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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL APPEAL NO. 796 OF 2025

Dhanaji Dhondiba Sadgire
Age : 38 Years, Occu : Labour,
R/o. Savarmal, Tq. Mukhed,
Dist. Nanded.

...APPELLANT

VERSUS

1. The State of Maharashtra,
Through Police Station Officer,
Mukramabad Police Station,
Tq. Mukhed, Dist. Nanded.

2. XYZ

...RESPONDENTS

Mr. Rohit Patwardhan, Advocate h/f Mr. Uttarwar Pavan P,
Advocate for the Appellant.

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

Ms. Harsha R. Lomte, Advocate for Respondent No.2.

CORAM : RAJNISH R. VYAS, J.

DATE : 05th FEBRUARY, 2026

ORAL JUDGMENT:

1. This is an appeal against conviction preferred by the original accused challenging the judgment dated 25th May 2023, passed in Special (Atrocity) Case No.18 of 2020 by the Additional Sessions Judge, Kandhar, Link Court Mukhed, by which he was convicted for commission of offence punishable under Section 376(2) (j)(1) of the Indian Penal Code, 1860 (IPC) and was directed to suffer

rigorous imprisonment for 10 years and pay fine of ₹ 20,000/-. In default imprisonment for one month for the offence punishable under Section 376(2)(j)(l) of IPC was imposed.

2. The applicant was acquitted of an offence punishable under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act(Act of 1989).

3. In short , it is the case of the prosecution that the victim of the crime had an intellectual disability to the extent of 50%. The accused, four months before the date of the First Information Report, subjected the victim to sexual intercourse, due to which the victim got pregnant. As the victim missed her menstrual cycle, she was taken by her mother to undergo a sonography. In the sonography report, it was found that the victim was carrying a four-month pregnancy, and therefore, the victim was admitted to the hospital, where her pregnancy was terminated.

4. It is in this background that the criminal law was set in motion, and consequently, the First Information Report bearing No.36 of 2020, dated 11th March 2020, was registered. The report filed by the mother of the victim was below Exhibit 27.

5. After registration of the First Information Report, on 20th March 2020, the accused was arrested. During the investigation, the victim and the accused underwent medical examinations. DNA samples of the victim, foetus and blood were collected, and those were forwarded to the forensic laboratory, and the opinion was also collected. After completion of the investigation, the charge sheet was filed under Section 376(2)(j)(l) of the IPC and Section 3(1)(r)(w)(i), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

6. The charge was framed against the accused in Special (Atrocities) Case No.18 of 2020, by Special Judge-2, Kandhar, Link Court Mukhed, Dist. Nanded, for the aforesaid offence. As the accused did not plead guilty to the offence, the prosecution, to bring home the charge, examined all 10 witnesses. The accused was then questioned under Section 313 of the Code of Criminal Procedure, 1973, in which he claimed to be falsely implicated and denied the allegations. He neither entered the witness box nor examined any other witnesses. It is in this background, after appreciation of evidence, that the conviction was awarded to the appellant.

7. The question before this Court is whether the victim was mentally disabled and whether the prosecution has proved that she

was subjected to the sexual intercourse. In this regard, it is necessary to go through the testimony of the PW-1/ mother of the victim. PW-1, in her testimony, has deposed that she had two daughters and one son and belonged to a particular caste, but she had not obtained a caste certificate. She stated that her daughter, the victim, was mentally disabled, and as she had missed her menstrual period, she enquired about her. Thereafter, the victim was taken to the hospital of Dr Gaikwad, where a sonography was advised. The sonography was conducted, and the report was shown to Dr Gaikwad, who disclosed that the victim was four months pregnant. Dr Gaikwad then advised PW-1 to take the victim to the Hospital at Nanded or Degloor. PW-1 then took the victim to the Government Hospital at Vishnupuri, Nanded, and there she requested an abortion of the pregnancy. When the victim was taken into confidence by PW-1, the victim informed that the accused had slept with her. She further disclosed that when she had been to the field with her father to graze the cattle, an incident had occurred there. Thereafter, PW-1 filed the complaint with the police station. PW-1 and the victim had shown a spot of the incident. The statement of PW-1 was also recorded under Section 164 of Cr.P.C.

