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Exh.

IN THE COURT OF THE SESSIONS JUDGE, SANGLI.
(Presided over by Virendra G.Bisht)

Sessions Case No. 17 of 2017.
(CNR-MHSN01-000208-2017)

State of Maharashtra,
Through – Police Station Kadegaon,
taluka Kadegaon, district Sangli.

Complainant.

Versus

Vikas Kamalu Patil,
age 32 years, occupation agriculture,
resident of Nimsod, taluka Kadegaon,
district Sangli.

Accused.

Offences punishable under Sections 376(2)(l),
376(2)(m). 452, 326, 506 of Indian Penal Code.

Smt.A.M.Satwilkar, Addl.Public Prosecutor for State.
Mr.R.M.Jadhav, Advocate for accused.

J U D G M E N T

(Delivered on this 1st October, 2018).

1. The accused stands prosecuted for the offences punishable under Sections 376(2)(l), 376(2)(m), 326, 452 and 506 of Indian Penal Code.
2. The prosecution case briefly stated is as under :

Informant is resident of Nimsod, taluka Kadegaon, district Sangli. The victim who is lunatic and mentally retarded resides alone in the said village. On 10.10.2016 while the informant was going to attend the nature's call he found gathering of villagers in front of the house of victim. He, therefore, went there and saw the door of the house of the victim opened and she was lying in injured condition with bleeding injuries on her mouth and other parts of the body. Informant then made inquiries with the people. A person by name Rajendra Ananda Pawar who resides nearby the house of victim told him that at about 01.30 a.m. to 02.00 a.m. while he was asleep, his relative by name Bajrang Laxman Pawar knocked the door and requested him to come out. Accordingly he came out of the house. Bajrang Pawar then informed him that when he had got up to attend the nature's call he heard the cries emanating from the house of victim. He then suggested him (Rajendra) to go to the house of victim and find out what had happened. Informant was further told that then Rajendra Pawar and said Bajrang Pawar alongwith a torch went towards the house of victim in the light of street light. Said Rajendra Pawar then flashed the light of torch at the door of victim and saw Vikas Kamalu Patil i.e. the accused, coming out of the house with a weapon like *Koyta* (sickle). When both of them asked him not to run away he threatened them to injure them grievously one by one. Since the accused was dangerous person from the locality both of them got frightened and went away.

3. The prosecution then contends that as the victim was seriously injured after summoning an ambulance she was taken to Rural Hospital, Kadegaon. Police also rushed there and tried to ascertain from the victim but since she was not in a position to speak,

on the advice of the doctor she was rushed to the Civil Hospital, Sangli.

4. While the victim was undergoing treatment, her cousin Santosh Ramchandra Pawar informed informant that victim was raped. Informant accordingly lodged report alleging that the accused by taking disadvantage of physically disabled condition of the victim forcibly raped her and when the latter resisted he assaulted her by means of sickle.

5. Accordingly, C.R.No.109/2016 under Sections 376(2)(l), (m), 326, 452 and 506 of Indian Penal Code came to be registered against the accused. After completion of necessary investigation a charge-sheet came to be laid.

6. In due course the case was committed to the Court of Sessions. Charge (Exh. 8) was framed by my learned predecessor. Accused pleaded not guilty and abjured guilt.

7. When the incriminating circumstances appearing in the evidence against the accused were put to him, he denied them as totally false and expressed ignorance and contended that he is falsely implicated in the crime. In addition, the accused has also given written submissions (Exh. 85). The sum and substance of the written submission is that as the victim is from his village and is not at all lunatic and mentally retarded or disabled. She does labour work and performs day to day activities. According to him, on the day of incident, he was in his house and was asleep and had not stepped out

of the house and, therefore, there was no reason for anybody to see him. Since he has no support in the village he has been implicated in a false crime by trouble shooters from the village. Since the victim has not been examined that in itself shows his false implication.

8. To prove the guilt, the prosecution has examined PW 1 Appaso Chandrakant Pawar, informant (Exh. 15), PW 2 Rajendra Anand Pawar (Ex.18), PW 3 Vilas Shamrao More (Exh. 20), PW 4 Jyoti Santosh Pawar (Exh. 24), PW 5 Santosh Atmaram Pawar (Exh. 26), PW 6 Subhash Tukaram Mulik (Exh.28), PW 7 Dr.Pournima Ashutosh Shringarpure, Medical Officer (Exh.27), PW 8 Dr.Ashish Anandrao Kalekar (Exh. 32), PW 9 Dr.Ravindra Bhumanna Narod (Exh.42), PW 10 Akash Kachaur Gaulushe (Exh.46), PW 11 Dr.Sandip Kaur (Exh. 51), PW 12 Umesh Mahadeo Dandure (Exh. 54), PW 13 Sachin Tukaram Gadave (Exh. 61) and PW 14 Dr.Milindkumar Hundurao Madane (Exh.78).

9. The following points arise for my determination and my findings thereon with reasons are under :

<u>Points</u>	<u>Findings.</u>
1. Whether the prosecution proves that on 10.10.2016 in between 01.30 to 02.00 a.m. at village Nimsod, the accused committed house trespass by entering into house of victim, having made preparation of committing rape on on victim and thereby committed an offence punishable under Sec.452 of I.P.C?	Yes.
2. Whether the prosecution further proves that the accused committed rape on the victim who was suffering from mental	Committed offence u/s. 376(1),IPC.

or physical disability and thereby committed offence punishable under Section 376(2)(l) of Indian Penal Code?

