

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL REVISION APPLICATION NO. 88 OF 2022

- 1) Vardan Durgesh Shukla,
Aged about 23 years, Occu. - Student,
R/o. Mahavir Nagar Yavatmal,
Taluka and District Yavatmal.
- 2) Anmol Durgesh Shukla,
Aged about 26 years, Occu. - Service,
R/o. Mahavir Nagar Yavatmal,
Taluka and District Yavatmal.

.... **APPLICANTS**

// VERSUS //

- 1) State of Maharashtra,
Through Police Station Officer, Lohara,
Taluka and District Yavatmal.

.... **NON-APPLICANT**

Mr. Akshay Sudame, Advocate for the applicants.
Mr. N.R. Rode, Additional Public Prosecutor for the
non-applicant.

CORAM : BHARATI DANGRE, J.

DATED : JANUARY 27, 2023

ORAL JUDGMENT :

1. Heard.

Admit.

Heard finally with the consent of the learned counsel for
the parties.

2. Application is filed by two brothers, who are aggrieved by the reversal of their acquittal by the Appellate Court Additional Sessions Judge, Yavatmal vide its judgment delivered on 09.03.2022 in Criminal Appeal No. 5 of 2018.

3. The case of the prosecution has surfaced through the statements of the victim girl, aged 21 years, who has stated that on 16.10.2015 at around 10.30 a.m., she received a phone call from the applicant No.2 Anmol asking her to come out of the college or else he would create a ruckus by coming there. While she was in an attempt to get out of the college premises, she was abused in filthy language, which was insulting and was highly abusive as per her version. She went home and reported the incident to her parents.

On 17.10.2015, that is on the next date, she lodged a complaint with Lohara Police Station and it is the case of the prosecution that while she was approaching the Police Station, she received threats from the applicant No.1 that if she lodge a complaint, she will have to meet dire consequences.

4. It is in the background of this complaint lodged by the victim girl, the Investigating machinery was set into motion. After completing the investigation, the charge-sheet came to be filed against the present two applicants of committing the offences punishable

under Sections 354, 354-D, 506, 509 read with Section 34 of the Indian Penal Code (IPC).

The offences being tried by the Magistrate, the trial commenced before the Judicial Magistrate, First Class, Yavatmal. During the trial, six witnesses came to be examined, the victim girl being examined as witness No.2 and her parents were examined as witness Nos.4 and 5. Two independent witnesses were also examined by the prosecution being PW.-1 and PW.-3. Apart from this, the Investigating Officer stepped into the witness box and was examined as witness No.6.

The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, where both of them denied the accusations and specifically pleaded that it was a case of false involvement.

5. On appreciating the evidence that was placed before the Magistrate, on 13.10.2017 the applicants were acquitted of the charges levelled against them. On an appeal being preferred before the Additional Sessions Judge, Yavatmal, the finding rendered by the Magistrate was reversed and both the applicants stood convicted for the offences punishable under Sections 354-D, 506 and 509 of the IPC.

On conviction, the applicants were directed to suffer One year Simple Imprisonment and to pay a fine of Rs.1,000/-. The

sentences imposed under the aforesaid sections were directed to run concurrently. As far as Section 354 of the IPC is concerned, the findings by the Magistrate are upheld, in Appeal.

6. Heard the learned counsel for the applicants and learned Additional Public Prosecutor. Perused the private paper book placed on record and also perused the reasons recorded in the judgments delivered by the Courts below.

I deem it appropriate to appreciate the evidence that has prompted the respective Courts to pass the orders, the first Court acquitting the accused persons whereas the second Court reversing the acquittal as far as certain offences are concerned.

The victim who examined herself as PW.-2 reiterated the alleged incident, which she had complained to the Police Station, which had resulted in registration of crime. In her cross examination, she has specifically admitted that she was acquainted with accused No.2 Anmol and when she received a phone call on 16.10.2015, she did not lodge any complaint because she had no objection about it nor did she inform about the call to her friends.

As regards accused No.1 – Vardan is concerned, no details are provided by her about the manner in which and the place at which, she was threatened by him. The accusation levelled against him is

vague and uncertain, devoid of any proof. There is no independent witness examined on that aspect by the prosecution.

The prosecution witness Nos.4 and 5, who are the parents of the P.W.-2 are merely hearsay witnesses, who have made reference to the history of the incident narrated to them by their daughter.

7. The prosecution rests its case upon two witnesses, who are referred to us as independent witnesses being P.W.-1 and P.W.-3.

As far as P.W.-1 is concerned, his statement was recorded by the Police on 18.10.2015, where he had specifically stated that on the date of the incident i.e. 16.10.2015 at about 10.45 a.m., while he was standing at a nearby pan kiosk for consuming mixture of tobacco, he noticed daughter of his friend on the road. He inquired with her as to what happened and she narrated the incident of Anmol harassing and outraging her modesty by uttering abusive words.

When he stepped into the witness box, in utter contrast, he deposed before the Court that the incident occurred at 03.00 p.m. on 16.11.2015 when he was standing at the pan kiosk, he heard the abuses by Anmol, in the name of the victim girl as well as her mother and as per his deposition, he dropped the victim to her house.

In the cross-examination, he is admitting that he shows close proximity with the father of the victim and he specifically admitted that the portion marked 'A' in the statement was narrated by

him to the Police. A suggestion in the cross examination also elicited an admission that his house is at a far distance from the Nandurkar college in which the victim girl was studied where the incident is alleged to have taken place.

8. Another independent witness is a young girl aged 13 years, who deposed before the Court that she is not acquainted with the victim girl, but in 2015 at around 10.30 a.m., victim was abused by Anmol in filthy language and this incident took place near her house which was located near the Nandurkar college.

