



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

CRIMINAL APPEAL NO. 705 OF 2024

Kishor Bapuraoji Meshram
(Convicted Offender)
Age : 38 years, Occ. - Agriculturist,
R/o. Ward No.3, Waregaon,
Tah. Kamptee, Dist. Nagpur.
(At present in Nagpur Central Jail)

... **APPELLANT**

...VERSUS...

State of Maharashtra,
Through Police Station Officer,
Khaparkheda Police Station,
Tah. Kamptee, Dist. – Nagpur.

... **RESPONDENT**

Mr. A. G. Mohabey with Mr. R. D. Hajare, Advocate for Appellant.
Ms. S. S. Dhote, A.P.P. for Respondent/State.

CORAM : NEERAJ P. DHOTE, J.
JUDGMENT RESERVED ON : 03.02.2026
JUDGMENT PRONOUNCED ON : 06.02.2026

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 19.10.2024 passed by the learned Additional Sessions Judge – 11, Nagpur in Sessions Case No.707/2021 convicting and sentencing the Appellant as follows :

- “i) The accused Kishor Bapuraoji Meshram 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 fine of of Rs.10,000/- (Rupees Ten Thousand only) in default to suffer Simple Imprisonment for six months.***
- ii) The accused to surrender his bail bond.*
- iii) The accused is entitled to set off under Section 428 of the Code of Criminal Procedure.*
- iv) The interim custody of seized Aactiva motorcycle bearing registration No.MH40-AS-7081 is given to the accused as per Supratnama. Therefore, the accused should retain it with him.*
- v) The seized biological samples being worthless and the Memory card be destroyed after appeal period is over.*
- vi) In case the compensation is not paid to the victim under Manodharya Scheme, the Secretary, District Legal Services Authority, Nagpur shall decide the quantum of compensation under Section 357-A of the Code of Criminal Procedure as per the Government Scheme and after recovery the same be paid to the victim.”*

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

a] The Informant was the resident of Waregaon, Taluka Kamptee, District Nagpur. She was residing with her husband and three daughters. Her middle daughter (Victim) and younger daughter were deaf and dumb by birth. They both had taken the

education. The Victim studied till 8th standard. The Informant and her husband were the labourers. On 03.08.2021, the Informant noticed that, the Victim missed her menstrual periods. The Victim was taken to the hospital by the Informant and her husband. On examination of the Victim, the Doctor opined that, the Victim was pregnant for seven (7) months. On 05.08.2021, the Victim experienced labor pains and was hospitalized. When asked her about the pregnancy, the Victim remained silent. On 06.08.2021, in the presence of the woman policeman and the teacher from the Deaf and Dumb School, the Victim was asked about the pregnancy and the Victim told that, the Appellant, who was handicapped by both the legs had taken the Victim on the motorcycle at one place and committed sexual intercourse with her. On the basis of this narration by the Victim, her mother lodged the report with the Khaparkheda Police Station and the crime bearing No.349/2021 came to be registered for the offence punishable under Section 376 of the Indian Penal Code, 1860 (for short, 'IPC'). The statement of the Victim was recorded. The samples of the Victim were taken. The Appellant came to be arrested. The samples of the Appellants were drawn. The medical papers of the Victim were collected. On completion of the investigation, the Appellant came to be chargesheeted.

b] The learned Trial Court framed the Charge against the Appellant for the offence punishable under Section 376 of the IPC below Exhibit – 3. The Appellant pleaded not guilty and claimed to be tried. To prove the charge, the prosecution examined 13 witnesses and brought on record the relevant evidence. The statement of the Appellant came to be recorded under Section 313(1)(b) of the Cr.P.C. He stated that, he was known to the Victim and once the Victim by writing on a chit asked him to take her with him and they both went out where they had sexual intercourse willingly. The Appellant examined two (2) defence witnesses to show that he was handicapped due to Locomotor disability. After hearing both the sides, 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 State. Scrutinized the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, though the Victim was deaf and dumb, she was the able-bodied girl having sufficient strength. The Appellant was handicapped and could not walk due to his disability. Had it been that, the Appellant forced the Victim, she would have easily escaped. He further submitted that, the Victim nowhere in her testimony deposed that, the sexual intercourse was without her consent. There was

