



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

CRIMINAL APPEAL NO. 121 OF 2025

Prakash Tekchand Upwanshi,
Aged: 31 years, Occu: Labour,
R/o: Vijay Nagar, Durga Mata Mandir,
Chowk, P. S. Kalmna, Nagpur.

.... Appellant

VERSUS

1. State of Maharashtra,
through, P. S. O.
Nandanwan Police Station, Nagpur.

2. XYZ Victim in Crime No.607/2018,
Registered with Police Station Officer,
Police Station Nandanwan, Nagpur City.

..... Respondents

Appearance :

Mr. A. S. Band, Advocate for the Appellant.
Mr. U. R. Phasate, APP for Respondent No.1 – State.
Ms. Alpana Ingolikar, Advocate for Respondent No.2.

CORAM : NEERAJ P. DHOTE, J.

Reserved On : 7th March, 2026

Pronounced On : 27th April, 2026

JUDGMENT :

1. This is an Appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred to as 'BNSS'] against the Judgment and Order dated 18/10/2024, passed by the learned Additional Sessions Judge-08, Nagpur [hereinafter referred to as 'the learned Trial Court'], in Sessions Case No.209/2020, convicting and sentencing the Appellant as follows :

- “1] *Accused Prakash Tekchand Upwanshi is convicted for the offence punishable under Sections 376(2)(k) and 506 of Indian Penal Code vide Sec.235 (2) of the Code of Criminal Procedure.*
- 2] *The accused Prakash Tekchand Upwanshi is convicted for the offence punishable under section 376(2) (k) of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 10 years and to pay Fine of Rs. 10,000/-. In default of payment of fine, he shall suffer Simple Imprisonment for one year.*
- 3] *The accused Prakash Tekchand Upwanshi is convicted for the offence punishable under section 506 of the Indian Penal Code and suffer Simple Imprisonment for Two years.*
- 4] *Accused is in jail since his arrest.*
- 5] *Both the sentences shall run concurrently.*
- 6] *The set off be given to the accused for the period which he has undergone in custody in this matter as per provision under section 428 of Cr.P.C.*
- 7] *The Muddemal property i.e. clothes of accused, prosecutrix and medical samples of accused and prosecutrix being worthless be disposed of by following the process of law, after appeal period is over.*
- 8] *The accused apprised for his right to appeal.*
- 9] *The judgment is pronounced in the open court in presence of the learned A.P.P., Learned Advocate for the accused and the accused.*
- 10] *The copy of the judgment be given to accused Prakash Tekchand Upwanshi free of cost as per section 363(i) of Cr.P.C.”*

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

[I] The Prosecutrix, aged twenty (20) years, was residing with her parents and brother at the given address. On 10/08/2018, the Appellant, who was not known to her, came to their house and inquired about the surname ‘Patle’. The Victim’s mother told him that their surname was ‘Patle’ and the

Appellant gave his introduction and told that he was in the business of mobile tower and was in need of the girls as office staff. The Appellant asked the Victim whether she was ready to work. The Appellant shared his card with the Victim's mother and left. On the next day, the Appellant came to the Victim's house and asked the Victim to accompany him. The Victim accompanied the Appellant on his motorcycle. The Appellant took her to one office. Thereafter, the Appellant dropped her home. On 12/08/2018, in the morning, the Appellant came to the house of Victim. The Victim accompanied him to his office. Thereafter, on the pretext of collecting the money from a customer, the Appellant took the Victim on his motorcycle to one house. The Appellant raped the Victim in the said house. The Victim raised alarm for help, however in vain. Thereafter, the Appellant brought the Victim to his office and asked one of the boy from his office to drop the Victim to her home. Accordingly, the boy from the office of Appellant, dropped the Victim to her home. The Victim narrated the incident to her mother. The Victim's mother questioned the Appellant as to whether he was ready to marry with the Victim, however the Appellant declined. Eventually, the Victim, along with her mother, went to Nandanwan Police Station and lodged the report against the Appellant.

[II] The Crime bearing No.0607/2018 came to be registered against the Appellant for the offence punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). During the

investigation, the Victim was referred for medical examination, Spot Panchnama was done, the Appellant came to be arrested, the relevant Articles were seized, the statements of the witnesses were recorded, the Appellant was put to the Test Identification Parade (TIP), the Appellant was referred for medical examination, and the seized articles were sent to the Chemical Laboratory for examination. On completion of investigation, the Appellant came to be charge-sheeted.

