

MHNG010108842021 		Presented on	:	15.11.2021
		Registered on	:	15.11.2021
		Decided on	:	14.07.2026
		Duration	:	04 Yrs., 08 months

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-06, NAGPUR

(Presided over by Dr. A. A. Joglekar)

SESSIONS CASE NO.678/2021

Exh. 65

(FIR No./Crime No.395/2020 for the offence punishable under Sections 376(2)(n), 328, 509 & 506 of Indian Penal Code of Police Station Ambazari, District Nagpur).

Prosecution

:- State of Maharashtra,
Through Police Station Officer,
Police Station Ambazari,
District Nagpur.

Represented by

:- Shri L.B. Shendre, Learned Addl. Public
Prosecutor for the State.

Accused

:- **Rajendra Bisan Sayare**
Age: 65 years, Occ –Hotel ,
R/o. Plot No. 53, Ram Nagar, Nagpur.

Represented by

:- Shri Parag Uke, Learned Advocate for the
accused

PART “B”

(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	:	From 30.03.2019 till 18.08.2020
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Date of FIR	:	20.10.2020
Date of Charge-sheet	:	17.12.2020
Date of Framing of Charge	:	17.06.2023
Date of commencement of evidence	:	17.10.2023
Date on which judgment is reserved	:	06.07.2013
Date of the judgment	:	14.07.2023
Date of the sentencing order, if any	:	<u>N.A.</u>

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428, Cr.PC.
1.	Rajendra Bisan Sayre	09.11.2020	09.11.2020	328, 376(2)(n), 509, 506	Acquitted	---	---

Part 'C'

(Para 44(iii) of Chapter VI of Criminal Manual)

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution -

Rank	Name	Exh. No.	Nature of evidence
PW1	ABC Victim	09	Informant
PW2	Malti Vasant Rao	34	Witness
PW3	Ashwini Kruparam Binjade	35	Witness
PW4	Rupalil Stiphan Victor	36	Witness
PW5	Shraddha Anant Wagh	49	Investigating officer

B. Defence witness, if any -

Rank	Name	Nature of evidence
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C. Court witnesses, if any -

Rank	Name	Nature of evidence
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution-**

S.No.	Description	Exh. No.
1	Complaint	10/PW1
2.	Printed FIR	11/PW1
3.	Spot panchnama /Crime details form	Exh. 51/PW5
4.	Medico Legal Examination Report	Exh. 52/PW5

Documents admitted under Section 294 of the Code of Criminal Procedure, 1973 -

S.No.	Exh. No.	Description
1	36	Property search and seizure form
2	37	Letter to RFSL
3	38	Letter regarding issuing of information related to CDR, SDR and Tower location
4	46	Property search and seizure form
5	47	Arrest Court Surrender Form

B. Defence -

S.No.	Exh. No.	Description
1	Exh. 55 /PW5	General Diary Details (Entry) at PS Ambazari dated 17.08.2020

C. Court Exhibits -

S.No.	Exh. No.	Description
1	63	CA Report
2	64	CA Report

D. Material Objects -

S.No.	Exh. No.	Description
1	Article P1 /PW1	Photographs Page No. 62 to 64
2	Article P2/PW1	Statement of complainant u/Sec. 164 of Cr.PC.

JUDGMENT**(Delivered on the 14th July, 2026)**

Accused Rajendra Bisan Sayare stand prosecuted for the offence punishable under Sections 328, 376(2)(n), 509, 506 of Indian Penal Code (for short "IPC") registered with Ambazari Police Station, as C.R.No.395/2020, upon a police report lodged by victim ABC (the informant). Charge-sheet is submitted by the Ambazari Police Station, Nagpur.

THE GRAVAMEN OF THE PROSECUTION'S CASE IN BRIEF ENSUES AS UNDER :

2. It is stated that the victim ABC was residing with her mother and two children at the stated address and was residing separately from her husband, since 16 to 17 years. The informant victim ABC used to work in a beauty parlour in the year 2007 at Lakhme Saloon, Ravi Nagar. In the year 2007, informant victim ABC was in receipt of an order for make over at 'Opulence Cafe and Bar' Gokulpeth Market, Old Post Office Road, Nagpur, and the owner of the said bar was the accused. Post 2007, informant victim ABC had no any contact with the accused.

3. In the year 2016, informant victim ABC started running her own parlour at Zenda Chowk, Dharampeth under the name and style as "Looks Parlour". Thereafter, the said parlour on account of certain reason was shifted at Lotus Plaza Building, Gokulpeth Market. Thus, informant victim ABC alongwith her partners in business realized that there was no response from the customers. Therefore, they decided to request the accused for placing their sign board ahead of the cafe of the accused, to which he refused.

4. Further, the accused apprised them that he will get them orders. At that time the accused asked for the mobile number of informant victim ABC and on the same day at about 4.00 p.m. in the evening had called informant victim ABC at his cafe as he had certain work. Accordingly, informant victim ABC

had reached the cafe by next day, wherein the accused apprised her of the fact that he would arrange an assignment for the informant victim ABC, as he has many acquaintances in the said field. At that time, informant victim ABC and the accused were only present at his office. The accused offered a soft drink to informant victim ABC. It is alleged that the said soft drink contained sedatives and upon its administration to informant victim ABC, she got fainted and post recovering her senses, she realized that the accused had committed unwarranted physical act with her. She also realized that her clothes were removed and had ugly feeling. Thus, she was about to lodge complaint but, the accused apprised her of committing marriage with her and refrained her from lodging complaint.

5. Thereafter on several occasions, informant victim ABC had physical relations with the accused. Informant victim ABC has also stated for several such instances. Further, informant victim ABC realized that the accused had lodged complaint against her for dishonour of cheque, thereby misusing the cheque. Therefore, prosecution alleges that the accused using his position had committed atrocities on informant victim ABC.

6. Hence, the Informant lodged a report of the incident with Ambazari Police Station, whereupon the police registered an offence against the accused for the offences *ibid* and investigated the same and the accused was arrested as on 09.11.2020. In the

investigation, police

- a) Recorded the statements of witnesses
- b) Arrested the accused,
- c) Prepared the spot and arrest panchnama
- d) Collected medico-legal evidence

And after due completion of investigation, charge sheeted the accused.

7. Chief Judicial Magistrate, Nagpur committed the case to the Court of Sessions vide committal order under Sec. 207 of the Code of Criminal Procedure, 1973 (herein referred to as Cr.PC.), Dated 12.11.2021.

8. This Court framed charge against the accused vide Exh.3, for the offences *ibid* and read it over and explained the same to the accused in her language and after admitting of having understood the same, she pleaded not guilty vide Exh. 4 and claimed to be tried.

9. Post conclusion of trial, incriminating prosecution evidence was put to the accused in his examination under Sec. 313(1)(b) of the Cr.PC. vide Exh.57 at the record of this Court after the prosecution closed its evidence vide Exh.56. The defence of the accused is of total denial and of false implication.

10. Heard Learned APP for the state, Mr. L.B. Shendre, Adv. W.R. Kapse, Assistant Counsel to prosecution and the Learned counsel for the accused Adv. Shri Parag Ukey. Also, perused documents relied by parties.

11. In the aforesaid parlance, following points arise for determination. I have recorded my findings for the reasons as follows :

Sr.No.	POINTS	FINDINGS
1]	Does prosecution prove that accused on 30.03.2019 till 18.08.2020, in 'Opulance Cafe and Bar' Gokulpeth Market, Old Post Office Road, Nagpur committed rape on the informant/prosecutrix and thereby committed an offence punishable under section 376(2)(n) of Indian Penal Code ?	...No.
2]	Does prosecution prove that during the aforesaid period and place, accused administered intoxicant substance or stupefying thing in soft drink and caused her to consume with intent to commit sexual intercourse with her, or with the intention to commit or facilitate the commission of the offence of rape by intoxicant substance or stupefying thing and thereby committed an offence punishable under section 328 of Indian Penal Code ?	...No.
3]	Does prosecution prove that during the aforesaid period, accused committed criminal intimidation and threatened the prosecutrix with intention to commit suicide, which caused alarm to her and	...No.

	thereby committed an offence punishable under section 506 of Indian Penal Code ?	
4]	Does prosecution prove that during the aforesaid period, accused intending to insult the modesty of the prosecutrix, uttered obscene words and thereby committed an offence punishable under section 509 of Indian Penal Code ?	...No.
5]	What order ?	As per final order.

REASONS

As to Point No.1 to 5 :

12. To bring home the guilt of the accused, the prosecution must prove the following *sine qua non* elements beyond reasonable doubt.

A. For the offence under section 376(2)(n) of the IPC.

i] The accused to be engaged in sexual intercourse with the victim as defined under section 375 of IPC

ii] The sexual act was committed without the consent of victim or her consent was legally invalid and

iii] The act was committed on multiple occasions at different points in time on the same victim.

A. For the offence under section 328 of the IPC :

Causing hurt by means of poison, etc. with intent to commit an offence :-

(1) The accused administered or caused the complainant to take such substance.

(2) The substance was a poison or any stupefying, intoxicating or unwholesome drug or other thing.

(3) The accused administered the same with (a) intent to causing hurt, or (b) knowing it to be likely to cause hurt, or (c) with intent to commit or facilitate the commission of an offence.

13. To bring home the guilt of the accused, prosecution must prove the aforesaid sine qua non elements. Sub-section 2 of Section 376 is an exception to sub-section 1 of the said provision. Sub-section 2, inter alia, states that whosoever commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. Hon'ble Supreme Court in catena of rulings have settled that proof of the required elements of force means women's physical resistance upon the man's advances. Without the evidence of her "utmost resistance," "earnest resistance," or at least "reasonable resistance," the prosecution would fail to establish either or both of the required elements. Therefore, it required to be tested whether in the instant case the aforesaid offences were committed by the appellant within the meaning of the aforesaid provisions.

14. Learned counsel for the accused submitted that the contents of the FIR and MLC report do not disclose any cognizable offence. The parties were in a consensual relationship. The institution of the FIR was with the ulterior motive of retribution due to a personal vengeance. There are umpteen contradictions in the FIR, MLC report and the statement made by the informant/victim under Section 164 CrPC. It was submitted that in the FIR dated 20.10.2020, the informant/victim stated that the accused committed alleged forceful sexual acts on her in March 2019, wherein on the day when she alongwith her colleague visited the cafe of the accused, he refused to placing signboard ahead of his shop, but had called the informant/victim at his café in the evening, to which informant/victim agreed to come by next day. By next day evening when the informant/victim visited his shop she was administered with a noxious drink, and post she fainted, the accused committed rape.

15. However, in the MLC report dated 20.10.2020, she alleged that the incident of rape happened on the same day when she visited the cafe of the accused, she stated that the accused post administering a noxious drink committed rape on her. Hence, there is inconsistency in her statements. Apart from the same, the original statement recorded under Section 164 of Cr.P.C. is not led on record. Apart from the same, PW.2 Malti Rao, PW.3 Ashwini Binjade and PW.4 Rupali Victor are interested witnesses, being the acquaintances of the informant/victim. The

FIR is registered at a belated stage in the form of an afterthought and in order to evade the liability from payment of sum availed from the accused and in the proceedings of N.I. act Hence, Ld. Counsel for accused urged for an acquittal of the accused.

16. Per contra, the learned APP Mr. Shendre contended that a prima facie case has been made out and that the statements made under Section 164 CrPC are sufficient to constitute offences levelled against the appellant. Both FIR and MLC reports state that the appellant had a physical relationship with the complainant on false promise of marriage. The appellant had also threatened the complainant to kill her family members if she refused to have physical relationship with him. Only because of the said threat, the complainant reported the incident at a belated stage, will not exonerate the accused from the charge. He states that the prosecution was successful in proving their case beyond reasonable doubt. Hence, the Ld. APP urged for convicting the accused.

17. Ld. advocate for the informant/accused who assisted the prosecution has filed written notes of arguments vide Exh.62 and has stated that the material testimony of all the prosecution witnesses have well proved the guilt of the accused beyond reasonable doubt. Although the defence has tried to extract certain omissions yet those are not fatal to the case of prosecution. He further stated that the defense have posed of irrelevant

suggestions and nothing crucial so as to falsify the case of prosecution is brought on record. He further states that there is no legal requirement that the testimony of the prosecutrix must be corroborated with that of the medical or forensic evidence, as the testimony of the informant/victim is reliable. Moreover the factum of false implication is improbable as no women would make such allegations at the cost of her reputation. Thus, as all the ingredients of the invoked sections are duly proved, he urged for conviction of the accused.

18. A graphic presentation of the instant case propels for the fact that the incident allegedly occurred in the year 2019. PW1 informant ABC vide her report (Exh.10) and the printed FIR (Exh.11) has stated for her acquaintance with the accused since the year 2007. She further states that she had no any concern with the accused since 2007 until 2016. In the 2016 the prosecutrix had opened up a shop at Zenda Chowk, Dharampeth under the name and style as Looks parlour on rental basis. But the owner of the said premises in the meantime, had sold the property and thus, PW1 informant ABC was required to shift her parlour at some different place. Accordingly, by February, 2019, she alongwith her partner had opened a parlour at Lotus Plaza building, Gokulpeth market, but there was no response from the customers, hence in the month of March, 2019, she alongwith her partner decided to request the accused, being the owner of the Opulance cafe and bar i.e. the accused to install the signboard of

their parlour ahead of their café, to which the accused refused, but he assured that if anybody approaches him with an order, he would refer it to them and asked PW1 informant ABC to share her number.

19. On the same day, accused had called PW1 informant ABC at about 4 p.m., and asked her come at his café, as he had certain work, upon which PW1 informant ABC stated that she would come by next day afternoon, to which he asked to come by evening next day. Accordingly, she went at the café of the accused, wherein the accused apprised her of certain project and also told about his acquaintances. He also assured her about securing work for some short film. After some time, he offered her some soft drink, to which she refused. But the accused upon emotional stance asked her to consume the said soft drink. Thereafter PW1 informant ABC started fainting and nearly post one and half hour, she resumed her senses and found her in uncomfortable condition. She found the accused sitting next to her and had a burning sensation at the private part and had bite marks on her thighs alongwith surface cuts over her breasts. She further questioned the accused about such act and also told him that she would lodge police complaint. Accused upon this, stated that he was aware of her financial condition and that as he has an affection for her, he would soon marry her and would look after her kids. He also convinced her to refrain from lodging complaint.

20. Apart from the same, as on 16.01.2020, it is alleged that the accused came at her parlour and asked her to remove hair on his chest and for facial. Further he also had asked for such sexual favours from the prosecutrix, and when the informant refused he threatened her of circulating such obnoxious content at the social media platform.

21. PW1 informant ABC had deposed in congruence with that of the report (Exh. 10) and has stated for the series of incident trailing from the year 2007. Ld. Adv. for accused has invited the attention of this court on the very incident alleged against the accused. FIR (Exh. 11) categorically mentions for the fact that in the month of March 2019, PW1 informant ABC alongwith her partner had approached the accused for the purposes of raising a sign board ahead of his cafe, to which he denied. He further apprised them of assigning such work pertaining to make over if anybody approaches him. At the same time, he had asked for the mobile number of PW1 informant ABC. Thereafter, on the same day in the evening at about 4.00 pm, the accused had called the informant and asked her to come at his cafe as he had certain work. PW1 informant ABC, thus informed him that she would come by next day afternoon, upon which he asked her to come by next day evening.

22. While deposing before the Court, prosecutrix had stated for similar such incident but she categorically states that on

the same day, when the accused had called her, she went at the cafe by 6.00 p.m.. Thus, it is evident that the prosecutrix fails to state the exact date and alongwith the same, contradicts with her own version as regards the trail of incident. Undoubtedly, FIR (Exh. 11) is not an encyclopedia, yet the alleged incident although being humiliating should not be mingled up with the trail of incident. Passage of time until recording of evidence can be well considered yet the prosecutrix must inspire such confidence while stating the incident in a logical manner. In the instant case, the said contradiction can not be considered as a minor error.

23. Further, PW1 informant ABC has deposed that while the accused offered a soft drink, post she consumed it, she had a feeling of fainting and eventually, after a period of nearly one and half hour, while she recovered senses, she found herself in an uncomfortable position. She found that her wearings were removed and had a dull feeling. Apart from the same, she had an irritation at her private part and had bites over her person. She found accused sitting besides her and she apprised him that she would lodge a police complaint. Accused in turn stated that he had an affection towards her and would commit marriage and therefore, asked her to refrain from lodging complaint.

24. Upon anvil of cross examination, PW1 informant ABC had admitted for meeting with the accused in the month of March

2019 and on the same day, she was called at his cafe and the incident occurred on the same day. She was confronted with the report (Exh. 52) wherein the history of the incident stated before the Medical Officer was confronted to her which PW1 informant ABC had absolutely denied thereby stating it as a false narration. It is pertinent that the portion Mark "A" in Exh. 52 propels that the incident stated in the month of March 2019 was first incident of sexual assault, which is stated to be false by the prosecutrix.

25. In furtherance of the same, Ld. Adv. for the accused has brought on record the issue as regards tendering of Rs. 2,00,000/- in the account of the prosecutrix by the accused. PW1 informant ABC, well remembers the date of tendering such sum of Rs. 1,00,000/- as on 05.12.2019 and the other Rs. 1,00,000/- as on 10.12.2019 and the accused also had tendered an amount of RS. 50,000/- in cash altogether amounting to Rs. 2,50,000/-. It is stated that PW1 informant ABC had tendered a cheque of Rs. 2,00,000/- bearing No. 105898 dated 05.06.2020 drawn on Central Bank of India, Branch Pratap Nagar, Nagpur to the accused, but she has denied for the nature of transaction to be against repayment of the amount of Rs. 2,50,000/- from the accused. PW1 informant ABC also has admitted for receipt of notice pertaining to dishonour of cheque from the accused as on 23.07.2020, but she states to be unaware of the SCC Case No. 8260/2020.

26. Ld. Adv. for accused has illicited a crucial fact as regards a written report to have been filed by the prosecutrix as on 20.10.2020. PW1 informant ABC categorically admits to have tendered such written report, vernacularly called as Lekhi Vardi to the police. PW1 informant ABC was confronted with Exh. 10 i.e. the report, but she in specific states that Exh. 10 is not the written report tendered by her to the police as on 20.10.2020. This particular aspect is crucial, more especially in the light of the fact that the prosecution failed to collect such crucial evidence corroborating their theory.

27. Ld. Assisting counsel although vide Exh. 62 i.e. the written note has stated that the defence failed to rebut the natural and consistent evidence led by the prosecution. It is evident that the Medico-Legal Report (Exh. 52) states for the date of incident being reported is 18.08.2020 and the said document i.e. Exh. 52 is proved through PW5 IO Shraddha Wagh. Ld. Adv. for accused has pointed out scribbling in the said date. May it as be, yet prosecution has not explained as regards the delay in date of incident, the date on which incident is reported before the Medical Officer and the date of registration of FIR. As stated supra, the date of registration of FIR is 20.10.2020 and the date of incident being reported is 18.08.2020 at about 5.00 pm.. Prosecution fails to explain this anomaly. The Medico-Legal Examination Report of sexual violence as regards is endorsed by PW1 informant ABC as on 20.10.2020 at about 4.00 p.m. and it was the prosecutrix who

had deposed the history of sexual violence. This particular history of sexual violence, in specific the response against the column 15A is denied vide portion mark A by the prosecutrix. If the date of incident reported is presumed to be 18.08.2020 and that the date stated by PW1 informant ABC pertaining to the Lekhi Vardi dated 20.10.2020 is compared, even then the same lays the case of the prosecution under speculation.

28. Now adverting to PW2 Malti, she has deposed in congruence with that of the prosecution theory. She stated that she used to meet PW1 informant ABC at her parlour at Lotus Plaza, Gokulpeth. She further states that in the month of March 2019, PW1 informant ABC had called her and accordingly, she had been to the parlour of prosecutrix where Rupa and Ashwini were present. PW1 informant ABC had apprised them of the incident wherein the prosecutrix was administered a soft drink containing a sedative and thereafter, it revealed to PW1 informant ABC that her apparels were not on her person and that she had injury like feeling on her thighs and had injuries on her breast. PW1 informant ABC stated to her that the accused would have made some physical relations with her.

29. It is pertinent that the entire testimony of PW2 Malti is in the form of hearsay. Further, she unequivocally states that her statement was recorded on the very day of filing of FIR. Ld. Adv. for accused has invited the attention of this Court on the fact that

the statement of this witness was recorded as on 12.11.2020. Lastly, she has admittedly stated to have read her statement before entering the witness box.

30. PW3 Ashwini also has deposed in the manner as led by the prosecution. She states to be attached with the saloon opened by the prosecutrix i.e. at Lotus Plaza, Gokulpeth. She categorically deposes that in the month of March 2019, one day in the morning she found prosecutrix sitting silent. Prosecutrix told them that she had been to the cafe of accused, wherein she was administered a drink containing something and on account of which, she got unconscious. She further stated for the prosecutrix to have told about she being found unclothed and had bite and nails scratch marks on her private parts.

31. PW3 Ashwini deposes that she also had an ugly experience from the accused, wherein she alleges that the accused had made certain sexually colored remarks against her. She also states that a statement was recorded on the same day of registering of FIR. Upon anvil of cross examination, she admitted that post occurrence of the incident, the accused and the prosecutrix were on talking terms. As stated supra, the testimony of the instant witness is also in the form of hearsay and that the said witness also propels for the conduct of either party post occurrence of incident, therefore, considering the same, the case of prosecution to that extent stands dented.

32. Upon considering the testimonial evidence of PW4 Rupali Victor, she deposed that in the year 2019 she received a call from the prosecutrix and hence she visited her parlour. Further, PW4 Rupali has deposed similarly as that of PW1 informant ABC, but she further stated the injuries on legs apart from the private part as such. Accused in their defence have upon cross examination suggested for an issue as regards the home loan obtained by this witness from SBI Housing Finance and that it was the prosecutrix who had introduced this witness with that of the accused for the purposes of help pertaining to recovery of the aforesaid home loan initiated by the finance department of SBI. PW4 Rupali also states that she had read her statement prior to entering into witness box. It is also evident that this witness has deposed for hearsay.

33. Now adverting to the modus of investigation, it is PW5 I.O. Shraddha Wagh has deposed that the investigation was assigned to her in the instant crime. She had conducted the spot panchnama (Exh. 51) and also had forwarded the victim for medical examination. In pursuance of the same, she also had obtained the Medico-Legal Report (Exh. 52). She states to have recorded statement of witnesses and lastly had charge-sheeted the accused.

34. Upon anvil of cross examination, PW5 I.O. Wagh has

deposed that the accused and the first informant belong to same cast. Further, she has categorically admitted that prior to lodging of report and registering of FIR, the prosecutrix had tendered a written complaint. Further, she also admits that the said complaint is not accommodated in the charge-sheet. Further, she also has admitted that as on 17.08.2020 the prosecutrix had lodged a complaint application pertaining to the case lodged by the accused regarding dishonour of cheque and that there were complaints pending by and between the accused and the informant pertaining to certain financial transactions at Sitabuldi Police Station, but in spite of the fact that PW1 informant ABC had tendered a complaint yet myself refused to accept the same as the complaint/application was already pending with Sitabuldi Police Station. Police Station Diary entry (Exh. 55) is accordingly recorded to that effect.

35. She also has categorically admitted that as on 17.08.2020 the first informant had not stated about any such incident of rape nor had lodged any complaint against the accused and it was for the first time as on 20.10.2020 when such allegation of rape was attributed to the accused. She has rebutted the very contention of PW2 Malti and PW3 Ashwini as regards recording of their statements as on day of registration of FIR.

36. As regards the modus of investigation, it is evident that the investigating officer has not recorded the statement of the

partner of PW1 informant ABC namely Priyanka Khandare, nor has the prosecution examined the said witness. Apart from the same, the Medico -Legal evidence was proved through PW5 I.O. Wagh and except stating about the procurement of such report, no any Medico- Legal Analysis substantiating the theory is laid on record. As stated supra, PW5 I.O. Wagh admittedly states about filing of an application by the prosecutrix as on 17.08.2020 against the accused, but it was pertaining to dishonour of cheque issue. No explanation is offered on this aspect, either by PW1 informant ABC or PW5 I.O. Wagh, thereby denting the case of prosecution, more especially when the prosecutrix being allegedly victimized by the accused. This particular admission by PW5 I.O. Wagh categorically stands substantiated with Medico-Legal Examination Report of Sexual violence (Exh. 52) wherein the date of incident being reported is stated as 18.08.2020. This conjunction of dates being un-controverted is fatal to the case of prosecution. As the prosecutrix who being well aware of the incident, fails to state the same in the application dated 17.08.2020 and her Medical Examination Report states for the date of incident being reported on 18.08.2020 generates a doubt upon the modus of investigation. Apart from the same, the defence has admitted the document vide Exh. 45 being the forensic medical examination of the alleged accused for evidence of sexual assault states for the opinion that nothing to suggest for inability of the accused to perform sexual intercourse but the factum of intercourse is not stated by PW1 informant ABC and

therefore the case of the prosecution itself lies under speculation.

37. Thus it is evident that the testimonial evidence led by prosecution faces several omissions as well as contradictions and the ingredients as envisaged under section 376(2)(n) of IPC do not match and are not attracted. Ld. Assisting Counsel to that effect have relied upon the case of i] **State of Punjab Vs. Gurmit Singh** and ii] **Om prakash Vs. State of Uttar Pradesh**. I do humbly that the said case laws were perused on SCC On Line and are salutary to myself.

38. Undoubtedly, there is no legal requirement that the testimony of prosecutrix must be corroborated by medical or forensic evidence, and that corroboration is the rule of prudence as such. Yet, considering the instant case, when the prosecutrix was allegedly victimized as per her own contention and had filed an application with PW5 I.O. Wagh as on 17.08.2020, yet the FIR was registered as on 20.10.2020 and without any explanation being afforded to substantiate the same. As observed herein above, it is also required to be seen that the printed FIR (Exh. 11) while marking response to point 3 (a) have stated for the occurrence of offence as on 30.03.2019 until 18.08.2020. This particular date i.e. 18.08.2020 is also reflected under the Medico-Legal Report (Exh. 52) and therefore belated lodging of FIR can be well located. Thus the said case laws are of no assistance to the case of prosecution.

39. Further, Ld. Assisting Counsel has stated for the truthfulness of witness to have been established under the minor discrepancies and omissions. As observed hereinabove, majority witnesses have deposed for a hearsay. There is discrepancy as regards the visit of PW1 informant ABC to the place of the accused as on one hand in the report, she claims to have visited the place of accused i.e. cafe on the next day when she had approached the accused for the purposes of erecting the sign board in front of his cafe, while on the other hand, under her testimonial evidence she deposes to have visited the place of accused on the same day when she approached the accused for erection of sign board ahead of his cafe.

40. Apart from the same, PW1 informant ABC also has admitted for the financial transaction between either of them. Complaint filed by PW1 informant ABC dated 17.08.2020 mentioned for the alleged transaction and the factum of dishonour of cheque. This particular aspect is two fold, firstly it propels for the admission of the dishonour of cheque at the hands of the prosecutrix and secondly, it clearly indicates that the issue of dishonour of cheque being agitated before PW5 I.O. Wagh under the complaint dated 17.08.2020, yet the prosecutrix chose not to spell out any such aspect pertaining to alleged rape committed by the accused. On the contrary, on bare perusal of report (Exh. 10), printed FIR (Exh. 11) and the testimonial evidence led by

prosecution as regards PW1 informant ABC, do not indicate in specific the allegations of rape as the prosecutrix states that her apparels were removed, she was lying on Sofa and had a hard sensation at her private part. No specific allegations pertaining to rape are made. Undoubtedly, she states for administration of a soft drink and post its consumption, she fainted. Thus, merely on the basis of surmises, prosecution can not be permitted to stretch the case. Therefore, the discrepancies are not in such form that those could be ignored.

41. As regards the factum of administration of the soft drink, except stating the same under bare blanket words nothing in order to substantiate the same, is laid on the record. Therefore, the ingredients of section 328 of IPC are missing. Similarly, prosecution has invoked section 506 of IPC and in order to buttress their contentions, no specific incident is stated. In order to substantiate the ingredients of section 506 of IPC, bare statement of the informant that the accused threatened her of dire consequences qua killing her relatives will not suffice and that it was required that the prosecution ought to have been able to show that the person charged qua the accused actually threatened the prosecutrix.

42. Lastly, as regards the charge under section 509 of IPC, PW1 informant ABC has not alleged of any such word gesture or act to have insulted her modesty. It could be gathered from the

testimonial evidence of PW3 Ashwini. But PW3 Ashwini has not lodged any complaint against the accused. Thus, except stating the same by words, nothing is placed on record substantiating the theory of prosecution under any of the charge leveled against the accused.

43. Ld. Assisting Counsel has stated for three case laws in his written notes of arguments, although have not tendered the copy of the said case laws. This court proceeded to peruse the said case laws, on SCC On Line.

1. State of Punjab Vs. Gurmit Singh

2. Rai Sandeep Vs. State (NCT of Delhi)

3. Phool Singh Vs. State of Madhya Pradesh

44. I do humbly submit that the said case laws are salutary to myself. The conspectus of the aforesaid case laws propel for the settled principle of law that if the evidence of the prosecutrix is trustworthy and reliable, conviction can be based solely on her testimony without any independent corroboration. Considering the instant case, as stated supra, the testimony of the prosecutrix do not inspire confidence, more especially when the date of the incident is not stated. The time of reporting of incident is uncertain and the Medico-Legal Evidence do not corroborate the stance of prosecution. Thus the said case laws are of no assistance to the case of prosecution. Lastly, on perusal of CA report (Exh. 63 and 64) with the aid of section 293 of Cr.P.C. nothing could be

extracted so as to corroborate the case of prosecution.

45. Therefore, upon testing the said evidence of prosecutrix alongwith the other witnesses, they do not stand in support of the theory laid by prosecution. Furthermore, upon considering the statement of accused recorded u/Sec. 313 (1)(b) of Cr.P.C., the defence that the prosecution initiated against the accused was with a purpose of revenge as against the case lodged by the accused for dishonour of cheque seems to be probable as the prosecutrix herself had lodged such complaint as on 17.08.2020 and failed to state about the alleged incident of rape.

46. Learned counsel for accused had argued that the prosecution has not proved their case beyond reasonable doubt. It is true that an accused has a profound right not to be convicted of an offence which is not established by the evidential standard of proof 'beyond reasonable doubt'. The doubt would be held reasonable, if it is free from a zest for abstract speculation. Law cannot afford any favourite other than truth and to constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts, as to the guilt of the accused arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. The prosecution is expected to prove its

case beyond reasonable doubt, and with absolute certainty and such reasonable doubt as discussed above ought to have grown from the evidence adduced by prosecution.

47. Thus, in the present scenario on cautious scrutiny of the evidence on record, this court has safely inferred that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt in respect of the offences *ibid*. Resultantly, I answer the point Nos.1 to 4 in the negative and with that, pass the order of the acquittal of the accused person and point No.5 is answered accordingly, hence order infra:-

ORDER

1. **Accused Rajendra Bisan Sayre** is acquitted under Section 235(1) of Cr. P.C. for the offences punishable under Sections 328, 376(2)(n), 509, 506 in C.R.No.395/2020 registered with Ambazari Police Station, District Nagpur.
2. His bail bonds stand cancelled.
3. Muddemal properties i.e. mobile phone (if not released on supratnama) be returned to the applicant on application and in the absence of such application, it be destroyed after appeal period is over, as per rules.
4. Muddemal Property marked/ *unmarked articles if any*, being worthless be disposed of after appeal period is over.
5. Accused shall execute fresh P. R. and S. B. of Rs.15,000/- in consonance with Section 437-A of the Code of Criminal Procedure, 1973.

6. The copy of order and findings be sent to the District Magistrate, Nagpur vide Section 365 of the Cr.PC.

7. As the matter is disposed of by this judgment, the record and proceeding be consigned to the Records Department as per rules.

8. Sessions Case No.678/2021 stands disposed of accordingly.

Judgment is dictated and pronounced in the open Court under section 353 of the Code of Criminal Procedure, 1973.

Nagpur.
Date: 14.07.2026

(Dr. A.A. Joglekar)
Additional Sessions Judge-06,
Nagpur.

Directly typed on : 13.07.2026 & 14.07.2026
Signed on : 14.07.2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
14.07.2026	6.00 p.m.	Mrs. Kavita M. Balpande Stenographer (Grade-I)

Name of the Judge	DR. A. A. JOGLEKAR
Date of Pronouncement of JUDGMENT /ORDER	14.07.2026
JUDGMENT /ORDER signed by P.O. on	14.07.2026
JUDGMENT /ORDER uploaded on	14.07.2026