

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

CRIMINAL APPEAL NO.15 OF 2005

Ahmedali Khan s/o Shardulla Khan
Age 25 years, Occu. Business,
R/o Station Road, Gawlipura,
Nanded, Tq. & District Nanded.

... APPELLANT
(Orig. Accused)

VERSUS

The State of Maharashtra
through Vazirabad Police Station,
Nanded
(Copy to be served on Public Prosecutor,
High Court, Bench at Aurangabad)

... RESPONDENT

.....
Shri T.W. Pathan, Advocate for appellant
Shri K.S. Hoke Patil, A.P.P. for respondent/ State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 13th July, 2016.

Date of reserving judgment : 16th June, 2016

Date of reserving judgment : 13th July, 2016.

J U D G M E N T :

1. The appellant – Ahmed Ali Khan was tried along with
other two accused (Mohd. Iqbal Abdul Habib – accused No.2 and
Shaikh Mujaid Shaikh Chand Pasha – accused No.3) before 3rd

Adhoc Additional Sessions Judge, Nanded in Sessions Case No.40/2002 for offence punishable under Sections 366-A, 354, 341, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC in brief). The other two accused came to be acquitted of all the charges while the appellant – accused (hereafter referred as accused) came to be convicted for offence punishable under Sections 341 and 354 of the IPC. For offence punishable under Section 341, he was sentenced to suffer simple imprisonment for one month and for offence under Section 354 of IPC, he was sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.5000/-, and in default to suffer simple imprisonment for one month. The sentences were directed to run concurrently vide judgment dated 29.11.2004. Thus, this appeal.

2. The case of prosecution in short is as under :

- (a) On 30.8.2001, Krutapalli Satyanarayana, the Head Master of Andhra Samiti Telgu High School, Gawalipura, Nanded (hereafter referred as complainant) filed report with the Police Station, Vazirabad, Nanded, informing that, the timing of their school is from 8.00 a.m. to 1.00 p.m. Boys and girls together studying in their school. On that day, 2

boys from the school, Vinay Naresh Lalwani and Khan, studying in 10th Standard came to him at about 8.00 a.m. and told him that near the gate of the school, at about 7.45 a.m., girl studying in the school was coming to the school, at which time an outsider boy Ahmed, aged about 25 years, along with three friends, out of whom one had Splender Motorcycle bearing No.MH-26-F-1569, surrounded the girl and threatened, and they tried to take her away, at which time, 40-50 students of the school went behind them, still said Ahmed referred to the girl as "*Kya Maal Hai*" and so saying, he had kissed her, due to which boys and girls of the school raised shouts and the girl started shouting "Save-Save", but the boys did not leave her, at which time, 2-3 boys of the school went in front and requested them, but those goonda boys beat them and abused them, threatening that if they tell anybody, they will be finished. Then they left the girl and had run away.

As per the F.I.R., then the said boy Vinay told complainant that he had brought along the girl. The girl was crying and the complainant pacified her. When enquired from the Peon Lalitabai, she also confirmed the incident. The girl was about 14 years

of age and to safeguard her future, her name was being withheld. The complainant informed the police that, because of the incident, there is atmosphere of fear in the school and action needs to be taken against the said Ahmed and his three friends and incident similar to what happened at Ahmedpur Mahatma Phule Gandhi College due to one sided love affair was required to be avoided.

- (b) Receiving F.I.R. as above from the complainant (P.W.1), P.S.I. Vasundhara Borgaonkar (P.W.11) registered Crime at No.196/2001 and investigated the offence. She visited the spot and conducted spot panchanama (Exh.37). Statements of witnesses and the victim were also recorded. Accused Ahmed came to be arrested on 4.8.2001. The motorcycle which was used at the time of incident was recovered from in front of house of accused No.2 Mohd. Iqbal vide panchanama Exh.28. After the investigation, charge sheet came to be filed.

