

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

CRIMINAL REVISION APPLICATION NO. 161 OF 2005

Abdul Bashid S/o Abdul Bari, Kazi,
Age 49 years, Occu: then Head Constable,
R/o Osmanabad (Head Quarter)
At present : Naldurg, Tq. Tuljapur,
Dist. Osmanabad.

... Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra,
(Copy to be served to Public Prosecutor
High Court of Judicature of Mumbai,
Bench at Aurangabad).

2. Ushabai w/o Umakant Mule,
Age 29 years, Occu: Household,
R/o: Police Line, Osmanabad.

... Respondents
(Orig. Respondents)

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Mr. G. P. Patankar, Advocate for the Applicant (appointed).
Mr. A. P. Basarkar, APP for Respondent No.1-State.
Mr. S. V. Kshirsagar h/f Mrs. Manjusha Deshpande, Advocate for
Respondent No.2 (appointed).

**CORAM : V. K. JADHAV, J.
DATED : 21st FEBRUARY, 2019**

ORAL JUDGMENT :-

1. The applicant/original accused has preferred this revision application against the judgment and order of conviction passed by the Judicial Magistrate First Class, Omerga dated 29.03.1996 in

R.C.C. No. 236 of 1992 and the said order has been confirmed by the Additional Sessions Judge, Omerga by order dated 12.04.2005 in Criminal Appeal No. 01 of 2004.

2. Brief facts of the prosecution story are as under :

a. PW5 Umakant was serving as Police Constable attached to Omerga Police Station on or about 16.09.1992. He was residing in Quarter No.2 in the police line at Omerga. Complainant Ushabai is his wife. The applicant/accused was also attached to Omerga Police Station at the relevant time and he was also residing in the police line. His quarter was adjacent to the residential quarter of PW5 Umakant towards eastern side. In the intervening night between 16.09.1992 and 17.09.1992, PW4 Ushabai slept in her house along with her husband. At about 03.00 a.m., she woke up for urination. She went towards the bathroom which was situated towards the back side of the residential quarter. There was one door to the extreme backside of the said quarter which was opening in the by-lane. As soon as she came out of the bathroom, the applicant/accused Kazi entered in the said residential quarter from the back door and caught Ushabai. The applicant/accused shut the

mouth of PW4 Ushabai with one hand and started pressing her breasts with the other hand. He had also started kissing her. The applicant/accused also threatened to kill PW4 Ushabai in the event she shouts for help. Even he told her that nobody will come to help her and that her husband is also in sound sleep under the influence of alcohol. In order to substantiate this fact, the applicant/accused lifted one brick and threw it towards the window. During this, his hand over the mouth of PW4 Ushabai slipped for a moment and she shouted for help. PW5 Umakant woke up and ran towards the back door of the house. He saw the applicant/accused kissing PW4 Ushabai and also pressing her breasts. On seeing PW5 Umakant, the applicant/accused ran away from the same back door. Immediately thereafter, PW4 Ushabai and PW5 Umakant both went to the Omerga Police Station which is close to the police line.

b. PW4 Ushabai narrated the entire incident to the police and it was reduced in writing as per her narration marked at Exhibit 29. On the basis of her complaint, crime no. 169 of 1992 under Sections 452 and 354 of IPC came to be registered. PW7 Kadam, PSI was entrusted with the investigation. He has drawn spot

panchnama (Exhibit 24) and also seizure panchanama (Exhibit 25) of the clothes of PW4 Ushabai. After completion of the investigation, he submitted charge sheet against the accused.

c. The learned Magistrate has framed charge against the applicant/accused for the offence punishable under Sections 452, 354 of IPC. The contents of the charge were read over and explained to the accused. The applicant/accused pleaded not guilty to the charge and claimed to be tried. The defence of the applicant/accused is that his relations with PW5 Umakant were not cordial. PW5 Umakant was suspended twice on the basis of the complaint made by applicant/accused. Moreover, applicant's relations with his senior PSI were also not cordial and as such, all of them made conspiracy to implicate him falsely into the crime. It is also the defence of the applicant/accused that in the night in question, he was allotted night patrolling duty throughout the night and as such, he has not committed any offence as alleged.

d. In order to substantiate the charge framed against the applicant/accused, the prosecution has examined in all seven witnesses. The statement of the applicant/accused under Section

313 of Criminal Procedure Code, 1973 came to be recorded after completion of evidence of prosecution witnesses. After hearing both sides, the learned Magistrate by judgment and order dated 29.03.1996 passed in R.C.C. No. 236 of 1992 convicted the applicant/accused for the offences punishable under Sections 452 and 354 of IPC and sentenced him to suffer R.I. for one year and to pay fine of Rs.1,000/-, in default to suffer R.I. for 15 days for the offence punishable under Section 452 of IPC and also sentenced him to suffer R.I. for six months and to pay fine of Rs.1,500/- for the offence punishable under Section 354 of IPC and in default to suffer R.I. for 20 days, with directions that both the above sentences to run concurrently. An amount of Rs.2,000/- is also ordered to be paid to the complainant Ushabai by way of compensation under the provisions of Section 357 of Cr.P.C. Learned Additional Sessions Judge, Omerga, by judgment and order dated 12.04.2005 in Criminal Appeal No. 1 of 2004 preferred by the applicant/accused, dismissed the said appeal with a modification that the conviction under Section 452 of IPC to be treated as the conviction for the offence punishable under Section 451 of IPC. Hence this Criminal Revision Application.

3. Learned counsel for the applicant/accused submits that both the courts below have not considered the defence of the applicant/accused. The applicant/accused has raised a specific defence to the effect that PW5 Umakant came to be suspended twice on the basis of the complaint lodged by the applicant/accused. Even PW5 Umakant has also admitted in his cross-examination that he was suspended once. Learned counsel submits that even the courts below have not considered the defence of alibi raised by the applicant/accused that he was on patrolling duty from 11.00 p.m. to 05.00 a.m. in the intervening night between 16.09.1992 and 17.09.1992. Learned counsel submits that though the prosecution has examined in all five police witnesses, however, even the senior Police Inspector in charge of the police station has shown his ignorance as to the patrolling duty assigned to the applicant/accused in the intervening night between 16.09.1992 and 17.09.1992. Learned counsel submits that the evidence of PW4 Ushabai and her husband PW5 Umakant is not trustworthy, reliable and consistent. PW4 Ushabai has not deposed before the court that the applicant/accused had thrown a brick on the window of her house to substantiate his contention. Learned counsel submits that it appears from the prosecution evidence that

only after arrival of PW5 Umakant on the spot, the incident has been revealed. Learned counsel submits that both the courts below should have given benefit of doubt to the applicant/accused.

4. Learned APP submits that the evidence of PW4 Ushabai and her husband PW5 Umakant is consistent, reliable and trustworthy. Immediately after the incident, PW4 Ushabai alongwith her husband PW5 Umakant went to the police station and narrated the incident to the police. It was reduced in writing as per her narration and accordingly, crime came to be registered. PW5 Umakant is also a witness to the incident. He has also deposed that after hearing the sound of brick thrown by the applicant/accused on the window of the house and the shouts of Ushabai, he rushed towards the spot. He had noticed that the applicant/accused had caught hold of PW4 Ushabai. He was kissing her and pressing her breasts. There is no reason to disbelieve these two important prosecution witnesses. Furthermore, the defence has also admitted the spot panchanama Exhibit 24 and seizure panchanama of cloths of the informant Exhibit 25. Learned APP submits that in the spot panchanama Exhibit 24, there is specific mention of button of the blouse. Furthermore, in the seizure panchanama Exhibit 25, the

torn blouse along with missing button has been specifically noted. Learned APP submits that there is absolutely no possibility of false implication in any manner. Even though the applicant/accused has raised the defence about the alleged suspension of PW5 Umakant at his instance, however, the applicant/accused has not produced any documents before the courts below to substantiate his defence. Furthermore, even though the applicant/accused has raised a specific defence of alibi about assignment of patrolling duty in the intervening night between 16.09.1992 and 17.09.1992, he has failed to examine himself on oath, nor examined any witness to substantiate the said defence of alibi. The prosecution has proved its case beyond all reasonable doubts. The courts below have rightly convicted the applicant/accused. There is no substance in this Criminal Revision Application and the same is thus liable to be dismissed.