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|----|--|----------------------------------|
| 3. | Whether the prosecution further proves that the accused while committing rape on victim caused grievous bodily injury to her and thereby committed an offence punishable under section 376(2)(m) of the Indian Penal Code? | Caused simple injuries. |
| 4. | Whether the prosecution further proves that the accused voluntarily caused grievous hurt to victim by means of sickle and thereby committed an offence punishable under Section 326 of the Indian Penal Code? | Committed offence u/s. 324, IPC. |
| 5. | Whether the prosecution further proves that the accused committed criminal intimidation by threatening informant and witnesses with the grievous injuries with intent to cause alarm to them and thereby committed an offence punishable under Section 506 of Indian Penal Code? | Yes. |
| 6. | What offence, if any, is committed by the accused? | As above. |
| 7. | What order? | As per final order. |

10. Smt.A.M.Satwilkar, learned Addl.Public Prosecutor, submitted that the prosecution has adduced cogent and convincing evidence to prove the guilt of the accused. The evidences of prosecution witnesses are consistent and inspire confidence. The medical evidence also supports the sexual assault and physical violence committed by the accused on victim. Having regard to the nature of offence committed by the accused on a physically and

mentally challenged victim the accused deserves to be dealt with in accordance with law, argued learned APP. Learned APP also placed reliance in **Nandkumar Sitaram Jadhav Vs. The State of Maharashtra : 2014 ALL MR (Cri) 697**, **Rajesh Bin Vs. State through Public Prosecutor, Panaji : 2014 ALLMR (Cri) 641**, **Sandip Hari Karande and others Vs. The State of Maharashtra : 2015 ALL MR (Cri) 4811**, **Virendrasingh s/o Rampurkar Khairwar Vs. The State of Maharashtra : 2017 ALL MR (Cri) 3475** and **Sachin Raghunath Fulsundar Vs. The State of Maharashtra : 2013 ALL MR (Cri) 4002**.

11. Mr.R.M.Jadhav, learned counsel for the accused, on the other hand, assailed the submissions of learned APP by contending that there is no explanation as to the delayed FIR. There is no satisfactory medical evidence to prove that the victim is physically or mentally disabled lady. According to the learned counsel, the C.A. report is also vague and, therefore, cannot be looked into. Learned counsel also invited my attention to the cross-examination of the prosecution witnesses. He highlighted the inconsistencies and infirmities in the evidence of prosecution witnesses and then summed up that this is a fit case where benefit of doubt must be extended in favour of the accused. Learned counsel also placed reliance in **Kansa Behera vs. State of Orissa : AIR 1987 SC 1507**.

REASONS

As to point Nos. 1 to 6 :

12. According to the prosecution, the accused committed rape on victim who was suffering from mental disability. The charge being serious one deserve to be taken into consideration with all seriousness

and, therefore, let me find out at the first instance whether the prosecution has been able to prove the mental disability of victim by adducing necessary evidence. The evidence herein will necessarily include the evidence coming from the mouth of relatives or neighbours, as the case may be, of the victim and as also the medical evidence.

13. It is also to be noted from the case of prosecution that at the relevant time the victim was residing all alone and in fact she used to reside lonely sans relatives. PW 1 informant (Exh. 15) who is resident of a village to which victim belongs and resides in the neighbourhood, has deposed only a single line in his evidence that victim was mentally retarded prior to the incident. Except this nothing is forthcoming from the mouth of this witness. This kind of vague evidence is not sufficient and will not help this Court to come to the conclusion about the mental condition of the victim. No such evidence is forthcoming to show that the victim because of incomplete development of her mind was incompatible of leading independent life or safeguard herself against any exploitation. Except the informant, no other close relative is brought before the Court by the prosecution to throw light on the mental disability of the victim. So I am now left with the medical evidence only.

14. It is seen from the evidence of PW 14 Dr. Milindkumar Hindurao Madane (Exh. 78) that he examined victim on 10.10.2016. He was told by the relative of victim that she was mentally retarded. On physical examination he found that she was *like* a mentally retarded person. Apart from this, he also conducted local examination and found various injuries on the person of victim.

15. From the evidence of PW 14, Medical Officer, all that one can gather is that this witness found her *like a mentally retarded person*. Admittedly, this witness is not a psychiatrist or expert in psychology. On what basis this witness came to the conclusion of likelihood of the mental retardation suffered by victim is not made clear. Therefore, in my considered view, the observation of this witness is not sufficient to conclude that the victim at the relevant time was suffering from mental disability.

16. PW 7 Dr.Pournima Ashutosh Shringarpure states in her evidence (Exh. 27) that on 11.10.2016 victim was brought in the hospital. As she was mentally retarded, she obtained consent of Chhaya Ramchandra Pawar, sister-in-law of the victim. It is her further evidence that as the victim was mentally retarded and was unable to narrate the history of injuries, she and other doctors obtained history from relative which was given by Appasaheb Chandrakant Pawar (i.e. informant). It is her further evidence that the victim was disabled to tell about the time, date of the incident.

17. From the evidence of PW 7, Medical Officer, let me make it clear that said Chhaya Ramchandra Pawar, sister-in-law of the victim, who could have been a better witness to say about the mental condition of the victim, is not brought before the Court by the prosecution for the reasons best known to it. If the Forensic Medical Examination Report (Exh. 28) proved by this witness is read carefully, then it would be seen that it was the informant who had given the history of victim to the effect that victim is mentally disabled. I have already noted above the evidence of informant.

