

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Application [APPA] No. 723 of 2015
IN
Criminal Appeal No. of 2015
[State of Mah. Vs. Ramesh Vishwanath Yadav]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. M.J. Khan, APP for appellant-State.

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CORAM : A.B. CHAUDHARI, J.

DATE : 29th January, 2016.

Heard learned APP for the appellant-State. Seen the evidence of 'N' [PW1], the prosecutrix. Seen the reasons recorded by the learned Trial Judge for recording the order of acquittal in paras 17 and 18, which I quote hereunder:-

“17. As per the submissions of the learned advocate for the accused, the area where the alleged incident occurred is a crowdly area. Near the Bust Stand, Amravati there is Ambika Hotel. There was heavy traffic of vehicles and several persons also used to go by that road [.....illegible....] going towards the Bus Stand, Amravati to catch the S.T. Bus. Somebody else might have been given push to the victim but wrongly the victim felt that the accused is the person who had given push to her. According to him, the accused who was hurriedly proceeding towards Bus Stop was stopped by the passers thereby as victim raised shouts and

told that the accused touched her body and thereafter, the accused was produced at Police Chowki, S.T. Bus Depot, Amravati. According to him, the accused is serving in a Newspaper Agency and used to collect the bills of Newspapers and he was hurriedly going to go to Anjangaon Surji and at that time he was stopped and caught by the passers. He submitted that the accused made same statement before the investigating officer but inadvertently he failed to ask about it to the investigating officer during her cross-examination. He submitted that the accused who is aged about 45 years old and a reputed person cannot intentionally touched the body of a teenage girl on public place while going and due to misunderstanding of the victim, he is involved in this crime. He alternatively submitted that the accused was proceeding hurriedly by the side of the victim and while walking as his hands were swinging condition therefore, there is possibility that twice his hand was touched with the body of the victim. According to him, the offence punishable under Section 354 of Indian Penal Code or Section 8 of POCSO Act is not proved against the accused beyond all reasonable doubt and therefore, the accused is entitled for acquittal.

18. The FIR [Exh.8] itself goes to show that the victim was standing in crowdly area. There was heavy rush of the vehicles and she was standing just to the side of the road. Taking into consideration the facts and circumstances, the possibility of accidental touched of the hand of the accused twice with the body of the victim cannot be ruled out. Taking into consideration the evidence available on record and the facts and circumstances, I found much substance in the submissions of the learned advocate for the accused that offence punishable under

section 354 of Indian Penal Code and in the alternative offence under section 8 of POCSO Act is not proved beyond all reasonable doubt.”

Keeping in mind para 61 of the Judgment of Apex Court in the case of **Darshan Singh Vs. State of Punjab** [2010 (2) SCC 333], I think, the view taken by the Trial Judge is a possible view. Since the State seeks conviction only on the basis of evidence of the sole witness [PW 1], there is a likelihood of what the Trial Judge has said about, namely the place being the State Transport Bus Station. I do not think, I should take second look of the matter. Hence the following Order:-

Leave is refused. Criminal Application No. 723 of 2015 is **rejected**.

Judge

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