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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 315 OF 2015
WITH
CRIMINAL APPLICATION NO. 279 OF 2015
IN
CRIMINAL REVISION APPLICATION NO. 315 OF 2015**

Imran Ayub Shah

... Applicant

Versus

The State of Maharashtra

... Respondent

Ms. Tejaswita Kadam i/by Mr.R.D. Suryawanshi for the applicant.

Mr. V.B.K. Deshmukh, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 15, 2015**

P.C.

Admit. Heard finally.

2. Heard learned counsel for the applicant and learned A.P.P. for the State.

3. The applicant has been convicted by the learned trial Magistrate for the offence punishable under section 451, 354, 323 and 506 of Indian Penal Code. The applicant is resident of village Saptashrunji Garh. The victim girl is also resident of the same village. The incident had occurred on 27th May, 2005 when the victim PW 7 was alone at home. Her parents were not at home. It is alleged that the applicant had committed trespass in order

to outrage the modesty of PW 7 and he had used criminal force against PW 7 with intention to outrage her modesty. It is the case of the prosecution that while the incident was going on, the mother of PW 7 reached the spot and she rescued her daughter. FIR was lodged on the next day after 24 hours of the incident. Statement of the witnesses were recored. The panchanama of spot was also drawn and the applicant was chargesheeted.

4. The learned trial court believed the evidence of PW 3 mother and PW 7 victim and convicted the applicant for the above stated offences. The learned appellate court has confirmed the order passed by the trial Magistrate.

5. Since there are concurrent findings of facts by two courts below, this court would not have disturbed the order of conviction unless there was some serious infirmity in appreciation of evidence. After examination of evidence in detail, I find that there is a glaring omission in the evidence of PW 7 which has been proved by the evidence of the I.O. PW 7 has stated that she disclosed to her mother that the applicant had outraged her modesty. However, this fact was not found in her police statement.

6. PW 3 had stated in her evidence that the entrance door was not completely closed. This fact was also missing from the earlier statement recorded by the police of PW 3. Apart from these very omissions in the evidence of PW 3 and 7, what is noted is that there is delay of 24 hours which is not satisfactorily explained. It has come on record that there was consultation with some relatives and thereafter FIR was lodged. From overall evaluation of the evidence, it appears to me that the applicant had entered the house of the victim with her consent. Mother of PW 7 unexpectedly reached home within a short time.

7. What is further noted is that PW 7 has not described the incident. She has stated that her modesty was outraged. In fact she was supposed to describe the fact of incident and court would have decided as to whether it amounted to use of criminal force with an intention to outrage the modesty of PW 7.

8. For all these reasons, Criminal Revision Application is allowed.

The order passed by the learned Magistrate in Criminal Case No. 386 of 2008 of Judicial Magistrate, First Class, Kalwan and order passed by the learned Additional Sessions Judge in Criminal Appeal No. 56 of 2010 are set aside. The applicant is acquitted of the offences punishable under sections 451, 354, 323 and 506 of Indian Penal Code. He shall be released from the prison forthwith, if not required in any other case. The fine paid by him shall refunded to him forthwith.

Criminal Application No. 279 of 2015 does not survive as Criminal Revision Application itself is disposed of.

(JUDGE)