

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.636 OF 2016

WITH

BAIL APPLICATION NO.642 OF 2016

IN

REVISION APPLICATION NO.636 OF 2016

Bharat Namdeo Shirke .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.H. Bhadbhade a/w. Mr.H.Salgaonkar i/b.
Mr.A.M.Landge, Advocate, for the Applicant
Mr.S.V.Gavand, APP, for the Respondent - State

CORAM : REVATI MOHITE DERE, J.

DATE : 19.12.2016

ORAL ORDER

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable forthwith
with the consent of the parties and is taken up
for final disposal at the stage of admission.

3. Learned APP waives notice on behalf of
the Respondent - State.

4. Vide Judgment and Order dated 15.09.2015 passed by the learned Metropolitan Magistrate, 51st Court, Kurla, Mumbai in C.C.No.182/PS/2011, the Applicant has been convicted for the offence punishable under Section 354 of the Indian Penal Code and has been sentenced to suffer R.I. for two years and to pay fine of Rs.10,000/-, in default to suffer S.I. for 30 days. The Applicant has also been convicted for the offence punishable under Section 509 of the Indian Penal Code and has been sentenced to suffer S.I. for one year and to pay fine of Rs.5,000/-, in default to suffer S.I. for 15 days. The amount of Rs.10,000/- was directed to be paid to the informant/victim as and by way of compensation. Both the sentences were directed to run concurrently.

5. Being aggrieved by the said Judgment and Order, the Applicant preferred an Appeal, being Cri. Appeal No.876 of 2015 in the Sessions Court. The learned Addl. Sessions Judge, Greater

Bombay vide Judgment and Order dated 12.11.2016 was pleased to partly allow the said Appeal, inasmuch as, the conviction of the Applicant under Section 509 of the Indian Penal Code was set aside. The Appellate Court was, however, pleased to maintain the conviction of the Applicant under Section 354 of the Indian Penal Code but reduced/modified the sentence to R.I. for three months, with a direction to pay fine of Rs.10,000/-, in default to suffer S.I. for 15 days. Hence, this Revision.

6. Learned counsel for the Applicant assailed the aforesaid Judgments and Orders on the following grounds:-

- (i) That both the lower Courts erred in not considering that there was a discrepancy in the FIR and the evidence of PW.1 with regard to the exact spot of incident in the Applicant's house;
- (ii) That PW.1 - victim girl was not a student of the Applicant; and

(iii) That there were several omissions in the evidence of PW.1.

In the alternative, he submitted that the sentence of the Applicant be reduced to the period undergone.

7. Learned APP supported the impugned Judgments and Orders and submitted that no interference was warranted in the same. He submitted that the prosecution had proved its case against the Applicant beyond reasonable doubt.

8. Perused the papers. The prosecution in support of its case examined four witnesses. PW.1 - the victim girl, who at the relevant time was 14 years of age and was studying in the 7th Std; PW.2 - Avin Alwin Nayar, brother of the victim girl; PW.3 - Baburao Maruti Mahadik, the officer who registered the offence against the Applicant, seized the mobile of the Applicant,

visited the spot, prepared the spot panchanama and filed the charge sheet.

9. The defence of the Accused was of total denial and false implication. The Applicant in his defence examined himself as DW.1, his wife as DW.2 - Mrs. Sushama Bharat Shirke and DW.3 - Saidatta Raju Durai, Applicant's student.

10. The evidence of PW.1 (victim girl) shows that the incident in question took place on 28.02.2009 at about 4.00 p.m. to 5.50 p.m. when she went to the Applicant's house for tuition. She has stated that when she reached the Applicant's house, the Applicant's wife, who was pregnant, was sleeping in a room. She has stated that the Applicant took her to the 1st floor, sat besides her, took out his mobile, showed her clip of the film 'Murder' on the said mobile. She has stated that she pushed his hand and asked him why he was showing this clip, as the clip was a scene, of kissing and sexual contact.

She has stated that she was embarrassed with the said clip which was shown to her. She has further stated that she was wearing a frock at the relevant time and that the Applicant started touching her inappropriately, pursuant to which she started crying. She has stated that she gave a jerk to the Applicant's hand, left her books and returned back home and narrated the incident to her brother PW.2, who in turn disclosed the incident to their uncle. She has stated that thereafter, her brother and uncle reached the Applicant's house, took his mobile, slapped the Applicant and took him to the police station, where she lodged the FIR, which is at Exh.05.

11. Certain suggestions were put to PW.1 in her cross-examination which were denied by her. Although, it is the defence of the Applicant that the victim girl was not his student, a perusal of the cross-examination shows that no such specific question has been put to the said witness or any other witness. Infact, the

Applicant stepped into witness box and examined himself, his wife and a student. However, there is nothing in the evidence of the Applicant, his wife and the student to show that the Applicant was not teaching the victim girl (PW.1). The discrepancy with regard to the exact place of the incident in the house of the Applicant, is not of much significance, considering that the FIR was lodged in 2009, whereas, PW.1's evidence was recorded after almost six years i. e. 2015. The evidence of PW.1 with regard to the act of outraging her modesty is consistent. It is pertinent to note that the FIR was lodged promptly on the very same day. A perusal of the evidence of PW.1 shows that she is a credible and truthful witness and there is nothing in her entire evidence to doubt her credibility. There is nothing on record to show, that there was any reason for PW.1 to falsely implicate the Applicant. The evidence of PW.1 inspires confidence and is sufficient to convict the Applicant. Nevertheless, in the present case,

the evidence of the said witness i. e. PW.1 is duly corroborated by her brother PW.2, inasmuch as, soon after the incident of outraging modesty, PW.1 went home and informed him of the said incident, pursuant to which he informed his uncle and they went to the Applicant's home and took him to the police station. Merely because the mobile which was seized did not contain obscene material does not mean that the Applicant had not shown her the clip. The Applicant sensing trouble, after PW.1 ran home, appears to have deleted the clip. The Applicant was PW.1's teacher. PW.1 - the victim girl was only 14 years at the relevant time. The Applicant exploited the student-teacher relationship, by taking advantage of the victim girl, aged only 14 years, at the relevant time and outraged her modesty. Considering the material on record, no interference is warranted in the impugned Judgments and Orders of conviction and sentence. The Revision Application being sans merit is dismissed. Rule

is discharged.

12. In view of dismissal of the Revision Application, the Bail Application does not survive and the same is also dismissed.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)