



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1076 OF 2024
WITH
CRIMINAL APPLICATION NO. 5012 OF 2024
IN
CRIMINAL APPEAL NO. 1076 OF 2024

X.Y.Z.

... Appellant
(Orig. Informant)

Versus

1. The State of Maharashtra,
Through Police Station,
Jawahar Nagar, Chhatrapati Sambhajinagar City,
Tq. & Dist. Chhatrapati Sambhajinagar.
2. Anil Chandan Pasaratte (Dead),
3. Chandan Fakira Pasarte
Age : 65 years, Occ: Retired,
R/o. Vishnu Nagar, Near Gajanan Maharaj Temple,
Buldhana, Dist: Buldhana.
4. Sau. Mandabai W/o. Chandan Pasarate,
Age : 62 years, Occ: Retired,
R/o. Vishnu Nagar, Near Gajanan Maharaj Temple,
Buldhana, Dist: Buldhana.
5. Sau. Kamal W/o. Anil Pasarate,
Age : 35 years, Occ: Retired,
R/o. Vishnu Nagar,
Near Gajanan Maharaj Temple,
Buldhana, Dist: Buldhana.

... Respondents
(Resp. No.3 to 5 are
Orig. Accused Nos.2 to 4)

.....
Mr. Ishwar Kalyan Wagh, Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent No.1 – State.
Mr. N. S. Ghanekar, Advocate for Respondent Nos.3 to 5.
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30 JULY 2025

PRONOUNCED ON : 18 SEPTEMBER 2025

JUDGMENT :

1. Original informant, who set law into motion by filing FIR No.I-153 of 2014 against present respondents, is dissatisfied by the judgment and order of acquittal passed by learned Additional Sessions Judge, Chhatrapati Sambhajnagar in Sessions Case No. 10 of 2015. Original informant has also pressed into service above Criminal Application bearing No.5012 of 2024 by raising prayers to stay the impugned judgment and order to the extent of releasing gold in favour of original accused Nos.2, 3 and 4 (i.e. respondents herein).

FACTUAL MATRIX

2. In nutshell, the case before learned trial Court was that, present appellant lodged FIR against respondent nos.2 to 5 on 14.06.2014, on the premise that, she was married, had children and her husband worked abroad. She got acquainted with accused no.1 Anil Chandan Pasrate (since deceased). They both exchanged their phone numbers to each other and even deceased accused used to visit her. He expressed his love towards her and assured her of marriage by giving divorce to his wife. In 2011, when her children were out of the house,

she claimed that by mixing something in her tea, he had forcibly established physical relationship with her. He used to threatened to make her photographs viral, demanded money from her and used to forcibly maintain physical relations with her for almost four years. She also permit him to operate her bank locker and finally accused took away gold ornaments from the locker with her consent and knowledge for the purpose of raising loan and ultimately refused to return it. Having felt cheated, she lodged report against accused no.1 and his family members, resulting into registration of crime no. I-153 of 2014 for offence punishable under sections 376(i), 328, 385, 406, 114, 323, 504, 506 read with section 34 of Indian Penal Code (IPC). Investigation culminated into filing of charge-sheet and trial was conducted vide Sessions Case No. 10 of 2015. By judgment and order dated 03.10.2024, trial ended into acquittal of all accused from all charges.

3. Feeling aggrieved by the judgment and order of acquittal, both, Appeal as well as Criminal Application are pressed into service, more particularly clause 5 of the operative part of the judgment, which reads as under:

“5. Vide application at Exh.130 gold weighing 232.02 gm. freezed in Manpurram Gold Finance, Akashwani, Aurangabad, Branch Manager of the Manpurram Gold Finance, Akashwani, Aurangabad is hereby directed to

release said gold jewelery as per rule by completing formalities in favour of the accused nos.2, 3 and 4, after appeal period is over.”

