

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

CRIMINAL REVISION APPLICATION NO.35 OF 2006

Bhimrao S/o Arjun Panchal,
Age : 41 Years, Occ. Carpenter,
R/o. Kinhola Tq. Pathri,
District Parbhani.

.. Applicant
(Original Accused)

V E R S U S

The State of Maharashtra .. Respondent

...

Ms. Ashwini A. Lomte holding for Mr. S. J. Salunke, Advocate for the
applicant;

Mr. S. P. Deshmukh, A.P.P. for the respondent/State :

...

CORAM : S. G. MEHARE, J.

Reserved on : 10.07.2023

Pronounced on : 31.08.2023

JUDGMENT :

1. The accused, who has been convicted of the offences punishable under sections 354 and 448 of the Indian Penal Code, has impugned the judgments and orders of the learned Judicial Magistrate First Class, Pathari, District Parbhani passed in Regular Criminal Case No. 60 of 2003 dated 17.05.2005 and confirmed by the learned Additional Sessions Judge Gangakhed in Criminal Appeal No. 4 of 2005, dated 31st January, 2006, under Section 397 read with Section 401 of the Criminal Procedure Code.

2. The facts giving rise to the case are that the accused and the husband of the prosecutrix were carpenters and residing in the same village. It has been alleged against the accused that on 18.02.2001, at about 9.00 p.m., he went to the house of the prosecutrix to demand ‘Kikara’ (a carpenter’s tool). That time, the prosecutrix was alone at home, and her children were sleeping. When she went to bring Kikra, suddenly, the applicant caught and pressed her breast from behind. When she screamed, her husband, who went to the house of P.W. No.2 to watch the Television, came with P.W. No.2 and 3 on the spot of the incident. They saw the accused running from her house. The accused was prosecuted and held guilty for the offences punishable under Sections 354 and 448 of the Indian Penal Code.

3. The learned counsel for the accused has vehemently argued that both the Courts have erroneously discarded the plea of inordinate delay in lodging the report and its unsatisfactory explanation. She has also vehemently argued that both the Courts have erred in law in assigning the reasons that it was a short delay; hence, it is liable to be condoned on its own. The law on delay in lodging the first information report has been misconstrued. The Courts have no jurisdiction to condone the delay on their own. The prompt first information report has its importance. The delay in lodging the first information report raises suspicion over the truthfulness of the accusations. Both the

Courts have erroneously applied the ratio laid down in the case laws placed before them. She further argued that the presence of the other witnesses was also improbable. However, both the Courts have discarded these material circumstances. She further argued that on the one hand, the learned Judicial Magistrate accepted the threat to kill the victim as a satisfactory explanation and, on the other hand, disbelieving the threat given by the applicant, acquitted the accused for the offences punishable under Sections 506(ii) of the Indian Penal Code. The learned Additional Sessions Judge also did not consider the legal ground raised before him about the ingredients of the threats and did not consider the contrary findings recorded by the learned Magistrate on threats given to kill the prosecutrix. The learned Additional Sessions Judge has erroneously applied the ratio laid down in the case of *Azeez Osman Shaikh Vs. State of Maharashtra 1999 (3) Mh. L.J. 272*. He has also erroneously held that a short delay would not come in the way of the prosecution.

4. The learned Sessions Judge has erroneously observed that it is not necessary that the threats to kill the prosecutrix must be realized and amounting the offence when it is the reason for the delay in lodging the first information report. There are a number of circumstances where it is not necessary that threats must be realized. We cannot mix these two terminologies together. To prove the offence

punishable under Section 506 (ii) of the Indian Penal Code beyond any shadow of doubt is one thing, and giving the reasons for delay in lodging the first information report according to the principle of preponderance of probabilities is another aspect. He also erroneously observed that the first information report in the case of offences against the woman is registered only after cool thought as the husband and wife had to make a final decision whether to lodge a report to the police or not, with a full and final understanding that wife will have to face mental humiliating questions asked by the police while recording her statement, standing in the witness box while deposing in the Court for pressing her breast and to face several unhappy, unhealthy, unwanted mentally humiliating questions while facing the cross-examination. With these erroneous findings, the legal issue of the contradictory findings on the threats to kill has been discarded. She would submit that the accused could not be held guilty on these two legal aspects, and he deserves acquittal.

5. Per contra, the learned A.P.P has vehemently argued that since there are two concurrent findings on the fact, this Court cannot reassess or re-appreciate the evidence. The issues raised by the learned counsel for the applicant are rather on facts and not on the law. The delay was properly explained, and the Courts have correctly accepted the same. There was no reason to disbelieve the prosecutrix. There

are no errors on the face of the record.

6. For the delay in lodging the F.I.R. the prosecution has the explanation that the accused had threatened to kill the victim.

