



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 922 OF 2025
WITH
CRIMINAL APPLICATION NO. 3359 OF 2025

Chand Maheboob Sayyed
Age: 57 years, Occupation: Labourer,
Resident of : Manewadi, Taluka Tuljapur,
District Osmanabad

..APPELLANT

VERSUS

1. State of Maharashtra
Through the Naldurg police Station,
District Osmanabad.

2. XYZ

..RESPONDENTS

....
Mr. Mukul Kulkarni, Advocate for appellant (appointed)
Ms. A.S. Deshmukh, A.P.P. for respondent no.1 – State
Ms. Smita Chole, Advocate for respondent no.2 (appointed)
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CORAM : RAJNISH R. VYAS, J.
DATE : 07th JANUARY, 2026

ORAL JUDGMENT :

. At the outset, a word of appreciation is required to be noted for the able assistance rendered by Mr. Mukul Kulkarni, who is appointed counsel for the appellant, since without seeking any adjournment he has argued the matter at length and has vehemently contended that the appeal needs to be allowed. He has brought to the notice of this Court the grounds, which according to him are sufficient to seek acquittal of the appellant. The able

assistance is also rendered by Ms. Smita Chole, who is appointed and appearing to represent Respondent No.2 – victim. Learned A.P.P. Ms. Deshmukh has also vehemently opposed the prayer made by the appellant. With the able assistance of all these counsel, I have gone through the record of the case.

2. The brief facts of prosecution case are as under : -

Prosecutrix has lodged F.I.R. of incident. According to her, accused is her step-father. Her mother married with accused 10 years back. They have also a son. Accused was yearly agricultural labour in the land of Bhosale. She was staying with them in the land of Bhosale at village Shahapur. She was studying in 12th standard in the College at Naldurg.

3. On 10.01.2022 at about 11.00 a.m. accused went for agricultural work. Her mother went in the village Shahapur to purchase the grocery articles. She was alone in the house. Accused came in the house with Axe. He threatened her to remove the clothes, otherwise he would cause her death. He has removed her clothes and committed rape on her against her will. He also threatened not to disclose the incidence anybody, otherwise he would cause the death of her mother. Then, he left the house and went for providing water to sugarcane. Her mother returned back at about 1.00 p.m. But prosecutrix did not disclose the incidence to mother, due to fear. Thereafter, at about 2.30 p.m. prosecutrix alongwith her mother and younger brother

went at village Jewali for the function to see the bridegroom and stayed there. Then, on 11.01.2022 at about 4.00 p.m. she was suffering pains and sat alone. Her mother inquired about her silence. Then, she disclosed incidence of rape committed by accused on her. Thereafter, on 12.01.2022, prosecutrix alongwith her mother and maternal aunt etc went in the Naldurg police station and lodged the F.I.R. against the accused for the offence of rape.

4. On the basis of the information supplied to the non-applicant - Police Station, Naldurg, Crime No. 16 of 2024 dated 13th January, 2022 was registered with Naldurg Police Station, Dist. Osmanabad for commission of offence punishable under Sections 376(2)(f) and 506 of the Indian Penal Code (for short, 'I.P.C.'). The date of occurrence of crime mentioned in the F.I.R. is 10th January, 2022. The victim of sexual act is a daughter, whereas the accused/appellant is her stepfather. After completion of investigation final report was filed and learned Sessions Court has framed the charge below Exhibit 10. As accused did not plead guilty, the guilt was tried to be proved by examining total 8 witnesses. After weighting testimony of the witnesses, Additional Sessions Judge, Dharashiv (Osmanabad) in Sessions Case No. 51 of 2022 convicted the appellant for commission of offence punishable under Section 376(2)(f) and 506 of I.P.C. and directed to suffer rigorous imprisonment for ten years and to pay fine of Rs.50,000/-. Default sentence

of simple imprisonment for two years for offence punishable under Section 376 (2)(f) of I.P.C. was also imposed. The accused was further directed to pay fine of Rs.1,000/- and in default to suffer simple imprisonment of one month for the offence punishable under Section 506 of I.P.C. The fine amount of Rs. 50,000/- was directed to be paid to the prosecutrix. All throughout the trial, the accused was in jail.

5. Learned counsel for the appellant submits that the story advanced by the prosecutrix as well as her mother cannot be believed for the reason that none of the witnesses has specifically deposed about the specific date on which the incident had taken place. According to him, conspiracy was hatched by the well-wishers of the mother of the prosecutrix to falsely implicate the appellant, since the appellant used to doubt the character of mother of the prosecutrix. He, however submitted that the medical evidence produced on record is required to be ignored, since the timing of medical examination from Exhibit 21 and Exhibit 49 clearly shows that the story is worth ignoring. According to him, the default sentence imposed by the trial Court is on higher side and should not have been imposed upon him. He further submits that the prosecutrix was, in fact, prompted to lodge the F.I.R. by her mother.

6. Per Contra, learned A.P.P. submits that there is absolutely no delay in lodging the F.I.R. She further submits that there is no reason for the

prosecutrix, who at the relevant time was in 12th standard, to falsely implicate her stepfather. She contended that inconsistency in the timing of Exhibit 21 and Exhibit 49 will not benefit the accused. Learned counsel appointed to represent the prosecutrix submitted that the witnesses examined were reliable and their testimony had, in fact, proved the ingredients of the offences for which the appellant was charged.

7. I have gone through the record of the case. P.W. 6 is the victim of the crime, whose testimony is at Page No. 94. In her testimony, she had stated that at the time of the incidence, she alongwith her mother, brother and accused was residing in the land of Bhosale at village Shahapur. On 10th January, 2022, her mother / P.W.3 went at Bazaar, at which time the appellant was working in the field and she was alone at the house. She deposed that her brother was playing out of the house, at which time the appellant came in the house with an axe and asked her to remove her clothes. When the prosecutrix inquired the reason, appellant threatened her and asked her to follow the instructions. Due to fear she removed her clothes and thereafter according to the prosecutrix she was subjected to forcible sexual intercourse. The prosecutrix further stated that she did not disclose the incidence to anybody due to fear of the accused.

8. On the next day, she alongwith her mother went at Jewali for the ceremony to see bridegroom and when after the program she sat alone, her

mother and maternal aunt inquired the reason. According to the prosecutrix, she then disclosed that accused had committed rape on her on the earlier day. This resulted into lodging of the F.I.R. The complaint is at Exhibit 25.

9. The prosecutrix was subjected to medical examination, firstly by P.W.2, who was the Medical Officer at the relevant time at Primary Health Center, Naldurg. The said witness has stated that on 14th January, 2022 at about 5:30 p.m. he started examining the victim, at which time the prosecutrix narrated history of the incidence and stated that the accused had committed rape on her. According to P.W.2, during examination the prosecutrix was referred to the Gynecologist / P.W.8 and the Gynecologist noticed that the hymen of the prosecutrix was ruptured in 6 O'clock position. She also noticed recent (one day to six days) rupture of hymen. According to her, as per primary opinion, history and medical examination, findings were suggestive of sexual intercourse. However, final opinion was to be given after receipt of C.A. report.

10. P.W.8 is the Gynecologist, who was examined by the prosecution. She was the medical practitioner holding qualification of M.B.B.S. On 14th January, 2022 she was working as contractual Medical Officer in Sub-District Hospital, Tuljapur. She submitted that she examined the prosecutrix and noticed that there was no injury on her private part. According to her, hymen was ruptured in 6 O'clock position and redness was also present. She stated

that there was possibility of sexual intercourse and she gave her opinion accordingly, which is at Exhibit 49.

11. It is the contention of learned counsel for the appellant that if the testimony of P.W.2 and P.W.8 is compared, then the medical evidence will have to be ignored. The medical evidence is based on two documents. Exhibit 21 is the first document which is at Page No.60. He states that according to Exhibit 21, the date and time of arrival of the prosecutrix in the hospital was 14th January 2022 at 5:30 p.m., whereas as per Exhibit 49 which is at Page No.131, the date and time of entry of the prosecutrix is 14th January, 2022 at 12:35 p.m. and the discharge time was 02:20 p.m. He, thus submits that initially she was referred to P.W.2 at Primary Health Center, Naldurg and thereafter to P.W.8 AT Sub-District Hospital, Tuljapur. He submits that if the prosecutrix was examined on first occasion on 14th January, 2022 at 05:30 p.m., then there was absolutely no propriety in mentioning time of 12:35 p.m. in the second examination conducted at Sub-District Hospital, Tuljapur. He, therefore, submits that the entire story of prosecution fails and thus the medical documents cannot be relied upon.

12. At the first blush, the argument advanced by the counsel for the appellant may seem attractive, but at deeper scrutiny it would be crystal clear that, in fact, both the medical documents support the case of the prosecution. The reason is very clear. When P.W.8 was subjected to cross-examination, not

a single question was asked by the counsel for the accused/appellant regarding the date and time of the medical examination. Neither P.W.2 was referred to Exhibit 21 nor P.W.8 was referred to Exhibit 49. In absence of effective cross-examination, these two documents cannot be ignored.

13. So far as contention of the appellant that there is absolutely no material to show that the incidence had taken place on a particular date, suffice it to say that the prosecutrix is a girl studying in 12th standard and at the relevant time was 18 years and 2 months old. In her cross-examination, more particularly, at Page No.96 Paragraph No.8, she had deposed that “I do not remember the date, whether 10th or 11th I went at Jewali. I am not aware, whether Arvind Jagtap has removed my father from work due to our family dispute. I did not remember whether we all left Shahpur prior to 10th January for Jewali. It is not true, I am telling 10th date as per the instructions of police.”

14. At this stage, it is also relevant to consider testimony of the mother of prosecutrix i.e. P.W.3, who in her testimony, has stated as under :-

“We went the police station on 12.01.2022. It is not true, we were carried one dress of prosecutrix., while went towards police station. It is true, after registration of crime, I have produced one dress of prosecutrix before police. We used to visit police station for initial three days. On the day of F.I.R.,

police has recorded my statement. Thereafter, police not recorded my statement.”

15. The testimony of P.W.3/mother and P.W.6/victim if taken into consideration holistically, it would be crystal clear that there is neither delay in lodging the F.I.R. nor any confusion regarding commission of offence. Just because the prosecutrix did not disclose specific date, it does not mean that her version is required to be disbelieved. At this stage, it is also necessary to observe that nothing has been brought on record by defence by examining any witness that there was any reason to falsely implicate the appellant at the hands of P.W.6 and P.W.3. Just because a stand is taken that the appellant had suspected the character of P.W.3, and therefore, a false report was lodged by P.W.6, it cannot be said that the testimony advanced by P.W.6 is false or there was attempt of false implication. The Investigating Officer, according to learned counsel for the appellant, ought to have examined brother of the prosecutrix, who at the relevant time was playing outside the house i.e. spot of incident. He may be right in saying so, but fact also remains that a boy, who was playing outside the house, was the son of the appellant. He, in his defence, could have summoned the boy for examination. The same is also not done.

16. In the statement recorded under Section 313 of the Code of Criminal Procedure (Page No.145), the accused has only stated that on 04th

January, 2022, P.W. 3 and 6 had raised quarrel and thereafter did not reside with him. He further stated that due to the conspiracy hatched by P.W.3, P.W.6 and other relatives, he was falsely implicated. Except that nothing has been brought on record to disbelieve the story of the prosecution.

17. Considering the consistent version advanced by P.W.6/victim and P.W.3/mother of the victim, by way of testimony and medical evidence in the form of Exhibit 21 and Exhibit 49 duly proved by P.W.2 and P.W.8, I am of the opinion that the judgment passed by the trial Court is just and proper, and therefore, interference is not required in it.

18. At this stage, learned counsel for the appellant has argued that a fine of Rs.50,000/- is imposed upon the appellant and in default, simple imprisonment for two years was imposed. According to him, default sentence of two years is on higher side. I am inclined to reduce the default sentence for the reason that the appeal has been preferred before this Court by the appellant through Legal Aid. He could not engage a private lawyer and legal aid was required to be provided to him. In that view of the matter it is clarified and accordingly punishment for default sentence is modified as under :-

In case, fine amount of Rs.50,000/- is not deposited by the appellant, he shall undergo simple imprisonment for six months for the offence punishable under Section 376(2)(f) of the I.P.C.

19. In view of above, appeal is dismissed. Criminal applications, pending if any, stand disposed of accordingly.

20. Mr. Mukul Kulkarni, learned counsel, submits that he will not claim fees and requested this Court to pass necessary order accordingly. Thus, no further order is required.

21. Fees of the appointed counsel Ms. Smita Chole, be quantified as per the rules.

(RAJNISH R. VYAS, J.)

SSD