8. This witness/ PW-1 was cross-examined, in which she admitted that the victim used to do household work in a good manner, and the victim alone used to take cattle in the field. When she was asked whether the victim was a lunatic, PW-1 answered that the victim had a below-average intellect. When she was asked whether the victim had willingly committed sexual intercourse with the accused, she answered that she could not tell whether the victim had willingly done the act or not, but the victim told her that the accused had slept with her. She denied the other suggestions, but admitted that the police did not read over the contents of the report to her. She further admitted that she gave her statement in Degloor Court as per the police's say-so.

9. In this background, the version of PW-1 that the victim was mentally disabled is required to be tested. This takes me to the testimony of PW-4, Dr Umesh Bapuji Atram, who was examined as PW-4 and has deposed that he had completed MBBS and MD in psychiatry. He stated that he had 12 years of experience and had examined more than 1000 patients with intellectual disabilities. He stated that on 07th March 2020, he had received a letter from the Police Station to test the I.Q. of the victim and submit the opinion as

to her mental status. The letter was proved by him and was exhibited as Exhibit 44.

10. Thereafter, PW4 examined the victim and found that the victim had an intellectual disability. The percentage of intellectual disability was 50%. He had carried out an IQ test for that purpose and used the ADPMR scale to determine the percentage of intellectual disability. While explaining the test, he stated that in that examination/scale, several questions are put to the person to be examined, as well as to relatives, to assess. He submitted that he had given his report. The said report dated 17th March 2020, below Exhibit 45, was proved by this witness, which clearly shows that the victim had intellectual disability of 50%.

11. In cross-examination, this witness has stated that he could not tell how many questions he put to the victim, and he has no record of the questions that were put to the girl. The other suggestions given to this witness were denied.

12. The learned counsel for the appellant states that the victim was not mentally disabled since it was the victim who showed the spot of the incident, and PW-5 has also stated that he did not maintain the record of questions which were put to the victim. He

further submitted that the mother's admission that it was the victim who alone used to take the cattle for grazing shows that the victim had a normal intellect. He further submitted that the mother had admitted that the victim used to do household work. He submits that since the oath was administered to the victim, it can safely be concluded that the victim was a normal girl.

13. Inviting my attention to the testimony of the victim, the learned counsel, Mr Patwardhan, has contended that the manner in which the victim has deposed would clearly reveal that only a man of normal intellect can depose in such a manner. According to him, a holistic reading of the testimony would indicate that the victim was a girl of normal intellect.

14. Per contra, Ms Ghanekar, learned APP, submits that the testimony of PW-5, who is an independent witness and there is nothing to disbelieve his testimony. She submitted that since the prosecution has proved guilt beyond a reasonable doubt, there is absolutely no reason to interfere with the findings given by the trial Court. She then invited my attention to the law laid down by the Hon'ble Apex Court in the case of Chaman Lal Versus State of Himachal Pradesh, (2020) 17 Supreme Court Cases 69. She has also invited my attention to the judgment delivered by the Hon'ble Apex

Court in the case of Tulsidas Kanolkar Versus The State of Goa, dated 27.10.2023, passed in Criminal Appeal No. 298/2003. She, therefore, submitted that the prosecution has proved the case beyond a reasonable doubt.

15. Ms. Ghanekar, also relied upon the judgment delivered by the Hon'ble Apex Court in the case of Suchita Srivastava and another Versus Chandigarh Administration, (2009) 9 SCC 1, more particularly paragraph no. 28 and has contended that the benefit can be taken of the Medical Termination of pregnancy Act, 2002, wherein the observation of the Hon'ble Apex Court in paragraph no. 28 are relevant and is reproduced as under :

"28. It is pertinent to note that the [MTP Act](#) had been amended in 2002, by way of which the word 'lunatic' was replaced by the expression 'mentally ill person' in [Section 3\(4\)\(a\)](#) of the said statute. The said amendment also amended [Section 2\(b\)](#) of the MTP Act, where the erstwhile definition of the word 'lunatic' was replaced by the definition of the expression 'mentally ill person', which reads as follows:

"2(b) 'mentally ill person' means a person who needs treatment by reason of any mental disorder other than mental retardation."

The 2002 amendment to the [MTP Act](#) indicates that the legislative intent was to narrow down the class of persons on behalf of whom their guardians could make decisions about the termination of pregnancy. It is apparent from the definition of the expression 'mentally ill person' that the same is different from that of 'mental retardation'. A similar distinction can also be found in the Persons with [Disabilities \(Equal Opportunities,](#)

Protection of Rights and Full Participation) Act, 1995. This legislation treats 'mental illness' and 'mental retardation' as two different forms of 'disability'. This distinction is apparent if one refers to Section 2(i), (q) and (r), which define 'disability', 'mental illness' and 'mental retardation' in the following manner:

"2(i) 'disability' means -

(i) blindness;

(ii) low vision;

(iii) leprosy-cured;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation;

(vii) mental illness;

(q) 'mental illness' means any mental disorder other than mental retardation;

(r) 'mental retardation' means a condition of arrested or incomplete development of the mind of a person, which is specially characterised by subnormality of intelligence."

The exact definition of 'mental retardation' has also been incorporated in Section 2(g) of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999."

16. She thus submitted that the legislative provision clearly shows that the person who is in a condition of mental retardation should ordinarily be treated differently from those who are found to be mentally ill. She then submitted that mental disability, as not defined under the provisions of the Indian Penal Code, can be interpreted in the light of observations made by the Hon'ble Apex Court.

17. Ms Lomte learned counsel appearing for the victim, has supported the stand taken by the prosecutor and has contended that

the appeal is liable to be dismissed. Testimony of the Medical Officer who had examined the victim, i.e. P.W. 5, had categorically stated that the victim had mental disability i.e. P.W. 4 had explicitly noted that the percentage of intellectual disability of the victim was 50%. In the cross-examination of this witness, nothing has been brought on record to disbelieve the testimony. The contention of the counsel for the appellant that ADPMR is not the conclusive test and thus cannot be taken into consideration, is required to be ignored for the simple reason that the Court is not an expert in such matters. Suffice it to say that the prosecution by examining the expert evidence as proved that the victim had an intellectual disability.

18. Coming to the testimony of the victim of the crime, i.e. P.W. 2, she has specifically stated that her mother had admitted her to the hospital due to pain in her stomach, and there was a foetus in her womb, due to which surgery was performed. She stated that she had gone to agricultural land and, and then, conceived a child. She further noted that no one has done anything to her to conceive a child. She further stated that the accused had not done anything with her. In cross-examination, the victim has admitted that she had willingly slept with the accused.

19. She admitted that her thumb mark was also obtained on the blank paper in the hospital. She denied that the contents had been read over to her. She has admitted that she does not know what the contents were.

20. In this background, it is necessary to mention here that, as already stated, the prosecution has proved that the victim was mentally disabled. Thus, her consent cannot be considered valid under the law.

21. The question is whether the victim was subjected to sexual intercourse or not, needs no elaborate discussion for the simple reason that the foetus was aborted and samples of the victim as well as the foetus and the appellant were collected and forwarded to the Regional Forensic Science Laboratory, Aurangabad, for opinion. Exh.22 is the opinion/result of analysis. It states that the controlled DNA profile is obtained from Exh. 1: the femur of the victim's abortus in FMLC/SKP/1537/6.3.20. This document, i.e., Exh. 22, is admitted by the defence.

