

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

CRIMINAL APPLICATION NO. 3089 OF 2015

The State of Maharashtra

...Applicant

VERSUS

Dilip Hiranman Patil

...Respondent

.....

Shri S.D.Ghayal, A.P.P. for applicant/State

Shri Sachin Risbud, advocate h/f

Shri M.M.Bhokariker, advocate for respondent sole

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CORAM : INDIRA K.JAIN, J.

DATED : 11th January, 2016

ORDER :

This application under Section 378(1)(b) of the Code of Criminal Procedure is filed for grant of leave to appeal against the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, Jalgaon on 31.1.2015 in Regular Criminal Case No. 260 of 2009 for the offences punishable under Sections 354, 293 and 509 of the Indian Penal Code.

2] Heard Shri S.D.Ghayal, learned A.P.P. for applicant/State and Shri Sachin Risbud, advocate holding for Shri M.M.Bhokariker, learned counsel for sole respondent. Perused original record.

3] The facts giving rise to the present application may be stated in brief as under : -

(i) Rajendra Bhaulal Kumat, resident of

Shriramnagar, Jalgaon was the first informant. On 8.4.2009 at 7.30 a.m. his wife Vinita and ten years old daughter were at home. Respondent, who resides in the same lane came to the house of complainant and asked for a match box. Vinita told him that they did not have a match box. Then accused asked her to send her daughter to his house so that he could send her for bringing match box. The daughter was reluctant to go but due to insistence of mother she went to the house of respondent.

(ii) After five minutes victim returned home. She was frightened. Vinita asked her the reason. That time victim disclosed to her mother that when she went to the house of respondent he took her inside, closed the door and asked her to touch his private part. She was scared and frightened. She tried to escape. While running away accused pulled her top and one button of her top was broken.

(iii) Informant had gone to morning walk. When he returned Vinita informed him about the incident. They went to Jalgaon Taluka police station and lodged report. Investigation was set into motion. After completing investigation charge sheet was submitted to the court.

4] Charge against the accused was framed vide Exh.18. He pleaded not guilty and claimed to be tried. Prosecution examined in all six witnesses. Considering the evidence of prosecution witnesses

and the material brought on record, Trial Court found that prosecution has failed to prove the guilt of accused beyond reasonable doubt and acquitted the respondent as stated herein above.

5] With the assistance of the learned A.P.P. this court has gone through the evidence of material witnesses PW 1-complainant Rajendra Kumat, PW 2-victim and PW 3-Vinita wife of informant. Even the Trial Court while recording the reasons expressed that the evidence of these three witnesses is consistent in material particulars, however, the Trial Court noticed that there was 12 hours delay in lodging F.I.R. and one day delay in recording the statements of witnesses. As the said delay was not properly explained it was treated fatal to the prosecution case.

6] In this premise and considering the evidence of PW 1 to PW 3 this court finds that there is an arguable case for the State against the respondent. Hence, leave to appeal is granted.

- (i) Criminal Application No. 3089 of 2015 is allowed.
- (ii) Appeal is admitted.
- (iii) Action under Section 390 of the Code of Criminal Procedure.

[INDIRA K.JAIN, J.]