7. There is no quarrel that there was a seven-day delay in lodging the first information report.

8. The legal position on quick F.I.R. is that the prompt first information report of each crime is expected for the reasons that it reflects firsthand information of what happened and who was responsible for the offence. Inordinate delay in lodging the first information report, without having a satisfactory explanation, raises a doubt about the involvement of the accused.

9. The Hon'ble Supreme Court in the case of *Mehraj Singh Versus and others Vs. State of Uttar Pradesh (1994) SCC (5) page 188* has observed in paragraph No.12 which reads thus:-

“12. The object of insisting upon prompt lodging of the first information report is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the first information report often results in embellishment, which is a creature of an afterthought. On account of delay,

the First Information Report not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the first information report was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks. One of the checks is the receipt of the copy of the first information report, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the first information report was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the first information report by the local Magistrate. Prosecution had led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the first information report and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the first information report came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged first

information report. In our opinion, on account of the infirmities as noticed above, the first information has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by P.W.8."

10. In **Satpal Singh Versus State of Haryana, (2010) 8 SCC 714**, the Hon'ble Supreme Court observed thus:

"14 This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging the FIR more often than not result in embellishments and exaggeration which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as result of deliberations and consultation, also creeps in, casting a serious doubt on its veracity. Thus, the FIR is to be filed more promptly and if there is any delay the prosecution must furnish satisfactory explanation for the some of the reason that in case the substratum of the evidence given by the complainant/ informant found to be unreliable, the prosecution case has to be rejected in its entirety."

11. As far as the condonation of delay is concerned, the Hon'ble Supreme Court, in the case of **Harman Kaur Versus State of Hariyana, AIR 2005 SC 2989** in paragraph No.7, has observed that:-

“7. Even a long delay can be condoned if the witnesses have no motive to implicate the accused and has given a plausible reason as to why the report was lodged belatedly.”

12. The learned Sessions Judge relied on the ratio in the case of *Azeez Osman Shaikh Vs. The State of Maharashtra 1999 (3) Mh. L. J. 272*. It was a case of rape under Section 376 of the Indian Penal Code. However, the ratio was that delay in giving a report should not come in the way of the prosecution when other clinching evidence is available on record. Relying upon the ratio laid in the case *State of Punjab Vs. Gurumitsingh and others 1996 CRI LJ-1728*. The Hon’ble Supreme Court has observed thus,

“In sexual offence the delay in lodging the first information report can be due to variety of reasons particularly reluctance of the prosecutrix or a family member to go to the police and complaint about the incident are concerned the reputation of the prosecutrix and the honour of her family. It is only after giving it cool thought that the complaint of sexual offences is generally lodged. Even if there is some delay in lodging the first information report, in respect of offence of rape, if it is properly explained, and the explanation is natural in the facts and circumstances of the case, such delay would not matter.”

13. The learned Sessions Judge relied on the case of *Azeez Osman*

Shaikh Versus State of Maharashtra, 1999 (3) Mh. L.J. 272, and recorded the finding that in the case in hand, there is clinching evidence on record; therefore, even if there is any small delay, it would not come in the way of the prosecution.

14. The Hon'ble Supreme Court, in the case of Aziz cited supra, has also observed that delay in lodging the first information report or conveying the incident of rape to the relations cannot always be taken against the victim. In the case of this type, the victim, out of fear or shyness, does not report such incidents to the relation or the police. There is always fear that society will ridicule her or criticize her and the relations would show resentment, and there is other clinching evidence on record; such delay shall not come in the way of the prosecution.

15. In *Pandurang Sitaram Bhagwat Vs. State of Maharashtra, (2005) 9 SC 44,* the accused was convicted on the ground that ordinarily a lady would not "put her character at stake' and falsely implicate a person. In this context, the Hon'ble Supreme Court in above case, in paragraph No. 16 has observed that "the approach of the learned trial Judge as noted supra that ordinarily a lady would not "put her character at stake" may not be wrong but can not be applied universally. Each has to be determined on the touchstone of the

factual matrix of the case. The law reports are replete with decisions where charges under Sections 376 and 354 of the Indian penal Code have to be found to have falsely advanced.”

16. It is clear that the consistent view of the Hon’ble Supreme Court as regards the delay in lodging the report is there shall be a proper explanation, and it should be natural in the facts and circumstances of the case. In the case of *Pandurang Sitaram Bhagwat* (cited supra), the ratio was that ordinarily, a lady would not put her character at stake and may not be wrong but cannot be applied universally. The accused, in this case, has a defence of false implication. Therefore, it is to be tested whether the delay explained was satisfactory.

