



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 23 OF 2021

Bandu Maroti Pawar,
Convict No. C-4080,
aged about 35 years,
District Prison, Yavatmal.

...APPELLANT

Versus

1] The State of Maharashtra,
through P.S.O. Ghatanji,
District – Yavatmal.

2] XYZ (Victim) in Crime No. 456/2019,
Registered in P.S.O. Ghatanji, District – Yavatmal.

...RESPONDENTS.

Mr. Suyog P. Deshpande, Counsel for the appellant (appointed).
Mr. I.J. Damle, A.P.P. for respondent no.1/State.

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CORAM : ANIL L. PANSARE AND
Y.G. KHOBRAGADE, JJ.

ARGUMENTS WERE HEARD ON : 9/10/2025
JUDGMENT IS PRONOUNCED ON : 14/10/2025

JUDGMENT (PER : ANIL L. PANSARE, J.) :

The appellant has assailed judgment dated 24/6/2020 passed by the Sessions/Special Judge, Yavatmal, in Special Case No. 56/2019. He has been convicted for the offences punishable under Sections 376(2)(f), 376(2)(i), 376(2)(n) and 506 of the Indian Penal Code, 1860 (for short

“IPC”), and Sections 4, 6 and 10 of the Protection of Children From Sexual Offences Act, 2012 (for short “POCSO Act”), and Section 235(2) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”).

2] The incident has allegedly occurred on 15/8/2019 and 16/8/2019. The appellant’s wife (informant) had been to field for work. The appellant and his daughter were at home, when the appellant is said to have committed penetrative sexual assault on his daughter. Accordingly, he has been convicted for the offences punishable under the provisions of IPC as also POCSO Act.

3] Briefly stated, the facts are, on 16/8/2019, when the appellant’s wife returned back home, she found her daughter to be nervous and scared. She accordingly asked her as to what had happened, to which, the daughter narrated the incident saying that the appellant committed penetrative sexual assault. The wife then took her daughter to her (wife) maternal house, where her brother was also residing. She informed her mother and brother about the incident. At that time, the appellant came there and threatened his wife by saying that if

she doesn't follow him, he will beat her and daughter. The wife did not follow him, but approached Ghatanji Police Station and lodged report. Investigation was then carried out and chargesheet filed, which culminated into conviction of the appellant.

4] We have heard Mr. Suyog P. Deshpande, learned Counsel for the appellant, and Mr. I.J. Damle, learned A.P.P. for respondent no.1/State. We have gone through the evidence, documents, impugned judgment and other material. We will refer to same to the extent necessary to decide the following points that arise for our consideration. We have recorded finding thereon for the reasons to follow.

Sr. No.	Points	Finding
1	Whether the prosecution proved that on 15/8/2019 and 16/8/2019, the appellant repeatedly committed penetrative sexual assault on his daughter ?	In the negative
2	Whether interference is called for in the impugned judgment ?	In the affirmative
3	What order ?	Appeal is allowed

REASONS

As to point nos. 1 and 2

5] The point that requires answer is, whether the allegations made by the appellant's wife and daughter were proved. The Counsel for the appellant has not disputed that his daughter was minor. His argument is that the daughter has been tutored by her mother and relatives because of strained relationship between appellant and his wife, as also, wife's relatives.

6] Accordingly, we have, with the assistance of both sides, gone through the testimony of the appellant's wife (informant) and daughter (victim).

7] The appellant's wife is examined as first witness. In chief-examination, she has supported the case of the prosecution, and deposed in terms of the report, which she lodged with the Police Station. In cross-examination, she deposed that many a times her daughter and husband were at home. She admitted that on 14/8/2019 (one day prior to the incident), there occurred quarrel between appellant and his brother-in-law (brother of the witness). She also admitted that because of the quarrel, the appellant had also quarreled with her. She then said that thereafter, she and her daughter went to

her mother's house. She then denied that she stayed at her mother's house for entire night. However, immediately thereafter, she said that she stayed at her mother's house. It is then brought on record that relationship between her and appellant was not cordial and that she was residing at mother's house for three years after marriage. It is also brought on record that while lodging report, her brother was with her. Thereafter, a case was put up that because of such strained relationship, false report was lodged, which the witness denied.

8] The Counsel for the appellant argued that evidence show that on 14/8/2019, there occurred quarrel between appellant and his brother-in-law, followed by quarrel between appellant and his wife. The appellant's wife and daughter then proceeded to the house of wife's mother, where they stayed for entire night. It is nobody's case that the appellant's wife and daughter came back home, either on 15th morning or at any time prior to the alleged incident. The Counsel further argued that the appellant's wife has also admitted that her relations with the appellant were strain, and in fact, she stayed at her maternal house for three years even after marriage. Accordingly, he argued that possibility of false implication

cannot be ruled out.

9] The Counsel then invited our attention to the evidence of daughter (victim). In chief-examination, she deposed that the incident occurred in the afternoon of 15/8/2019. The appellant asked her to press legs, thereafter, asked her to remove pant, she refused, however, the appellant removed it. He then removed his pant, and committed rape. The appellant gave her life threat if she would disclose the incident to anybody. Therefore, she did not disclose it to her mother. Similar such incident occurred on next day also. Her mother came back from the field in the evening. She asked her (daughter) as to why is she so scared, upon which, she informed about the incident.

