

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

CRIMINAL REVISION APPLICATION NO.89 OF 2022

Manoj s/o Kaduba Nade,
Age : 36 years, Occu.: Labour,
R/o Annabhau Sathe Nagar,
Chikalthana, District Aurangabad.

...Applicant

VERSUS

1. The State of Maharashtra
Through Police Station MIDC CIDCO,
Aurangabad, Dist. Aurangabad.

2. Savita w/o Suresh Magare
Age : 41 years, Occu.: Household,
R/o Annabhau Sathe Nagar,
Chikalthana, Aurangabad.

...Respondents

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Mr. Mahesh P. Kale, Advocate for Applicant.

Mr. Y.G. Gujarati, APP for Respondent/State.

Ms. Poonam V. Bodke Patil, Advocate for Respondent No.2.

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CORAM : S.G. MEHARE, J.

RESERVED ON : JULY 06, 2023

PRONOUNCED ON : AUGUST 10, 2023

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The accused has preferred this revision under Section 397 r/w 401 of the Criminal Procedure Code against the judgments and orders of conviction passed in R.C.C. No.1490 of 2013 dated 09.01.2017 by the learned Judicial Magistrate First Class, Court No.6,

Aurangabad and confirmed in Criminal Appeal No.25 of 2017 by the learned Additional Sessions Judge, Aurangabad by its judgment and order dated 28.02.2022.

3. The applicant has been convicted of the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year.

4. The case of the prosecution, in brief, was that the incident happened on 04.06.2013 at about 09.00 to 10.30 pm in front of the shop of the victim's husband. Before the alleged incident, the applicant and other persons were sitting on the platform in front of the grocery shop of the victim's husband. Since they were creating a mess, he asked them to get up and go. Thereafter, the petitioner said to her husband that they would not get up and they would get up after cutting him. Her husband told the incident to the victim. Then she asked the petitioner why he said so to her husband. Therefore, the petitioner rushed at her and started abusing her. He grasped her hair, pulled her and fell her down and, catching her breast, tore her blouse. He also kicked her with his legs. She screamed; therefore, her husband, mother-in-law, father-in-law, and other persons collected there.

5. Both Courts believed the prosecution evidence and held the petitioner guilty. The family members supported the prosecution, but, an independent witness did not support the prosecution. The

report was lodged the next day with an explanation that when she was going to lodge the report with her father-in-law, they met with an accident; hence, they returned and the next day she lodged the report.

6. The accused had a defence that the grocery bills were due; hence, the false report was lodged. He also had a defence that there was a dispute over the flag pole roped in front of house of victim.

7. Learned counsel for the applicant would argue that the defence was probable. However, the Courts did not consider it. No incident as alleged, happened. The incident happened in the spur of the moment. Therefore, it cannot be said that the petitioner had an intention to outrage the modesty of the victim. None of the offences is proven against him. He would rely on the case of Pandurang Sitaram Bhagwat Vs. State of Maharashtra, (2005) 9 SCC 44, Raju Pandurang Mahale Vs. State of Maharashtra and Another, (2004) 4 SCC 371 and Rajesh Swarupchand Kankaria and Ors Vs. The State of Maharashtra, the decision in Criminal Revision Application No.128 of 2017 with other connected matters of Bombay High Court dated 20.03.2017.

8. Per contra, learned APP would submit that the credibility of the witnesses has not been impeached. The victim had no reason to lie against the accused. The delay explained in lodging the report

was not denied. The defence of the accused was improbable. The defence of the accused, implicating him falsely in crime for the amount due for grocery articles, was not proved. Otherwise, also such a defence is unbelievable. The suggestion to PW-1 that after the quarrel was over, the co-accused went to her home and requested not to go to the police station proved the happening of the incident. The evidence of the victim inspires confidence. Hence, the non-examination of the neighbours and not supported by another witness to the prosecution is not fatal. A woman would not put her character at stake unless there was substance in the case. Outraging modesty is a lifelong trauma that causes mental agony forever.

9. Considering the rival contentions, a short point falls for consideration is whether, in given circumstances and proven facts, the offence under Section 354 of the Indian Penal Code is made out.

10. To constitute an offence under Section 354 of the Indian Penal Code, the prosecution has to establish the intention of the accused to outrage or knowing it to be likely that he will thereby outrage the modesty of a woman. He must have assaulted or applied criminal force to a woman with intent to outrage her modesty. The intention and knowledge are the crux of the offence under the said section. The prosecution has to prove the presence and existence of the culpable intention and knowledge on the part of the accused. The intention and knowledge of the accused form his course state of mind.

It is to be gathered from the circumstances of each case. Looking at the circumstances, a reasonable man would think that the acts of the offender were intended or likely to outrage the modesty of a woman. The term 'intention' means the acts done with the goal of getting some expected results, and 'knowledge' simply means awareness of the results or consequences of his acts. An act done with knowledge is an act done without care.

11. The other ingredients to constitute an offence under Section 354 of the Indian Penal Code are the 'assault' or the 'use of criminal force'. The term 'Assault' has been defined under Section 351 of the Indian Penal Code. Its ingredients are; (1) Making of any gesture or preparation by a person in the presence of another person and (2) intention or knowledge or likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force.

12. The term 'Criminal force' has been defined under Section 350 of the Code. Its ingredients are; (1) the intentional use of force on any person, (2) Such force must have been used without the consent of the person, and (3) the force must have been used (a) in order to commit an offence; or (b) with the intention to cause or knowing it to likely that he will cause injury, fear, or annoyance to the person to whom it is used. The intention and knowledge are the common thread in 'assault' and 'criminal force'. The assault is the pre-

stage of the use of criminal force. The simple and plain difference between these two definitions is that in a criminal force, there would be physical contact; in assault, physical contact between the accused and the victim is absent.

13. In the case at hand, it is evident that the petitioner came into physical contact as he pulled by her hair, kicked her and fell her down

14. This Court, in the case of Rajesh Swarupchand Kankaria (cited supra) in para 16, has observed that “for recording a conviction of the offence punishable under Section 354 of the IPC, it is not enough merely to show that accused persons assaulted a woman. In addition thereto, it is also required to establish either, that accused persons were harbouring intention to outrage the modesty of the victim who has been assaulted by them. Thus, it is clear that to constitute an offence under Section 354 of the IPC, an intention to outrage her modesty must be present. The culpable intention of the accused is the crux of the matter. Intention is certainly a mental state of a person, and as such, it is difficult to procure direct evidence to prove the intention of the accused. Therefore, the intention of the accused is to be inferred by appreciating the direct act of accused persons while committing the crime, so also on the basis of assessment of total evidence keeping in mind the conduct of the accused person and all other relevant surrounding circumstances.

However, the intention is not the sole criterion of this offence. It can also be said to have been committed by the person assaulting or using criminal force to any woman if he knows that by such act, the modesty of the woman is likely to be affected.”

15. In the case of Raju Pandurang Mahale v State of Maharashtra and another (2004) 4 SCC 371, it has been held that knowledge that modesty is likely to be outraged is sufficient to constitute the offence without any deliberated intention of having such outrage alone for its object.

16. The above observation shows that the knowledge that modesty is likely to be outraged in the absence of intention is sufficient.

17. In the case of Pandurang Sitaram Bhagwat v State of Maharashtra (2005) 9 SCC 44, the Hon’ble Supreme Court held that convicting the accused alone under section 354 on the ground ordinarily a lady would not “put her character at stake” cannot be universally applied. Each case has to be determined on the touchstone of the factual matrix thereof.

18. In the case at hand, it appears that since the victim questioned the accused, he started abusing her, he grasped her hair and fell her down and pressed her breast and tore her blouse. It is also evident that the incident happened in a public place. Her husband and father-in-law corroborated her. There was nothing in

rebuttal against the recovery of the torn blouse. There was no cross-examination on the delay in the lodging of the report. Most importantly, after the incident, the brother of the accused, who had been acquitted, went to the house of the victim requesting her not to lodge a report, proves the happening of the incident. His defence does not inspire confidence. Before outraging her modesty by pressing her breasts, he pulled her grasping her hair and fell her down. Considering his acts, it cannot be believed that the incident happened in the spur of the moment. The acts of the accused were sufficient to prove that he had knowledge that his act was likely to outrage her modesty. His acts also prove that he had applied criminal force on the victim. Hence, both Courts have correctly believed that the prosecution has established the offence of outraging the modesty of the women as provided under Section 354 of the Indian Penal Code beyond a reasonable doubt. The ratio laid down in the case laws relied upon by the accused would come to his aid as distinguishable on facts.

19. The benefit under the Probation of Offenders Act can not be extended as the offence under Section 354 of the Indian Penal Code is moral turpitude. Regarding the term of imprisonment, the minimum sentence for the offence under Section 354 of the Indian Penal Code has been awarded. Therefore, the term of imprisonment can also not be modified.

20. The learned trial and first appellate Courts have correctly appreciated the evidence. Examining the impugned judgments and orders, this Court did not find error on the face of the record. Both impugned judgments and orders are free from errors and infirmity. There were no grounds to interfere with the impugned judgments and orders. Hence, the following order;

ORDER

- (i) The revision application stands dismissed.
- (ii) The bail and surety bonds are cancelled, and the surety is discharged.
- (iii) The accused shall surrender for undergoing the sentence before the learned Judicial Magistrate First Class, Court no. 6, Aurangabad, on or before 18 th of August 2023. If he fails to surrender, he shall be arrested under the conviction warrant and sent to Jail to suffer the sentence.
- (iv) Needless to say, the accused is entitled to set off under Section 428 of Cr. P.C.
- (v) R and P be returned to the Court of learned Judicial Magistrate First Class, Court no. 6, Aurangabad.
- (vi) Rule stands discharged.

(S.G. MEHARE. J.)