

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No.152 Of 2001.

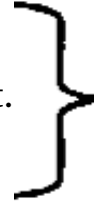
Sanjay Gorakh Kale.

Age : 36 Years., Occ.: Agriculturist.

R/o.: Attar Kale Vasti, Taluka –

Karjat,

District – Ahmednagar.



Applicant.

Versus

(1) The State of Maharashtra.

(2) Sakharbai w/o. Hanumant
Gaikwad.

Age : 43 Years., Occ.:

Agriculturist and Household.

R/o.: Parit-wadi-Rashin.

Taluka – Karjat, District –
Ahmednagar.



Respondents.

Appearance =>

Mr. S.B. Bhapkar, Advocate for the Applicant.

Mrs. S.G. Chincholkar, Additional Public Prosecutor for the State of
Maharashtra – Respondent No.1.

CORAM : V.M. Deshpande, J.

DATE : 29th July, 2015.

ORAL JUDGMENT :-

Challenge in the present Criminal Revision Application is the
Judgment and Order dated 3rd February, 1996 passed by the learned
Judicial Magistrate, First Class, Karjat, District – Ahmednagar in S.T.C.C.
No. 233 Of 1993 whereby the learned Magistrate convicted the present

Applicant for the offence punishable under Section 354 of the Indian Penal Code and sentenced him to suffer Simple Imprisonment for one month and to pay fine of Rs.500/- and in default of payment of fine, to suffer further Simple Imprisonment for one month; together with the Judgment and Order dated 24th April, 2001 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No.11 Of 1996, whereby the lower appellate court has dismissed the Criminal Appeal preferred on behalf of the present Applicant and, thereby, confirmed the Judgment and Order of conviction passed by the learned Magistrate.

[2] The fact giving rise to the present Criminal Revision Application in nut-shell can be stated herein-under :-

Prosecutrix lodged the report with the Police Station, Karjat, District – Ahmednagar on 4th July, 1993. On the basis of said report, CR No.81/1993 was registered for the offence punishable under Section 354 of the Indian Penal Code. As per the First Information Report, on 1st July, 1993 the Prosecutrix had been to parit-wadi, which is known as Pirachamala (पिराचा मळा), for grazing the she goats. At 4.00 O'clock, present Applicant came there on his bicycle. After reaching near the Prosecutrix, he parked his bicycle and asked the Prosecutrix that now, there is nobody and, she should permit him to sleep with her and, thereafter, he touched her private part. Thereafter, the Prosecutrix raised hue & cry. That time, her brother in law – Dattu came there. Therefore, the Applicant ran away from the spot. She immediately narrated the incident to Dattu. Thereafter, she reached to her house and informed the incident to her mother-in-law and father-in-law. Also, in the night, she went to her parental house and narrated the incident to her mother. However, on that day, since her

husband was not present at their home, report was not lodged. However, on second day, she disclosed the incident to her cousin father-in-law – Bhimrao. It is further stated that on 4th July, 1993 her husband came to the house and thereafter, she narrated the incident to him. Then First Information Report Exhibit – 10 was lodged. After completion of investigation, charge sheet was filed.

[3] In order to bring home the guilt of the accused, the prosecution has examined :-

PW No.1 : Prosecutrix.

PW No.2 : Dattatraya Bhimrao Gaikwad, brother-in-law of the Prosecutrix.

PW No.3 : Zhumbar Govind Gaikwad, father-in-law of the Prosecutrix.

PW No.4. : Maruti Yeshwant Sagde, panch witness who has proved the spot panchnama Exhibit -15.

The prosecution for the reasons best known to it, did not examine the Investigating Officer.

[4] First Information Report is not substantive piece of evidence. Said can be used either for the purpose of corroboration or for the purpose of contradiction. The prosecution is obliged to prove the contents of the First Information Report by the substantive evidence. The evidence of prosecutrix is completely silent about touching of her private part by the present Applicant. Further her version, from the witness box that her father-in-law came there, is also not appearing in the First Information Report and also PW No.3 – Zhumbar, who is her father-in-law is not corroborating the said fact, which is asserted by the prosecutrix in her evidence.