10] In cross-examination, she deposed that she is more inclined towards her mother and listen to her mother. She further said that she follows her mother's instructions. She then said that on 15/8/2019, she had been to School for a function. She then corrected herself and said that she did not go to School on that day, however, she deposed that on 15/8/2019, she was playing at her house with her friend and she continued

playing until her mother came back. She also admitted that the relations between appellant and her mother were strained. She then said that there occurred quarrel between appellant and her mother and, therefore, her mother got furious and took her to the house of her grandmother. Thereafter, they lodged report and stayed at her grandmother's house. It is then brought on record that her mother, grand-parents and maternal uncle were annoyed with her father. She then deposed that because of which they all said that such complaint is to be lodged against her father.

11] The Counsel for appellant rightly argued that victim's cross-examination supplements the argument of tutored story. Her statement that her mother, grand-parents and maternal uncle were annoyed with the appellant and that therefore, they said that such a complaint is to be lodged against him, is a statement that would destroy the prosecution's case.

12] In this regard, we called upon the learned A.P.P. to show us from the judgment as to how this part of the evidence has been dealt with by the trial Court to which the learned

A.P.P. has invited our attention to paragraph 26 of the judgment, which reads as under :

“26. The evidence of the victim show as to how she was sexually assaulted by the accused in the house. The statement under section 164 of Cr.P.C. has stated in what manner the accused has done sexual assault on the victim. The victim has stood the test of cross-examination and has categorically stated as to how sexual assault took place with her.”

13] Thus, the trial Court has relied upon the statement under Section 164 of the Cr.P.C. and straight away held that the victim has withstood the cross-examination. This finding is apparently erroneous inasmuch as the witness has nowhere stated that her statement was recorded before the Court. In any case, such statement will not replace the substantive evidence. Secondly, the finding that the victim withstood cross-examination runs contrary to what we have noted above. The victim has stated that she was playing with her friend until her mother came and has also stated that the report is lodged at the instance of her mother and relatives. She is exposed in the cross-examination.

14] The learned A.P.P. has then invited our attention to certain observations made by the trial Court in paragraph 19 of the judgment. According to the learned Judge, there is no material on record to show that the victim was under influence of her mother.

15] This finding is again erroneous inasmuch as the victim has categorically said that she behaves as instructed by her mother and has more inclination towards her mother. Despite such status, the learned Judge has observed as above and further said that there is no material that the victim was tutored, when she states that the report was lodged at the instance of mother and her relatives.

16] The learned Judge has then rendered a finding that her evidence before the Court is consistent with her statement under Section 164 of the Cr.P.C. and that her hymen was slightly torn at 6 o'clock position. On the basis of such evidence, he jumped to the conclusion that the appellant had forceful sexual intercourse with his daughter.

17] Thus, the learned Judge has relied upon the statement under Section 164 of the Cr.P.C. without the same

having been proved. In any case, and as stated above, the substantive piece of evidence is something that would weigh over other evidence, particularly, when statement under Section 164 of the Cr.P.C. was not even proved. So far as status of hymen is concerned, PW5 doctor deposed that there was no evidence of injury on genital area. There was no evidence of bleeding and edema as regards hymen. The doctor also admitted that hymen can be torn by cycling and jumping. She, however, volunteered that where torn was at 6 o'clock position, it cannot be because of cycling and jumping.

18] The evidence of doctor would only indicate that the victim had undergone sexual intercourse, however, there is no evidence that the appellant is the one, who is responsible for the same. The doctor's evidence, saying that there were no injuries on genital area of victim, nor was there bleeding and edema, is supporting the defence. As such, it is not always necessary that there would occur injury, however, the trial Court observed that there was human blood on quilt (wakal) and hymen was torn showing that the appellant had forceful sexual intercourse with his daughter. In that context, the evidence of doctor that there was no evidence of injury on

genital area and no evidence of bleeding and edema, is relevant. Thus, doctor's evidence will be also not helpful to the prosecution.

19] Put all together, the testimony of the informant – mother and victim – daughter doesn't inspire confidence, rather possibility of the appellant having been roped in cannot be ruled out. The learned Judge failed to note vital admissions in cross-examinations of both the witnesses. The finding, therefore, will have to be over-turn.

20] As such, the prosecution has examined other witnesses also, but their evidence would not lead to a different conclusion. PW3 is maternal uncle, whose evidence will only certify the strained relations, PW4 is a panch witness to spot panchanama, PW5 is doctor, whose evidence is discussed and PW6 is Investigating Officer.

21] Thus, the prosecution failed to prove the allegations. Accordingly, point no.1 is answered in the negative and point no.2 is answered in the affirmative.

22] As to point no.3, having answered first two points in the manner hereinabove, the judgment of the trial Court is

liable to be set aside. Hence, we proceed to pass following order :

ORDER

- I] The appeal is allowed.
- II] The judgment dated 24/6/2020 passed by the Sessions/Special Judge, Yavatmal, in Special Case No. 56/2019, is quashed and set aside.
- III] The appellant is acquitted of all the charges. He shall be released forthwith, if not required in any other case.
- IV] Fees of the Counsel appointed to represent the appellant be quantified and paid as per Rules.

JUDGE

JUDGE

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