

(2019) 01 BOM CK 0079
In the Bombay High Court
Case No : Criminal Appeal No. 1061 Of 2013

Dattatray @ Kashinath Babaso Khatal	APPELLANT
Vs	
State Of Maharashtra	RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506

Citation : (2019) 2 BCR(Cri) 196

Hon'ble Judges : A.M. Badar, J

Bench : Single Bench

Advocate : R.V. Bansode, Sheetal Ubale, S.V. Gavand

Final Decision : Allowed

Judgement

A. M. BADAR, J.

1. By this appeal, the appellant/accused is challenging the judgment and order dated 22nd August 2013 passed by the learned Additional Sessions Judge, Satara, in Sessions Case No.59 of 2009, thereby convicting the appellant/accused of offences punishable under Sections 376 and 506 of the Indian Penal Code.

For the offences punishable under Section 376 of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.10,000/- and in default, to undergo simple imprisonment for 1 year. For the offence punishable under Section 506 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 1 year apart from imposition of fine of Rs.1,000/- and default sentence of simple imprisonment for 3 months. Substantive sentences are directed to run concurrently by the learned trial court.

2. Brief facts, leading to the prosecution and resultant conviction as well as imposition of sentence on the appellant/accused, can be summarized thus :

(a). The prosecutrix/PW1 is an adult women, who had crossed the age of consent. She used to reside at Village Andhori in Satara District along with her parents, two brothers and two sisters. After passing 12th Standard Examination and taking education upto 2nd Year of Degree Course in Arts Faculty, she took up a job of a Salesgirl with 'Sunstar Management Advertising Agency' of Phaltan town in Satara District with effect from 19th June 2008. Office of the said Sunstar Management Advertising Agency was located near Jain Temple of Phaltan town. The prosecutrix/PW1 and other salesmen and salesgirls were entrusted with the task of selling the product 'Add-Care Gel' at Phaltan town as well as various villages in the Phaltan Taluka. The employer of the prosecutrix/PW1 had arranged for residence of the prosecutrix/PW1 as well as other employees in the very same building where the office was located.

(b). The incident in question took place on 26th June 2008. As usual, the prosecutrix/PW1 left her office cum residence at 10.00 a.m. along with the briefcase containing the products for selling those at various villages. She visited villages named Veer, Lonand and Taradgaon on that day for sale of the products. From Lonand Viilage she lastly went to Village Taradgaon by a taxi-jeep. After finishing the work at Taradgaon, by the tanker carrying milk she returned near the State Transport (S.T.) Stand of Phaltan town at about 8.00 p.m. of 26th June 2008.

(c). According to the prosecution case, when the prosecutrix/PW1, on reaching the S.T.Stand of Phaltan town, was proceeding by walk towards her office cum residence, the appellant/accused who was smiling at her, called her and told her that a lady should not walk in the night. Upon being asked, she told him that she resides in the Office premises of the Sunstar Management Company situated near the Jain Temple. The appellant/accused then offered lift to her on his motorcycle. She accepted and proceeded towards the Jain Temple by Satara Road on motorcycle of the appellant/accused. They reached near the office cum residence of the prosecutrix/PW1. She requested the appellant/accused to drop her at that place. Upon that, the appellant/accused told her that a quarrel had taken place in the town and he would take her by the another road. The appellant/accused then took the prosecutrix/PW1 towards Satara. She questioned him as to where she is being taken. The appellant/accused threatened her to keep silence or else he would stab a knife in her abdomen. In this manner, she was taken at a distance of 2 kms. She then jumped from the motorcycle and suffered a fall on the road. The appellant/accused stopped the motorcycle, lifted her, again threatened her and made her to sit on the motorcycle. After traveling some distance, the appellant/accused took motorcycle inside the left side of the road. She was taken at a distance of 25 to 30 feet away from the road. Thereafter, the appellant/accused started fondling her body and by threatening to stab her, removed her pyjama and committed rape on her.

(d). According to prosecution case, the prosecutrix/PW1 thereafter put on her pyjamas. The appellant/accused also wore his pant and underwear. They went at

Phaltan - Satara Road. There, continuously for a period of 1 to 1½ hours, the appellant/accused was leveling allegation of stealing his wallet money and mobile phone against the prosecutrix/PW1. Then, she was again taken to the same spot of the incident on the pretext of checking as to whether the wallet is lying thereat. Then, the appellant/accused again committed forcible sexual intercourse with her for four times. At about 10.30 p.m., the prosecutrix/PW1 saw a convoy of vehicles and therefore, she went by running on the road and stopped one of the vehicles. She disclosed the incident which took place to policemen who alighted from the vehicle. At that time, the appellant/accused started running away. He was apprehended by police. Thereafter, police from the Police Station Phaltan also came there. The prosecutrix/PW1 and the accused were then taken to Police Station Phaltan where the prosecutrix/PW1 lodged report Exhibit 32 against the appellant/accused which resulted in registration of Crime No.176 of 2008 for offences punishable under Sections 376 and 506 of the Indian Penal Code.

(e). In the night intervening 26th June 2008 and 27th June 2008 itself, the prosecutrix/PW1 was sent to the Rural Hospital, Phaltan, where she was medically examined by PW5 Dr.Anshuman Dhumal. Her clothes, which were allegedly stained with mud and blood, came to be seized vide Seizure Panchnama Exhibit 94 on 27th June 2008 itself by PW9 Balasaheb Muley, Police Sub-Inspector. The spot came to be inspected in the morning hours of 27th June 2008. In presence of PW2 Bhausaheb Budhanwar and PW3 Maruti Kadam Spot Panchnama Exhibit 57 came to be recorded, at about 8.00 a.m. of 27th June 2008. Blood stained soil, simple soil, a knife as well as one earring came to be seized from the spot of the incident. The appellant/accused was subjected to medical examination through PW6 Dr.Kiran Sasturkar of the Rural Hospital, Phaltan. Sample of his blood and pubic hair so also nail clips came to be seized. Clothes of the appellant/accused were also seized. On completion of routine investigation, the appellant/accused came to be charge-sheeted.

(f). The learned trial court framed and explained the Charge for offences punishable under Section 376 and 506 of the Indian Penal Code to the appellant/accused. He pleaded not guilty and claimed trial.

(g). In order to bring home the guilt to the appellant/accused, the prosecution has examined as many as 10 witnesses. The victim of the crime in question i.e. the prosecutrix is examined as PW1. The report lodged by her is at Exhibit 32. Panch witnesses to the Spot Panchnama namely Bhausaheb Budhanwar and Maruti Kadam are examined as PW2 and PW3 respectively. The Spot Panchnama is at Exhibit 57. Exhibit 58 is the Seizure Panchnama of the motorcycle. Vilasrao Shinde, Police Naik, is examined as PW4. He was on the escort duty on 26th June 2008 and his vehicle was stopped on being signaled by the prosecutrix/PW1. PW5 Dr.Anshuman Dhumal of the Rural Hospital, Phaltan, had examined the prosecutrix/PW1 at about 2.45 a.m. of 27th June 2008. The report of Medical Examination of the prosecutrix/PW1 is at Exhibit 82. Exhibit 84 is the answer

given by this witness to the queries made by the Investigating Officer. PW6 Dr.Kiran Sasturkar had examined the appellant/accused and had drawn samples. PW7 Dattatray Dhaigude, Police Naik, had carried the samples to the Forensic Laboratory. PW8 Ram Ahiwale is a panch witness to the Seizure Panchnama Exhibit 94 of clothes of the prosecutrix/PW1. He turned hostile to the prosecution. Investigating Officer Balasaheb Muley, Police Sub-Inspector, is examined as PW9. Exhibit 93 is the Seizure Panchnama of clothes of the appellant/accused. Another Investigating Officer Anil Kadam, Police Inspector, is examined as PW10.

(h). The defence of the appellant/accused is that of total denial as well as false implication in the crime in question for the purpose of extracting money from him and his family. As per the defence version, the appellant/accused was waiting at the S.T.Stand of Phaltan when the prosecutrix/PW1 contacted him and asked for a lift for going to Village Malwadi. He obliged the prosecutrix/PW1 who, after traveling a distance of 2 kms. from Phaltan, had asked the appellant/accused to stop the motorcycle. Thereafter, some boys came there and took away his wallet, money as well as mobile phone. He, therefore, started signaling the vehicles. One vehicle stopped and as policemen alighted from the vehicle, the prosecutrix/PW1 started leveling false allegation of rape against him. The defence has examined Lakhan Khatal - son of the appellant/accused to demonstrate extortion of money by the prosecuting party.

(i). After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to hold that the prosecution has proved the Charge leveled against the appellant/accused and accordingly, he came to be convicted and sentenced as indicated in the opening paragraph of this judgment.

