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IN THE COURT OF ASSISTANT SESSIONS JUDGE, WASHIM.

(Presided over by Shri M.M. Walimohammed
Adhoc District Judge – III and A.S.J., Washim)

S.T. No. 91/2011.

Exhibit No. 41

State of Maharashtra
Through Police Station Officer,
Police Station Jaulka, Tq. Malegaon,
District Washim.

Complainant.

...Versus....

1. Panjab Natha More,
aged 32 years. Occn : Labour,
2. Ganesh s/o. Sahebrao More,
Aged 25 yrs. Occn : Labour,
Both R/o Kolgaon Bk.
Tq. Malegaon, Dist. Washim

....

Accused.

Charge for the offence p.u.s. 376, 506 r/w. 34 of I.P.C.

Shri R.N. Deshmukh, A.G.P. for the State.
Shri K.M.A. Hussain, Adv. for the accused.

J U D G M E N T.

(Delivered on this 24th day of February, 2012)

1. The accused was charge-sheeted for the offence punishable U/s. 376, 506 r/w. 34 of I.P.C.

2. Facts in brief, alleged by the prosecution are that complainant Ku. Laxmi Bhaurao Kankal is residing at village Kolgaon with her parents. On 19-6-2011 at about 10.00 a.m. she and her parents attended their field in the vicinity of village Chandas and after attending the work, they returned home in noon time. They have taken meal and her parents went to attend the work in the field. It is alleged that behind them, she (Laxmi) went to the field and on the way at about 4.30 p.m., when she reached near the field of Digambar Shendge, the accused came on motorcycle. Accused No.1 Panjab More asked her to accept the amount and allow him intercourse. She asked that they are like uncle, however, he said that condemn uncle (Mama gela khaddyat). It is alleged that accused No.1 Panjab removed her Salwar by causing her to fell down on earth, unfolded the knot, she cried, accused No.2 Ganesh pressed her face by hand. The accused removed her Salwar and nicker and forcibly had intercourse. She shouted, but nobody came there. The accused threatened that if the incident is reported to parents, they would be killed. They left the spot on motorcycle. She reported the matter to her parents and thereafter lodged the report.

3. The concerned police of P.S. Malegaon registered Crime No.101/11 for the offence punishable U/s. 376, 506 r/w. 34 of I.P.C. During the investigation, spot panchnama, seizure panchnamas of motorcycle bearing No. MH-30/R-7931, seizure

-3-

panchnama of sealed packet containing sample from accused Panjab Morey, seizure panchnama of underwear and pant of accused Panjab, seizure panchnama of Salwar, nicker and shirt of victim Laxmi were drawn. The Muddemal was sent to Chemical Analyser, victim Laxmi and accused were medically got examined and after completion of investigation, charge sheet was submitted.

4. The learned Judicial Magistrate First Class, Malegaon found the offence U/s. 376 of I.P.C. exclusively triable by Sessions Court, therefore, by passing order below Exh.1, he committed the case.

5. On hearing learned A.G.P. and defence counsel and considering the record, my learned predecessor has framed the charge for the offence U/s. 376 of I.P.C. Against accused No.1 Panjab and under Section 506 r/w. 34 of I.P.C. against accused No. 2 Ganesh at Exh.6 against the accused and the same when read over and explained to them in Marathi, they have denied it vide their statements below Exh.7 and 8.

6. The prosecution examined in all five witnesses. The accused did not examine themselves nor led the evidence but admitted spot panchnama Exh.17, seizure panchnama of motorcycle No. MH-30/R-7931 Exh.18, medical examination

report of victim Exh.33.

7. From the evidence and statement U/s. 313 of Cr.PC. the defence of accused is of total denial and also accused No.1 that because of the enmity, he is falsely implicated.

8. I have heard learned A.G.P and learned defence counsel today.

8. Under these circumstances, following points are arise for my determination and I have recorded my findings against them for the reasons given below :

Sr. No.	POINTS	FINDINGS
01.	Whether prosecution prove that on 19.06.2011 at about 4.30 p.m. at village Kolgaon within the Police Station jurisdiction Malegaon, accused No.1 committed rape on ku. Laxmi. ?	Proved
02.	Whether it is proved that on the aforesaid date, time and place the accused in furtherance of their common intention threatened the complainant Ku. Laxmi to cause death and thus, committed the offence of criminal intimidation ?	Not proved.
03.	What order ?	Only accused No.1 is convicted U/s. 376 of I.P.C.

REASONS.

As to point No.1 :

09. As referred to earlier, prosecution examined P.W. Dr. Ganesh Kulkarni who was Medical Officer, Rural Hospital, Malegaon at the relevant time, P.W. Savita Kankal, mother of victim, P.W. Laxmi Kankal who is victim and complainant, P.W. Santosh Bali who was panch of seizure panchnama and P.W. Janardan Jaiwal who was the Investigating Officer.