[III] The learned Trial Court framed the Charge against the Appellant for the offence punishable under Sections 376(2)(k) and 506 of IPC below Exhibit – 20, to which, the Appellant pleaded not guilty and the claimed to be tried. To prove the Charge, the Prosecution examined in all twelve [12] witnesses comprising the Panch for the Spot Panchnama as PW – 1, the Victim as PW – 2, the Medical Officer, who examined the Victim as PW – 3, the Panch Witness for the TIP as PW – 4, the mother of the Victim as PW – 5, the Driver of four wheeler as PW – 6, the Landlord of the house where the place was taken on rent by the Appellant as PW – 7, the witness working in the office of the Appellant as PW – 8, the father of the Appellant as PW – 9 and the Police Officers who recorded the report and did the investigation as PWs – 10, 11 and 12. The relevant documents are brought on record in the evidence of these witnesses. After filing of the evidence closure pursis by the Prosecution, the statement of the Appellant came to be recorded under Section 313(1)(b) of the Code of Criminal Procedure, 1973 (hereinafter

referred to as 'Cr.PC'). The Appellant stated that, he was falsely implicated. On appreciating the evidence on record, the learned Trial Court passed the impugned Judgment and Order.

3. Heard the learned Advocate for the Appellant, learned APP for Respondent No.1 – State and the learned Advocate for Respondent No.2 - Victim. Scrutinized the evidence available on record.

4. It is submitted by the learned Advocate for the Appellant that, there was delay of thirteen (13) days in lodging the report and there is no explanation for the delay. The hymen of the Victim was old healed. The evidence on record was contrary to each other. There were omissions in the evidence of the Victim and Victim's mother, which were proved through the Investigating Officer. The Victim was major by age. There were consensual relations between the Appellant and Victim. The Appeal be allowed by setting aside the impugned Judgment and Order.

5. It is submitted by the learned APP for Respondent No.1 – State that the delay in lodging the report was explained. The omissions were not material. There is no suggestion to the Victim in respect of consensual relations. The Appellant introduced himself to the Victim's mother and Victim. The Appellant was identified in the TIP. The evidence of the Landlord of the premises where the Appellant had rented room had proved the conduct of the Appellant. The evidence on record shows that, no office

was run by the Appellant and just to bring the girls, room was taken on rent. Through the medical evidence, the injuries on the Victim were proved and there was no cross-examination on that point. Inviting the Appellant for marriage with the Victim was of no consequences as it might be the way to resolve the matter. There was no merit in the Appeal and the same be dismissed.

6. It is submitted by the learned Advocate for Respondent No.2 – Victim that, the evidence on record proves the Charge against the Appellant and the learned Trial Court has rightly convicted and sentenced the Appellant. The Appeal deserves to be dismissed.

7. The Victim is examined as PW – 2. Her evidence shows that, she was residing with her parents and brother. Her father was a construction contractor and used to be out of the house for work. On 10.08.2018, the Appellant came to her house and inquired about the surname 'Patle'. The Appellant asked the address to her mother. Her mother told the Appellant that, they were also by the name 'Patle' and asked which 'Patle' he wanted. The Appellant gave reference of her village and relations and it was made to realize by the Appellant that, they were known through the distant relations. Her mother talked with the Appellant. The Appellant asked for water and her mother asked her to get water. She gave the water to the Appellant. The Appellant asked her about her qualification. She told her educational qualification. The Appellant asked her mother as to whether she would send

her to his office for work which was relating to mobile tower. Some photographs of some girls were shown by the Appellant and he told that, they were from his office. The Appellant gave his office card to her mother. The Appellant gave his name as 'Rahul Thakre'. Her mother told him that, she will ask her husband. The Appellant left. On the next day morning around 10:00 a.m., the Appellant again came to her house. He asked her to come with him to his office. When she was to take her documents, the Appellant asked her not to take the documents and she accompanied the Appellant on the bike. The Appellant brought her to his office at Wathoda in front of Chandmari Temple. One boy was present in the office. There were no girls. She filled up the form and handed over the same to the staff. The Appellant dropped her home. Thereafter, on the next day, i.e. 12/08/2018, the Appellant came to her house in between 10:00 a.m. and 10:30 a.m. She went with the Appellant to his office and filled up the form. The Appellant told her that, he was to attend one customer and ask her to accompany him. Time was between 01:00 p.m. and 01:30 p.m. The Appellant took her at one place, which was 2 to 3 lanes behind the office. One boy was present at the said place and was watching laptop. The Appellant asked him to go in the kitchen. She was standing at the door of the house. The Appellant pulled her inside and closed the door from inside. The Appellant started touching her indecently. She gave call to the said boy, who was asked by the Appellant to go in kitchen, however there was no response. She screamed for help. The Accused disrobed her and committed forceful sexual intercourse without her

wish. She was continuously crying. She put on the clothes and the Appellant brought her to the office. The Appellant asked the office boy to drop her to her house and the office boy dropped her home.

8. The Victim further deposed that, she informed her mother about the incident. Her mother called the Appellant and asked him that, he has done such thing and asked him whether he will marry her daughter. The Appellant gave threat to viral the video, which he clicked. Her father came on 22/08/2018 and the incident was informed to him. They approached her uncle and thereafter the report below Exhibit – 33 was lodged with Nandanwan Police Station on 24/08/2018. The FIR below Exhibit – 33-A came to be registered. She took the Police to the office and at the place of incident. She was referred for medical examination. Her clothes were seized by the Police. She came to know that, the name of the Appellant was ‘Prakash Upwanshi’. Her statement was recorded by the learned Magistrate. She identified the clothes - Articles – 1 to 4.

9. The cross-examination of the Victim shows that, her evidence that, the Appellant video-graphed the rape was an omission, which was proved through the evidence of PW – 10 (Sandhya S. Chavan), the Police Officer, who took her report. Though it is tried to show that, her evidence in respect of pulling her inside by the Appellant was an omission, the same was not proved through the said Police Officer, who recorded her report and the cross-examination shows that, it was not specifically shown in her report.

The other omissions were in respect of her evidence that, no other girl was working there and her father came on 22/08/2018 and her mother told the incident to him and they went to her uncle, which were proved through the said Police Officer. Barring the said omissions, her evidence is consistent with her report / statement. The said omissions do not affect her evidence in respect of the incident. The evidence of Victim's mother, who is examined as PW – 5, shows that, it corroborates the Victim's testimony in respect of the Appellant coming to their house, inquiring about the surname 'Patle', inquiring about the educational qualification of the Victim, asking her to come to his office for job, visiting her house continuously for two (02) days in the morning and taking the Victim with him. Their evidence shows that, they both were present at home at the relevant time. There is slight variance in the evidence of the Victim and her mother in respect of asking the Appellant by the mother as to whether he was going to marry with the Victim. According to the Victim, her mother asked the Appellant as to whether he will marry her daughter and the Victim's mother denied the same. It is tried to show from the cross-examination of the Victim that, the spot of incident was the residential area and therefore, the evidence in respect of rape was not probable. Though it is come in the evidence of the Victim that, the place of incident was in the residential area, her evidence shows that, the door of the house was closed and she had screamed for help. The spot of incident is proved by bringing on record the Spot Panchnama below Exhibit – 30 in the evidence of PW – 1 (Maheshkumar N. Agrawal), the Spot Panch.

The evidence of the Spot Panch shows that, the Victim showed the spot. Though the Victim was cross-examined except for the above omission and slight variance with the evidence of her mother in respect of asking the Appellant about marriage, nothing has come in the evidence so as to create any doubt in respect of her evidence of rape. The Victim's evidence clearly shows that, though she was not willing, the Appellant committed sexual intercourse with her. True it is that there is no video seized during the course of investigation, the Victim's evidence shows that, the threat was given by the Appellant to viral the video.

10. The incident is dated 12/08/2018 and the report was lodged with the concerned Police Station on 24/08/2018, i.e. after twelve (12) days. As discussed above, the evidence of Victim shows that, her father was in the construction work and used to be out of the house for work. On the day of incident, her father was not at home and he came on 22/08/2018 and the mother informed him of the incident and then they approached her uncle and thereafter lodged the report. Similarly, the evidence of PW – 5 (Victim's mother) shows that, at the time of incident, her husband was not at home. The evidence of PW – 10 (Sandhya S. Chavan), who took the report, shows that, Column No.8 in the FIR format at Exhibit – 33-A in respect of delay in reporting by the Informant was blank and there was delay in lodging the FIR. However, the evidence of the Victim shows that, the delay in reporting the incident to the Police has been explained. The explanation for delay as is

clear from the testimony of Victim is due to threatening by the Appellant to viral the video and due to that they kept mum and did not disclose the fact to anybody and after her father came home on 22/08/2018, they approached her uncle and thereafter lodged the report. The delay in not approaching the Police immediately after the incident is explained by the Prosecution through the evidence of the Victim.

11. Though the learned Advocate for the Appellant submitted that, there were consensual relations between the Appellant and the Victim, nothing has come in the evidence of the Victim in that regard, even slightly. There are even no suggestions on that line. What defence is tried to be brought on record as seen from the cross-examination of the Victim and her mother is that, as the Appellant refused to marry with the Victim, the false report was lodged. If we see the statement of the Appellant recorded under Section 313(1)(b) of Cr.PC, his case is that of total denial and false implication. The evidence of the Victim remained unshaken in the cross-examination. The Victim's evidence is consistent. Though the Victim's mother in the cross-examination deposed that, the girl should not go with unknown person, she volunteered that, the Appellant gave his detailed introduction. As seen above, the evidence of the Victim and her mother shows that, the Appellant visited their house and gained their confidence. The sexual intercourse by the Appellant with the Victim without her consent / wish is clearly brought on record by the Prosecution through the evidence of the Victim. In light of the

trustworthy and unshaken evidence of the Victim, the stray admission in Paragraph No.19 of the cross-examination of the Victim that, she had never been with the Appellant anywhere on 12th, will not create any dent in the Victim's testimony and more so, because it has further come in her cross-examination that, she went with the Appellant to the spot.