In her cross-examination, PW-3 had admitted that she is a student of Rajarshee Shahu Maharaj School, Lohara and her school assemble at 10.00 o'clock.

9. During investigation, Spot Panchnama is also prepared, which is proved through the Investigating Officer i.e. PW-6 and in the Spot Panchnama, there is no reference of the pan kiosk, whereas the house of the PW-3 is mentioned, being located at left side of the road coming out of the college and leading towards Lohara by pass.

10. On appreciating the evidence placed before it, the Judicial Magistrate, First Class has rightly construed the same and recorded a clear finding that the prosecution has failed to prove its case by cogent

and reliable evidence, on account of the inconsistency in the version of P.W.-1, who was cited by the prosecution as independent witness. The inconsistency being apparent, is as regards the timing at which the incident is alleged to have taken place. As far as the minor girl – P.W.-3 is concerned, in her cross-examination she has clearly admitted that her school timings are from 10.00 o'clock and in that contingency, when the incident is alleged to have taken place at 10.30 a.m., near her house and when she is not acquainted either with the victim/complainant or the accused No.2, there is no reason why she should particularly remember this incident and why she was cited as a witness.

In any case, the testimony of P.W.-1 and P.W.-3 cannot be believed, on account of the inconsistencies which have surfaced in the cross examination.

Now what remains is only the evidence of the victim/complainant, which is clearly silent about the specifications as regard the accused No.1 Vardan, who is alleged to have threatened her so as to desist her from lodging the report to the Police Station. Neither any independent witness is examined on that aspect nor any details have been cited by the victim herself. As far as the other accused Anmol is concerned, she has not referred to any previous incident of contacting or attempting to contact her, so as to establish the accusation of forced personal interaction, despite her indication of

disinterest. One thing is apparent that, when she received phone call from accused No.2, she started walking outside her college premises, without reporting to anyone.

11. The Magistrate has therefore rightly appreciated the evidence and acquitted the accused persons of the charges levelled against them.

12. When the judgment of the Appellate Court is perused, what is startling, is the following observation :-

“8) Learned A.P.P. Mr. M.S. Gangalwar contended that no doubt, her parents used to accompany with victim while going to college, it does not mean that parents were accompanied with victim during entire college hours. On the contrary, it is not feasible for any parents to attend entire college hours. Therefore, he argued that only on filmsy doubt and hypothesis learned trial Court has committed error and acquitted the accused.”

What is the basis for the aforesaid observations is however not clear as the Appellate Court has discussed the evidence available on record in the form of these six witnesses and has randomly recorded that it is worth to note that in usual course no parents accompanied a daughter while going to the school and college and there is no reason why her parent should have been accompanied her. However, the Appellate Court has failed to consider an important aspect as to the presence of the P.W.1 on the said spot when he specifically admitted in

his cross examination that his house is situated at a far distance of the college and there is no reason why he should have been present at the relevant spot when the incident took place. Apart from this, the testimony of P.W.-1 does not inspire confidence, for the simple reason that there is inconsistency in his version which is proved through the Investigating Officer being the timing of the incident.

Apart from this, as per his statement recorded under Section 161 of the Code of Criminal Procedure, which is marked as “A”, whatever was stated by him was on the basis of information supplied to him by the victim girl, leads to an inconclusive inference that he is not an eye witness to the said incident.

13. As far as the offence under Section 354 of the IPC is concerned, the Appellate Court has rightly acquitted the accused No.1 and 2 of the said offence but, in my considered opinion, the offence of stalking is also not made out since in an offence of stalking which is punishable under Section 354-D of the IPC is attracted, where a man follows a woman and contacts, or attempt to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such a woman or he monitors the use by a woman of the internet, e-mail or any other form of electronic communication.

“Stalking” has a definite contention and since it itself involves a repeated attempt to establish a contact with a specific

intention of fostering a personal interaction, despite an indication on part of the woman showing disinterest. The aforesaid element being conspicuously absent in the version of P.W.2 and further on the basis of her credibility which has been already impeached in cross examination, when she has categorically admitted that she was acquainted to Anmol as he was studying in the same college and prior to the said incident being reported, she was never followed by him either on some electronic platform or physically, for the purpose of soliciting some interests, the offence cannot be said to have been made out.

14. In the wake of the above position emerging, on appreciating the evidence and also considering the essential ingredients, the offence of stalking which is made punishable under Section 354-D of the IPC, the specific Section being introduced by the Amendment Act of 2013 in the wake of Justice Verma Committee Report, I do not think that the judgment of the Appellate Court is sustainable. As far as the offences punishable under Section 506 and 509 of the IPC are concerned, which prescribe the punishment for criminal intimidation and for uttering words intended to insult the modesty of a woman, it is amply clear that the prosecution has utterly failed to establish these offences against the accused No.1. As far as accused No.2 is concerned, the offence of criminal intimidation definitely warrants an intention to cause alarm to a person or to cause

to that person to do any act, which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding execution of such threat. The intention has to be necessarily established before a conviction is sustained under Section 506 of the IPC. Same is the case as regards Section 509 of the IPC, since the Section contemplates the utterance of words, gestures or acts which are intended to insult the modesty of a woman.

The intention, not having been established by the prosecution through reliable evidence, the applicant No.2 also deserves acquittal of the said charges under Section 506 and 509 of the IPC.

15. In the wake of the above, the Revision Application is allowed. The impugned judgment dated 09.03.2022 passed by learned Additional Sessions Judge, Yavatmal in Criminal Appeal No. 5 of 2018 is quashed and set aside.

In view of the disposal of the Criminal Revision Application, the Criminal Application (APPR) No. 107 of 2022 is disposed of.

(BHARATI DANGRE, J.)