

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

CRIMINAL APPEAL NO. 612 OF 2020

Shahrukh S/o. Jamir Shahane Divan,
Age : 26 years, Occu. Labour,
R/o. Omerga, At Present Koregaonwadi,
Tal. Omerga, Dist. Osmanabad.

...Appellant

Versus

1. The State of Maharashtra.
2. Ambika W/o Sardar Kale,
Age : 30 years, Occu. Household,
Presently residing at C/o. Jaldu Rangu Pawar,
R/o. Rajola, Tal. Aaland,
Dist. Gulbarga, State-Karnataka.

...Respondents

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Dr. Swapnil D. Tawshikar, Advocate for the appellant
Mr. S.G. Sangle, APP for respondent No. 1/State
Mr D.G. Nagode, Advocate for Respondent No.2

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AND

CRIMINAL APPEAL NO. 613 OF 2020

Pashumiya S/o. Rasul Mulla,
Age : 38 years, Occu. Business,
R/o. Madaj, Tal. Omerga, Dist. Osmanabad.

...Appellant

Versus

1. The State of Maharashtra.
2. Ambika W/o Sardar Kale,
Age : 30 years, Occu. Household,
Presently residing at C/o. Jaldu Rangu Pawar,
R/o. Rajola, Tal. Aaland,
Dist. Gulbarga, State-Karnataka.

...Respondents

.....

Dr. Swapnil D. Tawshikar, Advocate for the appellant
Mr. S.G. Sangle, APP for respondent No. 1/State
Mr D.G. Nagode, Advocate for Respondent No.2

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AND

CRIMINAL APPEAL NO. 614 OF 2020

Ajim S/o. Jafar Shahane Divan,
Age : 50 years, Occu. Business,
R/o. Koregaonwadi,
Tal. Omerga, Dist. Osmanabad.

...Appellant

Versus

1. The State of Maharashtra.

2. Smt. Ambika W/o Sardar Kale,
Age : 30 years, Occu. Busi.,
R/o. Laxmi Pati Brick Kiln, Latur Omerga Road,
Dist. Latur. [Original R/o. Zalaki, Tq. Aaland,
Dist. Gulbarga, Karnataka].

...Respondents

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Shri. Sachin S. Panale, Advocate for the appellant
Mr. S.G. Sangle, APP for respondent No. 1/State
Mr D.G. Nagode, Advocate for Respondent No.2

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**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

Date : 06-01-2021

PER COURT :-

1. On 27-11-2020, we had heard the learned Advocate for the appellant and the learned Prosecutor on behalf of respondent

no.1 – State. Thereafter, we had passed the following order :

1. The first appeal has been filed by Mr. Shahrukh Jamir Shahane Divan, the second appeal has been filed by Mr. Pashumiya Rasul Mulla and the third appeal has been filed by Mr. Ajim Jafar Shahane Divan, who are accused nos. 4, 3 and 2, respectively in the FIR registered with the Omerga Police Station on 05.10.2020 by respondent no. 2 - complainant. All these accused are before this court being aggrieved by the impugned order passed by the trial Court dated 12.11.2020, vide which they have been refused anticipatory bail.

2. Issue notice to the respondents, returnable on 06.01.2021. The learned APP waives service of notice on behalf of the respondent no. 1. Since the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the said Act”) have been invoked, we request the learned APP to direct the Investigating Officer to serve respondent no. 2 with a copy of this order and apprise her of these pending proceedings, in view of Section 15-A (3) and (5) of the said Act.

3. We have heard the strenuous submissions of the learned Advocates Dr. Swapnil Tawshikar and Shri. Sachin Panale and the learned APP on behalf of respondent no. 1. With their assistance, we have gone through the FIR and the documents placed before us.

4. The FIR lodged by respondent no. 2 indicates that she was dragged out of her house on 19.09.2020 by the brick-kiln owner Salim and was forcibly bundled into his car and taken away from a Zalki to Ekurga on 19.09.2020. Until 21.09.2020, she was confined to a house at Ekurga. On 20.09.2020, accused no. 1 - Salim beat her and committed an offence punishable under Section 376 of the Indian Penal Code. On 21.09.2020, accused no. 1 took her at 08:00 pm from Ekurga to another place which is unknown to the complainant. She was confined to that place until 26.09.2020. On the said day, accused no. 1 once again beat her and committed the same offence.

5. In the night of 26.09.2020, the first accused handed over the complainant to Adam, Patraj and Sharukh (all are the appellants before this court). These three persons are said to have taken her to the Kalamb Police Station and on the way, they threatened her that she should tell the Police that she had a bitter fight with her husband and had left her house in anger. Accordingly, she has made a statement before the said Police Station on 26.09.2020. It is her story that, thereafter her parents arrived from Taluka Aaland, Dist. Gulbarga, State of Karnataka and took her along with them to Aaland. After she recovered from her ill-health, she has registered the FIR on 05.10.2020.

6. Accused no. 1 - Salim has been arrested and is behind the bars. The only allegation against these three appellants is that as they received her from the custody of accused no. 1 on 26.09.2020 and that, they told her to suppress the acts of accused no. 1 and narrate a false story to the police authorities.

7. The learned Advocates for the appellants submit that, the complainant and accused no. 1 had developed an illicit relationship when she was working on the brick-kiln of accused no. 1. Her husband also was employed in the same brick-kiln. On 19.09.2020, accused no. 1 and the complainant eloped and were together till 26.09.2020. No missing complaint was lodged by her husband with any Police Station as per the knowledge of the appellants. Since the appellants knew about the illicit relationship and were also aware that accused no. 1 must have eloped with the complainant, they went searching for him and finally traced him at Vasmat. This lead towards Vasmat, Tq. Hingoli by the driver of the private vehicle Mr. Deepak Karake, who dropped the couple at Ahmedpur and returned to Ekurga and gave this information to Juber Salim son of accused no. 1-Salim. So also, the appellants could notice the location of accused no. 1 by using the cellular service. They, therefore, reached the place and accompanied the complainant to the Kalamb Police Station on 26.09.2020. Her parents were also informed and they also came to the Kalamb Police Station on 26.09.2020 and they took the custody of the complainant since her husband declined to accept her after knowing that she had eloped along with accused

no.1. The FIR aims to implicate them as the complainant wants to cover up her acts.

8. Until further orders, in the event of arrest, all the three appellants namely Shahrukh S/o. Jamir Shahane Divan, Pashumiya S/o. Rasul Mulla and Ajim S/o. Jafar Shahane Divan shall be released on bail on each of them furnishing P.R. Bond of Rs. 20,000/- (Rupees Twenty Thousand) along with a solvent surety of the like amount. They shall mark their attendance with the Omerga Police Station on every Tuesday and Friday in between 11:00 am and 01:00 pm. The Station House Officer shall mark their attendance in the special diary by obtaining their signatures. They shall fully cooperate with the SDPO, Omerga in the investigation of the crime and shall make themselves available before the SDPO, as and when directed. They shall refrain from meeting the complainant or her husband or any such person who is likely to be a witness in the matter, either directly or indirectly.”

2. The learned Advocate for the complainant strenuously opposes the appeals contending that these three appellants were instrumental in threatening her (the victim) to make a statement before the police station in a particular fashion. They have attempted to brain wash the complainant. The complainant was under their spell and therefore made a statement before the police as was suggested by these persons.

3. We have taken a *prima facie* view while writing this order. We are conscious of the pendency of the trial and hence we are avoiding making specific observations about the roles played by the

accused as well as the conduct of the victim, in this order. Suffice it to say, that much remains to be said about the victim travelling with the brick kiln owner and *prima facie*, it were these three appellants who actually traced out the victim from Vasmata and they were the persons who were producing the lady before the police station. The version of the victim with regard to these three persons having threatened her would be a matter of investigation.

4. The *ad-interim* order that we had passed and the conditions that we had imposed in paragraph no.8 reproduced above, are sufficient to ensure proper investigation in the matter.

5. As such, we allow these appeals in terms of our observations and directions in paragraph no.8 of our order dated 27-11-2020 reproduced above.

(B. U. DEBADWAR)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE