



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

CRIMINAL APPEAL NO. 165 OF 2024

Shabbir Babbu Shaha,
Aged about 30 years, Occupation : Labour,
R/o. Ward No.13, Indira Nagar,
Tah. Narkhed, District – Nagpur.

... **APPELLANT**

...VERSUS...

State of Maharashtra,
Through Police Station Officer,
Police Station, Narkhed,
Tah. Narkhed, District – Nagpur.

... **RESPONDENT**

Mr. S. D. Chande, Advocate for Appellant.
Ms. S. S. Dhote, A.P.P. for Respondent/State.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 22.01.2026
JUDGMENT PRONOUNCED ON : 04.02.2026

JUDGMENT :

1. 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 11.04.2023 passed by the learned Extra Joint Additional Sessions Judge, Special Court No.2 (POCSO), Nagpur in Special POCSO Case No.304/2020 convicting and sentencing the Appellant as follows :

“i) The accused **Shabbir Babbu Shaha**, aged 27 years, Occ. Labour, R/o. Ward No. 13, Indira Nagar, Narkhed, District Nagpur, is hereby convicted under Section 235(2) of Cr.P.C. for the offence punishable Section 376 of IPC in Crime No. 124/2020 registered by Narkhed Police Station and sentenced to suffer **RI for a period of Seven years** and to pay fine of **Rs. 3000/- (Rs. Three thousand only)**, I/d. SI for **one month**.

ii) The accused **Shabbir Babbu Shaha**, is hereby convicted for the offence punishable u/s. 354 of IPC and sentenced to suffer RI for a period of **one year** and to pay fine of **Rs. 1,000/- (Rs. One thousand only)** I/d. SI for **one month**.

iii) The accused **Shabbir Babbu Shaha**, is hereby convicted for the offence punishable u/s. 452 of IPC and sentenced to suffer RI for a period of **one year** and to pay fine of **Rs. 500/- (Rs. Five hundred only)** I/d. SI for **15 days**.

iv) The accused **Shabbir Babbu Shaha**, is hereby convicted for the offence punishable u/s. 323 of IPC and sentenced to suffer RI for a period of **six months** and to pay fine of **Rs. 500/- (Rs. Five hundred only)** I/d. SI for **15 days**.

v) The accused **Shabbir Babbu Shaha** is acquitted for the offence punishable u/s. 376(2) (j) (i), 376(3) of IPC and sec. 4 and 12 of the POCSO Act, 2012, for want of proof of minority (age) of the victim u/s. 2(d) of the Act.

vi)

vii)

viii)

ix)”

2. The prosecution's case as revealed from the police report is as under :

a] The Prosecutrix was residing with her mother and sister at the address given in the police report. The Prosecutrix was taking education in 8th standard in the year 2020. On 19.03.2020, in the afternoon, while the Prosecutrix was returning home, she met her friend P.W.4 – Hitesh Kishore Shrirame. While they were talking, the Appellant came there and asked the Prosecutrix as to what she was doing there and threatened that, he will show the video of both of them i.e. the Prosecutrix and P.W.4 – Hitesh, to her mother and told her that, he will come to her house and left. On the same day, between 3.00 p.m. and 3.30 p.m., when the Prosecutrix was at her home with her younger sister, the Appellant came to her house and enquired whether the Prosecutrix's mother was present. When the Prosecutrix told him that, her mother was not present, the Appellant told her that, he was having the video of hers with P.W.4 – Hitesh and asked the Prosecutrix to accompany him or else he will circulate the said video in the locality. The Appellant caught hold the hand of the Prosecutrix and forcibly took her on his motorcycle towards the Pimpalgaon Dam. When the Prosecutrix asked the Appellant to show the video, the Appellant slapped her on her cheek. Thereafter, the Appellant committed forcible rape on her by removing her clothes.

The Appellant threatened her not to disclose the said incident to anyone or he will circulate the said video. Thereafter, the Appellant brought the Prosecutrix to her house and he left. After the mother of Prosecutrix came home, the Prosecutrix informed her the incident. The Prosecutrix and her mother went to the Police Station and lodged report against the Appellant and crime bearing No.0124/2020 came to be registered with Narkhed Police Station for the offences punishable under Sections 363, 323, 376(2)(j) and 376(3) of the Indian Penal Code, 1860 (for short, 'IPC') and for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

b] The Prosecutrix was referred for medical examination. Her samples were collected. The Spot Panchanama was drawn. The Appellant came to be arrested. The statement of witnesses were recorded. The clothes of the Prosecutrix and that of the Appellant came to be seized. The said articles were referred for chemical analysis. On completion of the investigation, the Appellant came to be chargesheeted. The learned Trial Court framed the Charge against the Appellant for the offences punishable under Sections 452, 323, 376, 376(2)(i)(j) and 354 of the Indian Penal Code and for the offences punishable under Section 4 and 12 of the POCSO Act below Exhibit-15. The Appellant pleaded not guilty and

claimed to be tried. To prove the Charge, the prosecution examined in all ten 10 witnesses and brought on record the relevant documents. After the prosecution closed their evidence, the statement of the Appellant came to be recorded under Section 313 of the Cr.P.C. On appreciation of the evidence available on record, the learned Trial Court passed the impugned Judgment and Order.