SUBMISSIONS

On behalf of Appellant :

4. Learned counsel for appellant pointed out that, informant, who is a victim, was a married lady. That, accused happens to be her relative, took disadvantage of her being alone and her husband being away and abroad. He pointed out that, he made her drink laced tea and sexually exploited her, took photographs of her in nude condition and by threatening to show the same to her relatives, he blackmailed her and time to time against her wish, accused sexually ravished her. According to learned counsel, merely because of fear of shame, victim did not lodge report at that time. Learned counsel further submitted that, taking disadvantage of acquittance and above photographs, he forcibly accompanied her to her bank, joined him as co-operator of her locker and in her absence took away the 20 Tolas gold belonging to her. That, there is cheating as well as sexual exploitation. That, victim has finally approached police and has lodged report. Learned counsel pointed out that, victim has narrated entire story in her evidence at Exh.89. That, to led corroboration she had also examined another relative. He pointed out that even bank officials and witnesses from financial institution, are

examined on the point of operation of locker and borrowing loan. Thus, according to learned counsel, accused has not only sexually exploited victim, but has also retained gold ornaments belonging to informant and as he refused to return the same, complaint was lodged. Learned counsel pointed out that, there was overwhelming evidence regarding commission of forceful rape as well as cheating and taking away gold belonging to informant. That, learned trial court failed to consider and appreciate informant's evidence and not only acquitted the accused, but also refused to handover gold belonging to her. Thus, according to learned counsel, the order of trial court acquitting accused as well as directing the handing over of gold ornaments to original accused nos.2 to 4 is illegal, erroneous and perverse and is required to be interfered by allowing the appeal.

On behalf of Respondents :

5. Learned counsel for respondent nos.2 to 5 pointed out that, allegations are false, baseless and afterthought. That, informant in spite of being married, and in spite of having children, had maintained friendly relations and subsequently willingly indulged in consensual sexual relations. He pointed out that, the acquaintance of said relations were for four years. That, main accused is now no more. Present respondents are parents and family members of main accused. That, they are falsely

implicated. He pointed out that, as regards to allegations of cheating and taking away gold ornaments is concerned, there is no credible or legally acceptable evidence. That, complaint being belated, there is no proof of ownership of gold ornaments and therefore, learned trial court committed no error whatsoever in passing the impugned judgment. He pointed out that, at no point of time, either during pendency of trial or even after conclusion of trial, any proceedings were initiated, supported with any material regarding ownership of ornaments so as to assert claim over it. That, present criminal application for return of gold ornaments has no basis or foundation and consequently it is urged to be rejected.

6. After hearing the above submissions and on complete re-appreciation of the evidence adduced before the trial court, it is emerging that, present appellant had lodged report against accused no.1 Anil (since deceased) for commission of offence under sections 376(i), 328, 385, 406, 114, 323, 504, 506 r/w section 34 of IPC. Present accused nos.3, 4 and 5 seems to be parents and sister of main accused no.1, who indisputably has expired during pendency of trial itself.

7. Substance of the charge is that, on the promise of marriage and by making informant drink laced tea, she was sexually ravished. Photographs of said episodes were allegedly used to repeatedly sexually

exploit her. Second allegation is that, by operating her bank locker, 20 Tolas gold has been taken away without her consent for raising loan and retaining the gold ornaments.

8. In the trial court, prosecution seems to have adduced evidence of in all seven witnesses i.e. PW1 victim informant; PW2 relative of PW1; PW3 Vivek, PW4 Amrutlal and PW5 Sandip, Bank Officials; PW6 Sagar, brother of informant and PW7 P.I. Sk. Salim, Investigating Officer.

9. Here, crucial evidence is of victim PW1, PW2 her relative and PW6 her brother. On visiting their testimonies and answers given in cross examination, it is emerging that, victim is a married lady having children and her husband seems to be working abroad. From her testimony, it is emerging that, during her visits to her first maternal cousin's place, she got acquainted with accused no.1 Anil, who happens to be brother-in-law of her such sister. Her testimony shows that she and accused no.1 exchanged their numbers and were talking to each other. According to her, initially there was marriage proposal i.e. her marriage with accused no.1, but said proposal had not materialize. She testified that, during their meetings, accused expressed his love towards her and even assured to remarry her by giving divorce to his wife. She claims that she had turned down the proposal, but he insisted for maintaining

relations. Her evidence shows that, there was acquaintance between them since almost 2011 and are admittedly relatives of each other though distant one.

