

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

CRIMINAL APPEAL NO. 279 OF 2017

The State of Maharashtra
Through Dharangaon Police Station,
Taluka Dharangaon, District Jalgaon.

.. Appellant
(Original complainant)

Versus

1. Allha Abdul Rahim Mohd.,
Age 27 years, Occu. Education,
R/o. Ahmadiya Majid, Plot No. 22,
Gajabatti Palestine Nation (Foreigner),
At present R/o. Madni Chowk, Cidco,
N-1, Near Binmazi Complex,
Aurangabad.
2. Parvin (Parsi) Veisi Birgooni Saha Husen,
Age 46 years, Occu. Education,
R/o. Sahar Estan Iran, Isfahan Nation,
At present R/o. Plot No.3,
Hrunanubandh Park, Behind Swimming tank,
217, Anand Nagar, Old Sanghvi, Pune. .. Respondents
(Original accused)

...
Mr. S. P. Sonpawale, APP for Appellant- State.
Mr. Mohammad Imran Ahemad, Advocate for Respondent No.1
Mr. Vinod P. Patil, Advocate for Respondent No.2
...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 13th FEBRUARY, 2018.

DELIVERED ON : 17th APRIL, 2018.

JUDGMENT :-

1. The appellant - State of Maharashtra by invoking remedy under section 378 (1) of the Criminal Procedure Code (for short "Cr.P.C) preferred the present appeal agitating validity, propriety and legality of the judgment and order of acquittal of both the respondents - original accused in Sessions Case No. 07 of 2015 passed by the learned

Additional Sessions Judge, Jalgaon, dated 16-05-2016. The respondents-original accused are exonerated from the charges pitted against them for the offence punishable under sections 328, 506 read with 34 and 354-A as well as 107 read with section 109 of the Indian Penal Code (for short, "IPC") and Section 14(a)(b) of the Foreigners Act, 1946 (for short, "Act of 1946"). The impugned findings of acquittal of both respondents -accused is the subject matter of present appeal.

2. It has been alleged on behalf of prosecution that the prosecutrix was the student of M. Sc. First Year course studying in North Maharashtra University at Jalgaon (for short, "University"). She took an admission on 24-07-2014 and since then she started residing in ladies hostel located within the University Campus itself. Accused No. 2 Parvin (Parsi) Veisi Birgooni Saha Husen, a Iranian nationality, was also pursuing Ph.D Degree course in Psychology subject in the same University. She had also occupied the Room No. S-41 in the same Ladies Hostel of prosecutrix. Accused No. 1 Allha Abdul Rahim Mohd, a Palestinian nationality, was the friend of accused No. 2 Parvin and used to visit her frequently. There were other girl students of the University residing in the ladies hostel. After acquaintance with each other, on one day some of the inmates of ladies hostel including prosecutrix and accused No.2 Parvin had been to "Gandhi Tekadi" for strolling. They took photographs of each other in the cellphone. Accused No. 2 Parvin insisted the prosecutrix to forward those photographs of girl students on her cellphone.

According to prosecution, accused No. 1 Allah came in contact with the prosecutrix at the instance of accused No.2 Parvin under the

pretext of repairing of her cell phone. The accused offered dinner to the prosecutrix. Initially, the prosecutrix was reluctant to accompany with the accused for dinner etc. But, the accused Parvin convinced the prosecutrix about the accused No.1 Allha, and made her to join them for dinner. The trio enjoyed the dinner in "Shalimar hotel" and returned to hostel. In the night hours, accused No.1 Allha sent text message on the cellphone of prosecutrix that "*I like you, I don't force ladies. I love you and you are decent*", etc.

3. It has been alleged that, on the day of incident i.e. on 03-08-2014 in the noon hours, both the accused and prosecutrix had been to Big Bazar for roaming. They watched the movie and in the wee hours of evening, they came to Shalimar hotel for meal. In the hotel, after occupying the seats, accused No.1 Allha left the lunch table and went towards the waiter. He had some conversation with the waiter in the hotel. Thereafter, they enjoyed the meal and returned to the University Campus. There was drizzling at about 5.00 to 6.00 p.m. The accused No.2 Parvin insisted the prosecutrix for halt at Shikshak Bhavan building located in the University Campus instead of going to ladies hostel. Accordingly, accused managed to get two rooms, one on the ground floor and another on first floor of Shikshak Bhavan building. Initially, trio went in the room located on first floor. The prosecutrix was feeling some what giddiness, and therefore, she slept on the bed in the room. The accused No. 2-Parvin divulged the prosecutrix that accused No. 1-Allha wanted to kiss her. But, prosecutrix shouted and asked both the accused to go out of the room. Thereafter, both accused left the prosecutrix alone and came downstairs in the another

room allocated in the name of accused Allha. However, at about 9.00 to 9.30 p.m. prosecutrix informed to the accused No.2 Parvin that her menstrual period has commenced. The accused No.1 Allha brought the sanitary napkins for the prosecutrix from market. The prosecutrix was alone in the room on the first floor, whereas, both the accused were chitchatting in the ground floor room. At about 11.00 p.m. prosecutrix woke up from the bed she felt thirsty. Therefore, she came downstairs in the room of accused Allha for drinking water. She saw both the accused were chitchatting in the room. The prosecutrix was feeling loneliness, therefore, she asked accused No.2 Parvin that she would sleep on another bed in the room of accused No.1 Allha, and accordingly, she slept in the room. In the midnight, when prosecutrix awakened from the bed that time she realized that the accused No.2 Parvin was not in the room and accused No.1 Allha was bolting the doors of the room. The accused No.1 Allha came near her and attempted to embrace her. He started kissing her forcibly and made demand for sexual favours. But, the prosecutrix refused to budge for such immoral act. Thereafter, accused No.1 Allha went to sleep on another Bed. In the morning at about 6.00 a.m., accused No.2 Parvin came in the room and took the prosecutrix back to her room at first floor. At about 8.00 a.m. they both left the Shikshak Bhavan and returned to ladies hostel in the University Campus.

4. According to prosecutrix, accused No.1 Allha had given threats of dire consequences to her for not disclosing the incident to anybody else. But, after about two and half months i.e. on 09-10-2014, the prosecutrix ventured to approach to the Police and lodged the First

Information Report [Exhibit-86].

5. Pursuant to FIR, Police of Dharangaon Police station registered the Crime No. 184 of 2014 and set the penal law in motion. The Investigating Officer carried out the investigation. He recorded statements of witnesses acquainted with the facts of the case. After completion of investigation, he preferred the charge-sheet against both the accused for the offence punishable under sections 328, 354A, 107 and 506 read with Section 34 of the IPC and Section 14(a)(b) of the Foreigners Act of 1946. The offence punishable under section 328 of the IPC was triable by the Court of Sessions, therefore the matter came to be transmitted to the Court of Sessions by requisite committal order from the learned Magistrate at Dharangaon. The learned Additional Sessions Judge, after procedural formalities, framed the charges against both the accused. They denied the charges and pleaded not guilty. In order to bring home guilt of the accused, prosecution examined in all 20 witnesses. The statements of accused under section 313 of the Cr.P.C. also came to be recorded to afford them an opportunity to explain incriminating circumstances brought on record. Both the accused denied the allegations and claimed their false implication in this case.

6. The learned Additional Sessions Judge considered the factual aspect in the light of evidence adduced on record and arrived at the conclusion that prosecution failed to prove the charges pitted against accused beyond all reasonable doubt. Therefore, learned Sessions Judge proceeded to absolve the accused from the charges levelled against them and passed the impugned judgment and order of

acquittal, which is put in controversy on behalf of prosecution in this present appeal.

7. The learned APP vehemently submitted that learned Sessions Judge did not appreciate the evidence adduced on record on behalf of prosecution in its proper perspective and committed error to acquit both the accused in this case. According to learned APP, prosecutrix verbalized in candid manner about the indecent act of accused No.1 Allha for sexual assault. Accused No.2 Parvin abetted commission of such indecent act by accused No.1 Allha. The version of prosecutrix that accused attempted to embrace and kissed her forcefully was not considered by the trial Court in proper manner. There was demand for physical relations, but the prosecutrix resisted the accused No.1 Allha for sexual advance. Learned Sessions Judge failed to appreciate the version of the prosecutrix for adverse inference against accused. According to learned APP, P.W. 13 Jolly was the friend of prosecutrix and she corroborated the version of prosecutrix on the material aspect of allegations nurtured against accused. The learned APP submits that the presence of both accused and prosecutrix during the relevant period of incident in the room of Shikshak Bhavan building was proved by the prosecution. Therefore, the sole version of prosecutrix is required to be taken into consideration for adverse inference against accused. There was no motive for the prosecutrix to implicate the accused falsely in this case. Learned APP further added that the delay in lodging the FIR would not cause any dent in the prosecution case, as prosecutrix was under duress and mental trauma following threats by the accused for dire consequence. The prosecutrix did not lodge FIR in