22. Exh.23 is the description of the Article, and also the result of the analysis. It states that a controlled DNA profile is obtained from Exh. 1- blood of Dhanaji-accused MLC No.36/2020.

Exh. 24 is the description of the article contained in parcels and the result of the analysis. Description of article subject matter of Exh.24 is the blood in Vials (two) in plastic container in the name of the victim. Result of analysis is the part of Exh. 24, and opinion reads as: Dhanaji-accused and victim are concluded to be biological parents of the abortus of the victim. The defence also admits this result of the analysis. In view of the specific admission of document at Exh. 22, 23 & 24, it is crystal clear that the appellant had intercourse with the victim of the crime. As already stated, the question of consent need not be addressed, as it has been discussed at length (supra).

23. Ms Ghanekar, learned APP has relied upon in the case of Chamanlal Vs State of Himachal Pradesh reported in (2020) 17 SCC 69, more particularly para 19, which reads as under :

“Even as per clause fifthly of Section 375 IPC, “a man is said to commit rape, if with her consent, when, at the time of giving such consent, by reason of unsoundness of mind, is unable to understand the nature and consequences of that to which she gives consent as observed herein-above, even if it is not the case on behalf of the accused that it was a case of consent. On evidence, it has been established and proved that the victim was mentally disabled and her IQ was 62, and she was not in a position to understand the good and bad aspects of sexual assault. The accused has taken advantage of the mental sickness and low IQ of the victim.”

24. In the present case also, in view of the testimony of the PW-4, it is crystal clear that the victim of the crime had mental disability and therefore, the appellant took advantage of this and subjected her to sexual intercourse.

25. Learned Advocate appearing for the victim has drawn my attention to the law laid down by this court in the case of Duragsay @ Motu Jiyalal Chaudhari Vs State of Maharashtra reported in 2025 DGLS (Bom) 3889, more particularly para 28,29 and 30 which read as under:

“28. The DNA report assumes paramount importance in the present case. It conclusively establishes that the appellant is the biological father of the foetus aborted from the victim. DNA evidence is regarded as the most accurate scientific evidence available and, in the absence of any cogent challenge, constitutes clinching proof of sexual intercourse between the appellant and the victim. The evidence alone is sufficient to connect the appellant with the crime.

29. The Psychiatric evidence of PW-12 further seals the issue. The disability certificate, issued much before the incident, conclusively proves that the victim was suffering from 75% severe intellectual disability. The expert opinion that such a person is incapable of giving informed consent brings the case squarely within the aggravated form of rape under Section 376(2)(j)(l) of the IPC. The contention that the certificate does not mention the exact IQ level is of no consequence, as the statutory requirement is the existence of intellectual disability, not numerical precision.

30. The learned trial court has rightly rejected the defence theory of false implication due to an alleged land dispute. No documentary or oral evidence has been

adduced to establish such animosity. In the absence of any motive, it is wholly improbable that the family of the victim would falsely implicate the appellant in a grave offence involving social stigma and personal trauma.”

26. According to learned counsel for the victim, DNA report, conclusively establishes the appellant to be the biological father of the foetus from the victim. She further stated that it is irrelevant whether the certificate specifies the exact IQ level, as the statutory requirement is the existence of intellectual disability, not numerical precision.

27. In the present case, the DNA report, which is admitted, supports the case of the prosecution, as does the testimony of PW-4. Ms Lomte has rightly invited my attention to the aforesaid judgment.

28. Thus, it is crystal clear that the trial court, while awarding the conviction, has rightly taken into consideration the material available on record.

29. I could not find any illegality or perversity committed by the trial court while convicting the accused. In that view of the matter, nothing survives in the appeal, and the same is accordingly dismissed.

30. At this stage, it is necessary to mention here that Ms Lomte, a learned Advocate who was appointed, has ably assisted this court. She had done research and had invited my attention to the various case laws. Her fees be quantified at Rs.10,000/-.

[RAJNISH R. VYAS, J.]

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