

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

**CRIMINAL REVISION APPLICATION NO. 101 OF 2004**

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| Namdeo s/o. Mahadu Bhalerao<br>Age. 32 years, Occ. Labour,<br>R/o. Lohagaon, Tq. Kannad,<br>Dist. Aurangabad. | .. Applicant<br>[original<br>accused] |
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Versus

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| The State of Maharashtra<br>Through Police Station Pishor<br>Tq. Kannad, Dist. Aurangabad. | .. Respondent |
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Mr.R.V. Gore, Advocate for the applicant.  
Mr.A.R. Kale, A.P.P. for respondent/State.

**CORAM : Z.A. HAQ, J.**  
**DATED : 02.12.2016**

**ORAL JUDGMENT :-**

. Heard. The accused has approached this Court by this Criminal Revision Application challenging his conviction by the Magistrate and maintained in appeal by the Sessions Court, for offence punishable under section 452 and 376 (1) of the Indian Penal Code.

02. According to the prosecution, the prosecutrix - Shantabai was alone sitting in front of her house at

05.00 p.m. on 26.02.2000, when the accused came there under influence of liquor, caught hold of her hand, dragged her inside the house, fell her down, gagged her mouth and committed sexual intercourse forcibly. The subordinate Courts have concurrently recorded that the prosecution has proved that the offence is committed by the accused and the accused is convicted.

03. The learned Advocate for the applicant/accused has submitted that the subordinate Courts have failed to consider the discrepancies in the case of the prosecution and the evidence of the prosecutrix and have wrongly recorded that the accused is guilty of the offence for which he was charged. The learned Advocate for the applicant has taken me through the evidence of the prosecutrix and has argued that not only the evidence of the prosecutrix is not sufficient to hold accused guilty of the offence but there is no corroborating evidence including the medical evidence on the basis of which the conviction of the accused for the offence can be justified.

04. The learned A.P.P. has submitted that the scope of interference for exercising jurisdiction under section 397 of the Criminal Procedure Code is very restricted and there cannot be re-appreciation of the evidence. It is

argued that the subordinate Courts have examined the evidence on record and have recorded findings against the accused, which cannot be said to be perverse to enable this Court to re-examine the evidence. It is submitted that the applicant has not been able to point out that any relevant evidence on record is not considered and it will not be permissible for this Court to re-appreciate the evidence and take a different view. It is submitted that the contention on behalf of the applicant that there is no corroborating evidence is also not correct as the Doctor who examined the prosecutrix is examined and his evidence supports the claim of the prosecutrix and the case of the prosecution. It is argued that the report of chemical analysis also supports the case of the prosecutrix that because of the possibility of the intercourse by the accused, there was bleeding, as bloodstains are found on the clothes of the prosecutrix.

05. The evidence on record shows that the house (hut) of the prosecutrix was situated in a congested locality. In the evidence of the prosecutrix it has come on record that Taherabi, who resided in the house adjoining the hut of the prosecutrix was present in her (Taherabi's) house. Though the prosecutrix has stated that her husband and son had gone out of village on 26th February, 2000, there is nothing on record which shows

that the accused was having knowledge of this fact. The prosecutrix was aged about 31 years at the time of incident and had five children. The claim of the prosecutrix and the prosecution that the prosecutrix bled after the incident, is tried to be explained by the defence by putting suggestion to the prosecutrix that the bloodstains are because of menstruation cycle. Though the Doctor who is examined by the prosecution has admitted that in the certificate (Exh.48) it is stated that menstruation cycle of the prosecutrix had lapsed 15 days prior to the incident, in the cross-examination, the Doctor has admitted that it is medically not possible to opine about it and also whether the menstruation cycle was regular or not. The prosecutrix has stated in her evidence that the accused dragged her inside the house and fell her down. The medical certificate does not show any injury on her person.

06. Though it is not permissible for this Court while exercising jurisdiction under section 397 of the Criminal Procedure Code to re-appreciate the evidence, this Court cannot shirk its responsibility of examining whether the findings recorded by the subordinate Courts are legal and proper and based on material/evidence on record.

. The evidence on record is not sufficient to

prove the guilt of the accused beyond doubt and the subordinate Courts have committed an error by recording conviction relying on the assertions of the prosecutrix and overlooking the medical evidence which lacks in proving the guilt of the accused beyond doubt. In view of the above, I find that the conviction of the applicant is unsustainable.

. Hence, the following order is passed :-

(i) The judgment passed by the IV Adhoc Asstt. Sessions Judge, in Sessions Case No. 213 of 2000 on 19.11.2002 and maintained by the III Additional Sessions Judge in Criminal Appeal No.94 of 2002 on 23.02.2004 and the conviction of the applicant/accused for the offence punishable under sections 452 and 376 of the Indian Penal Code are set aside.

(ii) The applicant/accused is acquitted of the offence punishable under sections 452 and 376 of the Indian Penal Code.

(iii) The amount of fine deposited by the applicant be refunded to the applicant.

(iv) The Criminal Revision Application is allowed in the above terms.

. As there was no appearance on behalf of the applicant when the matter was called out for hearing on 29th September, 2016, this Court directed issuance of non-bailable warrant to secure presence of the applicant/accused. The warrant could not be executed and therefore again order came to be passed on 17.11.2016

directing issuance of non-bailable warrant to secure the presence of the accused before this Court. The accused was arrested and produced on 29.11.2016 and the matter was placed before the Court at about 06.15 p.m. On 29.11.2016 the order was passed that the accused be sent to the jail and be produced on 30.11.2016. When the matter was called out on 30.11.2016, the Advocate for the accused appeared and sought time. Accordingly, the matter came to be adjourned for today. The applicant/accused is in custody. It is directed that he be released forthwith.

**[Z.A. HAQ, J.]**