

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Revision Application No. 149 of 2014

Shaikh Ahmed @ Rahemat s/o. Shaikh Gulab,
Age : 46 years,
Occupation : Driver,
R/o. Nehru Nagar, Katkat Gate,
Aurangabad.

.. Revision Applicant
(Original accused no.2)

versus

The State of Maharashtra,
Through Police Station, Chawani,
Aurangabad.

.. Respondent.

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Mr. Anand I. Deshmukh, Advocate, for the revision applicant.

*Mr. S.G. Nandedkar, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 24TH MARCH 2015

ORAL JUDGMENT :

1. Heard Adv. Mr. A.I. Deshmukh for the revision applicant, and the learned APP Mr. S.G. Nandedkar for the respondent - State.
2. Rule. Rule made returnable forthwith. By consent, heard

finally.

3. The applicant herein is original accused no.2 in Sessions Case No. 107/2011. Charge was framed against the present applicant for offence punishable under Section 376, read with Section 511 of the Indian Penal Code. It is the case of the prosecution, that on 4-5-2010, Miss "X" (Prosecutrix) alighted from the bus at Aurangabad S.T. Bus Stand. She alighted at about 11.45 p.m. at Baba Petrol Pump. She wanted to go to Ghanegaon and, therefore, engaged an auto-rickshaw. The present applicant was standing along with his auto-rickshaw No. MH-20/W-4145. It is alleged by the complainant, that after travelling some distance, the applicant stopped the auto-rickshaw by the side of the road. Accused no.1 was accompanied by the present applicant. At that juncture, accused no.1 tried to flirt with the complainant. He was warned by the complainant, that he should not instigate her. That, accused no.1 had attempted to denude the complainant of her clothes. At that stage, it is alleged, that the present applicant caught hold both the hands of the complainant. She raised hue and cry. At that juncture, present applicant had left the company of accused no.1 and the complainant. It is alleged, that the original accused no.1 had tried to gag her mouth. At that time, a patrolling Police Van was passing by the road. It stopped. At that time, the applicant herein i.e. accused no.2 was at a distance of 25 feet. After making preliminary enquiry, the Police had accosted the accused no.1 and the present applicant and had brought them to the Police Station. Statement of the prosecutrix was recorded and was treated as First Information Report. On the basis of the said report, Crime No. I-168/2010 was registered at Chawani Police Station, against the present applicant and original accused

no.1, for the offence punishable under Sections 376, 354, read with Section 511 of the IPC.

4. After completion of investigation, charge sheet was filed. The case was committed to the Court of Sessions and was registered as Sessions Case No. 107/2011. The case was tried by the Assistant Sessions Judge-2, Aurangabad. The prosecution examined five witnesses to bring home the guilt of the accused. The complainant is PW 1. She had narrated in consonance with the FIR.

5. After appreciating the evidence adduced by the prosecution, the learned Assistant Sessions Judge vide judgment and order dated 28th March 2012, was pleased to convict both the accused for the offence punishable under Section 376, read with Section 511, of the IPC, and sentenced each of them to suffer simple imprisonment for one year and to pay fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for fifteen days. They were also convicted of the offence punishable under Section 354, read with Section 34 of the IPC and each of them were sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 1,000/-, in default of payment of fine, to undergo simple imprisonment for fifteen days. The substantive sentences were directed to run concurrently.

6. The learned Counsel for the applicant submits that the original accused no.1 has undergone the substantive sentence imposed upon him by the Assistant Sessions Judge.

7. Being aggrieved by the judgment and order passed by the Assistant Sessions Judge, the present applicant filed Criminal Appeal No. 96/2012 before the Sessions Judge at Aurangabad. The learned Additional Sessions Judge-3, Aurangabad, vide judgment and order dated 7th June 2014, has been pleased to dismiss the appeal. Hence, the present Revision Application.

