

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.261 OF 2018

The State of Maharashtra,
Through
Shrirampur City Police Station,
District Ahmednagar

... Applicant
(Orig. Informant)

Versus

1. Raju Anton Adhav,
Age : 45 years, Occu. : Agri.,
R/o. Kendal Kd.,
Tq. Rahuri, Dist. Ahmednagar

2. Ashok Namdev Gadve,
Age : 38 years, Occu. : Agri.,
R/o. Haregaon, Tq. Shrirampur,
Dist. Ahmednagar.

... Respondents
(Orig. Accused)

...
Smt. V. S. Choudhari, APP for Applicant – State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 12th JUNE, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. As State intends to impugn judgment and order passed by learned Sessions Judge, Shrirampur in Sessions Case No.16 of 2017 dated 24.09.2018, leave is hereby sought by way of instant application.

FACTUAL MATRIX

2. Shrirampur police station entertained FIR lodged by victim, wherein she narrated that on 28.12.2016, in the afternoon, while she was proceeding to Saint Luce's Hospital, Shrirampur to meet and see her father-in-law, she was intercepted by two persons on a motorcycle bearing no. MH-17/7775. One of them by named Raju got down from the motorcycle, outraged her modesty and even inserted finger in her private part, thereby committing sexual assault. On her such report, Shrirampur police registered crime bearing no. 313 of 2016 and after investigation accused persons were charge-sheeted for commission of offence under sections 341, 376, 354 read with section 34 of Indian Penal Code (IPC).

3. After its committal, learned Additional Sessions Judge which was a special court, conducted trial during which prosecution examined 4 witnesses including victim and relied on documentary evidence. After section 313 of Cr.P.C., both sides were heard and on appreciating the available evidence, learned Judge reached to a finding that prosecution failed to establish that victim was wrongfully restrained, she was sexually assaulted and her modesty was outraged and thereby acquitted both accused vide judgment and order dated 24.09.2019.

Feeling aggrieved by the above, prosecution has filed instant proceeding, thereby seeking leave to file appeal against the same.

4. Learned APP would submit that judgment and order under challenge is against settled principles of law and also contrary to the evidence on record. He would submit that informant/victim herself approached police. That, she had narrated about being restrained while she was proceeding. Initially her modesty was outraged by one of the accused by named Raju and even there was sexual assault on her by fingering her private part. Her testimony to that extent was intact, but the same not been appreciated properly. It is next submitted that, her statement under section 164 of Cr.P.C. was also recorded. Therefore her testimony was reliable and natural. Medical evidence is also on record. Therefore, there was corroboration. Thus, it is submitted that, necessary ingredients for attracting the offences was very much available on record, however unfortunately, learned trial Judge failed to appreciate the same in its proper perspective and legal requirements and settled law has been lost sight of and hence the above prayers.

5. After hearing learned APP, we have carefully

examined the evidence as well as the impugned judgment under challenge. It is emerging that including victim prosecution has examined in all three more witnesses, i.e. PW-2 Raju a passerby, PW-3 Mohan Police Officer/P.S.O. and Investigating Officer, PW-4 Dr. Priyanka Mankar, Medical expert.

6. It seems that alleged occurrence had taken place at 1.45 p.m. while victim was proceeding over road leading to hospital. The sequence of events that surfaced are that she was intercepted by two persons on motorcycle. They are not known to her. Her evidence shows that, pillion rider got down and asked her to accompany them to hotel. He caught hold of her hand and thereafter she claims that her modesty were outraged and after lifting her Saree said person allegedly inserted his finger in her private part. Alleged incident seems to have taken place on a public road in the broad day light i.e. afternoon hours. When victim herself speaks of people gathering hearing her shouts, inference that can be drawn is that there were people around on the road. However, it seems that only PW-2 Raju has been examined.

Para 5 of the cross of victim shows that accused persons were not known to her and she had never seen them nor there was any dispute between them. She even answered that she

was not sure whether those accused knew her also since previously. Answers given by her in cross demonstrates that, the place where incident took place is a busy locality and the market place. Considering such spot, it is difficult to believe that a person could lift a Saree of a full grown lady and thereafter insert his finger right into a private part.

7. If we go through the testimony of PW-2 Raju, it is emerging that at the relevant time, she was proceeding with his wife. According to him, he saw two persons on motorcycle talking to a lady and asking her to accompany them for tea. He stated that the lady refused and therefore that person started outraging her modesty and he fondled her breast, made her fall down and then put a finger in a private part. People gathered and there was commotion and the persons ran away.

8. Above version of PW-2 Raju is contrary to the testimony of the victim to the extent that she does not state that she was first made to fall and thereafter there was sexual assault. Wife of PW-2 Raju in spite of being present there has not been examined by prosecution. Para 2 of the cross of PW-2 shows that there is previous enmity between PW-2 Raju and accused Ashok as wife of this witness had lodged report against accused Ashok and

the matter is *sub judiced*. Further, his statement was not recorded on the same day, rather it was recorded on the next date. It is pertinent to note that in his statement he has not stated that accused persons asked the lady to have tea with them and thereafter made her fall down and inserted finger in her private part. Therefore, there is materiel omission. It is also worth noting that, victim does not mark his presence in her FIR or her oral testimony.

9. PW-4 Dr. Priyanka is the Medical Officer, who had occasion to physical examine the victim. According to this witness history was reported about a drunken person outraging her modesty, however, such version is not reported in FIR nor stated by victim in witness box. Medical experts speaks of coming across three abrasions. She claims that, she issued medical certificate (Exh.43). However, in cross she has admitted that, age of abrasions is not noted in the certificate and she conceded that such abrasions are possible during foreplay or can be self inflicted one. She admitted that it is not noted that abrasions are fresh one. Examination seems to have been done on her at 6.30 p.m.

10. We have gone through the Exh.34, which is a statement of victim recorded under section 164 of Cr.P.C. However,

on conjoint reading of her testimony, it is seen that there is no consistency. Before learned Magistrate it is narrated that by catching both her hands, she was dragged, her blouse got torn. Therefore, self contradictory versions are given in testimony and in statement before the learned Magistrate.

11. Record shows that, occurrence is of 28.12.2016, but scene of occurrence panchanama is drawn on the next day. However, victim admits that she visited police station only on 28.12.2016 and not thereafter. Therefore on whose showing scene of occurrence panchanama was drawn is a question mark.

12. To sum up here version of victim fails to inspire confidence, for the reasons stated in aforesaid paras. We have also carefully gone through the judgment under challenge. It seems that there is proper appreciation of testimony of victim, medical expert and so called eye witness. Reasonable doubt about veracity of version of victim has cropped up and the same has been spelt out in the judgment. Therefore, reasons are assigned for not believing the case of prosecution. Consequently, there is no reason to take a different view, so as to allow State to prefer an appeal. No case on merits being made out for grant of leave, we pass following order :-

ORDER

- (i) Application for leave to appeal by State stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)