
(2012) 09 BOM CK 0175
In the Bombay High Court
Case No : Criminal Appeal No. 545 of 2011

Abhang Jadhav

APPELLANT

Vs

The State of Maharashtra and Mahadabai

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 366, 376

Citation : (2013) BomCR(Cri) 16

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : E.S. Murge holding for and Mr. A.S. Bayas, for the Appellant; N.R. Shaikh, Assistant Public Prosecutor, for the Respondent

Judgement

Shrihari P. Davare, J.—Heard respective learned counsel for the parties. By the present appeal, the appellant i.e. original accused has taken exception to the conviction and sentence imposed upon him by way of judgment and order, dated 26.8.2011, rendered by the learned Additional Sessions Judge, Udgir in Sessions Case No. 4 of 2011, thereby convicting him for the offence punishable u/s 366 of the Indian Penal Code and sentencing him to suffer S.I. for 7 years and to pay fine of Rs. 5,000/-, in default of payment of fine to undergo S.I. for six months; and also convicting him for the offence punishable u/s 376 of the Indian Penal Code and sentencing him to suffer S.I. for 7 years and to pay fine of Rs. 5,000/-, in default of payment of fine to undergo further S.I. for six months.

2. The factual matrix, which gave rise to the present appeal, is as follows :-

The first informant i.e. P.W.3-Rajkumar Choukate lodged a report with Jalkot police station on 15.10.2010, alleging that when he was at his house on 14.10.2010 at about 6.00 p.m., his sister-in-law Mahadabai informed him that at about 4.00 p.m. the accused committed rape on his sister, namely P.W.6-Shilabai in the lane behind the house of Shetiba Sawai. Accordingly, he made inquiry with P.W.6-Shilabai and thereupon she disclosed that when she was going to her

uncle's house at about 4.00 p.m., the accused met her near the house of Govind and forcibly lifted her by pressing her mouth and carried her into a lane and the accused fell her down and committed forcible intercourse upon her. Thereupon, she shouted loudly, but nobody arrived there for her help, and therefore, she rescued herself from the clutches of the accused and came to the house. She further stated that she was having pain in her private part. P.W.3-Rajkumar also again confirmed from her, but she reiterated the same thing. Hence, P.W.3-Rajkumar went to the President of Tanta Mukti Samiti, and therefrom he along with his sister and said President of Tanta Mukti Samiti approached the police station and lodged the report against the accused, which was registered under C.R. No. 99 of 2010 for the offence punishable under Section 376 of the Indian Penal Code.

3. P.W.7-Manisha Bhimrao was working as Deputy Superintendent of Police, Ahmedpur at the relevant time, who took over the investigation of the afore said C.R. Accordingly, she visited scene of offence and prepared the spot panchanama and seized the pieces of bangles from the spot. Thereafter she seized the clothes of the victim and the clothes of the accused under the respective panchanamas. She also recorded the statements of the witnesses. Moreover, she sent the victim to the hospital along with a letter. So also, on the next day, she sent the accused to the medical hospital along with a letter. She also instructed the Medical Officer of the hospital to collect the blood of the victim and accused and same was collected accordingly. She also sent the police personnel to Mumbai to bring D.N.A. kit. She recorded the statement of the victim on 23.10.2010 and then sent the blood samples of the accused and victim in sealed condition for D.N.A. test to Mumbai. Besides, seized articles were sent to the Chemical Analyser's office for examination purpose, and the chemical analysis reports thereof were received which are marked at Exhs. 35 and 36 respectively.

4. Thus, after completion of the investigation, charge sheet was filed against the accused by P.W.7-Dy. S.P. Manisha Bhimrao before the learned Judicial Magistrate, First Class, Udgir. However, since the offence with which the accused was charged was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Udgir committed the said case to the Court of Sessions. Accordingly, learned Sessions Judge framed the charge against the accused on 2.6.2011 at Exh. 6 for the offences punishable under Sections 366 and 376 of the Indian Penal Code. However, the accused pleaded not guilty to the said charges and claimed to be tried.

5. To substantiate the charges levelled against the accused, the prosecution examined as many as 7 witnesses as mentioned below.

