



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

CRIMINAL APPEAL NO. 184 OF 2023

APPELLANT

Shankar s/o Babulal Yadav,
Aged about 28 years, Occu: Labour,
R/o Railway Station Area, Ballarpur,
Tah. Ballarpur District Chandrapur.

-VERSUS-

RESPONDENTS

- 1] State of Maharashtra through,
Police Station Officer, Police Station
Ballarpur, District Chandrapur.
- 2] XYZ (VICTIM) in Crime No. 411/19
Registered at Police Station Ballarpur.
District Chandrapur.

Mr. D.A. Sonwane, counsel (appointed) for appellant.
Mrs S.S. Dhote, APP for respondent/State.

CORAM	: <u>URMILA JOSHI-PHALKE, J.</u>
DATE OF RESERVE	: <u>20/03/2025</u>
DATE OF DECISION	: <u>02/04/2025</u>

ORAL JUDGMENT :

1. By this appeal, the appellant has challenged the

judgment and order of the sentence passed in Special Case No. 122/2019, whereby the appellant/accused is convicted for the offence punishable under Section 376(1) of the Indian Penal Code, 1860, and sentenced to suffer rigorous imprisonment for a period of 10 years and to pay a fine of Rs. 2,000/-. In default of payment of fine, simple imprisonment for six months. The appellant is further convicted for the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/-. In default of payment of fine, the appellant shall suffer further simple imprisonment for a period of one month.

2. The brief facts of the prosecution case as emerges from the police papers, and recorded evidence are as under;

On 08/05/2019, while the victim was returning home after finishing her work at the hotel where she was employed. She went for urination behind the Railway Quarters, at the relevant time, the present accused reached there, caught hold of her hand, and took her beyond the Railway Crossing. It is alleged that he threatened her by holding a stick in his hand and subjected her for forcible sexual intercourse and thereby committed an offence.

3. On the basis of the said report, police have registered the offence against the accused vide Crime No. 411/2019. On registration of the crime, the wheels of the investigation started rotating. During the investigation, the investigating officer has referred the victim for medical examination. The investigating officer has also visited the spot of the incident and drawn the spot panchanama. From the spot panchanama, he seized the pair of chappals of the victim and pieces of broken bangles. The investigating officer also seized the clothes of both the victim and the accused, along with their blood samples, and other samples. After completion of the investigation, the charge-sheet is filed against the accused. The learned Magistrate has committed the case to the Court of Sessions, as the offence under Section 376 is exclusively triable by the Sessions Court. The Sessions Court frame the charge vide Exhibit No. 5.

4. In support of the prosecution case, the prosecution has examined in all six witnesses, namely PW-1/victim (vide Exhibit 20); PW-2 – Vikram Lokendra Lahore – Exhibit No. 27; PW-3 – Dr. Asha Vasant Rao Salve, (Medical Officer); PW-4 Sureshkumar Prabhudas Vajpayee, Hotel Owner Exhibit 38;

PW-5 - Achal Shantaram Kapur (Investigating Officer)- Exhibit 44 and PW-6 Dharmendra Tryambakrao Joshi (API)- Exhibit-57.

5. Besides oral evidence, the prosecution placed reliance on chemical analyser reports - Exhibits 11 to 14 and 20; the report lodged by Victim - Exhibit 21; FIR Exhibit 22; Medical Certificate Exhibit 24; Forensic Medical Examination Report Exhibit 25; Spot Panchanama Exhibit 29; Seizure Memos Exhibit 30 & 31; Memorandum Statement of the Accused, Exhibit 32; and Discovery Panchanama Exhibit 34; the requisition to the medical officer Exhibit 45; letter to Chemical Analyser - Exhibit 47; Seizure Memo Exhibits 52 to 53, and letter to Chemical Analyser Exhibit- 54 etc.