17. The learned Judicial Magistrate, on the one hand, accepted that the explanation that threats given to kill her was satisfactory and at the same time, he disbelieved the evidence of the prosecutrix that the accused had threatened her to kill and acquitted him for the offences punishable under Section 506 part II of the Indian Penal Code.

18. The learned Sessions Judge, on the one hand, observed that in the case in hand, the prosecutrix did not care what the neighbours would think and narrated two incidents to her husband and neighbours; therefore, the best possible evidence is available in this case and on the other hand he observed that it is not necessary that the

threat to kill the prosecutrix by the accused must be realized. To prove the offence punishable under Section 506(ii) of I.P.C. beyond the shadow of doubt is one thing, and to give reasons for delay in lodging F.I.R. according to the principle of preponderance of probabilities is another thing.

19. The same evidence has been led to explain the delay in lodging in F.I.R. and constituting an offence under Section 506 (ii) of I.P.C. The common thread for these two reasons is “threat”. Hence, the meaning of the term “threat” has to be examined. The dictionary meaning of the term ‘threat’. That means something that is a source of danger. As per Oxford Advance Learners Dictionary, Eight Edition, threat means a statement in which you tell somebody that you will punish or harm them, especially if they do not do what you want. Oxford Dictionary, on Law, Seventh Edition defines ‘threat’ as the expression of an intention to harm someone with the object of forcing them to do something. As per Section 503 of the I.P.C., the term “Criminal intimidation” has been defined as whoever threatens with any injury to his person, reputation or the property or to the person or reputation of any person of anyone whom that person is interested with intent to cause alarm to that person, is an offence punishable for the criminal intimidation.

20. The threat has an impact on the human mind. However, that differs from man to man to whom and by whom threats are given. For example, a threat by a hardened criminal may last longer than a person having no bad past. The threats can be weak or strong, causing slight anxiety or deep dread. It is presumed that in case of a threat, the reports are lodged after the fear impressed upon the human mind due to the threats of taking life disappear.

21. The question is whether the fear due to threats given to the prosecutrix lasted on her mind for seven days. Hence, the delay was caused in lodging the F.I.R.

22. In the case at hand, the prosecutrix narrated the incident to her husband and two independent witnesses immediately after the incident. Since she had immediately disclosed the incident, there is wide scope to believe that so-called threats immediately disappeared from her head, and she got the courage to disclose the same immediately to her husband and neighbours. So, in such a set of facts, it is to be examined whether the law laid down by the Hon'ble Apex Court in the case of Azeez Osman Shaikh and Gurumeet Singh (cited supra) would apply to this case. Whether the explanation for delay was natural in the facts and circumstances of the case and the prosecutrix was under fear and shyness that the society would ridicule her or

criticize her and the relations would show resentment would apply. It is evident that she narrated it to her husband immediately after the incident in front of two neighbours. So, it would be difficult to believe that the victim was afraid and shy to disclose the incident to the relations, and she had a fear that society would ridicule and criticize her and her relations would show resentment. The explanation offered by the prosecution for the delay in lodging the first information report is considered, in the facts and circumstances of the case, does not appear natural. Hence, it is hard to believe that the threats lasted for seven days and the delay was caused in lodging in F.I.R. Considering the above aspects, the Court concludes that the delay in lodging the F.I.R. was not explained satisfactorily. The Court also believes that the learned Sessions Judge has erred in applying different tests for the same act of threat.

23. The delay in lodging the first information report gives the benefit of the doubt to the accused. The delay in lodging in F.I.R creates doubt about the happening of the incident. The possibility of false implication cannot be denied.

24. For the reasons discussed above, the Court concluded that both Courts erred in appreciating the law on delay in lodging the F.I.R. and committed errors on the face of the record discarding the defence of

the accused that the delay was not satisfactorily explained and no incident as alleged was happened. Hence, the following order:-

ORDER

1. Revision application is allowed.
2. The impugned judgments and orders of the learned Judicial Magistrate F.C Pathari delivered in R.C.C. No., 16 of 2003 dated 17.05.2005 convicting the accused for the offences punishable under Sections 354 and 448 of the Indian Penal Code and confirmed by the learned Additional Sessions Judge Gangakhed, in Criminal Appeal No. 4 of 2005 by his judgment and order dated 31 Jan. 2006 stands quashed and set aside.
3. The accused, Bhimrao Panchal, is acquitted under Section 248(2) of the Code of Criminal Procedure for the offences punishable under Sections 354 and 448 of the Indian Penal Code.
4. The fine amount deposited by the accused be returned to him.
5. Bail and surety bonds stand cancelled.
6. Surety stands discharged.
7. Record and papers be returned to the Court of Learned Judicial Magistrate First Class Pathari, District Parbhani.
8. Rule made absolute in above terms.

(S. G. MEHARE)
JUDGE