PW1 Dr. Amjadkhan Pathan, who examined the accused on 16.10.2010.

PW2 Dr. Aruna Vidyadhar Mhaske Patil, who examined the victim Shilabai.

PW3 Rajkumar Choukate, complainant and brother of the victim, who lodged the F.I.R. Exh. 22.

PW4 Tulshiram Pandurang Nadarge, panch to panchanama of seizure of clothes of accused and victim - turned hostile.

PW5 Shivaji Tulshiram Mundkar, panch to the spot panchanama - turned hostile.

PW6 Shilabai - victim.

PW7 Dy. S.P. Manisha Bhimrao, investigating officer.

6. The defence of the accused is of total denial and he stated that PW3 Raju and accused himself were doing the tailoring work. There were more customers with the accused, and the accused and PW3 Raju were friends and accused used to visit his home. However, later on PW3 Raju told him not to come to his house. He also stated that Raju was suspecting that the accused had relations with his wife and on that count there was exchange of words, and therefore, he has filed false case against the accused.

7. However, the accused neither examined himself on oath nor examined any defence witness in support of his defence.

8. After considering oral as well as documentary evidence produced/adduced by the prosecution, learned Trial Court found the accused guilty and convicted and sentenced him as mentioned herein above.

9. Being aggrieved and dissatisfied by the said conviction and sentence, the appellant has challenged the same in the present appeal and prayed for quashment thereof and urged to acquit him for the offences with which he is charged.

10. Learned counsel for the appellant submitted that victim Shilabai has not filed any complaint, but the complaint has been filed by her brother PW3 Rajkumar, which is hear say evidence. Moreover, it is submitted that PW3 Rajkumar, who is the brother of victim Shilabai, implicated the appellant in the present case falsely due to their business rivalry, since the appellant and accused are engaged in the similar business of tailoring. He further submitted that there is another reason to implicate the accused in this case falsely by the complainant that the complainant suspected that the accused was having illicit relations with his wife. Accordingly, the learned counsel for appellant canvassed that the appellant is a young boy of 30 years and he is the only earning member in the family and he is in jail since October, 2010, and therefore, urged that lenient view be taken, and present appeal be allowed.

11. He further submitted that in so far as medical evidence is concerned, PW2 Dr. Aruna stated that there was no evidence of violence on the body of the victim, as well as there was no evidence of injuries over the private part and anywhere on her body. She also stated that there is possibility of blood stains on the clothes of any member facing menstrual cycle and no marks were found on the body as well as private part of the victim. According to her, the rupture is possible due to cycling, playing and when she is in mood of sex and due to the hand job.

Accordingly, he submitted that the medical evidence does not support the case of prosecution and same is in favour of the appellant.

12. As regards testimony of victim PW6 Shilabai, the learned counsel for the appellant pointed out that her version is contradictory in the examination-in-chief and in the cross-examination. Moreover, it is evident from her testimony that she is mentally retarded girl, and therefore, such testimony cannot be believed. Besides, he pointed out that there is delay of one day in lodging the first information report, which is fatal to the prosecution, since the said delay has not been explained convincingly. Moreover, he submitted that the testimony of PW6 Shilabai is not corroborative with the other witnesses. So also, the report of the Chemical Analyser cannot be of any help to the case of the prosecution. Hence, he urged that present appeal be allowed and conviction and sentence imposed upon the appellant be quashed and set aside and he be acquitted for the offences with which he is charged.

