



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 CRIMINAL APPEAL NO.894 OF 2025

Maruti Jalindar Sarvade,
Age-23 years, Occu-Labour,
R/o. Holi, TQ. Lohara,
Dist. Osmanabad

...APPELLANTS

VERSUS

1. The State of Maharashtra
Through Officer-in-charge of
Lohra Police Station, Tq. Lohra,
Dist. Osmanabad

2. XYZ

...RESPONDENTS

Mr. S. B. Bobade, Advocate for the appellant
Mr. V. K. Kotecha, APP for the respondents/State
Ms M. V. Narwade, Advocate for the respondent No. 2

CORAM : RAJNISH R. VYAS, J.

DATE : 13th JANUARY, 2026

ORAL JUDGMENT :

1. In this appeal, a challenge is to the judgment of conviction rendered by the Additional Sessions Judge, Omerga in Sessions Case No. 5/2022 dated 20-07-2023 by which the appellant/sole accused was convicted for the commission of the offences punishable under Sections 376 read with section 511, 452 of the Indian Penal Code (for short 'the IPC'). For the offences punishable under Sections 376 read with section 511 of the IPC the

appellant was directed to suffer rigorous imprisonment for 10 years and to pay fine of Rs.5000/-. In default he was directed to suffer rigorous imprisonment for 6 months. The accused was also convicted for the commission of the offence punishable under section 452 of the IPC and directed to suffer rigorous imprisonment for 7 years and to pay fine of Rs.5000/-. In default he was directed to suffer rigorous imprisonment for 6 months. The sentences were ordered to run consecutively.

2. According to the case of prosecution, first information report was registered on 25-11-2021 at the instance of PW-2/mother of the victim, on the basis of which offences punishable under Sections 452 and 376 (2) (j)(l) of the IPC was registered.

3. On the day of incident i.e. on 24-11-2021 at about 09.00 pm the victim took her dinner and slept in a tin shed. At about 11.00 pm one Savitribai/PW-3 (neighbour) heard a shout and therefore, woke-up and informed PW-2. PW-2 along with one Shankar Pawar/PW-4 rushed to the spot of the incident where victim was sleeping. At that time they saw the appellant committing sexual assault on the victim.

4. At the relevant time clothes of the victim were lifted upto the neck and the appellant was in a nude condition. Therefore, PW-2 went to the police station and on second day the first information

report was registered at Exh.17.

5. On the basis of said information criminal law was set in motion and during the course of which, the appellant was arrested on 25-11-2021. At the relevant time, the appellant was 23 years old whereas the victim was 19 years old. During course of investigation, clothes of accused as well as victim came to be seized. After the completion of the investigation charge-sheet was filed. Charge was framed against the appellant on 07-04-2022 below Exh.4 for the commission of the offences punishable under Sections 376(2)(j)(l) and 452 of the IPC. As the accused did not plead guilty, prosecution in order to bring home the charge, examined total 7 witnesses.

6. The accused was thereafter asked questions under Section 313 of the Code of Criminal Procedure. The defense of the accused was of total denial and false implication. According to the accused, he was falsely implicated since on the earlier occasion he had taken initiative to register a case against one Pappu Rathod who was arrested in that case. Further cousin of the appellant and the said Pappu were on enemical terms and said Pappu had threatened that one day he would send the appellant behind the bar. Appellant stated that he was innocent and falsely implicated in the case.

7. At this juncture, it is necessary to mention here that victim of the crime died after three months after the incident. The

reason of death has not come on record. Be that as it may, neither her statement was recorded by the police authority nor evidence by the court.

8. In order to appreciate the evidence rendered by the prosecution, it is necessary to discuss the testimony of PW-1 who is a Medical Officer. The Medical Officer/PW-1 who was examined by the prosecution has stated that on 25-11-2021, she examined the victim and found her to be paralyzed below waist. She also found the victim mentally ill. She stated that in her opinion possibility of sexual intercourse could not be ruled out. Be that as it may, since the appellant has been charged for attempt to commit rape, the medical evidence, in peculiar facts and circumstances may not be very much relevant.

9. So far as actual incident is concerned, testimony of PW-2, PW-3 and PW-4 is of importance. PW-2 is the mother of the victim who in her deposition has categorically stated that at the time of incident age of the victim was 20 years and victim was handicap and mentally retarded. According to her before 9 months of deposition the incident had taken place. On the day of incident, the victim was sleeping in a tin shed when one of her relatives, PW-3 heard some shouting and therefore, she informed the said fact to the PW-2. PW-2 then alongwith PW-3 and PW-4 reached the spot of incident where

she found that the clothes of the victim were lifted upto neck. The accused was over the person of the victim and was committing the rape and was pushed by the PW-2. Thereafter police had recorded her report on the next date.

10. In the cross-examination various suggestions were given in order to support the defense that it was a case of false implication. It was also stated in the cross-examination that the appellant was beaten mercilessly on that day. It was also brought on record that when PW-2 visited the police station 3-4 other persons from the locality also accompanied with her. It was suggested to her that a false case was lodged.

11. PW-3 is one Savitribai who in her examination-in-chief had stated that on the day of incident she heard some shout and therefore, she came out of the house, at which time, one Shankar was also standing out side. When all these persons reached the spot they saw that one boy was sleeping on the person of the victim and he was in a naked condition whereas the clothes of the victim were lifted upto her neck. Said witness had further stated that PW-2 took out the said person and the person who committed the rape was the present appellant.

12. In cross-examination a suggestion was given to this witness that she was relative to PW-2 which was admitted by her. If

line of defense of this witness is perused, it would reveal that prosecution is trying to suggest that she was able to speak and therefore, could have disclosed the fact to the police by narrating the incident. An omission was tried to be proved by way cross-examination regarding the name of the present appellant was informed by the Bhaurao. Said witness had admitted that she came to know the name of appellant from one Bhaurao. Said omission was put to the Investigating Officer/PW-7 who had duly proved it.

13. PW-4 is one Shankar who has also deposed on the same line as of PW-3. He had categorically stated in his deposition that on the day of incident he heard shouting of victim and therefore, reached the spot along with other two witnesses, at which time, he noticed that one boy was committing 'the act' on the victim [the name is not disclosed in order to protect the identity] Suffice it to say that the name uttered by PW-4 is the name of father of the appellant.

14. In the cross-examination again it was stated to this witness that it was due to earlier enemical terms, the appellant was falsely implicated. This witness has admitted that the victim was mentally unfit. He denied the fact that the victim was not in a position to speak. This witness has stated that the victim could talk a little. If the testimony of all three witnesses are perused, it would reveal that same was consistent as far as the all of them visiting spot

of incident and noticing the appellant in a nude condition, so also the victim in a semi nude condition.

15. Learned Advocate for the appellant Mr. S. G. Bobade, has categorically contended that the entire story adduced by the prosecution is nothing but a striking example of after thought and concocted story. He further submitted that according to the PW-3 victim was in a position to speak and therefore, the incident could have been narrated by her to the police authority. He further stated that there was a omission in the statement of PW-2 regarding the name which is duly proved through the Investigating Officer. He submitted that PW-4 also cannot be relied upon since he has mentioned the name of father of the appellant and not of the appellant.

16. Mr. Bobade, learned Advocate further contended that the best evidence was not collected by the Investigating Officer by examining the father of the victim. According to him, panchanama cannot be relied upon as timing of the panchanama clearly shows that same are planted documents since the first information report was registered at 08.30 on 25-11-2021 whereas the panchanama was drawn after 11.30 on the same day. Considering the distance of 29km between two spots it was not possible to conduct the panchanama at such timing.

17. He further submitted that the victim was studying in a school which is crystal clear from the testimony of PW-7. In fact it was the duty of the Investigating Officer to produce the record of the school where victim was studying but since the Investigating Officer did not do so it was the appellant who by way of prosecution brought relevant documents on record.

18. He further contended that if the cross-examination of PW-7- the Investigating Officer is perused, it seems that he has stated that victim was studying in a school. Further if Exh.46 (page No. 79 of the paper book) is perused it would reveal that the victim studied up to 7th std which was not the school where deaf and dumb students were taught. Thus, according to the learned Advocate for the appellant the prosecution has suppressed the genesis of crime and has not come with clean hand.

19. Per contra, the learned APP Mr. Kotecha has vehemently contended that the evidence produced by the prosecution was cogent and reliable and in fact the case has been proved beyond the reasonable doubt.

20. Ms. Narwade, learned Advocate for the victim has supported stand taken by the prosecutrix and has contended that there is no reason to disbelieve the story advanced by the prosecution.

21. Rival contention falls for further consideration.

22. It is necessary to mention here that the appellant is convicted for the commission of offence of attempt to commit rape and not for the rape. The appellant was also convicted for the commission of offence punishable under Sections 452 of the IPC.

23. In order to prove the ingredients of aforesaid sections, the testimony of PW-2, PW-3 and PW-4 is required to be taken into consideration holistically. PW-2, PW-3 and PW-4 have categorically stated in their depositions that on the day of incident it was PW-3 who heard shouts and therefore, she woke up PW-2. When PW-2, PW-3 and PW-4 went to the spot of the incident where the victim was sleeping they found the appellant in a nude condition sleeping on the person of the victim. The clothes of the victim were lifted up to her neck. This particular of testimony was not seriously challenged by the defense in prosecution. Though the various contentions were raised regarding delay in lodging the first information report and the omission which was put to PW-2 and proved through the Investigating Officer, but suffice it to say that said minor omission cannot destroy the case of the prosecution.

24. It is further pertinent to mention here that though the defense has been taken that it was due to initial registration of case against the Pappu in which, the present appellant had taken active

part, the appellant was falsely implicated but nothing has been brought on record to show that any case was registered against the said Pappu.

25. According to the defense the victim was in a position to speak and she had studied up to 7th std and thus could have made resistance, but the fact remains that the victim was physically handicapped. The said testimony of the Medical Officer that the victim was handicapped and testimony of other witnesses in that regard has remained unchallenged.

26. As far as non-examination of witness i.e. victim by the police is concerned, it is necessary to consider the relevant portion of the testimony of the PW-6 examined by the prosecution below Exh.33. She was a Special Teacher working with the deaf and Dumb School. She stated that for recording the statement of the victim she had received a letter from the office of Social Welfare Office. She along with police visited the house of the victim and met the victim. The victim was mentally unfit and handicapped. According to PW-6 when she enquired victim was not in position to reply, since she was mentally unfit. This witness also enquired from the victim by making signs, but, she could not reply. Thus, it is crystal clear that the victim was not in a position to narrate the incident. Nothing has been brought on record to disbelieve the deposition of PW-6- Special

Teacher.

27. So far as PW-5 is concerned (a panch witness) he has stated about seizure of the clothes of the victim and the appellant. The clothes were forwarded to the Chemical Analyzer but nothing incriminating was found. In fact, CA report supports the case of the appellant.

28. Be that as it may, considering the fact that the testimony of PW-2, PW-3 and PW-4 as discussed supra, is trust worthy, I come to conclusion that the conviction rendered by the trial court is just and proper. Trial Court has dealt with the said aspect at length in the judgment and has rightly awarded the conviction.

29. In the aforesaid background, I am of the opinion that prosecution has proved the case beyond the reasonable doubt. In that view of the matter, the appeal is dismissed. It is directed that substantive sentences shall stand run concurrently.

30. It is worth noting that Ms. Narwade who was appointed counsel to represent the victim has assisted the court in a short time. Her fees be quantified at Rs.7000/-

21. In view of dismissal of appeal, pending applications, if any, stand disposed of.

[RAJNISH R. VYAS, J.]