3. I have heard the learned counsel appearing for the appellant/accused. By taking me through the entire evidence adduced by the prosecution, he argued that evidence of the prosecutrix/PW1 is unworthy of keeping reliance. Her evidence suffers from infirmity and improbability. She had not suffered any injury in the wake of allegation of jumping from the motorcycle as well as forcible sexual intercourse on rough surface. Her briefcase was also not found on the spot of the incident. The learned counsel further took me through evidence of DW1 Lakhan Khatal and argued that amount of Rs.2 lakh was extracted from the family of the appellant/accused by the prosecuting party with a further demand of Rs.5 lakh. The entire meeting between DW1 Lakhan Khatal and father of the prosecutrix/PW1 was video- graphed. The prosecutrix/PW1 has admitted the fact that the person seen in the Compact Disk is her father. It is further argued that no semen of the appellant/accused was extracted, and therefore, the forensic evidence is of no assistance to the prosecution.

4. The learned APP supported the impugned judgment and order of conviction and resultant sentence by arguing that in a case of this nature, broader probabilities of the case of prosecution are required to be kept in mind and the case in hand shows that evidence of the victim of crime is corroborated by the

situation found on the scene of occurrence so also the forensic evidence.

5. I have carefully considered the rival submissions and also perused the record and proceedings including oral as well as documentary evidence adduced by the parties.

6. This is a case of commission of forcible sexual intercourse on an adult lady who, after passing 2nd Year of college education in Arts faculty, had joined the employment as a salesgirl with Sunstar Management Consultancy Services at Phaltan and started residing in the office complex itself for doing her job as a salesgirl. She had crossed the age of consent long back. By now it is well settled that, in case of sexual assault on a female victim, conviction can be based even on uncorroborated evidence of the prosecutrix as the very nature of such offence makes it impossible to get direct corroboration to the version of the prosecutrix. Minor discrepancies and contradictions in the version of the prosecutrix are required to be ignored and broader probabilities of the case of prosecution are required to be kept in mind. Finding of injuries on the person of the victim of such offence is not a sine-qua-non for recording conviction. At the same time, if the prosecutrix is an adult and full of understanding, the court is required to ascertain whether her evidence is reliable and trustworthy. In a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence alleged against the accused. Such onus never shifts on the accused. In such a case, it is not the duty of the accused to explain as to how and why he is falsely implicated. The offence of rape causes distress and humiliation to the victim thereof and in the similar manner, false accusation of rape causes equal distress and humiliation to the accused.

7. Let us now examine whether evidence of the victim of the crime in question is in tune with the probabilities. As stated in foregoing paragraphs, the First Information Report (FIR) Exhibit 32 lodged by the prosecutrix/PW1 herself shows that she has undergone college education for 2 years in Arts faculty. In discharge of the duties of the job taken by her, she was required to visit several villages in Phaltan Taluka of Satara District for selling the product 'Add-Gel'. Her evidence shows that she used to travel to various villages by taxi-jeep or even by any available goods vehicle such as tankers etc. She was thus a woman with worldly knowledge and was having experience of difficulties in life. She used to return to Phaltan town after her work, daily at about 8.00 p.m. Her evidence shows that she used to alight from the vehicle at or near S.T.Stand of Phaltan town and from there she used to go to her office cum residence, which was located near Jain Temple of Phaltan, by walk. Keeping in mind this position, let us put on record what the prosecutrix/PW1 has stated before the court in support of the allegation leveled by her against the appellant/accused in the FIR Exhibit 32 lodged by her with promptitude. According to her FIR Exhibit 32, though she, accompanied by the appellant/accused reached near her place of residence at Jain Temple, the appellant/accused took her further on the pretext of quarrel in the town. He, then, took her by motorcycle further 2 kms. away from Phaltan town by Phaltan-

Satara road. This was done under the threat of stabbing by a knife. The FIR Exhibit 32 reveals that the prosecutrix/PW1 then jumped from the running motorcycle and suffered a fall on the tar road. The appellant/accused then lifted her. Under his threat, she again sat on his motorcycle. Then, after traveling for some distance, she was taken 25 to 30 feet inside the left side of the road, where she was subjected to forcible sexual intercourse, initially for one time and subsequently, for four times by the appellant/accused.