3. In trial Court, the accused persons pleaded not guilty. The defence of accused Ahmed is that of total denial. Prosecution brought on record evidence of 11 witnesses and the trial Court, after considering the oral and documentary evidence

brought on record, convicted only the accused No.1 Ahmed for offence under Sections 341 and 354 of the IPC as mentioned above.

4. I have heard learned counsel for the appellant – accused. He referred to the evidence which was brought on record and submitted that, although the victim identified the accused as the person who had outraged her modesty, no test identification parade was held. There was variance in the evidence of P.W.1 complainant and the investigating officer P.W.11 Vasundhara as to the time when the complaint was filed. Other than the victim, the rest of the witnesses were hostile and contradictions mentioned had been proved. The evidence of P.W.1, the father of victim showed that he was not interested in filing the F.I.R. According to the learned counsel, the offence was not established and the accused deserved to be acquitted.

5. Against this, the learned A.P.P. submitted that, the victim had deposed and her evidence showed that, the appellant – accused had outraged her modesty after committing wrongful restraint, when she was going to school. Although the other witnesses turned hostile, their evidence still did show that the incident of attempt to take away the girl of the school had indeed taken place near the gate of the school. The evidence of the

victim was supported by such other evidence. There was no reason for the victim to depose against the appellant – accused. Her evidence showed that even earlier the accused had been troubling her and she had come to know the name of the accused before the incident. According to the A.P.P., the appeal deserves to be dismissed.

6. Having heard counsel for both sides, I have gone through the evidence available in the matter. Before discussing the oral evidence, it would be appropriate to keep in view the spot where the incident took place. The spot panchanama is at Exh.37. No doubt, the panch P.W.8 Uttam turned hostile and did not support the prosecution, however, the details of the spot have come on record from the evidence of other witnesses, who have been examined, as well as the evidence of P.W.11 Vasundhara. She has proved the spot panchanam Exh.37. There is no reason why the investigating officer should be disbelieved, who was merely discharging her duties. The spot panchanama Exh.37 shows that the incident took place on the cement way which is sort of a lane (as can be seen from evidence of witnesses), near gate of Andhra Samiti School. The gate of the school is towards south of the spot which was on the way. The way is about 100 metres long, going east-west. There appears to be History Research Centre nearby. There is I.M.A.

Bhawan to the west of the school and there is open space in front. There is another building to the south and nearby there is narrow way and thereafter there is residence of Head Master of Khalsa High School having compound.

The cross-examination of the complainant shows that, this Head Master referred to the way as road coming from Gawalipura towards their school. He deposed that, from Gawalipura, there is lane of 15 ft. and thereafter Khalsa Colony is situated. He deposed that, there are 3-4 houses of Khalsa Colony and then vacant plot and thereafter I.M.A. Bhawan. The cross-examination of P.W.3 Vinay Lalwani shows that, the concerned way is actually a lane from Gawalipura towards their school and the width of the lane is very narrow to the extent that only motorcycle can go by that lane. The cross-examination of P.W.10, the victim brought on record the fact that, on the concerned lane, two wheelers can pass, but there wheelers or four wheelers cannot pass. Her evidence is that, for four wheelers there is another road.

7. The above discussion shows particulars of the spot, which appears to have been a narrow lane from Gawalipura side area to come towards the school. The incident is stated to have taken place on such lane.

8. Coming to the incident, firstly there is evidence of the complainant. He deposed that, the first shift of the school was from 7.30 a.m. to 1.00 p.m. and on the day concerned, he was in his cabin. At that time, the students from his school namely one Dipak, one Vinayak and Soheli came to his cabin. The cross-examination of the complainant made it clear that the reference to Soheli was Soheli Mohsin Khan. This is relevant because in the F.I.R. he had referred to the names of Vinay Lalwani and Khan coming and telling him the incident. The evidence of complainant then shows that, these boys came to him and told him about the incident. The witness gave details of what was informed to him by the boys. This I have already referred while referring to the F.I.R. I am not referring to the details as were told to this Head Master and regarding which he had given oral evidence as that would be hear-say for the witness. However, the relevance remains that immediately after the incident, the incident was told to this Head Master by students, who had seen the incident. The boys told the Head Master that, when they had obstructed the incident taking place, they had been threatened. The complainant deposed that he made prima facie enquiries and the incident was confirmed from Peon Lalitabai (P.W.6) also. His evidence is that, because of the incident there was panic amongst the students and parents came to know about it and

