

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.86 OF 2020

The State of Maharashtra
Through Officer in-charge
Vivekanand Chowk Police Station,
Latur, Tq. & Dist. Latur.

.. Applicant

Versus

Chandrakant @ Raju s/o Shivaji Kalwale,
Age: 31 years, Occu.: Driver,
R/o. Gandhi Chowk, Pangaon,
At Present Vyankatesh Apartment,
Ambajogai Road, Latur.

.. Respondent

...

Mr. S. J. Salgare, APP for the applicant – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 5th October, 2023

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 07.02.2020 passed by the learned Additional Sessions Judge-1, Latur in Sessions Case No.67 of 2017; thereby acquitting the respondent from the offence punishable under Sections 307, 354. 354(A)(2), 504, 506 read with Section 149 of Indian Penal Code and under

Section 4/27 of the Indian Arms Act.

2. Heard learned APP Mr. S. J. Salgare for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The FIR has been given in written form by informant P.W.1 on 26.05.2017. She disclosed that she is serving as a staff nurse and accused was driver at M.I.T. College, Latur. Previously they used to reside in quarters adjacent to each other and those quarters were provided by the college. The accused used to tease her and demand sexual relations. He also used to abuse and harass her during the night hours under the influence of liquor. She had made complaint about the same to the college management and therefore, the accused was removed from services and the management had directed that all the employees should vacate the quarters. Thereafter since about the year prior to the FIR, she was residing in a rented room. She has stated that around 3.00 p.m. when she was near M.I.T. college for attending her duty on 26.05.2017, she was on the two wheeler of her husband. The accused came in four wheeler from the backside, abused her in filthy language and asked as to why she is not keeping sexual relations with him. He also told that due to her complaint, he has been removed from service. He then took out a *Gupti* (Swordstick) and tried to give blow, but she sat down and saved herself. She shouted

loudly, therefore, watchman at the college entrance and other people gathered. The accused abused her in filthy language in their presence also and made attempt to kill her. People caught accused and then she went inside the college. She has stated that even accused went there and threatened to kill her. On the basis of the said written complaint, offence was registered vide Crime No.251 of 2017. Investigation was undertaken. Panchanama of the spot was carried out and accused came to be arrested. Statements of witnesses came to be recorded. The accused while in police custody led the discovery and discovered the swordstick from his house i.e. below the cot in the room. After the completion of the investigation, charge-sheet was filed.

4. After the committal of the case, the prosecution has examined in all seven witnesses to bring home the guilt of the accused. After hearing both sides and perusing the evidence, the learned Trial Judge has acquitted the accused from all the charges.

5. PW.1 is the informant and PW.2 is her husband. The apparent reading of their examination-in-chief would show that they were corroborating each other, however, the cross-examination is important. Before turning to the cross-examination, the other person who has been examined to prove the incident is P.W.3 Rahul Pandit, who was working in the said college. Perusal of his evidence would show that he had received

phone call from one Holkar around 3.00 to 3.30 p.m. stating that there is some problem and, therefore, he should come to security gate. After he went to the security gate, he was ordered by officer that Scorpio vehicle of the accused should not be allowed to go outside. Accordingly, they did not allow the accused to go out. But thereafter the accused made phone call to someone from the gate and then the college authority asked the accused to park the vehicle outside the road. Accordingly, accused took the vehicle and went. That means, he is not the eye witness to the incident. He had seen the informant and her husband at the said place. Here itself we would like to consider the testimony of P.W.7 Anil Kurundkar, the investigating officer. He has stated in the examination-in-chief that he had given letter to M.I.T. college demanding CCTV footage and accordingly, in the cross-examination he says that he had collected the footage of the camera installed at the security gate. It appears that the said CCTV footage was not played in the Court and the identifications have not been conducted. P.W.7 Anil Kurundkar admits that the photographs taken from the CCTV footage does not show the Scorpio vehicle. Even the people who had gathered were not seen. Informant and her husband are also not seen in the CCTV footage proceeding on two wheeler. He admitted that there is only one way of security gate to come out of M.I.T. college. Therefore, the other evidence that has been collected is not supporting the testimony of P.W.1 informant and her husband.

6. As regards the testimony of PW.1 and her husband is concerned, as aforesaid, we have gone through the cross-examination and it has been revealed from the same that accused was the first person to make complaint against the informant to the management authority stating that an unknown person remains in the house of informant whole day and the informant had illicit relations with that person. Informant has admitted that after that complaint by accused, the staff members of the college found informant and that unknown person in her quarters. Her husband was also called at that time and the said person turned out to be the husband of her sister. She admitted that inquiry in respect of complaint against accused and her was carried out by the management and thereafter management had directed her as well as accused to vacate the quarters. This clearly shows that there was previous enmity and grudge against each other. Therefore, it cannot be said that only accused was aggrieved on the count that he was removed from the service. With this background, her testimony will have to be received with caution.

7. From the testimony of both these witnesses it can be certainly said that the husband had not even tried to resist the accused in any manner, though according to informant, the accused was asking sexual favour from the informant. A husband would not have kept quiet after hearing such advances from a stranger to his wife. PW.2 is totally silent about the same.

He does not say that he tried to take side of his wife, but accused showed the swordstick to him also and, therefore, he kept quiet. The husband appears to be the mute spectator. Further, even after the alleged incident, it appears that he had not taken wife to police station immediately. PW.1 in her examination-in-chief says that one Borade Saheb asked her to stop for sometime as she was frightened and thereafter around 7.00 to 8.00 p.m., she went to Vivekanand Chowk Police Station and gave complaint. She also states that her husband was with her at that time. If we consider the FIR Exhibit-43, it does not spell out presence of her husband at the time of incident. Now, in her examination-in-chief, she has tried to explain that since she was frightened at the time of lodging report, she had not stated that her husband was with her at the time of incident. She has made the improvement by way of supplementary statement on the next day i.e. 27.05.2017 and then says that her husband was along with her. If the husband was with her and such a serious incident has taken place, then he would have immediately taken her to police station and lodge the report. PW.2 in his examination-in-chief has not stated as to why from 3.00 to 3.30 p.m. till 7.00 p.m. he had not gone to police station and try to lodge report against the accused. In his cross-examination he says that he stopped at the college for about 30 minutes and went. His conduct is absolutely not convincing. Under the said circumstance, the learned Trial Judge has rightly disbelieved both of them.

8. As regards the discovery is concerned, prosecution has examined PW.5 Chandrashekhar Phad, who was serving as Talathi in Tahsil Office, Latur. He says that the accused had given memorandum and taken them to his house in an apartment. He says that one woman opened the door and then accused went inside the house and took out knife like *Gupti* from the place below cot. In the cross-examination, he was unable to tell which flat number they had visited. They had not offered search of their person i.e. the panchas search and also that of police to the woman, who opened the door. Under the said circumstance, the discovery is doubtful and, therefore, no case is made out by the prosecution for re-appreciation of evidence. Application therefore stands rejected. .

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm