
(1999) 04 BOM CK 0041

In the Bombay High Court

Case No : Criminal Rev. Application No. 208 of 1997 & Criminal Revision
Application No. 208 of 1997

Azeez Usman Shaikh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Evidence Act, 1872 — Section 45, 59, 61
Penal Code, 1860 (IPC) — Section 324, 342, 366, 375, 376

Citation : (2000) 5 BomCR 704 : (2000) BomCR(Cri) 704 : (1999) 3 MhLj 272 :
(2000) 4 RCR(Criminal) 638

Hon'ble Judges : Vishnu Sahai, J;Ranjana P. Desai, J

Bench : Division Bench

Advocate : Mrs. Sunanda Kumbhat, for the Appellant; I.S. Thakur, Assistant
Public Prosecutor, for the Respondent

Judgement

Mrs. Ranjana P. Desai, J.—Accused Azeez Usman Shaikh filed Criminal Appeal No. 406/97 through the Superintendent of Yeravada Central Prison, impugning judgment and order of conviction and sentence dated 17-4-1997 passed by the Sessions Judge, Pune, in Criminal Appeal No. 33 of 1996. The said appeal was not maintainable and, therefore, it was allowed to be converted into the present Criminal Revision Application.

2. Appellant-Azeez Usman Shaikh, hereinafter referred to as "the accused" was tried in the Court of Assistant Sessions Judge, Pune, in Sessions Case No. 337/95 for offences punishable under sections 366, 376, 324 and 342 of the Indian Penal Code. By the judgment and order dated 19-1-1996, the learned Assistant Sessions Judge, Pune, convicted the accused for the offences punishable under sections 366 and 376 of the Indian Penal Code and sentenced him to suffer R.I. of six years and to pay a fine of Rs. 500/-, in default to undergo further R.I. for six months. No separate sentence was awarded for the offence punishable u/s 366 of the Indian Penal Code. The accused was convicted for the offence

punishable u/s 324 of the Indian Penal Code and was sentenced to suffer R.I. for 2 years and to pay a fine of Rs. 300/-. In default the accused was to undergo further R.I. for one month. He was also convicted for the offence punishable u/s 342 of the Indian Penal Code and was sentenced to suffer R.I. for one year and to pay a fine of Rs. 200/-, in default thereof to suffer further R.I. for one month. All the sentences were ordered to run concurrently.

3. Being aggrieved by the said judgment and order, the accused preferred appeal in the Court of Sessions Judge, Pune, being Appeal No. 33/96. By judgment and order dated 17-4-1997, the conviction and sentence of the accused for the offence punishable u/s 324 of the Indian Penal Code was set aside. He was acquitted of the said offence. The conviction and sentence of the accused for the offences punishable under sections 366, 376 and 342 of the Indian Penal Code was however confirmed. The present Revision Application is filed against the said judgment and order.

4. Briefly stated, the prosecution story runs as under :---

Victim Sunita, P.W. 4 is mentally unsound. She was married to one Vijay Kamble in the year 1992. Since she was mentally unsound, four months after the marriage, her husband brought her to her father's house. Her father took her to a hospital at Sangli where she was treated. She was then sent to her husband's house. She was under treatment. She again had a relapse. Her husband took her back to her father's house. Her father again took her to Pune for medical treatment. She was admitted in the Mental Hospital at Yeravada. After treatment, as she improved she was discharged by the hospital authorities. Her father brought her to his house. She again had a relapse. Her father had to take her back to Yeravada for admission in the hospital. She was in the Yeravada Mental Hospital for 4 to 5 months and was discharged thereafter, after she became mentally fit on account of the treatment. On all these occasions accused Azeez Usman Shaikh, who was an employee of Yeravada Mental Hospital helped Sunita and her father in getting her admitted in Yeravada Mental Hospital.