met him and expressed their feelings and concern about the incident and, therefore, he lodged the complaint to the police. According to him, police wrote down the complainant and he signed the same. He has proved the document at Exh.26. In the cross-examination, this complainant accepted that he had not seen the accused persons on the spot and that he was not eye witness of the incident.

The cross-examination brought on record admission of the complainant that initially he did not want to file the complaint with police and he was thinking and rethinking, but as the students and parents insisted, he filed the complaint. Although such admission is taken in the cross-examination, it would rather explain the small delay, which took place between the happening of the incident and registration of the F.I.R. which was done in the evening of 3.8.2001.

The cross-examination further brought on record the fact that this complainant did call the victim girl to his chamber and had made enquiries regarding the incident. In the cross-examination, complainant stated that, he had attended the police station in the afternoon and not at 7.30 p.m. The accused is arguing that the evidence of P.W.11 P.S.I. Vasundhara in cross-examination showed that the Head Master came to the police

station at about 7.00 p.m. and the complaint as dictated by him was reduced by the witness into writing. Thus, according to the accused, there are different versions of the complainant and the P.S.I. The F.I.R. Exh.26 shows that the offence was registered at about 8.05 p.m. The trial Court has considered the arguments on this count and found that there was difference of versions of 1-2 hours and it did not mean that the witnesses were speaking false. I find that, the date of incident was 3.8.2001 and the recording of evidence started in 2004. Some difference of version cannot be so doubted, so as to discard the case of prosecution. With passage of time, such differences are natural. In F.I.R. this Head Master recorded the time of shift in school as from "8.00 a.m. to 1.00 p.m.", but in oral evidence, stated it was "7.30 a.m. to 1.00 p.m." It only shows that witness is not attentive to details. That does not mean that he is deposing false.

9. The F.I.R. registered in ordinary course will have to be upheld specially when there is no material to show that this complainant had any axe to grind against the accused and rather there is evidence to show that he was a reluctant complainant.

. Regarding the incident, there is evidence of P.W.3 Vinay Lalwani. He is a student who is supposed to have informed

the Head Master. His evidence shows that, the incident took place at about 7.30 – 7.45 a.m. when he was going to school along with his classmate Sohail Khan. He deposed that, there were 2-3 boys snatching hand of a girl. The girl was shouting "Bachao Bachao" i.e. "Save Save". This witness deposed that, he and his friends went near the spot and those boys left the girl and ran away on motorcycle. According to him, he then went to the Head Master and narrated the incident. This witness partially turned hostile and did not support the prosecution with regard to the fact that the concerned boys had attacked or threatened these boys. Even regarding the incident of kissing the girl this witness excused himself saying that it did not happen that the boy kissed the girl in his presence.

10. Thus, although he did not deny the kissing part of the incident, he merely wanted to say that it did not take place in his presence. He was confronted with the statement to police. Portions A and B have been proved in the evidence of the investigating officer P.W.11 Vasundhara. It can be said that, this witness did not come up with the whole truth at the time of evidence. The evidence of the P.S.I. Vasundhara shows that the witnesses might not be stating correctly out of pressure. In the cross-examination of P.W.3 he was asked details regarding the lane and further admission was taken from him that when he told

the incident to the Head Master, he did not tell any name of the boy or registration number of the motorcycle and that he did not know anybody from Gawalipura. Thus, in the cross-examination, the fact that this witness saw 2-3 boys trying to snatch hand of girl of the school and the girl shouting "Save, Save" and when these persons went near the spot, the boys ran away on Hero Honda motorcycle has not been denied or challenged. The occurring of incident thus was not disputed.