order to avoid further complication in regard to her character reputation, etc. The delay would not cause any doubt or create suspicion in the prosecution case. The learned APP relied on the citations of the Supreme Court in the case of **Vidyadharan Vs. State of Kerala** reported in **2003 Law Suit (SC) 1128** and **Kanwar Pal Singh Gill Vs. State (Appeal Cri. No. 1032 of 1998 decided on 27-07-2005)**.

8. The learned counsel for the accused assailed that prosecution has miserably failed to prove the charges pitted against the accused beyond all reasonable doubt. The sole version of prosecutrix is not sufficient to hold both the accused guilty. There was a colossal delay in filing the FIR. The prosecution has failed to explain the delay in lodging FIR. According to learned counsel for accused, no such incident as alleged by the prosecutrix was ever occurred, but the accused were embroiled falsely in this case. The sole version of prosecutrix is not sufficient to draw adverse inference against the accused. The delay for lodging FIR was not properly explained. The learned counsel for accused explained the conduct and demeanour of prosecutrix since the day of incident till lodging of the FIR in the Police Station. He submitted that even if it is considered that the accused and prosecutrix were present in the room, the prosecutrix was one of the consenting parties for the alleged act. Therefore, accused cannot be held guilty for the act committed in passion or in excess of his excitement. The learned Sessions Judge has correctly dealt with the factual aspects of the matter and exonerated the accused from the charges pitted against them. Therefore, no interference is warranted in the findings of

learned trial Court at the instance of prosecution.

9. Admittedly, both the accused are arraigned for the offence punishable under sections 328 and 506 read with section 34 of the IPC. In addition, accused No.1- Allha was charge-sheeted for the offence punishable under section 354-A of IPC whereas accused No. 2-Parvin blamed for the offence punishable under section 107 read with section 109 of the IPC for abetment of committing offence punishable under section 354-A of the IPC by the accused No.1 – Allha. Accused No. 2 Parvin was also implicated for commission of offence punishable under section 14 of the Foreigners Act 1946.

10. At the threshold, it is to be noted that, there are circumstances which are not seriously put into controversy on behalf of accused. It was admitted fact that the victim/prosecutrix was the student of M.Sc. First year course studying in North Maharashtra University, Jalgaon. She took admission on 24-07-2014 and since then she started residing in ladies hostel of the University itself. It was not denied that accused No. 1 – Parvin, a Iranian nationality was also pursuing Ph.D degree in Psychology subject in North Maharashtra University and resides in the same ladies hostel of victim/prosecutrix. The accused No. 2 Parvin, get introduced accused No. 1 Allha to victim/prosecutrix and other inmates of the ladies hostel being her friend. Prosecution produced relevant documents i.e. the register of inmates of girl hostel, their movements, etc., maintained and preserved in the ladies hostel. P.W. 9- Dilip Govindlal Hundiware stated about admission of accused No. 2 Parvin in the North Maharashtra University at Jalgaon for pursuing Ph. D. decree.

All these circumstances are not seriously agitated on behalf of accused in this case. These circumstances indicate that accused and victim/prosecutrix as well as her associates i.e. inmates of ladies hostel all were well acquainted with each other prior to the alleged incident of sexual harassment to victim by accused No.1 Allha.

11. The provisions of section 328 of the IPC contemplates punishment for causing hurt by means of poison or any stupefying, intoxicating or unwholesome drugs with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. In the matter in hand, it has been alleged on behalf of prosecution that accused on 03-08-2014 administered some stupefying, intoxicating substance to victim/prosecutrix while enjoying lunch in the noon hours at Shalimar Hotel, with an intention to facilitate accused No. 1 Allha for committing offence of sexual harassment with victim/prosecutrix.