consensual sexual intercourse between the Appellant and the Victim. The Victim was dropped by the Appellant at her house. There was no complaint by the Victim to anyone. Only after the pregnancy was detected, the report was lodged by the Victim's mother. He submitted that, there is no dispute that, at the time of the incident, the Victim was major by age. He submitted that, the Appeal be allowed.

b] It is submitted by the learned A.P.P. that, there are no suggestions in the cross-examination that, the sexual act was consensual. The Victim was deaf and dumb. The C.A. report supports the case of the prosecution. The learned Trial Court has rightly passed the impugned Judgment convicting and sentencing the Appellant and no interference is called for in the impugned Judgment and Order.

4. Undisputedly, the Victim was major by age at the time of incident. The evidence on record goes to show that, the Victim was deaf and dumb. Undisputedly, it is not the case of the prosecution that, the Victim was suffering from any such disability so as to render her incapable of giving consent. The relevant evidence is that, the Victim who is examined as P.W.3. Her statement under Section 164 of the Cr.P.C. recorded with the assistance of the interpreter was considered as her evidence by the learned Trial Court. Her evidence shows that, the Appellant had taken her on the motorcycle to one

agricultural field and committed sexual intercourse with her. Thereafter, she put on her clothes and the Appellant dropped her to her house. Her evidence in cross-examination shows that, she used to seat on the motorcycle as per the say of the Appellant. To the question as to why she did not protest, she replied that, “*he used to take her*”. Her evidence shows that, she went with the Appellant only once. Undisputedly, it is nowhere in the evidence of the Victim that, the Appellant compelled her and committed sexual intercourse with her without her consent.

5. Her evidence indicates that, there was no resistance from the Victim for any of the act of the Appellant, who, was admittedly handicapped in his lower limbs. The evidence of the two (2) defence witnesses shows that, they were the Doctors. Their evidence shows that, the Appellant was the patient of “*post polio residual paralysis*” of both lower limbs, having 65% permanent disability in the form of “*locomotor disability*”. The defence witness No.2 is the Doctor, who had examined the Appellant. The Disability Certificate of the Appellant is brought on record at Exhibit-83, which corroborates the testimony of the defence witness No.2. Nothing has come in the cross-examination of the defence witnesses so as to discard their testimony. From the evidence of the defence witnesses, it is established by the Appellant that, he was suffering from the above

referred disability.

6. Accepting the evidence available on record as it is, the same falls short of constituting the offence under Section 375 of the IPC. The essential ingredients for the offence of Rape are absent in the prosecution's evidence. The evidence on record clearly shows that, the act of sexual intercourse by the Appellant with the Victim was by her free will and consent. Being deaf and dumb does not make the person incapable of giving consent. The C.A. report below Exhibit-71 in respect of Parentage Test Result shows the Appellant and the Victim as the biological parents of the baby born to the Victim. As the offence of Rape is not made out, the C.A. reports do not take the prosecution's case further in establishing the Charge. With the evidence available on record, the conviction and sentence recorded by the learned Trial Court is liable to be set aside and hence, the following order :

ORDER

- i] The Appeal is allowed.
- ii] The conviction of the Appellant recorded by the learned Trial Court for the offence punishable under Section 376 of the Indian Penal Code is quashed and set aside.

- iii] The Appellant is acquitted of the offence punishable under Section 376 of the Indian Penal Code.
- iv] The Appellant is behind bars. He be released forthwith if not required in any other offence.
- v] The Muddemal articles be dealt with as per the directions of the learned Trial Court.
- vi] Record and proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)