



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPEAL NO.983 OF 2023

Vikas Ananda Khandare

... Appellant

Versus

1. The State of Maharashtra

2. XYZ

... Respondents

.....

Shri. S. G. Bobade a/w. Ms. Khan Sultana Bee Rahim, Advocate for the Appellant

Shri. N. D. Batule, APP for the Respondent – State.

Ms. Angha Pedgaonkar, Advocate for Respondent No.2 (appointed through Legal Aid).

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CORAM : NEERAJ P DHOTE, J.

Reserved on : 06.10.2025

Pronounced on : 14.10.2025

JUDGMENT :-

. This is an Appeal against the Judgment and Order dated 07.10.2023 passed by the learned Additional Sessions Judge, Hingoli in Sessions Case No.56/2017, convicting and sentencing the Appellant as follows:

“1. The accused No.1 Vikas Ananda Khadare is convicted under section 235(2) of the Cr.PC, for the offence p/u/s. 376 (1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment of seven years and shall pay a fine of Rs.10,000/-(Rs.Ten thousand only), in default to suffer rigorous imprisonment for a period of six months.

2. The accused No.1 Vikas Ananda Khadare is convicted under section 235(2) of the Cr.PC, for the offence p/u/s. 452 of the Indian Penal Code and sentenced to undergo rigorous imprisonment of two years and shall pay a fine of Rs.5,000/-(Rs.Five thousand only), in default to suffer rigorous

imprisonment for a period of three months.

3. The accused No.1 Vikas Ananda Khadare is convicted under section 235(2) of the Cr.P.C, for the offence p/u/s. 352 of the Indian Penal Code and sentenced to undergo rigorous imprisonment of one month and shall pay a fine of Rs.1,000/- (Rs.One thousand only), in default to suffer rigorous imprisonment for a period of seven days.

4. The accused No.1 Vikas Ananda Khadare is convicted under section 235(2) of the Cr.P.C, for the offence p/u/s.506 of the Indian Penal Code and sentenced to undergo rigorous imprisonment of six months and shall pay a fine of Rs.2,000/- (Rs.Two thousand only), in default to suffer rigorous imprisonment for a period of one month.

5. Both sentences shall run concurrently.”

2. The Prosecution’s case, as revealed from the Police Report, is as under:

2.1. The Victim was residing at Aajegaon, Tal. Sengaon, Dist. Hingoli with her Husband and two (2) Children. On 24.06.2017 when the Victim was sleeping with her Children inside the house and her Husband was sleeping outside the house in *Osri* (Veranda/open space) in the night, the Appellant entered the house between 12:00 to 01:00 a.m., and he pulled the Saree of the Victim and raped her. The Appellant put the Axe on the neck of her Son and threatened to kill him, if she shouts. However, the Victim shouted and her Husband got up from sleep and entered the room. The Husband of the Victim asked the Appellant to stop, whereupon the Appellant threw the Axe over him which missed and the Victim’s Husband got saved. The Appellant managed to escape. Due to the chaos, the Co-accused residing nearby and the relatives of the

Husband of the Victim gathered. The Husband of the Victim called the Uncle and Maternal Uncle of the Victim, who were residing at Asegaon Pen. Thereafter, the incident was reported to the Police and Crime bearing No.74/2017 came to be registered at Goregaon Police Station, Dist. Hingoli for the offence punishable under Sections 376, 506, 34 of the I.P.C. against the Appellant.

2.2. During the course of the investigation, the Spot Panchanama was carried, the Quilt on which the Victim was sleeping came to be seized from the spot, the Victim was sent for medical examination, the clothes of the Victim came to be seized, the Appellant came to be arrested, the clothes of the Appellant came to be seized, the Statement of Witnesses were recorded, the seized Articles were sent to the Laboratory and on completion of the investigation, the Appellant and the acquitted Accused came to be Charge-sheeted.

3. On committal, the learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 452, 376(1), 506, 352 of the I.P.C. and against the acquitted Accused for the offence punishable under Sections 504 r/w. 34 of the I.P.C. below Exh.25. The Appellant and the acquitted Accused pleaded not guilty and claimed to be tried.

4. To prove the Charge, the Prosecution examined the following witnesses:

PW1 – Baban Devba Chatse, as the Witness for the Spot Panchanama and Seizure of Articles from the spot.

PW2 – Victim.

PW3 – Husband of the Victim.

PW4 - Dr. Rupali Ajay Shiradkar, who examined the Victim,

PW5 – Ravindra Sivilal Sonune, the Investigating Officer.

5. The Prosecution brought on record the relevant documents, such as, the Report lodged by the Victim, Spot Panchanama, the Medical Examination Report, the Panchanama for seizure of the Victim's Clothes, the C.A. Report, etc. After the Prosecution filed the evidence closure *pursis*, the learned Trial Court recorded the Statement of the Appellant and the acquitted Accused under Section 313 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), wherein they denied the Prosecution's evidence. Thereafter, by the impugned Judgment and Order, the Appellant came to be convicted, as above, and other accused came to be acquitted.

