
(2024) 11 BOM CK 0004

Bombay High Court (Nagpur Bench)

Case No: Criminal Appeal No. 353 Of 2022

Shailesh Mahadeo Lanjewar

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision: Nov. 12, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 366, 376(2)(f), 376(2)(n)

Hon'ble Judges: G. A. Sanap, J

Bench: Single Bench

Advocate: Yogesh Mandpe, Mukta Kavimandan, Falguni Badani

Final Decision: Disposed Of

Judgement

G. A. Sanap, J

1. In this appeal, challenge is to the judgment and order dated 21.03.2022 passed by the learned Additional Sessions Judge, Chandrapur (for short

the learned Judge™), whereby the learned Judge convicted the appellant/accused for the offences punishable under Sections 366, 376(2)(f) and

376(2)(n) of the Indian Penal Code (for short the IPC™) and sentenced him to suffer rigorous imprisonment for five (05) years and to pay a fine

of Rs.2000/-, in default of payment of fine further directed to suffer simple imprisonment for six months for the offence punishable under Section 366

of the IPC and he is further sentenced to suffer rigorous imprisonment for fourteen (14) years and to pay a fine of Rs.2000/-, in default of payment of

fine further directed to suffer simple imprisonment for six months for each of the offences punishable under Section 376(2)(f) and 376(2)(n) of the

IPC.

2. Background facts

PW-1/Prosecutrix is the informant. The crime against the appellant, who is her son-in-law, was registered on 23.12.2018. The

prosecution case which emerges from the report and other material is that the prosecutrix is doing the business as a flower vendor at Golbazar in the

vicinity of Chandrapur Bus Stand. There was marital discord between the appellant and his wife Deepmala. They have two daughters, namely

Shravani and Vaishnavi. The wife of the appellant was residing separately at Nagpur. On 21.12.2018, the prosecutrix had received a phone call from

her granddaughter Shravani. She informed prosecutrix that she was not feeling well. The prosecutrix promised her to come to Nagbhid and meet her.

The prosecutrix was supposed to go to Nagbhid for that purpose.

3. It is stated that on 21.12.2018, in the evening, the appellant came to her shop and quarreled with her. The appellant told her to reunite his wife with

him. The appellant at that time compelled her to accompany him to Nagbhid, where the Shravani was residing. The prosecutrix even otherwise

wanted to go to Nagbhid to meet her granddaughter. She accompanied the appellant on the motorcycle. The appellant at village Lohara purchased

country liquor. At about 10:00 p.m., on the way to Nagbhid, the appellant stopped his motorcycle and drank the country liquor. He told the prosecutrix

that, as her daughter is not living with him, he wanted to establish physical relations with her. The prosecutrix was shocked, and she told the appellant

that he should not talk like that as she was like his mother. However, the appellant did not pay any heed to her request. The appellant caught hold of

her hand and took her in the jungle beside the road. The appellant beat the prosecutrix, brought her down on the ground and committed a forcible

intercourse with her. After an interval of some time, he again committed sexual intercourse with her.

4. It is stated that at the scene of the occurrence the keys of the motorcycle, which had been kept by the appellant in his pocket, fell down and later on

he could not trace it out. Due to this, the appellant manually pushed his motorcycle and took it towards the chowki of the forest department. On

reaching there, he told two persons present at the chowki that he lost the keys of motorcycle, when he had gone to attend the nature's call and

requested them to help him in searching the keys. One of the watchmen helped the appellant in searching the keys in his mobile light. It is stated that

while the appellant and one watchman were searching for the keys, 2-3 other persons came to the said chowki. The prosecutrix was with them. The

prosecutrix told these persons about the forcible rape committed on her by the appellant, who is her son-in-law. Those persons did not pay any

attention to her. They told her that they had to perform their duty in the night and instructed them to leave the spot.

5. It is the further case of the prosecution that the appellant then went ahead with the prosecutrix on the motorcycle. The appellant stopped his

motorcycle at Chichpali, near Bajrangbali idol. At the said place, some people were sitting and warming themselves on the fire kindled by them. The

prosecutrix at that time told the persons sitting around the fire about the forcible intercourse committed with her by the appellant. The appellant,

however, told those persons that the prosecutrix was mad and on account of that, none of them helped her. The appellant compelled the prosecutrix to

sit on his motorcycle and proceeded ahead. At about 3:00 a.m., they reached the bus stop constructed on the road near the Andhari River. The

appellant forcibly took the prosecutrix to the bus stop shed and committed rape upon her. Thereafter, the appellant threatened to kill her if she

disclosed about this occurrence to anybody.

6. At about 5:00 a.m., the appellant and the prosecutrix proceeded to Nagbhid. They reached the house of the sister of the appellant at about 10:00

a.m. On reaching there, the prosecutrix met her granddaughter Shravani. The prosecutrix informed Shravani, Shravani's paternal aunt and also

mother of the appellant, about the assault on her by the appellant. Thereafter, she had lunch at the house of the sister of the appellant and she took a

train at 12:45 p.m. for Chandrapur. On reaching Chandrapur at about 3:30 p.m., the prosecutrix went to the house of her daughter Shubhangi and

narrated her the crime committed by the appellant. Her daughter gave courage to the prosecutrix and thereafter, they went to the police station at

Gandhi Chowk. From there they were sent to police station Ramnagar. The prosecutrix lodged the report of the incident.

7. On the basis of this report, the crime bearing No. 1485 of 2018 was registered against the appellant. The prosecutrix was sent for medical

examination to the Government Medical College and Hospital at Chandrapur. The initial investigation was carried out by PW-11. PW-11 Prajakta

Nagpure drew the spot panchanama at the place of occurrence. The clothes of the prosecutrix had been seized. The blood samples collected by the

medical officer had also been seized. The accused was arrested on 23.12.2018. He was also referred for medical examination. The test identification

parade of the appellant was conducted through the witnesses, who had seen the prosecutrix with the appellant in the said night. The samples had been

sent to the CA. The CA reports and DNA reports were received. On completion of the investigation, the charge-sheet was filed against the appellant

by the second investigating officer PW-10 Vitthal More.

8. Learned Judge framed the charge against the appellant. The appellant abjured his guilt. His defence is of false implication at the instance of the

wife of the appellant. It is his defence that sexual intercourse was consensual. The prosecution, in order to bring home guilt of the appellant, examined

eleven witnesses. Learned Judge, on consideration of the evidence, held the appellant guilty of the charge and convicted and sentenced the appellant

as above. The appellant, being aggrieved by this judgment and order, has come before this Court in appeal.

9. I have heard learned Advocate Mr Y. B. Mandpe for the appellant, the learned APP Ms Mukta Kavimandan for the State and learned Advocate

Ms Falguni Badani appointed to represent respondent No.2. Perused the record & proceedings.

10. The learned Advocate Mr Y. B. Mandpe submitted that there are major inconsistencies and discrepancies in the evidence of the prosecutrix. The

evidence is not credible and trustworthy. There are major contradictions with regard to the place, where the prosecutrix was forced to accompany the

appellant. It is pointed out that the prosecutrix in her report stated that the appellant meet her at Chandrapur Bus Stand when she was proceeding to

Nagbhid to meet her granddaughter Shravani. Whereas, before Court she has stated that incident of beating and abduction of the prosecutrix occurred

in front of her flower shop. The learned Advocate submitted that, therefore, the very genesis of the incident is doubtful. The learned Advocate further

submitted that the conduct of the prosecutrix is inconsistent with her contention that she was subjected to forcible intercourse. In short, the learned

Advocate submitted that sexual intercourse was consensual. The learned Advocate pointed out that there was no compulsion on the prosecutrix to

accompany the appellant on his motorcycle. The prosecutrix had ample opportunity to run away and even to inform the police on the way to Lohara

from Chandrapur. She even had an opportunity to run away at Lohara, when the appellant wanted to purchase the liquor, but she did not avail it.

Again, after committing the alleged first intercourse in the jungle, at Forest Chowki she had an opportunity to board a vehicle and to come back to

Chandrapur. It is submitted that this conduct of the prosecutrix suggests that she was a consenting party to the act. It is submitted that just to involve

the appellant falsely on account of the marital discord between the appellant and the daughter of the prosecutrix and to get rid of the appellant, he was

falsely implicated. The learned Advocate submitted that the evidence of other witnesses, even if accepted, at face value would not be sufficient to

prove the offence of the forcible intercourse against the consent of the prosecutrix. The learned Advocate pointed out that there were no injuries on

the person of the prosecutrix as well as of the appellant to suggest that when the prosecutrix was taken to the jungle she had protested the appellant.

The learned Advocate submitted that the learned Judge has failed to properly appreciate the available evidence and come to a wrong conclusion.

11. Learned APP submitted that the contradiction as to the place where the prosecutrix had been forced to accompany the appellant on a motorcycle

has been sufficiently explained. This aspect has been properly appreciated by the learned Judge. It is submitted that this contradiction would not make

the forcible act a consensual act. It is submitted that there is an independent witness, who is the adjoining flower vendor, to corroborate the version of

the prosecutrix as to the occurrence of the incident in front of the shop. The learned APP submitted that the prosecutrix on that day wanted to go to

Nagbhid to meet her granddaughter. The evidence shows that the appellant made a phone call to the prosecutrix and, after knowing her whereabouts, came to the shop and quarreled with her. The learned APP submitted that the appellant insisted the prosecutrix to reunite his wife with him. On that count, there was a quarrel and he forced the prosecutrix to accompany him to Nagbhid. It is submitted that the prosecutrix even otherwise had to go to Nagbhid to see her granddaughter Shravani and therefore, at the instance of the appellant, she accompanied him on his motorcycle. The learned APP submitted that it is not the case of the appellant that prior to this incident he had physical relations with the prosecutrix. The learned APP submitted that, being her son-in-law, the prosecutrix believed him and in good faith accompanied him. The learned APP submitted that the evidence of the medical officer clearly shows that the prosecutrix was subjected to sexual intercourse. The CA report as well as DNA report prove the complicity of the appellant in the commission of the crime of rape. The learned APP submitted that the conduct of the prosecutrix in narrating the forcible rape committed on her to the person, who met them on the way, is consistent with her conduct. The learned APP submitted that the learned Judge has not committed any mistake or illegality.

12. Learned Advocate appointed to represent the prosecutrix has adopted the submissions advanced by the learned APP.

13. PW-1, the prosecutrix, is the most important witness in this case to prove the charge leveled against the appellant. It is the defence of the appellant that the sexual intercourse with the prosecutrix was consensual. The learned Judge, on minute scrutiny and appreciation of the evidence, recorded a finding that the defence of the consensual act has not been established. The learned Judge has held that the evidence of the prosecutrix is sufficient to prove that the appellant committed sexual intercourse with her against her consent. The report of the incident was lodged on the next day of the incident. There was no delay in lodging the report. The prosecutrix has deposed that her daughter Deepmala is married to the appellant. It was a love marriage. On account of her marital discord, since five years Deepmala has been residing at Nagpur. They have two daughters, Shravani and

Vaishnavi. The daughters had been residing with the appellant. She has stated that on 21.12.2018, her granddaughter Shravani had gone to her

maternal aunt's house at Nagbhid. She had informed her on phone that she was not well and requested her to come to Nagbhid. The prosecutrix

has stated that she had assured Shravani that she would come to meet her. She has stated that in the evening the appellant came to her shop and

abused her. The appellant insisted that the prosecutrix should bring his wife back. He beat her. She has stated that thereafter she went to Chandrapur

Bus Stand to go to Nagbhid. The appellant came there and forced her to accompany him on motorcycle. The prosecutrix, in her further evidence,

reiterated the facts stated in the report. She has stated that on the way to village Lohara, the appellant purchased country liquor. On the way, he drank

some liquor. The appellant, on the way, stopped the vehicle in jungle and took her inside the jungle and committed sexual intercourse with her. She has

stated that when the appellant expressed desire to commit intercourse with her, she told him that he should not behave like that because she is like his

mother. She has stated that at the time of the incident, the appellant lost his keys. He brought the motorcycle on the road pulling it manually. There

was a forest guard near the chowki. The appellant told them that when he had gone to attend nature's call, he lost his keys. He took the

assistance of the forest guard to search the keys. The prosecutrix has categorically stated in her report as well as in her deposition before the Court

that she narrated this unfortunate incident to the forest personnel and requested for help. She has stated that the forest personnel told her that they

were on duty and therefore, could not help her.

14. She has further stated that she was compelled to accompany the appellant on the motorcycle. The appellant stopped the motorcycle near

Bajrangbali idol at Chichpali. The people were warming on the fire kindled by them. The prosecutrix has stated that she went towards those people

and sought their help. She narrated the incident to them. She has stated that the appellant told those people that the prosecutrix was mad. She has

further stated that on the way to Nagbhid in the night at the bus stop shed in front of the Andhari River, the appellant forcibly committed sexual

intercourse with her. She has stated that they reached the house of the sister of the appellant at 10:00 a.m. She narrated his sister and mother that the appellant beat her. She has stated that after taking meals she went to Chandrapur and narrated the incident to her another daughter Shubhangi, who is residing at Chandrapur. Then they went to the police station and reported the matter.

15. It is evident that in her cross-examination certain omissions and contradictions have been elicited. The main contradiction is with regard to the commencement of the incident. It was stated in the report that while she was at Chandrapur Bus Stand to go to Nagbhid, the appellant met her, and there he quarreled with her and forced her to accompany him on motorcycle. In her evidence, she has stated that the incident occurred in front of her flower shop, and in the presence of the other shop vendors, the appellant forced her to accompany him on a motorcycle. She has categorically stated that the appellant quarreled with her on the ground that his wife is not joining his company. The appellant insisted her to reunite them. As far as this part of her evidence is concerned, it is consistent with her report. She has admitted that the fact with regard to the occurrence of the incident on the Chandrapur Bus Stand is false. It has come in her evidence that she did not protest or resisted the appellant on the way to Lohara. The answers given by her in the cross-examination would show that she had ample opportunity either to run away or complain to the police and people about the appellant. In my view, on this count alone, her evidence cannot be discarded. It is necessary to keep in mind that the appellant is her son-in-law. Her granddaughter Shravani was at Nagbhid. She wanted to meet her because she was not well. Shravani had requested her to come to Nagbhid and meet her. The prosecutrix had no reason to doubt the intention of the appellant. The appellant married her daughter twenty years back. It is not the defence of the appellant that prior to this incident he had consensual relations with the prosecutrix. The prosecutrix had no reason to suspect that the appellant would commit an intercourse with her. As far as the quarrel and the subject of the quarrel in front of her shop is concerned, there is no reason to disbelieve the same. It is to be noted that the quarrel between the appellant and the prosecutrix in front of the shop was purely of a domestic

nature and as such, the prosecutrix had no reason to suspect any such intention of committing rape on her by the appellant. The appellant was

frustrated on account of the marital discord between him and his wife. Therefore, on this count, it is not possible to conclude that the prosecutrix was

a consenting party to this act. It is true that she had an opportunity to run away as well as complain, when she was forced to accompany him on

motorcycle. The prosecutrix would not have even imagined such an act at the behest of the appellant with her. Therefore, this conduct of the

prosecutrix accompanying the appellant on the motorcycle could not be the ground to record a finding that the prosecutrix was a consenting party.

Despite searching cross-examination, no material has been elicited to indicate that the prosecutrix was a consenting party. The conduct of the

prosecutrix is consistent. She complained about forcible rape on her by the appellant to the forest guard, when she had the opportunity to do so for the

first time. She also requested the people to whom she met at village Chichpali to help her, but they did not help her. In the night, she had no other

alternative than to accompany the appellant on his motorcycle. On perusal of her evidence in its entirety, I am satisfied that it is credible and

trustworthy. It is not the case of the appellant that his daughter Shravani had not come to Nagbhid. It was not suggested to the prosecutrix that on that

day Shravani was not suffering from any illness.

16. The prosecutrix has stated that after reaching Nagbhid at the house of the sister of the appellant, she narrated the incident of beating to his mother

and sister. She did not narrate the incident of rape on her by the appellant. She had admitted this fact. It is to be noted that she had gone there to meet

her granddaughter Shravani. She met Shravani at the house of the sister of the appellant. If she had not stated any part of the incident, then it would

have been a doubtful circumstance. The prosecutrix was subjected to forcible rape by the appellant, who is her son-in-law. She might not have felt it

proper to disclose this to his sister and mother in presence of Shravani. She might not have narrated the entire incident to them because it would have

further embarrassed her. She was already ravished and humiliated by the appellant. In order to avoid further humiliation and discussion on this subject,

she might have thought it fit not to tell them about the rape committed on her by the appellant. In my view, this cannot go against the appellant. It is to be noted that there is other corroborative evidence to substantiate the contention of the prosecutrix that the rape committed on her was against her consent.

17. PW-2 Raju Kopulwar is the forest guard. In his evidence, he has narrated the part of the incident witnessed by him on 21.12.2018 at about 11:00 p.m. He has stated that on that day he was on night duty with one Someshwar Aasutkar. He has stated that at that time one person came there manually pushing his motorcycle. The said person called them. He has stated that one woman was with him. He has stated that said person told them that he had lost his keys and requested them to help him to find it out. He has stated that the forest guard Someshwar accompanied the appellant into the jungle to search for keys. At that time the woman was standing with him and the woman told him that the said person had committed forcible sexual intercourse with her. He has stated that he questioned the said person when he came back after finding the keys, but he told him that the woman is mad. He has stated that he narrated the said incident to forest guard Someshwar. He has stated that the prosecutrix at that time was frightened.

18. The appellant was not known to this witness. He was called by the police for conducting the test identification parade of the appellant on 10.01.2019. In the test identification parade, he identified the appellant being the same person who had met them with the woman in the jungle. This witness was subjected to searching cross-examination. He has stated that he did not inform his superior officer about the complaint of rape made by the woman. He has also admitted that he did not inform about the same to the Police Station. He has admitted that on that road there is a vehicular movement in the night. Perusal of his cross-examination would show that nothing has been brought on record to discard his evidence. This witness had no axe to grind against the appellant. The evidence of this witness as to the loss of keys by the appellant in the jungle is consistent. They had helped the appellant to find out the keys. There is consistency in the evidence of the prosecutrix and the evidence of this witness on this material point. This

witness identified the appellant in the test identification parade. The suggestion was put to this witness that at the time of the investigation he had an opportunity to see the appellant. He has denied this suggestion. The suggestion put to this witness clearly suggest that the appellant has not denied this part of the occurrence. I do not see any reason to discard and disbelieve his evidence.

19. PW-3 Laxman Chahare is the most important witness. He is the flower vendor having a shop adjoining to the shop of the prosecutrix. In my view,

the evidence of this witness is sufficient to prove the incident as well as to explain the inconsistency and contradiction as to the occurrence of the

incident in front of the shop. He has stated that the prosecutrix has a flower shop adjoining to his shop where the incident had occurred. He has stated

that the incident occurred on 21.12.2018 at about 7:00 p.m. He has stated that the appellant came there and questioned the prosecutrix about his wife.

He has stated that the appellant slapped the prosecutrix. He has stated that he and other people present there tried to give an understanding to the

appellant, but the appellant did not listen. The appellant made the prosecutrix to sit on his motorcycle and took her away. He has stated that at that

time the prosecutrix handed over her bag and flower basket to him. He returned the same to her on next day. He has stated that on the next day the

prosecutrix told him that the appellant had committed rape on her. This witness was also subjected to searching cross-examination. It was suggested

to him that, on account of his acquaintance with the prosecutrix, he has deposed falsely. He has admitted that the police station is near to the market.

He did not go to the police station and report the incident to the police. In my view, on this ground, his testimony cannot be disbelieved. This witness

knew that the appellant is the son-in-law of the prosecutrix. In his presence, the appellant had quarreled with the prosecutrix and insisted the

prosecutrix to reunite him with his wife. It was therefore not expected from this witness to go and report this incident to the police. As far as this

witness is concerned, the quarrel between the appellant and the prosecutrix was purely of domestic nature. This witness considering the quarrel being

of routing nature, might not have reported the same to the police. On minute scrutiny and appreciation of the evidence of this witness, I do not see any

reason to doubt his version. His evidence clearly proves that the incident had occurred in front of the shop. His evidence fully corroborates the prosecutrix on this point. Even if it is assumed that some incident had occurred at the Chandrapur bus stand, the fact of the occurrence of some incident in front of the shop of the prosecutrix cannot be disbelieved.

20. PW-4 Jitendra Gadewar is the Nayab Tahsildar, who conducted the test identification parade. In his evidence, he has deposed about the request made by the police to him to conduct the test identification parade of the appellant and the procedure followed by him while conducting it. In his evidence, he has categorically stated about the precautions taken by him at the time of the test identification parade. He has stated that after going to the jail, he secured the presence of the appellant as well as the dummies and made them stand in the queue. There were six dummies in the row and the

PW-2 and Someshwar identified the appellant. He has deposed that the test identification parade by PW-2 and Someshwar was conducted separately.

Perusal of his cross examination would show that no dent has been caused to his evidence in examination-in-chief, as to the conduct of the test identification parade, identification of the appellant by the witness, as well as the precautions taken by him at the time of the test identification parade.

Exh. 28 is the requisition letter made by the investigation officer. Exh.32 is the test identification parade memorandum. Exhs.30 and 31 are the charts with details of dummies and the appellant. Exh.30 pertains to the identification of the appellant by witness Someshwar. Exh. 31 pertains to the identification of the appellant by PW-2.

21. PW-5 Ishwar Shende is the watchman at Chowki, which is near to Hanuman Temple at Chichpalli. He has deposed about the part of the incident seen by him. It is to be noted that he was not summoned by the police for identification of the appellant. Therefore, much importance cannot be placed on his evidence. PW-6 Shubhangi Wankhede is the daughter of the prosecutrix. The incident of rape on the prosecutrix was first narrated to her by the prosecutrix. She has stated that she gave courage and support to the prosecutrix and accompanied the prosecutrix to the police station. She has stated that the entire incident of the forcible sexual intercourse with her by the appellant was narrated to her by the prosecutrix. In her cross-

examination, an attempt was made to bring on record the reasons for the false implication of the appellant by the prosecutrix. In her cross examination she has stated that there is a marital dispute between her sister Deepmala and the appellant. She has admitted that Deepmala, the wife of the appellant, had filed cases in the Court at Nagpur. The prosecutrix had helped Deepmala in filing the said cases. She has stated that the prosecutrix is residing adjoining to her house. On every day they meet. She has stated that on 21.12.2018, when her mother did not come back from the market, she made a phone call in the market and inquired about her mother. She was told that the appellant had forcibly taken her mother with him. She has stated that on that day and/or on next day she did not go to the police and report the matter to the police. It is to be noted that this part of her statement in cross-examination is natural. As far as the major part of the incident is concerned, she was not privy to that. She has deposed before the Court on the basis of the information received from the prosecutrix. She accompanied the prosecutrix to the police station. It is to be noted that there was no delay in lodging the report. I do not see any reason to discard the evidence of this witness. It is evident that the prosecutrix did not inform about this incident to Deepmala. The prosecutrix from Nagbhid went to Chandrapur and conveyed the incident to her daughter Shubhangi. It is therefore evident that Deepmala had not played any role in this episode before lodging the report by the prosecutrix to the police station. It cannot therefore be said that the Deepmala was instrumental in falsely implicating the appellant in this case.

22. The next important corroborative evidence is with regard to the seizure of the samples, the seizure of the clothes of the prosecutrix, the clothes of the appellant and the samples of the appellants. The investigating officer has deposed that after examination of the prosecutrix, the samples had been collected by the medical officer. The samples had been sent to CA for analysis. The report of the analysis of the sample is part of the record. The blood samples of the prosecutrix as well as the appellant had been collected during the course of the investigation. The CA report is at Exh. 78. The CA has not been examined. Similarly, the DNA analyst has also not been examined. Perusal of the cross-examination of the investigating officer

would show that the evidence with regard to the collection of the samples and forwarding of the samples has not been seriously challenged. The samples had been forwarded to CA Nagpur vide Exh. 69 dated 25.12.2018. Exh. 70 is the duty pass of the carrier. Exh. 71 is the acknowledgment from the office of the RFSL Nagpur. It shows that samples had been received on 26.12.2018 in the lab. Perusal of the CA report at Exh. 78 would show that the semen stain had been detected on Exh. 4 Saree, Exh. 6 peticot and Exh. 7 leggins. These clothes had been seized from the prosecutrix. Exh. 79 is the report of the analysis of the blood samples of the prosecutrix. Her blood group is A+. Exh. 80 is the report of the analysis of the blood samples of the appellant. The result of the analysis of his blood group was inconclusive. It is seen that thereafter all the samples had been sent to the DNA section for analysis. Exh. 11 is the DNA report. The DNA analyst has opined that the mixed DNA profile obtained from semen detected on Exh. 4 Saree, Exh. 6 peticoat and Exh. 7 leggins in BN-5113/2018 contains the DNA profile of Shailesh Mahadev Lanjewar in BN-5115/ 2018 and Nanda Deepak Wakhede in BN-5114/2018. A DNA analyst has further opined that the DNA profile obtained from Exh. 3 genital swab in BN-5115/2018 is of male origin and matched with DNA profile obtained from blood sample of Shailesh Mahadev Lanjewar in BN-5115/2018. In my view, this evidence is concrete and cogent. I do not see any reason to discard and disbelieve this scientific evidence. This evidence corroborates the version of the prosecutrix with regard to the rape on her by the appellant.

23. The next important witness is the medical officer. PW-9 Priti Bambole has deposed that on 22.12.2018, the prosecutrix was referred to her for medical examination by the Ramnagr police station. On examination, she found that there was a slight bleeding and abrasion over the posterior fourchette. She has deposed that she also found that there were bite marks on the right nipple. The medical officer, on her over all findings, opined that the prosecutrix was subjected to sexual intercourse. It is to be noted that the clothes of the prosecutrix had not been collected by the medical officer. The clothes had been handed over by the prosecutrix to the police and seized by the police. She has further deposed that she noticed a fresh

injury, bleeding and oedema. She has stated that her hymen was absent as she had delivered five children vaginally. This evidence, in my opinion, corroborates the evidence of the prosecutrix with regard to the forcible sexual intercourse with her.

24. It is to be noted that there was a marital discord between the appellant and daughter of the prosecutrix for five years prior to the incident. It is the defence of the appellant that in order to falsely implicate him, this case of consensual sex has been given the colour of forcible rape against her consent.

It is to be noted that this defence is not probable. It cannot be accepted. It is not the case of the appellant that prior to this incident he had sexual

relations with the prosecutrix. The prosecutrix was staying alone at Chandrapur. She was doing a business of selling flowers for her livelihood. She

was not dependent on her daughters. Her daughter PW-6 was residing at Chandrapur. They are residing separately. On the date of the incident, she

was 55 years old. Even if it is assumed that she was supporting the wife of the appellant in a litigation filed against the appellant, it could not be said

that for that purpose she would invite such a stigma on her character. Reporting of such a matter to the police invites stigmatic consequences. If it

was a consensual act then she would not have at all reported the incident to the police. If it was a consensual act, then she would not have even

disclosed the same to her daughter. It is to be noted that the appellant, who is the son-in-law of the prosecutrix, has committed this shameful act with

his mother-in-law, who is of the age of his own mother. The appellant defiled the womanhood of the prosecutrix. It is to be noted that the defence of

the appellant that, for the sake of taking revenge, this false case was created cannot be believed. It is to be noted that if the prosecutrix wanted to

involve the appellant in a false case, then she would have invented another story. She would not have allowed such a direct attack on her character.

The prosecutrix, a mother of five children, would be required to carry this stigma throughout her life. The evidence on record is sufficient to prove the

rape on her. It is to be noted that the appellant took advantage of his relations with the prosecutrix. The prosecutrix would not have imagined in the

wildest of dreams that her son-in-law would commit such a deplorable act with her. In this case, therefore, I do not see any reason to discard and disbelieve the evidence adduced by the prosecution. Learned Judge has done a meticulous analysis of the evidence and has come to a just and proper conclusion. I do not see any reason to interfere with the well-reasoned judgment and order passed by the learned Judge. The sentence awarded by the learned Judge on all counts is absolutely proportionate to the gravity of the crime. No interference is warranted on this count as well. As such, I conclude that there is no substance in the appeal. Hence, the appeal stands dismissed.

25. Ms Falguni Badani, learned Advocate appointed to represent respondent No.2 in this appeal, is entitled to receive the fee. The High Court Legal

Services Sub Committee, Nagpur is directed to pay the fee of the learned appointed Advocate, as per the rules.

26. The criminal appeals stand disposed of, accordingly. Pending application if any, also stands disposed of.