6. On the basis of the above oral as well as documentary evidence, the prosecution claimed that it has proved its case beyond reasonable doubt. The defence of the accused is of total denial and false implication. All incriminating evidence is put to the accused in order to obtain his explanation regarding the evidence appearing against him by recording his statement under Section 313 of Code of Criminal Procedure, 1973.

7. After recording the evidence and on appreciation of

the same, learned Sessions Judge held the accused guilty and convicted him as aforestated.

8. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the accused.

9. Heard learned counsel Mr. D.A. Sonwane for the appellant, who is appointed through legal aid and learned APP for the State.

10. Learned counsel for the appellant submitted that, to prove the charge the prosecution mainly placed reliance on the evidence of PW-1 Victim. As per her evidence, accused took her and forcefully subjected her for the sexual assault on a hard surface, specifically in the bushes, but not a single injury is witnessed on her person. According to the victim, the alleged incident has taken place near railway quarters. Her evidence nowhere shows that she has resisted the act of the accused, either by shouting or by any other means, which sufficiently shows that the story narrated by the victim is not inspiring the confidence. In view of that, the evidence of the victim requires to be discarded.

11. He submitted that, as the evidence of the victim is not inspiring the confidence, therefore independent corroboration was required, on that ground, the accused is to be acquitted. He invited my attention towards the spot panchanama and other evidence and submitted that the evidence of the victim itself is doubtful and therefore it is to be thrown away.

12. The learned APP supported the judgment of the Sessions Judge and submitted that no independent corroboration is required. The victim has narrated about the incident, which is supported by the medical evidence, and there is no reason to come forward to disbelieve the version of the victim. In view of that, the appeal is devoid of merits and liable to be dismissed.

13. After hearing both sides and on perusal of the evidence, the core question is whether the evidence of the victim is sufficiently inspiring the confidence to prove the involvement of the accused in the alleged incident, and no independent corroboration is required.

14. To prove the charge, the prosecution mainly placed reliance on the evidence of the victim examined vide Exhibit 20.

As per her evidence, the accused is a beggar and staying at Railway Station Ballarsha. Prior to one year, at about noontime, while she was proceeding towards her home from the hotel and attending to nature's call, at the relevant time, the accused came there, dragged her into the bushes near the Railway Bridge, and subjected her for the forceful sexual intercourse. Thereafter, she reached the Hotel of Vajpayee where she was working, and thereafter, she went to the police station and lodged the report, the said report is at Exhibit 21 and the FIR is at Exhibit 22. She has shown the spot of incidence. She was also referred for medical examination, and her clothes, articles A to D, were seized, and a pair of chappals was also seized from the spot of incidence.

15. During her cross-examination, it came on record that she is serving in a Vajpayee Hotel, which is located near the Post Office. The Railway Station is approximately 7 to 8 shops from the Vajpayee Hotel. There is ladies urinal in Vajpayee Hotel and she stays in Subhash Nagar, Ward. The spot, where she urinated, is far away from her house. She further admits that the employees of Railway by residing in railway quarters along with their families. Several persons used to come and go on the road near the spot of

incident. The accused caught her by one hand and she tried to save herself by another hand. She has not made any attempt to throw soil in the eyes of the accused. The distance between spot of incident and the place where the accused spot her, is about 5 to 10 minutes. Further cross-examination, it has been established that there is a water tank and pump house located near the site of the incident. This area often serves as a gathering place for people, who are frequently found seated there. She specifically admitted that she never resisted the accused, while he was forcing her into the sexual assault. As per her evidence, the alleged intercourse was going on for half an hour with her, and accused discharged the semen at the spot of incidence. She has not sustained any injuries in the alleged incident. She does not take bath, till her medical examination was carried out.

16. To corroborate her version, the prosecution placed reliance on the evidence of PW-3- the Medical Officer, who deposed that on 08/05/2019, she was attached to Rural Hospital Ballarsha as Medical Officer. The victim has narrated the history of the alleged incident and stated that the accused took her forcibly into bushes near Railway Yard and sexually assaulted her. On her

physical examination, one abrasion was found on her neck. Except the neck abrasion, there was no injury on her body, including private parts. Her hymen was old and torn; no injury was found on her private part, the medical report is shown at Exhibit-24.