12. In order to prove the charge under section 328 of the IPC, prosecution relied upon version of P.W.12-victim/prosecutrix and P.W.14- Baburao Lokhande, waiter of the Shalimar Hotel. P.W.-12 victim/prosecutrix stated that on 03-08-2014 at about 12.30 p.m. accused No. 1 Allha brought auto rickshaw for going to Big Bazar. Thereafter, victim/prosecutrix accompanied with accused no. 1- Allha and accused No. 2 – Parvin visited to Big Bazar. They watched the movie and thereafter they came to the Shalimar Hotel for lunch. The accused placed order for lunch. According to prosecution, accused No. 1 - Allha left the lunch table and went towards the waiter. After

10 - 15 minutes he returned to lunch table. The victim/prosecutrix further added that after enjoying lunch they returned to University Campus. There was drizzling, therefore, accused No. 2 Parvin told victim/ prosecutrix to stay for night in the rooms of Shikshak Bhavan located in the campus of University itself. Accused No. 1-Allha was also present with them. Accused No. 2 Parvin managed to get two rooms in the building of Shikshak Bhavan. The first floor room was allotted in the name of accused No. 2-Parvin, whereas, another ground floor room was allotted to the accused No.1 Allha. The victim/prosecutrix further deposed that while returning from hotel, she attempted to have conversation with the waiter. He informed her that the accused persons are foreigners and she should be alert from them. It has been alleged that when victim/prosecutrix came in the room of Shikshak Bhavan, she felt some giddiness. Therefore, she slept in the first floor room, but after some time, her menstruation period commenced.

13. In addition to version of victim/prosecutrix, prosecution adduced evidence of P.W. 14 – Baburao Lokhande, waiter of the Shalimar Hotel. He stated about visit of the prosecutrix accompanied with both accused for lunch in the Shalimar Hotel during the relevant period. He added that accused placed order of Veg Biryani for lunch. He served lunch to both accused and victim/prosecutrix. After lunch, they went away. P.W. 14 – Baburao did not whisper about the attempt of accused No.1 Allha for administering intoxicating substance to the victim/ prosecutrix during the course of lunch.

14. The aforesaid versions of victim/prosecutrix and P.W. 14- Baburao, waiter of the Shalimar Hotel do not reflect any overt-act of the accused to prove the circumstance that he attempted to administer stupefying or intoxicating substance to the victim prosecutrix while they were enjoying lunch in the hotel during relevant period. Therefore, it would hazardous to draw adverse inference against accused for commission of offence under section 328 of the IPC. Prosecution examined P.W.7 Vinod Chanal and P.W. 8 Bhagwat Thorat who were on duty as an attendant during relevant period at Shikshak Bhavan building. But, these witnesses also did not observe any abnormal behaviour or inebriated state of the victim/prosecutrix. In such circumstances, there is no need to cause any interference in the conclusion drawn by learned Sessions Judge to exonerate both the accused for the charges pitted against them under section 328 of the IPC.

15. Prosecution further cast allegations about the sexual harassment by the accused No.1 Allha to victim/prosecutrix. The accused attempted to make physical contact by sexual overtures and also insisted for sexual intercourse. At this juncture, it would be profitable to take into consideration the newly inserted provisions of section 354-A of the IPC relating to the sexual harassment to woman. It is reproduced as under:-

" S. 354-A. (1) A man committing any of the following acts-

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman ; or

(iv) making sexually coloured remarks;

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (I) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

16. The provision of section 354-A of the IPC prescribes that an act of physical contact and advances with sexual overtures as well as demand or request for sexual favours would be an offence under the Penal Code. This new provision was introduced under Criminal Law (Amendment) Act, 2013 to provide stringent punishment for crime against the women.