18. PW 7 Medical Officer on her part admits in her cross-examination that in order to get a person declared as mentally disabled the report of psychiatrist is necessary. However, she denied the suggestion that her opinion as to the victim being mentally disabled was founded on guess work. Thus, no conclusive evidence is forthcoming to prove that the victim was suffering from mental impairment.

19. PW 10 Dr.Akash Kachaur Gaulushe states in his evidence (Exh. 46) that on 09.12.2016 he conducted clinical examination of the victim and found her conscious but disoriented. The evidence of this witness is helpful to the extent that he found victim disoriented and since he had found so, he referred her to psychiatrist ward. That is the only evidence.

20. Then there is evidence of PW 11 Dr.Sandip Kaur (Exh. 51) who also examined the victim on 09.12.2016. She was brought before him with complaints of rape and psychiatric problem. According to him, as there was no facility of consultation of psychiatric problem at Sangli Civil Hospital, she was referred to Miraj Medical College, Miraj. He did nothing except this. Evidence of this witness, therefore, is of no help.

21. Lastly, PW 9 Dr.Ravindra Bhumanna Narod stated in his evidence (Exh. 42) that on 09.12.2016 he was attached to Miraj Medical College as an Assistant Professor of Psychiatric. He examined the victim on 09.12.2016. According to him, the victim was brought before him because she was not answering to the questions put to her

and remained quiet most of the time. On being inquired with police he came to know that the history provided of the patient was insufficient and there was no history regarding previous psychiatric treatment the patient had undergone and her condition. He further states that ordinarily they receive proper information from the relatives of the patient who know the patient for longer time and as the patient was accompanied by her relative and only by police, he could not get adequate information.

22. His evidence then shows that he observed behaviour of the victim and her habits and posed certain questions to her. For initial 10 minutes the victim was not responding to the questions put to her. Therefore, he asked question in depth. She answered them. He also came to know that the victim was grossly aware of the time, place where she was brought. He observed her body language and other aspects to ascertain her mental status and came to the conclusion that the detail investigation of mental condition of the victim was necessary to arrive at proper conclusion. Accordingly, he advised the victim to get admitted in Miraj Government Hospital and to bring adequate information and documents. He lastly states that he could not opine about the mental status of victim due to inadequate history and non-co-operation of the victim and accordingly recorded his observations in case papers. He then proved his note at Exh. 45.

23. If the evidences of PW 14, PW 7, PW 11 and PW 9, all Medical Officers, are read conjointly, then what is certain is that the victim was suffering from some sort of mental deficiency and, therefore, was advised treatment in the psychiatric ward. Therefore, to

conclude it could be said that there is no cogent and satisfactory evidence to hold that the victim at the relevant time was suffering from mental sub-normality. However, her behaviour as noted by the Medical Officers required or was susceptible to medical treatment. Thus, the possibility of some mild mental retardation cannot be ruled out altogether.

24. This takes me to the accusation of rape. PW 1 Appasaheb Chandrakant Pawar states in his evidence (Exh. 15) that on 10.10.2016 in the morning while he was going to attend nature's call he saw people gathered in front of house of victim. He, therefore, went there and peeped inside the door and found one Lilabai Mohan Karande was trying to awake the victim by calling her. However, the victim was not in a position to get up. It is her further evidence that at that time one Rajendra Pawar (PW 2) who was present amongst the gathering told him that one Bajrang Pawar had come to his house at 01.30 to 02.00 a.m. in the earlier night and called him outside the house. Bajrang further informed him (Rajendra) that he heard shouts from the house of victim and also asked him to accompany towards the house of victim to see what had happened. Accordingly both of them went to the house of victim with a torch in the hand of Rajendra Pawar. They found the accused coming from the house of victim in the light of torch as well as the street light. He was having a weapon like scythe in his hand. Both of them asked him to stop. However, the accused threatened them to cut down in case they came forward. Hence being frightened they went to their respective houses and went to bed.

25. The informant then states that somebody from the village called an ambulance and the victim was shifted to Rural Hospital, Kadegaon. Police also reached there. Police tried to take further information from the victim but the victim was not in condition to speak. Doctor advised to shift the victim to Civil Hospital, Sangli, as her health was deteriorating. Sukhadeo Pawar and Santosh Pawar took victim to the Civil Hospital, Sangli. Santosh Pawar called him in the evening and told that the victim was physically abused. He, therefore, lodged the report. The witness then proved his report at Exh. 16.

26. The informant has broadly corroborated the contents of his FIR in his substantive evidence, except the injuries allegedly suffered by the victim during the incident. However, that will not affect the truthfulness of the contents of FIR inasmuch as the PW 2, an eye witness, is duly examined by the prosecution, the evidence of whom is coming immediately hereinafter for discussion.

27. From the evidence of PW 1 informant it is clear that he was the first person to whom PW 2 Rajendra Pawar stated in the early hours of the morning about the happening of the incident, conduct of the accused and the act indulged into by the accused.

28. In the cross-examination a suggestion is given to the effect that the informant filed false FIR against accused in order to involve somebody in the village. It was further suggested that the accused is his classmate which the informant plainly admitted. He was then suggested that since he (informant) was having frequent quarrels

during the school days, he has filed false FIR against him. Suggestion of filing false complaint is denied by informant outrightly. It is quite interesting to note here that in his statement recorded under Section 313 of Cr.P.C., he nowhere states that the because of frequent quarrels during school days, informant has filed false case against him. Therefore, much cannot be read from the above suggestion given to the informant about the false implication.