3. Heard the learned Advocate for the Appellant and the learned A.P.P. for the prosecution. Scrutinized the evidence available on record.

a] According to the learned Advocate for the Appellant, as the Appellant saw the Prosecutrix talking with her boy friend P.W.-4, the Prosecutrix lodged the false report against the Appellant. The P.W.-4 denied that, he was the boy friend of the Prosecutrix. In the history to the Medical Officer by the Prosecutrix some different name of the accused is told. The mother was not the eye witness to any of the incident. The Prosecutrix's sister though was examined by the prosecution before the Trial Court, her statement was never recorded by the police during the course of the investigation. The Prosecutrix's testimony do not inspire confidence. The medical evidence do not support the version of Prosecutrix. The Appellant is entitled for acquittal and the Appeal be allowed.

b] It is submitted by the learned A.P.P. that, the identity of the Appellant was not in dispute. The Prosecutrix was under threat from the Appellant and, therefore, she accompanied the Appellant on his motorcycle. The Panchanama shows that, the colour of the motorcycle matched the colour deposed by the Prosecutrix. The medical evidence shows the injury on the cheek of the Prosecutrix, which corroborates her testimony that, the Appellant slapped her. P.W.4 - Hitesh identified the Appellant and so the Appellant's presence on the day of incident was proved. The medical evidence shows that, there was possibility of sexual assault. The evidence of the Prosecutrix's sister corroborates the Prosecutrix's testimony. No interference was called for in the impugned Judgment and Order and the Appeal be dismissed.

4. Undisputedly, the Appellant has been acquitted from the offence punishable under Section 376(2)(i)(j), 376(3) of the IPC and for the offence punishable under Section 4 and 12 of the POCSO Act. The Prosecutrix is examined as P.W.2. According to the Prosecutrix, on 19.03.2020, while she was returning home from her friend's house and talking with P.W.4 – Hitesh, the Appellant came there and asked her as to what she was doing and told her that, he will show her video to her mother and informed her that he will come to her house and left away. In between 3.00 p.m. and 3.30 p.m., when she was at

her home with her sister, the Appellant came to her house and enquired whether her mother was present at home. When the Prosecutrix told him that, her mother was not present, the Appellant threatened her by saying that, he was having her video with P.W.4 – Hitesh and asked her to accompany him or else he will circulate the said video in the locality. The Appellant caught hold the hand of the Prosecutrix and forcibly took her on her motorcycle towards Pimpalgaon Dam.

5. The evidence of the Prosecutrix further shows that, the Appellant took her near the shrubs and steps of the Dam. When the Prosecutrix asked him to show the said video, the Appellant slapped the Prosecutrix on her cheek/face. The Appellant forcibly committed rape on the Prosecutrix by removing her clothes. The Appellant threatened her that, she should come whenever he will call or else he will circulate the video in the public. Thereafter, the Appellant dropped the Prosecutrix in front of her house. She informed her mother about the incident and the First Information Report below Exhibit – 32 came to be lodged with the concerned Police Station. She was referred for medical examination. Her statement under Section 164 of the Cr.P.C. was recorded. Her clothes were seized by the police.

6. P.W.4 – Hitesh Shrirame is the friend of the Prosecutrix. His evidence shows that, on the day of incident, he and Prosecutrix met near Narayan Hall. After some times, the Prosecutrix left. The Appellant came there and asked him as to why he was talking with the Prosecutrix and threatened him not to talk with the Prosecutrix. The Appellant threatened him that, he will inform his father about the same and left and this witness proceeded to his work.

7. The testimony of the Prosecutrix that, the Appellant stopped when she was talking with P.W.4 – Hitesh is not corroborated by the testimony of P.W.4- Hitesh. The testimony of the Prosecutrix and P.W.4 are not consistent with each other on that aspect. The evidence of P.W.4 – Hitesh shows that, after the Prosecutrix left, the Appellant came to him. Moreover, the testimony of the Prosecutrix that, the Appellant came when she was talking with P.W.4 – Hitesh, was an improvement as can be seen from the cross-examination of the Investigating Officer P.W.7 – Sonali P. Jagtap. Therefore, it is clear that, the testimony of the Prosecutrix that the Appellant threatened her while she was talking with P.W.4 – Hitesh, is required to be seen with doubt.

8. By examining P.W.1 – Uttam T. Madankar, the Panch witness, the prosecution has brought on record the Spot Panchanama below Exhibit-25. The evidence of this Panch witness shows that, the

spot was shown by the Prosecutrix. It is clear from the Spot Panchanama, which is proved through the evidence of this Panch witness that, the spot of incident was the stony place at of the Dam surrounded by shrubs. It has come in the cross-examination of the Prosecutrix that, on the spot of incident, there were shrubs and thorns. It is, therefore, clear that, the spot of incident was the place having stones and shrubs. However, strangely, the medical evidence do not show any injury on the person of the Prosecutrix. P.W.5 – Dr. Trupti M. Wankhede was the Medical Officer at Meyo Hospital, Nagpur. Her evidence shows that, on 20.03.2020, the Prosecutrix was brought by the Women Police Constable for medical examination and on recording the history, she medically examined the Prosecutrix. Her evidence shows that, if penetrative sexual assault take place on rough place, then possibility of scratches and injury on the backside cannot be ruled out. She noticed bruises on the cheek of the Prosecutrix and found no injury on the genital part of the Prosecutrix. Her evidence shows that, no violence marks were found on the private part of the Prosecutrix except the mark on her cheek. The Medical Examination Report of the Prosecutrix is brought on record in the testimony of this Medical Officer at Exhibit -27. The paragraph Nos.17 and 18 from the said medical report is reproduced below :

“17. Examination for Injuries on the body if any

Scalp examination for areas of tenderness (if hair pulled out/dragged by hair)	
Facial bone injury : orbital blackening, tenderness	
Petechial haemorrhage in eyes and other places	
Lips and Buccal Mucosa/Gums	No evidence of any external Injury.
Behind the ears	
Ear drum	
Neck, Shoulders and Breast	
Upper limb	
Inner aspect of upper arms	
Inner aspect of thighs	
Lower limb Buttocks	
Other, please specify	

18. Local examination of genital parts/other orifices :

A. External Genitalia : Record findings and state NA where not applicable.

Body parts to be examined	
Urethral meatus	Normal
Labia majora	Normal
Labia minora	Normal
Fourchette & Introits	Normal
Hymen Perineum	Intact, No evidence of any tear, injury
External Urethral Meatus	Normal
Penis	N.A.
Scrotum	
Testes	
Clitoropenis	
Labioscrotum	
Any Other	

9. The above medical evidence shows no injury so as to corroborate the testimony of the Prosecutrix that, the Appellant

forcibly raped her. The above referred columns show no injury on the Prosecutrix. The above Chart at Serial No.18 from the medical report shows that, the hymen of Prosecutrix was intact, neither there was any injury nor any tear. Except the bruises on the cheek, no injury or marks of violence were noticed by the Medical Officer when she examined the Prosecutrix on the very next day of the incident.

10. The evaluation of the above referred evidence shows that, the possibility of exaggeration by the Prosecutrix cannot be ruled out. Firstly, there is no corroboration to her evidence by P.W.4 in respect of coming of the Appellant while she was talking with P.W.4- Hitesh. Secondly, though she deposed of forcible rape by the Appellant on her on the stony and thorny place, not a single injury was found on her person though she deposed that, the said act of forcible rape was done after removing her clothes. It is strange and makes the Prosecutrix version of rape doubtful. The Prosecutrix is the witness, who cannot be wholly relied. However, her testimony that, the Appellant entered her house, caught hold her hand and slapped her finds corroboration from the bruises on her cheek. From the above evidence, it is clear that, the Prosecutrix version in respect of rape is liable to be discarded.

11. The other evidence is that of the Prosecutrix's sister - P.W.10. The evidence of the Prosecutrix's sister shows that, her

previous statement was not recorded. The mother of the Prosecutrix was not the eye witness to any of the incident. The other witnesses are the police man, photographer, who deposed about the part played by them during the course of investigation. The report of Chemical Analyzer below Exhibit – 19 in respect of the clothes of the Prosecutrix and the Appellant do not show any blood or semen on the same. To put in other words, the C.A. reports are not incriminating in nature.

12. The result of evaluation of the above discussed evidence on record is that, the Appellant, is entitled for benefits of doubt in respect of offence of rape. As regards the offence punishable under Section 354 of the IPC (assault or criminal force to women with intent to outrage her modesty) it is made out. As regards the conviction under Section 452 of IPC (house- trespass committed after making preparation to cause hurt, assault, or wrongfully restrain), the essential ingredients of the same are not made out. However, the Prosecutrix's testimony shows that, the offence punishable under Section 451 of IPC (house-trespass in order to commit an offence punishable with imprisonment) is made out. Further, the evidence of the Prosecutrix proves the offence punishable under Section 323 of the IPC (voluntarily causing hurt). The Appellant is entitled for acquittal for the offence punishable under Section 376 and 452 of

the IPC. Hence, the following order :

ORDER

- i] The Appeal is partly allowed.
- ii] The conviction of the Appellant recorded by the learned Trial Court for the offences punishable under Sections 376 and 452 of the Indian Penal Code is quashed and set aside.
- iii] The conviction of the Appellant for the offence punishable under Section 452 of the IPC is converted to offence punishable under Section 451 and for the same he is sentenced to suffer simple imprisonment for one (1) year and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days.
- iv] The conviction and sentence recorded by the learned Trial Court for the offences punishable under Sections 354 and 323 of the IPC is maintained.
- v] The Appellant shall be entitled for the set off under Section 428 of the Cr.P.C. for the period when he has already undergone in jail.
- vi] The Muddemal articles be dealt with as per the directions of the learned Trial Court.

vii] Record and proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)