12. The evidence on record goes to show that, the Victim was referred for medical examination. The Medical Officer is examined as PW – 3 (Dr. Ashwinkumar Sontakke). He was attached to the Government Medical College, Gondia. On 24/08/2018, when he examined the Victim. There was no evidence of any visible surface injuries. On local examination of genital of the Victim, there was abrasion around 1x1 mm in posterior fourchette of vagina which was *reddish brown in colour*. Hymen injuries were present which were old healed, teared edges on 11, 1, 9 O'clock position. The samples of the Victim were collected. It is denied in the cross-examination that, the injuries to the fourchette and more particularly, the abrasion was possible because of cycling or running. It has come that, the age of injury was not mentioned in the report and reddish in nature means the injury was caused within seven (07) days. This will not affect the medical evidence because the colour of injury as deposed in the examination-in-chief was reddish brown and not only reddish. The said colour of injury, i.e. reddish brown, was corroborated by the medical examination report of the Victim below Exhibit – 40. The evidence of this Medical Officer shows that, the

history given by the Victim at the time of medical examination, corroborates her evidence in respect of sexual assault on 12/08/2018 at the spot proved through the evidence of the Victim and the Spot Panch. This medical evidence on record clearly supports and corroborates the Victim's evidence.

13. The evidence of PW – 12 (Ganpat E. Kaluse), the Investigating Officer, shows that, after the Appellant was arrested, he was sent for medical examination to the Hospital at Nagpur. The Appellant admitted his medical examination report below Exhibit – 68. The endorsement on the same made by the learned Advocate for the Appellant was that, the said document was admitted except the history which was stated by the Appellant. The said medical examination report shows that, there was nothing to suggest that, the Appellant was unable to perform sexual intercourse. The evidence of PW – 7 (Pradip R. Shahu) shows that, he was the owner of the premises having three (03) commercial galas (shops) for giving on rent and the Appellant brought PW – 8 (Akash Jumde) in the month of July – 2018 and he gave his premises on rent to the Appellant. A copy of Adhar Card of PW – 8 (Akash Jumde) was handed over by the Appellant and though he asked the Appellant for his document, the Appellant avoided to give the same to him. The evidence of PW – 8 (Akash P. Jumde) shows that, he knew the Appellant. The real name of the Appellant was Prakash, but he knew him by the name Rahule Thakre. His evidence shows that, on the request by the Appellant, he provided the copies of I.D proof, Electric Bill and two photographs of passport size and

accompanied the Appellant to the property owned by PW – 7 (Pradip Shahu). His evidence shows that, he joined the office of the Appellant. The evidence of PW – 12 (Ganpat E. Kaluse), the Investigating Officer, shows that, during investigation, it was revealed that, the Appellant was known by two (02) different names.

14. The above discussed evidence on record establishes that, by going to the house of the Victim, the Appellant on the pretext of giving the job took the Victim with him. The above-discussed evidence on record completely rules out the possibility that, the sexual intercourse by the Appellant with the Victim was consensual in nature. There is no evidence or nothing has come on record to even suggest remotely that, the Victim was a consenting party. The natural evidence of the Victim goes to establish that, the act of sexual intercourse by the Appellant on her was against her wish / will. Her evidence in respect of sexual assault gets complete corroboration by the medical evidence. Except denial, there is no defence. The defence suggested that, since the Appellant refused to marry with the Victim, false case was lodged does not appear probable in light of the above-discussed evidence on record. The essential ingredients for the offence of rape and criminal intimidation are present in the evidence discussed above. Thus, no fault can be found with the conviction and sentence recorded by the learned Trial Court against the Appellant. There is no merit in the Appeal and the same deserves to be dismissed. Hence, the following order :

ORDER

- [I] The Appeal is dismissed.
- [II] The Record and Proceedings be sent back to the learned Trial Court.
- [III] The fee of learned Advocate Ms.Alpana Ingolikar appointed for the Respondent No.2 is quantified Rs.7,500/- (Rupees Seven Thousand Five Hundred Only) to be paid by the office of High Court Legal Services, Sub – Committee, Nagpur.

[NEERAJ P. DHOTE, J.]

Sameer/-