

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 298 OF 2022**  
**WITH**  
**INTERIM APPLICATION NO. 751 OF 2022**

Ganesh Ramesh Ingale,  
Age – 34 years,  
R/o Ganesh Building No.4,  
4<sup>th</sup> Floor Room No.22,  
Near Diva Railway Station,  
(West) Thane.

Presently in Nashik Central Jail, Nashik,  
District Nashik.

.....Appellant/Applicant

Vs.

State of Maharashtra  
(At the instance of Matunga Police Station)

.....Respondent

Ms. Manisha Devkar (appointed Advocate) for Appellant/Applicant.  
Mr. R. M. Pethe, APP for State.

**CORAM : A. S. GADKARI, J.**  
**DATE : 14<sup>th</sup> JUNE, 2022.**

**ORAL JUDGMENT:-**

Appellant, original accused No.1, has impugned the Judgment and Order dated 5<sup>th</sup> 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.

2. Heard Ms. Deokar, learned Advocate appointed to represent the Appellant and Mr. Pethe, learned APP for 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 15<sup>th</sup> 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 16<sup>th</sup> 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, prosecution examined in all 14 witnesses. 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. 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 5<sup>th</sup> 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 before this Court against the same impugned Judgment and Order dated 5<sup>th</sup> November 2014.

The co-ordinate Bench (Smt. Sadhana S. Jadhav, J.) by its Judgment and Order dated 18<sup>th</sup> March, 2019 was pleased to allow the said appeals by quashing and setting aside impugned Judgment and Order dated 5<sup>th</sup> 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 4<sup>th</sup> 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. The original accused No.2 Rohidas Shridhar Gaikwad had also preferred Criminal Appeal No.347 of 2020. This Court after relying on the findings recorded by the co-ordinate Bench in its Judgment and Order dated 18<sup>th</sup> March, 2019 has acquitted accused No.2 by its Judgment and Order dated 8<sup>th</sup> January, 2021 as the role attributed to Rohidas Gaikwad (accused No.2) was same and similar rather little lesser than the role attributed to co-accused Shahid Shaikh (accused No.4) and Imran Shaikh (accused No.5).

7. In the present case also, the investigating agency has shown the Appellant to the victim in Police Station and the test identification parade was also conducted in Police Station. PW No.1 has admitted the said fact. The prosecutrix has not deposed anything adverse against the Appellant than making general allegations against all the accused as noted in Judgment and Order dated 8<sup>th</sup> January, 2021. The facts that, (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 4<sup>th</sup> 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, are fatal to the prosecution's case. In the present case also, the findings recorded by the coordinate Bench in its Judgment and Order dated 18<sup>th</sup> March, 2019 are *mutatis-mutandis* applicable. 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 and Sessions Court, Greater Mumbai dated 5<sup>th</sup> November 2014 in Sessions Case No. 752 of 2013 for the offences punishable under Sections 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.

9. In view of disposal of Appeal, nothing survives in the Interim Application No.751 of 2022 and is accordingly disposed off.

10. Before parting with the Judgment, this Court places on record a word of appreciation for the efforts put in by Ms. Devkar, learned Advocate appointed through the High Court Legal Services Committee, Mumbai for espousing the cause of Appellant, as she was thoroughly prepared in the matter and rendered proper assistance.

**(A.S. GADKARI, J.)**