5. On perusal of the prosecution evidence, I find that the evidence of PW4 Ushabai and PW5 Umakant is consistent, reliable and trustworthy. PW4 Ushabai has deposed that in the intervening night between 16.09.1992 and 17.09.1992 at about 3 a.m., she went to bathroom which was at the extreme backside of their

residential quarter. Admittedly, the applicant/accused was residing in the adjacent quarter allotted to him towards the eastern side. PW4 Ushabai has further deposed that when she came out of the bathroom, the applicant/accused caught hold of her and pressed her mouth and started kissing her and also pressing her breasts. He has given threats to her and also told her that nobody would come to rescue her including her husband, who slept under the influence of liquor. In order to substantiate the same, he has thrown a piece of brick on the window of the residential quarter of PW4 Ushabai. In consequence thereof, PW5 Umakant, who had slept in the said house, woke up and rushed towards the spot after hearing the shouts of his wife and also due to the sound of the brick thrown on the window. PW5 Umakant has also witnessed the incident of accused kissing PW4 Ushabai and pressing her breasts. On seeing him, the applicant/accused ran away from the spot. Immediately thereafter, PW4 Ushabai along with her husband went to the police station and lodged the complaint Exhibit 29. Though the defence has tried its best to point out that one another complaint in writing came to be filed by PW5 Umakant in the police station, however, there is no record available to that effect. PW4 Ushabai has not narrated the incident orally to the police immediately after the

incident and it was reduced into writing. In fact, on that day, PW5 Umakant was assigned with the duty as a security guard and his duty hours were from 3.00 a.m. onwards. The prosecution has examined a constable who was on duty till 3.00 a.m. on that day. He has also deposed that he was waiting for PW5 Umakant to relieve him. However, at about 3.15 a.m., PW5 Umakant came to the police station along with his wife PW4 Ushabai and when he had asked PW5 Umakant about the delay, he had narrated the incident to the PSO of police station.

6. Apart from this oral evidence, the two panchnamas, one spot panchanama Exhibit 24 and seizure panchanama of cloths of the complainant PW4 Ushabai Exhibit 25 which came to be admitted by the defence, also supports the prosecution story. In the spot panchnma Exhibit 24, it has been specifically mentioned that one button of the blouse was lying on the spot and also the pieces of a brick near the window. Furthermore, the seizure panchanama of cloths of the complainant PW4 Ushabai Exhibit 25 also shows that the blouse of the complainant PW4 Ushabai was seized under the panchnama and it was in torn condition and two buttons of the said blouse were found missing.

7. Learned Judge of the trial court has observed that the applicant/accused is a strong build person. It was not possible for the complainant to raise shouts as soon as he caught hold of her and pressed her mouth. She could raise shouts only after the applicant/accused lifted his hand from her mouth to throw the brick on the window to substantiate his contention. PW4 Ushabai got that much breathing time and she raised shouts for help. PW5 Umakant immediately rushed to the spot. There is hardly any distance between the place where he slept and the back side of the court yard of the house. His evidence appears to be reliable and trustworthy. He has not exaggerated the facts. He had also witnessed that the applicant/accused was kissing his wife PW4 Ushabai and also pressing her breasts.

8. In view of the above, the prosecution has proved beyond all doubts that the applicant/accused has committed house trespass and also used criminal force on PW4 Ushabai with intent to outrage her modesty. Both the courts below have thus rightly come to the conclusion and recorded the conviction and also passed the sentence against the applicant/accused for the offence punishable under Sections 451 and 354 of IPC. There is no reason to take any lenient view. Hence, I proceed to pass the following order:

ORDER

- I. The Criminal Revision Application is hereby dismissed.
 - II. The applicant/accused Abdul Bashid s/o Abdul Bari, Kazi shall be taken into custody forthwith to serve the remaining part of the sentence.
 - III. The Criminal Revision Application is accordingly disposed of. Rule discharged.
9. Since Mr. Ganesh B. Patankar is appointed to prosecute the cause of the applicant, the Legal Services Sub-Committee, High Court, Bench at Aurangabad is hereby directed to pay the fees to the counsel Mr. Ganesh B. Patankar as per rules.

(V. K. JADHAV, J.)

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