10. Victim / informant's evidence is at Exh.89 goes to show that, according to her, one day accused called her at his place on the pretext of he to be unwell and there she claims that he sought sexual favours from her and on her refusal he offered her tea, which according to her was intoxicated and during its influence he established sexual relationship. This according to her was the first sexual encounter, but as stated above, she is unable to give date, month or year. According to her, since thereafter by threatening to make her photographs known to others, he maintained sexual relations with her against her wish and even demanded money from her. Then she states that in 2013, she shifted to Pune i.e. after return of her husband, but still according to her, accused Anil approached her and threatening to kill her children. To save her marriage, she claims to have succumbed to the demands. Then she states that, in 2012, once while she was going to operate her locker at Jalgaon Peoples Bank at Aurangabad, accused joined her, entered his name also along with her for operating the bank locker and after seeing the gold in locker, he demanded the gold for purchasing flat. She claims that, he threatened and even took away the gold from her against her wish i.e. 20

tola gold by operating locker behind her back. Again in 2014, accused called her on the pretext of returning the gold, but accused and his wife beat her and drove her out of the house. Therefore, she approached Jawaharnagar Police Station.

11. On visiting her cross, it is emerging that, she has admitted that her marriage was performed in 2002. She admitted about not inquiring with accused about his wife. She admitted acquaintance, accused coming to Aurangabad from Buldhana to meet her, they both meeting outside the house. She is unable to tell when he maintained physical relations with her by expressing his love. She admitted that, since first visit of accused to her sister's place till she visited his place, there were no demand of physical relations. She is unable to remember that she herself booked air tickets of herself and accused for a trip from Aurangabad to Bangalore, but she admitted that they had stayed at Bangalore as well as Kuala Lumpur. She attending religious function with him or joining for marriage ceremony of his friend and to be in the company of accused along with own son of which there are photographs which she has admitted to be correct. There are omissions about she gaining consciousness, scolding accused for having sexual relations with her after making her drink tea.

12. In further cross examination, she has admitted that she had authorized accused to operate her said locker and admitted that he was handling the locker for a period of one year and that after two years thereafter she has lodged complaint relating to the articles in locker. Rest is all denial.

13. Other witnesses i.e. her relative and brothers merely deposed about getting knowledge about accused having sexual relations with victim. Remaining witnesses are on the point of victim having bank locker, accused operating it, mortgaging the gold for borrowing loan and become defaulter. So much is the only evidence.

14. Here, as seen from above, the victim a married lady and also a mother, alleges initial acquaintance with deceased accused and subsequently he expressing his love towards her while her husband was abroad. She claims to have got acquainted with accused no.1 in 2011 and said relations seems to have lasted for almost four years of which she has herself admitted. Except oral allegations about accused making her drink laced tea at his house during her visit to him, there is nothing. She has not stated the period of such episodes. Her evidence shows that she herself booked their tickets to go from Mumbai to Bangalore and Kuala Lumpur. Therefore, apparently, she seems to be a consenting adult to

whatever relations were established between them. Her answers in the cross renders her allegations about being threatened and forced upon against her wish itself doubtful. Therefore, charge under section 376(i) of IPC fails.

15. In support of allegation of 328 of IPC is concerned, there is no distinct and cogent evidence. There is no prompt reporting, rather even thereafter, there is continued acquaintance permitting accused to operate her bank locker. There is no evidence suggesting availability of essential ingredients of attracting section 328 of IPC.

16. Her answers in cross examination that accused was with her when she went to open bank locker and her answer that she joined him and allowed him to operate her bank account inflicts serious blow to her accusations about criminal breach of trust regarding taking away her gold ornaments. As pointed out by learned counsel for respondents, there does not seem to be any efforts by her during trial to establish ownership and possession of so called 20 Tolas gold to be part in the locker. There is no evidence to show that accused behind her back opened the locker and took away 20 Tolas gold. Though there is witness about gold being mortgaged for raising housing finance, it was expected of complainant to cogently establish that the said gold indeed belonged to her. There is no distinct evidence in this direction also.

17. Learned counsel for appellant seeks indulgence of this court in appeal for granting stay to the order passed by learned Additional Sessions Judge directing handing over of gold to accused nos.2, 3 and 4. As pointed out, no distinct efforts were done by appellant either during pendency of trial or post conclusion of trial asserting claim and ownership over the gold ornaments i.e. by invoking section 452 of Cr.P.C. Though, now in appeal attempt is made to bring on record documents of ownership of gold, entitlement of the gold is to be established in the trial and not in this court. For said reasons, prayer for stay to the operative part of clause (5) also cannot be granted.

18. In the light of above discussion, there is no perversity in the finding arrived at by the learned trial court. No patent error or illegality has been brought to our notice in the appeal. Resultantly, there being no merits in the same, I proceed to pass the following order.

ORDER

- (i) The appeal is hereby dismissed.
- (ii) Criminal Application No. 5012 of 2024 is rejected.

(ABHAY S. WAGHWASE, J.)