



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 821 OF 2025

Sakharam s/o Sampat Mhaske
Age – 58 Years, Occupation – Agriculture,
R/o. Thergaon,
Taluka and District Jalna. ... Applicant

Versus

1. The State of Maharashtra
Through Police Station Incharge,
Police Station Jalna,
Taluka Jalna, District Jalna.
2. X. Y. Z. ... Respondents

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Mr. Sopan G. Bobade, Advocate for the Appellant.
Mr. Kiran D. Jadhav, Advocate for Appellant (appointed through
Legal Aid).
Mr. N. S. Tekale, APP for Respondent No.1-State.
Ms. Anagha Pedgaonkar, Advocate for Respondent No.2 (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.03.2026

Pronounced on : 30.03.2026

JUDGMENT :

1. The convict for offence under Sections 376(2)(j) and 376(2)(l) of IPC has preferred instant appeal, thereby challenging the judgment and order of his conviction dated 03.09.2024 passed by learned Additional Sessions Judge, Jalna in Sessions Case No. 254 of 2023.

CASE OF PROSECUTION IN BRIEF

2. In short, case of prosecution is that, victim, a differently abled lady, was staying with her brother and sister-in-law, having lost her husband in road traffic accident. She used to visit field and do agricultural labour work. Son of her brother-in-law met with a mishap and was being treated in a hospital due to which, brother and his wife were taking his care at the admitted hospital. As such, victim was left alone in the village. Accused taking disadvantage of her loneliness and her mental retardation, had developed sexual relationship with her and thereby he impregnated her. Sister-in-law of victim realized the same and thereafter brother lodged report with police resulting into registration of crime, its investigation and accused faced trial in which he came to be ultimately convicted. Hence, appeal at his instance.

SUBMISSIONS**On behalf of the Appellant :**

3. Learned counsel for the appellant would challenge and criticize the judgment on the ground that case of prosecution has not been proved beyond reasonable doubt. According to him, victim was full-

grown lady and she understood the consequences of her act. That, she performed her chores and as such she is not mentally retarded or abnormal as is claimed by prosecution. According to him, there are material contradictions and omissions in the testimony of prosecution witnesses. He further submitted that, chain of circumstances is not proved even when case was based on circumstantial evidence. He seriously challenges the prosecution story on the point of chain of custody of forensic sample and evidence. Resultantly, he urges to set aside the impugned judgment and order of conviction by allowing the appeal.

On behalf of the State as well as Respondent No.2 :

4. Both, learned APP as well as learned counsel appointed for victim through legal aid, justify the order of conviction and it to be legally correct and sustainable. According to them, on meticulous analysis of evidence, case of prosecution has been accepted. Further according to them, scientific evidence is overwhelming and more particularly, DNA connects accused with the offence. For all above reasons, they canvass in the favour of judgment of conviction.

**BRIEF ACCOUNT OF SUBSTANTIVE EVIDENCE
BEFORE THE TRIAL COURT**

5. It seems that, to establish its case, prosecution has examined as many as nine (9) witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

6. PW1 victim has deposed at Exhibit 28 wherein she gave names of her brother and her sister-in-law with whom she resided. She testified that she lost her husband in an accident and that, she lived with brother and work in his field. She claimed to be acquainted with accused-appellant and other two accused namely, Kisan and Bandu, and according to her, two years back while she was in the field, appellant came, touched her body, pressed her chest, made her drink water and made her fall down. Thereafter on court questions as a result of witness hesitating, she answered that he raised her clothes, and to a question 'whether he committed sexual intercourse with you?', she replied in affirmative and to further question as to whether she had consented him, she answered in negative. Thereafter she stated that, Kisan and Bandu also came and they did what Sakharam did. She further deposed that on the day of incident, her brother and his wife had been to hospital in another village. That, she remained pregnant, went to the hospital and her sister-in-law came to know

that she was pregnant as she had missed her menses. Doctor advised visiting Jalna and her brother lodged complaint and she narrated the incident when police made inquiry with her. She also identified the clothes confronted to her stating that the same belong to her.

While under cross, she had reaffirmed that incident happened three years back and that her marriage was performed after taking into account her mental condition and that, she lived happy matrimonial life. In para 12 also she admitted that she did work both, in the house and field, and talk with neighbours. She answered that, her field is away from the village and admitted that people were working in nearby fields, but she volunteered that they were at long distance. When question was posed to her whether she shouted while sexual intercourse was going on, she answered that she shouted but her mouth was pressed and that, her bangles also broke and her blouse and saree got torn. She answered that she did not disclose about the incident to her brother, but again volunteered that she was afraid. To a question whether 'the bad incident had been caused with her by Sakharam was consensual?', she denied. Omissions are brought in statement to police on the count that, accused pressed breast, made her drink water which she threw, accused removed clothes and committed sexual intercourse and about telling police

that brother and his wife had gone to other village and she had missed her menses which was realized by her sister-in-law.