Sunita again had a relapse and her father brought her to Pune for admitting her in the Mental Hospital on 2-6-1995. Her brother Rajaram was also with them. On their arrival at Pune, they went to the house of accused Azeez. Accused Azeez prepared the documents for her admission to the hospital. She was also taken to the Court. After all the formalities were completed, at about 6 p.m. they went to the house of the accused.

According to the prosecution, accused gave liquor to her father on account of which, her father went to sleep. Her brother Rajaram also went to sleep. At about 9 p.m. accused told Sunita that he will give her tablets. He took her on a scooter to one lodge. He took her to one room. He closed the door of the room. He had brought liquor with him. He asked Sunita to take liquor however, she refused. Upon her refusal, the accused inflicted burn injuries with the help of cigarette on her breasts. Then the accused raped her twice. He then brought her

back to his house. In the morning Sunita did not inform her father or brother about the incident out of fear. She was admitted in the Mental Hospital. After admission her father and brother went back to the village.

Dr. Madhumita Bahale P.W. 7 examined her at about 9 a.m. i.e., at the time of admission. She found her talk to be illogical. She also found that she had partial insight.

At 12.30 p.m. she was examined by Medical Officer Dr. Madhuri Deshpande, P.W. 3. Dr. Deshpande found burn marks on her breast. She accordingly made a note to that effect. She found the patient excited. The necessary treatment was given to Sunita.

On 16-6-1995, Dr. Shilpa Soman, P.W. 2 examined Sunita. It is on this day that Sunita informed Dr. Soman that, accused Azeez Shaikh took her to Swargate on 3-6-1995 by saying that he would give her tablets and raped her twice. Dr. Soman found her, at that time, to be mentally sound. Dr. Soman noted the history narrated by her and informed Superintendent Dr. Paras Lavatre, P.W. 1 about it. On the request of Dr. Lavatre, Sunita was then examined by Dr. Prafullata Nerlekar, P.W. 6 on 17-6-1995. Sunita reiterated the same history to Dr. Nerlekar as she had given to Dr. Soman. Dr. Nerlekar then made the necessary remarks on the case papers and reported to Superintendent Dr. Lavatre that the patient was conscious and had repeated the same history. P.W. 1 Dr. Lavatre then reported this fact to the concerned officer of Jail Road Police Chowki of Police Station Yeravada on 19-6-1995, by sending letter.

Pursuant to the said letter P.W. 8 Jyotiram Sawant, P.S.I. Lohagaon Airport, Pune visited Yeravada Mental Hospital with Social Worker Nirmala. He recorded statement of victim Sunita in the presence of 2 Psychiatrists and 2 Social Workers. According to him Sunita was in a position to give statement. In fact, a certificate to that effect was given by Dr. Soman which is found at Exh. 25. After Sunita's statement was recorded, she was forwarded to Sassoon Hospital for medical examination.

Thereafter, he forwarded Sunita's statement to Yeravada Police Station for the purpose of registration of a crime. Crime came to be registered and investigation was started. The accused came to be arrested on 28-6-1995. After completion of the investigation, the accused came to be charged as aforestated.

5. In order to prove the prosecution story, the prosecution examined P.W. 5 Shrimant Sidappa Vankande, father of the victim Sunita and the victim Sunita P.W. 4. The medical evidence consists of evidence of P.W. 2 Dr. Mrs. Shilpa Soman, P.W. 3 Dr. Madhuri Deshpande, P.W. 6 Dr. Pratibha Nerlekar, P.W. 7 Dr. Madhumita Bahale, P.W. 1, Dr. Paras C. Lavatre, Superintendent, Yeravada Mental Hospital is also examined. The details of investigation have been given by P.W. 8 Mr. Jyotiram Sawant, P.S.I., who was at the relevant time in charge of Jail Road Police Chowki of Police Station Yeravada.

6. Accused pleaded not guilty and claimed to be tried. According to him, Sunita accompanied him to the lodge of her own accord. He and Sunita were in contact with each other from the year 1991 and they were having sexual relations. Sunita did not have good character. He did take her to the lodge but he denied the incident of rape. He stated that he knew Sunita. Because of previous contact Sunita, her father and brother came to him for help. Sunita was not a patient having mental disease. She had a lust for sex.

7. Upon perusal of the oral and documentary evidence and also upon considering the defence of the accused, the learned Assistant Sessions Judge convicted the accused u/s 366 and 376 of the Indian Penal Code and sentenced him as aforesaid.

On appeal, the learned Sessions Judge, Pune set aside the conviction of the accused u/s 324 of the Indian Penal Code as according to him, so far as the burn injuries on the breast of the victim are concerned, it was not known whether they were necessarily caused at the time when the incident took place. As aforesaid the learned Sessions Judge confirmed the conviction and sentence for the offence punishable under sections 366, 376 and 342 of the Indian Penal Code. The said judgment and order is impugned in the present application.

8. We have been taken through the oral evidence adduced before the learned Sessions Judge and also the documentary evidence. We have gone through the statement of the accused recorded u/s 313 of Criminal Procedure Code. We have heard at length Mrs. Sunanda Kumbhat, learned Counsel for the accused and Mr. Thakur, learned Additional Public Prosecutor for the State of Maharashtra.

9. Mrs. Kumbhat submitted that there is sufficient evidence on record to indicate that the accused knew Sunita and her family since 1991 and he was in touch with them. In fact, on all occasions, the accused helped the father of Sunita to get her admitted in Yeravada Mental Hospital. The evidence of Sunita as well as her father supports the defence of the accused that Sunita and the accused had developed intimacy and that he had sexual relations with her since 1991. The evidence proves to the hilt that Sunita of her own volition accompanied him to the lodge and she consented to the accused's proposal to have sexual intercourse with her. There was no rape as the sexual intercourse was with her consent.

10. As against this, Shri Thakur, learned Additional Public Prosecutor contended that the evidence unmistakably indicates that Sunita was not in a fit mental condition. She was mentally unsound. Admittedly, on a number of occasions, she was admitted in Yeravada Mental Hospital. In fact, on account of her mental illness, her husband had deserted her. On 2-4-1991, she was brought to Pune because she was mentally ill and was to be admitted to the Yeravada Mental Hospital. It was accused, who helped them to prepare necessary documents for her admission in the hospital and it is on that very night before her admission to the hospital that the accused took her to the lodge and had sexual intercourse

with her. Assuming that Sunita had consented to it, in law, consent of a person, who is mentally imbalanced or not sound is no consent at all. The learned Additional Public Prosecutor pointed out Clause Fifthly of section 375 of the Indian Penal Code which reads thus :

"375. Rape:---A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :- --

Fifthly --- With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent."

Since Sunita was mentally unsound, she did not understand the nature and consequences of that to which she had given consent and, therefore, the act committed by the accused will be rape within the meaning of section 375 of the Indian Penal Code.

11. In our opinion there is substance in this contention. P.W. 5 Shrimant Vankande, the father of the victim Sunita has stated that Sunita was married to one Vijay Kamble, resident of Sangli. Sunita was with her husband for about 4 months and thereafter, she fell ill. She became mentally unsound. He brought her to his house. She was given medical aid at Sangli. After she improved he sent her to husband's house. She stayed with her husband for six months and again became mentally unsound and, therefore, her husband brought her to her father's house. Then Shrimant Vankande took her to Pune for medical treatment. With the help of the accused, Sunita was admitted in the Yeravada Mental Hospital. She was there for about 5 to 6 months. After she improved she was discharged. He brought her home. For about one year she was alright and again there was a relapse. He again brought her to Yeravada for admission in the Mental Hospital. Accused helped them to complete all the formalities for admission in the Mental Hospital. She was there for about 4 to 5 months and was discharged thereafter. He took her home.

