

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Revision Application No. 507 of 2024

Mr. Sandip Govind Tirthe ... Applicant

V/s.

State of Maharashtra ... Respondent.

Mr. Prashant Naik	Advocate for the Applicant.
Ms. Sangita E. Phad	APP for Respondent No.1 -State.
Mr. Ankush Karche	PSI, APMC Police Station present.

CORAM : S.M. MODAK, J

DATE : 27 September 2024.

P.C. :

Heard learned Advocate for the Applicant – convicted Accused and the learned APP for the State.

2. By the Judgment and Order dated 4 February 2021, the trial Magistrate has imposed the sentence of three months simple imprisonment and fine of Rs.2000/ for the offences under Section 354(D) and 509 of Indian Penal Code. Whereas the court of Additional Sessions Judge Belapur has maintained the conviction but clarified that this sentence is there for every offence and directed both the sentences to run concurrently. The applicant was taken into custody on 18 July 2024.

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3. Considering the short sentence this revision application is heard finally.

4. The Hon'ble Supreme Court in many judgments have clarified what is a difference between the appeal and the revision. The Appellate Court is last fact finding Court. The accused gets an opportunity to put forth his defence through the trial. He gets an opportunity to agitate his grievance against the findings before the Appellate Court but when he has failed before two Courts, revisional Court cannot do appreciation.

5. What is appreciation. Appreciation means ascertaining whether one material corroborates with another material, to ascertain whether the testimony is reliable and satisfactory. This is not permissible in a revision. The findings which are perverse can only be considered.

6. When it can be said that findings are perverse? It is a settled law that if a particular piece of evidence is not at all considered and then finding is arrived at, it is said to be a perverse finding. For example, in this case there are two eye witnesses; PW No.1- the victim and PW No.3 – a rickshaw driver. Rickshaw driver has not supported whereas he has given a different version about the incident. If both the Courts below have not at all considered his evidence and arrived at a finding of guilt only on the basis of

evidence of victim, it can be said that the finding is perverse. This submission was made and that is why I have read their evidence minutely and the finding. It is necessary to state what is the case of the prosecution.

7. PW No.1-victim is a passenger of the rickshaw. The victim works in Gajra Associates at Vashi. She catches her rickshaw near Turbhe railway station. The incident is of 15 February 2017 at about 10.45 a.m. It is admitted that PW No.2 Sharad Jadhav is a rickshaw driver. It is also admitted that she was sitting on the back seat in that rickshaw. It is also admitted that the accused was sitting near the rickshaw driver. What is in dispute is whether the accused sat near the rickshaw driver since beginning or at the instance of the PW No.1-victim.

8. During the journey, the accused asked about the occupation of the victim at Satra Plaza. Even he told that he was seeing her in that Plaza daily. Accused asked her about her post. Victim neglected. Even she told her not to ask questions. Still the accused has not understood and he went to the extent of asking her whether she can have friendship with him and if she consented then there will be enjoyment. The victim got annoyed and she has taken the help of the rickshaw driver. The rickshaw driver took the rickshaw to APMC police station. Accused got down from the rickshaw and ran away.

9. The PW No.3 Nilesh Rajput, API is an investigating officer. As per the PW No.3 the FIR was registered at 7.00 p.m. Victim visited the police station between 11.45 a.m. to 12 noon. The investigating officer has explained the procedure followed by him while recording FIR. Once the victim reaches the police station, it is for the police to complete the formalities. It cannot be said that there is delay in lodging the FIR.

10. The learned Advocate for the applicant tried to point out variances in between the evidence of the victim on one hand and contents of the FIR on the other hand. At one stage even he argued that certain facts mentioned in the FIR are not deposited by victim. This contention cannot be accepted. FIR is not substantive piece of evidence. What is substantive evidence is fact stated before the Court.

11. Even he tried to point out certain variances i.e. to say in FIR and in the evidence. For example, in the FIR the victim has said when the rickshaw stopped near Union Bank Circle signal, at that time accused asked about her occupation. Whereas in the evidence she has not referred about Union Bank Circle signal. The learned APP is right. This is not the contradiction in respect of material particular. What is important is rickshaw stopped and at that time accused asked her about her occupation. Similarly, 2-3 more points were raised. It does not appeal to my conscious. They are in respect of minor particulars. Learned APP is right. We cannot apply the

principles of mathematics to evidence. All contentions are rejected. Furthermore, these contentions deal with appreciation of evidence.

12. Another issue raised is about appreciating the evidence of rickshaw driver. It is true that before the police, rickshaw driver has reiterated all the facts which are stated by the victim before the Court. There were 3 passengers sitting on the back seat. Victim came there and requested the passenger on the end side to sit ahead. This passenger was the applicant. At that juncture applicant refused then the altercation took place in between both of them and it continued even though rickshaw proceeded ahead. In spite of altercation the rickshaw driver has not stopped. It is a fact that these facts are not stated by him before the police. It has come in the evidence that applicant was knowing the rickshaw driver earlier to the incident. The prosecution claims that due to this intimacy rickshaw driver has helped the applicant.

13. The issue is whether a rickshaw was a passenger rickshaw or private rickshaw. According to rickshaw driver it was a passenger rickshaw whereas victim says that she was alone sitting on the back seat. Now how this controversy can be resolved? We can see the contemporaneous documents. It is FIR. In the FIR the victim has said she was alone sitting on the back side. Her version needs to be given importance. Now how both the Courts below appreciated this evidence.

14. The trial Court in Paragraph No.10 has referred about the evidence of the rickshaw driver. In Paragraph-15 there is a further reference that rickshaw driver has not explained who were the passengers sitting on the back seat. This is the reason for discarding the evidence of rickshaw driver. It is true that he may not know who are the other passengers. It is also true that their evidence is not recorded. PW No.3 has answered that he has tried to record the statements but he could not locate them. In Paragraph-16, the trial Court has given importance to the conduct of the lady as to why she will implicate the companion person. Whereas the Appellate Court in Paragraph No.17 has referred about the evidence of PW No.2. His evidence was also discarded and that is how the evidence of victim was given preference.

15. After considering the findings of both the Courts below, what I find is that the Courts below have referred to the evidence of rickshaw driver and ultimately disbelieved him. Appreciation of evidence is already done. Now if this Court will take a view that evidence of rickshaw driver has to be believed then it will amount to appreciation of evidence which is not permissible by the revisional Court. So I do not find there is any merit in the revision. I do not find there is illegality in the findings. The trial Court has imposed three months sentence and fine of Rs.2000/- for every offence. It is clarified by the Appellate Court that it is for every offence. It cannot be said to be illegal. This is permissible for the Appellate Court.

16. There is no merit in the revision. Revision Application is dismissed.

17. The efforts taken by the learned Advocate for the Applicant are appreciated.

(S.M. MODAK, J.)