

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.849 OF 2024

XYZ (Victim) ...Appellant
Vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Prakash Wagh, for the Appellant.
Mr. Vinit A. Kulkarni, APP for the Respondent-State.
Mr. M. A. Patil a/w Mr. Jaydeep A. Shringane, for the Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

DATED : 02nd JULY, 2025

P.C. :-

1) This is an Appeal against the Judgment and Order of acquittal passed by the Additional Sessions Judge, Ratnagiri in Sessions Case No.13 of 2022. The Judgment was passed on 25th June, 2024. By the impugned Judgment the Respondent No.2 i.e. the Original Accused was acquitted from the charges of commission of offences punishable under Sections 376(2) (n)(j), 328, 506 of I.P.C. and under Section 66-E of the Information Technology Act, 2000. This is the Appeal filed by the original first informant.

2) According to the F.I.R. lodged by her on 25th November, 2021 with Jaigad Police Station, Ratnagiri *vide* C.R. No.103 of 2021, she has stated that, she got acquainted with the Accused in the year 2018

through a social networking site. They exchanged their phone numbers. According to her, the Accused told her that he was in the business of construction and he had completed some projects in Bhandup and Vikroli. He was president of the local ward of a political party. The first informant was working in the film-city as hair dresser and also used to supply food. They met for the first time in the year 2019. According to her, the Applicant told her that he had dispute with his wife. He needed lunch boxes for himself and his father. Therefore, she started supplying lunch boxes to him. He had promised to pay Rs. 25,000/- for that purpose and also for doing some small jobs for him.

3) In September 2019, he told her that he had a project at Ganpatipule and he wanted to visit that site. As a part of her job she agreed to accompany the Accused to Ganpatipule. They reached there on 18th September 2019, in the morning. He booked a room in a hotel. They had their lunch in that hotel. In the evening, when they returned to the hotel after visiting the temple, the Accused told her that they would visit the site on the next day because it was already late. They came back to the hotel at 8:30 p.m. It is her case that when she had gone to the bathroom, the Applicant introduced some substance in a cold drink and made her drink it, because of which she went into deep sleep. When she woke up at 3:00 a.m., she realized that she was not wearing any clothes. The Accused was also not wearing any clothes. She realized that there was physical contact

between them during that period. The Accused confirmed the same fact. He told her that he had shot their video and started showing her that video. He asked her to keep quiet. On that pressure, he established physical relations with her two to three times in the same manner. On the next day, they returned back to Mumbai. Since the Accused had threatened her; she did not give any complaint to the police.

4) In August 2021, again the Applicant threatened her that he would make the video clip viral and demanded favour from her. Because of this, she lodged her F.I.R. on 25th November, 2021. The investigation was carried out and the trial was conducted. At the conclusion of the trial, the learned Trial Judge acquitted the the Accused.

5) Learned Counsel for the Appellant submitted that she had given a consistent version in her F.I.R., in her deposition and even in her statement recorded under Section 164 of Cr.P.C. He submitted that it is the settled law that the conviction can be based on the sole testimony of the prosecutrix. He relied on the Judgment of the Hon'ble Supreme Court in the case of ***Parkash Chand Vs. State of Himachal Pradesh*** decided on 12th February 2019 in Criminal Appeal No.2393 of 2010. He submitted that deposition of the first informant has remained unchallenged. She has explained the delay of two years in lodging the F.I.R. Initially, she had not lodged the F.I.R. but because of the pressure put by the Accused in the year 2021, she decided to lodge the F.I.R. because of the circumstances, as she

did not want to succumb to his demands. There was no monetary transaction. As far as the Accused's money is concerned. The entire money which she had received was returned back to him. Therefore, there was no reason to falsely implicate him.

6) Learned counsel for the Respondent No.2 i.e. the Original Accused submitted that the informant was a 46 year old lady with grown up daughters. She was supplying tiffins. She had even contested a local election. Therefore, it is not possible that she was not aware of the situation or she was totally helpless. There is a delay of two years in lodging the F.I.R. There is no incriminating recovery. The alleged video clip was not found anywhere. All these allegations are vague and the F.I.R. was lodged to pressurize the Applicant.

7) We have considered these submissions and we have perused the impugned Judgment. The learned Judge has recorded his conclusion in paragraph 27 of the impugned Judgment which reads thus:-

"27. As such from the entire evidence, it appears that Investigating Officer also was unable to collect any evidence for the reason that the report was lodged two years after the alleged incident, except the evidence of lodge manager, there is nothing material on record. The prosecution could not bring on record anything to show that the accused administered some stupefying substance. As such, there is no evidence in that regard except the words of prosecutrix. The prosecution also could not collect any evidence as to

show that accused was involved in any scene of sexual intercourse for the reason that two years after it was not possible for Investigating Officer to collect such evidence. The testimony of prosecutrix cannot be said to be acceptable and reliable to punish the accused by relying upon the testimony of prosecutrix only. Therefore, I came to conclusion that prosecution failed to substantiate any of the charges against the accused. In view of this, accused is entitled for acquittal. Consequently, I answer all the points in negative and proceed to pass following order.”

8) We have considered these submissions. Undoubtedly, in a given case, if the evidence of the prosecutrix is found to be absolutely trustworthy, conviction can safely be based on such evidence. But in the present case, we do not find that her deposition is beyond reasonable doubt. First of all, there is unexplained and unreasonable delay of two years in lodging the F.I.R. Obviously, after two years it is not possible to expect the Investigating Agency to collect any evidence. In any case, for two long years she had not lodged her protest anywhere. She had not complained about it either to the police or to her friends or relatives. Two years' period is quite unreasonable. Even otherwise her case does not appear to be truthful. The lodge owner at Ganpatipule was examined as PW3. He has produced the entries of the register, which show that the Accused and the first informant had occupied and booked the same room i.e. room No.105. The first informant had even given her Aadhar Card for booking that room. Therefore, it cannot be said

that she was not aware that they were staying in the same room. She has not uttered a word about their monetary transactions in her F.I.R. However, in her cross-examination, the Accused had successfully brought out their monetary transactions, which she had suppressed from the Investigating Agency.

In the cross-examination, she admitted that the Accused had given Rs.1,00,000/- by a cheque dated 12th March, 2021. Though, she claims that the amount given was regarding the work which she had carried out for him. Then there were two more payments of Rs.1,00,000/- on 18th March, 2021 and 23rd July, 2021. All these facts are suppressed by her not only in her F.I.R. but even before the Court when her examination-in-chief was recorded. Therefore, we find substance in the arguments of the learned counsel for the Accused that the informant herself made the Accused part with big amounts. The view taken by the learned Judge as we have recorded earlier is quite reasonable. It is a possible view. Therefore, we are not inclined to interfere with the impugned Judgment and Order of Acquittal which in our opinion has passed with proper appreciation of evidence. We do not find that it is perverse.

9) We do not find any merit in the Appeal. The Appeal is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)