29. Here comes PW 2, an eye witness to the incident. PW 2 Rajendra Ananda Pawar states in his evidence that he is acquainted with the accused who is residing at Nimsod only. On 10.10.2016 at about 01.30 to 02.00 a.m. he was sleeping in his house. At that time, Bajrang Laxman Pawar knocked the door of his house and called him. He woke up and came out of house. Bajrang informed him that when he came out for answering nature's call he heard shouts from the house of victim. He asked him to accompany him to see what had happened. Accordingly, he and Bajrang went to the house of victim having a torch in his hand. He focused torch light on the door of the house of victim and saw accused coming out of the house. They also saw him in the light installed on the door of house of victim on the DP of MSEDCL. At that time they also saw that accused was holding a weapon like scythe in his hand which was blood stained. They asked him to stop and not to run from the spot, however, the accused threatened them to beat in case they came forward. Accused went away from the spot with the scythe in his hand. As they were frightened, they returned to their houses.

30. The evidence of PW 2 then shows that when he woke up in the morning he found that many villagers had gathered near the house of victim. He also went there and saw the victim. He found victim in injured condition and blows were inflicted on her face with bleeding injuries. Victim was completely naked. Lilawati Karande was trying to call Sonabai but she was not in physical condition to respond. He came out of house and informed this position to Appasaheb Chandrakant Pawar (informant).

31. It is his further evidence that the victim was then shifted to Kadegaon Civil Hospital by an ambulance. Police also reached there and tried to inquire about the incident with victim but she did not tell anything due to her poor physical condition. Medical Officer of Kadegaon Hospital referred the victim to the Civil Hospital, Sangli. Rajendra Pawar went to civil Hospital, Sangli alongwith victim in the van. He informed Appasaheb that victim was raped. Appasaheb then lodged FIR to the police station.

32. What is pertinent to note from the evidence of this material witness is that he is well acquainted with the accused as the accused is from the same village where this witness resides. Equally pertinent to note is the fact that whatever this witness has deposed, has deposed in consonance with the evidence of PW 1 informant. There is total consistency between versions of these two witnesses. There is no denial, much less specific denial, to the version of PW 2 that when he saw accused coming out of the house of victim he was armed with a weapon like scythe which was blood stained. There is absolutely no cross-examination to the fact that scythe was blood

stained. Except general denial, there is nothing in the cross-examination of this witness to impeach his credibility. All that is suggested in the cross-examination, and which is denied, is that as there is dispute between this witness and accused prior to the incident, he has deposed falsely against him. What kind of dispute is between this witness and accused is nowhere brought on record. Neither such defence is taken in the statement under Section 313 of Cr.P.C. by the accused.

33. What is apparent from the evidence of this eye witness is that not only he saw the accused exiting from the scene of offence i.e. from the house of victim but the accused was also armed with weapon like scythe which was blood stained. Then in the next morning he found various injuries on the person of victim. Even his evidence shows that the police tried to ascertain from the victim about the incident at Kadegaon Government Hospital but the victim was not in a position to tell anything because of her poor physical condition. His entire evidence gets due corroboration from the mouth of PW 13 Investigating Officer.

34. Not only the presence of the accused is very much established in the house of victim on the day of incident but the accused was also armed with weapon like scythe which was blood stained. It is also established by eye witness that the victim had bleeding injuries on her person. Now what remains to be seen is whether and to what extent the medical evidence and forensic evidence corroborate the version of this witness.

35. PW 14 Dr. Milindkumar Hindurao Madane states in his evidence (Exh. 78) that on 10.10.2016 he was posted as Medical Officer at Rural Hospital, Kadegaon. The victim was brought before him and on local examination he found following injuries on her person :

- i) Multiple CLW on forehead at left side.
The injuries were scalp deep and 3 cm in length.
- ii) CLW over bridge of the nose ad-mesuring
about 0.5 cm x 05 cm.
- iii) One lacerated wound over left thigh of Sonatai
medially.
- iv) Lacerated wound over right chest. It was in
the form of abrasion.
- v) There was vaginal tear and bleeding.

36. He then verified the M.L.C. papers and proved them at Exhs.79 and 80. It is his further evidence that as there was history of rape he referred the victim to the Civil Hospital, Sangli as gynaecologist was not available in his hospital. On 11.10.2016 gynaecologist was available in the hospital and, therefore, police referred the victim again to his hospital. Accordingly the gynaecologist Mrs.Shringarpure (PW 7) examined her in his presence and in presence of Dr.Kalekar. The report (Exh.28) prepared by Dr.Shrungarpure was shown to this witness and he acknowledged that the said report bears his signature as also signatures of Dr.Shrungarpure and Dr.Kalekar.

37. Concluding part of the evidence of this witness shows that he received a letter (Exh. 72) on 14.10.2016 seeking opinion regarding weapon and he accordingly issued opinion (Exh. 82) thereby opining that the injury on the head of victim was possible due to blow of sickle seized in the present matter. He further opined that the injury to the vagina of the victim was possible due to forcible sexual intercourse.

38. From the evidence of this witness it is clear that the injuries and more particularly the injury No.1 found on the forehead of the victim was possible by means of muddemal property seized in the present matter and, secondly, and importantly enough, vaginal injury was the outcome of the forcible sexual intercourse. There is absolutely nothing in his cross-examination so as to disbelieve or question the testimony of this witness. It is also apt to note here that the victim was also examined by the gynaecologist on the very next day by PW. 7. Let me quickly go through her evidence.

39. PW 7 Dr.Paurnima Ashutosh Shrungarpure states in her evidence (Exh.27) that the victim was examined on 11.10.2016 and while recording the history she through oversight mentioned the date of assault as 10.11.2016. In fact, according to her, the date was narrated by the relative as 10.10.2016 at 01.30 a.m. The victim had sustained bleeding head injury. She found blood stains on saree of the victim and it was torn. The blood stains were present near thigh and vagina. On general physical examination of victim she found following injuries :

- i) Multiple lacerated wound on left forehead of the patient, 3 cm in length and it was scalp deep injury.
- ii) Lacerated wound over bridge of nose, $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.
- iii) Lacerated wound on right side of breast, $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.
- iv) Lacerated wound over left thigh, 5 cm x 5 cm.
- v) Lacerated wound on left waist, $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.

40. According to her the margins were lacerated and colour was reddish blue. Swelling was found on all the injuries. All the injuries were simple in nature.

41. It is her further evidence that on local examination of the victim she found that pubic hairs were present and normal. On genital examination of victim she found libia majora was minor. It was lacerated wound and reddish in colour. Nature of injury was simple. She found no tear over clitoris. She found vaginal tear present at 6 O' clock position, swelling was present, blot clot was present over tear which was reddish blue in colour.

42. According to her hymen injury was present and the edges were swollen. She found clotted blood and edema. She further found perineal tear present 2 cm x 3 cm upto vagina. She found para urethral laceration present. On PS examination, she found para urethral tear present and perennial tear present. She also collected thigh, vaginal swab, swab from the discharge, blood sample, public hair and nail clipping for the purpose of forensic examination.

According to her she had examined the victim after 36 to 40 hours of assault approximately and found injuries present over genital perennial. She came to the conclusion that the force was applied during incident of sexual assault.

43. According to this witness, she and other doctors primarily opined that there was sexual assault but they reserved the final opinion for the report of forensic experts. He then proved the report at Exh. 28 which is signed by him and as also by PW 14 Dr.M.H.Madane and Dr.Kalekar (PW 8). It is her further evidence that lastly she opined that there was sexual intercourse with the victim with force, on the basis of C.A. reports. She then proved her final report which is at Exh. 29.

44. This witness was also shown the weapon i.e. Muddemal Article A, viz. scythe and she opined that the injuries caused to the victim were possible by the said weapon.

45. If the evidence of PW 14 Medical Officer and PW 7 Medical Officer, who had an opportunity to examine the victim is read in conjunction, then they sufficiently corroborate each other's version. Like PW 14, there is also nothing in the cross-examination of PW 7 prejudicial to the case of prosecution. The only admission given by PW 7 Medical Officer in her cross-examination is that the lacerated wound cannot be caused by sharp edged weapon and that such injuries are possible by hard and blunt side object. Having regard to the testimonies of these two material witnesses, possibility of accused having used the blunt side of the weapon while causing laceration on

the person of victim cannot be ruled out altogether. If the evidence is read in totality then in my considered opinion, the reports made by above said medical officers are most material circumstantial evidence and prove that the victim was violated forcibly, both physically and internally i.e.in the form of ravishment.

46. Here, I cannot be unmindful of the fact that the accused was also medically examined on 12.10.2016. PW 8 Dr.Ashish Anandrao Kalekar states in his evidence (Exh.32) that patient, i.e. accused narrated history of assault at 01.30 a.m. on 10.10.2016 but did not tell any history of sexual intercourse with any lady or ejaculation. On general examination he found that the accused had not changed clothes after the incident and he also noted that there were blood stains on the shirt of accused and two buttons were missing. However, he did not find any injury on penis. He gave provisional opinion that the accused was potent and capable of sexual intercourse. He then proved the certificate (Exh.33).

47. The striking feature of the evidence of PW 8 Medical Officer is that while examining the accused he noted blood stains on his shirt, two buttons were missing and the pocket of the shirt was torn. This evidence persuades me immediately to go through the evidence of PW 5 panch witness in whose presence the clothes of accused were seized.

48. PW 5 Santosh Atmaram Pawar states in his evidence (Exh. 26) that on 12.10.2016 while he was returning home after closing his shop alongwith one of the customer, namely, Shankar

Chavan police stopped them and asked them to come to the police station. Accordingly they went there. Police then requested them to act as panch witness to which he consented. It is his further evidence that accused produced his clothes which were removed by him at the time of incident. Clothes were including reddish white coloured shirt of full sleeves. There was a blood stain on the left shoulder and two blood stains on the other places of the shirt. There was black coloured pant with two pockets, a white coloured banian of Isa company and a blue coloured underwear of Lux company make. The clothes were seized in their presence under a panchanama. He then proved the seizure panchanama at Exh. 27. Except general denial, there is nothing in his cross-examination to the credit of defence. It is relevant to note that the clothes of the accused were sent to the forensic science laboratory for necessary analysis.

49. The prosecution has also produced on record C.A. report which is at Exh. 86. Description of articles at Sr.Nos. 4 to 7 are the clothes of accused and version of PW 5 finds corroboration from this description. From the report it is crystal clear that Exh.4 i.e. full shirt wrapped in paper was having few blood stains ranging from 0.1 cm to 6 cm. in diameter spread at front side lower portion and there was human blood and the group was 'B'. Then there is C.A. report Exh.88 which shows that blood group of the victim was 'B' and that of accused was 'A' as seen from C.A. report Exh. 87. This clearly proves that the shirt of accused was having blood stains of blood group 'B' belonging to victim. When these C.A. reports were brought to the notice during the examination under Section 313 of Cr.P.C., accused failed to give any explanation about existence of blood having blood group 'B' on his

shirt, as seen form C.A. report Exh. 86. This certainly is a positive circumstance which needs to be kept in mind while assessing the over all case of the prosecution.

50. There is seizure panchanama of the clothes of victim as well and for that purpose I take note of evidence of PW 4. PW 4 Jyoti Santosh Pawar states in her evidence (Exh.24) that on 12.10.2016 she was called by Kadegaon police in the house of Sonatai Pawar. Chhyaya Pawar, who according to PW 7 Medical Officer is sister-in-law of the victim, handed over the clothes on the person of victim to police. Those clothes were worn by the victim at the time of incident and included black blouse and white saree. There were blood stains and oily stains on the said saree. Said clothes came to be seized in her presence and under her signature and as also under the signature of one Uma Pawar. She also identified the thumb impression of Chhaya Pawar and proved the contents and her signature. The seizure panchanama is at Exh. 25. Again there is nothing advantageous to the credit of defence in the cross-examination, except general denial.

51. C.A. report (Exh. 86) also shows that the blouse and saree belonging to the victim were having blood stains. ABO grouping of blood stains on the blouse remained inconclusive but species origin was that of human. Saree was having blood stains of 'B' group which in the light of C.A. report Exh. 88 is that of victim herself. This is a circumstance which clearly indicates the injuries found on the person of victim. Then there is panchanama of the scene of occurrence.

52. PW 6 Subhash Tukaram Mulik states in his evidence (Exh. 28) that on 11.10.2016 he was called by Kadegaon police in the house of victim. Accordingly he and Mohan Karande went there. Police asked them to act as panch witnesses to which he consented. It is his further evidence that the spot of incident was shown by Appasaheb Chandrakant Pawar (PW 1-informant). Informant opened the lock of that house. They then entered into the house. There was no light in the house. Police had brought torches alongwith them. They saw the situation in the house with the help of those torches. Household articles were scattered. One parrot green coloured blanket was kept in the room having blood stains and there was oily smell in the room. Police seized the blanket, sealed in brown paper with lacquer. Panchanama was accordingly prepared in their presence. Police obtained their signatures on the label and it was pasted on the said blanket. He then proved the seizure panchanama at Exh. 29.

53. During the course of argument learned counsel for the accused seriously questioned the role of informant by pointing out that he had no business either to lodge the FIR or to show the spot of occurrence. According to the learned counsel the victim ought to have shown the place of occurrence if at all the incident had occurred. In such a situation, according to the learned counsel, preparation of spot panchanama has no evidentiary value. I think, learned counsel is not on the right track when he argues so. One cannot lose sight of the fact that the prosecution has come with a theory that at the relevant time the victim was suffering from mental disability. This aspect has been considered in extenso by me and conclusion to that effect is also recorded. Similarly, it is also to be kept in mind that right from the

witnessing the condition of victim till lodging of the report, informant kept abreast of himself about the development subsequent to the happening of the incident and in such circumstances his conduct of showing spot of occurrence to the police was quite natural and cannot be questioned by any stretch of imagination.

54. Reverting back to the seizure of blanket, which according to the C.A. report (Exh. 86) was a quilt, was having moderate number of blood stains ranging from 0.1 cm to 5 cm in diameter spread at places. The blood was of human origin but ABO grouping remained inconclusive. This again indicates that the blood found on the quilt was the outcome of the bleeding injuries sustained by the victim in the incident.

55. The last important article to be discussed is the weapon of offence, namely, scythe (Koyta), seized during the course of investigation. In this regard the evidence of PW 3 assumes significance.

56. PW 3 Vilas Shamrao More states in his evidence (Exh. 20) that on 14.10.2016 he was serving as a draftsman in the office of Taluka Agricultural Officer at Kadegaon. PWI Gadve of Kadegaon police station issued a letter to the Agricultural Officer to provide a person to act as a panch witness. Accordingly, Agricultural Officer issued him a letter directing him to appear as panch witness in Kadegaon police station. Accordingly, he and one Chavare of his office went to Kadegaon police station at 11.30 a.m. Police officer then told them the name of one unknown person as Vikas Kamalu Patil, resident

of Nimsod. It is his further evidence that the said person disclosed before them that he committed rape on the victim on 10.10.2016 at about 01.00 to 01.30 a.m. and as the victim resisted for the same he beat her with the scythe used for cutting sugarcane. The said person further disclosed that he had kept the scythe in the house only at Nimsod village and then showed his readiness to produce scythe. Accordingly disclosure statement was reduced into writing in their presence. He then proved his signature and thumb impression of accused on the disclosure statement at Exh. 22.

57. PW 3 further states that pursuant to the recording of disclosure statement the accused took them and police officials to his house. There was one bed. Accused then produced one scythe ordinarily used for cutting sugar cane. It was kept under the said bed. Police wrapped the said scythe in one sky blue coloured plastic paper and sealed the same with the help of lacquer. A panchanama was accordingly drawn in their presence. He then proved the seizure panchanama at Exh. 23. During the course of evidence he also identified the weapon of offence before the court being the same which was seized in his presence.

58. From the evidence of this witness, who is a government servant, it is quite clear that the accused gave disclosure statement in his very presence about the weapon (scythe) used by him in the commission of offence and its concealment. Subsequent to the said disclosure statement the accused took him and others to the house and from there produced the scythe which was kept under the bed. Thus, the entire statement of the accused including the fact that he had kept

scythe under bed is admissible under Section 27 of the Evidence Act. Here it may be pointed out that disclosure statement (Exh. 22) and consequent discovery and seizure (Exh. 23) thereto is also proved by PW 13 Investigating Officer in his examination-in-chief.

59. The disclosure statement as well as seizure panchanama made subsequent thereto fully satisfy the requirement of Section 27 of the Evidence Act.

60. Cross-examination of this witness also needs to be taken for discussion. According to this witness they did not see any stain on the said scythe. Although the evidence does show that after production of the scythe the same was seized, nothing is there, either in the examination-in-chief or in the cross-examination, to show that this witness had an occasion to see the scythe very closely. Rather, the evidence in the cross-examination shows otherwise. According to this witness they did not see the scythe from outside but they saw it when accused took it out from under the cot. This evidence necessarily implies that the witness was at a certain distance and saw the taking out of scythe from under the cot. Even otherwise, this negligible aspect should not detain me for the reason that PW 2 in his examination-in-chief has clearly stated in so many unequivocal terms that when accused came out of the house he was holding scythe in his hand which was blood stained. And this fact remained uncontroverted.

61. I have already, during the course of my appreciation of evidence of PW 2, pointed out that the evidence of PW 2 having seen scythe stained with blood has absolutely gone unchallenged in the

cross-examination. Therefore, what is material is that scythe was stained with blood. This being so, I again take recourse to the C.A. report (Exh. 86).

62. C.A. report (Exh. 86) clearly shows that Exh.8 i.e. Koyta was stained with blood on blade. It was human blood but ABO grouping remained inconclusive. Learned counsel for the accused during the course of argument vehemently argued that the report of the Chemical Analyser is quite vague as no ABO grouping of blood stains found on the weapon of offence was detected and, therefore, the same cannot be taken into consideration. To buttress his contention learned counsel has placed reliance in **Kansa Behera Vs. State of Orissa : AIR 1987 S.C. 1507**. The Hon'ble Apex Court at para 11 held as under :

“11. As regards the recovery of a shirt or a dhoti with blood-stains which according to the seologist reports were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small blood-stains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the blood-stains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.”

63. It may not be out of place to mention here that in the instant case, however, position is different. Dimensions of the blood stains found on the shirt of the accused are duly mentioned by Chemical Analyser in his report. Moreover, the blood stains on saree of victim and shirt of accused was found to have contained blood of group 'B', of the victim.

64. If the learned counsel wants to extend the analogy or ratio laid down in the said case to the case in hand, then in my humble opinion, the over all evidence in the present case is overwhelming and merely because result was inconclusive the whole prosecution case cannot be thrown to the winds. I may usefully refer, in support of my conclusion, the observations of Hon'ble Apex Court in the following cases.

65. In **State of Rajasthan Vs. Teja Ram : (1999) 3 SCC 507** the Hon'ble Apex Court concluded that even when the origin of the blood cannot be determined, it does not necessarily prove fatal to the case of the prosecution. In that case, the murder weapons had been recovered with blood on them, and the origin of the blood on one of the weapons could not be determined. Therein, the Court held as follows :

“25. Failure of the serologist to detect the origin of the blood due to disintegration of the serum in the meanwhile does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it happens, either because the stain is too insufficient or due to haematological changes and plasmatic coagulation

that a serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such guesswork that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, no benefit can be claimed by the accused.

26. Learned counsel for the accused made an effort to sustain the rejection of the abovesaid evidence for which he cited the decisions in Prabhu Babaji Navle Vs. Stae of Bombay (AIR 1956 SC 61 : 1956 Cri LJ 147), and Raghav Prapanna Tripathi Vs. State of U.P.(AIR 1963 SC 74 : (1963) 1 Cri LJ 70). In the former, Vivian Bose, J. has observed that the chemical examiner's duty is to indicate the number of bloodstains found by him on each exhibit and the extent of such stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that "blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment". In the latter decision, this Court observed regarding the certificate of a chemical examiner that inasmuch as the blood stain is not proved to be of human origin the circumstance has no evidentiary value "in the circumstances" connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was

seized from a drycleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for drycleaning, it was not bloodstained.

27. We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood, the circumstance arising from recovery of the weapon would stand relegated to disutility. The observation in the aforesaid cases were made on the fact situation existing therein. They cannot be imported to a case where the facts are materially different.”

66. In case of **Prabhu Dayal Vs. State of Rajasthan : 2018(3) Crimes 95 (SC)**, the Hon'ble Apex Court at para 12 held as under :

“12. The reports of the Forensic Science Laboratory as well as those of the Ballistic Experts have been perused by us. The Forensic Science Laboratory report discloses that the samples collected from the scene of the offence had bloodstains of human origin. However, since the bloodstains were disintegrated by the time the bloodstains were examined by the Forensic Science Laboratory, the blood group could not be determined. For the same, the accused cannot be unpunished, more particularly when the bloodstains were found of human origin.”.

67. In view of above pronouncements and having regard to the evidence discussed so far, I hold that the finding of human blood on the clothes of the accused and knife duly corroborates the version of the prosecution witnesses regarding the incident.

68. One more circumstance. As per additional statement (u/s.313) of the accused on the date of incident he was asleep in the house and therefore there was no reason for others to see him out of his house. Neither accused entered into the witness box nor any of his family member(s) to substantiate the said fact. Therefore, the false explanation so given, in the light of evidence on record, becomes an adverse circumstance against him, enhancing his involvement in the crime.

69. The last witness of the prosecution is PW 13 Investigating Officer (Exh. 61). PW 13 Sachin Tukaram Gadave has deposed in his evidence (Exh. 61) about various steps taken by him during the course of investigation right from the time of preparation of panchanama, referral of various articles seized during the course of investigation to the Forensic Science Laboratory and recording of disclosure statement of the accused. His whole examination-in-chief is consistent with the testimonies of the witnesses discussed so far by me. I do not find any infirmity in his evidence nor there is anything in the cross-examination.

70. There are two more submissions advanced by learned counsel for the accused. One, about the delay in filing the FIR. I do not find merit in the submission for the reason that it is only in the evening the informant came to now that the victim was physically abused by the accused from Santosh Pawar who had called him from the hospital. Even otherwise, in the facts and circumstances of the case, I do not find any reason to question the timing of filing of FIR. Hence the submission being devoid of merit stands rejected.

71. Two, non-examination of victim. In **State of Himachal Pradesh Vs. Gian Chand: AIR 2001 SC 2075**, the offence was under Section 376 IPC. In this case the Hon'ble Apex Court held that :

'Non examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record, howsoever, natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court leveled against the prosecution should be examined in the back ground of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution. The court has first to assess the trustworthiness of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined”.

72. Similarly, various judgments filed by learned APP also support the above proposition. But those cases are distinguishable on facts.

73. In the case in hand, I have already pointed out the mental health of the victim at the time of incident and in my considered opinion that is the reason for not bringing her before the Court. Moreover, since other evidence proving criminal act of accused is thereon record, I hold that non-availability of victim is no ground to question the case of prosecution.

74. Having regard to the discussion made so far I hold that there is concrete and positive evidence of eye witness which is supported and corroborated by the medical evidence. Guilt of the accused is proved as the prosecution has established that not only the accused committed house trespass but victim was subjected to rape and injuries. Further the accused committed offence of criminal intimidation by threatening the informant with injuries. Thus, the accused is guilty of the offences of house trespass, rape, voluntarily causing hurt by dangerous weapon and criminal intimidation, punishable under Sections 452, 376(1), 324 and 506 of Indian Penal Code, respectively. The points stand answered accordingly.

(At this stage, dictation of judgment is suspended
and accused is called upon to hear on the point
of sentence)

Sangli.

Date : 01.10.2018.

(V.G.Bisht)
Sessions Judge, Sangli.

75. Smt.A.M.Satvilkar, learned Addl.Public Prosecutor, submitted that having regard to the fact that the accused committed rape on victim who was suffering from mental ailment and as also inflicted injuries on her person, maximum possible sentence be inflicted on the accused.

76. Mr.R.M.Jadhav, learned counsel for accused, submitted that the accused is in jail since last more than 24 months and, therefore, a lenient view be taken while awarding the sentence.

77. I have also heard the accused in person. According to him minimum possible sentence be awarded.

78. Before adverting to the aspect of punishment, I may point out that the Hon'ble Apex Court in the case of **Ankush Shivaji Gaikwad Vs. State of Maharashtra : AIR 2013 Supreme Court 2454** held that as Section 357 of the Criminal Procedure Code confers a duty on the Court to apply its mind to the question of compensation in every criminal case, it necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case and to record reasons for awarding or refusing compensation.

79. In the case in hand, from the facts and circumstances of the case it is more than clear that since the victim herself was not in a proper frame of mind because of some sort of mental deficiency, and, therefore, was also not brought before the Court, compensation, if any, awarded would not go in the right hand. Even otherwise, no close relative or distant relative is examined by the prosecution and even if he or she had been examined, he or she would not have utilized compensation amount for the benefit of victim. Apart from above, nothing is brought on record by the prosecution establishing that the accused is well placed financially or in a position to spare compensation amount. In such circumstances, this Court in its wisdom decide not to award compensation under Section 357(3) of the Criminal Procedure Code.

80. This takes me to the sentence. The act committed by the accused is condemnable in all possible form. The victim being hapless

and helpless woman fell prey to the lust of accused. Facts and circumstances warrant that the accused be treated with heavy hands. Undeserved indulgence or liberal attitude in awarding minimum sentence is not called for. No extenuating circumstances are brought on record to deviate from minimum sentence prescribed for the offence of rape.

81. I am of the considered view that the ends of justice would be met, if the accused is sentenced to imprisonment as under. Hence the following order :

O R D E R

Accused Vikas Kamalu Patil is hereby convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 376(1) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1000/-, in default to suffer further rigorous imprisonment for one month.

Accused is further convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 452 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.1000/-, in default to suffer further rigorous imprisonment for one month.

Accused is further convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section

324 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer further rigorous imprisonment for fifteen days.

Accused is further convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 506 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for six months and to pay fine of Rs.500/-, in default to suffer further rigorous imprisonment for fifteen days.

Substantive sentences to run concurrently.

Accused is in jail from 10.10.2016 till date. Hence, he is entitled for set off under Section 428 of the Code of Criminal Procedure, for the period during which he was in custody.

Muddemal property, article Nos. 1 to 8, being worthless be destroyed after the period of appeal is over.

Copy of judgment be given to the accused free of costs immediately.

Sangli.

Date : 01.10.2018.

Sd/xxx
(V.G.Bisht)
Sessions Judge, Sangli.