8. The learned Counsel for the applicant has drawn attention of this court, to the substantive evidence of the complainant. The complainant has deposed before the court, that the present applicant had stopped the auto-rickshaw near Baba Petrol Pump. She had boarded the auto-rickshaw. After covering some distance, original accused no.1 had also boarded the auto-rickshaw. The auto-rickshaw had proceeded towards Ghanegaon. After crossing half the distance, present applicant had taken the auto-rickshaw towards road side. The original accused no.1 started flirting with the complainant. He had attempted to tear her clothes. In the examination in chief, the complainant has stated that, at that stage, accused no.2 had caught hold hands of the complainant. In the meanwhile, Police patrolling van had approached. The victim was rescued and all the three were taken to the Police Station.

9. In the cross examination, it is specifically elicited that no talk took place between the complainant and accused no.2 about the fare of the rickshaw. She had further stated that when she boarded the auto-rickshaw, accused no.1 was present in the auto-rickshaw. Hence, she has falsified the version that the accused no.1 had boarded the rickshaw subsequently. Since the applicant herein had stopped the rickshaw by the road side, he

had abandoned the company of the complainant and the accused no.1 was standing at a distance of 20-25 feet away from the auto-rickshaw. He had not talked with the complainant after the auto-rickshaw was stopped. She had specifically stated in the cross examination, that the accused no.2 returned to the auto-rickshaw only after the Police patrolling van had halted near the rickshaw. She has reiterated the said contention. As far as the allegation, that the applicant herein had facilitated the accused no.1, the same is brought on record as material omission. As far as role of the applicant herein is concerned, there are inherent omissions and contradictions in the substantive evidence of the complainant, who would be the only material witness.

10. The learned Counsel for the applicant submits that, in fact, charge under Section 376, read with Section 511 and Section 34, of the IPC was not maintainable in the present case. According to him, it cannot be said by any stretch of imagination, that the present applicant had facilitated the act of accused no.1 and had not participated in the act of outraging modesty of the complainant. The learned Counsel for the applicant submits that the present applicant had no knowledge that the original accused no.1 would attempt to outrage modesty of the complainant. Mere acquaintance with original accused no.1 or the liberty granted to accused no.1, to travel in the said auto-rickshaw cannot be said that they shared a common intention to outrage modesty of the complainant. The learned Counsel for the applicant submits that the prosecution has failed to establish guilt of the accused beyond reasonable doubt and hence, he deserves to be acquitted.

11. The learned Additional Public Prosecutor submits that, in fact, original accused no.1 appears to be a friend of the present applicant. He had boarded the auto-rickshaw much prior to the complainant and that it was the duty of the applicant to restrain the original accused no.1 from attempting to outrage modesty of the complainant. The learned Additional Public Prosecutor submits that it is a ghastly offence and that, security of the complainant was at stake while travelling. Therefore, according to the learned Additional Public Prosecutor, no leniency be shown to the present applicant.

12. As against this, the learned Counsel for the applicant submits that the applicant has undergone the substantive sentence of 3 months and 25 days during the pendency of the trial and appeal, and therefore, he prays that the applicant be sentenced to the period already undergone.

13. Upon perusal of the evidence adduced by the prosecution, it is clear that the applicant herein had been a silent spectator to the act of the accused no.1. That, making no attempt to rescue the complainant from the clutches of the accused no.1, would mean that there was a silent acquiescence to the act committed by the accused no.1 and, therefore, the applicant deserves to be convicted for the offence punishable under Section 354 read with Section 511 of the IPC. The fact, that the applicant had abandoned the company of the accused no.1 and the complainant soon after the auto-rickshaw was stopped, it cannot be said that the applicant was a party to the charge under Section 376 read with Section 511 of the IPC. Therefore, the applicant deserves to be acquitted for the charge under Section 376, read with Section 511 of the IPC. However, conviction of the

applicant for the offence punishable under Section 354 read with Section 511 is upheld.

14. In the result, the Revision Application is partly allowed.

(A) The conviction and sentence against the applicant for offence punishable under Section 376, read with Section 511 of the Indian Penal Code, is set aside.

(B) The conviction against the applicant for the offence punishable under Section 354, read with Section 34, of the Indian Penal Code, is upheld. However, substantive sentence of the applicant is reduced to the period which he has already undergone. The sentence of fine is maintained. Bail bonds of the applicant stand cancelled.

15. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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