



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

CRIMINAL APPEAL NO.322/2021

XYZ

(Identity of appellant/accused
concealed in terms of Section 228A
of the Indian Penal Code, 1860)

.....APPELLANT

...V E R S U S...

State of Maharashtra through
Police Station Officer, Dongaon,
Dist. Buldhana.

...RESPONDENT

Mr. P. H. Khobragade, Appointed Advocate for appellant.
Mr. A. B. Badar, A.P.P. for respondent.

CORAM:- ANIL L. PANSARE AND RAJ. D. WAKOKE, JJ.

DATE OF RESERVING THE JUDGMENT :- 10.12.2025

DATE OF PRONOUNCING THE JUDGMENT :- 12.12.2025

JUDGMENT (Per: Anil L. Pansare, J.)

The appellant has taken exception to judgment and order dated 20.01.2021 passed by Special Judge, Mehkar, District Buldhana in Special (POCSO) Case No.189/2019. The Special Judge convicted appellant for an offence punishable under Sections 376(2)(f)(j)(k)(l) of the Indian Penal Code, 1860 ("IPC") and sentenced him to suffer rigorous imprisonment for life, which means remainder period of his natural life and to pay a fine of Rs.10,000/-. He has been, however, acquitted for the offence punishable under Section 376(2)(i) of the IPC.

2. The appellant carries a blame of committing rape on his own daughter, he being in a position of control/dominance over the victim

daughter, who was physically challenged. He also faced trial for the offence punishable under Section 6 of the Protection of Children From Sexual Offences Act, 2013. However, since punishment for offence under Section 376(2) of the IPC being greater, it is imposed only under the said provision.

3. The law was set in motion by PW3 – victim, saying that 6-7 months ago, 2 days prior to Mahashivaratri, while she and her sisters were sleeping, the appellant came to her undressed, upon which she inquired as to what is he doing, to which, he asked her to keep quiet and gave a life threat. Thereafter, he removed her clothes and committed rape and again threatened her of dire consequences, if the incident is disclosed to anyone.

4. The investigating officer recorded statement of relatives to whom the incident was narrated by the victim. Thereafter, the victim was referred to medical examination so also appellant. Investigation culminated into filing of charge-sheet. The appellant pleaded not guilty. The prosecution examined eight witnesses to bring home guilt of the appellant. Various documents were proved during the trial. Learned Special Judge, after going through the evidence and after having heard both the sides, held appellant guilty of the offence. The said finding is challenged by way of present appeal.

5. We have heard Mr. P. H. Khobragade, learned appointed

counsel for the appellant and Mr. A. B. Badar, learned A.P.P. for respondent-State. We have gone through the impugned judgment, documents and evidence etc. We will refer to the same to the extent necessary to decide whether the prosecution has proved that the appellant has committed the offence.

6. PW1 is victim's uncle. He deposed that the appellant has three daughters and one son. His wife expired 2 ½ years ago. The victim is physically handicapped. On 21.09.2018, the victim came to him crying and told him that at the time of Mahashivratri, during night hours, the appellant demanded matchstick box to her. He turned off the light. She gave matchstick to him. He removed her clothes and also his and committed sexual intercourse. He threatened her to not disclose this fact to anyone. In the cross-examination, the appellant put up a defence that the witness and the appellant are in inimical terms. The witness denied this theory. It is then brought on record that the incident occurred at the time of Mahashivratri. Nothing more has been brought on record nor is there anything to disbelieve his version. However, this witness has not seen the incident. His testimony is hearsay and, therefore, will have to be considered in the light of what the victim and other witnesses say.

7. PW2 is younger sister of the victim. She stated similar facts as narrated by victim to PW1. The only modification is that she

deposed as if she has seen the incident. However, her evidence that after sexual intercourse, her sister shouted and then she woke up is something that would show that during the course of incident, she was asleep. Nonetheless, her testimony that her sister shouted and she woke up and that incident took place one day prior to Mahashivatri, is corroborating prosecution version. The witness then deposed about the second incident saying that her father made another attempt to commit forcible sexual intercourse. This incident, however, was narrated to her by her sister i.e. the victim. She then stated that victim is handicapped by her legs since her birth and that the incident was narrated by them to PW1. He took them to police station and, thereafter, report was lodged.

8. In the cross-examination, it is brought on record that the victim and her sister used to sleep at about 08:30 p.m. She denied the suggestion that her father and brother used to sleep together with three sisters. She then deposed that she woke up at the time of incident, meaning thereby that she has not seen the earlier incident. She then stated that the first incident was also narrated to PW1. At that time, he felt that her father might have taken victim near to him because of affection. This part of evidence will adversely affect the defence taken by the appellant that he and PW1 were in inimical terms. Had PW1 any grudge against the appellant, he would have at the first incident itself, implicated the appellant. The evidence, however, indicates that despite

informing PW1 about the incident, he appears to have calmed down the victim and her sister saying that appellant might have taken victim close to him out of affection.

9. In further cross-examination, PW2 denied that the report was lodged as explained by PW1. It is then brought on record that on 20.09.2018, when the second incident occurred, the victim shouted and the father got aside. Such is the cross-examination. It doesn't affect the credibility of PW2. There is, thus, nothing in the cross-examination to disbelieve PW2's version.

10. Next comes the testimony of victim. She stated that her father used to drink liquor. He asked her for matchbox. At that time, he removed her clothes and committed forcible sexual intercourse. He threatened her of dire consequences if she narrates the incident to anyone. Statement under Section 164 of the Criminal Procedure Code, 1973 ("Code") was recorded. It was shown to her. She admitted the contents. At this stage, learned Trial Court made certain observations. According to it, mental condition of witness was not appropriate. She was giving proper answers to some questions but irrelevant answers to other. Accordingly, the victim's statement recorded under Section 164 of the Code is treated as chief-examination. On further questioning, the victim stated that her Papa i.e. the appellant behaved improperly with her. He did bad work with her which he should not have done.

