

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

CRIMINAL APPEAL NO.651 OF 2019

X. Y. Z.

**...APPELLANT
(Orig. Complainant)**

VERSUS

- 1) Pankaj Bhanudas Hase,
An adult Indian Inhabitant,
Mulchandani Wada, Shastri Nagar,
Parbhani, Maharashtra,
- 2) State of Maharashtra,
Through Government Pleader.

...RESPONDENTS

...
Mr.J.S. Kini Advocate h/f. Mr. K.U. More Advocate for Appellant.
Mr.R.D. Sanap, A.P.P. for Respondent No.2 - State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE OF RESERVING ORDER : 29th MARCH 2023

DATE OF PRONOUNCING ORDER : 19th APRIL 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed under Section 372 of the Code of Criminal Procedure by the informant - prosecutrix

challenging the acquittal of respondent No.1 – original accused by the learned Additional Sessions Judge, Parbhani on 3rd May 2019 in Sessions Trial No.40 of 2015 for the offence punishable under Section 354-A, 376, 511 of the Indian Penal Code. In view of the letter and spirit of Section 228-A of the Indian Penal Code, we have masked the name of the informant.

2. In short, the prosecution story is that the informant was taking education in Veterinary College, Parbhani and at the time of First Information Report (for short "FIR"), she was in her 4th year. Accused was her guide as Assistant Professor. She had gone to her parents place with prior permission of the accused on account of Diwali vacation on 27th September 2014. She was asked to return by 27th October 2014, accordingly, she returned and met with accused in the clinic on 28th October 2014 and then the accused had called her in the noon time for correction of books. When informant went in the noon time, accused told her to come on the next day morning. She went to clinic on 29th October 2014 and at that time the peon of the College informed the informant that the accused is calling her in his cabin. She went to the cabin where accused told her to correct the record. Accordingly she corrected the record, but while she was carrying out that work, accused made inquiry about the arrangements for

her lunch and how many students were there in the hostel. Informant answered those questions and then accused invited her to his house on the next day for lunch. Informant was informed again by the peon when she was in the clinic that accused is calling her in his cabin and accordingly she went to the cabin around 12.30 p.m., on 30th October 2014. Accused told her to proceed towards his house by walk and he would pick up her in his car from a distance. Accordingly, informant went outside the gate of the university / college and she was picked up by the accused in his car from a distance. They went to his house. Informant could notice that a lady had come out of house of the accused and gone to the house in front, before they entered the house of the accused. The informant as well as accused had lunch together and when she was about to leave, accused offered her ice-cream. It is alleged that when she was eating ice-cream, she was sitting on the bed which was in the hall. She was sitting in the corner whereas accused was sitting on the other side corner of the bed. She has then stated that thereafter the accused catch hold of her hands and dragged her towards him. Accused had tried to kiss her and demanded for sex. The accused was trying to hug her and she was saying no but when the accused tried to do the same thing, she shouted

loudly and therefore, accused went in another room. Informant then returned to her hostel by taking auto rickshaw and narrated the incident to the warden of the hostel. On the next day the informant went to Pune by taking a bus and called her parents. Thereafter she went to Thane where her parents reside and told the incident to her parents. She came to Parbhani along with her parents on 5th November 2014 and lodged the FIR.

3. It is to be seen from the record that on the basis of the said report, offence vide Crime No.247 of 2014 came to be registered and investigated.

4. The prosecution has examined in all nine witnesses to bring home the guilt of the accused. After it was seen that there was incriminating evidence, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure and an opportunity was given to him to examine witnesses in defence. Thereupon, the accused has examined five witnesses in his defence. After considering the evidence on record and hearing both the sides, the learned Additional Sessions Judge, Parbhani acquitted the accused on 3th May 2019, hence the present Appeal.

5. We have heard learned Advocate Mr. J.S. Kini holding for learned Advocate Mr. K.U. More for the appellant through video conference and also the learned APP Mr. R.D. Sanap for respondent No.2. We have considered the matter at this stage for admission and also perused the record and proceedings.

