



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

CRIMINAL APPEAL NO.31 OF 2021

APPELLANT : Sheikh Ibrahim Sheikh Karim,
(In Jail) Aged 45 years, Occ. Labour,
R/o, Kosara, Tah. Pauni,
District: Bhandara

//VERSUS//

RESPONDENT : The State of Maharashtra,
Through the officer in charge,
Adyal Police Station, Tah, Pauni,
District : Bhandara

Mr. Amit Kukday, Advocate (appointed) for the appellant.
Mr. K.R. Lule, APP for the respondent/State.

CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE J, J.

Date of reserving judgement : 11.11.2025

Date of pronouncing judgment : 18.11.2025

JUDGMENT (Per Raj D. Wakode, J.)

1. The present appellant has approached this Court by way of present appeal under Section 374 of the Code of Criminal Procedure. By virtue of the present appeal, the appellant seeks to challenge the judgment

dated 01.09.2018 passed by the learned Sessions Court, Bhandara in Sessions Trial No.03/2017 whereby the learned trial Court has convicted the present appellant for the offence punishable under Section 376(1)(2) (f) of the Indian Penal Code, 1860 (for short, 'I.P.C.') and sentenced him to suffer imprisonment for life and to pay fine of Rs. 25,000/-, in default to suffer rigorous imprisonment for six months. The learned Sessions Judge has further convicted the present appellant of the offence punishable under Section 506 (II) of the I.P.C. and sentenced him to suffer rigorous imprisonment for six months and to pay fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month.

2. The facts of the present case in brief are as under :

The appellant is the father of the victim girl/PW-2. PW-1 informant is the wife of the appellant. As per the prosecution, the appellant, original accused, on the fateful day of 10.10.2016 at about 1.30 p.m. when the PW-1 mother of the victim was not at home, committed rape upon the PW-2. The details of the commission of the aforesaid offence are given specifically by the PW-2 in her deposition which were unshattered in her cross-examination also. The aforesaid allegations of PW-2 were corroborated by her mother PW-1 who had lodged the oral

report with the respondent on 12.10.2016. The respondent registered First Information Report No.0057/2016 on 12.10.2016 for the offences punishable under Sections 376(1)(2)(f) and 506 of the I.P.C. The Investigating Officer-PW-8 conducted the investigation wherein he recorded the statements of PW-1 and PW-2, visited the spot, prepared the spot panchanama. Seized the bedsheet, clothes of the victim & the accused and prepared seizure panchanama thereof in presence of the panchas. On the requisition of the PW-8, the Judicial Magistrate First Class, Pauni recorded the statements of PW-1 and PW-2 under Section 164 of the Cr.P.C. The medical examination of the PW-2/victim was conducted at the hands of PW-6 (Dr. Meera Sonawane) and PW-7 (Dr. Megha Davile); whereas, the medical examination of the present appellant was conducted at the hands of PW-5 (Dr. Suyog Kamble). Accordingly, the medical examination reports were collected by the Investigating Officer and after concluding his investigation, he filed charge-sheet against the present appellant before the learned Judicial Magistrate First Class, Pauni for the aforesaid offences. The learned Judicial Magistrate First Class, Pauni committed the aforesaid case to the Court of Sessions.

The learned Sessions Court framed the charge on 30.01.2017 at Exh. 4 and recorded the plea of the present appellant/accused wherein

the present appellant pleaded not guilty and claimed to be tried. Accordingly, the aforesaid session case was conducted by the learned trial Court wherein the prosecution had examined in all eight witnesses to bring home the guilt of the accused. The prosecution relied upon various documentary evidence which are enumerated alongwith their exhibit numbers by the learned trial Court in paragraph 5 of the impugned judgment. After the conclusion of the evidence, the learned Sessions Court recorded statements of the accused under Section 313 of the Cr.P.C. vide Exh. 63. The appellant in his statement under Section 313 raised the defence that the appellant has been falsely implicated. However, he did not lead any defence evidence.

3. Upon hearing learned counsel for the parties, the learned Sessions Court, Bhandara convicted the present appellant vide its judgment dated 01.09.2018 which is impugned before this Court.

4. We have heard Mr. Amit Kukdey, learned counsel for the appellant and Mr. K.R. Lule, learned APP for the respondent/State. We have gone through the evidence, documents and the impugned judgment. We will refer the same to the extent if necessary to decide the following

points that arise for our consideration. We have recorded our findings thereon for the reasons to follow:-

Sr.No.	Particular	Findings
(i)	Does the prosecution prove that the accused committed rape on the prosecutrix?	Yes
(ii)	Does the prosecution further prove that the accused committed criminal intimidation by giving threats to the prosecutrix to kill her with intent to cause alarm to her?	Yes
(iii)	Whether interference is called for in the impugned judgment ?	No
(iv)	What order ?	Appeal Dismissed

REASONS

As to point Nos. (i) to (iii)