During her cross-examination, she admitted that she had not mentioned in report Exhibit-25 that the abrasion over the neck of the victim was fresh or old. She further admits that, if the forcible intercourse was committed on the spot, as shown in the photographs, there is a possibility of abrasion on the body of the victim. Thus, by this cross-examination, an attempt was made to bring on record that no injury was found on the person of the victim, which sufficiently shows that the evidence of the victim is not trustworthy.

17. The PW-4 Sureshkumar Prabhudas Vajpayee, who is the owner of the hotel wherein the victim was working, is examined vide Exhibit-38, who testify that on 08/05/2019 at about 9.00 a.m., the victim went to her home after recess of her hotel. However, at about 11 p.m. she returned to the hotel, and she was weeping and disclosed that she was subjected for the sexual assault. He also admitted during cross-examination that

there is a pump house near the spot. The rest of the cross-examination is in the denial form.

18. According to the victim's testimony, the accused discharged semen at the scene of the incident. To support this claim, the prosecution examined PW-2 Vikram Lokendra Lohare, to prove the spot panchanama. The panchanama documented that the victim identified the location, where the police collected soil samples with semen stains, a pair of chappals, and fragments of bangles, all of which were recorded as evidence. As to the spot of incidence, he is cross-examined, but he was unable to state anything about the surrounding circumstances, which were available at the spot of incidence. He also acted as a panch witness during the seizure of the clothes, samples, and dupatta, which were seized at the instance of the accused, and accordingly, the panchanamas were drawn. As to the said seizure, no incriminating facts are brought on record by the defence. The prosecution examined PW-5 and PW-6, namely Achal Shantaram Kapur and Dharmendra Trambakrao Joshi, both were the investigating officers narrated the investigation carried out by them.

19. The evidence of the investigating officer- PW-5, also

reveals that he seized soil, pieces of bangles, and a pair of chappals from the spot. He forwarded all the articles for Chemical Analyzer. The Chemical Analyzer reports are before the Court. Exhibit No. 11 is the Chemical Analyzer report about analysis of the clothes of the accused and Duptata of the victim. The analysis shows that neither blood nor semen is detected on these articles. Exhibits 12 and 14 are the analysis regarding the blood and vaginal samples of the victim, and blood samples of the accused, which are also negative. Exhibit No. 13 is the Chemical Analyzer report concerning the analysis of the various articles namely soil seized from the spot, pieces of bangles, a pair of chappals, and the clothes of the victim, which is also yielded negative results.

20. It is well settled that the sole testimony of the victim is sufficient to warrant a conviction in a rape case, when her evidence is of high value and inspires the confidence. In rape cases, the sole testimony of the victim is sufficient for conviction. However, if the victim's account is not supported by medical evidence or surrounding circumstances, corroboration is necessary. What is most relevant is the victim's evidence, which should be credible and inspire confidence.

21. On appreciation of the evidence, the victim has come with the case that when she was proceeding towards her home and stopped at one place for urinal purposes, at that time, the accused dragged her under the bushes near the railway bridge and subjected her for forceful sexual assault. Her cross-examination shows that the alleged spot of incident was behind the railway quarters, where the employees of the railway resides along with their families. She further admits that the spot of the incident is situated near the road, which is used by several persons for transportation. Her evidence further shows that she did not resist the act of the accused while he was subjecting her for sexual assault. This evidence requires to be appreciated in the light of the spot panchanama. The recitals of the spot panchanama show that the alleged spot of incidence was at a distance of 40 feet from the railway quarters, and adjacent to the said railway quarters, there is a locality by the name of Rani Laxibai Ward, and towards the east of the spot of incidence, there is a forest.

22. Thus, the cross-examination of the victim as well as the spot panchanama appears to show that near the spot of incidence, there is a residential locality. The alleged incident,

according to the prosecution, is at daytime in the morning. Thus, when the incident has occurred in the morning time near the road and near the residential locality, it is difficult to accept that none has seen the present accused and the victim together at the spot of incidence. Further evidence of the victim shows that she was dragged by the accused and taken her to the bushes. Except the abrasion on her neck, no other injury was found on her person. The medical officer stated that only one injury was found, namely an abrasion on the neck. The alleged incident, as per the prosecution, took place on 08/05/2019. On the same day, she is examined at about 6.00 p.m. within 7 to 8 hours of the incident. No fresh tear was found on examination of the genitals of the victim. The evidence of the medical officer shows that it was an old tear observed during her examination. The age of the injury as to the abrasion is also not mentioned by the Medical Officer. Thus, there is no corroboration from the medical evidence either. It is highly improbable and unacceptable that though she was dragged by the accused by holding her hand, no redness or abrasion was found on her person. As per the evidence of the victim, the alleged incident has taken place in the bushes. However, not a single injury is found on her person. The spot panchanama also shows

that the alleged spot of incidence was situated behind the Railway Quarter in a service lane.

23. Thus, considering the evidence of the victim, the spot panchanama and medical evidence, which nowhere corroborate the story of the victim as to the forceful sexual assault. As per the evidence of the victim, the accused has discharged the semen at the spot of the incident. The spot panchanama was drawn between 7 to 8 p.m on 08/05/2019. The police have collected the soil from the spot of the incident, which was forwarded to Chemical Analyzer. The Chemical Analyzer report is negative, as far as the analysis of the soil is concerned. Thus, the evidence of the victim is not corroborated by a single circumstance.

24. It is well established that in a rape case, the accused can be convicted based solely on the victim's testimony, provided it is credible and inspires confidence in the mind of the Court. If the version given by the victim is unsupported by any medical evidence or the whole surrounding circumstances, then the Court shall not act on the solitary evidence of the victim. While appreciating the evidence of the victim, the Court shall be extremely careful in accepting the sole testimony of the victim

when the entire case is improbable and unlikely to act.

25. Having carefully considered all the evidence of this case, I am of the view that the evidence of the victim is not inspiring the confidence, especially in light of the fact that the alleged incident has exactly taken place behind the railway quarters, where employees of the railway are residing, and the alleged incident has occurred during the morning time. The admissions given by the victim show that she has not resisted the act of the accused. She has not made any hue and cry, though a residential locality was nearby. The said spot of incident is also near the room, which is used by the citizen for the transportation. The injury found on the neck is not proved to be a fresh injury. The hymenal tear, which were observed by the medical officer, were old one when the victim was examined on the same day. Though the victim deposed that the accused discharged the semen at the spot of incident, but the chemical analyzer report negatived the same. The victim further admitted that she had not bathed until her medical examination was over. Her clothes were seized and forwarded for chemical analysis, but the report of chemical analyzer as to the examination of the clothes is also negative.

26. Thus, in the present case, after appreciating the entire evidence on record, it reveals that the evidence of the victim is not inspiring the confidence and is also not corroborated by the attending circumstances or the medical evidence. The evidence of the victim should be natural and consistent with case of the prosecution, as the evidence of the victim itself is doubtful and shaky.

The learned Sessions Judge, wrongly relied upon the same and convicted the accused. As the evidence of the victim is not inspiring the confidence, and it is doubtful and not corroborated either by an independent witness or by the surrounding circumstances.

27. Considering the circumstances, the accused is entitled for benefit of the doubt. In view of that, the appeal deserves to be allowed. The conviction of the accused is required to be set aside. Accordingly, I proceed to pass the following order;

- a] The criminal appeal is allowed and disposed of.
- b] The impugned judgment and order of sentence passed in Sessions Case No. 122/2019 dated

15/11/2021, convicting the accused, is hereby quashed and set aside.

- c] The accused shall be released forthwith if not required in any other offence.
- d] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]