6. It has been vehemently submitted on behalf of the appellant that the learned trial Judge has not appreciated the evidence properly. The testimony of the informant was sufficient to inspire confidence and her behaviour after the incident stood supported by the testimony of her mother, PW-2 as well as PW-3 Dr. Bhagyashree Bhadane, who was warden of the girl's hostel. Learned Advocate for the appellant has taken us through the evidence of these three witnesses and pointed out the corroboration. He submitted that accused was in fact the local guardian of the informant as per the rules of the college. The informant and her mother had previously gone to the house of the accused and at that time they had found the wife of the accused in his house. Informant, therefore, under the impression that the wife of the accused would be at home, had gone to his house for lunch as she was invited. The girl was required to struggle to rescue herself from the clutches of the accused and she was in frightened condition. When she went back to the

hostel, after seeing warden she started crying. Warden PW-3 Bhagyashree had then asked informant as to what had happened, then she had narrated the entire incident to the warden. PW-3 Bhagyashree asked informant whether she would lodge complaint with the police station or the college authorities, informant told her that she will not do anything unless she informs it to her parents. Informant has then sent message to her mother stating that if someone misbehaves with her daughter then what she would do and her mother sent her message that then her mother would become Mary Kom. Informant has not told anything to her mother on phone but then on the request of PW-3 Dr. Bhagyashree, the informant stayed on 31st October 2014 whole day and then as she could not get reservation for Mumbai, she went to Pune by private bus. Her parents picked her up and then in the car she narrated the entire incident to her parents. This subsequent conduct would support the testimony of the informant and it ought to have been properly appreciated by the learned trial Judge. The learned trial Judge appears to have got swayed away with the evidence adduced in defence. It is the defence story that there is bio-metric machine installed for the staff in the college and therefore, whenever any person from the staff resumes his duty,

he will have to impress his thumb on the bio-metric machine and whenever he is going out, has to do the same. DW-2 Rushikesh Kamble has produced print out about the record of the accused on 30th October 2014 which showed that he came to the office on 10.22 a.m. and left around 17.50 hours, but in the cross-examination he has admitted that he has no information if any employee leaves office without punching bio-metric machine. It is also the defence of the accused that children of PW-3 Bhagyashree were found in the room of the informant and the said fact was revealed through the accused. The college had taken disciplinary action in respect of indiscipline in the hostel against the informant and she was directed to pay amount of Rs.250/- as fine. Informant as well as PW-3 Bhagyashree had, therefore, reason to implicate the accused. Learned trial Judge failed to consider that it would have been the act of the college but why the girl will make such kind of allegations by compromising with her status. The sole evidence of the girl ought to have been believed. The matter therefore, requires admission as injustice has been done to the informant.

7. At the outset, it is to be noted from the record that after the charge was framed against the original accused on 21st July 2016, the examination-in-chief of PW-1 informant started on 3rd

September 2016. After asking about 4 to 5 questions, learned APP requested for opening the statement which was recorded by the Magistrate under Section 164 of the Code of Criminal Procedure which appear to be under the sealed envelope, on a point that it is required to refresh the memory of the witness. This is surprising move by the prosecution. Question of showing statement under Section 164 of the Code of Criminal Procedure of the witness would arise at the fag end of the examination-in-chief i.e. after the witness narrates the entire story. Here before it could be started such request is made. It shows the intention that under the guise of refreshing the memory, the prosecution intended that the girl should go through her statement under Section 164 of the Code of Criminal Procedure and depose accordingly. The record is not clear on this point as to whether informant was allowed to go through the said statement. The matter appears to have been got adjourned till 5th November 2016 and thereafter on 5th November 2016 further examination-in-chief proceeded. The note in the beginning itself states that the witness is not conversant with Marathi and therefore she requested her deposition to be recorded in English language. At that time APP as well as defence Advocate had no objection to record the evidence of the said witness in English and therefore,