5. Mr. Amit Kukdey, learned counsel for the appellant argued that the present appellant was working as a labour and on the day of incidence, for the entire day he was in the field of Dr. Nakhate and doing work of spraying pesticides on the paddy crop. He further argued that the present appellant has been falsely implicated in the present case by PW-1, his wife only to throw him out of his house. Mr. Kukdey, learned counsel pointed out the medico legal report at Exh.26 wherein it was recorded that there was no external injuries present on the body of the victim. So also he invited our attention to the C.A. report at Exhs. 21 to 24 wherein it was opined that semen was not detected on the clothes of the prosecutrix and the accused. On the basis of the aforesaid material, Mr. Kukdey argued that

the learned Sessions Court was not at all justified in convicting the present appellant for the severe offence of rape upon his daughter and hence prayed for the acquittal of the present appellant.

6. Mr. K.R. Lule, learned APP vehemently argued and justified the impugned judgment of the learned Sessions Court. He pointed the various medical reports including the confidential report at Exh. 27 and forensic medical examination report at Exh 47 which clearly pointed out the sexual assault on the prosecutrix. He also led us through the evidence of PW-1 (informant) and PW-2 (prosecutrix) who in clear terms pointed out the guilt of the accused through their testimonies and which was not shaken in the cross-examination. In the end, Mr. Lule, learned APP referred to the evidence of various doctors who had unequivocally referred to the sexual assault on the prosecutrix recorded by them in the medical reports and hence prayed for dismissal of the present appeal.

7. We have perused the evidence of PW-5 Dr. Suyog Kamble, who had examined present appellant while he was on duty as a Medical Officer in Rural Hospital, at Adyal. He has specifically deposed that after having examined the present appellant he found that accused was fit to

have sexual intercourse and accordingly he has given the query report and filled form B which are at Exhs. 39 and Exh.40. The aforesaid finding of PW-5 could not be challenged by the appellant in his cross-examination. The evidence of PW-6 Dr. Meera Sonwane who was the first medical officer who examined the present prosecutrix on 12.10.2016 while on duty as Casualty Medical Officer, General Hospital, Bhandara. PW-6 during her examination-in-chief had in clear terms deposed that during the examination of the prosecutrix she found that her hymen was torn. She also further deposed that during her vaginal examination index finger insertion was very painful and accordingly, she has given confidential report at Exh.27. PW-6 also specifically denied the suggestion in her cross-examination that the aforesaid internal injury mentioned in the confidential report can be caused by cycling, running or if the girl did heavy labour work.

8. PW-7 Dr. Megha Davile who is working as Assistant Professor in Gynecology Department in Government Medical College and Hospital, Nagpur had conducted the gynecology examination of the prosecutrix and deposed that on genital examination of the prosecutrix, she found that her hymen was torn. There was evidence of bleeding present in vagina.

Edges of the hymen were irregular. There was no edema and tears were present at 2.00 O' clock and 5:00 O' clock position. She further said accordingly she issued Forensic Medical Examination report of the victim, which is at Exh.47. PW-7 specifically denied the suggestion that the aforesaid injuries can be caused by sports, cycling or field work.

9. Perusal of the evidence of aforesaid medical officers who had conducted the medical examination of the prosecutrix during discharging of their official duties clearly points out that there was a sexual assault on the prosecutrix. The evidence of PW-5 Dr. Suyog Kamble has clarified that the accused was fit to have a sexual intercourse. The perusal of the medico legal certificate at Exh.26, the confidential report at Exh.27 and Forensic Medical Examination Report at Exh.47 clearly points out that the prosecutrix had suffered sexual assault. Now the question is who has committed sexual assault on the prosecutrix. The Hon'ble Apex Court had time and again reiterated the principle that the sole testimony of the prosecutrix of a rape case is sufficient to base the conviction as the testimony of prosecutrix stands on higher pedestal than the injured witness. In the present case, the prosecutrix is PW-2. Perusal of her evidence clearly points out the guilt of the present appellant. PW-2 in her

examination-in-chief has described in detail as to how the appellant, her biological father, had committed rape upon her in absence of her mother. PW-2 in her cross-examination had clearly denied the suggestions given by the counsel for the appellant as to his false implication at the behest of her mother and for receiving the compensation. The entire cross-examination of the PW-2 could not shatter her evidence. In fact the perusal of the evidence of PW-2 points out that the offence was committed on 10.10.2016 and her evidence was recorded on 16.03.2018. However, even after passage of two years the prosecutrix was crying through-out her evidence. The learned Sessions Court has recorded that the PW-2 was crying while narrating the incident of commission of rape upon her by her father and also she cried while she narrated about criminal intimidation by her father for not disclosing the incident to anybody. Similarly during her cross-examination when the prosecutrix was given suggestion that her father has not committed rape upon her, she cried and stated that why she would get herself defamed and why she would level allegation against her father if really such incident has not occurred. Similarly when the suggestion was given to her that she had lodged false report against her father only to receive compensation, the prosecutrix while crying said that for money she did not lodge report against her own father. Such disturbed

mind set of PW-2 even after the passage of two years speaks volumes about the agony of the prosecutrix suffered and is sufficient to believe her testimony that the original accused/appellant has committed rape upon his daughter. The evidence of PW-2 is substantiated by her mother PW-1 who also narrated in detail the sequence of events regarding the involvement of the present accused. PW-1 also specifically denied the suggestion that she has falsely lodged the complaint against present appellant. Thus, in view of the above medical evidence so also the testimonies of PW-1 and PW-2 we have no hesitation to hold that the learned Sessions Court was completely justified in reaching to the conclusion that the appellant is guilty of offence of committing rape upon his daughter PW-2.