17. Now, in regard to allegations of sexual harassment and criminal intimidation under section 354-A as well as 506 of the IPC against accused No. 1 is concerned, the evidence of P.W.12 victim/prosecutrix is available on record. The P.W. 12 victim herself deposed that when she had slept in the first floor room that time in the wee hours of night

she woke up for drinking water and came downstairs in the room of accused No. 1 Allha and saw that both the accused were chitchatting in the room. The victim prosecutrix further stated in paragraphs No. 8 and 9 of her deposition as follows:

"8. At about 11.00 p.m. I was thirsty with water hence, I had been to the ground floor to take search of Alla. When I entered in their room, Alla and Parvin were talking with each other. As I was going to sleep, I sleep on one cot and Alla and Parvin were talking with each other on the another cot. On 4.8.2014 at about 12.00 to 12.30 a.m. I got awakened and that time Parvin was not present in the room and Alla was bolting the door of room from inside. Alla closed the door of room by inside. Thereafter, Alla came to near me. He caught hold me and forcibly kissed me. He was also forcibly insisting me to have a physical relationship with me. I denied him. Thereafter, also he was forcibly kissing me and insisting for physical relationship, hence, I was constrained to push him. My bed sheet was lying near the cot and when I bent down to collect it I saw that water bottle was there. After taking the water I feel it little better and thereafter, I asked to Alla immediately to leave the room. It was the time at about 3.00 a.m. Alla asked me that he will take sleep on the another cot and thereafter, he slept there on the another cot.

9. In the morning at about 6.00 a.m. Parvin rushed to my room and took me in her room. The room from which Parvin took me was of Alla. At about 7.30 a.m. When we were proceeding towards hostel that time Alla had also left the said room of Shikshak Bhavan when we were approaching towards the hostel, Alla threatened me that I should not disclose

the said incident to anyone otherwise he will defame me and also kill to me and my family members."

18. It is the settled rule of law that the evidence of a victim of sexual assault stands on par with evidence of an injured witness. The evidence of victim of such sex offence is entitled to great weight. If the evidence of victim does not suffer from any basic infirmity and probabilities factor does not render it unworthy of credence, as a general rule, there is no reason to insist for corroboration. The Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Chandraprakash Kewalchand Jain** reported in **AIR 1990 SC 658** summarized the position in the following words-

"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of prosecutrix, there is no rule or law or practice incorporated in the Evidence Act similar to illustration (b) to section 114 which requires it to

look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence."

19. The intense scrutiny of the evidence of victim/prosecutrix referred above, in the light of aforesaid legal dictum, reflects that the accused No. 1 - Allha during relevant period of intervening night in between 03-08-2014 and 04-08-2014 attempted to ravish victim/prosecutrix. He ventured to grasp her and by physical contact forcibly kissed her. He was insisting for physical relations. But, the victim prosecutrix refused to yield to his advances. The aforesaid unblemished solitary version of P.W.12-victim/prosecutrix demonstrate that the accused No. 1-Allha committed the crime of sexual harassment as envisaged under sub-section (i) and (ii) of section 354-A (1) of the IPC. Her sole version is sufficient to draw inference against the accused No.1 - Allha.

20. The learned trial court found reluctant to accept the statement of victim/prosecutrix for the reason that, in view of her past as well as subsequent conduct and demeanour, she would be one of the consenting and voluntary parties to the affairs, and therefore, accused No.1 Allha cannot be blamed for his obnoxious behaviour. In view of attending circumstances, it would hard to persuade the conclusion drawn by the learned trial court for discarding the allegations nurtured on behalf of victim / prosecutrix against accused No.1-Allha. It would imperative to appreciate that the victim / prosecutrix had recently taken admission in the University just prior to ten days of the alleged incident i.e. on 24-07-2014 and since then she started residing in girl's hostel. Accused No. 2-Parvin was also one of the inmates of the girl hostel of victim/prosecutrix. It is also worth to mention that the alleged incident of sexual harassment on the part of accused with victim/prosecutrix occurred within ten days after her admission in the University Campus. According to prosecution, accused No.2-Parvin introduced the accused No.1- Allha with victim/prosecutrix within a span of these ten days under the pretext of repairing of her cellphone. In view of such short span of period, it would fallacious to appreciate that the victim/prosecutrix would develop some sort of affairs with accused No. 1-Allha, so that she would be considered as one of the consenting parties to the alleged indecent act of sexual harassment. Had there been any consent on the part of victim/ prosecutrix for such immoral act, there would have been more vulgarity and promiscuous virtue in their activities. But, there were no allegations of any sexual assault or physical relation in between accused No. 1 - Allha and

victim/ prosecutrix. Moreover, there was no reason or strong motive brought on record which goaded the prosecutrix to embroil the accused by making false allegation in this case.