8. On the backdrop of these allegations in the FIR Exhibit 32, as per version of the prosecutrix/PW1 before the court, on 26th June 2008 after visiting villages named Veer, Lonand and Taradgaon, she returned back to Phaltan by a tanker at about 8.30 p.m. and alighted near the bus stand of Phaltan. There, the appellant/accused called her by gesture. She told her name to him. He further told her that ladies should not travel late in the evening. After asking her about place of her residence, the appellant/accused offered lift to her, and therefore, she sat on his motorcycle. She was then taken by the motorcycle near the Jain Temple where her office cum residence was located. As per version of the prosecutrix/PW1, she requested the appellant/accused to drop her there but on the pretext that there was quarrel in the town, he told her that he would take her by another road. Thereafter, she was taken 2 kms. away from Phaltan by threatening her that she would be stabbed on abdomen. The prosecutrix/PW1 further deposed that as one vehicle came in front of the motorcycle, the appellant/accused slowed down the motorcycle and she jumped from the motorcycle. The appellant/accused then again lifted her and threatened that if she did not listen to him, he would kill her by knife. They proceeded further and then she was taken 20 to 25 feet inside the main road. As per version of the prosecutrix/PW1, there the appellant/accused made her to lay on the ground, took off her pyjama and committed rape on her. As the appellant/accused kept his palm on her mouth, she could not shout. As stated by her, after this incident, they came on the main road. There the appellant/accused leveled allegation on her that she had stolen his mobile phone and money. She was then again taken back to the spot of the incident on the pretext of searching the mobile phone and money. She accompanied the appellant/accused at that place where again by removing her clothes, she was subjected to forcible sexual intercourse by the appellant/accused. The prosecutrix/PW1 further deposed that as she had seen vehicles passing from the road, she came on the road, shouted for help and one vehicle stopped. Police got down from that vehicle. She narrated the incident to police. They were then taken to Police Station where she lodged report Exhibit 32. The spot was then inspected and one of her earrings apart from a knife was found on the spot of the incident.

9. Now let us consider whether probability factor makes this evidence believable or unbelievable. The prosecutrix/PW1 had stated in her FIR that the appellant/accused had called her to meet him at the S.T.Stand by a smiling gesture and then she joined his company when he offered lift to her for going to her residence. However, in her chief-examination, the prosecutrix/PW1 is speaking

about her initial reluctance to join the company of the appellant/accused and subsequently joining the company of the appellant/accused, considering humanitarian nature of the appellant/accused.

10. Evidence of the prosecutrix/PW1 shows that the appellant/accused had taken her near the Jain Temple where her place of residence was located. That road, as per her version in the cross-examination, was a road having traffic and many houses as well as shops were situated on that road. When the prosecutrix/PW1 along with the appellant/accused had reached near the Jain Temple where her place of residence was located, what was the reason for her to accompany the appellant/accused further, merely because the appellant/accused had spoken about the quarrel in the town, is not explained by the prosecutrix/PW1 in her evidence. The prosecutrix/PW1 was free to alight from the motorcycle of the appellant/accused at the Jain Temple itself, so as to reach her residence. What was the need to go further by taking another route on the say of the appellant/accused when the prosecutrix/PW1 had virtually reached at the place of her residence in company of the appellant/accused, is not explained by the prosecutrix/PW1 in her evidence. She has not even stated in her evidence that she had seen chaos at or near her place of residence at that time. She had not noticed any commotion or hue or cry on the road. Still, she undertook further journey with the accused.

11. The FIR lodged within an hour after the alleged incident contains version of the prosecutrix/PW1 that when the prosecutrix/PW1 was taken at a distance of about 2 kms. away from Phaltan town under threat of stabbing, she jumped from the motorcycle and had suffered a fall on the tar road. The FIR contains further averment that then the appellant/accused parked the motorcycle, came towards her, threatened her of stabbing by knife and therefore, she again sat on his motorcycle. In chief- examination the prosecutrix/PW1 has modulated her first version found in the FIR by stating that the speed of the motorcycle became slow because another vehicle came in front of the motorcycle, and therefore, she jumped from the motorcycle. She has conveniently not stated in her chief examination that she had suffered a fall on the tar road, visualizing the fact that in her report of the medical examination no injuries were found on her person. This shows tendency of the prosecutrix/PW1 to modulate her version to suit the prosecution case.

12. As per version of the prosecutrix/PW1, by taking her 20. to 25 feet inside from the Phaltan - Satara Road, the appellant/accused initially committed forcible sexual intercourse on her and thereafter, she was again taken back to the same place where the appellant/accused again committed forcible sexual intercourse with her. Careful scrutiny of chief-examination of the prosecutrix/PW1 itself goes to show that the spot of the incident was an open place from where Phaltan - Satara road was clearly visible. Infact, as claimed by her, at the end of the entire incident, she had seen a convoy of vehicles passing from that road, and therefore, she came on the road and stopped those vehicles. Her cross-

