

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 24 OF 2017

APPLICANT : Sanjaysingh S/o. Mayasingh Bhada,
Aged about 34 years, Occu: Labour,
R/o. Durgapur Neri, Chandrapur,
Distt. Chandrapur.

//VERSUS//

NON-APPLICANT : State of Maharashtra, through P.S.O.
P.S. Ram Nagar, Chandrapur.

Mr. M.V. Rai, Advocate for the Applicant.

Ms. Mayuri Deshmukh, APP for the Non-applicant/State.

CORAM : G. A. SANAP, J.

DATED : 30th JUNE, 2023.

ORAL JUDGMENT

In this revision application, challenge is to the judgment and order dated 1st February, 2017, passed by learned Additional Sessions Judge, Chandrapur, whereby learned Additional Sessions Judge dismissed the appeal filed by the applicant/accused against his conviction and sentence awarded by learned Judicial Magistrate First Class, Chandrapur for the offences punishable under Sections 354, 506, Part-I of the Indian Penal Code, 1860 (for short "IPC"). Learned Magistrate, on conviction, had sentenced the accused to

suffer rigorous imprisonment for two years for the offence punishable under Section 354 of the IPC and rigorous imprisonment for two years for the offence punishable under Section 506, Part-I of the IPC. He was further sentenced to pay fine of Rs.1,000/- on each count and in default, to suffer rigorous imprisonment for one month.

02] The facts are as follows:

PW-1 is the informant. On 15th October, 2003, she had lodged a report at Ramnagar Police Station, Chandrapur against the accused. On the basis of the said report, a crime bearing No.346/2003 was registered against the accused. It is the case of the prosecution that on 15th October, 2003 at about 3:00 p.m., the informant had gone to bring soil from the cremation ground. She was alone. The accused, after seeing the informant, went there and caught hold her hand. The informant freed herself from the clutches of the accused by giving jerk. The accused ran away from the spot. The informant left the said place. On the way towards her home, the accused, who was hiding on the roadside, followed her. The accused caught her waist and hand. The accused threatened to kill her, if she disclosed the incident to anybody. The informant slapped him. The accused pulled her hair and knocked her down.

Her bangles were broken. The informant raised shouts. The accused fled away from the spot. When the informant reached her house, the accused went there and quarrelled with her and her husband. He assaulted the informant.

03] The informant went to the police station and lodged the report. The crime, as above, came to be registered. PW-5 carried out the investigation and filed charge-sheet against the accused. The prosecution examined four witnesses. Learned Judicial Magistrate First Class, Chandrapur found the said evidence cogent, concrete and reliable, to prove the charge against the accused and convicted and sentenced the accused as above. The appeal filed by the accused against his conviction and sentence was dismissed by learned Additional Sessions Judge, Chandrapur. The accused is, therefore, before this Court in revision.

04] I have heard Mr. M.V. Rai, learned advocate for the accused and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

05] Learned advocate for the accused submitted that there are material omissions and inconsistencies in the evidence of the witnesses in relation to the actual occurrence of the incident as well

as the place of occurrence. Learned advocate submitted that the evidence of the informant with regard to the occurrence of incident, is not at all believable. Learned advocate submitted that the husband of the informant and the accused were not on good terms and therefore, the false report was lodged against the accused. Learned advocate submitted that there is no independent corroborative evidence to support the case of the prosecution put forth on the basis of the statement of the informant. Learned advocate submitted that the informant and her husband improved their statements in the Court. Learned advocate submitted that the evidence of other witnesses is not sufficient to corroborate the case of the prosecution. Learned advocate submitted that the Courts below have failed to appreciate the evidence of the prosecution properly and thereby came to a wrong conclusion.

06] Learned Additional Public Prosecutor submitted that the evidence of the informant before Court is consistent with the facts stated by her in her report. Learned Additional Public Prosecutor submitted that certain statements attributed to her as omissions during her cross-examination, find place in the report as well as in her statement. Learned Additional Public Prosecutor submitted that the accused in his cross-examination has admitted his presence

on the spot. Learned Additional Public Prosecutor further submitted that the evidence of the informant is of sterling quality and therefore, the same has been accepted by the Courts below. Learned Additional Public Prosecutor submitted that the Courts below, after considering the available evidence on record, have recorded concurrent findings of fact. Learned Additional Public Prosecutor submitted that in the exercise of revisional jurisdiction, unless and until it is pointed out to the satisfaction of the Court that there was an apparent error on the face of the record or perversity in the findings of the Courts below, the judgment and order cannot be reversed. In short, learned Additional Public Prosecutor supported the judgment and order passed by learned Additional Sessions Judge as well as the judgment and order passed by learned Judicial Magistrate First Class.

07] In order to appreciate the rival submissions, I have gone through the record and proceedings and particularly the evidence of the informant. It is to be noted that the informant is the main witness of the prosecution to prove the charge against the accused. The incident occurred in the year 2003. The informant gave her evidence before Court in the year 2010. In order to appreciate the submissions advanced by learned advocate for the accused that

there are major omissions and inconsistencies in the evidence of the informant, I have minutely perused her evidence and report, which is at Exh.24. Perusal of the evidence and report would show that during her cross-examination, she was questioned about the material improvements made by her at the time of her evidence before the Court. Certain omissions were attributed to her from her report as well as statement. It appears that learned Magistrate, without cross-checking and satisfying himself about the omissions put-forth to the witness, recorded the cross-examination on the basis of the questions put to the witness by the cross-examiner. Perusal of the cross-examination and perusal of the report, which is at Exh.24, together would show that the facts, which find place in the report as well as in her statement, have been suggested during the cross-examination as omissions/improvements.