the deposition was recorded in English only. Thereafter her examination-in-chief was completed. One question was asked in the cross-examination and the cross-examination was adjourned on the request of the defence Advocate. Another surprising fact then is, the learned trial Judge started with the recording of evidence of PW-2 mother when the informant PW-1 was not discharged completely from the witness box. Then examination-in-chief of PW-2 was recorded. Two questions were asked in the cross-examination and further cross-examination was adjourned till next date. At the cost of repetition, we would say that the said part of the deposition of PW-2 has also been recorded on 5th November 2016. In the meantime, on that day itself the FIR came to be exhibited in the testimony of PW-1. Thereafter the matter was adjourned on 9th December 2016 and to the utter surprise, learned Additional Sessions Judge passed an order below Exhibit-1 stating that the matter was kept for cross-examination but it is revealed that the complaint i.e. FIR was lodged as well as statement of PW-2 under Section 161 of Code of Criminal Procedure was recorded by police in Marathi, they both were not conversant with Marathi and told that they had narrated their statements in English but police have recorded it in Marathi, they are unable to speak Marathi. The learned

Additional Sessions Judge further observes that though he had recorded the testimony of PW-1 and PW-2 only in English language, the problem arose while recording cross-examination in respect of contradictions and omissions. He has stated that mandatory provisions of the sessions trial are that the deposition should be recorded in Marathi and then it should be translated in English, he will not be in a position to translate the same in English or vice-versa and therefore, he cancelled the previous evidence of both the witnesses and directed that the case should start de-novo by recording the evidence of the witnesses afresh in Marathi and translate it in English. Learned Additional Sessions Judge, to our mind, had no authority to start the recording of evidence de-novo. All those things ought to have been considered in the beginning itself when the trial Court started with the examination-in-chief.

8. Section 276 of the Code of Criminal Procedure deals with record in trial before Court of Session. It states that in all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding judge himself or by his dictation in open Court or, under his direction and superintendence, by an officer of the

Court appointed by him in this behalf. Further Subsection (2) of Section 276 of the Code of Criminal Procedure provides that such evidence shall ordinarily be taken down in the form of a narrative, but the Presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer. Section 277 of the Code of Criminal Procedure deals with language of record of evidence. It prescribes that in every case where evidence is taken down under section 275 or section 276, - (a) if the witness gives evidence in the language of the Court, it shall be taken down in that language; (b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or Presiding Judge, and shall form part of the record. The language of the Court in Maharashtra is Marathi. When the trial Judge had started recording of the evidence on 3rd September 2016, there was no such request or information to the Presiding Officer that the girl is not conversant with Marathi. But on the next date i.e. 5th November 2016 such request was made and then the evidence was recorded in English only.

9. The order below Exhibit-1 passed by the learned Additional Sessions Judge states that the case should start de-novo by recording the evidence of the witnesses afresh in Marathi and translate it in English. When the witnesses say that they were not conversant with Marathi, what difficulty they had expressed was that they are not good at grammar. It appears to be not the case of the witnesses that they do not understand Marathi. If we consider the FIR Exhibit-22, there is no statement that it was narrated in English and then it was taken down in Marathi. Rather the note shows that the informant had gone through the FIR and found out to be correct and then she has signed it. It is also to be noted that when it was decided by the learned Presiding Officer on 5th November 2016 that the evidence would be recorded in English only, the accused had no objection, but when it came to passing of the order by the learned Presiding Officer on 9th December 2016, it appears that the accused was not heard and abruptly without there being any provision for recording the evidence de-novo, it has been so started. We take this step on the part of the learned Additional Sessions Judge to be prejudicial to the accused.

10. Much has been said about the procedure that has been adopted is prejudicial to the accused, but now keeping that point aside for a moment, we would consider, whether the prosecution had proved its case beyond reasonable doubt and whether the Judgment of acquittal passed by the learned trial Judge is perverse, requiring interference at the hands of this Court. PW-1 has stated about the incident, rather as compared to her FIR, there is much exaggeration. However, informant has not explained as to why she was required to go for lunch to the house of the accused when there was mess in her hostel. In the submissions, the learned Advocate for the appellant has tried to submit that since many girls residing in the hostel had gone for education tour and as informant in this case had not gone, there was no arrangement for lunch in the mess. We could not find such specific statement in the testimony of the informant or PW-3 Bhagyashree. PW-3 Bhagyashree has rather stated that there were 75 girls in the hostel at the relevant time, which would be definitely consisting the girls taking education in various education years. PW-1 informant has stated that her batch-mates had gone to the education tour. That means, the education tour was for the 4th year students. Rather informant says that on 28th October 2014 she had gone to the hostel for

lunch at about 1.00 p.m. She says that she was taking lunch with hostel warden. Therefore, if she could have got lunch on 28th October 2014, she could have got it on 30th October 2014 also. She had not informed to PW-3 Bhagyashree that she would be leaving the college premises in the afternoon period for any reason.

11. One more important aspect that has been properly considered by the trial Judge is that the incident is alleged to have taken place on 30th October 2014 and according to the informant, she had narrated it immediately to PW-3 Bhagyashree. Though PW-3 Bhagyashree is supporting the informant, she herself had not tried to inform the said fact to any of the superiors or not tried to take the informant to police station. Informant says that though PW-3 had asked, as to whether she wants to lodge the FIR and informant told that she would not do anything unless she tells the facts to her parents. Informant also deposes about giving SMS to her mother and the mother also supports to receive such message. Of course there is no evidence collected by the investigating officer in respect of the same, but still that SMS was vague. It was in respect of misbehaviour of someone with the informant or her daughter

and in that case what the mother will do. Of course the mother would say that she would protect the daughter in whatsoever manner. But surprisingly PW-2 has not stated as to why she did not give a phone call to the informant and tried to extract from her as to what has happened. She has not stated that as the informant was not willing to disclose anything, she had tried to contact PW-3. PW-2 has not tried to come down to Parbhani and it has come in the cross-examination that PW-2 is a Gazetted Officer in Central Railway. The girl then chooses to accept the request of PW-3 Bhagyashree to stay in the hostel on the next day also and after the cultural programme was over, she says that she left for Pune as she could not get the reservation for Mumbai. Informant has stated that her parents picked her up on 1st November 2014 in the morning and in the car she disclosed entire episode to the parents. All the three of them had not decided to come to Parbhani immediately to lodge the report or for making an inquiry. But the FIR came to be lodged on 5th November 2014. Thus, there is inordinate delay in lodging the FIR, which has not been explained by the prosecution.

12. In the cross-examination of PW-1 informant has admitted that complaint was lodged against her for keeping two children, i.e. aged 3 and 5 years respectively, in her room and an inquiry

was conducted against her alleging that her said behaviour amounted to indiscipline in the hostel. She also admits that three advisers committee was established and accused was one of them. Another member of the said committee was wife of the accused. The said committee made inquiry against her. The said committee held her guilty and punished her to pay fine of Rs.250/-. The copy of the order imposing fine on her, has been produced at Exhibit-27. Taking into consideration these admissions, we find that the learned trial Judge was justified in holding that there was substance in the point raised by the defence that there was element of false implication of the accused. Here the learned Advocate appearing for the appellant tried to submit that those two children, aged 3 and 5 respectively, were in fact the children who had come just to play with the girls in the hostel and they were from the staff quarters or nearby area. We would like to say that we are not going into much more details about the same. Suffice it to say that there was an inquiry held by a committee, of which the accused and his wife were the members. The said incident had taken place much prior to the present incident and the order imposing fine was passed on 28th December 2012. It has come on record that the wife of the accused, who was serving in the same college

earlier, was later on transferred to the college at Akola. It is not the case of informant that absence of the wife of the accused from the college as well as the house was not known to her. If wife of the accused was in the same college, then definitely the informant should have knowledge about her transfer.

13. The learned trial Judge has also noted that the sole testimony of prosecutrix can also be relied for convicting an accused if the testimony is trustworthy. However, for the aforesaid reasons and also the reasons those have been stated including the contradictions and omissions, the learned trial Judge found that the testimony of the informant – prosecutrix is not inspiring confidence and therefore he has acquitted the accused. We do not find the impugned Judgment perverse or bad in law in any manner. No case is made out for admitting the Appeal.

14. The Appeal, therefore, stands dismissed at the admission stage.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE