

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.262 OF 2023
ALONGWITH
INTERIM APPLICATION NO.2993 OF 2023
IN
CRIMINAL REVISION APPLICATION NO.262 OF 2023

Laxman Dhakalu Patil	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Prajakt M. Arjunwadkar a/w Raj Satam and Dhananjay Utture for the Applicant.

Mr.S.R. Agarkar, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 7th September, 2023

P.C.

1] Respondent No.2, lodged a report contending that on 23.03.2014 at about 10.00 a.m., when she was alone in the house, the accused gained entry in her house, with an intention to outrage her modesty and by holding her hands he embraced her, with a bad intention. After she raised an alarm, the neighbours came to her rescue and the accused ran away from the spot.

Despite attempt of being chased, he could not be caught.

The above report resulted in registration of CR No.24/2014 by invoking Sections 452, 354 and 354(d)(1) of the Indian Penal Code.

2] As a part of investigation, the Spot Panchanama was drawn and the statements of witnesses came to be recorded by the Investigating Officer and charge sheet was filed before the learned Metropolitan Magistrate, who took cognizance of the offence and framed charge under Section 452 of the IPC for committing house trespass by entering into the house of the complainant and also under Section 354 for outraging her modesty by holding her hands and embracing her.

The accused pleaded not guilty and preferred to be tried.

3] To establish the guilt, the complainant entered into witness box and deposed before the Court, that since her marriage in the year 2011, the accused had an evil eye upon her and he used to pass nasty comments, after her brother-in-law and sister-in-law left for work. The accused is also stated to have gone to the extent of claiming that the daughter born to the complainant was his and thus attempted to defame her.

As regards the alleged incident dated 23.03.2014, of which she complained to the Police station and the subject offence was registered, she reiterated that the accused entered the house from the back door, and he held her hand and embraced her and this act, outraged her modesty.

It is the version of the complainant that, when she raised a cry, the people in the neighbourhood arrived at the spot and this included Manohar Krishna Patil (PW 3), Laxman Mukund Patil (PW 4), Manisha Manohar Patil (PW 5), and her nephew Gopal and thereafter the accused took to his heels and though an attempt was made to nab him, he was not found. She narrated the incident to her husband and father and then reported the same to the Police Station.

4] The prosecution examined PW 3, 4 and 5 to corroborate her version, but conjoint reading of the evidence, of all these witnesses, I can only infer that the case of the prosecution suffer from inconsistency and their versions have impacted its veracity.

Pertinent to note that the accused was made to face with the charge under Section 452 and 354 of the IPC. As far as offence of stalking is concerned, though it is the version of the complainant that the accused was ogling her and making nasty comments, but the charge was not framed.

5] In order to establish the charge of outraging modesty, it is necessary to establish the use of criminal force with an intent to outrage the modesty.

Criminal force as defined under Section 350 of the IPC, contemplate intentional use of force to any person without that persons consent, in order to commit any offence or intending that by use of such force or knowing it to be likely that it will cause injury, fear or annoyance to the person to whom force is used.

Section 351 of the IPC defines an assault, to mean any gesture or any preparation intending or knowing it to be likely that it will cause any person present to apprehend that one he who makes the gesture or preparation is about to use criminal force to that person.

In order to attract Section 354, it is necessary to scan the evidence brought on record by the prosecution.

The version of the complainant is that the accused entered her house, held her hand and embraced her and upon her shouts, the persons in the neighbourhood arrived at the spot.

6] PW 4, who admittedly was residing two houses away from the

house of the complainant could hear her cry for help, but those residing in her immediate neighbourhood i.e. her brother-in-law's family or those who were residing behind her house i.e. Sagar Patil and Sandip Patil, nobody from these houses, attended to her call.

