

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

**CRIMINAL REVISION APPLICATION NO. 108 OF 2021
with Criminal Application No.1993/2021**

Parmeshwar s/o Muktiram Dhage
Age: 36 years, Occ: Agri,
R/o Partur, Tal Partur, Dist. Jalna

.. **Applicant**

Versus

1. The State of Maharashtra,
through P.I., Partur Police Station,
Jalna.

2. Minakshi W/o Umesh Puri
Age: 25 years, Occu: Household,
R/o Dixit Galli, Partur, Tq. Partur,
Dist. Jalna.

.. **Respondents**

.....

Advocate for Applicant : Mr. Pratik Bhosle
Advocate/APP for Respondent-State: Mr. S.W. Munde
Advocate for R/2: Vishal A. Bagal

.....

CORAM : M.G. SEWLIKAR, J.

**RESERVED ON: 29th October, 2021
PRONOUNCED ON: 21st December, 2021**

JUDGMENT :-

Being aggrieved by the judgment and order passed by the learned Additional Sessions Judge-3, Jalna in Criminal Appeal No.53/2015 dated 21st August, 2021 thereby confirming the judgment and order passed by the learned J.M.F.C., Partur dated 25th June, 2015 in RCC No.141/2014 thereby

convicting the applicant of the offence punishable under Section 451 of the I.P.C., sentencing him to suffer simple imprisonment for one year and to pay fine of Rs.2,000/- in default to suffer simple imprisonment for two months, for the offence punishable under Section 451 of the I.P.C. and to suffer rigorous imprisonment for one year and to pay fine of Rs.3,000/- in default to suffer simple imprisonment for two months of the offence punishable under Section 354-A (i) of the I.P.C.

2. Facts in brief are that victim lodged the report on 5th July, 2014 alleging therein that on 4th July, 2014 she and her grand mother in law were the only persons in their house as husband of the victim had gone to village Pokharni. Applicant/accused lives in the house adjacent to the house of the victim. On 4th July, 2014 at about 8.00 pm, applicant had been to the house of the victim and inquired as to when the husband of the victim would be returning. Victim answered that her husband would not be returning in the night. It is further alleged that on 4th July, 2014, victim had closed the main door of her Wada and without bolting the door from inside she and her grand mother in law went off to sleep. At about 11.00 pm the victim sensed that someone was touching her feet. Therefore, the victim woke up and found the accused/applicant sitting near her feet on her bed. Victim shouted because of which her grand mother in law woke up and she also raised shouts.

Thereafter, the applicant ran away. Neighbours gathered on hearing shouts. Thereafter, the victim informed her husband telephonically about the incident. The next day morning her husband returned and thereafter she lodged the police report against the accused.

3. Charge was framed and read over and explained to the accused. He pleaded not guilty to it and claimed to be tried. His defence is of total denial. It is also his defence that he was not present at the spot of the incident.

4. I have heard Shri Bhosle learned counsel for the applicant, Shri Munde learned APP for the State and Shri Bagal learned counsel for respondent no.2.

5. Shri Bhosle submits that applicant was not present at the spot of the incident. According to Shri Bhosle applicant resides at Jalna. Therefore, applicant was not present at the spot of the incident. He further submits that door was not bolted from inside. When informant and her grand mother in law were alone in the house, normally in such situations ladies bolt the door from inside. In the case at hand, the informant did not bolt the door from inside which indicates that the applicant had entered the house was with consent of the informant/victim. He submitted that there is delay of almost

12 hours in lodging the FIR for which no explanation is forthcoming. He submitted that considering all these aspects both the Courts below have committed grave error in convicting the accused. He placed reliance on the cases of **Hemraj s/o Fulchand Patle V/s. State of Maharashtra** reported in **2018 (3) Mh.L.J. (Cri.) 656** and **Kailash s/o Somaji Khodkar** reported in **2020 (5) Mh.L.J. (Cri.) 372**.

6. Learned APP Shri Munde and Shri Bagal supported the judgment of the Trial Court and the Appellate Court.

7. So far as plea of *alibi* is concerned, it has not been established by the applicant. He was seen by the victim and her grand mother in law. Applicant did not produce any evidence to indicate that he was employed at Jalna. Therefore, the learned Trial Court and the learned Appellate Court rightly discarded his plea of *alibi*.

8. So far as the incident is concerned, victim has deposed about the incident which is corroborated by her grand mother in law. Victim has stated that at 11.00 pm when she and her grand mother in law were sleeping, victim sensed that someone was touching her feet. When she woke up she found the applicant sitting on her cot at her feet. This version of the victim is corroborated by her grand mother in law. Learned counsel Shri Bhosle

submitted that he had only touched her feet and did not have any sexual intent in touching her feet. For appreciating his submissions, Section 354 of the I.P.C. will have to be looked into. Section 354 of the I.P.C. is as under:

S.354 Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. Word 'modesty' has not been defined in Indian Penal Code. In the case of **Mrs. Rupan Deol Bajaj and Anr V/s. K.P.S. Gill and Anr.** reported in **AIR 1996 SUPREME COURT 309** the Hon'ble Apex Court has defined word 'modesty' as under:

"15. In State of Punjab v. Maor Singh, AIR 1967 SC 63, a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354, IPC. Needless to say, the 'common notions of mankind' referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to

that word by this Court in Major Singh's case (supra) it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.