10. The facts that complainant Laxmi is putting with her parents at village Kolgaon, she is major on the date of incident i.e. on 19-6-2011, identification of the accused are not disputed.

11. The prosecution alleged that on 19-6-2011 she alongwith her parents, attended the field in the vicinity of village Chandas. They returned from the work after noon time and after taking meals, her parents again went to the field. When she was going to field at about 4.30 p.m., both the accused came on motorbike. Accused No.1 asked her to allow intercourse by accepting amount and he caused her to fall down, removed Salwar and nicker and forcibly committed intercourse. Accused No.2 is alleged to have pressed her face by hand. The evidence is to be discussed firstly oral and on the second phase medical evidence.

12. The evidence of P.W. Savita who is mother of victim shows

that she, her husband, daughter Laxmi attended the field and returned home after noon time. After taking meals, she and her husband proceeded ahead and Laxmi came latter and reported that accused Panjab removed her clothes, asked her to allow intercourse. She also stated that Panjab removed the knot of Salwar and committed rape. She does not know that accused Panjab attempted to be killed by an axe by Amol, Santosh and Babn Morey and that her husband stood surety for Santosh Morey. The learned counsel submitted that accused Panjab intends that the said matter should be compromised and therefore, on refusal, he involved accused because of the rivalry. This is not acceptable for the simple reason that assuming the pendency of a criminal case and alleged assault, that has no nexus between the accused on one hand and happening of the present incident on the other. The submission of learned defence counsel is also not acceptable that the villagers and village politics may go to any extent and it is not possible to speculate it by sitting far away in the city.

13. The evidence of P.W. Savita shows that there is no road adjoining to their field and other field are around their field and labour in the field returned at about 4.30 p.m. The presence of any labour in the field is not borne out from the evidence to believe that inspite of watching the incident, he did not dare to rescue the victim.

14. This takes me to discuss the evidence of victim P.W. Laxmi, she stated that after attending the work, she and her parents

returned noon time, having taken meals and her parents again proceeded. She stated that when she reached near the field of Shendge, both the accused came on motorbike, asked her to accept money and allow intercourse. Accused Panjab Morey caused to fell down, removed her Salwar and nicker and committed rape. She sustained covert injury to her head. The report lodged by her is at Exh.26.

15. Firstly, the learned counsel found seizure panchnama of her clothes Exh.28 though allegedly bears her signature but the witness admitted that it does not bear her signature. It is brought to my notice that she was wearing some clothes which wore at the time of incident and taken other clothes from her house. She admitted that on the same day clothes were given to Police. Panchnama Exh. 28 is about seizure of shirt, Salwarl and nicker of victim Laxmi. It has been proved by Investigating Officer P.W. Janardan Jaiwal.

16. The cross-examination of P.W. Laxmi shows that the incident took place for the first time in her life and she has no experience of intercourse. She admitted that no clothes were on her person when incident took place and her clothes were torn. The torn clothes are not produced. At the same time, it has come in her evidence that she does not know whether the intercourse was complete or otherwise. She admitted that there was no bleeding after the intercourse and that they are caused injuries to her hand

and head while carrying firewood.

17. Before appreciating her evidence with the medical evidence, learned defence counsel submitted that the mobile number is given on the complaint Exh.26 and the victim has stated that she has no cell phone as admitted by her. He denied that said cell phone is of Baban Morey. In view of the evidence of victim Laxmi and her mother Savita, it is to be seen that whether such minor discrepancies virtually affects the prosecution. The learned A.G.P. Submitted that sole testimony of prosecutrix is sufficient and minor discrepancies should not be taken into account.

18. He relied in this behalf in **“Vijay @ Chinee V/s. State of M.P. 2010 All MR (Cri) 3326 (S.C.)”**. There was an appeal before the Hon’ble High Court affirming the judgment of Addl. District Judge, convicting the appellant U/s. 376 of I.P.C. Among other points, it was submitted that prosecutrix was major, no physical injuries were found on examination of prosecutrix and there are discrepancies. The Apex Court observed :

“Thus, the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

19. In the said citation, the case in **“State of Maharashtra V/s. Chandraprakash, A.I.R. 1990 Supreme Court, 658”** it was

-9-

held that woman who is the victim of sexual assault is not accomplice to the crime but is the victim of another person's lust.

The observations are :

“The prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as it is attached to an injured person in case of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony sort of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her

evidence unless the same is shown to be inform and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

20. The learned A.G.P. also relied in a case of “**State of Punjab V/s. Gurumitsingh, A.I.R. 1996 S.C. 1393**” observations of Apex Court are :

The court must, while evaluating evidence remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the feracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.

21. Thus, it is settled principle of law in the case of rape that rapist degrades very sole of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated over all and under the given facts and circumstances. The discrepancies and inconsistencies of negligible nature to be simply ignored.

22. So far as the conduct of the prosecutrix is concerned,

incident is occurring at about 4.30 p.m. in the field. There is no locality of inhabitants in the huts or a traffic road or the villager passers by could have witnessed the incident. Her shouting was therefore redundant.

23. The learned defence counsel submitted that there is no corroboration and relied in “**Suresh V/s. State of Maharashtra, 2008 All MR (Cri) 648**” There was an appeal by appellant against the conviction under Section 376 of I.P.C. Among other points, it was submitted that school leaving certificate of prosecutrix was not placed on record, case is improbable and it is not proved beyond reasonable doubt. The Hon’ble High Court observed as under :

“It is necessary to bear in mind that although no corroboration to the evidence of the prosecutrix is necessary, still it has to be reliable for basing conviction. If there is any doubt about its reliability or trustworthiness, such evidence cannot be treated as a basis for conviction of the accused”.

24. The learned defence counsel submitted that no injuries were found when Laxmi stated that she was naked and therefore, he submitted that the accused is entitled to the benefit of doubt. In this behalf, he relied in “**Bibhishan V/s. State of Maharashtra, 2008 ALL MR (Crio) 517(S.C.)**” There was an appeal before the Apex Court against the judgment of Hon’ble High Court convicting

the accused U/s. 376 of I.P.C. The Apex Court observed :

“As per the evidence of doctor, there was no injury on the body of the prosecutrix Anita. There was no sign of the semen on the private part of the body. Neither her clothes were torn nor there was presence of the hair of the accused on the private part of the accused. The doctor after examining the prosecutrix deposed that the girl was habituated to sexual intercourse”

25. In the present case, victim was examined in Rural hospital by PW. Ganesh Kulkarni on 19-6-2011 and he found following injuries :

“Blunt trauma over right parietal region of skull, caused by hard and blunt object within less than 12 hours. The certificate is at Exh.20.

26. On that day said witness also examined accused Panjab and found the injuries of blunt trauma on right thigh, pain in right thigh. His certificate is at Exh.21. He examined accused Ganesh Morey on the same day and found no sign of external injury. His certificate is at Exh.22”.

27. He was suggested that injury of Laxmi is possible if any hard substance comes in contact. The learned defence counsel submitted that the possibility of favouring the accused should be believed. This is not the case attracting the proposition and the spot panchnama Exh.17 is showing pit to the field having bushes and other trees.

28. The other facet of medical evidence is examination of victim at Exh.33 which is admitted by defence. It appears that on 20-6-2011 victim Laxmi Bhaurao Kanlal was examined when brought by concerned Police regarding injuries, condition over right parietal area is mentioned. Regarding hymen torn admits one or two fingers, tear at 12 'O' clock position. Regarding vaginal canal or servix , no injury is found. The opinion was reserved for vaginal swab examination.

29. The C.A. Report with list Exh.38 about torn ladies Kurta and Salwar, nicker shows that neither blood nor Semen is detected. The C.A. Report of hair, semen and blood sample of accused Panjab shows that no semen is detected and his blood group is of 'O' group. The C.A. Report of blood, vaginal swab and pubic hair of Laxmi mentions that no semen is detected and the blood group is 'B'.

30. In view of this evidence, the defence counsel submitted that negative C.A. report creates doubt even about penetration into the private part of the prosecutrix. He relied in a case of "Chandrakant Pawar V/s. State of Maharashtra, 2011 ALL MR (Cri) 3156". There was appeal against the conviction U/s. 376 and 366 of I.P.C. It was submitted before Hon'ble High Court that there was no evidence about the forcible rape, girl must be consenting party and the evidence is not sufficient that she was of less than 16 years of age. The Hon'ble High Court observed as under :

“The C.A. report Exhibit 29 and Exhibit 30 on (vulval swab and vaginal smear slides of the prosecutrix) reveal that no semen was detected. As noted above, as per C.A. Report Exhibit 42 and DNA test report semen of the accused was found on his underwear as well as on the kurta and salwar of the prosecutrix. It shows that ejaculation had taken place. If ejaculation had taken place after penetration, may be partial, and penis was still in the area of her private part, the semen must have been detected in the vaginal smear or at least on the vulva which is the outer part of the vagina”

31. In that case the prosecutrix was of 15 years of age. There was DNA test report and the Hon'ble High Court convicted U/s. 376 r/w. 511 of I.P.C. In this context, explanation to section 375 of I.P.C. prescribes that penetration is sufficient to constitute sexual intercourse and even the partial penetration may be sufficient to constitute offence of rape. In view of this settled position with due respect to Their Lordships, the accused would not be able to take help of the citation relied upon by him.

32. At the cost of repetition in the present case, medical examination for sexual offence of victim Laxmi is admitted by defence. therefore, the witness is not examined. The prosecution submitted that even non examination of doctor and non production of report would not be fatal. In this behalf, he relied in “**State of Madhya Pradesh V/s. Dayal Sahu, 2005 ALL MR (Cri) 3133 (S.C.)**”. In that case, respondent was convicted U/s. 376 of I.P.C. by trial Court. The Hon'ble High Court set aside the conviction and

state filed an appeal before the Apex Court. The contentions raised by the respondent were that there was contradictions, doctor who medically examined has not entered in the witness box and the evidence was not reliable. The Apex Court observed as under :

“A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor’s report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.

33. Thus, in view of the decision of Apex Court and the settled principle of law that evidence of prosecutrix does not necessarily require corroboration, non examination of doctor and non production of its report is not fatal and even the absence of

reference emission of semen in the evidence of prosecutrix also would not affect the case.

34. The learned defence counsel brought to my notice from the evidence of victim P.W. Laxmi her nicker was having white dot but the C.A. Report is not concurring. The reference of torn clothes is found in the C.A. Report. I have already referred that she is major and shown her age 19 years when report was lodged. There is no delay much less inordinate in lodging the report. The incident was reported to her parents and those are the persons of confidence in the case of molestation, rape or outraging the modesty of a girl. The fact that no injuries were found on the private part of the prosecutrix would not by itself be sufficient to infer that no sexual assault has taken place. The medical examination report mentions the injury of contusion over right parietal area of victim Laxmi.

35. The other circumstance that agricultural operation are not supposed to continue daily but they are periodical and as and when necessity arises. The fact that there is animosity in falsely implicating the accused particularly Panjab More in view of the evidence, facts and circumstances is not believable.

36. Lastly, the learned defence counsel submitted that there should be proper examination, general examination of whole body for marks of violence, especially scratches or bruises resulting from struggle about the mouth and throat, inner side of thighs and knees

caused by forcing her legs apart, true bite marks and love bites etc. These may be guidelines in the medical jurisprudence.

37. He submitted that victim Laxmi admitted that it happened that the accused who pressed her face and she took bite, however, there is no medical evidence or injury certificate in this behalf. Therefore, his submission is acceptable but it is regarding accused No.2 Ganesh Morey.

38. Having considered the evidence discussed above, this Court is of the opinion that the evidence of prosecutrix is credible so far as the offence of rape committed by accused No.1 is concerned. This answers the point partly in the affirmative.

As to point No.2 :

39. To avoid repetition of evidence for the sake of brevity, the allegation is that the accused threatened if the incident is reported, her parents will be killed. The entire evidence of the prosecution is not sufficient to believe the offence of criminal intimidation as prescribed in section 503 of I.P.C. against both the accused. The evidence of Investigating Officer who drawn the seizure panchnamas, spot panchnama, recording of statement of witnesses and after completion of investigation, submitted charge sheet need not be further discussed in detail. With this brief reasoning, I answer the point in the negative.

40. It is heard, I have heard accused No.1 Panjab More on the point of sentence. He requested that since arrest, he is in jail, having old parents and three small children. Under these facts and circumstances and particularly that he is in jail since June 2011, considering to be the adequate and special reasoning, this Court is of the opinion that the following sentence would be just and proper. Hence, the order.

ORDER

1. Accused No. 1 Panjab Natha More, r/o. Kolgaon, Tq. Malegaon, District Washim is convicted of the offence punishable U/s. 376 of I.P.C. and he is sentenced to suffer S.I. for 3 (three) years and to pay fine of Rs. 500/- (Rs. Five hundred) in default to suffer S.I. for six 6 (months), as per section 235 of Cr.P. C.
2. Accused No.2 Ganesh Sahebrao More, r/o. Kokgaon Bk. Tq. Malegaon, District Washim is acquitted of the offence punishable U/s. 376 and 506 r/w. 34 of I.P.C. as per section 235 of Cr.P. C.
3. Accused No. 1 Panjab is acquitted of the offence punishable U/s. 506 r/w. 34 of I.P.C. as per section 235 of Cr.P. C.
4. The period undergone in jail by accused No.1 Panjab Natha More be given as set off U/s. 428 of Cr.P.C.
5. Accused No.2 to comply the provisions of section 437(a) of Cr.P.C. by furnishing bail bonds.

6. The seized Muddemal property being worthless be destroyed after appeal period is over.

Dt/- 24.02.2012 (M.M. Walimohammed)
Assistant Sessions Judge, Washim