Assuming that as per Manohar Patil, PW 3, when he heard the shriek from the complainant, he alongwith his wife Manisha, brother Laxman, sister-in-law Sunanda and Gopal rushed towards the complainant's house but these witnesses differ in the version, from what the complainant has stated, as Manohar has deposed that he noticed that the accused had embraced the complainant and thereafter he fled and on being followed, he ran into the house and bolted the door from inside. As per Manohar, the complainant told him that the accused was forcing himself upon her.

In the cross-examination, Manohar admit that the house of the complainant's brother in law is separated by a lane and he also admit that when one stands on the road, the happenings in the house of the informant are clearly visible.

On being confronted with his statement given to the police, he admit that he had stated in the statement that accused held hand of the complainant and he had also told that he had embraced her, but it is not so recorded in the statement. Further about he chasing the accused was also mentioned in the statement to the police, but it is not recorded.

7] PW 4 Another witness, Laxman, who reached the house of the complainant alongwith PW 3 state that the accused was holding hand of the complainant, when they reached there and she was attempting to freed herself and when they reached on the spot, the accused ran away.

As per PW 4, the complainant disclosed that the accused was attempting to hold her hand and take her in his arm and therefore she raised a cry.

Turning to PW 5 Manisha, who had accompanied her husband has deposed that when she reached the house of the complainant, she was attempting to free her hand from that of the accused and the accused ran away. As per PW 5 when she enquired with the complainant, she is alleged to have stated that the accused had held her hand and embraced her and indulged into obscene act and therefore she raised a cry for help.

8] The aforesaid version of the prosecution witnesses is at variance with one another. It also varies with the version of the complainant, who has admitted that Manohar Patil is closely associated to her husband and he reside two houses away, whereas, her brother in law was residing in her immediate neighbourhood.

The cross-examination of Manohar also reveal that before lodging of the FIR, a discussion took place between the husband of the complainant, his brother and Sidappa almost for an hour and thereafter he gave statement to the police.

9] The Spot Panchanama of the house of the complainant refer to the proximity of the other houses situated and this it is unbelievable that on her cry for help only one family of the Patils came to her rescue. There is also contradiction as to whether the accused fled away from the spot as according to Manohar, he bolted the door of his house and locked himself inside the house, whereas, according to the complainant, he ran away and could not be traced.

This is a material contradiction in the prosecution case, which

affects its credibility to a large extent.

10] The accused in his statement under Section 313 of the Cr.P.C. has offered a specific explanation that there was animosity between him and Manohar Patil as regards the sale of buffalo as Manohar Patil's sister was given to Prakash Awdan and his dog and poultry used to enter into Prakash house and hence a quibble had taken place between his mother and the complainant and therefore they had lodged the false complaint and implicated him.

Since the case of the prosecution is not proved beyond reasonable doubt and is materially affected by the inconsistency in the version of the prosecution witnesses, the benefit must go the Applicant.

11] The Courts below failed to appreciate the evidence placed before it and the Magistrate without appreciating the evidence placed by the prosecution, failed to notice the lacuna and inconsistency in the version of the witnesses and has erred in recording the finding of guilt against the accused.

The Appellate Court upheld the said finding, and confirmed the conviction and sentence, once again falling into a similar error of not appreciating the inconsistency and improbability of the prosecution case, as surfaced through the witnesses.

12] As a result of the aforesaid discussion, the concurrent finding of the courts below, being perverse as it has failed to appreciate the evidence placed before it, deserve to be set aside. Hence, the following order :

ORDER

a] Criminal Revision Application No.262/2023 is allowed.

b] The impugned Judgment and order dated 08.08.2023 passed by the Additional Sessions Judge, Gadhinglaj in Criminal Appeal No.13/2017 is quashed and set aside.

c] The impugned Judgment and order dated 06.03.2017 passed by the JMFC Chandgad, District Kolhapur, in Regular Criminal Case No.14/2014 is quashed and set aside.

d] Appellant stand acquitted of the charges levelled against him.

e] In the wake of disposal of Criminal Revision Application, Interim Application No.2993/2023 also stands disposed off.

[BHARATI DANGRE, J]