

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Revision Application (Revn) No. 298 of 2019

Bhaskar S/o Shrawan Ramteke
Aged about 71 Yrs. Occ.- Labour Work
R/o - Wadsi, Post - Wadsi,
Tah. - Chimur, District Chandrapur.

.... Applicant

.. Versus ..

State of Maharashtra
Through Police Station Officer,
Police Station Chimur,
District – Chandrapur.

.... Non-Applicant/
Respondent

Mr. B. W. Patil, Advocate for the applicant
Mr. N. S. Rao, A.P.P. for the State/non-applicant

CORAM : ROHIT B. DEO, J.
DATED : 25-11-2021

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

2. Heard finally with consent of learned counsel appearing for the parties.

3. The applicant, who shall be hereinafter referred to as the accused, is convicted for offences punishable under Sections 354, 451 and

509 of the Indian Penal Code (IPC) by judgment dated 17-1-2013 rendered by the Judicial Magistrate First Class, Chimur and is sentenced to suffer simple imprisonment for three months and to payment of fine of Rs. 500/- (Rupees Five Hundred) and in default of payment of fine to suffer further simple imprisonment for seven days for offence punishable under Section 354 of the Indian Penal Code, and is sentenced to suffer simple imprisonment for three months and to payment of fine of Rs. 500/- (Rupees Five Hundred) and in default of payment of fine to suffer further simple imprisonment for seven days for offence punishable under Section 509 of the Indian Penal Code, and is sentenced to suffer simple imprisonment for six months and to payment of fine of Rs. 500/- (Rupees Five Hundred) and in default of payment of fine to suffer further simple imprisonment for seven days for offence punishable under Section 451 of the Indian Penal Code.

4. The accused preferred Criminal Appeal 5/2013 which is decided by the judgment dated 13-11-2019 rendered by the Additional Sessions Court, Warora. The appellate Court set aside the conviction for offence punishable under Section 509 of the IPC and confirmed the conviction and sentence for offences punishable under Sections 354 and 451 of the IPC.

5. The applicant is invoking revisional jurisdiction.

6. The thrust of the submissions canvassed by the learned counsel for the applicant is that the conviction is on the basis of the sole testimony of the complainant, and given the fragile nature of the other material on record, the Courts below committed a serious error in convicting the accused.

7. The case of the prosecution is that on 19-8-2008, while the complainant was sleeping in her house along with her child and her husband had gone to the house of acquaintance to watch T.V., between 10.30 p.m. and 11.30 p.m., the accused came inside the house, embraced her and demanded sexual favour. According to the complainant, she was acquainted with the accused who also used to visit her house. The complainant launched report on 20-8-2008. The police registered Crime 97/2008 and upon completion of investigation, submitted final report under Sections 354, 452, 506 and 509 of the IPC in the jurisdictional Court.

8. The learned Magistrate framed charge and since the accused adjured guilt, proceeded with the trial in which the prosecution examined five witnesses. P.W. 1 is the complainant, P.W. 2 Shrikumar is the husband of

the complainant, P.W. 3 Dattasraj is panch, P.W. 4 Nareshchandra is eye witness and P.W. 5 is the Investigating Officer. The defence is of false implication.

9. In so far as P.W. 2 Shrikumar is concerned, the evidence on the aspect of the alleged entry in the house and sexual misconduct is on the basis of what is conveyed by P.W. 1. Shrikumar was suggested that he borrowed Rs. 3,000/- from the accused and since the accused demanded return of the loan, the accused is falsely implicated. The suggestion is denied. P.W. 3 Dattasraj and P.W. 4 Nareshchandra have not supported the prosecution. It is, in this view of the matter, that the learned Magistrate proceeded on the premise that the prosecution case is based on the sole testimony of the complainant.

10. I have scrutinized the reasons recorded by the learned Magistrate and the appellate Court. I am in broad agreement with the reasons recorded and would be slow to interfere in revisional jurisdiction. Both the Courts have noted that there was no motive to falsely implicate the accused and the defence of the alleged loan of Rs. 3,000/- and the resultant bad blood is not substantiated by any material. I would, therefore, accept

the sole testimony of the complainant, which is confidence inspiring and confirm the conviction.

11. In so far as sentence is concerned, there was no minimum sentence prescribed for offence punishable under Section 354 of the IPC on the date of the incident. The accused is now aged 73 years and he has already undergone detention for 25 days. In my considered view, the sentence for offences punishable under Sections 354 and Section 451 of the IPC can be modified by sentencing the accused to detention already undergone and fine can be enhanced.

12. The revision is partly allowed. While the conviction of the accused under Sections 354 and 451 of the IPC is confirmed, the sentence is modified as follows.

13. The accused is sentenced to suffer detention already undergone and to additionally pay fine of Rs. 25,000/- (Rupees Twenty Five Thousand) in aggregate for the offences punishable under Sections 354 and 451 of the Indian Penal Code. In default of payment of fine, the accused shall suffer simple imprisonment for three months.

14. Fine shall be deposited within the next four weeks.

15. If the amount of fine is deposited, the same be paid to the complainant as compensation.

JUDGE

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