



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 528 OF 2024

Hanmant Bapurao Bhadre

...Appellant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Hande Avinash D., Advocate for the Appellant.

Ms. M. N. Ghanekar, APP for Respondent – State.

Ms. Sangita Rahul Bagul, Advocate for Respondent No.2.

CORAM : RAJNISH R. VYAS, J.

DATE : JANUARY 13, 2026

JUDGMENT :

1. This is an appeal preferred by the appellant – accused challenging the judgment in Sessions Case No.55 of 2021 dated 15th April 2024, passed by the learned Sessions Judge, Mukhed, by which the appellant was convicted for commission of offences punishable under Sections 376(2)(j)(l) read with Section 511 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC” for the sake of brevity). The appellant was directed to suffer rigorous imprisonment for 7 years and to pay fine of ₹ 50,000/-. In default to pay fine, he was directed to suffer rigorous imprisonment for 6 Months for an offences punishable under Section 376(2)(j)(l) read with Section 511 of IPC. Sofar as conviction under Section 323 of the IPC is

concerned, the appellant was directed to suffer rigorous imprisonment for 6 Months and to pay fine of ₹ 1,000/-. Default sentence of 1 Month was also imposed upon the appellant. It was directed by the Trial Court that the amount of ₹ 50,000/- out of fine be paid to the victim as compensation vide Section 357 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.” for the sake of brevity).

2. First Information Report dated 14th August 2020 was lodged at the instance of PW-1 with the non-applicant Police Station, which resulted into registration of Crime No.276 of 2020 for commission of offences punishable under Sections 376(2)(j)(l), 323 of IPC. During the course of the investigation, the appellant was arrested on 14th August 2020 and was also subjected to medical examination. The victim of crime was also subjected to medical examination. A spot *panchnama* was drawn, so also the seizure of clothes was made. After completion of investigation, charge-sheet came to be filed.

3. Trial Court in Special Case No.55 of 2021, below Exhibit 4 framed the charges. Since the accused did not plead guilty, the prosecution, in order to bring home the charges, examined total 6 witnesses. The appellant, thereafter, was questioned under Section

313 of Cr.P.C. His case was of false implication and total denial. He neither entered the witness box nor examined any witness in support of his defence. Trial Court, after considering the evidence rendered by the prosecution and material on record, convicted the appellant, as stated above.

4. The incident which has resulted into lodging of first information report is narrated by PW-1 in her testimony. PW-1 is the sister-in-law of the victim. The victim of the crime is PW-4, who was deaf and dumb. According to the case of the prosecution, at the relevant time the age of PW-4 was 20 years. PW-1, in her examination-in-chief has stated that on 12th August 2020, at about 01:00 o' clock in noon, noticed foot-wears in courtyard. She, therefore, pushed the door and saw the appellant having physical relationship with the victim / PW-4.

5. According to PW-1, at that time victim was wearing a top whereas the appellant was having shirt on his person. PW-1 then told appellant that what he has done was not proper. At that time, the appellant slapped her and ran away from the spot. Though PW-1 raised an alarm, but since neighbours had gone to the field nobody came for rescue. She, thereafter, narrated the incident to her mother-

in-law, who acted as an interpreter, during the course of the trial. At about 03:00 O' clock noon, PW-1's husband came to home, at which time incident was narrated to him. As the victim was not feeling proper and in order to avoid defamation in society, on the date of incident, they stayed at home and did not lodge any report.

6. After pondering over the issue, it was decided to lodge the report, therefore, they along with the victim went to the police station, at which place principal of Mr. Subhash Jadahv (who was examined as an interpreter, during the course of the trial) was present, who by interpreting the signs narrated incident to the concerned police. PW-1 then signed the report, which was marked as Exhibit 54. PW-1 has also stated that thereafter along with the victim and concerned lady police they went to the Government Hospital where she narrated incident to the Doctor, who medically examined the victim.

7. After medical examination, Police asked the victim to hand over the clothes, which was duly done by the victim. Said clothes were shown to PW-1, during her examination. On 14th August 2020, the spot *panchanama* of the incident was drawn. The statement under Section 164 of the Cr.P.C recorded by the Magistrate of PW-1 was at Exhibit 55.

8. In cross-examination, it was stated by PW-1 that she had studied up to 4th standard and her marriage took place in the year 2010. In the cross-examination, it was put to the said witness that house of one Nilkanth Karale was adjoining to the road and in front of the house of PW-1 there lies open space. It was also suggested that there are several houses situated adjacent to the house of PW-1. A suggestion was given to this witness that before marriage the appellant was having love affair with PW-1 and thereafter also, which was denied by PW-1. She admitted that the accused was married but denied the fact as to whether the accused was having any children. In defence, a story was tried to be built that since the appellant was having love affair with PW-1 and as the husband of PW-1 was suspecting, a false report was lodged against the appellant. It was also suggested to the witness that the victim was an obedient girl and she performed all the work which was asked to be performed.

9. PW-2 was the witness to the spot *panchnama*, *panchnama* of clothes of the victim and accused, who did not support the case of prosecution.

10. PW-3 was the Police Head Constable, who had forwarded

the articles for C.A. examination.

11. PW-4 was the victim of crime whose examination-in-chief was initially recorded by the Court with the help of interpreter Mr. Subhash Govindrao Jadhav, Special Teacher attached to the Deaf and Dumb School. Oath was administered to Mr. Subhash Jadhav who has stated that in the year 2020, he was called in Police Station Mukhed and a letter to that effect was given to him, which was at Exhibit 71. He stated that by interpreting the signs made by the victim, he narrated it to the concerned Police personnel. He stated that since last 20 years, he was working as a special teacher and was able to interpret signs/ gestures.

12. Mr. Subhash Jadhav had further stated in his evidence that the victim when asked in sign language, she could not tell her name and age. He further said that the question which was asked regarding the occupation of the victim was not understood by the victim. In response to the question regarding the residence of victim (which was stated by the interpreter) victim was doing some signs as were done by the interpreter. This witness i.e., Mr. Subhash Jadhav expressed his inability to interpret the signs made by the victim and therefore, he was discharged by the Court.

13. Thereafter, since the mother of the victim was present in Court, as it was informed by the prosecutor, she was appointed as an interpreter. The said witness was administered oath by the Court, who informed that she can interpret the sign language and gestures made by the victim.

14. In evidence the mother of victim, who acted as an interpreter, stated that the victim was not aware about her name and age. She further informed that the victim had disclosed her occupation as an agriculturist. She further stated that the victim was not in a position to disclose the name of village.

15. In her evidence, it was further stated (paragraph No.13 of examination-in-chief) that when she was cleaning the wheat, the accused caught hold of her hands, took her on the cot, made her lie on it and removed the clothes. Thereafter, the victim pointed out finger towards the appellant, who was present in the Court. This witness stated that the victim was not narrating the further incidence and therefore, a little finger was shown to the victim by the interpreter, on which the victim had stated as under :

“आरोपीने तिला लघविच्या ठिकाणी केले. साक्षीदाराने करंगळी खाली प्रेस

करून सदरची घटना सांगितली.”

16. The said witness has further stated that the victim by sign language has stated that incident had taken place during the day hours, but she was unable to state before how many days it took place. She further stated that the incident was seen by PW-1 and also stated that the accused went out of the house. She also pointed out towards the accused.

17. This witness was also subjected to cross-examination in which the actual incidence was not challenged. It is pertinent to mention here that the Trial Court has observed that the interpreter instead of asking questions put by the counsel for the accused to the victim, herself gave answers and therefore, it was found that it would not be proper to record the cross-examination with the help of said interpreter. The cross-examination was thereafter adjourned. This part of cross-examination was conducted on 19th July 2023. On 09th January 2024, a joint pursis was filed below Exhibit 88 by defence counsel as well as the prosecutor, in which no objection was given to treat the mother of victim as an interpreter.

18. On 09th January 2024, the victim was again cross-examined through interpreter i.e. her mother in which a suggestion was given that PW-1 was having love affair with the accused and no such incident had taken place. In this manner, the testimony of the victim of crime was recorded, through interpreters.

19. PW-5 was at the relevant time was working as the Medical Officer at Sub-District Hospital, Mukhed. On 14th August 2020, he medically examined the appellant and samples of hair, nail, blood were taken for chemical analysis. It was opined that the appellant was capable to perform the sexual intercourse and accordingly opinion, which was marked as Exhibit 75 was given. This witness also stated that on 14th August 2020, the victim was brought for medical examination. He stated that the victim was deaf and dumb and her relative was present with her. He conducted the medical examination as female medical officer was not present. According to him, on external examination of victim, he did not find any injury. On internal examination, he found "Recent Hymen Ruptured." He then took samples of vaginal and urethral swabs, for chemical analysis, which were handed over to the concerned Lady Constable. He found sexual intercourse was done with the victim and accordingly he gave his

report, which was at Exhibit 76.

20. This witness was cross-examined by the appellant in which he stated that the resistance injuries on the perpetrator and victim can be possible if resistance is made. According to him, the redness is the factor for deciding time of ruptured of hymen. He denied that he was not confirmed about the fresh or old hymen ruptured, so he did not mention the same. He admitted that in case of forceful sexual intercourse possibilities of injuries on vagina cannot be ruled out. He further admitted that hymen can be ruptured due to masturbation and can be ruptured by other than sexual intercourse. He stated that he did not examine the victim about her percentage of deaf of dumbness and also did not seek opinion of expert. According to him the victim was physically fit. He admitted that history of assault was told by sister-in-law of the victim. He denied the suggestion that the relative of the victim asked her about the incident and victim told it by signs. The Court question was put to the said witness, who stated that he has seen the CA report and his opinion was that the sexual intercourse had occurred. A suggestion was given that false medical reports were prepared by him.

21. PW-6 was the Investigating Officer, who deposed that he had carried out the investigation of the crime and arrested the accused, so also seized the clothes of the appellant and the victim. In cross-examination, this witness had admitted that he had recorded the statement of brother of the victim. He admitted that he did not obtain call records/CDR regarding the call made by brother of the victim. He further admitted that he did not record the statement of one Nilkanth Karale, Kerba Parse, Bapu Bhadre. He admitted that the victim did not go to school.

22. After recording of evidence, the appellant was subjected to enquiry by asking the questions under Section 313 of Cr.PC. In answers to the queries raised under Section 313 of Cr.PC., he stated that he was having affair with PW-1, and husband of PW-1 so also others relatives came to know about it and consequently false report was lodged. He further stated that the house where the victim was residing and where alleged incident took place was situated in a thick locality and thus case advanced by the prosecution can be said to be false.

23. In the aforesaid background, the learned counsel for the appellant submitted that the testimony of the witnesses was not

sufficient to convict the appellant for the commission of offence. He submitted that while examining the witnesses, procedure as laid down under Section 119 of the Evidence Act was not followed. According to him, delay in lodging the first information report was not explained by the prosecution, which goes to the root of the matter. He submitted that the mother, who acted as an interpreter was highly interested witness and considering the evidence in totality conviction should not have been awarded.

24. Per contra, learned APP, Ms. Ghanekar, submitted that the prosecution has proved the case beyond reasonable doubt and the evidence tendered by PW-1 and PW-4 is consistent. She further submitted that the testimony of the victim is supported by the medical evidence i.e. PW-5. According to her, the delay is properly explained and the defence taken by the appellant was hollow.

25. So far as the victim is concerned, she was represented by advocate Sangita Bagul, who has supported the stand taken by the learned APP. She submitted that no material brought on record by way of cross-examination by the appellant to disbelieve the facts which were deposed by PW-4 and PW-1 in their testimonies. She submitted that ingredients of offences were duly proved by the prosecution.

26. Rival contentions fall for consideration.

27. It is necessary to mention here that it is not even the case of the prosecution that the victim was mentally unfit. It is not even disputed by the prosecution and the defence that at the time of commission of offence the victim was major in the eyes of law. It is also not disputed that the victim of crime was deaf and dumb and she did not take any education. For appreciating the testimony of the witness, who is deaf and dumb recourse is required to be taken to Section 119 of the Indian Evidence Act, 1872, which is re-produced as under :

“119. Witness unable to communicate verbally. – A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.”

28. In the aforesaid background, when the testimony of the victim with the help of two interpreters is seen, it would be crystal clear that first interpreter i.e. the Headmaster has stated that he is not in a position to interpret the signs and gestures made by the victim. Thus, this witness was discharged and mother of the victim was appointed as an interpreter. If the testimony of the said witness is perused, it would reveal that what the victim has stated that while cleaning the wheat, her hand was caught by the appellant, who took her on bed, lie her down and removed her clothes. So far as incident regarding commission of act of forcible sexual intercourse is concerned, this witness has stated that the little finger was shown by the interpreter to the victim since the victim was not narrating the further incident. It is only after showing the little finger by interpreter to the victim, the victim deposed as under:

“साक्षीदाराने सांगितले की, आरोपीने तिला लघविच्या ठिकाणी केले.
साक्षीदाराने करंगळी खाली प्रेस करून सदरची घटना सांगितली.”

29. It is necessary to mention here that whether the incident was consensual or forceful has not been stated by the victim and thus was not interpreted by the interpreter – mother of the victim. The point at which the victim the victim kept mum is also relevant. The

victim has only stated about removal of clothes and further incident was not narrated by her. The Court has observed the demeanor of this witness i.e. interpreter (who is the mother) that instead of asking questions put by the accused to the victim, interpreter was giving answers of her own. She was therefore discharged and it was observed that it would not be proper to conduct further cross-examination through the said interpreter.

30. It is pertinent to mention here that the basic principle of criminal law that the prosecution is under obligation to prove the case beyond reasonable doubt cannot be diluted in any manner whatsoever. The Hon'ble Apex Court while dealing with the issue of interpreting Section 119 of the Indian Evidence Act has observed in the case of State of Rajasthan Vs. Darshan Singh alias Darshan Lal¹ as under :

“22. The basic argument which has been advanced by both the parties before us is on the admissibility and credibility of sole eye-witness Geeta (PW.16).

23. Admittedly, Geeta (PW.16) had not been administered oath, nor was Jaswant Singh (PW 1), her father who acted as interpreter when her statement was recorded in the Court. In view of provisions of Sections 4 and 5 of the Oaths Act,

1 (2012) 5 SCC 789

1969, it is always desirable to administer oath or statement may be recorded on affirmation of the witness.

24. *This Court in Rameshwar S/o Kalyan Singh v. The State of Rajasthan has categorically held that the main purpose of administering of oath is to render persons who give false evidence liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only touch credibility and not admissibility. However, in view of the provisions of Section 7 of the Oaths Act, 1969, the omission of administration of oath or affirmation does not invalidate any evidence.*

26. *The object of enacting the provisions of Section 119 of the Evidence Act reveals that deaf and dumb persons were earlier contemplated in law as idiots. However, such a view has subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent, and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the Court, the Court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of*

intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be a record of signs and not the interpretation of signs.

29. *To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.”*

31. When the testimony of PW-4 is considered in the light of the aforesaid observations of the Hon’ble Apex Court, it would be clear that the first interpreter was not in a position to interpret the signs and therefore, his testimony was of no help to the prosecution. The first

interpreter was the headmaster of the school, who during the course of the investigation and while recording the first information report was called by the police in the police station and at that time by interpreting the signs, report was registered.

32. Surprisingly, when this witness entered witness box as an interpreter, he stated that he was not in a position to read the signs and gestures made by the victim. If his examination-in-chief is perused, it would be crystal clear that the victim of the crime was not in a position to tell name, age and occupation. But when mother of the victim, who was present in the Court was examined as an interpreter the victim could disclose the occupation as an agriculturist.

33. The testimony of this witness PW-4/victim is already discussed in earlier part of the judgment. Her demeanor is observed by the Court in the cross-examination, more particularly paragraph No.19 of Exhibit 70. If the testimony of PW-4 through interpreter is read holistically, it would be crystal clear that nothing was brought on record to show that the act, if any, committed by the appellant was without her consent or against her will.

34. The interpreter i.e. the mother is highly interested witness and her enthusiasm to depose is clear from paragraph No.19, wherein the Court has observed that instead of asking questions to the witness as put up by the defence, the interpreter herself was giving the answers. Thus, suffice it to say that this witness cannot be believed upon. This witness has not deposed as was required to depose in the light of the law laid down while interpreting Section 119 of the Evidence Act.

35. It is necessary to mention that the testimony of victim further fell short of proving ingredients of offence punishable under Section 376 of IPC and therefore, the appellant was convicted for attempt. If PW-4's evidence is taken into consideration, so also the testimony of PW-1, it would reveal that the appellant cannot even be convicted for commission of offence of attempt to rape for the reason manner in which the interpreter had tried to interpret signs made by the victim of crime. It further shows that this witness was not reliable witness.

36. It is further pertinent to mention here that the point at which the victim stopped from advancing her case. The testimony of PW-4 clearly shows that the witness was not willing to actually narrate

the incident in question.

37. The question is thus, Whether the Court has proved the case beyond reasonable doubt or not. In case of Ramakant Rai Vs. Madan Rai², the Hon'ble Apex Court explained meaning of "reasonable doubt." It means doubts that are free from abstract speculation, not a result of an emotion response, which are actual and substantial doubts on the guilt of the accused person, and not lack of breach. It cannot be an imaginary, trivial or a possible doubt, but a doubt based upon a reason and common-sense. The relevant observation have been reproduced herein-below :

"23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to 'proof' is an exercise the inter-dependence of evidence and the confirmation of one piece of evidence by another a learned author says"

2 (2003) 12 SCC 395

38. If in the aforesaid background, again the testimony of PW-4, PW-1 is seen, it is crystal clear that witnesses have not stated the act committed by the appellant was against will. In fact, the story advanced by the prosecution falls short of proving the ingredients of offence registered.

39. No doubt in medical evidence, it was stated that hymen was ruptured and it was a recent act, the fact cannot be denied that the appellant is already acquitted for offence punishable under Section 376 of IPC and is convicted only with the aid of Section 511 of the IPC. Holistic reading of the testimonies of all the witnesses would clearly reveal that the prosecution has not proved the case beyond reasonable doubt. Neither the testimony of PW-1 can be taken into consideration for proving offences nor the testimony of victim is enough to convict the appellant. It is pertinent to mention here that the accused was arrested on 14th August 2020 and is still behind bars. He was directed to undergo rigorous imprisonment of 7 years and pay fine. Since I have already come to conclusion that the prosecution has not proved case beyond reasonable doubt, I hereby allow the appeal.

ORDER

A) Appeal is allowed.

- B) The judgment passed by the learned Additional Sessions Judge, Mukhed in Special Case No.55 of 2021 is set aside, so far as convicting the appellant for common of offences punishable under Section 376(2)(j)(l) read with 511 and 323 of Indian Penal Code.
- C) The appellant is acquitted for the offences, for which he was convicted.
- D) The bail bonds of the appellant stand surrendered.
- E) Fine amount be refunded to the appellant.

40. The fees of learned counsel appointed to represent victim is quantified as ₹ 5,000/-.

(RAJNISH R. VYAS, J.)