08] On going through the record and particularly her report and her examination-in-chief, I am satisfied that on the material part of the incident, the informant has not deviated from the statements made by her in her report. The Court has to see the substance of the report and the substance of the evidence before Court. It is seen on perusal of her examination-in-chief that as far as the main incident is concerned, PW-1 informant has not

deviated from the facts recorded in the First Information Report at the time of her evidence. It is to be noted that in her report, she had specifically stated that the accused had caught hold her hand and therefore, her bangles were broken. This fact was suggested in the cross-examination as an omission. It is further seen on perusal of the cross-examination of PW-5 Investigating Officer that he had admitted this fact as an omission from the report and the statement of the informant.

09] In my view, it appears that the Prosecutor who conducted the case, learned Presiding Officer who recorded the evidence and the Investigating Officer who deposed in terms of record of the investigation, have adopted a very casual approach. The facts, which find place in the report and her statement, have been suggested as omissions/improvements during her cross-examination. It is not out of place to mention that the most important object of criminal trial is to protect the rights of the accused guaranteed under the law and also ensure justice to the victim of the crime. The Presiding Officer, while conducting the criminal trial, has to play a very vital and important role. The Presiding Officer needs to be watchful, careful and must be seen on perusal of record to have played a participatory role. The Presiding

Officer cannot remain a mute spectator in the process of conduct of the trial. The active participation and the strict observance of the provisions of the procedural and substantive law in the conduct of the criminal trial, is necessary to protect the rights of the accused and the victim and thereby to ensure a fair trial. It needs to be stated that the mistakes of the kind noticed above, could occur only when there is lack of active participation and careless approach, while conducting the criminal trial. The mistake committed by the Presiding Officer in a given case, can prove fatal to the accused or to the informant/victim. The recording of evidence in the criminal trial and particularly the omissions and contradictions, is the most important part. The proved omission or contradiction in a given case can become the basis of the final adjudication of the criminal case one way or the other.

10] In this case, the statements attributed to the informant as omissions from her report and her statement, are not in fact omissions. It needs to be stated that, if it is found at any stage that the statement attributed to the witness as omission finds place in the report and statement, then the Court can take note of it and proceed to decide the case on the basis of the available material ignoring those proved omissions.

11] In this case, PW-1 informant has categorically deposed about the incident. She has narrated the overt acts committed by the accused. On the basis of her evidence, the overt acts committed by the accused have been proved. Her husband has corroborated her testimony on material aspects. Her husband has not made any statement in his evidence to suggest that he tried to exaggerate the facts. His further evidence indicates that he was privy to the part of the incident and he narrated the same in a most natural way before the Court.

12] PW-4 Kalpana Latelwar is an independent witness. She has stated that near the tank, the accused had caught hold the informant. The accused beat her. She was threatened by the accused not to disclose the incident to anybody. She has supported the evidence of the informant on material aspects. The informant has stated that the accused came from behind and caught her waist. She has further stated that the accused told her not to lodge report of the incident. The accused threatened to kill her in case the report was lodged by her.

13] PW-6 is the lady police constable, who had carried the informant to the hospital for examination. The M.L.C. report was proved on the basis of her evidence. PW-5 Investigating Officer

has deposed that he had drawn the spot panchanama. On the spot, he had found the broken bangles' pieces. The broken bangles pieces were seized by him pursuant to the seizure panchanama at Exh.31. The panch witness PW-3, on the seizure and spot panchanama, has not supported the case of the prosecution. However, he has admitted his signatures on the spot panchanama as well as the seizure panchanama. The evidence of PW-5 Investigating Officer on the preparation of the spot panchanam and the seizure of the bangles, if read with the evidence of PW-1, would show that it cannot be discarded on this count. The Courts below have taken this evidence into consideration. The evidence on record is sufficient to prove the charge against the accused. No interference is warranted in the well reasoned judgment and order passed by learned Additional Sessions Judge.

14] Learned advocate for the accused submitted that considering the fact that the offence was committed in the year 2003 and the accused and informant have moved ahead in their life, the substantive sentence may be suitably modified.

15] Learned Additional Public Prosecutor submitted that considering the nature of the offence proved against the accused, the accused does not deserve leniency. It is true that the offence

was committed in the year 2003. The accused and the informant are the residents of the same village. It is true that by this time, they must have moved ahead in their life. In the facts and circumstances, in my opinion, the substantive sentence of two years would be excessive. In my view, the substantive sentence of one year would meet the ends of justice.

16] Accordingly, the revision application is **dismissed**. The substantive sentence is modified as under:

The substantive sentence awarded by learned Judicial Magistrate First Class, Chandrapur and confirmed in appeal by learned Additional Sessions Judge, Chandrapur, is reduced from two years to one year.

17] Learned Judicial Magistrate First Class, Chandrapur to ensure the compliance of this order.

(G. A. SANAP, J.)

Vijay