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29criapl39.26-1

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

CRIMINAL APPEAL NO. 39 OF 2026

Munglya @ Mangesh S/o. Mahadev Bedre,
Age-27 years, Occu-Agril,
R/o. Varvanti, Tq. & Dist. Dharashiv

...APPELLANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station Dharashiv (Rural),
Tq. & Dist. Dharashiv
2. X. Y. Z.

Mr. N. D. Kendre, Advocate h/f Mr. V. B. Deshmukh, Advocate for the
appellant
Mr. V. K. Kotecha, APP for the respondents/State
Mr. P. S. Shinde, Advocate for the respondent No. 2 (through VC)

CORAM : RAJNISH R. VYAS, J.

DATE : 09th MARCH, 2026

JUDGMENT :

1. Heard the learned Advocate for the appellant, the
learned APP for the respondent and the learned Advocate for the
victim.
2. By this appeal, a challenge to the judgment of conviction
dated 31-12-2025, passed by the learned Judge, Fast Track Special
Court, Dharashiv in Sessions Case No.53/2022 by which the

appellant was convicted for commission of offences punishable under Sections 376 & 323 of the Indian Penal Code [for short 'the IPC'] and was directed to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1000/- in default to suffer simple imprisonment for one month for commission of offence under Section 376. All the sentences were ordered to run concurrently. The accused was acquitted of the commission of offences punishable under Sections 354(D), 504 and 506 of the IPC.

3. In short, it is the case of the prosecution that on 20-04-2021 at about 02.30 am, the accused committed the rape on the victim and said fact was noticed by the husband of the victim who pulled the accused. The accused then ran away from the spot. The incident dated 20-04-2021 was not reported to the police immediately, on the ground that the victim and her family would be defamed in the society. On 18-05-2021, the First Information Report was lodged, as the accused blew the whistle after seeing the victim. This incident has resulted in the registration of the First Information Report No. 109/2024 against the appellant, his consequent arrest, forwarding him for medical examination, the drawing of panchanama, the seizure of clothes, and, finally, the submission of the charge-sheet.

4. As the trial court found prima facie case, the charge was framed below Exh. 7 by the Additional Sessions Judge, Dharashiv on 06-10-2022 for commission of offences punishable under Sections 376, 354 (D)(1), 323, 504, 506 of the IPC.

5. The accused did not plead guilty, which resulted in the examination of a total of four witnesses at the instance of the prosecution. The accused was questioned under section 313 of the Cr. P. C. below Exh. 37 on 08-12-2025, in which his case was one of total denial. In answer to question No.36, the accused had stated that the agriculture field falling in the share of the accuse so also borewell were with the victim and his family and in spite of demand, it was not returned to the accused. Therefore, the victim and her husband had deposed against him.

6. The accused neither entered into the witness box nor examined any witness. The trial court after considering the evidence on record, convicted the appellant as stated above and sentenced him after honouring the mandate of Section 235 of the Cr. P. C. At this stage, it is necessary to mention that perusal of the record would reveal that, at the time of commission of the offence, the accused was 24 years old, whereas the victim of the crime was 31 years old.

7. It is worth noting that the defence has admitted Exh. 23, i.e. medical examination of the victim, so also, Exh. 24, i.e. seizure panchanama of the clothes of the accused on 19-05-2021, Exh. 25, report of the examination of the accused for Evidence of Sexual Assault of Potency. Exh. 26 , the arrest form.

8. The record further shows that the accused is nephew of the husband of the victim.

9. In the aforesaid background, the learned Advocate for the appellant has contended that the entire case advanced by the prosecution is false and fabricated. According to him, the delay in lodging the first information report is not explained, which goes to the root of the matter. Further, the fact cannot be ignored that the accused was 24 years old, a relative of the victim, whereas the victim was 31 years old. According to him, a ring of truth is missing from the prosecution's case.

10. Per contra, learned APP submitted that the testimony of PW-1 and PW-2, i.e., the victim and her husband, is reliable and cogent, and there is absolutely nothing to disbelieve their testimony. He submitted that the accused had already admitted the medical examination report of the victim and the accused.

11. Learned Advocate for the victim has submitted that just because there is a delay in lodging the first information report, it will not destroy the case of the victim and the reason for delay was defamation of the victim. He further submitted that just because the victim was older than the accused and a major in the eyes of the law, it would not mean that the offence of rape cannot be committed.

12. With the able assistance of all the respective counsels for the parties, I have gone through the record of the case and have also tested their arguments.

13. PW-1, who is the victim of a crime, has deposed that she resides with her husband, children and in-laws together, and the accused is her nephew. The incident occurred on 19-04-2021. Due to Covid-19, they had gone to reside in the agricultural field, and on the day of the incident, after taking dinner, they slept, at which time two children were with her. The victim's husband had gone to the village to fetch water from the borewell. At about 02.00 to 03.00 O'clock in the night, the accused came into the house, asked the victim to wake up, saying that he had to do the work. The victim asked him why the accused was saying this, to which he repeated earlier version .

14. Thereafter, he removed his clothes, as well as the clothes of the victim and was having a physical relationship, at which time, victim's husband arrived, who was having a torch/ battery with him. The husband of the victim then pulled the accused. The victim raised the shouts. But the accused had beaten her.

15. The victim further stated that, since her husband had served as President of the Dispute Resolution Committee for one month, they did not take any action against the accused and kept mum because they would be defamed. She further admitted that the accused's field is adjacent to their field and that, after the incident, the accused used to blow the whistle; therefore, she was afraid and, thereafter, a report was lodged, which she proved below Exh. 19.

16. The statement was recorded under Section 164 of the Cr. P. C., which was below Exh. 20. She also stated that she had shown the spot of the incident to the police, and the clothes that she was wearing at the time of the incident were identified by her, which were given Articles A, B and C. She identified the accused, who was present in the court.

17. The victim of the crime was subjected to cross-examination. She admitted that accused is younger to her and was

married person having two children. She further admitted that it was summer and the season of harvesting. She stated that she had no house in the field, only a cattle shed. She denied the suggestion that adjacent to her field, the work of harvesting was going on. She further admitted that from the date of the incident until lodging the first information report, she was in the village, and the fact was informed to the accused's cousin. She submitted that the incident was not narrated to her in-laws.

18. At the time of incident, the victim stated that her two children were studying in class 2nd and class 4th. She had also received medical treatment at the District Hospital in Dharashiv and handed over the medical papers to the police. In her deposition, she admitted that the accused's agriculture field was situated on the side of the accused's agriculture field, and that before the incident, the measurement of the accused's agriculture field and the victim's agriculture field was carried out by the villagers. She stated that she was not aware whether the accused's land had fallen to her share. She admitted that they have a very limited relationship with the accused family.

19. She admitted in cross-examination that whenever a dispute arises in the village, her husband, as President of the Dispute

Resolution Committee, is approached. If it is not settled, he suggests that the parties should approach the police station. She admitted that whenever the police visit the village, they call her husband for a meeting. She denied that, before the lodgment of the first information report, a quarrel had taken place between her husband and the accused on account of the borewell.

20. PW-1 has stated that on 18-05-2021, in the morning hours, her husband visited the police station and informed them that they would lodge the first information report. Still, in the evening, the victim's husband informed that, since the officer had gone outside, they were called at that time. She also admitted that her husband had informed her he had spoken with the police about the matter. She denied that she was told by her husband as to what to disclose to the police. That evening, she and her husband had been to the police station, where they stayed till 07.00 O'clock, and after putting their signatures, they came back home.

21. PW-1 admitted that before recording her statement in court, she was given a copy of the complaint for reading. As she was not in a position to read, a request was made to the police to read it over, and she deposed accordingly. She further stated that when the complaint was read over to her, she had known its contents. She

denied the suggestion that she was deposing as instructed by the police. She admitted that, at the time her statement was recorded in court before the Magistrate, her husband was with her. Other suggestions were denied. At this stage, it is necessary to mention here that the court had asked her a question as to whether on 19-04-2021, a physical relationship was with her consent, which she denied.

22. PW-2 is the husband of the victim who has deposed that on the day of the incident on 19-04-2021, he had gone to the village at about 12.00 to 12.30 at night to supply water and returned at 02.30 to 03.00 am. At this time, he found the accused having a physical relationship with his wife and therefore pulled him. But the accused fled away from the spot. He then enquired from the PW-1, and she disclosed that since she refused to have a relationship with the accused, the accused had beaten her. He deposed that, as President of the Dispute Resolution Committee, to avoid defamation, he did not narrate the incident to anyone. He stated that even after the incident, the accused started following his wife, and to avoid further harassment, a report was lodged. He stated that the statement was recorded before the Magistrate. The contents of which were true, and he identified his signature. Accordingly, the statement was exhibited as Exh. 22.

23. In the cross-examination, PW-2 has admitted that he normally used to visit the police station as the President of the Dispute Resolution Committee and disclosed the incident to his parents. He also admitted that after lodging the complaint, he had carried out a private measurement of the agricultural field. Still, he denied the suggestion that he was on enmity terms with the family members of the accused due to a land dispute. He denied the suggestion that, in the measurement, it was found that the accused's share had fallen in his favour. He admitted that there was a borewell on the accused's field. He denied the other suggestion regarding the land dispute.

24. He further denied that on 18-05-2021 in the morning, he had been to the police station. He stated that on that day, between 10.00 and 10.30, he and his wife had been to the police station and returned at about 06.00 p.m. The other suggestion was denied.

25. PW-3 is one Sachin who was a witness to the spot panchanama and seizure of clothes of the victim. He has proved the spot panchanama below Exh. 29. He has also proved the seizure of clothes of the victim below Exh.31 and seizure of clothes of accused below Exh.24 from police station. In the cross-examination he has admitted that he has acted as panch in several cases.

26. The testimony of this witness may not be very relevant for deciding the issue involved in the present case.

27. PW-4 is the Investigating Officer who has deposed that he had carried out the investigation of crime No.109/2021 and thereafter arrested the accused, forwarded the accused for medical examination, and prepared the panchanama of seizure of clothes. He also deposed to the further part of the investigation regarding the video recording of the victim's statement and the preparation of the DVD, including taking the hash value and the certificate issued under the Indian Evidence Act, below Exh. 34. He proved the said exhibit. He submitted that the clothes of the victim were forwarded for forensic examination by issuing the letter below, Exh. 35. He also stated that he has recorded the statement of the victim and the accused.

28. In the cross-examination, nothing helpful for defence was brought on record.

29. If the testimony of PW-1 is taken into consideration, it would reveal that on the day of the incident, it was a dark hour when the incident had taken place. The victim has categorically stated that at the time of the incident, her two children were with her, and the

accused had first removed his clothes as well as the victim's clothes. The question is whether this witness's testimony is reliable and cogent. In this regard, it is necessary to mention that when the PW-2 was returning, he was carrying a torch and noticed that the accused was having a physical relationship with PW-1. He then pulled the accused. But the accused ran away from the spot. Thus, it reveals that the accused removed his clothes, ran away from the spot without them, and what happened to those clothes. It is not even the case with the PW-1 and 2 that those clothes were given to the police by them. It is also not brought on record by way of investigation as to what happened to those clothes and whether the accused ran in the same condition.

30. Be that as it may, this may not be very crucial for deciding the issue involved in the case. But it would give the accused a helping hand in defending against false implication. Another fact that has come to light is that there was a borewell on the accused's agricultural field. PW-1 has admitted that there was a measurement of the land before lodging of the first information report, whereas PW-2, in the cross-examination, has admitted that he measured the land privately after lodging the complaint. This clearly shows that there was a dispute over the boundary or share of the accused's

agricultural field with the prosecutrix and her husband. It is also clear from the record that the field of the accused is situated on the East side of the agricultural field of the victim. Thus, it is crystal clear that the agricultural dispute is brought on record. It is in this background that the prosecution's testimony will have to be examined.

31. PW-1, though according to the prosecution, was subjected to the forcible sexual intercourse on 19-04-2021, surprisingly, the statement of the children was not recorded. The prosecution may have its own reason for not recording the statement. But, for the said, the prosecution should have brought reasons on record. It is further necessary to mention that the PW-1 stated that the incident was not narrated to the in-laws, whereas the PW-2 stated that it was narrated to the parents. These two versions are significant because the accused is a cousin of PW-1. Thus, it would have been well brought to the prosecution's attention what steps were taken by the elders in the family. Surprisingly, the parents of the PW-2 were not examined.

32. There is one more aspect that needs to be taken into consideration, which is the delay in lodging the first information report. The incident occurred in the intervening night of 19-04-2021 and 20-04-2021. In contrast, the first information report was lodged

on 18-05-2021. Thus, the prosecution did not prove the huge delay by advancing cogent grounds. Reasons advanced include defamation, which might have been faced by the family of the victim, but same will have to be tested from the surrounding circumstances, also. In this regard, it is necessary to mention that the husband of the victim was serving as the President of the Dispute Resolution Committee, and this was to explore the possibility of settlement when a dispute was put before him. His further job was to forward the authorities' , the dispute which is not settled amicably. In this background, it cannot be believed that, on the grounds of defamation in society, the report was lodged at a belated stage. It is not even the case of the prosecution that the accused had any criminal antecedents; it was due to fear that the report was not lodged. Admittedly, PW-2 was the accused's uncle, and he could have taken appropriate steps.

33. This further takes me to one more aspect of the case, i.e. lodging of the report on the day of 18-05-2021. PW-1, in her cross-examination, stated that on 18-05-2021, her husband informed them that they would lodge the report, but after returning home, PW-2 informed PW-1 that the police officer had gone outside; they were called at evening hours. It was also stated by the PW-1 that her

husband had informed her that PW-2 had returned after discussing the matter with the police.

34. It is thus crystal clear that in the morning hours, PW-2 had discussed the matter with the police. Surprisingly, the report was not lodged at that time. It is a well-settled principle of criminal law that anyone can set criminal law in motion, and as to why the husband did not lodge the report at the morning hours on 18-05-2021, the prosecution has also not explained. Further aspect that before recording the statement of PW-1 under Section 164 of the Cr. P. C, she was given a copy of the complaint for reading, and since she was not in a position to read, she had requested the police to read it over to her. Police then read over the complaint and thereafter her statement was recorded. The said act of the police, though, can be called an irregularity, in the peculiar facts of the case, but it will reflect on the conduct of the police authorities. The admission of the victim that when she put her signature on the complaint, she came to know about the contents, which also creates the doubt regarding genesis of the offence. Thus, all these factors cast doubt on the victim's testimony.

35. So far as the contention of the learned Advocate for the victim that delay in lodging the first information report will not go to

the root of the matter, suffice it to say that said principle cannot be made applicable with a fixed formula. It will depend on the facts and circumstances of the case. In the present case, it is already stated that there is absolutely no proper explanation for the delay in lodging the first information report.

36. Even in statement under Section 313 of the Cr. P. C., more particularly in answer to question No. 36, the accused has categorically stated that part of his land and borewell are with the PW-1 and PW-2, and, despite demand, they have not been returned to him. Thus, the line of cross-examination adopted, the evidence tendered, and the defence taken by the accused under Section 313, shows that case is not proved beyond reasonable doubt.

37. At this stage, it is necessary to consider the meaning of 'reasonable doubt'. The Hon'ble Apex Court in the case of Ramakant Rai Vs Madan Rai and others reported in 2003 (12) SCC 395 has observed as under:

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary,

trivial or a merely possible doubt; but a fair doubt based upon reason and common-sense.”

38. Thus, it is crystal clear that emotional ground cannot be called a reasonable doubt. The further fact that the battery / torch were not seized from the PW-2 also goes to show that the prosecution has not brought sufficient material on record to prove its case beyond a reasonable doubt.

39. Now the question is whether the testimony of the victim can be called one of sterling quality or not. In this regard, it is necessary to take into consideration the law laid down by the Hon’ble Apex Court in the case of Nirmal Premkumar and Ors. vs. State Rep. by Inspector reported in 2024 (20) SCC 293, more particularly in para 22 to 24.

22. *This court was tasked to adjudicate a matter involving gang rape allegations under Section 376(2)(g) IPC in Rai Sandeep Vs State (NCT of Delhi). The court found totally conflicting version of the prosecutrix, from what was stated in the compliant and what was deposed before court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a “sterling witness”, the court opined as under:*

22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of

such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstances should give room for any doubt as to the factum of the occurrence, the persons involved as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapon used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of

the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

23. *In Krishan Kumar Malik Vs State of Haryana, this court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:*

31. *No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.*

32. *Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Cr. P. C.), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as*

a witness was not examined and later given up by the Public Prosecutor on the ground that she has been won over by the appellant.

24. *What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the court should strive to find out the true genesis of the incident. The court can rely on the victim as a 'sterling witness' without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.*

40. If in the aforesaid background testimony of the witness is taken into consideration, it would reveal that the testimony of PW-1 cannot be called sterling in quality.

41. Thus, I conclude that the prosecution has not proved the offences punishable under Section 376 & 323 of the IPC. This now leads to further discussion regarding the accused's conviction under Section 323 of the IPC. It is a well-settled principle of law that, for proving an offence under Section 323 of the IPC, medical evidence is not required. In this case, the core case of the prosecution is not proved, and therefore, it logically follows that even the offence under

Section 323 of the IPC is not proved. The admission on the part of the victim that she had given medical papers of her treatment to the police, is brought on the record. Those documents are surprisingly not taken help by the prosecution. The testimony of PW-1 and PW-2 fails to inspire confidence, and therefore, I am of the opinion that the trial court did not consider the evidence correctly and properly. In that view of the matter, the following order is passed.

ORDER

- a] The criminal appeal is allowed.
- b] The judgment of conviction passed by the Judge, Fast Track Court, Dharashiv, in Sessions Case No. 53 of 2022, dated 31-12-2025, convicting the appellant for the commission of offences punishable under Sections 376 and 323 of the Indian Penal Code, is quashed and set aside.
- c] The appellant is acquitted of the commission of offences punishable under Sections 376 and 323 of the Indian Penal Code.
- d] The appellant is to be released forthwith.

e] The fine amount deposited, if any, be refunded to the appellant.

f] The R & P be sent back to the trial court.

[RAJNISH R. VYAS, J.]

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