



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

CRIMINAL APPEAL NO.226 OF 2020

Shankar S/o Bapurao Kale (In Jail), Aged about
49 Years, Occ – Labourer, R/o Ward No.4,
Maregaon, Tahsil-Maregaon, District-Yavatmal.

...Appellant

// VERSUS //

The State of Maharashtra, through P.S.O., P.S.
Maregaon, District : Yavatmal.

... Respondents

Shri Nitesh.H. Samundre, Advocate for appellant.
Ms Shamsi Haider, A.P.P. for respondent/State.

**CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.**

DATED : 31/01/2025

ORAL JUDGMENT (Per : Nitin B. Suryawanshi, J)

1. This appeal challenges conviction of appellant under Sections 376(2)(f) and (i) and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the Act of 2012”) awarded by learned Special Judge and Additional Sessions Judge, Kelapur, Dist. Yavatmal in Special Case No.22 of 2015 thereby, sentencing him to suffer imprisonment for life, for the remainder of natural life and to pay fine of Rs.5,000/- with a

default cause. He is also convicted under Sections 4 and 6 of the Act of 2012 and sentenced to suffer Rigorous Imprisonment for life.

2. The prosecution case in short is that, accused/appellant, who is father of the victim, has committed rape on victim on 09.06.2015 at about 12.00 to 1.00 a.m. at Maregaon. After commission of rape, accused threatened her that he will kill her if she discloses the incident to anybody. The First Information Report (hereinafter referred to as "FIR") of the incident was lodged by the victim on 08.07.2015, on the basis of same, Crime No.66 of 2015 was registered with Maregaon Police Station under Sections 376(2)(f), 370(4) and 506 of the IPC and Sections 4 and 6 of the Act of 2012. On completion of investigation, chargesheet was filed and case was numbered as Special Case No.22 of 2015. Appellant was charged under Sections 376, 506 of the IPC and Sections 4 and 6 of the Act of 2012. In support of its case, prosecution has examined 14 witnesses. Trial Court found appellant guilty. Hence, the present appeal.

3. Heard learned counsel for appellant and learned A.P.P. for State. Perused the record and the citations relied upon by learned counsel for appellant and learned A.P.P. for State.

4. Learned counsel for appellant assailed the judgment of the trial Court contending that there is delay of one month in lodging the FIR which is fatal to the prosecution case. He submits that the conduct of victim and her mother is not consistent with natural human conduct. They have reason to implicate appellant in a false case as appellant was not permitting withdrawal of amounts from his bank account and was not transferring agricultural land in the name of victim's mother. He states that trial Court has wrongly appreciated the evidence and has committed an error in convicting appellant. He therefore, prayed for acquittal of appellant by relying on decision of this Court in *Kailash s/o Chindhuji Pachare ..vs.. State of Maharashtra*, in *Criminal Appeal No.52 of 2016 decided on 23.01.2018*.

5. Learned A.P.P. on the other hand supported the judgment of trial Court. She submitted that no girl would sacrifice her honor to falsely implicating her father. According to her, there is no merit in appeal and it may be dismissed.

6. Victim (PW-2) has deposed in her evidence that on 04.06.2015, her mother had gone to Jalna for delivery of her elder sister and she was at home along with her father/appellant. On 08.06.2015, at evening time, they had their dinner at about 10.00 p.m. Thereafter, she

went to bed for sleeping. Her father was sleeping at the side of her bed. Between 00.00 hours to 1.00 hours at night, her father woke up and stated to her that she should allow him to sleep near her, but, she refused the same. Thereafter, he forcibly came on her bed and slept. He threatened her that she should not shout otherwise he would kill her. Thereafter, he removed her clothes and then committed sexual intercourse with her. On next morning, between 8.00 a.m. to 8.30 a.m. when her father went to answer nature's call, she contacted her mother on phone and narrated the whole incident to her. Then, her mother returned back to home on the same day at about 7.00 to 7.30 p.m. from Jalna. Due to the said incident committed by her father with her, she felt very bad and she had a feeling of fear. Thereafter, on 08.07.2015, her father visited house of elder sister at Jalna, that day she went to school early in the morning and then she returned home at 12.00 noon. At that time, she was alone in the house, her mother had gone outside to do work of cutting grass in the field. At about 1.30 p.m., her father returned back to home from Jalna. He said to her that she should allow him to have sexual intercourse. She told him that she is not feeling well. But, her father forcibly opened the binding of her chusti. Thereafter, he went outside for bathroom. Thereafter, she immediately tied the binding of her chusti and went to her friend Monali Thamke's home. When she was at her friend's house, her father came there to call her. She told him that she

will come later and he may go ahead. Thereafter, she contacted her mother on mobile phone and told the incident that her father attempted to rape her and she should immediately come home otherwise she will die. Then her mother came to Monali's house and thereafter, she along with her mother went to Police Station, Maregaon and narrated the incident. Her report Exh.20 was reduced in writing and FIR was registered on that basis. Thereafter, she was referred to Government Hospital, Maregaon for medical examination. Since lady doctor was not present there, she was referred to Government Hospital, Yavatmal. She was medically examined at Government Hospital, Yavatmal.

7. In cross examination, it is brought on record that, police station is at a distance of 10 to 15 minutes from her residence. She had many relatives including cousins, paternal uncle but she has not narrated the incident to anybody. She had also not narrated said incident to her friend. She admitted about the bank account of her father and joint bank account of her father and mother. However, she denied that, her mother withdrew cash of Rs.40,000/- to Rs.50,000/- from the said bank account. She also admitted that in the Post Office, FDR of Rs.40,000/- is there in the name of her father. She feigned ignorance as to whether her mother compelled her father to deposit Rs.68,000/- in her own account in Rangnath Swami Bank, Maregaon. She denied the suggestion given by

the defence that prior to the alleged incident, her mother was saying that her father should withdraw the amount from the bank and post office and since her father was not withdrawing the amount, she and her mother pressurized him for the same and were raising quarrel with him. She has also admitted that her father has share in the agricultural land of her grandfather but denied that her mother was pressurizing her father to enter the said agricultural land in her own name and on that count her mother was always quarreling with her father. She further admitted that Vijay Babaro Jogi is residing at some distance from her house. However, she denied that she used to talk with him on phone and due to that reason, her father got angry with her and also tried to beat her by slapping, to restrain her from talking with Vijay on phone.

8. Her mother Vandana (PW-4) has stated in her evidence that, she is staying with her daughter (Victim) and husband (Appellant) at Maregaon. On 04.06.2015, she had visited Jalna for delivery of her elder daughter. On 08.06.2015, her daughter (Victim) contacted her elder daughter by mobile phone. She talked with her from her mobile. She told her as “आई तु लवकर ये, बाबा माझाशी जबरदस्ती शारिरीक संबंध ठेवत आहे” “तु लवकर ये नाही तर मी माझ्या जिवाचा बरे वाईट करते . Victim also told that accused threatened her to kill if she disclosed anything about the same. She therefore asked victim to stay in her friend’s house and thereafter, she

came back to Maregaon by bus at about 7.30 p.m. After her arrival at home, her husband asked her as to how she came back to Maregaon. She told him that she got bored at Jalna therefore, she came back. Thereafter, she did not disclose anything to her husband and they started living properly. After her husband went to answer nature's call, she asked her daughter (victim) about the details. She stated that her father committed sexual intercourse with her by removing clothes. Thereafter, she was not leaving victim alone at house.

On 08.07.2015, she had gone for cutting grass in the field as a labour. At about 2.15 p.m., victim contacted her on her mobile phone and told her that, at about 1.00 p.m., her father came back to Maregaon from Jalna and saw victim alone inside home. He stated to her as “करू दे” and untied the lace of her chusti (legging). Thereafter, he went to bathroom, at that time, she tied her lace of chusti and picked her book for studying and immediately went to her friend Monali's house. Then after half and hour to one hour, accused called victim by going to the house of Monali and said to her “गुड्डू तु घरी चल”. Victim told him that she was doing her homework and after completion of the same, she will come back home after some time. Victim then contacted her mother from the mobile phone of Monali. She told victim that she will immediately come and she should stay at her friend. Thereafter, she came to the house of Monali and thereafter, along with victim, she went Maregaon Police

Station. They stayed at police Station for some time. Her daughter lodged report in the police station and crime was registered. As victim is minor, her signature was obtained on report (Exh.20). At that time, along with her daughter (victim), Sushama Wadai LPC, Shri Bhoyar, P.S.O and Nakshane tai were present. On next day, lady doctor was not available in Government Medical Hospital, Maregaon, therefore, she along with victim visited Government Medical Hospital, Yavatmal for medical examination of victim. On 10.07.2015, victim produced her clothes and bed cover before police.

9. In cross, she admitted that police station is at distance of 10 to 15 minute from her house. She had not disclosed the incident to her relatives and neighbours. She did not inform her relative or neighbours to keep an eye on her daughter as she was alone in the home. After she came back from Jalna, she did not take victim immediately to hospital. Her husband has four sisters and a brother. After she came back home from Jalna, immediately she did not disclose about the said incident to her husband's brother and sisters. She admitted that her husband has got agricultural land from his father and an amount of Rs.40,000/- to Rs.50,000/- was fixed deposit in the name of her husband. From the joint account, she has withdrawn an amount of Rs.38,000/-. She admitted that, her husband had deposited Rs.68,000/- in her account in

Ranganath Swami Bank and there is deposit of Rs.1,00,000/- in the name of her husband in the Cooperative Bank. She denied that on 30.09.2015, she had visited her husband in jail at Yavatmal and she had taken withdrawal forms of post office. She admitted that, she met her husband in jail. Along with her, on that day, her daughter and son-in-laws and her brother Narendra Thengane were present.

10. She denied suggestion that she was raising dispute and quarrel with her husband for entering agricultural land in her name and for getting withdrawal of the amount from bank and post office and she was pressurizing her husband for the same. For that purpose, her brother Narendra was helping her. She also denied that as her husband was not ready to transfer his land in her name and not ready to give her withdrawal of amounts, and as there were relations between victim and Vijay, her husband was raising objections about the same, therefore, she and her daughter lodged false report against her husband and prosecuted him falsely.

11. Monali (PW-3) is the friend of victim. She deposed that in the year 2015, she was studying 11th standard in Kala Vanijya Mahavidyalaya, Maregaon. The incident took place on 08.07.2015 at about 2.30 p.m., she was at house of Nishatai at that time. She saw victim

proceeding towards her house. Thereafter, she came out from the house of Nishatai and accompanied victim to her house. Victim was in frightened condition. She asked victim as to what happened. But victim did not reply. Thereafter, they commenced their English grammar study. Thereafter, victim's father came to her home. He called victim by speaking 'गुड्डू चल न घरी झाल नाही का अभ्यास'. Victim replied him that her study is not over. Thereafter, she started weeping. Thereafter, she contacted her mother from her mobile phone and told her as "आई तु शेतातुन लवकर ये नाही तर मी मरते". She also told her mother that her father is saying to her as "करू दे" Thereafter, she again started weeping. Thereafter, victim told her that her father forcibly committed sexual intercourse with her. She also told that before one month, her mother had gone to Jalna, her father forcibly committed sexual intercourse with her. Her mother was not present at home therefore, she could not restrain her father at that time. Thereafter, victim's mother came to her house and they both went to the Police Station. She admitted that victim had good terms and was knowing Vijay Jogi, they were speaking with each other. She denied that victim was contacting him on telephone. She admitted that, it is not specifically mentioned in her statement that "victim stated her that her father committed sexual intercourse with her". She further admitted that victim had not stated to her that, "for two times her father committed sexual intercourse with her". She denied the suggestion that because of

cordial relations with victim and her mother, she deposed falsely at her instance and victim did not disclose anything to her.

12. Dr. Subhash Ingale, Medical Officer (PW-9) to whom victim was sent for medical examination. As victim was a female, he referred her to Government Medical Hospital, Yavatmal for medical examination.

13. Dr. Sachin Gadge (PW-10), who was working as Assistant Professor in Department of Forensic Medicine, attached to V.N.G.M.C. Hospital, Yavatmal, examined the victim. He found no external injuries. On her local examination of genitals, carencule myritiformis was seen by him at places. No other injury was seen over genital. Hymen was rupture. A history was given that father has tried to have forceful sexual intercourse on her on 08.06.2015. Accordingly, the provisional opinion was given by him as “possibility sexual intercourse of assault cannot be ruled out”. Accordingly, he issued Medical Certificate (Exh.50).

14. In cross, he deposed that “if for first time accidentally any man of the age of 45 to 50 years committed sexual assault on minor girl, then certainly that girl will suffer injuries to her person. She also suffer’s bleeding.” If the girl has habit of fingering, then the injuries and

symptoms mentioned in his report are not possible. If she is habitual in sexual intercourse then those symptoms are possible.” ... “After getting thumb impression of a person it is necessary to mention there the name of that person. Name of victim is not mentioned near thumb mark and according to him, it is not necessary”. He admitted that entire record is maintained in Government Hospital. MLC number is mentioned on the certificate issued by them. It is also entered in the MLC register. Today, he had not brought it in the Court and investigation officer had not demanded that register to him. He further admitted that history of patient is not elaborated in his report.

15. On 10.07.2015, spot panchanama (Exh.16) was prepared and by seizure panchanama (Exh.17), clothes of the victim and bed cover were seized. By seizure panchanama (Exh.18), nicker of accused was seized. These panchanamas are proved by panch Dnyaneshwar Nagpure (PW-1).

16. By examining Pushpa Bhoyar (PW-8), prosecution has proved the seizure panchanama of seven bottles containing blood brought from Yavatmal Government Hospital in Police Station by police constable Pushpa (Exh.40). She has admitted that no written notice was

issued to her for calling as panch. Pushpa and Nakshane are members of Mahila Dakshata Samiti and they are acquainted with police officers.

17. Mangesh Bhoyar, P.S.I. (PW-14) is the Investigating Officer. He has proved the requisition letter forwarded by the Medical Officer, and CA report Exhs.81, 82 and 83. In CA report, no blood is detected on the mattress cover, legging, Kurta and panty of the victim and also on the underwear of the accused. Obviously, because the clothes of the victim were seized one month after the incident. For the same reason, no semen was detected on vaginal swab, pubic hairs and vagina smear as per CA report. Victim blood group is 'B' and blood group of accused is 'A'.

18. Victim (PW-2) and her mother (PW-4) have admitted that police station is at distance of 10 to 15 minutes from their house, then why FIR was lodged after one month of the incident, is not explained by both of them. The delay in lodging the FIR further creates serious doubt about the prosecution version. If the incident of rape had really taken place, then PW-4 would not have lived properly with accused, after she returned from Jalna on the same day.

19. It is clear from the evidence brought on record by the prosecution that the alleged incident of rape on victim had taken place in

the intervening night between 08.06.2015 and 09.06.2015. On 09.06.2015, victim informed the incident to her mother (PW-4) in the morning at about 8.00 to 8.30 a.m. when accused went on nature's call. Admittedly, victim's mother (PW-4) returned from Jalna at 7.00 to 7.30 p.m. on the same day. Surprisingly, she did not talk with the accused about the incident. She did not confront him that he has raped his own daughter. On the contrary, PW-4 has categorically deposed that when she arrived at home, accused asked her as to how she came back to Maregaon and she told him that, since she got bored at Jalna therefore, she returned. If the incident of rape as alleged by the prosecution had really taken place then mother (PW-4) would have definitely questioned appellant about the same but she did not do so. On the contrary, she states that she did not disclose anything to her husband and they started living properly. The conduct of victim and PW-4 is not natural and it raises serious doubt on the prosecution version that accused committed rape on the victim.

20. Prosecution evidence in respect of the second incident dated 08.07.2015 is also not reliable. As per victim, on that day her mother had gone outside to do her work of cutting grass in the field and she was alone in the home. At about 1.30 p.m., accused returned back from Jalna and he stated to her that she should allow him to have sexual intercourse.

She told her father that she was not feeling well. Thereafter, forcibly accused opened binding of her chusti and thereafter, he went outside for bathroom. Then she immediately tied the binding of her chusti and went to her friend Monali's house. Admittedly, behind the back of her father, she had gone to the house of the Monali. Then how her father came to know that she was at Monali house, is a mystery. Admittedly, victim has her own cellphone from which she contacted her mother on the date of alleged first incident. Then why she has used cellphone of Monali to call her mother on 08.07.2015, is also not clear. In cross, she had admitted that she had not narrated the first incident to her friend, it means that she did not disclose the incident to Monali (PW-3).

21. Medical evidence also does not support the prosecution case. Dr. Sachin Gadge (PW-10) has stated that on local examination of genitals, carencule myritiformis was seen by him at places. It means that postpartum remnants of the hymen or the remnants of the hymen found in sexually active females. He has also admitted that if victim is a habitual in sexual intercourse then this symptoms are possible. No other injury was seen over genital. Hymen was ruptured. Only history given by the victim to him was forceful sexual intercourse on 08.06.2015. On the basis of history given by victim, he has opined that possibility of sexual

intercourse/assault cannot be ruled out. He has also admitted that he has not elaborated the history of patient in his report.

22. Taking into consideration the medical evidence, it is clear that victim was habitual to sexual intercourse. As on internal examination of victim, remains of hymen which are found in sexually active female were found by Dr. Sachin Gadge (PW-10). It further creates doubt about allegations of rape on victim.

23. Evidence of Punam @ Monali (PW-3), friend of victim is also not reliable. As she has admitted that it is not specifically mentioned in her statement that “victim stated her that her father committed sexual intercourse with her”. She has also admitted that victim had not stated her mother that, “for two times her father committed sexual intercourse with her”. She has however admitted that victim has good friend of Vijay Jogi.

24. In view of admissions of mother (PW-4) about withdrawal of amount from the account of accused, the defence of appellant that since mother (PW-4) was insisting the accused to withdraw money from his account and also she was insisting that his agricultural land should be transferred into her name and on that count, there used to be quarrels

and since accused refused for the same, he is falsely implicated in the present crime, appears to be probable.

25. In ***Aman Kumar ..vs.. State of Haryana***, reported in (2004)

4 SCC 379, it is held that:

“It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would suffice.”

In the present case, evidence of victim and her mother does not inspire confidence. There is also no corroboration of any sort to their evidence. Therefore, this citation is of no help to the prosecution.

26. In ***Ranjit Hazarika ..vs.. State of Assam***, reported in (1998) 8

SCC 635, it has held that:

“the evidence of the prosecutrix in this case inspires confidence. There was no suggestion by the defence as to why she should not be believed or why she would falsely implicate the accused. Medical opinion was against the prosecution, the prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her

testimony cannot be accepted unless corroborated". In case of State of **Punjab v. Gurmit Singh**, reported in (1996) 2 SCC 384 to which one of us (Anand, J.) was a party, while dealing with this aspect has observed as under :

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a

new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

There cannot be any dispute about the above principle laid down by the Hon’ble Apex Court. But considering the facts of present case, is of no assistance to the prosecution case.

27. And as we are of the view that, evidence of victim (PW-2) and her mother (PW-4) is not reliable and it does not inspire confidence, their conduct post-incident is unnatural, they had reason to implicate accused as suggested by the defence. In this view of the matter, it is not possible to rely on sole testimony of the victim to sustain conviction of the accused. In view of the discrepancies in the prosecution case noted in forgoing paragraphs and unnatural conduct of the victim and her mother (PW-4) their evidence does not inspire confidence, it is not possible to rely on testimony of victim, so also of her mother.

28. The trial Court has failed to appreciate the evidence on record in proper perspective and has erred in convicting the accused. Serious lacuna’s in the prosecution case noted herein above are ignored by the trial Court, while convicting the accused. The impugned judgment of conviction is therefore unsustainable. Accordingly, we pass the following order:-

- i) The appeal is **allowed**.
- ii) Impugned judgment and order of conviction dated 20.07.2017 passed by the Special Judge and Additional Sessions Judge, Kelapur, Dist. Yavatmal in Special Case No.22 of 2015, is quashed and set aside.
- iii) Appellant is acquitted of the offence punishable under Sections 376(2)(f) and (i), and 506 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act, 2012.
- iv) Appellant be set at liberty forthwith, if not required in any other case. Fine amount, if any, paid by the appellant be refunded to him.
- v) Appellant to execute the bail bond under Section 437-A of the Code of Criminal Procedure.

(PRAVIN S. PATIL, J.)

(NITIN B. SURYAWANSHI, J.)

C.L.Dhakate