6. Heard the learned Advocate for the Appellant and the learned APP for the State assisted by the learned Advocate for the Victim (appointed through Legal Aid).

7. It is submitted by the learned Advocate for the Appellant that,

the Victim's evidence was not reliable. There is no corroboration to the evidence of the Victim. There is delay in lodging the Report. The Report was after thought. There are material omissions in the testimony of the Victim and her Husband. The Medical evidence shows no injuries on the Victim. The spot was not shown by the Victim. The learned Trial Court did not appreciate the evidence in its proper perspective and wrongly convicted the Appellant. He submitted that, the Appeal be allowed and the Appellant be acquitted.

8. It is submitted by the learned APP that, the Victim's testimony was corroborated by the testimony of her Husband. Their testimony were consistent with the Report and previous Statement. The Spot Pancha proved the spot of incident. The Articles were seized. The Investigating Officer deposed of the investigation carried by him. The clothes of the Appellant, which he was wearing at the time of arrest, were seized and, therefore, there is variance in the description of the clothes of the Appellant given by the Victim and the clothes which were seized. He submitted that, the Appeal be dismissed and the Conviction and Sentence be upheld.

9. It is submitted by the learned Advocate for the Victim that, as the Victim, and the Witnesses - who were the villagers, not knowing what to do after the incident, delay is caused in lodging the Report. The Axe

used by the Appellant was seized and identified by the Husband of the Victim. As the Victim herself deposed that, she suffered no injuries, there is no question of injuries in the medical evidence. The plank of the door of the room was found broken, which corroborate the Prosecution's case. As there was no outstanding bill of water against the Victim's Husband in respect of taking water from the house of the Appellant, there is no question of false implication to avoid payment of bill. It was not the fault of the Victim, that the Police seized different clothes of the Appellant. The Prosecution proved the Charge and the learned Trial Court has rightly convicted the Appellant and, therefore, the Appeal be dismissed.

10. Undisputedly, the Victim was a married woman and major by age. At the time of evidence, which was recorded in March-2022, her age was shown as 31 years. The incident was of June-2017. Therefore, at the relevant time, the Victim might be 25 to 26-year-old. She was residing with her Husband and Children. Her house was surrounded by the other houses in the village. According to the Victim, in the night of incident, when she was sleeping with her 4-year-old Son and 5-year-old Daughter in the room, and her Husband was sleeping outside the house in the *Osri*/ Open space, the door of the room was not latched, but was closed. Between 12:00 to 01:00 a.m. the Appellant came inside the Room, pulled her Saree thrice and raped her. When she shouted, the

Appellant put the Axe on the neck of her Son and threatened her to kill him. She called her Husband and her Husband came in the room. Her Husband asked the Appellant to stop, however the Appellant went outside by breaking plank of the door. When her Husband tried to stop him from opening the door, the Appellant threw the Axe towards him; however, her Husband got saved. The Appellant escaped. Her Husband raised the shout, and neighbours, including the acquitted Co-accused, gathered. Her Husband called her Uncle and Maternal Uncle, who were resident of Asegaon Pen i.e. another village. They all went to the Police Station and lodged the Report. She further deposed that, the Police referred her to Doctor and also to the Court of Magistrate, where her Statement was recorded on 28.06.2017. She identified the Quilt and her Clothes i.e. Saree and Petticoat.

11. There is no dispute in respect of identify of the Appellant, as he was the resident of the same village where the Victim was residing. The place of incident was the house of the Victim situated in the residential locality of the village. The Cross-examination of the Victim show that, the electricity bulb in her house was lit. After the incident, she went to sleep and woke up in the morning at 06:00 a.m., swept the house, cleaned the utensils, took bath and her Husband told her that he will leave her to her Uncle's house and assaulted her. As her Father was no more, her Husband told her that, he will take her to her Uncle's house.

Her Husband gave a phone call to the Victim's Uncle, who came to their house along with the Maternal Uncle of the Victim at 10:00 a.m. A meeting was held between them and it was decided to file the case and accordingly, they went to the Police Station and lodged the Report.

12. After the Rape had taken place with the Victim, the natural course would have been to rush to the Police Station with the help of neighbours. However, strangely the Victim and her Husband called her Uncle and thereafter the decision was taken to lodge the Report. It is further strange that, the Victim's Husband assaulted her. No Husband will do so after the incident of Rape. Suggestion is given in the Cross-examination by the Defence that, the Victim's Husband used to suspect of illicit relations between the Appellant and the Victim and, therefore, lodged the false Report of Rape. It is not that the Victim and her Husband were alone which caused delay in lodging the Report. Her evidence show that, Father-in-law of the Victim was also the resident of the same village and in the night of incident, had gone to sleep at the house of her Cousin Father-in-law.

13. Though it has come in the evidence of the Victim that, there was a struggle with her body at the hands of the Appellant, she suffered no injuries. Even the evidence of PW4 - Dr. Rupali Ajay Shiradkar, the Medical Officer, who examined the Victim in the evening at 08:30 p.m.

on 24.06.2017, shows that she found no injuries on the Victim. The evidence of Medical Officer further show that, she was unable to state whether there was sexual assault on the patient on the basis of FSL Report. Though according to the Victim her Father-in-law Trimbak and Cousin Father-in-law Prabhakar came after alarm was raised by her Husband, the said two (2) witnesses are not examined by the Prosecution. According to the Victim, the incident was narrated to the Police by all; thereafter, in the next breath, she deposed that she herself had narrated the Report to the Police. This version raises reasonable doubt as to whether the Report was lodged on the Statement of the Victim.

14. The evidence of PW3 – Victim's Husband show that, he was residing with the Victim, two (2) Daughters and one Son. On 23.06.2017 after meals he slept outside the house at *Osri*/open space and Victim along with one Daughter and one Son slept in house. Between 01:00 to 01:30 a.m., his Wife called him and he knocked the door which was bolted from inside. He shouted loudly and the Victim opened the door. He saw the light burning inside the house and he noticed that the Appellant was going out of the house by breaking the plank of another door. He asked the Appellant to stop, on which the Appellant flung the Axe towards him, however, he got saved. He saw the Victim was weeping. In the morning, they went to the Goregaon

Police Station and lodged the Report. His Cross-examination show that, they reached the Police Station at 12:00 noon and from there they went to the Hospital. The Cross-examination show that, his evidence that, his Wife gave call to him, he saw the Appellant going out of the house after breaking the plank of another door, was an omission. It has come in his Cross-examination that, in the night of the incident, there was sexual intercourse between him and Victim. The suggestion is given that, he was suspecting love relations between the Victim with another person. Suggestion was also given that, until the relatives of the Victim came, he assaulted the Victim. His evidence also show that, in the morning, he and Victim woke up between 06:00 a.m. to 06:30 a.m. and he made phone call to his In-laws and his relatives also came to his house at about 08:00 a.m.

15. The conduct of Husband of the Victim in calling In-laws in the morning also appears strange. It could have been natural conduct for this witness to take the Victim with his relatives, who were residing in the same village, to lodge the Report; however, he made phone calls to his In-laws. His evidence further show that, after the incident, he left the village Ajegaon, where the incident took place, along with the Victim and his Children and started residing in the village Hanwat Kheda. The Husband of the Victim had to shout and thereafter the Victim opened the door. This makes the defence, that he was suspecting the relations of

the Victim with the Appellant, probable.

16. The evidence of PW1 - Baban Devba Chatse, Spot Panch, show that, the spot of incident was shown by Father-in-law of the Victim. Admittedly, Father-in-law was not the Eye Witness to the incident and strangely the spot was shown by him and not by the Victim.

17. The evidence of PW5 - Ravindra Sivilal Sonune, Investigating Officer, show that, he seized the Quilt and the Axe from the Spot of incident. His evidence go to show that, he seized the clothes of the Victim and that of the Appellant. His evidence further show that, he sent seized Articles to the Forensic Laboratory on 30.06.2017. The C. A. Report in respect of Quilt and Clothes of the Victim is at Exh.60, which show neither blood nor semen were detected on the Quilt, Saree and Petticoat of the Victim. The evidence of the Investigating Officer show that, he did not record the Statement of the children of the Victim. This evidence on record do not corroborate the testimony of the Victim.

18. Re-appreciation of the evidence available on record, as above, do not establish the Charge against the Appellant. The evidence of the Victim and her Husband do not inspire confidence, that in the night of the incident, the Appellant committed the Rape on the Victim. Whereas, the evidence show that, their was intercourse between the

Victim and her Husband. Their testimony is shrouded with improbabilities. As seen from the Cross-examination of Husband of Victim, the FIR was lodged at 12:00 noon, when the incident was of midnight. As already seen, in the evidence of Victim that after discussion the FIR was lodged. The defence version that the Victim's Husband was suspecting the relations between the Appellant and the Victim and lodged the false First Information Report, appears more probable. The Prosecution's case of Rape on the Victim do not find corroboration by the Medical evidence and the Forensic Reports. Therefore, on the basis of the evidence available on record, it is not possible to hold that the Charge is proved against the Appellant and, further it is not possible to uphold the Conviction and Sentence awarded by the learned Trial Court against the Appellant. The Appeal, therefore, succeeds and the following order is passed.

ORDER

- (i) The Appeal is allowed.
- (ii) The Appellant is acquitted for the offence punishable under Sections 452, 376(1), 506, 352 of the I.P.C. and the Sentence imposed on him by the impugned Judgment and Order is quashed and set aside.
- (iii) The Fine amount, if paid by the Appellant, be refunded.
- (iv) The Appellant is behind the bars and he be released forthwith, if not required in any other offence.

- (v) Muddemal Articles be dealt with as per the operative Order of the Impugned Judgment.
- (vi) Record and Proceedings be sent back to the learned Trial Court.
- (vii) The fees of the learned Advocate Ms. Angha Pedgaonkar appointed through legal aid to represent the Respondent No.2 - Victim is quantified at Rs. 10,000/- (Rs.Ten Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(NEERAJ P. DHOTE, J.)

GGP