



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.141 OF 2024

Akash Chandan Naik

Aged about 27 years, Occu : Nil,

R/o. Nilgaon, Tah. Kalmeshwar,

Dist. Nagpur

.. Appellant

Versus

1. State of Maharashtra,
Through Police Station Officer,
Police Station Saoner,
Dist. Nagpur

2. Victim XYZ,
Police Station Saoner,
Crime No.66/2021
Dist. Nagpur

.. Respondents

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Shri. Aniruddha C. Jaltare, Advocate for the Appellant

Shri. U. R. Phasate, APP for Respondent No.1 – State.

Ms. Archana P. Murrey, Advocate for Respondent No. 2 (Appointed)

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CORAM : NEERAJ P. DHOTE, J.

Reserved on : 12.03.2026

Pronounced on : 27.04.2026

JUDGMENT :-

. This is an Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') against the Judgment and Order dated 11.05.2023 passed by the Additional Sessions Judge, Nagpur, in Sessions Case No.406 of 2021, convicting and sentencing the Appellant as follows:

“ORDER

i) The accused Akash Chandan Naik is convicted under Section 235(2) of the Code of Criminal Procedure for offence under Section 376 of Indian Penal Code to suffer rigorous imprisonment for ten years and pay fine of Rs.5,000/- (Rupees Five Thousand only) in default to suffer Simple imprisonment for three months.

ii) The accused Akash Chandan Naik is convicted under Section 235(2) of the Code of Criminal Procedure for offence under Section 506(II) of Indian Penal Code to suffer Rigorous imprisonment for one year and pay fine of Rs.1,000/- (Rupees One Thousand Only) in default to suffer simple imprisonment for one month.

iii) Both substantial sentences shall run concurrently.

iv) The accused is entitled for set off under Section 428 of the Code of Criminal Procedure.

v) The seized muddemal (G.P.No.781/22) i.e. Sickle Article-A be destroyed after appeal period is over.

vi) The copy of judgment be given free of cost to the accused.

Vii) Accordingly, Session Case No.406/2021 is disposed of.”

2. The Prosecution's case as revealed from the Police Report is as under :

(a) The Prosecutrix aged 45 years was residing at the given address. She was having one son and one daughter. She is an agricultural labourer. The Appellant resides near her house. The Appellant is the friend of her son. The Appellant was on visiting terms to the house of Prosecutrix. On 30.01.2021 the Appellant outraged the modesty of the Prosecutrix and she lodged the Report with Saoner Police Station against the Appellant. On 02.02.2021 at 07:00 a.m. when the Prosecutrix went

to the agricultural field for plucking the cotton bolls, the Appellant came near her and asked for water. The Prosecutrix asked him to take the water from the bottle which was kept there. The Appellant caught hold her hand and pulled her and threatened by showing Sickle. The Appellant demanded sexual favours from the Prosecutrix and threatened that if she declines, he will ask 5-6 boys to come. The Prosecutrix could not resist and the Appellant raped her. The Appellant asked the Prosecutrix not to disclose the incident to anyone. The Prosecutrix reached home and was weeping. Her son asked the reason and the Prosecutrix disclosed the incident to him. Her son could not bear the shock and he consumed the poison. The Prosecutrix shifted her son to the hospital where he died. After the last rites of her son, the Prosecutrix lodged the Report with Saoner Police Station against the Appellant and Crime bearing No.0066/2021 came to be registered for the offence punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (for short, 'IPC').

(b) During the course of investigation, the Prosecutrix was sent for medical examination, the Spot Panchanama was drawn, the clothes of the Prosecutrix came to be seized, Statements of Witnesses were recorded, the Appellant came to be arrested and sent for medical examination, the clothes of the Appellant came to be seized, the seized articles were sent to the Chemical Laboratory and after completion of investigation, the Appellant came to be Charge-sheeted. The learned

Trial Court framed the Charge against the Appellant *vide* Exh.14 for the offence punishable under Sections 376 and 506 (II) of the IPC. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the Prosecution examined in all 10 (ten) witnesses comprising the Prosecutrix, the Panch Witness, the Police Officers and the other Witnesses. The relevant documents are brought on record in the evidence of the witnesses. After the Prosecution filed the evidence closure pursis, the Statement of the Appellant under Section 313 (1)(b) of Cr.P.C. came to be recorded. The Appellant stated that, he was falsely implicated. Appreciating the evidence available on record, the learned Trial Court passed the impugned Judgment and order.

3. Heard learned Advocate for the Appellant, learned APP for the State and learned Advocate for the Prosecutrix. Scrutinized the evidence on record.

(a) It is submitted by learned Advocate for the Appellant that, there was delay of 5 days in lodging the Report by the Prosecutrix. The Prosecutrix had written the dates on her hand at the time of deposition. No injuries were noticed on the Prosecutrix in the medical examination. Place of incident was shown as the agricultural field and absence of injuries on the Prosecutrix create doubt about the Prosecution's case. There is no scientific evidence to support the Prosecution's case and the possibility of consensual relations cannot be ruled out. The Appeal be

allowed by setting aside the impugned Judgment and order.

(b) It is submitted by learned APP that, the Prosecutrix was the rustic witness and therefore, the stray admission will not affect her testimony. Minor inconsistencies are bound to be there in the evidence of such witness. The delay in lodging the Report is explained by the Prosecutrix. The defence does not go hand in hand. The evidence on record shows that the Appellant had criminal antecedents. Due to the Sickie in the hand of the Appellant, the Prosecutrix had no option, but to surrender. As the Prosecutrix was the married woman, absence of injuries will not be material. Nothing is brought on record to show that, the Prosecutrix had any reason to falsely implicate the Appellant. The evidence of the Prosecutrix was natural and no interference is called for in the impugned Judgment and order.

(c) It is submitted by learned Advocate for the Prosecutrix that, the Appellant was of the age of the Prosecutrix's son. Before offence of the Rape, there was one more incident of outraging modesty of the Prosecutrix by the Appellant. The evidence of PW6 shows that, the Appellant had outraged the modesty of her daughter. Since the Prosecutrix was the married woman, absence of injuries on her person was immaterial. No case for interference exists.

4. Undisputedly, the Prosecutrix was a widow and 45 years old at the time of the incident. She was examined as PW1. The Prosecution's case

entirely rests on her testimony. Her evidence shows that, her husband expired and she was having one daughter and one son. She knew the Appellant as he was residing in front of her house. The Appellant was the friend of her son. On 30.01.2021 at 08:00 a.m. when she was going to the field, the Appellant outraged her modesty by touching her chest. She reported the said incident to the Saoner Police Station and the Appellant absconded. After one month, when she was in the agricultural field at 07:00 a.m. to collect the cotton bolls, the Appellant was collecting fodder. The Appellant asked water to her and she told him to take the water from the bottle. The Appellant was having Sickle in his hand. He caught her and dragged her to the Babool tree. The Appellant demanded sexual favours from her and threatened to call 2 to 3 boys. The Appellant lifted her Saree, covered her face and raped her. Though she shouted, it was in vain as there was no one in the field. The Appellant threatened her to kill, if she disclosed the incident to anybody. She came home and told her son about the incident. Her son could not bear the shock and he consumed poison. Her son was taken to the Government Hospital, Nagpur, where he died. Thereafter, the last rituals of her son were completed. Thereafter, she went to the Police Station and lodged the Report below Exh.21 and the FIR below Exh.22 came to be registered. She identified the Article 'A' Sickle.

5. The Prosecutrix was subjected to cross-examination. Her cross-examination shows that, she could read Marathi and she was told

by the madam (may be police) how to depose and she was shown the record. The dates 30.01.2021 and 02.02.2021 were written on her hand. This indicates that, the Prosecutrix did not depose on the basis of her memory. Undisputedly, there is delay of 5 days in lodging the Report in respect of the incident of the Rape. According to the Prosecutrix and the Investigating Officer PW10, the said delay was due to the death of the Prosecutrix's son. Though the Prosecutrix deposed that, after she told the incident of Rape to her son, her Son consumed poison, he was taken to hospital and he died, there is no evidence as to when the Prosecutrix's son consumed poison. The evidence of the Prosecutrix shows that, for the incident dated 30.01.2021, she lodged the Report with the Saoner Police Station against the Appellant. The evidence of PW10 – Investigating Officer shows that, she collected the crime chart of the Appellant which was at Exh.50. The said exhibit shows that, for the incident dated 30.01.2021, the Report was lodged on the very same day i.e. 30.01.2021. This indicates that, the Prosecutrix was aware that, the Police Report is to be lodged on happening of crime. However, there is no explanation as to why the Report in respect of the offence of Rape which took place on 02.02.2021 was not lodged on the same day. There is no evidence to show that the Prosecutrix's son immediately consumed the poison after the Prosecutrix told him about the incident. The incident of Rape according to the Prosecutrix took place in the morning hours. In absence of the evidence as to when the Prosecutrix son