examination also reveals that Phaltan - Satara road is a road with traffic. If that is so, then why the prosecutrix/PW1 again rode the motorcycle of the appellant/accused after jumping therefrom is a fact which is not explained by her in her evidence. The prosecutrix/PW1 was having tons of opportunities after her jump from the motorcycle to seek help from the persons passing by that road. She could have very well stopped other vehicles and she could have narrated her suffering. She could have disclosed the fact that the appellant/accused was abducting her by threatening her to the passers-by. If averments made by the prosecutrix/PW1 are kept in mind, then it needs to be held that the prosecutrix/PW1 must be contemplating and anticipating the fact that she would be sexually violated by the appellant/accused, who was threatening to stab her and with such threats he was abducting her to some unknown place. However, still the prosecutrix/PW1 continued her further journey with the appellant/accused without any protest from the populous area. Any woman would certainly get suspicion in her mind that she may be sexually violated if she continues her journey in company of a male abductor to an isolated place, and that too, in the night hours away from the sight of world at large. However, in the case in hand, the prosecutrix/PW1 claims to have alighted the motorcycle by jumping therefrom. Thereafter, she again sat on that motorcycle for continuing her onward journey with the appellant/accused. She, then, claims to have gone to the area on the left side of the road, while being accompanied by the accused without offering any resistance or protest.

13. The FIR lodged by the prosecutrix/PW1 shows that the entire incident of her abduction and sexual violation and that too for five times by the appellant/accused took place in a short span of 8.30 p.m. to 10.30 p.m. of 26th June 2008. As per her claim in the FIR, initially the appellant/accused had committed forcible sexual intercourse with her once in the open space on left side of Phaltan - Satara road. Thereafter, he started leveling allegation of stealing his mobile and wallet on her, while standing by the side of Phaltan - Satara road for a period of about 1 to 1½ hours. In her cross-examination, the prosecutrix/PW1 has candidly accepted that she had disclosed this fact to police. If really after initial act of rape on the prosecutrix/PW1, the appellant/accused was quarreling with the prosecutrix/PW1 for a period of about 1 to 1½ hours and that too on the main road i.e. Phaltan - Satara road, then why the prosecutrix/PW1 failed to seek help of the passers-by, by disclosing the incident of commission of rape on her by the appellant/accused, is also a fact which is not explained by the prosecutrix/PW1 in her evidence. As per her version in the FIR, thereafter she again accompanied the appellant/accused to the open place at a distance of 20 to 25 feet from the main road for searching the mobile phone and wallet and on this occasion, the appellant/accused raped her four times. The prosecutrix/PW1 has conveniently dropped this allegation of commission of rape for four times by the appellant/accused on this second occasion while in the witness box, most probably keeping in mind the duration of the entire incident stated by her. The sequence of events unfolded by the prosecutrix/PW1 in her evidence are to the

effect that she and the appellant/accused reached the spot of the incident at about 9.00 p.m. of 26th June 2008. Then the appellant/accused initially raped her. Thereafter he leveled allegation of stealing mobile phone and wallet, standing by the said of Phaltan - Satara road for a period of about 1 to 1½ hours. The prosecutrix/PW1 further accepted the fact in her cross-examination that even the police had inquired from her whether she had stolen any articles from the appellant/accused. In cross-examination, the prosecutrix /PW1 has stated that at about 10 to 10.30 p.m., fleet of cars was seen on the road and she signaled the cars to stop. Thus, as per version of the prosecutrix/PW1 found in her cross-examination, the entire episode started from 9 p.m. and ended by 10.30 p.m. If evidence of the prosecutrix/PW1 is believed, then during this period of 1½ hours, the appellant/accused, who at the relevant time was aged about 45 years, had committed forcible sexual intercourse on the prosecutrix/PW1 by the side of Phaltan - Satara road on five occasions, apart from quarreling with her for a period of 1 to 1½ hours by leveling allegation of stealing his wallet and mobile phone on her. This version of the prosecutrix/PW1, as such, is not at all in tune with the probability factor. It is not possible to hold that within such short span of time, all these events can take place.

14. On this backdrop, if evidence of PW4 Vilasrao Shinde, Police Naik, is examined, then it becomes clear that he is the person who stopped his vehicle, upon being signaled by the prosecutrix/PW1. PW4 Vilasrao Shinde, Police Naik, is stating that the prosecutrix/PW1 signaled his vehicle to stop at about 8 - 8.30 p.m. of 26th June 2008 and then complained about commission of rape by the appellant/accused on her. He deposed that the appellant/accused, who was present nearby and started running, was then caught by him. If evidence of this official disinterested witness is accepted, then it becomes clear that the prosecutrix/PW1 joined company of the appellant/accused at the S.T.Stand of Phaltan town at about 8.00 p.m. of 26th June 2008 and then she signaled the vehicle of police to stop at about 8.30 p.m. near Pharandwadi i.e. at the outskirts of Phaltan town. Thus, within half an hour of joining company of the appellant/accused, the prosecutrix/PW1 alleged commission of rape by the appellant/accused for five times by taking her 20 to 25 feet inside the main road, on the open space, and that too after spending time of about 1 to 1½ hours on quarreling with each other. This discrepancy in evidence of the prosecution makes the case suspect. Evidence of this witness indicates that the prosecutrix/PW1 was in company of the accused only for thirty minutes. This time was spent in the journey from the S.T.Stand of Phaltan to Pharandwadi. Then, how the appellant/accused had raped the prosecutrix/PW1 for five times during this period is a fact which is shrouded in mistry.