10. Learned counsel for the appellant Mr. Kukdey had strenuously argued that PW-2 has specifically admitted in her cross-examination that her father does labour work and on the day of incident her father had went to the field of Dr. Nakhate for spraying pesticides and thus, he tried to substantiate that the appellant was not at home at the time of incidence and was in the field of Dr. Nakhate for spraying pesticides. It is worth to mention that aforesaid defence does not find place in the statement under

Section 313 of Cr.P.C. of the present appellant. Also the appellant has not led evidence in support of the aforesaid defence by examining Dr. Nakhate or any other labour who has worked with the present appellant in the field of Dr.Nakhate as defence witness and hence the aforesaid argument without any basis cannot be accepted.

11. So far as the ground raised by the present appellant is to the absence of external injuries on the body of PW-2 as recorded in the medico legal certificate at Exh.26 is concerned, it is useful to point out the evidence of PW-6 Dr. Meera Sonwane who has specifically deposed that due to the growing age of the victim, the minor and superficial injuries can be disappeared if the victim was examined after 48 hours of the incident like nail pricks. In the present case, the incidence is of 10.10.2016 and the prosecutrix was examined on 12.10.2016 and thus, the aforesaid possibility as deposed by PW-6 cannot be ruled out.

12. The observation of learned Sessions Court who had an opportunity to observe the prosecutrix, so also the accused during the course of evidence is also sufficient to rule out the aforesaid argument of absence of external injuries which is as follows, "This Court has an

occasion to see the prosecutrix at the time of recording her evidence. It is necessary to state that she is a short and little weak girl. On the other hand, the accused is strong and stout. Therefore, it was quite possible that she tried to resist him but, she could not succeed in her act of resistance. This is one aspect. The another aspect, which can not be brushed aside, if is brought on record in the evidence of PW.2 that the accused pressed her mouth and gave threats to kill her in case if, she shouts or discloses the said incident to anybody. It is therefore, quite possible that under the fear she might not have resisted him or acted as per the dictation of the accused.” In view of the above findings of the learned Sessions Court, the argument led by the learned counsel for the appellant loses its force and is accordingly rejected.

13. During the course of the trial the appellant/ original accused has adopted various defences. One such defence is that the hymen was torn due to sports, cycling or field work and thus injuries were mentioned in the forensic report Exh.47. The aforesaid defence as raised by the present appellant has been clearly brushed aside by the expert witnesses. PW-6 and PW-7 who had specifically denied such suggestion that the injuries mentioned in the medico legal reports can be caused by sports,

cycling or field work. The specific evidence of Dr. Meera Sonwane that there was an internal injury in the vagina of the prosecutrix because of which she did not allow even insertion of finger while examination is sufficient to hold that there was forceful penetration during the course of rape at the hands of present appellant and hence such defence is only recorded for the purpose of rejection. So far as the argument of the learned counsel for the appellant that as per the chemical analyzers reports at Exh.21 to 24 the presence of semen was not detected on the clothes of the prosecutrix and the accused and this fact clearly substantiated that the appellant has been falsely implicated, it is worth to mention here that the incident took place on 10.10.2016 and the clothes were seized on 13.10.2016 i.e. after gap of three days and it is quite possible that in the meantime the aforesaid clothes of the prosecutrix and the accused were washed before the same were handed over to the police and therefore, the possibility of noticing any semen stains or blood stains on the clothes of the prosecutrix or the accused does not arise and hence the absence of such stains of semen on the clothes, in our opinion, is not fatal the prosecution case.

14. In view of the aforesaid discussion and the voluminous

evidence on record, both oral and documentary, we are of the considered opinion that learned Sessions Court was completely justified in convicting the present appellant for the offence of rape and criminal intimidation and sentencing him to suffer imprisonment for life vide impugned judgment dated 01.09.2018. Accordingly, point Nos. (i) and (ii) are answered in affirmative and point No.(iii) in the negative.

As to point No.(iv)

15. Having considered point Nos.(i) to (iii) in the manner above, the present appeal deserves to be dismissed and it is dismissed.

16. The fees of the appointed counsel be quantified and paid as per Rules.

(RAJ D. WAKODE, J.)

(ANIL L. PANSARE, J.)