12. After about 1 or 2 months she again became mentally unsound. Therefore, on 2-6-1995, he and his son Rajaram brought her to Yeravada for admitting her in the Mental Hospital. They reached at about 6 p.m. and halted at the house of the mother of the accused as they could not contact the accused. On 3-6-1995 they contacted the accused at about 9 a.m. Accused helped them to complete all the formalities for admission in the Yeravada Mental Hospital. Everything was completed by 6 p.m. Then all of them went to the house of the accused. Accused had brought liquor. P.W. 5 Shrimant Vankande and the accused drunk liquor. P.W. 5 Shrimant went to sleep. Rajaram was also sleeping.

At about 9 p.m. Rajaram informed him he had seen accused taking Sunita out on a scooter. However, since he was under the influence of liquor he went to bed.

On the next day he got up at about 7 a.m. Sunita was there. He admitted her in the Mental Hospital and left Pune with his son Rajaram. After about 15 days he got message from Mental Hospital, Pune. He was informed that his daughter was to be examined by the Medical Officer. He then went to Pune. His daughter was in the Sassoon Hospital. He went there. Sunita told him that accused had inflicted burns injuries on her breasts and had raped her. He had taken her to a lodge on the pretext of giving tablets. He took her there on a scooter. She further told him that she did not narrate the incident to him out of fear.

13. In her evidence victim Sunita has confirmed the history of her mental illness. She has stated that on account of mental illness she had to be admitted in the Yeravada Mental Hospital and accused had helped her family in admitting her in the Mental Hospital. On 2-6-1995 she was brought to Pune as she was mentally sick. Her father and her brother were with her. She has confirmed that on arrival at Pune, they went to the house of the accused. As she was to be admitted in the Mental Hospital, the accused prepared the documents. She was also taken to the Court. After completing the formalities, at about 6 p.m. they went to the house of the accused.

Accused gave liquor to her father. Her father and her brother were sleeping. At about 9 p.m. the accused told her that he will be giving her tablets. He took her on a scooter. They went to a room in a lodge. Accused closed the door of the room. He was having liquor. He offered it to Sunita however, she refused. Upon that the accused inflicted burn injuries by means of cigarette on her breasts and he raped her. She has categorically stated that he did the act against her will. The accused then brought her to his house. In the morning she did not inform her father about the incident out of fear. On that day she was admitted in the Hospital. After her admission, her father and brother went back to the village. She informed the doctor about the incident of rape and her statement came to be recorded. She has identified her thumb impression on her statement Exh. 33.

14. Upon admission to the Mental Hospital, Dr. Bahale P.W. 7 examined Sunita on 4-6-1995 at about 9 a.m. Dr. Bahale however, did not find any burn marks on her breast. According to her, as per the practice, she had examined only exposed parts of the body of Sunita. Dr. Bahale noted that the patient was talkative, her speech was irrelevant and illogical. Her insight was partial. There was inadequate affect.

15. P.W. 3 Dr. Deshpande, Medical officer, Yeravada Mental Hospital examined Sunita on 4-6-1995. On her physical examination, she found burn marks on her breasts. She asked Sunita about the author of the injuries, but Sunita was not in a position to inform her. At that time, Sunita was excited. Dr. Deshpande gave her necessary treatment. Dr. Deshpande found her talkative, her speech was irrelevant and illogical. Her insight was partial.

16. Dr. Shilpa Soman P.W. 2 Psychiatrist attached to Mental Hospital Yeravada, examined Sunita on 16-6-1995. She found Sunita to be mentally sound, calm,

quite, co-operative and oriented to place and time. She stated that accused Azeez Shaikh had taken her to Swargate on 3-6-1995 by saying that he will give her tablets and raped her twice. Next day he had admitted her in the hospital. Dr. Soman has stated that Sunita was giving her statement consistently. Dr. Soman, realising the seriousness of the history given by Sunita, informed Superintendent of Mental Hospital, Dr. Lavatre P.W. 1. about it.

17. Upon getting to know from Dr. Soman about the history given by patient Sunita that she was raped by accused Azeez Shaikh Dr. Lavatre asked for report from Dr. (Mrs.) Nerlekar another Psychiatrist. Accordingly, on 17-6-1995 Dr. (Mrs.) Nerlekar examined Sunita. Dr. Nerlekar P.W. 6 in her evidence in the Court has stated that she had examined Sunita earlier on 5-6-1995. At that time Sunita was talkative. She was talking illogically, her insight was poor. Dr. Nerlekar then wrote down medicines for Sunita. She identified her signature on the said case papers Exh. 36. On 17-6-1995 as per the request of Dr. Lavatre P.W. 1, she examined Sunita. According to her, Sunita confirmed the statement which she had given to Dr. Soman. Dr. Nerlekar then noted down her remarks to that effect on case papers which she produced in the Court as Exh. 37.

18. P.W. 1 Dr. Lavatre has, in his evidence, narrated the history of Sunita as a mental patient, who was admitted in the Yeravada Mental Hospital on 3 occasions. He has stated that Sunita was admitted in the hospital on 4-6-1995 at about 9 a.m. He has confirmed that Dr. (Mrs.) Bahale examined her and found her to be talkative. He reported that Dr. Bahale found that Sunita was talking illogically and irrelevantly. She had partial insight and inadequate affect. Necessary treatment was prescribed by the doctor.

He has further stated that on 4-6-1995 at 12.30 p.m. Medical Officer Dr. (Mrs.) Deshpande examined her. At that time, the patient was excited. Dr. Deshpande found burn marks on the person of Sunita. Dr. Deshpande gave her medical treatment.

On 16-6-1995, Dr. Soman examined Sunita when she gave history of the accused having raped her on 3-6-1996. Dr. Deshpande found burn marks on the person of Sunita. Dr. Soman informed Dr. Lavatre about the history of rape given by Sunita and, therefore, Dr. Lavatre asked Psychiatrist Dr. (Mrs.). Nerlekar to examine her. Accordingly, on 17-6-1995 Dr. Nerlekar examined her and she reported that the patient was consistent and that she had repeated the same history.

He then reported the matter to the concerned Police Officer of Jail Road Police Chowki of Yeravada Police Station on 19-6-1995, by sending a letter.

19. P.W. 8 Jyotiram Sawant, P.S.I., Yeravada, Pune has, in his evidence given the details of investigation. He has stated that at the relevant time, he was in charge of Jail Road Police Chowki of Yeravada Police Station. Upon receipt of the letter Exh. 24 from Dr. Lavatre on 19-6-1995 that patient Sunita was raped, he called one Social Worker by name Nirmala Hire. Along with her he went to Mental

Hospital. He recorded the statement of Sunita in the presence of two Psychiatrists and two Social Workers in the Mental Hospital itself. The patient was in a position to give statement. To that effect Dr. Soman gave a certificate Exh. 28. P.S.I. Jyotiram Sawant then recorded the statement of Sunita Exh. 33. After taking permission from the Superintendent of the Mental Hospital, he took custody of Sunita and took her to Sassoon Hospital. On the basis of statement of Sunita, investigation started. P.S.I. Sawant recorded statements of the concerned doctors. On 20-6-1995 he arrested the accused and after completion of the investigation, charge-sheet came to be filed in the Court and the accused came to be tried.

20. The accused in his 313 statement in the Court has admitted that he had gone to the lodge along with Sunita on 3-6-1995. He stated that Sunita accompanied him on her own accord. He never compelled her. He admitted that he and Sunita went out. He denied that he told Sunita that he will give her tablets. He said that he was not empowered to give tablets to the patients. He and Sunita were in contact with each other from the year 1991, and they were having sexual relations since then. Sunita did not have good character. He did bring her to the lodge but he denied the allegations of rape. He stated that Sunita and her father and brother came to him because of their previous acquaintance with him. Sunita was not a patient. She had a lust for sex.

21. From the evidence of the prosecution witnesses, one thing is clear that Sunita was a patient. She was a mentally ill person. Sunita's father has stated that Sunita had to be admitted in the Mental Hospital on earlier occasions. Because of her mental illness Sunita's husband had sent her back to her father's house. Her previous history shows that after admission to the Mental Hospital, upon taking treatment as directed, Sunita would get well for a while. There would be a relapse requiring her admission in the hospital again. Sunita herself has stated this in her evidence. This is confirmed by her father Srimant Vankande P.W. 5 and also by the doctors. Even the accused has admitted that Sunita had to be admitted in Yeravada Mental Hospital. It is also an accepted fact that on all occasions it was accused, who helped Sunita because Sunita's father did not know anyone in Yeravada who would help him. Moreover, the accused was employed in the Yeravada Mental Hospital and, therefore, accused used to help them in preparing documents for Sunita's admission in the hospital.

22. Both Sunita and her father have stated that on 2-6-1995 she was brought to Yeravada because she was mentally ill and she had to be admitted in the hospital. They halted at the house of mother of the accused. On 3-6-1995, they contacted the accused. The accused helped them to complete all the formalities. The formalities were completed by 6 p.m. They went to the house of the accused. Thereafter, accused brought liquor which the accused and Sunita's father drank. According to Sunita, the incident of rape took place on that very night when her brother and her father fell asleep. Admittedly; on 4-6-1995, Sunita was admitted in the Mental Hospital. The evidence of Dr. Bahale and Dr.

Deshpande, who examined her on 4-6-1995 indicate that they noticed Sunita to be talkative; that her talk was illogical and irrelevant; there was inadequate affect and partial insight. Taking into consideration the admitted past history of mental illness, the fact that Sunita was brought on 2-6-1995 for admission to the Mental Hospital, that she was admitted to the Mental Hospital on 4-6-1995, when the doctors found her to be mentally ill and that they started giving her treatment prove that from 2-6-1995 to 4-6-1995 patient Sunita was mentally ill.

23. Mrs. Kumbhat, learned Counsel appearing for the appellant tried to persuade us to hold that Sunita at the material time was not mentally ill and that she consented to have sex with the accused. Mrs. Kumbhat has taken us through the evidence of Sunita and pointed out that admittedly, Sunita knew the accused for a long time, Sunita and her father used to come and contact the accused for her admission to the hospital. Sunita's father has stated that his son Rajaram saw that Sunita was taken away by accused and, therefore, if the incident was really true, Rajaram, the brother and Srimant, the father would have prevented the incident from taking place by following the accused. We are not impressed by this submission. Admittedly, Srimant was drunk. He may not have been in a position to understand the implication of the action of the accused. Besides, it appears that Shrimant and Rajaram trusted the accused as the accused had earlier helped them. Therefore, they found nothing wrong in this move of the accused. So, this act by itself does not affect the prosecution story adversely.

24. Mrs. Kumbhat argued that the incident narrated by Sunita appears to be inherently improbable. It is inconceivable that a woman will shut the door of the room at odd hours without suspecting that something was amiss. The evidence shows that they were together for about 2 hours. If the victim was not willing she would not have been in the same room for about 2 hours. She would have raised a hue and cry. The fact that she kept quite indicates that she was a consenting party. Mrs. Kumbhat contended that the prosecution case that the accused gave her burn injuries is also not proved because the learned Judge has recorded acquittal on that count. Therefore, it is established that this witness is prone to exaggeration. Mrs. Kumbhat further pointed out that father of Sunita has in his evidence stated that till Sunita was brought to Yerawada, she used to work at home and, therefore, she was not mentally sick when she accompanied the accused to the lodge. According to Mrs. Kumbhat, the incident took place during lucid interval. Victim actively participated in the act and, therefore, the allegations of rape are baseless.

25. We are not inclined to accept this submission of the learned Counsel. The fact that Sunita was working in the house before she came to Pune for admission in the Mental Hospital will not disprove her mental illness. It is quite possible for her to do her routine work and yet be mentally unsound. It is significant to note that on 3-6-1995 at 9 a.m. the Judicial Magistrate, First Class, Kirkee passed a reception order on the basis of which she was admitted in the Mental Hospital. The reception order indicates that Sunita was mentally unsound. Carrying out

some household work will not show that she was perfectly alright. It is significant to note that earlier she was admitted in the Mental Hospital thrice and she had to be given treatment. On 2-6-1995 she was specifically brought to Pune for admission in the Mental Hospital and on 4-6-1995 in fact she was admitted. Therefore, this period from 2-6-1995 to 4-6-1995 is a very crucial period. The reception order is passed on 3-6-1995. About mental illness of Sunita, therefore, there can hardly be any doubt. Both the doctors had examined her on 4-6-1995. Dr. Bahale and Dr. Deshpande have found her to be mentally ill, they prescribed treatment and treatment was given to her accordingly.

26. It is further argued that Dr. Shilpa Soman has put a question mark against the word "delusion" on the case papers prepared by her after she examined Sunita on 16-6-1995. This does not necessarily suggest that Sunita was under delusion. This is a query put by the doctor. However, the other evidence on record proves that when Sunita was raped she was mentally unsound. Doctor's evidence in that behalf is unassailable. Therefore, delusion theory must go by the board.

27. It is argued by Mrs. Kumbhat that when her statement was recorded on 16-6-1995, Sunita could not have correctly narrated the facts because the incident had taken place on 3-6-1995. If she was mentally ill on 3-6-1995 will it be possible for Sunita to remember, what exactly happened on that day on 16-6-1995. In this connection, Dr. Soman has stated that when she examined Sunita on 16-6-1995, she was normal. She was giving her statement consistently. She was well oriented, calm, quiet and co-operative. She gave a history that the accused had raped her. Dr. Nerlekar P.W. 6 has also stated that when she examined her on 17-6-1995 Sunita gave the same statement which she gave to Dr. Soman. Dr. Nerlekar reported to Dr. Lavatre that patient was consistent. Now, from 4-6-1995 Sunita's treatment had started. Therefore, by 16-6-1995 she has recovered. Dr. Lavatre, the Superintendent of Yeravada Mental Hospital has in his evidence stated that from the admission of the patient generally after the treatment within 15 days or within one month, patient recovers from his illness. He has also stated that as per his experience, generally patient recollects the events which had occurred during his illness. He has further stated that on 16-6-1995 and 17-6-1995 patient Sunita was mentally normal and she was recollecting the past events and she was repeating them. In the cross-examination, he has stated that the patient can recollect the past events and even mistakes which they have committed when their condition becomes normal. Dr. Lavatre is the Superintendent of the Mental Hospital and is an experienced man. We find no reason to disbelieve Dr. Lavatre on this point. Therefore, the statement given by Sunita on 16-6-1995 and 17-6-1995 about the accused having committed rape on her on 3-6-1995 deserves to be believed. There is no need to discard the said statements because she gave those statements after she had recovered from her illness.

28. In our opinion, the evidence of victim Sunita inspires confidence. The father

has also supported her on all particulars. The fact of insanity of Sunita is further corroborated by the evidence of P.W. 7 Dr. Bahale, Dr. Deshpande, Dr. Nerlekar, Dr. Soman and also the Superintendent of Yeravada Mental Hospital Dr. Lavatre. The case papers prepared by Dr. Bahale, Dr. Deshpande, Dr. Nerlekar and Dr. Soman also support the case of the victim. There is no need for these doctors to prepare false documents or to involve the accused in false case. According to us, the evidence of the doctors is totally believable. They are independent witnesses and have no reason to concoct a false story.

29. Mrs. Kumbhat further argued that the story of the prosecution regarding accused giving cigarette burns is disbelieved by the trial Judge and, therefore, it is evident that the prosecution has concocted its case. The rest of the prosecution case therefore, must go by the board. We are not impressed by this submission at all. It is true that the learned Judge has recorded acquittal so far as this allegation against the accused is concerned. It is true that the prosecution has not been able to prove that the burn injuries were caused by the accused. The evidence adduced about the said allegation is not convincing though there are burn injuries on the victim. That does not mean that rest of the prosecution story which is proved by convincing evidence, both oral as well as documentary, needs to be discarded. We are particularly impressed by the evidence of the doctors. We are convinced that Sunita at the relevant time was a mentally unsound person and the accused has taken advantage of the illness. By helping the victim and her father in the past, the accused had created trust and confidence in their minds. They depended on the accused for help. There is evidence on record to show that accused had even gone to the house of the victim's father. Therefore, the father trusted the accused even when the accused took her out of the house. The accused has committed breach of the trust and raped the victim.

30. It was argued by Mrs. Kumbhat that though the victim was raped on 3-6-1995 she has told the doctors about it only on 16-6-1995. This delay, according to Mrs. Kumbhat shakes the credibility of the prosecution story. Mrs. Kumbhat also stated that the victim did not tell her father or brother about the incident on the next day. Delay in lodging the F.I.R. or conveying the incident of rape to the relations cannot always be taken against the victim. In cases of this type, the victim out of fear and shyness does not report such incidents to the relations or to the police. There is always a fear that the Society will ridicule her or criticise her and the relations would show resentment. When there is other clinching evidence on record, such delay will not come in the way of prosecution. In the case of State of Punjab Vs. Gurmit Singh and Others, , the Supreme Court has observed as under :---

"In sexual offences delay in the lodging of the F.I.R. can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool

thought that a complaint of sexual offence is generally lodged. Even if there is some delay in lodging F.I.R. in respect of offence of rape, if it is properly explained and the explanation is natural in the facts and circumstances of the case, such delay would not matter."

In the very case, the Supreme Court has said that :

"The testimony of victim in case of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury."

The Supreme Court has said that corroboration need not be insisted upon if the witness inspires confidence, though the Court may look for some assurance of her statement to satisfy its judicial conscience. In the instant case, in our view, the evidence of the victim inspires confidence. She has stated that she did not disclose the incident to her father out of fear. Besides she was mentally ill. It is only when she recovered from her illness that she found some courage to report the incident. There is no reason to disbelieve her on this ground. We find her implicitly reliable. In addition to that, there are statements of the doctors and the case papers prepared by them. Corroboration is also lent by the reception order of the Judicial Magistrate, First Class and the evidence of Dr. Lavatre, the Superintendent of Yeravada Mental Hospital.

31. We are therefore, of the considered view that victim Sunita was mentally unsound person when she was subjected to sexual assault. The argument that she was a consenting party cannot therefore survive because Clause Fifthly of section 375 says that a man is said to commit rape when he has sexual intercourse with a woman with her consent when by reason of unsoundness of mind she is unable to understand the nature and consequences of the act to which she gives consent. Therefore consent of a mentally unsound person is, in law, no consent at all and if a person has sexual intercourse with a woman, who is mentally unsound with her consent it is still an offence within the meaning of section 375.

32. Having considered the clinching documentary as well as oral evidence recorded by the learned Judge, we are of the considered opinion that the learned Sessions Judge is absolutely right in convicting the accused for offence punishable u/s 366, 376 and 342 of the Indian Penal Code. The impugned judgment and order is sound both on facts and in law. It cannot be characterised as perverse. We do not find any reason to interfere with the impugned judgment and order of conviction and sentence in our revisional jurisdiction.

33. In the result, the application is dismissed.

34. Application dismissed.