[5] In the First Information Report Exhibit – 10, it is reported that, she resisted the Applicant by raising hue and cry and that time, her brother-in-law – Dattu (PW No.2) came there. This particular aspect, as mentioned in the First Information Report is not stated by the prosecutrix in her evidence. Further Dattu is not corroborating the assertion made by the Prosecutrix in Exhibit – 10 – the complaint.

[6] The incident, according to the prosecution is dated 1st July, 1993 where-as First Information Report is lodged on 4th July, 1993. Thus, there is delay in lodging the First Information Report. According to the prosecution, the matter cannot be reported immediately, in view of absence of husband of the Prosecutrix. According to the prosecution, after arrival of her husband, the incident was narrated by the Prosecutrix to him and thereafter, First Information Report was lodged.

[7] It is to be noted that, if the prosecution case is to be believed, at the spot itself, PW No.2 – Dattu who is 31 years old, was present. Not only that after return to the house, she narrated the incident to her father-in-law and mother-in-law. Prosecutrix did not stop there, in the night, she went to her parental house and narrated the incident to her mother. Thus, on the date of incident, the Prosecutrix made known the atrocious act on her to Zhumber, mother-in-law and her parents. In addition to this, according to the prosecution case, PW No.2 Dattu was present on the spot itself. There is no explanation as to why these persons failed to lodge the report, immediately to the Police.

[8] On the next date, the Prosecutrix reported the matter to her cousin father-in-law – Bhimrao. Thus, on the said date also Bhimrao could have lodge the report, however, according to the prosecution, he

advised that till husband is reached to the house, matter should not be reported to the Police.

If this entire story of the prosecution is to be believed, it appears that it was decided by all the persons to whom the incident was narrated by the prosecutrix, to report the matter to Police, only after arrival of the husband. On 4th July, 1993 husband of prosecutrix arrived and thereafter matter was reported to the Police. Now, in the present case, husband of the Prosecutrix is not examined.

[9] Further, it is to be noted that the Prosecutrix is completely silent in her evidence that she went to Police Station alongwith her husband. On the contrary, PW No.2 Dattu claims that he accompanied the Prosecutrix at the time of filing of the First Information Report. Thus, in my view the prosecution has utterly failed to explain the delay. Non availability of the husband is mere cloak put forth by the prosecution.

[10] Delay, if it is not explained properly creates serious doubt about the truthfulness of the prosecution case; since the embellishment cannot be ruled out completely. Further according to the prosecution, Prosecutrix was dragged by the Applicant and she was fell down on the ground. Spot panchnama Exhibit – 15 shows that, place of occurrence is uneven one. According to the Prosecutrix, there was resistance on her part. Therefore, she must have received the certain injury on her body, at the time of resistance and when she fell down to uneven one however, she was not referred to the hospital.

[11] All the aforesaid aspects, in my view were not considered at all by the courts below and they misdirected themselves by mechanically accepting the version of the prosecution witnesses.

[12] Merely because the prosecution witnesses are coming and they are deposing, the court should not readily accept their version especially when they are close relatives. This court is mindful of the principle that merely because the witnesses are close witnesses, their testimony should not be viewed with tainted glasses however, the court should be cautious and seeks corroboration from the other attending circumstances. In my view even on the vital aspect the prosecution witnesses are not corroborating to each others.

[13] The aforesaid evaluation of the prosecution case, leads me to hold that, miscarriage of justice has been done, which needs to be corrected in exercise of revisional jurisdiction. Hence, I pass the following order :-

ORDER

(i) Criminal Revision Application is allowed.

(ii) Judgment and Order dated 3rd February, 1996 passed by the learned Judicial Magistrate, First Class, Karjat, District – Ahmednagar in S.T.C.C.No.233 Of 1993; together with the Judgment and Order dated 24th April, 2001 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Appeal No.11 Of 1996 are quashed and set aside.

(iii) Applicant - Accused is acquitted from the charge of offence punishable under Section 354 of the Indian Penal Code.

(iv) His bail bonds stands cancelled.

(v) Fine amount, if any, be refunded the Applicant.

(V.M. DESHPANDE, J.)