11. Then there is evidence of P.W.4 Imran Memon, who also deposed that, on the concerned date and time, the incident took place near the gate of the school. He claimed that, there was a crowd of students and he came to know about the incident regarding outraging modesty of girl of their school. The witness was declared hostile and portions marked in his statement to police have been proved against him in the evidence of P.W.11 P.S.I. Vasundhara. Thus, it can be seen that, even this witness has tried to suppress the truth. Same is the condition of P.W.5 Feroz A. Gani, who was also confronted with the statements to the police. The Peon P.W.6 Lalita also turned hostile and has been discredited.

12. P.W.7 Laxmikant, the Laboratory Attendant did not support the prosecution and the Portion marked A from his

statement was proved, which showed that the incident had taken place as is the case of prosecution.

13. The material evidence is of the victim herself, who stepped into the witness box as P.W.10. Her evidence shows that, she was studying in the school concerned in 9th Standard and timing of the school was 8.00 a.m. to 1.00 p.m. Her evidence is that, on that day, she went to the school at 7.45 a.m. The school is in Gawalipura area. According to her, when she reached up to Indian Medical Association Hall, the accused Ahmed came there on motorbike. There were 2-3 other boys also at the place concerned and they started misbehaving with her. Her evidence is that, 2-3 school boys tried to help her and the accused persons started fighting with them. Her evidence shows that, the accused Ahmed along with 2-3 other boys tried to take her away forcibly by catching her hand. When asked to specify, this victim stated that, it was accused Ahmed who had caught her hand. She claims that, when this accused caught her hand, she told him that her uncle is Inspector and in response, the accused claimed that, even S.P. was coming to his house for having tea. She deposed that, thereafter this accused Ahmed kissed her and nearby people intervened and rescued her. Her evidence corroborates the complainant that after the incident she was called to the chamber of the Head Master and enquiries were

made from her. Her evidence further shows that, she identified the accused Ahmed by naming in the witness box. (See Marathi version). Her evidence further showed that, prior to the present incident, for 2-3 days this accused had been troubling her and so she knew him from prior to the incident.

14. In the cross-examination, the victim was asked if she had told the police that the accused Ahmed had caught her hand. She claimed that, she did tell the police. She stated that, she could not say why this specific portion was not in her statement. The investigating officer P.W.11 was asked in her cross-examination if the victim had told her that her hand had been caught. The investigating officer stated that, the victim did tell her that, in the course of incident, her hand was caught. The investigating officer stated that, in the statement it is mentioned that she was lifted by the boys who were taking her away and according to the investigating officer, this clearly meant that her hand had been caught. Thus, victim telling name of the accused Ahmed was not disputed. Regarding holding of hand, the investigating officer has explained and thus, it cannot be said there is any material omission.

The victim was then asked in the cross-examination if she had told the police that she had told accused Ahmed that her

uncle is Inspector and the accused claimed that even S.P. comes to his house to have tea. When the victim was asked if she had made this statement to the police, she deposed that, she could not assign why police did not record this in her statement. Omission on this count has been proved in the evidence of P.W.11 Vasundhara. However, I do not find that, this is material omission as far as regards the main incident of outraging modesty is concerned. The victim was then asked if she had told police that accused was troubling her since last 3-4 days. She explained that the police asked her what happened on the day concerned and she told about the incident of that day and as police did not ask about the past event, she had not told this to the police. Thus, the victim explained why the concerned fact did not appear in the statement of police. The evidence appear to be natural. The victim was hardly in 9th Standard at the concerned time. It could be that she stated what she was being asked. Thus, there is no reason to doubt her evidence when she deposed that since before the incident the accused had been troubling her and so she knew him. Thus, the argument that Test Identification Parade should have been held has no substance. Victim manhandled in broad daylight is bound to remember her tormentor.

In the cross-examination, victim was asked and thus

she deposed that, she was knowing name of accused Ahmed since from one day prior to the incident. Having brought this detail in the cross-examination, the cross-examiner then wanted her to explain her statement to police that she had come to know about names afterwards. Even this was explained by the victim by deposing that she came to know the name of accused Ahmed before the incident, but the name of other boys were not known to her. The cross-examination thus made it rather more clear that the accused Ahmed had been troubling the victim since before the incident and the victim had even came to know about his name and the matter became an issue when on the day of incident this accused along with other friends tried to forcibly take her away and matter came to be reported to the Head Master. In the evidence, the victim did not identify the other accused or could not tell their names and thus, the other accused Nos.2 and 3 got the benefit. This can happen as the young victim may not have paid attention to other supporters of accused in her effort to ward off the aggressive accused who had been troubling her. But there was substantive evidence against accused No.1 Ahmed and the trial Court accepted the evidence. Going through the reasons recorded by the trial Court, I find that the evidence of the victim was rightly accepted regarding the incident as against the present appellant – accused.

15. Lastly, reference needs to be made to the evidence of P.W.9, the father of victim. (I am not naming him also to keep identity concealed). His evidence shows that, he was working in Railways and returned home in the evening of 3.8.2001, when he got message that police had come and so he went to the police station. He deposed that, P.I. asked him if he wanted to lodge the report regarding the incident which had taken place about the victim. This witness appears to have stated that, he told police that whatever the Principal had already done was sufficient and he did not want to lodge any further report. His evidence shows that, he thereafter came home and his daughter also reached. He initially deposed that the victim did not tell him about the incident in the school. He stated that the victim was so much frightened that she could not tell anything. When he was declared hostile and confronted with Portion A of his statement, he deposed that, his daughter had indeed narrated the story as appearing in the police statement after he came back from the police station. He deposed that, the victim did tell him that accused Ahmed had kissed her and others had abused and threatened her. The cross-examination by the accused brought further details on record that the victim was so much frightened that they were subsequently required to accompany her to school. The accused is trying to say that, it is not clear whether the victim told her father the incident in the afternoon before he

went to the police or after he came back from the police station. I find that, this is not material as in any case this witness is not an eye witness of the incident and when called to the police station, had declined to file complaint on his own and was satisfied with the action taken by the police. It shows the tendency to avoid publicity of such incident. On day of incident, when victim told her father is not material.

16. In the cross-examination of P.W.11 P.S.I. Vasundhara, she was shown a certificate dated 3.10.2001, issued by the Head Master, certifying that the victim had on 3.8.2001 attended the school from 7.30 a.m. to 1.00 p.m. The certificate was merely shown to the investigating officer in the cross-examination and the accused claimed and the trial Court marked the same as Exhibit. It was marked as Exh.55. I do not think that, by such confronting the investigating officer with the certificate got issued subsequently from Head Master any benefit could be taken by the accused. The complainant P.W.1, when he was in the witness box, was not confronted with any such statement and contents and signature of the document were not got proved. The investigating officer was not author of this document and thus, by putting up the same to her, the document could not have been said to be proved so as to take any disadvantage of the same. Even otherwise, in the context of the

evidence which has come on record, the certificate would at the most mean that the victim had attended the shift of school on the day concerned, which is a fact as the evidence shows that immediately after the incident the victim was taken to the Head Master and questioned.

17. Having gone through the material available, I do not find that there is any reason to find fault with the judgment of the trial Court. The evidence has been properly appreciated and the evidence has been correctly accepted by the trial Court to hold the appellant – accused guilty of offence punishable under Sections 341 and 354 of the Indian Penal Code.

18. There is no substance in the appeal. The appeal is dismissed. The appellant – accused shall surrender to his bail bonds before the trial Court on 25th July 2016. Trial Court shall ensure execution of the sentence.

(A.I.S. CHEEMA, J.)