7. PW2 is the informant/brother of victim and according to him, victim is his sister, she is uneducated, she was married to Bharat Katkar, but he died in an accident. His sister's mental condition was not good. He brought his sister after three months of losing husband and she was working in his field. As his son was admitted in a hospital at Jalna, he and his wife stayed with him for one and half months. Menses of his wife and his sister were almost identical and his wife realized that his sister had missed her menses and therefore she was taken to hospital where doctor told that his sister was pregnant. According to him, his sister was not having husband but still she had missed the menses and so he was afraid of defamation, but he lodged complaint. He stated that, pregnancy of his sister was terminated.

In cross, he answered that victim passed her matrimonial life properly but volunteered that it was only for three months. He admitted that, she did agricultural and household work and that she knew what is good and bad. In cross at the hands of learned counsel for accused nos. 2 and 3, he answered that his sister did not tell him

about the incident, but he volunteered that she stated it to his wife and she knew it.

8. PW3 wife of informant (sister-in-law of victim) also in her evidence at Exhibit 29 stated about her sister-in-law victim to be gullible and since last 10 to 11 years residing with them and working with them in the field. Even she narrated about she and her husband taking their son to Jalna on account of his admission in the hospital for one and half month and after return, she realized that her sister-in-law victim had missed her menses. According to her, victim was not taking requisite clothes during menses on her own accord as she was not aware of it. As her clothes were not wet during the menses, she claims to have realized that she had missed it and then they got done urine test with the aid of pregnancy kit and found that she was pregnant. She stated that when she inquired, victim did not disclose anything and she accordingly told her husband. They went to police, who inquired with victim where she disclosed the name of accused. She also deposed that pregnancy of victim was terminated.

While facing cross, PW3 answered that she and victim went to the field together. To a question whether victim did the field work on her own, witness has answered that, victim did the work after seeing

her work and that this witness would show her the manner of the work and on seeing her work, victim did the work. She is asked, when there were talks with her daughter on phone, whether victim spoke?, to which she answered that victim was not able to talk on phone. She also volunteered that, land of accused Sakharam was adjacent to their land, but she admitted that victim did not state about missing menses either to her or to the doctor. She also admitted that after many inquiries, victim named accused.

9. PW4 is the Psychiatrist, who examined victim on 23.03.2023 upon which, he claims to have found that she had no sleep, appetite or behavioral disturbances except poor intellectual ability. He accordingly referred her to PW5 Psychologist for IQ test and claims to have found her IQ around 65 which, according to him, was below normal range suggesting mild intellectual disability. He opined victim to be suffering from mild intellectual disability which amounts to mild mental retardation. He identified report Exhibit P2/PW4 issued by him and PW5.

In cross, he admitted that history was reported by brother of the patient. He admitted that there is difference between mental illness and mental retardation and again in cross he confirmed that patient had mild intellectual capacity.

10. PW5 Psychologist in Civil Hospital, Jalna, who, on 23.03.2023 claims to have examined victim's intellectual capacity in which she scored 65 which, accordingly to this expert also, means that she is having mild intellectual disability. Accordingly, he issued the report Exhibit P2/PW4.

In cross, he denied that intellectual capacity of victim was not on border line.

11. PW6 is the counselor in whose presence statement of victim was recorded.

12. PW7 is the Investigating Officer who carried out investigation and filed charge sheet.

13. PW8 is the Assistant Chemical Analyzer who, at Exhibit 51, deposed in para 12 that after comparing DNA profile obtained from femur bone of aborted child with the DNA profiles obtained from blood of victim as well as from the blood of accused, he came to the conclusion that victim was the biological mother and accused Sakharam was the biological father of femur bone of aborted child.

14. PW9 is the carrier of DNA kit and sample and he is examined at Exhibit 52.

15. The above is the evidence on behalf of prosecution in the trial court. For the sake of proper comprehension, above evidence can be categorized as under :

First set : Testimony of victim, her brother and sister-in-law.

Second set : Medical evidence i.e. psychiatrist and psychologist who examined victim.

Third set : Investigating Officer, Chemical Analyzer and Carrier.

ANALYSIS AND CONCLUSION

16. Victim has given her age as 40 years. There is no serious challenge to the prosecution story that victim was married but had lost her husband in an accident and as such she was brought by PW2 brother to stay with him and his wife PW3.

17. Primary case of prosecution is that, victim was mentally retarded person and disadvantage of the same had been taken by accused. Therefore, it becomes incumbent to ascertain whether

prosecution at all proved that it was so. It is necessary to ascertain the mental condition of victim also in the light of arguments made before this Court that, victim was doing her daily chores and therefore was a person of understanding what is good and what is bad and she had consented for the relations.

18. Resultantly, evidence of prosecution is tested on above lines. Immediate family members i.e. brother and sister-in-law in their evidence have deposed that, 'mental condition of victim was not good', is what is stated by brother, whereas his wife PW3, who is sister-in-law of victim, branded her as 'gullible', i.e. a person who is easily deceived or cheated. Prosecution has taken efforts to get victim examined through experts in psychology and psychiatry and both these experts are also examined by prosecution as PW4 at Exhibit 35 and PW5 at Exhibit 36.

19. On appreciation of testimony of PW4, it is emerging that he is a medical practitioner and a professional psychiatrists. He deposed about victim being referred by police, examining her, found her able to give answers to simple questions but she was unable to answer the general knowledge questions and was unable to answer simple mathematical questions in spite of her age. He claims to have noted

the history, i.e. there being no sleep, apatite or behavioral disturbance **except poor intellectual ability**, and therefore he claims to have referred victim to the psychologist for intellectual test. He named the psychologist placed at Civil Hospital, Jalna and according to him, IQ test was done by using VSMS test and results were that IQ was noted to be around 65 which, in medical parlance, is below normal range and it suggestive of mild intellectual disability. Thus, he claims that his final impression is that patient was suffering from mild intellectual disability which amounts to mild mental retardation and he identified report at Exhibit P2/PW4.

Above witness is subjected to cross by defence wherein he admitted that both, police and brother of the patient had already disclosed the **history about apatite, sleep and behaviour of the patient**. Witness further answered that patient was conscious, oriented and had no delusion or hallucinations. According to him, her mood was euthymic. He answered that it was normal mood and admitted that there is difference between mental illness and mental retardation. He also admitted that patient had mild intellectual disability.

20. The another witness is PW5 psychologist, to whom PW4 had referred the victim for IQ test. This witness, who claim to have

acquired degree of M.A. in Clinical Psychology, in his testimony, deposed that he examined intellectual capacity of the victim and the examination score was 65, which according to him, means that victim was having mild intellectual disability. He identified the report issued by him.

While under cross, he denied that intellectual capacity was on border line. He answered that record of questions put are required to be maintained and he further deposed that he put questions about her daily work.

21. On analyzing the above testimonies of both the experts, here, it is emerging that, family members speak of mental condition of victim to be not good or she to be gullible. Admittedly, they are rustic villagers and as such, have not stated about mental deficiency which is a medical term. However, here, two experts, who had examined the victim, had opined that victim was diagnosed of having “**mild intellectual disability**”. Though experts are cross examined, the above aspect has remained intact. Consequently, it can safely be held that prosecution has proved that victim was patient of mild intellectual disability.

22. Learned counsel for accused would submit that, victim was regularly doing agricultural work and her daily chores and therefore she was a normal person who knew what was good and what was bad. In the considered opinion of this Court, there is no force in such submission. Mere ability of a person to do daily routine activities or daily chores itself is not an indicator that person is perfectly mentally sound.

23. The Hon'ble Apex Court in the recent judgment of ***Chiman Lal v. State of Himachal Pradesh*** [Criminal Appeal No. 1229 of 2017 decided on 03.12.2020], has held that, ability to do some household chores does not discard evidence about mental disorder of prosecutrix. The observations of Hon'ble Apex Court in para 11 of the above referred judgment are borrowed and reproduced here as, *“merely because the victim was in a position to do some household works cannot discard the medical evidence that victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault”*.

24. Here also, there is opinion of two medical experts about mild intellectual disability of victim. Therefore, facts in the case in hand and the case before the Hon'ble Apex Court being identical, the said

ruling squarely applies and can be hence taken recourse to and relied also. Consequently, this settles the issue about mental deficiency of victim.

25. Second ground of challenge according to learned counsel for appellant is that, there is weak evidence on the point of rape and there is no supportive medical evidence to corroborate the case of prosecution. That apart, there are material contradictions and omissions on the point of sexual assault.

26. In the backdrop of above ground, substantive evidence of complainant, her brother and sister-in-law is visited. It is emerging from their testimony that, while brother and sister-in-law of victim were away and out of the village for taking care of their son in a hospital at Jalna, deceased was staying alone in the village. She was still attending agricultural field. Sister-in-law in her cross has volunteered that accused was the immediate neighbour of their field. Victim has already narrated that while she was in the field, accused came, touched her body with his hand, pressed her chest as well as mouth, made her fall down, and after she stated that she might have killed him if he was present before the court, when learned APP asked what happened after falling, finding her hesitating to answer the

question, learned trial court had indulged and put up a question as, “whether your clothes were removed?”, to which victim answered that he raised her clothes. To the further question, “whether he committed sexual intercourse”, she answered as “yes”, and to further court query, “whether she had consented to him?”, she has answered as “no”. It needs to be noted from above answers that victim has narrated the incidence which took place with her while she was alone in the field that day. Her answer that, she might have killed accused if he was present in the court, signifies her annoyance and anguish. The answers given by her to the court queries are clearly suggesting that there was sexual intercourse with her by accused.

27. No doubt brother and sister-in-law are having hear-say information and they both, also in cross, candidly admit that victim did not inform them immediately. Rather, it is worthy to note that PW3 sister-in-law of victim has deposed that she had noted that victim had missed her menses. She very categorically stated prior to it that her menses and that of victim were almost identical. Victim was staying in the house with this witness and her brother. Therefore obviously, PW3 was watchful of the day to day developments and she has deposed about noticing menses being missed by victim and she had duly reported it to her husband and thereafter necessary tests

seem to have been taken. Here, though victim was intellectually disabled, it was diagnosed to be of mild category and therefore, her required testimony to the extent of offence can safely be relied. Her evidence is apparently natural one. Learned trial court has remained vigilant in putting questions noticing the victim hesitating. Answers given by the victim reproduced above clearly establish that she is a victim of sexual assault.

28. Though omissions are there as stated in para 18 of the victim's cross, the mental state of victim is required to be taken into account and therefore, much importance need not be given to said omissions. PW7 Investigating Officer in para 26 has admitted that victim has not stated before her that accused pressed her breast and stomach, but IO has volunteered that she told that accused did bad work with her. IO admitted that, it was not stated before her that accused made victim to drink water and victim threw the water, or about he raised her clothes and kept physical relation with her. But, again this witness volunteered that there was much trouble to this witness while recording the statement of victim and victim repeatedly said that bad work was done by accused by taking her clothes up.

29. Therefore, apparently, no much controversy can be raised when victim has informed the IO but in slightly different matter, and more particularly when it is suggestive of sexual act. Above all, it is to be borne in mind that victim was not like others, i.e. in normal mental condition, and such aspect cannot be lost sight of and benefit of such omissions cannot be extended to the accused.

30. The third ground of challenge here is that, case is based on circumstantial evidence and chain of custody is not proved. Again, if evidence of IO PW7 is visited at Exhibit 42, it is noticed that, after entertaining the complaint, there was seizure of clothes of victim which she has also identified in the court. Victim being pregnant, was referred to hospital for termination of pregnancy. After seeking permission from court, DNA samples have been procured of both, accused and victim. After receiving respective samples from Medical Officer, IO speaks about dispatching the same to laboratory, including DNA sample. All communications to that extent are identified by IO in her chief para 8 to 12, 18 and 23. This court does not come across anything adverse in the cross of IO on the point of collection and preservation of samples.

31. On the contrary, DNA kit was initially procured and suggestion that it was not received, has been turned down by the IO. On re-examination, learned APP has got communication for obtaining DNA kit at Exhibit P33. IO has stated in chief that in Government Hospital DNA samples were received in sealed condition and the same were deposited to the CA, and IO has further clarified that if there is tampering to the seal, CA office does not accept the sample, and here, CA has accepted the samples. Some issues raised on the name of the carrier cannot be given undue importance more particularly when the carrier has deposed in the witness box about carrying the sample and depositing the same with CA. Resultantly, when it is not demonstrated as to how and where the chain of custody is getting snapped so as to render the sampling and its collection doubtful, above ground has no force.

32. To sum up, here, prosecution has substantiated that victim was intellectually challenged lady, i.e. in the sense that she was diagnosed of mild intellectual disability. There is overwhelming evidence in the form of not only her brother and sister-in-law, but also in the form of two independent medical experts, i.e. PW4 and PW5, who have placed reports on record confirming the above mental disability. Testimony of victim is shown to be natural one, more particularly in

view of the remarks and notings of the trial court wherein finding the victim in such state, court has rightly taken initiative of putting up court questions to elicit required answers which are duly answered by the victim. DNA report sealed the fate of accused by which he is confirmed to be the biological father of the fetus, of which femur bone was put to DNA analysis. Consequently, charges being cogently proved and there being no merits in the appeal, the following order is passed :

ORDER

- I. The Criminal Appeal is dismissed.

- II. Fees of the respective learned counsel appointed to represent the appellant as well as respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]

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