

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

REVISION APPLICATION NO.633 OF 2017

Sayyedalli Mohammadali Siddqui

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr. Anand Jondhale a/w. Ms. Yashoda Jondhale i/b. Jondhale & Co., Advocate for the Applicant.

Mr. A.R. Patil, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 23rd AUGUST 2018

P.C.:

1. The present Revision Application is directed against the concurrent findings recorded by the two Courts below, thereby convicting the applicant under Section 354 of the Indian Penal Code and sentenced him to undergo Simple imprisonment for three years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo Simple imprisonment for one month.

2. The prosecutrix is the step-daughter of the applicant. It is the allegation against the applicant that, after the death of father of the prosecutrix, her mother performed second marriage with the applicant and started cohabiting with him. The prosecutrix was aged about 21 years on the date of lodgment of the present crime. It

is alleged that, the applicant i.e. the step-father of the prosecutrix used to outrage her modesty and whenever she realized the unpleasement touches of the applicant, she objected to him. She reported the said fact to her mother, who expressed her reluctance in extending any help to the prosecutrix. It is alleged that, on 21.04.2013 the applicant crossed all the limits of decency, which became unbearable to the prosecutrix, and therefore, she resisted the act the applicant. She also disclosed the said fact to her close relatives and after having deliberation upon the future of the prosecutrix, the present crime is registered on 01.05.2013 under Section 354, 323 and 504 of the IPC.

During the course of investigation, the applicant came to be arrested and after completion of investigation, police have submitted charge-sheet.

3. The prosecution in support of its claim examined in all four witnesses. The applicant examined one witness in his defence. Learned Metropolitan Magistrate, 29th Court, Dadar, Mumbai after recording evidence and hearing the parties to the said case was pleased to convict the applicant for the offence punishable under Sections 354 and 323 of the Indian Penal Code and has imposed the maximum sentence of three years of simple imprisonment upon the

applicant. The Criminal Appeal No.119/2016 preferred by the applicant has been dismissed by the learned Additional Sessions Judge, Greater Mumbai by its Judgment and Order dated 08.02.2017.

4. Learned counsel for the applicant submitted that, there are contradictions in the evidence of the prosecutrix and her mother, so also her brother with respect to the place of her sleeping in the house and therefore drawing an inference that, on the alleged date of incident the applicant outraged modesty of the prosecutrix cannot be safely reached. He further submitted that, the defence witness has deposed about the alleged affair of the prosecutrix with one Mr. Juned and as the applicant was against the said affair, the prosecutrix has falsely implicated him in the present crime. He further submitted that, the alleged last incident has taken place on 21.04.2013 and the present crime is registered after a gap of about 9 days i.e.01.05.2013. He submitted that, the prosecutrix has admitted in her cross examination that, after due deliberation with the near relatives, a present crime has been registered and therefore the lodgment of present crime belatedly is an afterthought, and therefore, the testimony of the prosecutrix cannot be believed upon. He, therefore, prayed that, the present revision may be allowed and

the applicant may be acquitted from the offence charged against him.

5. The learned APP opposed the application and submitted that, there are concurrent findings recorded by two Courts below which do not require interference at the hands of this Court, and therefore, the present revision may be dismissed.

6. A minute perusal of the evidence of the prosecutrix would clearly indicate that, her testimony is trustworthy and reliable. She has narrated the facts about the act of applicant, which she has faced at the hands of the applicant for more than five years.

The record indicates that, the applicant being step-father of the prosecutrix took undue advantage of her helplessness, who had no other roof over her head or shelter other than the house of the applicant. The prosecutrix has categorically averred various acts of the applicant which undoubtedly fall within the purview of Section 354 of the Indian Penal Code. On the alleged last date of incident, the applicant also assaulted the prosecutrix when she objected to his acts and advances and therefore Section 323 of the IPC is properly applied to the present crime.

7. The evidence of the mother and brother of the prosecutrix duly corroborates the testimony of the prosecutrix. The alleged contradictions, which have been brought on record are minor in

nature and can be termed as infirmity in the evidence, which do not go to the root of the matter. The testimony of the prosecutrix in her examination in chief is not at all shattered and/or disturbed by the applicant in cross examination and as a matter of fact, according to me the allegations made by the prosecutrix in her evidence have gone unchallenged. Except giving certain suggestions to the relevant witnesses, no other substantial material is brought on record to create doubt about the testimony of the prosecutrix.

8. After taking into consideration the evidence available on record and the concurrent findings recorded by the two courts below, this Court is of the view that, the impugned Judgment and Order passed by the Learned Metropolitan Magistrate, 29th Court, Dadar, Mumbai and the Judgment and Order passed by the Additional Sessions Judge, Greater Mumbai do not suffer from any error either in law or on facts and requires no interference by this Court in its revisional jurisdiction.

9. Revision Application is accordingly rejected.

(A.S.GADKARI, J.)