

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
CRIMINAL REVISION APPLICATION NO.150 OF 2022

Swami s/o Malayya Sunkari

Vs.

The State of Maharashtra through Police Station Officer, Police Station, Sironcha,
Dist.Gadchiroli

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Umredkar, Advocate h/f Mr. A. C. Jaltare, Advocate for applicant.
Mr. A. R. Chutke, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/07/2022

1. Heard Mr. Umredkar, Advocate holding for Mr. A. C. Jaltare, learned counsel for the applicant and Mr. Chutke, learned APP for the non-applicant/State.

2. The applicant has been convicted by the learned Magistrate for the offence punishable under Section 509 of the Indian Penal Code by the judgment dated 20.2.2017 and has been sentenced to suffer simple imprisonment for six months and pay fine of Rs.1,000/-, in default to suffer simple imprisonment for one month. The said judgment was challenged in appeal, in which, the conviction has been maintained, however the sentence is modified by reducing it to three months.

3. Mr. Umredkar, learned counsel for the applicant submits that there was a delay in filing of the FIR, in as much as the incident has occurred on 15.2.2011 at 8.00 a.m. and the FIR has been filed on

17.2.2011. He further submits that though the victim has claimed that one Satyakka Gursinge had seen the incident, she has not been examined, which is fatal to the story of the prosecution as there is no corroboration in the complaint by the victim. He further submits that nothing concrete has been placed on record to show the presence of the accused.

4. Mr Chutke, learned APP for the non-applicant/State opposes the contention and supported the impugned judgments.

5. The incident is dated 15.2.2011 at about 8.00 a.m. when the victim/PW 4 had gone out of the village, for defecation, the accused was looking her stealthily. When he was questioned by the victim as to why he was looking at her while she was defecating, there was no reply, on the contrary, accused started coming near her. When one lady Satyakka Gursinge, came there, the accused ran away. PW-3 brother-in-law and PW-5 the father-in-law of the victim and PW-6 have turned hostile. PW-1 is the panch witness for the spot and has proved his signature on the spot and denied its contents. PW-2 is the husband of the complainant and has stated that PW-4 his wife had narrated the incident to him after coming to the house, whereupon he had told the incident to the Police Patil. As nothing was done, the complaint was filed in Police Station.

6. The PW-7 is the Investigating Officer, who has registered the report Exh.108 and the FIR Ex.109 and has also conducted the panchnama Exh.118 and also proved the crime detail form Exh.119. In the cross-examination, he claims not to remember the full name of the accused and that of the panchas. PW-8 has also turned hostile.

7. The entire prosecution therefore depend upon the sole testimony of the PW-4. A perusal of her testimony at Exh.107 would indicate that she has narrated the incident in consonance with the report. She has also withstood the onslaught of cross-examination, and nothing has been brought in her cross-examination to disbelieve her testimony. The question of any eye witness being available for such an incident is bleak and considering the testimony of the victim PW-4 which remains unshaken. Reliance placed upon it by the Court blow for convicting the appellant for the offence under Section 509 of the Indian Penal Code is not unjustified. In the result, I do not see any merit in the revision, the same is accordingly dismissed.

JUDGE

Sarkate