

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

**CRIMINAL APPEAL NO. 347 OF 2020
ALONG WITH
INTERIM APPLICATION NO. 311 OF 2020**

Rohidas Shridhar Gaikwad	]	
Age-27 Years, Occ. Service,	]	
Residing at C/o. Milind Jadhav,	]	
Ramabai Colony, Opp.Ration Shop,	]	
Ghatkopar (East), Mumbai	]	
At present Nashik Road Jail	]	... Appellant

V/s.

The State of Maharashtra	]	
At the instance of Matunga Police Station	]	... Respondent

Mr.Keshav Chavan for Appellant.
Mr.Amit Palkar, A.PP. for Respondent-State.

**CORAM : A.S. GADKARI, J.
DATE : 8th January 2021.**

JUDGMENT :

. The appellant, original accused No.2, has impugned the Judgment and Order dated 5th November 2014 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Mumbai in Sessions Case No. 752 of 2013 thereby convicting him, under Section 323 of the Indian Penal Code (for short, "I.P.C.") and is sentenced to suffer rigorous imprisonment (for short, "R.I.") for 1 (One) year and to pay fine of

Rs.1,000/-, in default of payment of fine to further suffer R.I. for 15 days; under Section 376(D) of I.P.C. and is sentenced to suffer R.I. for 20 (Twenty) years; under Section 377 of I.P.C. and is sentenced to suffer R.I. for 10 (Ten) years and fine of Rs.5,000/-, in default of payment of fine to further suffer R.I. for 3 months; under Section 120-B of I.P.C. and is sentenced to suffer R.I. for 1 (One) year; under Section 452 of I.P.C. and is sentenced to suffer R.I. for 7 (Seven) years and to pay fine of Rs.5,000/-, in default of payment of fine to further suffer R.I. for 3 months; and under Section 506 of I.P.C. and is sentenced to suffer R.I. for 1 (One) year and to pay fine of Rs.500/-, in default of payment of fine to further suffer R.I. for one month. The Trial Court has directed that all the substantive sentences of imprisonment of appellant to run concurrently.

The said Judgment and Order dated 5th November 2014 is impugned herein.

2. Heard Mr.Chavan, learned counsel for the appellant and Mr.Palkar, learned A.P.P for the respondent-State. Perused entire record.

3. The prosecution case in brief is that, the victim in the present case was a married woman and was staying with her husband in a hut near railway track at Matunga Railway Station. There was no electricity connection in the said hut. The victim and her husband used to cultivate vegetables near the barren land at Matunga railway track. The prosecutrix was knowing accused

No.3 Anup M. Jaiswal (Juvenile) and Siddhu @ Siddharth Sudhir Nikam (Juvenile). That in the midnight of 15th March 2013 both the said accused persons entered in the house of prosecutrix along with 5 other persons, beat her husband and threw him out of the hut. All the accused thereafter had forcible sexual intercourse and unnatural sex with the prosecutrix. As per the prosecutrix, the said incident of sexual assault was going on till about 1.15 a.m. of 16th March 2013. After accused persons left the scene of offence, the prosecutrix went to Matunga railway station. As the husband of prosecutrix was injured at the hands of the accused persons, he was taking rest near the gate of R.P.F. police chowki. It is the further prosecution case that, the prosecutrix saw accused Siddhu along with unknown person on the railway track of Matunga soon after the incident and therefore, she alone went to C.S.M.T. railway station and took rest in the night. In the morning, she came and met her husband at Matunga railway station. She went to Matunga railway police station to lodge crime, however she was referred to Dadar railway police station. Her statement was recorded by the police at Dadar railway police station and registered as Crime No.00/2013. It was then referred to Matunga Police Station wherein Crime No.90 of 2013 against the accused persons under Sections 323, 506, 376(2)(g), 377 and 120-B of I.P.C. was lodged. The investigation of the said crime culminated into Sessions Case No.752 of 2013.

4. There were in all six accused persons in the said Sessions case. To substantiate the charges framed against the appellant and other accused persons, the prosecution examined in all 14 witnesses. The original accused No.3 Anup M. Jaiswal was found to be a juvenile in conflict with law and therefore, his case was separated. The Trial Court framed Charge below Exhibit-10. The contents of the Charge were read-over and explained to the appellant to which he pleaded not guilty and claimed to be tried. The defence of the appellant was of total denial and false implication. The Trial Court after recording evidence and hearing the learned Advocates for the respective parties was pleased to convict appellant by its impugned Judgment and Order dated 5th November 2014.

5. At the outset, it is to be noted here that, the original accused No.4 Shahid Sayyed Shaikh and original accused No.5 Imran Abdul Hamid Shaikh had preferred Criminal Appeal No.904 of 2014 and original accused No.6 Ganesh Laxman Gurav had preferred Criminal Appeal No. 219 of 2015 respectively before this Court against the same impugned Judgment and Order dated 5th November 2014.

The Co-Ordinate Bench (Smt.Sadhana S. Jadhav, J.) by its Judgment and Order dated 18th March 2019 was pleased to allow the said appeals by quashing and setting aside impugned Judgment and Order dated 5th November 2014 and the co-accused have been acquitted from all the

charges levelled against them. The acquittal of the co-accused is predominantly on three grounds. i.e. (i) The medical evidence does not corroborate the version of the prosecutrix (PW-1), (ii) the Test Identification Parade of the accused persons was conducted by PW-14 the Investigating Officer initially in the police station and subsequently in Arthur Road Jail on 4th April 2013 by PW-8 and therefore, the Test Identification Parade loses its sanctity and (iii) the evidence of prosecutrix does not inspire confidence of any kind, as the medical evidence falsify her contention that she was sexually assaulted by almost 8 persons.

6. Though, the prosecution has examined in all 14 witnesses in support of its case, the evidence of prosecutrix (PW-1), Bhalchandra Saini (PW-2) husband of prosecutrix, Dr.Baban Shinde (PW-10), who examined the prosecutrix and Raghvendra Thakur (PW-14), the Investigating Officer of the present case, is material and relevant to decide the present appeal. PW-10 has examined the prosecutrix immediately on the date of incident and lodgment of crime, i.e. on 16th March 2013, when the prosecutrix was referred to him by the police. He did not find injuries on her private part or breasts. He noticed tenderness at the anal sphincture. He also noticed the private parts of the prosecutrix as normal and no foreign body was found therein. The prosecutrix in her examination-in-chief itself has admitted that, after 4 days of the alleged incident, the accused were shown to her in Matunga Police

Station. Record further indicates that, PW-14 showed accused persons to the prosecutrix in the Police Station during the course of investigation.

7. The aforestated facts are fatal to the prosecution case. The findings recorded by the Co-Ordinate Bench in its Judgment and Order dated 18th March 2019 are *mutatis-mutandis* applicable to the case of the appellant before this Court. The appellant therefore deserves for benefit of doubt and acquittal accordingly.

8. Hence following Order.

ORDER

(i) Appeal is allowed.

The Judgment and Order passed by the Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai dated 5th November 2014 in Sessions Case No. 752 of 2013 for the offences punishable under Section 323, 376(D), 377, 120-B, 452 and 506 of the Indian Penal Code is hereby quashed and set-aside.

(ii) Appellant is acquitted from all the charges leveled against him.

(iii) Appellant shall be released forthwith, if not required in any other case.

(iv) Fine amount, if any deposited, shall be refunded to the Appellant.

(v) In view of disposal of Appeal, nothing survives in the Interim Application No.311 of 2020 and is accordingly disposed off.

[A.S. GADKARI, J.]

Omkar S.
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