15. To crown this all, medical evidence in respect of examination of the prosecutrix/PW1 casts a serious shadow of doubt on case of the prosecution. As per the prosecution case, the prosecutrix/PW1 was subjected to repeated forcible sexual intercourse up to 10.30 p.m. of 26th June 2008. Prior to that, she had jumped from the fast running motorcycle and had suffered a fall on the tar road.

Cross-examination of the prosecutrix/PW1 shows that the spot of the incident where she was subjected to rape was a rough agricultural land. The Spot Panchnama Exhibit 57 also reflected that the spot where the prosecutrix/PW1 was allegedly raped was a rough agricultural land with heap of stones lying nearby. Though in her substantive evidence before the court, the prosecutrix/PW1 has stated that she was raped twice by the appellant/accused, she claims to have been raped for five times by the appellant/accused in her report to the police which is at Exhibit 32. The prosecutrix/PW1 was taken to the Rural Hospital, Phaltan, within four hours from occurrence of the alleged incident. There she was examined by PW5 Dr.Anshuman Dhumal. The prosecutrix/PW1 was precisely examined at 2.45 a.m. of 27th June 2008 by PW5 Dr.Anshuman Dhumal. Evidence of PW5 Dr.Anshuman Dhumal also makes the prosecution case suspect. This witness while examining the prosecutrix/PW1 had found her white dupatta drenched with blood and mud. He also found white salwar of the prosecutrix/PW1 stained with blood. However, upon external examination of the prosecutrix/PW1, this witness has not even found a scratch mark on body of the prosecutrix/PW1. Despite the fact of jumping from the fast moving motorcycle and suffering a fall on the tar road, the prosecutrix/PW1 had not suffered even a minor abrasion or contusion. This finding of the Medical Officer belies the version of the prosecutrix/PW1 that because of fall from the motorcycle she sustained injuries in the nature of contusion. Similarly, this medical evidence coming from the mouth of PW5 Dr.Anshuman Dhumal belies the version of the prosecutrix/PW1 that because of successive forcible sexual intercourse on the rough surface of the agricultural field, her back had signs of blunt trauma i.e. black and blue marks. Within four hours even small abrasion or contusion does not get healed. Improbabilities surfaced from version of the prosecutrix/PW1 does not end here. Evidence of PW5 Dr.Anshuman Dhumal shows that though he examined the prosecutrix/PW1 within four hours of the incident, he had not noticed active bleeding from vagina of the prosecutrix/PW1. Evidence of PW5 Dr.Anshuman Dhumal shows that upon internal examination of the prosecutrix/PW1, he noticed an old tear at her hymen and the vagina of the prosecutrix/PW1 was admitting one finger easily. This Medical Officer did not notice matting or blood stains on pubic hair of the prosecutrix/PW1. In absence of active bleeding from the private part of the prosecutrix/PW1 and in absence of any external injury on the entire body of the prosecutrix/PW1, how the dupatta of the prosecutrix/PW1 was found drenched with blood is again a factor which casts a shadow of doubt on the prosecution case. The appellant/accused had not suffered any injury in the incident in question. No doubt, the Medical Officer had found tear of size of 1.5 x ½ x 0.5 cms. but it was on the posterior wall of vagina of the prosecutrix/PW1. Cross-examination of PW5 Dr.Anshuman Dhumal makes it clear that this part of the vagina is located at the back of labia majora, labia minora and clitoris. Absence of stains of blood on pubic hair of the prosecutrix/PW1 and size of this injury makes it clear that there was no active bleeding from this injury, so as to drench the white dupatta of the prosecutrix/PW1 in blood and to stain her salwar with blood. Moreover, when such a minor injury was found on person of the

prosecutrix/PW1, when the spot was inspected in the morning hours of the next day, surprisingly several stains of blood were found on the spot of the incident. This is clear from the recitals in Spot Panchnama Exhibit 57. Though there was no mud on the spot as seen from the Spot Panchnama, dupatta of the prosecutrix/PW1 was found drenched in mud by PW5 Dr. Anshuman Dhumal. A lurking doubt arises in such situation as to whether evidence was being manufactured to support the case of prosecution. Though the prosecution has examined both panch witnesses namely PW2 Bhausaheb Budhanwar and PW3 Maruti Kadam to prove this Spot Panchnama, both of them have not supported the prosecution. In a criminal trial this aspect will have to be kept in mind for evaluating the merits of the prosecution case.

16. One more aspect further makes version of the prosecutrix/PW1 unworthy of reliance. On the day of the incident i.e. on 26th June 2008, the prosecutrix/PW1 had completed the day's work by visiting three villages. Her cross-examination shows that on that day, she sold ten to twelve bottles of the product 'Add-Gel' but still four to five bottles of the product remained in her briefcase. Other articles such as her money purse, receipt book and articles of day to day use were also kept in that briefcase. The prosecutrix/PW1 claimed that after suffering the incident of forcible sexual intercourse on her, her briefcase remained on the spot of the incident. The Spot Panchnama Exhibit 57 which was recorded on the next day morning by police does not show that the briefcase of the prosecutrix/PW1 was lying on the spot of the incident. In her substantive evidence before the court or even after lodging the FIR Exhibit 32 by her, the prosecutrix/PW1 has not made any complaint of missing of her briefcase, in the incident in question.

17. The prosecutrix/PW1 has made a strange claim of threatening by the appellant/accused of stabbing by knife while he was riding on the motorcycle and when the prosecutrix/PW1 was occupying the pillion seat. The prosecutrix/PW1 has not even claimed that the appellant/accused was ever holding a knife or pointing the knife at her. Her evidence on this aspect is as vague as it can be. How the appellant/accused was in a position to point a knife at the prosecutrix/PW1 while riding the motorcycle and when the prosecutrix/PW1 was occupying the pillion seat of the motorcycle is not explained by the prosecutrix/PW1 in her evidence. The prosecutrix/PW1 has not even stated as to where the appellant/accused had kept the knife and when he whipped out the knife to threaten her.

18. All these reasons coming on record after careful evaluation of evidence of the prosecutrix/PW1 makes her evidence infirm and unworthy of placing explicit reliance to base conviction for such a serious offence. The other side of the story is unfolded by the defence witness no.1 Lakhan Khatal, who happens to be a college going son of the appellant/accused. It is trite that evidence of the defence witness is also entitled to have same treatment as is given to the witness examined by the prosecution. DW1 Lakhan Khatal has categorically deposed that when the incident allegedly took place, he was taking education in Aeronautical Maintenance Engineering College at Baramati where he was

required to pay annual fees of Rs.1.35 lakh. He stated that after release of his father on bail, he used to accompany his father to the court of the learned Judicial Magistrate First Class at Phaltan and thereafter the Court of Sessions at Satara. As per version of DW1 Lakhan Khatal, father of the prosecutrix/PW1 met him in the court and demanded an amount of Rs.10 lakh for settling the matter and subsequently, that demand was reduced to Rs.7 lakh. DW1 Lakhan Khatal agreed to pay Rs.2 lakh. He categorically stated before the court that he paid Rs.2 lakh to the father of the prosecutrix/PW1. He deposed that by taking a drop from the college for a year and by taking some amount as a hand- loan, he paid the amount earmarked for his college fees and the amount arranged by taking the hand-loan to the father of the prosecutrix/PW1. As per version of DW1 Lakhan Khatal, this happened in the year 2010 when the case was pending at the Court of Sessions, Satara. At this juncture, it is apposite to note that in the year 2010, recording of evidence of prosecution witnesses in the sessions case had not started. This amount of Rs.2 lakh as such, is seen to have been paid to the father of the prosecutrix/PW1 prior to the prosecutrix/PW1 entering in the witness box. DW1 Lakhan Khatal further deposed that thereafter on one day, father of the prosecutrix/PW1 came to his house and invited him to have negotiations for settling the matter. DW1 Lakhan Khatal accompanied by one Popat Kokare then went to Village Andhori where father of the prosecutrix/PW1 used to stay. Evidence of DW1 Lakhan Khatal shows that then the meeting took place at the open land in the vicinity of the house of father of the prosecutrix/PW1. In that meeting, mother as well as paternal uncle of the prosecutrix/PW1 and 2/3 other persons were present. As deposed by DW1 Lakhan Khatal, he then informed father of the prosecutrix/PW1 that amount of Rs.5 lakh as demanded, is beyond his capacity and that amount be reduced to some extent. Upon being questioned by him, father of the prosecutrix/PW1 accepted the fact that he had received Rs.2 lakh but had stated that he was demanding more amount as he was required to attend the court by a jeep apart from maintaining three to four goons.

DW1 Lakhan Khatal testified that father of the prosecutrix/PW1 told him that out of his demand of Rs.7 lakh, he had received Rs.2 lakh only and an amount of Rs.5 lakh was still in balance. Father of the prosecutrix/PW1 refused to reduce that amount, and as a student, he could not arrange for such a huge amount. In addition to this, as per version of DW1 Lakhan Khatal, he by using the pen camera had video graphed entire proceedings of the meeting. He produced the Compact Disk of the recorded event so also the transcript Exhibit 106 of the conversation between the persons attending that meeting. It is seen that the learned trial court had directed the Assistant Superintendent to verify the conversation in the Compact Disk and the record contains the report dated 22nd February 2012 of the Assistant Superintendent (Judicial Branch) District court Satara addressed to 2nd Ad-hoc District Judge, Satara, to the effect that except a marked portion on page 4 of the transcript at Exhibit 106, rest of the portion in the transcript is as per the conversation in the Compact Disk.

19. DW1 Lakhan Khatal was subjected to the cross-examination. The prosecution has not at all disputed his version regarding payment of Rs.2 lakh by him to the father of the prosecutrix/PW1 in the year 2010 and further demand of Rs.5 lakh as balance amount by the father of the prosecutrix/PW1 from DW1 Lakhan Khatal for settling the matter. Entire evidence of DW1 Lakhan Khatal regarding demand of huge amount of Rs.7 lakh by father of the prosecutrix/PW1, payment of Rs.2 lakh by him to the father of the prosecutrix/PW1 and further demand of balance amount of Rs.5 lakh by the father of the prosecutrix/PW1 from DW1 Lakhan Khatal has gone unchallenged and as such, there is no reason to disbelieve this version of DW1 Lakhan Khatal. The prosecution has not disputed meeting of DW1 Lakhan Khatal with father of the prosecutrix/PW1 named Nana at Village Andhori and happenings in that meeting as disclosed by DW1 Lakhan Khatal. What was suggested to DW1 Lakhan Khatal in his cross-examination by the prosecution is to the effect that taking undue advantage of illness of father of the prosecutrix/PW1, DW1 Lakhan Khatal had video-graphed entire proceedings of the meeting. In other words, the prosecution is accepting the meeting between the prosecuting party and the son of the appellant/accused as well as demand of money by the prosecuting party from DW1 Lakhan Khatal for settling the matter and for securing acquittal of the appellant/accused. Receipt of amount of Rs.2 lakh by father of the prosecutrix/PW1 is also undisputed. This unchallenged evidence of the defence witness probabalize the defence of the appellant/accused that he was honey-trapped by the prosecutrix/PW1 in order to extract money from him. Reasonable doubt lurks in the judicial mind as to whether the prosecutrix/PW1 is a witness of truth or whether she was using her womanhood for falsely implicating the appellant/accused in the crime in question.

20. Forensic evidence in the nature of report of chemical analysis of the seized articles and samples as well as the report of the DNA is no doubt supporting the case of the prosecution, but considering the events unfolded during the course of evidence and considering the nature of evidence coming from the mouth of the prosecutrix/PW1, it is not possible to hold that the sexual intercourse, if any, between the appellant/accused and the prosecutrix/PW1 was against her will and without her consent. This is particularly so because the FIR itself indicates that she voluntarily sat on the motorcycle of the appellant/accused as a pillion rider and instead of alighting from the motorcycle near the place of her residence, continued her further journey with the appellant/accused outside Phaltan town. Thereafter also, despite having tons of opportunities to extricate herself from the clutches of the appellant/accused, she continued to be in the company of the appellant/accused and subsequently, raised grievance of forcible sexual intercourse. Then there is evidence of demand and acceptance of huge amount by her father from son of the appellant/accused. DW1 Lakhan Khatal was even invited to the native place of the prosecutrix/PW1 by her father. Evidence of the prosecution is not in tune with the probability factor and suffers from serious infirmities. As such, the appellant/accused deserves to be granted benefit of

doubt. Hence the following order :

ORDER

i). The appeal is allowed.

ii). The impugned judgment and order dated 22nd August 2013 passed by the learned Additional Sessions Judge, Satara, in Sessions Case No.59 of 2009, thereby convicting the appellant/accused of offences punishable under Sections 376 and 506 of the Indian Penal Code, is quashed and set aside.

iii). Appellant/accused Dattatray @ Kashinath Babaso Khatal is acquitted of offences punishable under Sections 376 and 506 of the Indian Penal Code.

iv). He be set at liberty if not required in any other case.

v). Fine, if any, paid by him, be refunded to him.