21. However, in order to lend assurance to the testimony of victim/prosecutrix, prosecution adduced evidence of P.W. 4- Yogendra Arekar and P.W. 5-Pundlik Chaudhari, panch witnesses for seizure of visitor's register, maintained / preserved in the Shikshak Bhavan building. The relevant entries in these register indicate that both the accused and victim during the intervening night of 03-08-2014 and 04-08-2014 had been to Shikshak Bhavan Building for halt. P.W. 7-Vinod Chanal and P.W.8 Bhawat Thorat, staff members of Shikshak Bhavan building disclosed about the visit of accused and victim/ prosecution during relevant period to Shikshak Bhavan building for stay. These circumstances corroborate the testimony of victim/ prosecutrix to establish presence of both the accused and prosecutrix during relevant night at the scene of occurrence. P.W. 11-Sharda Chavan, Superintendent of girl's hostel stated that on the day of incident i.e. on 03-08-2014 accused No. 2-Parvin and victim/ prosecutrix both left the hostel for going to Jalgaon city. They both submitted application for going outside the hostel premise. P.W.11-Sharda Chavan made it clear that both the victim/prosecutrix and accused No. 2-Parvin returned to the hostel on the following day i.e. on 04-08-2014 at about 10.30 a.m. They made entry in the relevant register for check in the hostel, (Exhibit-78). These circumstances are sufficient to point out that victim/prosecutrix and accused No. 2-Parvin both left the premises of the girl's hostel on 03-08-2014 in the noon hours at about 12.30 p.m.

and returned to the hostel on the following day i.e. on 04-08-2014 at about 10.30 a.m. This factual aspect fortify the contentions propounded on behalf of victim/prosecutrix that she was accompanied with both the accused in Shikshak Bavan building located within University campus during the relevant night.

22. The evidence of P.W.13-Jully Jayant Agnihotri, one of the hostel-mate of the victim/prosecutrix is adduced on record. P.W.13 Jully deposed that she had an acquaintance with accused No. 2-Parvin being inmate of hostel. In the month of August, she came in contact with accused No. 1- Allha, after he was being introduced by the accused No. 2 - Parvin to her. P.W.13-Jully testified about the events of sexual overtures and advances by accused No.1-Allha with her. But, she did not respond to his vulgar activities. She further deposed that on one day she saw that victim/prosecutrix was in nervous mood and weeping. She took her in confidence and made enquiry. At that time prosecutrix spill the beans that she was cheated and deceived by accused No.2- Parvin and accused No.1- Allha. The victim/prosecutrix further divulged that in the month of August, she had been with accused in the city for strolling. Thereafter, accused No.2-Parvin insisted her to stay in Shikshak Bhavan Building for night. She disclosed about the episode of sexual harassment by accused No. 1- Allha occurred in the night with her. P.W.13-Jully further added that they made endeavour to convince the victim/prosecutrix to disclose the incident to her parents. But, she denied for the same by saying that accused No.1 -Allha threatened her not to disclose the incident to anybody else, otherwise he would kill herself and her parents. He had

also given threats to damage character and educational career of the victim/prosecutrix. P.W.13-Jully also cast the allegations against the accused for sexual harassment to herself and consequently her parents filed complaint to the Police. The evidence of P.W.13-Jully strengthen the version of victim / prosecutrix on material circumstance of alleged act of sexual harassment by accused No. 1-Allha to victim/prosecutrix in connivance with accused No. 2 Parvin. Obviously, the act done by the accused No.1 Allha with the victim/prosecutrix was lustful suggestive of sex, and therefore, it must fall within provisions of section 354-A of IPC.

23. The learned trial Judge considered the discrepancies in the oral evidence of victim/prosecutrix before the Court as well as in her statement recorded under Section 164 of the Cr.P.C. before the learned Magistrate. It is to be noted that, the witness is not like a tape-recorder. When the victim of sex offence is giving evidence before the Court under mental stress, her memory may not serve her complete right. In such mental disposition some sort of discrepancies are bound to appear in her evidence. But, it does not mean that, her entire evidence should be thrown at board. The discrepancies brought on record in the evidence of victim are not of such a nature to devastate the prosecution case.

24. The learned trial Court also found reluctant to nod in favour of prosecutrix on the legal issue of delay in lodging the First Information Report (Exhibit-86). No doubt, the FIR is extremely vital and valuable piece of evidence for appreciation of allegations against accused. The lodging of FIR at belated stage would not only gets bereft of the

advantage of spontaneity, but danger creeps in introduction of coloured version, exaggeration of the circumstances or concocted story as a result of due deliberation and consultation. But, in the instant case, the delay caused in filing FIR does not prove fatal to the prosecution case. Admittedly, incident occurred during night hours of 03-08-2014 and 04-08-2014 in the ground floor room No. 108 of Shikshak Bhavan Building located within the campus of North Maharashtra University, Jalgaon. The FIR came to be filed on 09-10-2014 i.e. after about two months of the incident. It cannot be ignored that victim/prosecutrix was the young unmarried girl and student of North Maharashtra University pursuing study in the first year M. Sc. degree course. She would normally be not made to expose herself to shame and ignominy in the campus of University or in the society. The issue of honour of family of the prosecutrix was also involved for consideration prior to make public such indecent incident by lodging FIR. It has been observed that in tradition bound non-permissive society of India, the girl or a woman would be extremely reluctant to admit any such incident would ever occur, which would likely to reflect on her chastity.

25. In the matter in hand, initially the prosecutrix was reluctant to disclose about the incident because of threats on the part of the accused as well as her apprehension that lodging of FIR would tarnish and malign her character and educational career. She did not venture to disclose all these facts even to her parents and friends. P.W. 13-Jully deposed that when she had given advice to the victim/ prosecutrix to inform about the incident to her parents that time victim/ prosecutrix denied for the same and said that she would prefer to

commit suicide. It would be inconceivable that the unmarried college student would go to the extent of staking her reputation, character and future by implicating accused falsely. This mental turmoil may be a cause which would prevent the victim/ prosecutrix to approach to Police at the earliest. But, however, she mustered the courage and filed the FIR (Exhibit-86). It could be appreciated that the reluctance to go to Police Station was because of society's attitude toward such women, which always creates doubt and shame upon her rather than confront and sympathize with her. It is to be borne in mind that the college student like victim would not put her own character and educational career at stake by making false allegation against the accused relating to her own character. In the result, delay in lodging FIR does not found detrimental to the prosecution case. The findings of learned trial court for disbelieving the evidence of victim/prosecutrix to bring home guilt of the accused No.1 - Allha appears erroneous, unjustifiable and not within the purview of law. The learned trial Court failed to appreciate the evidence on record in its proper perspective and venture to absolve the accused No. 1-Allha for the heinous charges of sexual harassment punishable under sections 354-A of IPC.

26. It is evident on record that since occurrence of incident the prosecutrix was under duress and mental trauma. P.W. 13 July on one day noticed that the friend victim/prosecutrix was weeping. She took the victim/prosecutrix in confidence and made enquiry, that time victim /prosecutrix divulged about the alleged incident to her. These circumstances are sufficient to draw inference that there were threats of dire consequences to the victim/prosecutrix on the part of accused,

and therefore, there was delay in lodging FIR. There is no impediment to conclude that the accused No.1 Allha is guilty of the offence of criminal intimidation under section 506 of the IPC.

27. Now, turning to the allegations nurtured against the accused No.2 Parvin for charges of abetment to commit offence under section 354-A of the IPC by the accused No.1-Allha with victim/prosecutrix punishable under section 107 read with section 109 of the IPC, prosecution relied upon the factual score of the matter. According to prosecution, accused No. 2 -Parvin intentionally aided the accused No. 1- Allha, being one of the conspirators, for illegal act of sexual harassment with victim/prosecutrix.

28. It was not denied that the accused No. 2-Parvin was one of the inmates of girl's hostel, and therefore, she was familiar with girls residing in the hostel. P.W. 12-victim/prosecutrix blamed the accused No. 2- Parvin for alleged incident, as she was an instrumental for introduction of accused No.1-Allha with her under the garb of repairing of cellphone. There were endeavour by the accused No. 2 -Parvin to bring the victim/prosecutrix nearer to the accused No. 1-Allha. The victim/prosecutrix came in contact with accused No. 1- Allha only because of accused No. 2 Parvin. The evidence of victim/prosecutrix adumbrates that the accused initially tried soft approach for wooing the prosecutrix and attempted to win her confidence. The accused No. 2 Parvin on the day of incident took the prosecutrix to Shikshak Bhavan building for halt in that night. It has brought on record that the accused No. 2-Parvin ventured to persuade to the victim/prosecutrix to allow the accused No.1 - Allha to kiss her. She conveyed the victim that

accused No.1 Allha has an desire to kiss her. The victim/ prosecutrix became aggressive and shouted on them. The victim asked both the accused to go outside the room. This conduct and demeanour of accused No. 2- Parvin reflects that she had intentionally and knowingly aided the accused No. 1-Allha to facilitate him for physical contact and sexual overtures with victim/prosecutrix to slack his sexual urges.

29. The evidence of victim/prosecutrix further reveals that when she had slept in room No. 108 of accused No. 1 located on the ground floor of Shikshak Bhavan building, that time, both the accused were chitchatting in the room. Thereafter, when she woke up, she realized that the accused No. 2 -Parvin left the room allowing the accused No.1- Allha alone to remain in the room with victim/prosecutrix. She did not prefer to take the victim to accompany with her for going to sleep in upstairs room. In contrast, the accused No.2 Parvin left the victim alone in the room at the mercy of accused No.1- Allha. These circumstances are sufficient to draw adverse inference that accused No. 2 Parvin was one of the members of conspiracy for doing illegal act of sexual harassment with victim/prosecutrix. Therefore, there is no impediment to arrive at the conclusion that prosecution has succeeded to prove the offence under section 107 read with section 109 of the IPC against accused No.2- Parvin for abetment to commit offence by accused No.1 Allha. Therefore, the finding of acquittal of accused No.1 Allha for the charges under section 354-A and 506 of the IPC as well as charges under section 107 read with section 109 against accused No. 2 Parvin deserve to be set aside and quashed. The accused are required to be held guilty for these offences.

30. However, in regard to offence punishable under section 14 of the Foreigners Act, 1946 is concerned, there are no material on record to prove that accused No. 2 violated the terms and conditions of visa and passport issued in her favour for stay in India. Therefore, circumstances does not warrant any interference in the conclusion drawn by the learned trial Court for absolving the accused No. 2-Parvin for the offence punishable under section 14 of the Foreigners Act, 1946.

31. In view of aforesaid discussion, there is no impediment to allow the appeal partly. The impugned judgment and order dated 16-05-2016 passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No. 07 of 2015 is hereby modified. Accordingly, the accused No. 1 - Allha is convicted for the offence punishable under sections 354-A and 506 of the IPC whereas accused No. 2-Parvin is convicted for the offence punishable under section 107 read with section 109 of IPC. In regard to sentence to be imposed for the offence punishable under sections 354-A and 506 of the IPC against accused No. 1 - Allha and offence under section 107 read with section 109 of the IPC against accused No. 2-Parvin, it would justifiable to appreciate that both the accused were arrested in this crime on 09-10-2014 and since then they were in jail being under trial prisoners. The learned Additional Sessions Judge, Jalgaon by impugned judgment and order of acquittal dated 16-05-2016 directed the Jail Authority to set both the accused at liberty in the present crime. It does appear that both the accused were detained in jail for a period more than one and half year being under trial prisoners. However, in view of nature of offence committed by both

the accused and gravity of the allegations, I find that, the period undergone by the respondents/ accused during the course of investigation/trial, would be sufficient and shall sub-serve the purpose to meet the ends of justice. Hence, no need to impose any more sentence of imprisonment or fine, in addition to the period already undergone by the respondents-accused during the trial of this case. In the result, I convict the accused No. 1-Allha for the offence punishable under section 354-A and 506 of the IPC and accused No. 2 -Parvin for the offence punishable under section 107 read with section 109 of IPC and impose the sentence of imprisonment to the period already undergone by them pending trial. The respondents / accused are on bail pending appeal, their bail bonds stand cancelled. The rest of the order of acquittal of both the accused under section 328 of the IPC and acquittal of accused No. 2 Parvin under section 14 of the Foreigners Act as well as order relating to muddemal properties is hereby maintained and made confirmed. In sequel, the appeal stands partly allowed in above terms and disposed of accordingly.

[K. K. SONAWANE]
JUDGE

MTK.