13. Shri N.R. Shaikh, learned A.P.P. for the respondent countered the said argument and opposed the present appeal vehemently and submitted that the testimony of victim PW6 Shilabai is the natural and truthful version, which connects the accused with the crime, and hence, no corroboration is required therefore, since the case in hand is the case of rape. He also submitted that the appellant has committed heinous offence by committing rape upon the simpleton girl i.e. victim Shilabai and her testimony is specific in respect of the charge of rape by the appellant upon her and same has been corroborated by the medical evidence of PW2 Dr. Aruna. Moreover, he pointed out that the accused belonged to the village of victim, namely Tiruka and both were knowing each other and the accused used to visit house of the victim and established the proximity to the victim. According to the learned A.P.P., the medical evidence of PW2 Dr. Aruna discloses that the clothes of the victim were stained with blood (over inner clothes) and on examination of her private part, she found that hymen was ruptured and there were tears at 4, 6, 8, 11 O'clock position and tears were fresh and margins congested and she opined probability of sexual intercourse and its approximate duration was within 48 hours. He relied upon the judicial pronouncement of Apex Court in the case of Sri. Narayan Saha and another vs. State of Tripura, reported at AIR 2005 SC 1452 (1), as follows :-

A 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, 1872 nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under S.118 and her evidence must receive the same weight as is attached to an injured in cases 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 S. 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 short 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 infirm 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.

14. Relying upon the afore said observations, learned A.P.P. submitted that testimony of victim PW6 Shilabai is reliable and trustworthy and learned Trial Court rightly believed the same. He further submitted that after scrutinizing and assessing the prosecution evidence on record, the learned Trial Court has convicted and sentenced the appellant rightly and there is no glaring mistake therein, and accordingly, supported the impugned judgment and order, dated 26.8.2011 and submitted that there is no necessity to interfere therein in the present appeal, and consequently, urged that present appeal be dismissed.

15. In order to advert upon the submissions advanced by the learned counsel for the parties, it is necessary to deal with the material evidence adduced/produced by the prosecution and in the said context, at the out set, coming to the deposition of victim herself namely PW6 Shilabai, who stated that she knew the accused who was present in the court, who belongs to village Tiruka. She also stated that she was going towards the house of Anna. At this juncture, accused came running from behind her and he removed her nicker by lifting her and committed rape on her. She shouted. However, the accused pressed her mouth and pressed her arm and breast. She further stated that accused did not leave her in spite of the fact that she shouted. She disclosed the afore said fact to Mahadabai. PW3 Rajkumar, who is brother of victim and complainant, carried her to the hospital. The doctor took her blood. She again identified the accused before the court as the same person.

16. In cross-examination, she stated that the accused always used to visit her house and he used to come to her house in presence and in absence of her brother PW3 Raju. She stated that police did not record her statement. She further stated that she does not know what police have recorded in her statement. She also stated that she does not know whether police have recorded her statement or not. She also stated that her memory was weak, and therefore, she does not remember what happened. She could not tell exactly what happened. She did not know what PW3 Raju has stated before the police. Since she was mentally retarded, she used to stay in her house. She was illiterate.

Even she could not tell the year of marriage of her brother. She admitted that she cannot identify the accused. She stated that she does not know the accused, and that she does not remember the persons. She also stated that she does not know how the males wear the clothes. She also stated that she does not know how a man sleeps with woman and how a woman sleeps with man.

17. She further stated that accused never kept relations with her. On the date of incident, she was in her house for the whole day. The accused did not meet her on that date. She does not understand menstruation period. She also admitted that she did not tell police and did not give any written complaint. She also stated that whatever is done is done by Raju. She denied that the accused used to talk with the wife of her brother Raju. She also denied that the accused did not leave her and did not commit rape upon her. She further denied that she deposed falsely at the instance of her brother Raju. In the beginning of statement of PW6 Shilabai, learned Trial Court made an endorsement that witness appears to be some what mentally retarded, and therefore, she was given stool to stand up on it and to give her deposition as she was dwarf in height. She has categorically stated in her deposition that she knows the accused before the court and the accused is the same person who committed rape upon her and who was present in the court.

18. However, it appears that confusing question was put to her in the cross-examination, to which she replied that she cannot identify the accused and even does not know the accused. Apart from that, she has narrated the occurrence of the incident categorically, wherein she stated that the accused came running from behind her and removed her nicker and committed rape upon her. Thereupon she shouted, but the accused pressed her mouth and pressed her arm and breast and the accused did not leave her in spite of her shouting. She disclosed the said incident to Mahadabai and her brother PW3 Rajkumar removed her to the hospital.

19. Pertinently, it has come in the cross-examination that accused always used to visit her house and also used to come to her house in presence and in absence of PW3 Raju. The said text of her deposition clarifies that since the accused used to visit her house frequently, she knew the accused. Pertinently, the afore said very act of committal of rape by the accused upon the victim PW6 Shilabai has gone unchallenged in the cross-examination. True it is that she stated in the cross-examination that her memory is weak and she does not remember what happened and she was mentally retarded, and therefore, she used to stay in the house and she is also illiterate, but it is material to note that in spite of the said position, she categorically attributed specific role to the accused i.e. committal of rape upon her by him by pressing her mouth and by pressing her arm and breast.

20. It also cannot be overlooked that she stated in the cross-examination that police did not record her statement, but again misleading question was put to her that she does not know what police have recorded in her statement. In fact, when she stated that police did not record her statement, it was not expected to

ask about the contents of the said statement whereon she replied that she does not know what police have recorded therein, and therefore, she further stated that she does not know whether police have recorded her statement or not. I am not oblivious to the fact that the testimony of such witness is to be considered with close scrutiny. However, considering the totality of the testimony of PW6 Shilabai, it cannot be ignored that she ascribed specific role to the accused and her testimony spelt out that the accused committed rape upon her, and accordingly, said testimony amounts to incriminating piece of evidence against the accused.

21. Turning to the deposition of PW3 Rajkumar. who is the brother of the victim and complainant in the present case and he has stated that PW6 Shilabai is his sister, who is a simpleton girl. On 14.10.2010 she was going to her uncle's house. At this juncture, he was at his house. Mahadabai i.e. his sister-in-law came to his house and informed him that the accused had taken Shilabai and committed rape on her in a lane near the house of Shetiba Sawai. Thereafter his sister came to the house in disturbed condition. Her shirt's buttons were broken. PW3-Rajkumar made inquiry with her. Thereupon she told him that at about 5.00 p.m. she was going to her uncle's house and on the way accused met her. He pressed her mouth by lifting her and carried her into a lane near the house of Shetiba Sawai and the accused fell her down and removed her nicker, pressed her chest, removed the chain of his pant and committed rape on her. Thereupon, she shouted, but nobody arrived thereto rescue her. She also disclosed to him that the accused forcibly committed rape on her. P.W.3-Rajkumar went to the President of Tanta Mukti Samiti and informed him about the incident. Thereafter he went to the police patil and informed him about the incident, and then along with his sister i.e. victim, police patil and said President of Tanta Mukti Samiti went to the police station and lodged the report against the accused, which is marked at Exh. 22. Police personnel sent him and his sister to the hospital at Jalkot and since lady doctor was not available at the hospital, they were referred to the Civil Hospital, Latur. Accordingly, they went there and the Medical Officer, Civil Hospital, Latur examined his sister.

22. In cross-examination he stated that he does tailoring work and the accused also does the same work and he has started his tailoring work at his village and then at village Kolnoor. He denied that there was any dispute between he and the accused on the count of income. He also denied that he was under wrong impression that the accused was having illicit relations with his wife. He further stated that his sister was simpleton and therefore she was unmarried and her age is about 40-42 years. He further stated that on the date of incident, he was doing stitching work at his house. He also stated that there are houses of Balu, Khandu and Machindra Gaikwad near the house of Shetiba Sawai and there is a well in front of his house. He also stated that the shop of the accused is at Kolnoor, but denied that he used to go to Kolnoor at 9.00 a.m. Daily. He admitted that nobody gave information about the incident from 4.00 p.m. to 6.00 p.m. He asserted that he lodged the complaint about on 14.10.2010 and denied that till

15.10.2010 he did not lodge the complaint. He also stated that on the date of incident he made inquiry with his sister and thereupon she disclosed about the incident to him. However, he stated that there is no house and shop of Abhang near Shetiba Sawai. There were about 200 to 300 houses between the houses of Abhang and Shetiba Sawai and there are 4-5 houses of Sawai Mandali. He denied that on account of enmity he deposed falsely against the accused.

23. As regards the testimony of PW3-Rajkumar, it was argued by learned counsel for the accused that his testimony is the hear say evidence and he is not the eye witness to the occurrence of the incident, but still the trial court convicted the accused basing upon his testimony and the testimony of PW6-Shilabai i.e. victim. It is also submitted that PW3-Rajkumar implicated the accused in the present case falsely, since he suspected that the accused had illicit relations with his wife.

24. Considering the totality of the evidence of PW3-Rajkumar, no doubt that he has not witnessed the occurrence of the incident of rape upon the victim by the accused, but it is apparent from his testimony that soon after the said incident, the victim girl came to the house in disturbed condition and her shirt's buttons were broken and he made inquiry with her and thereupon she disclosed that at about 5.00 p.m. She was going to her uncle's house and on the way accused met her and pressed her mouth and by lifting her carried her into a lane near the house of Shetiba Sawai and after removing her nicker committed rape on her. She shouted, but nobody came to rescue her. The said version which was disclosed by victim girl to PW3-Rajkumar is soon after the incident and after making inquiry with her by him and same is consistent with the deposition of PW6-Shilabai victim herself. PW3-Rajkumar admitted that he as well as accused were engaged in tailoring work, but denied that there was any dispute between them on the count of income. He also categorically denied that he was under wrong impression that the accused was having illicit relations with his wife. He categorically stated that his sister i.e. victim was simpleton, and therefore, she was unmarried. Moreover, he asserted that he lodged the complaint on the date of occurrence of incident i.e. on 14.10.2010. Accordingly, the testimony of PW3-Rajkumar is in tune with the testimony of PW6-Shilabai i.e. victim herself. Accordingly, the evidence of PW3 Rajkumar is relevant in accordance with Section 6 of the Indian Evidence Act and same cannot be construed as hearsay evidence, as canvassed by the learned counsel for the appellant/accused.

25. That takes me to the deposition of Dr. Aruna Patil, who examined the victim Shilabai, since she was attached to the Civil Hospital, Latur as Medical Officer on 15.10.2010. She received letter from CMO and accordingly she examined Shilabai Narsing i.e. victim herein. Her height was 124 cms. On examination, she found her clothes stained with blood (over inner clothes). However, there was no evidence of violence on the body. She also examined her private part and found that hymen ruptured and there were tears at 4, 6, 8, 11 O'clock position and tears were fresh and margins congested. On PV examination vagina admitted one finger easily and vaginal mucosa were congested. On clinical examination,

she found that hymen was ruptured and vagina admitted one finger easily and she opined probability of sexual intercourse and its approximate duration was within 48 hours. However, there was no evidence of other injuries over private part or anywhere on the body at the time of examination. As per Radiologist's opinion, her age according to X ray was more than 30 years. As per Psychiatrist's opinion, her mental condition was moderate mental Retardation. However, there were no signs suggestive of mental illness or infirmity. Accordingly, she issued certificate which is produced at Exh. 19.

26. In cross-examination, she stated that the victim stated her age as 41 years at the time of medical examination. It took about half an hour for examination of the victim. However, she stated that she was unable to state how many times the victim was member of sexual intercourse considering her age. She admitted that there was possibility of blood stains on the clothes of the member facing menstrual cycle. At this juncture, witness volunteered that the patient had no menses for last 3 years. However, there was no cross-examination in respect of said voluntary statement. Admittedly, no marks were found on the body as well as private part of the victim. She further opined that hymen rupture is possible due to cycling, playing and when she is in mood of sex and due to the hand job.

27. Thus, although there was no evidence of violence on the body of the victim and though there were no marks found on the body as well as private part of the victim, her clothes were stained with blood (over inner clothes). Moreover, her hymen was ruptured and tears were at 4, 6, 8, 11 O" clock position and same were fresh and margins congested and on PV examination vagina admitted one finger easily, and hence, doctor opined that there was probability of sexual intercourse and its approximate duration was within 48 hours. Moreover, Psychiatrist opined that her mental condition was moderate mental Retardation. Admittedly, as per her opinion there was possibility of stains of blood on the clothes of member facing menstrual cycle. However, pertinently, the witness volunteered that the victim had no menses for last 3 years and there is no cross-examination in that respect. Thus, the fact remains that the clothes of the victim were stained with blood although she had no menses for last 3 years.

28. It was canvassed that the said medical evidence is not supportive to the case of prosecution since there were no signs of violence/marks of injury on the private part of the body of the victim and rupture of hymen was possible due to cycling, playing and when she is in mood of sex and due to hand job, as opined by PW2 Dr. Aruna Patil. However, I am not impressed by the said argument since the said doctor categorically opined that hymen was ruptured and tears thereof were at 4, 6, 8, 11 O" clock position and the said tears were fresh and the doctor further opined that there was probability of sexual intercourse and its approximate duration was within 48 years and said aspects are in consonance with the charges levelled against the accused and strengthens the case of prosecution. Accordingly, the testimony of PW2 Dr. Aruna Patil is in support of the case of the prosecution and the said medical evidence is in tune with the

testimony of PW6 Shilabai i.e. victim herein. Moreover, her evidence discloses that height of the victim was 124 cms., which leads to the position that she was dwarf and her weight was 24 kgs. as per the evidence, and her age was 31 years and the age of the accused was also 31 years, and therefore, the resistance on the part of the victim to the accused, having her age 31 years, height 124 cms. and weight 24 kgs. was apparently next to impossible. Further it has no where come on record that there was enmity between the victim and the accused, and hence, possibility of implication of the accused by the victim in the present case falsely deserves to be ruled out. Besides, mere suggestion was given that the complainant had doubt that the accused was having illicit relations with his wife, and therefore, the complainant i.e. PW3 Rajkumar implicated the accused in the present case, but the said defence of the accused is not worth considering beyond mere suggestion, since it was denied by the said witness and since the accused neither examined himself on oath nor examined any defence witness to substantiate the same. Therefore, I am not inclined to accept the arguments advanced by the learned counsel for the accused/appellant.

29. Coming to the deposition of PW1 Dr. Amjadkhan Pathan, who examined the accused on 16.10.2010, he stated that he was attached to SDH Udgir as Medical Officer and on 16.10.2010 police personnel brought the accused for examination in a rape case along with a letter which is as marked Exh. 16. Accordingly, he found that the accused was able to perform sexual intercourse. However, no injuries were found on the person of the accused. Accordingly, he issued certificate which is marked Exh. 17.

30. Thus, the medical evidence adduced/produced through PW1 Dr. Amjadkhan Pathan reflects that the accused was able to perform the sexual intercourse, but no injuries were found on his person. Thus the competency of the accused to perform the sexual intercourse is in consonance with the testimony of PW6 Shilabai i.e. victim herein.

31. The next two witnesses i.e. PW4 Tulshiram Nadarge, who is the panch witness to the seizure of clothes of the victim and the accused and PW5 Shivaji Mundkar, who is the panch to the spot panchanama, have not supported the case of the prosecution, and therefore, they were declared hostile. Moreover, although the learned A.P.P. cross-examined the said witnesses, nothing beneficial to the case of prosecution could be elicited therefrom.

32. Having the comprehensive view of the matter, it is evident from the evidence adduced/produced by the prosecution that the accused used to visit the house of the victim, which establishes the proximity of the accused with the victim, and which indicates that she was knowing him and the testimony of PW6 Shilabai i.e. victim has not been shaken in the cross-examination, which implicitly involves the accused in the crime and the said direct evidence of PW6 Shilabai i.e. victim has been supported by the medical evidence adduced/produced through PW2 Dr. Aruna Patil and PW1 Dr. Amjadkhan Pathan and further the testimony of PW3 Rajkumar i.e. complainant is also relevant in view of Section 6 of the Indian

Evidence Act as mentioned herein above and cumulative effect of the said testimonies establishes the nexus between the accused and the crime. I, therefore, accept the arguments advanced by the learned A.P.P. and the judicial pronouncement (cited supra), as relied upon by the learned A.P.P. in support of the prosecution. Hence, present appeal lacks merits, and therefore, same deserves to be rejected. In the result, present appeal, which is sans merits, stands dismissed and is disposed of accordingly.