11. Learned counsel for appellant submits that the Trial Court committed error of law in treating the statement under Section 164 of the Code to be her chief-examination. We agree with the submission. It is impermissible in law to treat such statement as chief-examination. The substantive piece of evidence is the one where the witness enters the witness box and narrates his/her version. In fact, the victim has narrated the version. It is a different matter that minute details were not given. The Trial Court should have been mindful to the fact that the victim had already undergone a severe trauma. She faced sexual assault by none else than her father. Thereafter, she was required to go to police station to lodge the FIR and then to the Court to again narrate her sufferings. In the circumstance, the Court should be aware of the psychological burden that the victim would carry. She is bound to be hesitant to narrate the fact relating to the sexual intimidation. Her statement that her father behaved improperly is such natural mode of expressing her sufferings. She also stated that her father done bad work with her. The statements if read with the earlier chief-examination, where she stated that her Papa removed her clothes and committed forcible sexual intercourse and, thereafter, gave life threat to her, is testimony giving necessary details of the incident.

12. The witness may not be able to furnish other details as regards the exact date, which even otherwise is not given by her while lodging the report. The victim and family is residing in the rural area

and accordingly has stated that the incident occurred couple of days prior to Mahashivratri. Such an evidence will be admissible, unless there is relevance to the date and/or time, where the incident can only be assessed on the basis of date and time of the incident. Such is not the case here. The incident relates to sexual assault, which has been spelt out by the victim.

13. Thus, even if her statement under Section 164 of the Code is not treated as her chief-examination, in our considered view, the victim has given necessary details of the incident. In the cross-examination, she denied that she lodged false report and that the incident of rape has not occurred. She has also denied that her medical examination was not conducted by the Medical Officer. This four line cross-examination does not deal with the material ingredients about the incident as narrated in the chief-examination. Her testimony, therefore, remains unchallenged on occurrence of incident.

14. PW4 is aunt of the victim, i.e. wife of PW1. She stated about what the victim has narrated to her husband. The additional evidence which, according to us is relevant, is that after the incident, the victim's behaviour was not normal and she was disturbed. This evidence is indicative of the fact that the victim was undergoing trauma. In the cross-examination, it is brought on record that the victim narrated all the incidents to PW1 and accordingly, the witness came to

know about it. This part of cross-examination will corroborate the prosecution's version where PW2, sister of victim has deposed that the incident was narrated to PW1. Thus, evidence of PW4 will further certify occurrence of incident.

15. PW5 is a spot pancha. Nobody has disputed the spot and, therefore, his evidence does not require detailed discussion. PW6 is the doctor, who has examined the appellant. No internal injuries were found on his private part. We may note here that the incident occurred 6-7 months prior to the medical examination and, therefore, there arises no question of finding external injuries on his private parts. PW7 is the doctor who has examined the victim. She found no evidence of fresh sexual intercourse. The victim's hymen was ruptured. There were old injuries on hymen. There were no internal or external injuries over the genital organs. The victim was 17 years old. In the cross-examination the doctor stated that at the time of medical examination she found that the victim was handicapped by leg. She narrated the incident of rape.

16. Her mental condition was normal. In the cross-examination, general questions were asked, which has no bearing on the case. She admitted that if any lady inserts her finger or any other object in private part, in that event, hymen may be ruptured. Such a suggestion, without there being anything to show that there had been an occasion for any lady to insert her finger in victim's vagina, is of no significance. Another

futile suggestion was given that in such a case, generally women would resist and will cause injuries on the face of the assailant and that there would be injuries on the thighs and back of the victim.

17. Thus, there is nothing in the cross-examination to support either defence or to disbelieve the victim's version. Rather, the evidence would support the prosecution case inasmuch as hymen of the victim was ruptured and there were old injuries to her hymen. The evidence, therefore, would support the victim's version that she suffered penetrative sexual assault.

18. PW7 is investigating officer. He has given details of investigation which he has conducted. His cross-examination is also of the nature of causing no dent to the prosecution case.

19. Put all together, the evidence of first four witnesses, if read with evidence of the Doctor who examined the victim, the prosecution has successfully spelt out the ingredients of Sections 376(2)(f)(j)(k)(l) of the IPC. As such, the counsel for appellant argued that there is a delay in lodging the FIR. However, learned A.P.P. has rightly countered the same by arguing that in such cases, the delay in lodging FIR will not be fatal if the same is justified. The evidence indicates that the appellant had threatened the victim of dire consequences if she narrates the incident to anybody. Despite such fact, she along with her sister PW2 had been to PW1. However, PW1 thought that the victim has

misunderstood her father. PW1 was of the view that the appellant must have, out of affection drawn the victim towards him while she was sleeping. It was on the second occasion that PW1 understood the seriousness of the case and, therefore, took the victim and her sister to Police Station to lodge the report. The defence of the appellant that PW1 has falsely implicated him because of the dispute, runs contrary to its own case as put up to PW2. Further, it is the defence, which has brought on record in the cross-examination of PW2 that the victim narrated the entire story to PW1. Thus, the case of the prosecution has been, to certain extent, certified in the cross-examination. The prosecution has thus successfully proved the guilt of the appellant. No interference is, therefore, called for in the impugned judgment.

The appeal is accordingly dismissed.

(Raj D. Wakode, J.)

(Anil L. Pansare, J.)

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