10. When this test is applied to the facts of the instant case, it is clear that the act of the applicant was capable of shocking sense decency of any woman. In the case at hand, applicant was sitting at the feet of the victim and had touched her feet and was sitting on her cot. This behaviour smacks of sexual intent. Otherwise, there was no reason for the applicant to be in the house of the victim at such an odd hour of the night. When a query was put to the learned counsel Shri Bhosle as to why the applicant was present in the house of the informant/victim at dead hours of the night, he could not give any answer much less any satisfactory answer. Moreover, touching any part of the body of a woman without her consent that too in the dead hour of the night by a stranger amounts to violation of modesty of a woman. The applicant did not enter the house of the victim with any sublime motive. He had ensured in the evening from the victim that her husband would not be present in the house in the night. Therefore, the applicant ventured to enter the house. This clearly indicates that the applicant had gone there with sexual intent and violated the modesty of the informant. Therefore, learned Trial Court did not commit any error in holding that the applicant had molested the

victim/informant.

11. Learned counsel Shri Bhosle submitted that the house was not bolted from inside. For this the victim has given explanation that the bolt of the door was not functioning properly. This answers the question of the applicant as to why the door was not bolted from inside. In the case of **Hemraj s/o Fulchand Patle** (supra) the facts are totally different. In that case, husband was away from the house in the night as there was recitation of kirtan. When he came home he found that his wife and the accused were having sexual intercourse. According to the wife, she had raised shouts but they were not heard because of recitation of kirtan. Husband had deposed that he had come to the house not because of hearing the shouts of wife but for easing himself. On the basis of these facts a Single Judge of this Court held as under:

12. The prosecutrix in her cross-examination has admitted that door to her house on that day was open, although she would keep the door closed. The prosecutrix has not explained as to why on the day of incident, the door to her room was not closed by her. Added to it, are those odd sounds heard by husband of the prosecutrix as well as her sister-in-law emanating from the room of the prosecutrix. To my mind, these facts are sufficient indicators of the possibility of consensual sexual intercourse between the prosecutrix and the appellant. This inference in the present case is further strengthened by the fact that the husband of the prosecutrix was out of his house as he had gone to attend kirtan being held in the night and that it was not expected of

him to come back home so early. Usually, kirtans are held for the entire night. The husband of the prosecutrix also states that as he wanted to ease himself, he visited his house. It would mean that the husband of the prosecutrix had no intention to come back home for the purpose of sleeping. Thus, the visit of the husband of prosecutrix to the house was by way of chance only and it appears, it was an unexpected visit from the view point of the prosecutrix. As stated earlier, the prosecutrix also does not explain as to why did she not close the door in that night though usually she would keep it closed. So, the strange conduct of the prosecutrix shown by keeping the door open especially when her husband was out of the house and not raising the shouts for help coupled with material inconsistencies and coming of unusual sound from the room of the prosecutrix during presence of appellant in her room, all create a large circle of doubt over the version of prosecutrix giving rise to a strong possibility of presence of consent of the prosecutrix in the whole incident. There is no other evidence, which has ruled out consent of the prosecutrix.

12. This is not the factual position in the case at hand. Husband of the victim was away from home. Applicant ensured that husband of the victim would not be there in the house in the night and therefore he entered the house and touched the feet of the victim who was sleeping. Therefore, the case of **Hemraj s/o Fulchand Patle** (supra) is not applicable to the case in hand.

13. In the case of **Kailash s/o Somaji Khodkar**, it has been observed as under:

26. Incident in question occurred at morning hours i.e. 9:30 of 15.9.2006. Printed First Information Report (Exhibit 12) shows that incident was reported at 19:00 hours. In cross-examination, victim (PW1) admitted that one can reach to Paoni Police Station within 10 minutes and Nilaj-Paoni Road is having traffic around the clock. A serious incident of gaining unlawful entry inside house and, thereafter, outraging modesty of a married woman occurred, which is a serious offence. Victim runs a hotel. In spite of the said, till 19:00 hours report was not lodged. Though it was open for the prosecution to offer plausible explanation for the delay, no such explanation is coming on record. Further, report (Exhibit 11) is written and the said is not an oral report. A suggestion was made to victim, during her cross-examination, that report was lodged only after consultation of a lawyer at Paoni. In my view, lodging of report belatedly has its own impact on the prosecution case.

14. In the case at hand, victim has given the explanation for lodging the report late. It is pertinent to note that the incident took place at 11.00 pm. Only the victim and her grand mother in law were present in the house. Therefore, the conduct of the victim in waiting for the husband's arrival and then lodging the report cannot be faulted with. In this view of the matter, I do not find any infirmity in the appreciation made by the learned Trial Court and the learned Appellate Court. Revision is, therefore, devoid of any substance. Hence, it is dismissed. Criminal Application is also dismissed.