



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

CRIMINAL APPEAL NO.235/2025

Sandip Mahadeo Adbaile,
aged about 36 Years, Occup.Labour
R/o Sonegaon (Raut), Tahsil, Hinganghat,
District Wardha.

Appellant

- Versus -

State of Maharashtra,
through Police Station Officer,
Police Station Wadner, Tahsil, Hinganghat

Respondent

Mr.P.W.Mirza, Advocate for the Appellant.
Mr.G.S. Umale, A.P.P for Respondent /State.

CORAM: NEERAJ P. DHOTE, J.
DATED 09.04.2026

ORAL JUDGMENT:-

1) This is an Appeal under Section 415(2) of the Bharatiya
Nagarik Suraksha Sanhita, 2023 against the Judgment and Order
dated 29/04/2024, passed by the learned Additional Sessions Judge,
(Court No.2), Hinganghat in Sessions Case No.41/2018 convicting
and sentencing the Appellant as follows:-

*1) Accused Sandip Mahadev Adbaile is convicted under
section 235(2) of Code of Criminal Procedure for offence
punishable under section 376 (1) of the Indian Penal Code.
For the same, he shall undergo rigorous imprisonment for*

twenty five years and pay fine of Rs.10,000/- (Rs. Ten thousand only). In default of payment of fine, he shall undergo simple imprisonment for one year.

2) Accused Sandip Mahadev Adbaile is convicted under section 235(2) of Code of Criminal Procedure for offence under section 450 of the Indian Penal Code. For the same, he shall undergo rigorous imprisonment for seven years and pay fine of Rs.5000/-(Rs.Five Thousand only). In default of payment of fine, he shall undergo simple imprisonment for six months.

3) Accused Sandip Mahadev Adbaile is acquitted under section 235(1) of Code of Criminal Procedure for offence under section 506 of the Indian Penal Code.

4) All substantive sentences to run concurrently.

5) Bail bond of accused stands cancelled.

6) Accused was in jail since 06.04.2018 till 02.01.2019. Set off be given under section 428 of Code of Criminal Procedure.

7) Muddemal in this case, as described in charge-sheet at serial No.1 to 18 being worthless be destroyed after appeal period is over.

2) The prosecution's case, as revealed from the police report, is as under:-

a] The Victim who was Nineteen(19) years old was raped by the Appellant on 06.10.2018, when she was alone in her residence. The Appellant, who was the resident of the same village, entered her house from the back door, caught-hold the hairs of the Victim, gagged her mouth and raped her and threatened. The Victim

informed her mother on mobile phone. In the evening the report was lodged with the Wadner Police Station, District Wardha and Crime bearing No. 367 of 2018 came to be registered against the Appellant for the offence punishable under Sections 376, 450 and 506 of the Indian Penal Code, 1860(for short herein after referred to as 'IPC').

b] The Victim was sent for medical examination. The Appellant came to be arrested and sent for medical examination. The spot panchnama was drawn. The statement of the witnesses were recorded. The necessary documents were collected. The clothes of the Victim and of the Appellant came to be seized. The samples of the Victim and of the Appellant came to be drawn. The seized Articles and the samples were sent to the Chemical Laboratory for examination. On completion of the investigation, the Appellant came to be charge-sheeted.

3) The learned Trial Court framed the Charge against the Appellant below Exh.15 for the offence punishable under Sections 450, 376(1) and 506 the IPC. The Appellant pleaded not guilty and claimed to be tried. To prove the Charge, the prosecution examined in all Fifteen (15) witnesses and brought on record the relevant documents. After the prosecution filed the evidence closure pursis, statement of the Appellant came to be recorded under Section

313(1)(b) of the Code of Criminal Procedure. The Appellant stated that, he was falsely implicated. Appreciating the evidence on record, the learned trial Court passed the impugned judgment and order convicting and sentencing the Appellant as above.

4) Heard the learned Advocate for the Appellant and the learned APP for the State. With their assistance, scrutinised the evidence on record.

a] It is submitted by the learned Advocate for the Appellant that, undisputedly, the Victim was major by age. The prosecution's case largely rests on the testimony of Victim. The Victim's evidence shows that, it was not the case of rape but was an act of consensual relations between the Victim and the Appellant. The medical evidence do not show any injury either on the Victim or on the Appellant. The samples were not collected as required under the Medical Protocol. Most of the columns of the medical examination report of the Victim are blank. The Chemical Analyser's reports do not support the Victim's testimony. There was delay of six(6) hours in lodging the report. Though, the evidence of investigating officer shows that, he collected the CDR and SDRs from the mobile phone of the Victim and of the Appellant, they are not filed on record. The suggestion is given that, the Victim used to talk over the phone. The

learned Trial Court has acquitted the Appellant for the offence punishable under Section 506 of the IPC. The evidence on record do not prove the Charge of rape and the learned Trial Court has not appreciated the evidence on record in it's right perspective. In support of his submissions, he relied on the following judgments:-

- i) *Thulia Kali Vs State of Tamil Nadu, (1972) 3 SCC 393;*
- ii) *Mohinder Singh and another Vs. State of Punjab and Ors. 2003 Cri. L.J. 5002;*
- iii) *Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh (2023) 16 SCC 510;*
- iv) *Mahendra Tularam Deshmukh Vs.The State of Maharashtra 2014 ALL MR(Cri.)1757;*
- v) *Somnath Yeshwant Shirsat Vs.The State of Maharashtra 2016 ALL MR 3844;*
- vi) *Rahul Vs. State of Delhi Ministry of Home Affairs and anr. (2023) 1 SCC 83;*
- vii) *Roshan Manohar Sahare vs. State of Maharashtra and anr. In Criminal Appeal No. 236 of 2022;*
- viii) *Chetan Kailash Vaidya ..Vs. State of Maharashtra 2024 SCC OnLine Bom 3308.*

5) It is submitted by the learned APP that, the prosecution's case entirely rests on the testimony of the Victim. Since, the Appellant gagged the Victim's mouth, she was unable to shout. Though the medical evidence was less supportive, it will not weaken the case of the prosecution, which was fully proved through the evidence of Victim. The Victim's evidence was not shaken. There was no reason for the Victim to falsely implicate the Appellant. Even if the aspect of love relations between the Victim and the Appellant

are accepted, there was no consent by the Victim at the relevant time. The Victim's testimony was sufficient to maintain the conviction. There was delay of only six(6) hours in reporting the incident to the police. Nothing has come in the evidence to show that, it was consensual act between the Victim and the Appellant. The Victim was merely Nineteen(19) years of age. The Appeal be dismissed. In support of his submissions, he relied upon the following judgments:

- i) *State of Himachal Pradesh Vs. Raghubir Singh and ors* 2024 SCC OnLine SC 940
- ii) *Phool Singh Vs. State of Madhya Pradesh* (2022) 2 SCC 74
- iii) *Deepak Kumar Sahu Vs. State of Chhattisgarh* 2025 SCC OnLine SC 1610.

6) Undisputedly, the Victim was major by age. The prosecution's case entirely rests on her testimony. Her evidence shows that, the Appellant was known to her. On 06.10.2018, when she was alone at her home in the morning at 10.00 a.m. the Appellant had come to her house. At that time her grandmother had come to wash the clothes and so the Appellant left. After her grandmother left the house for going to her uncle's house, she was alone in the house, while she was taking rest, the Appellant entered her house by opening the door at the back side. The Appellant hold her hairs, gagged her mouth, removed her clothes and his clothes

and committed rape on her. After the rape, the Appellant left. The Victim further deposed that, she called the girl by name Akanksha, who was residing in the neighbourhood and informed her mother from Akanksha's mobile phone. Her mother came home and she narrated the incident to her. Thereafter she along with her parents, maternal uncle and uncle went to the Police and the report below Exh.23 was lodged. She identified her clothes. She deposed that, she was taken for medical examination.

7) The Victim was subjected to cross-examination. It is fortified that, she knew the Appellant prior to the incident. The Appellant was on visiting terms at her house. Her evidence that, the Appellant inserted his private part into her vagina was by way of improvement. Further, her evidence that, she called the girl Aakanksha residing in the neighbourhood and informed her mother on her phone and after her mother came home, she informed the incident to her and thereafter her maternal uncle and uncle came home and they went to the police station was by way of improvement. The said improvements/omissions are proved through PW-15 Ashish Gajbhiye, who recorded the statement of the Victim and investigated the crime. The Victim admitted in her cross examination that, at the time of incident the Appellant was present

in her house for about 45 minutes. Suggestion is given that, she was having love relations with the Appellant and she called him to her house when she was alone. The Victim admitted that, if the alarm is raised from her house, it could be heard by the neighbors. The evidence of PW-11 Investigating Officer shows that, the spot of incident was in a deeply populated area. Though the Victim deposed that she closed the entrance door of her house, her evidence shows that, the Appellant entered her house from the back side door. The suggestion was given that, she kept open the back side door. The suggestion is given that, her uncle saw the Appellant coming out of the house and therefore the false report was lodged. The suggestion is given that, the Appellant committed sexual intercourse without her consent was false.

8) The evaluation of the overall evidence of the Victim shows that, the possibility of consensual act between her and the Appellant cannot be ruled out. The material omissions in her evidence and presence of the Appellant for about 45 minutes in the day time at her house, which was situated in the residential area, makes her testimony of rape by the Appellant, doubtful. The mother of the Victim is examined as PW-2, admitted in the cross-examination that, the Appellant used to visit their house and talk

with the Victim. The evidence PW- 15 Investigating Officer shows that, he had given the letter dated 03/11/2018 for getting the CDR and SDR and he did not file the CDR and SDR of the Appellant. Suggestion is given that, he found from the Call Detail Records that, Victim and the Appellant used to speak every day on the phone and therefore the CDR and SDR were not submitted. Though the communication was given to get the call details of the mobile phone of the Appellant, the same are not brought on record and therefore, adverse inference is to be drawn that, they were not favourable to the prosecution.

9) The evidence of PW-7 Dr. Rashmi Khilekar shows that, she examined the Victim on 06/10/2018 and found her hymen was ruptured, edges were irregular, mild oedema was present, tears were in 3 O'clock and 5 O'clock in position, the Ruptured hymen along with tear were suggestive of application of force. She admitted in her cross-examination that, in the consensual intercourse, there may be rupture to the hymen. As per her opinion, over all findings were consistence with sexual intercourse. Her evidence shows that, she had kept her final opinion reserved till receipt of the CA reports. Her evidence further shows that, on local examination of genital, she found the labia majora, labia minora and clitoris of Victim were

normal. She admitted that, she had not mentioned the age of injuries in column No.10 of the medical examination report of the Victim. She admitted that, if the Victim is major, her signature and thumb impression was required to be taken on medical examination certificate in respect of consent for medical examination. She admitted that, she did not obtain the Thumb Impression and signature of the Victim on the medical report and further admitted that, she had not mentioned the date and number of pages in the medical examination report.

10) There is evidence of PW No.6- Dr.Kishor Nasare, who examined the Appellant on 06/10/2018. His evidence shows that, the accused had not taken bath after the incident. There were no marks of any injury, scar and stains of foreign body on the person of the Appellant. There was no matting present.

11) The above discussed medical evidence do not show the marks of violence either on the Victim or on the Appellant. As regards the hymen tear is concerned, the medical officer admitted, as seen above that, same can be the result of the consensual intercourse.

12) Evidence of PW-15 the Investigating officer shows that, he did not seize anything from the spot. He deposed that, he did

not feel to seize the pillow, mattress and the bed-sheet from the spot. He admitted that, he did not find any stains of blood or semen on the pillow, mattress and bed-sheet and therefore, he did not seize it.

13) There cannot be any dispute in respect of the principles laid down in the above referred judgments cited by the learned Advocate for the Appellant and the learned APP. There cannot be any dispute on the settled legal position that, the conviction for the offence of rape can be recorded on the sole testimony of the Victim if found trustworthy. As seen above, the evidence of the Victim do not give the required assurance that, the Appellant raped her. Her evidence do not rule out the possibility of consensual sexual relation. The material omissions in the testimony of the Victim, the presence of the Appellant in her house for 45 minutes, the entering of the Appellant in her house from the back door makes her evidence of rape doubtful. The Appellant at the time of the incident was 25 years of age. The absence of the marks of violence, rules out the possibility of resistance. The said girl Akansha, who was called by the Victim after the incident, to make a phone call to her mother is not examined. The evidence of other witnesses are not referred by

the learned Advocate for the Appellant and by the learned APP and their evidence do not take the case of prosecution any further.

14) The learned trial Court observed that, the prosecution did not strictly prove the sending of the samples for analysis, its return for proper compliance etc makes the prosecution's case doubtful. In para No.33 of the judgment, it is observed by the learned trial Court that, the report of Chemical Analysis cannot be taken into consideration. The learned trial Court recorded the acquittal of the Appellant for the offence punishable under Section 506 of the IPC. In the backdrop of the above discussed evidence and the observations made by the learned trial Court, the conviction and sentence recorded by the learned trial Court needs interference. Hence the following order.

ORDER

- i) The Criminal Appeal is allowed
- ii) The conviction and sentence passed by the learned Additional Sessions Judge, (Court No.2), Hinganghat in Sessions Case No.41/2018 is quashed and set aside.
- iii) The Appellant is acquitted for the offence punishable under Sections 376(1) and 450 of the Indian Penal Code.
- iv) The Appellant is behind bars, he be released if not required in any other offence.
- v) The fine amount if paid, be refunded to the Appellant.

- vi) The Record and Proceedings be sent back to the learned Trial Court.

(NEERAJ P. DHOTE, J.)

Kavita