

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

CRIMINAL REVISION APPLICATION NO. 222 OF 2001

Madhav s/o Parasaram Suryawanshi,
age 40 years, occ.agril.,
R/o Talni, Ta. And Dist. Nanded

...Applicant

VERSUS

The State of Maharashtra

...Respondent

.....
Shri R.C.Patil, advocate h/f
Shri V.D.Patnoorkar, advocate for applicant
Shri V.D.Godbharle, A.P.P. for respondent
.....

CORAM : V.M.DESHPANDE, J.

DATED : 16th January, 2015

ORAL JUDGMENT : -

1] The present Revision is directed against the judgment and order of conviction, passed by the learned Judicial Magistrate, First Class, Nanded, dated 18.12.1997, whereby the applicant was convicted for the offence punishable under Section 354 of the Indian Penal Code and was directed to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default he was directed to suffer one months simple imprisonment, together with the judgment and order,

passed by the learned Sessions Judge, Nanded, dated 20.7.2001 in Criminal Appeal No. 2 of 1998, by which the learned lower appellate court, though acquitted the applicant for the offence punishable under Section 506 of the Indian Penal Code, confirmed the judgment and order of conviction passed by the learned Magistrate for the offence punishable under Section 354 of the Indian Penal Code.

2] I have heard Shri R.C.Patil, advocate holding for Shri V.D.Patnoorkar, learned counsel for the applicant and Shri V.D.Godbharle, learned Additional Public Prosecutor for respondent/State. With their able assistance, I have gone through the record and proceedings.

3] The applicant along with his parents was charged by the learned Magistrate in Regular Criminal Case No. 1053 of 1995. Charge under Section 354 of the Indian Penal Code was framed against the applicant; whereas he faced the charge for the offence punishable under Sections 498-A and 506 r/w 34 of the Indian Penal Code along with his parents.

4] In order to bring home the charge, the prosecution has examined in all six witnesses during trial, including the prosecutrix (PW 1); her mother Gayabai (PW 2); Pandurang Kelkar, who recorded the first information report at Vazirabad

and sent the same to Limbgaon police station; PW 4 Dr. Subhash Deshmukh, who examined Satyabhamabai on 11.10.1995 for treatment of poisoning; and PW 5 Wahb Beig, the investigating officer.

5] The learned trial court acquitted all the accused persons for the offence punishable under Section 498-A of the Indian Penal Code. The original accused nos. 2 and 3 parents of the present applicant were also acquitted for the offence punishable under Section 506 of the Indian Penal Code. However, the learned Magistrate vide judgment and order of conviction, dated 18.12.1997 convicted the present applicant for the offence punishable under Sections 354 and 506 of the Indian Penal Code.

6] No appeal was filed by the State against the order of acquittal of original accused nos. 2 and 3 and for present applicant acquitting him for the offence punishable under Section 498-A of the Indian Penal Code.

7] The applicant filed appeal No. 2 of 1998 before the Sessions Court, Nanded questioning the correctness of his conviction. The learned Sessions Judge on 20.7.2001 partly allowed the appeal and though acquitted the applicant for the offence punishable under Section 506 of the Indian Penal Code

confirmed his conviction under Section 354 of the Indian Penal Code.

8] The entire case of the prosecution hinges on the testimony of PW 1 prosecutrix and her mother PW 2 Gayabai. The first information report is at Exh.29. It is dated 12.10.1995. Perusal of the first information report would reveal that the marriage of prosecutrix was solemnized with Chandoji the brother of the applicant prior to six months of lodging of the first information report. The family was joint family. The first information report alleges that the applicant gave illtreatment on account of domestic work.

The first information report further discloses that on 11.10.1995 she had been to the agricultural field and at that time since the applicant caused illtreatment to her, therefore, in a feat of anger she consumed endrine due to which she fell in the hut. Thereafter her husband came there and since the smell of endrine was emitting from her mouth he inquired with her and she disclosed that she has consumed endrine. Therefore, she was taken to the hospital and was given treatment by Dr. Deshmukh.

9] Since the first information report was disclosing the commission of an offence, offence was registered initially under Section 498-A of the Indian Penal Code.

10] It appears from the prosecution case that thereafter after lapse of ten days her supplementary statement was recorded disclosing the ingredients of commission of an offence, and therefore, an offence punishable under Section 354 of the Indian Penal Code was registered against the present applicant.

11] From the witness box, the prosecutrix has not stated that the two incidents of outraging her modesty at the hands of the present applicant were ever disclosed by her to her mother. However, Gayabai (PW 2) the mother of the prosecutrix claims that the prosecutrix used to say about ill-intention to her. Since it is not the claim of the prosecutrix that at any point of time she disclosed either the incident or illintention to Gayabai, we have no option to discard the evidence of Gayabai.

12] Further, according to the prosecutrix from the witness box at the time of first incident of outraging of modesty her father-in-law was not at house but he had gone to Babhalgao, however, this version appears to be an improvement.

13] The foremost important aspect is that the crime was registered on the basis of the first information report dated 12.10.1995. The said first information report is completely silent about outraging her modesty. Not only that, there is no

whisper in respect of any of the incident which the prosecutrix from the witness box deposed in respect of the offence punishable under Section 354 of the Indian Penal Code.

Her supplementary statement was recorded on 22.10.1995. Her supplementary statement is exhibited during the trial and it is at Exh.29. The said statement (Exh.29) shows that there was incident of outraging her modesty. However, the said statement is recorded after a period of 10 days. There is no explanation for recording the belated statement. Further it is clear from Exh.29 that the incident of outraging modesty occurred much earlier.

14] Thus, the case of the prosecution is completely based on uncorroborated version of the prosecutrix.

15] Looking to the chronology of the events, uncorroborated evidence of the prosecutrix does not inspire confidence. The applicant is convicted solely on such uncorroborated statement. Thus, it is a fit case to extend the benefit of doubt in favour of the applicant.

16] Consequently, present Criminal Revision Application is allowed. The judgment and order of conviction for the offence punishable under Section 354 of the Indian Penal Code passed by the learned 5th Judicial Magistrate, First Class,

Nanded on 18.12.1997 in Regular Criminal Case No. 1053 of 1995, which was confirmed by the learned Sessions Judge, Nanded by his judgment and order dated 20.7.2001 in Criminal Appeal No. 2 of 1998 is quashed and set aside. The accused is set at liberty forthwith. His bail bonds shall stand cancelled. Fine amount, if any paid by the applicant, shall be refunded to him. Rule is made absolute accordingly.

[V.M.DESHPANDE, J.]

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