consumed poison, non-lodging of prompt report by the Prosecutrix is fatal for the Prosecution. Thus, the explanation of delay that, due to the death the Report was lodged belatedly not satisfactory and is required to be seen with doubt.

6. The evidence of the Prosecutrix shows that, the incident of Rape took place after one month from the incident dated 30.01.2021 in respect of outraging her modesty. It has come in her cross-examination that, after the incident of 30.01.2021, the Appellant did not come to the village and further she deposed that the Appellant came to the village after 8 to 10 days. This evidence of the Prosecutrix on record shows that, her evidence was shaky and not concrete. The suggestion is given that, no such incidence took place with her as deposed in the Examination-in-chief. The suggestion is also given that, she did not shout. When the evidence of the Prosecutrix do not give the required assurance, the corroboration becomes necessary. Undisputedly, after lodging the Report the Prosecutrix was sent for medical examination and PW5 – Dr. Prachi Chakradhat Thool examined her on 07.02.2021. The evidence of Medical Officer shows that, there was no significant injury on the Prosecutrix and she had old healed tears of hymen. When it is the case of the Prosecutrix that, the Appellant caught hold her and dragged to the Babool tree and Raped, absence of injury on her person is strange. The place of the incident was the agricultural field. True it is that the

medical examination was after 5 days, however, some injuries on her body in the light of her evidence, would certainly be there. It is clear that the medical evidence do not corroborate the testimony of the Prosecutrix.

7. Though the Prosecution examined the other witnesses, they are not referred to by the either side, being hearsay evidence. True it is that one earlier crime was registered against the Appellant at the instance of the Prosecutrix with the same Police Station for the incident dated 30.01.2021, that by itself will not be sufficient to hold that, the incident in question had taken place. The C.A. Reports below Exhs.3 and 4 are of no assistance for the Prosecution. Though according to PW10 - Investigating Officer Sickle was seized at the instance of the Appellant, the evidence do not establish the necessary ingredients of Section 27 of the Indian Evidence Act to make it relevant. Though according to the Prosecutrix on the day of incident she had gone to the agricultural field in the morning for collecting cotton bolls, she denied the suggestion that, she was collecting cotton balls along with other women. It is strange that, the Prosecutrix alone had gone to the agricultural field for collecting the cotton bolls. True it is that, there is no suggestion of consensual act, however, that will not absolve the Prosecution from proving the Charge beyond reasonable doubt. The evidence on record do not conclusively establish the Charge. As the Prosecution's case is not

free from doubt, the benefit will have to be given to the Appellant. Resultantly, the Conviction and Sentence recorded by the learned Trial Court needs interference. Hence, the following order.

ORDER

- (i) The Appeal is allowed.
- (ii) The conviction and sentence recorded by the learned Trial Court on 11.05.2023 against the Appellant for the offence punishable under Section 376, 506 (II) of the IPC is quashed and set aside.
- (iii) The Appellant is acquitted for the offence punishable under Sections 376, 506 (II) of the I.P.C.
- (iv) The Appellant is behind the bars and he be released, if not required in any other offence.
- (v) The Fine amount, if paid by the Appellant, be refunded.
- (vi) Muddemal property be dealt with as per the operative order of the impugned Judgment.
- (vii) Record and Proceedings be sent back to the learned Trial Court.
- (viii) The fees of appointed learned Advocate Ms. Archana P. Murrey for representing Respondent No.2 - Prosecutrix are quantified at Rs. 10,000/- (Rs.Ten Thousand), which shall be paid by the High Court Legal Services Sub-Committee, Nagpur Bench.

(NEERAJ P. DHOTE, J.)