

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

CRIMINAL REVISION APPLICATION NO.116/2022

Gajanan Sudhakar Ingale,
Aged about 35 Yrs., Occ. Labour,
R/o Umari Pathar, Tq. Arni,
Dist. Yavatmal.

... Applicant

- Versus -

State of Maharashtra,
through its Police Station Officer,
Police Station, Arni, Tq. Arni,
Dist. Yavatmal.

... Non-applicant

Mr. M.I. Dhattrak, Advocate for the applicant.
Mr. V.A. Thakare, Additional Public Prosecutor for the non-applicant.

CORAM: BHARATI DANGRE, J.
DATE : 27.1.2023

ORAL JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The applicant / accused along with the complainant / victim is resident of village Umari Pathar and engaged in agricultural operations.

The incident is alleged to have taken place on 15.1.2008 when the victim along with her husband were present in their field for agricultural operations and she was assisting her husband by ensuring supply of water for the purpose of sprinkling activity. At around 2 p.m. she started proceeding towards field of her father-in-law by the boundary (dhura) for fetching water when all of sudden, it is alleged that the applicant intercepted her and questioned her whether thresher machine is available, to which she responded in the negative. All of sudden, the applicant felled the victim down and sat on her chest and pressed her chest by unbuttoning her blouse. He snatched her *Mangalsutra*, as a consequence, victim raised a cry, upon which the applicant assaulted her on nose and mouth and she started bleeding. The victim pleaded with the applicant to stop but he responded by stating that if he left her alive she would inform about the incident to the villagers and, therefore, with an intention to kill her he gagged a piece of cloth in her mouth as a result of which she became unconscious.

As per the case of the prosecution, her husband and one Bandu Jaiswal rescued her and took her to the Rural Hospital, Arni from where she was referred to Government Hospital, Yavatmal where she came to be operated and she remained there for about 10 days and on 25.11.2008 she was discharged.

Subsequent to the discharge, she lodged a report to the Police Station, Arni on 26.11.2008, which resulted in registration of Crime No.188/2008 by invoking Sections 325 and 354 of the Indian Penal Code.

3. The investigation machinery which was set into motion on lodging of the F.I.R. by the victim resulted in filing of chargesheet on 31.1.2009. The prosecution led its case before the Judicial Magistrate First Class, Arni through two witnesses, the victim herself having examined as P.W.1 and her husband being examined as P.W.2.

On appreciation of evidence, the J.M.F.C., Arni in Regular Criminal Case No.80/2009 convicted the applicant for

the offence punishable under Section 354 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 2 years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months. Apart from this, a compensation of Rs.1,000/- was directed to be paid.

The, applicant, however, stood acquitted for the offence punishable under Section 325 of the Indian Penal Code by recording that the injuries sustained by the victim do not fall within the ambit of Section 325 of the Indian Penal Code and hence charge under Section 325 is not established.

On an appeal being taken before the Additional Sessions Judge, Darwha in the form of Criminal Appeal No.23/2016, the Appellate Court concurred with finding rendered by the trial Court vide its judgment dated 1.4.2022.

Being aggrieved, present revision application is filed.

4. The applicant faced the following charges on 15.11.2008.

“1. Does the prosecution prove that the accused used criminal force against the informant on 15.11.2008 at about 2.00 p.m. in a field at Umari-Pathar in order to outrage her modesty?

2. Does the prosecution prove that the accused on the same date, time and place intentionally caused grievous hurt to the informant by fist blows?”

In support of the charge the prosecution examined its key witness, the victim, aged 25 years, who had lodged the report with the Police Station resulting the applicant being arraigned as an accused in the said crime.

In the witness box, the victim has reiterated her version in her complaint filed on 26.1.2008 and narrated the sexual assault caused to her by the applicant coupled with the attack mounted by fist blows on her nose and mouth resulting into bleeding injury. In her complaint she narrated that she became unconscious and her husband and neighbour Bandu Jaiswal brought her home and thereafter carried her to the hospital at Arni from where she was referred to the Government

Hospital, Yavatmal for further treatment where she was operated for fracture of the nasal bone.

In her deposition before the Court the victim categorically deposed that at around 1.30 p.m. when she was proceeding to her father-in-law's village for fetching water the applicant intercepted her and when she ignored and started walking ahead he followed her and committed an act which amounted to outrage her modesty and he has also beaten her brutally. She also deposed that the applicant had the intention to kill her so that she cannot disclose the incident to anyone in the village and tied her mouth and strangled her which resulted in she becoming unconscious. She categorically deposed that when she regained her consciousness a women in the neighbourhood gave her water and her husband and one Bandu Jaiswal brought her home and all the while this happened she was in an unconscious condition.

She deposed that Tahsildar recorded her statement in the Hospital at Arni from where she was taken to Yavatmal where

her statement was once again recorded. The victim has deposed that she was at Hospital for about 8 to 10 days. The doctor had informed her that there is coagulation of blood and one of her bone of the face had also broken.

The victim also cast aspersions on the police machinery by deposing that on her discharge from the hospital she was called in the police station by Shri Anmulwar and asked her to sign the blank F.I.R. and threatened that if she did not put her signatures, she will be arrested but she did not budge and she went to home. On the next day the police visited her place and in the absence of lady police constable she was taken to the spot though she was feeling very weak and from the spot pieces of her bangles, her head-bow and beads of a neck-piece were also found. Her saree as well as the clothe which was used for gagging her and blouse was also seized by the police. Her statement was recorded in the police station and her signature was obtained on the report which was prepared.

5. The learned counsel Mr. Dhattrak has took me through the entire testimony as well as cross-examination of the victim and in support of his statement that in the wake of the material contradictions and omissions her testimony is not credible and particularly when it is to be compared with the testimony of her husband, with lacunae surfacing on record, the prosecution's star witness has failed to prove the case beyond reasonable doubt and, therefore, the benefit of doubt must be given to the accused.

6. The prosecution has examined the victim and her husband. The victim has stated that she was intercepted by the accused and by the objectionable act committed by him her modesty was outraged and with an intention to eliminate her, the accused strangled her and gagged her mouth with a piece of cloth, as a consequence she lost her consciousness. In her evidence before the Court she deposed that a women in the neighbourhood noticed her and offered her water. However, this

women never surfaced on record as prosecution has not named her as a witness. It is unclear as to till what point of time the victim remained unconscious as her version is, her husband and one Bandu Jaiswal took her to the hospital in unconscious condition. It is, therefore, not clear as to who noticed the victim in an unconscious condition and what the prosecution has left is only P.W.2 her husband, who obviously is an interested witness. His evidence has to be closely analysed to assess whether he corroborated the version of the victim.

P.W.2 however gives a completely different story than P.W.1.

He deposed that after 1.30 p.m. his wife did not bring water and as he had no water, he went to see his wife on the well in his father's field. However, he did not notice his wife there but he found her lying under a tree in the vicinity and the tree was standing on the dhura of his father's land. He has further deposed that he noticed the accused running away and he chased him. He thereafter raised a cry in the name of his father, upon which Bandu Jaiswal arrived at the spot.

The inconsistency in the versions of P.W.1 and P.W.2 is apparently evident as P.W.1 had specifically deposed that some woman in the neighbourhood offered her water and then her husband and Bandu Jaiswal arrived there and according to her she was lying unconscious for some time whereas according to P.W.2 when he reached the spot he noticed the presence of the accused there and on realizing that P.W.2 has arrived to rescue his wife, the accused ran away from the spot to be chased by P.W.2. There is no reference of any women and another important glaring aspect of the matter is that when P.W.2 cried for help, Bandu Jaiswal came to his rescue. If this is so, when P.W.1 victim has deposed that she had also raised cry for help, it is unbelievable that though people were working in the adjoining fields, nobody came to her rescue, particularly when in her cross examination she has admitted that agricultural operations were going on in various fields at the relevant point of time.

According to the victim scuffle with applicant lasted for half an hour and she has specifically admitted in her cross-examination that while her modesty was being outraged she

attempted to raise hue and cry but the accused did not permit her to do so and till the time she was strangulated, the accused had not pressed her mouth with piece of cloth.

7. Mr. Dhatrak has emphasized on the delay in lodging F.I.R. in order to consider the aspect, when the testimony of the victim is carefully read, she is evasive over the issue whether the incident was reported to the police on the very same day. In her examination-in-chief she has stated that Tahsildar had recorded her statement in the Police Station, Arni. She has also made a categorical statement that on the date of the incident her husband went to the police station for lodging report but the police refused to accept the said report and the report came to be lodged after she was discharged from the hospital. In her cross examination she has given evasive answers when asked about the details of her husband reporting to the police station and she stated that her husband told her that the report was not taken. Though she has stated that because the police did not accept the report, the

complaint was made with the Superintendent of Police but she was unable to produce any such complaint. It is pertinent to note that even after being discharged from the hospital she did not went to the police station on the same day and she admit that after discussion with her husband and family members, she decided to lodge the complaint on 26.11.2008 despite being discharged from the hospital on 25.11.2008.

The victim has also raised a doubt upon the investigation machinery and has deposed that she came to the hospital at Arni wearing the same clothes which she did wear when the incident took place and she changed the clothes on the next day but she did not remember whether these clothes were sent by her back to the house. The clothes which she produced for investigation purpose were produced by her from the house and it can be seen that blouse which was seized was having hooks whereas in her complaint as well as in examination-in-chief she has referred to the buttons attached to the blouse.

The medical examination of the victim conducted on 15.11.2008 referred to swelling to both lips and swelling and

contusion near right eye and abrasion on middle finger. Discharge copy from Government Medical College, Yavatmal do not refer to any operation but there is a reference to a fracture of tip of nose of left side but since no doctor was examined to establish this injury, the Magistrate has chosen the option of acquitting the applicant for the offence punishable under Section 325 of the Indian Penal Code.

The Magistrate, however, has failed to consider the inconsistency in the prosecution case which has surfaced through P.W.1 and P.W.2. He has referred to the evidence of P.W.12, a Medical Officer from Rural Hospital, Arni who had examined the victim and informed the police by letter which was received by the Police Constable on the same day. The statement of the victim was referred to as the dying declaration but it is pertinent to note that no F.I.R. came to be registered either by the Police Constable or the victim before 26.4.2008. The spot-panchanama conducted after a gap of more than ten days is considered as one of the factor to establish the offence under Section 354 as P.W.6 has stated that when the spot panchanama was recorded the soil

on the spot was disturbed and the plants of cotton and tur were flattened and black beads and some pieces of bangles were found lying on the spot. Merely because this is stated by P.W.6 a panch witness on the spot panchanama, the Court has believed the prosecution case and held that beads, bangle pieces and her head-bow was seized from the spot. It is rather surprising that after a gap of more than ten days, the position of the soil on the spot showing disturbances would continue to remain the same. The Court has relied upon the testimony of an independent witness for passing the conviction under Section 354 of the Indian Penal Code i.e. P.W.3 Bandu Jaiswal. When his testimony is read, he has deposed that when he was in his field he could hear P.W.2 calling for his father and, therefore, he went to the field where he saw the victim lying in an unconscious condition and when she was brought to home and put on a caught she had disclosed that Gajanan had visited the farm and he had misbehaved with her. Even in his testimony there is no reference of the third women nor he has narrated the details of the

harassment faced by the victim. This independent witness, however, do not corroborate with P.W.1 and P.W.2 as P.W.2 do not disclose that when his wife was taken to home she had disclosed the harassment by the applicant as his version is his he saw the applicant running away from the spot.

Thus, inconsistency in versions of P.W.1, P.W.2 and P.W.3 create a doubt in the prosecution case and make the testimony highly unreliable. The witnesses are contradicting themselves. Apart from this, there is also a material discrepancy in the form of blouse of the victim which was seized, which comprises of hooks and not buttons as the victim has specifically narrated that accused forcibly removed her buttons and touched her with an objectionable manner and this amounted to outraging her modesty. In order to establish a serious offence of outraging the modesty of a woman the prosecution ought to have more responsible and ought to have proved the charge beyond reasonable doubt. The inconsistent versions of the witnesses and the evidence of the victim herself being shaken in the exhaustive cross-examination, cannot sustain the finding recorded by the

Courts below under Section 354 of the Indian Penal Code. True it is that the character, reputation, dignity and honour of the women has to be preserved but in order to establish the evidence of causing harm to the dignity and honour of the women, it would be necessary to establish the finding beyond reasonable doubt. Having failed to do so, the conviction of the applicant under Section 354 of the Indian Penal Code cannot be sustained and he deserve his release from the said accusation.

In the wake of the above discussion, the judgment of two Courts below are quashed and set aside.

Criminal revision application is allowed accordingly.

(SMT. BHARATI DANGRE, J.)

Tambaskar.