



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

CRIMINAL REVISION APPLICATION NO. 70 OF 2021

Bablu Abdul Khalil
Aged about 30 years, Occ. Labour,
R/o. Dhamangaon, Tq. Morshi,
Dist. Amravati

... Applicant

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station Shirkhed,
Tq. Morshi, Dist. Amravati

... Non-applicant

Mr. A.M. Kukday, Advocate (appointed) for applicant/original accused.
Mr. H.D. Marathe, APP for non-applicant/State.

CORAM : RAJNISH R. VYAS, J.
DATE : 09.10.2025.

ORAL JUDGMENT:

Heard Mr. Kukday, learned appointed counsel for the applicant/original accused and Mr. Piyush Pendke, learned Assistant Public Prosecutor appearing for the non-applicant/State.

(2) The applicant is the original accused. The applicant/accused has preferred present application praying for setting aside his conviction for commission of offences punishable under Section 354 and

506 of the Indian Penal Cod, awarded to him by the learned Judicial Magistrate First Class, Morshi, in Regular Criminal Case No.223/2007, on 06.01.2010 and consequent judgment delivered by the learned Additional Sessions Judge, Amravati in Criminal Appeal No. 07/2010 dated 09.07.2021, dismissing appeal against conviction.

(3) In short, it is the case of the prosecution that on the date of incident PW-1/victim, who was 11 years old was at her house and sleeping. The present applicant/original accused No.1 came there and moved his hand over her private part, due to which, victim woke up and covered herself with a blanket but accused repeated the said act and therefore, she went away from that place. It was the case of the prosecution that the applicant/accused threatened her, in case the incident is disclosed to anybody.

(4) The aforesaid incident dated 16.07.2007 was reported by victim to her father, who immediately rushed to the house of the applicant and sought explanation. According to the prosecution, at that time, present applicant/original accused No.1 and his brother, original accused No.2, assaulted father of victim.

(5) Incident of outraging modesty was reported to the non-applicant/Police Station vide Exhibit 18 oral report and thereafter, First

Information Report at Exhibit 19, bearing Crime No.89/2007 for commission of offences punishable under Section 354, 323, 506 read with Section 34 of the Indian Penal Code was registered against the applicant and one more person. Other accused is acquitted by trial Court.

(6) In order to bring home the charge, the prosecution has examined four witnesses. PW-1 is the victim. PW-2 is the father of victim whereas the PW-3 is grocery shop owner. PW-4 is Panch to the spot.

(7) In this case, neither the Medical Officer nor the Investigating Officer was examined by the prosecution. After recording of evidence, inquiry under Section 313 of the Code of Criminal Procedure was conducted by putting evidence to the accused in form of questions. The accused pleaded not guilty and contended that he was falsely implicated, as according to him, an amount of Rs.7,000/- was to be paid to the father of victim by the accused towards repayment of purchase of auto. The accused neither entered the witness box nor examined any witness.

(8) Considering the evidence on record, learned Judicial Magistrate First Class, Morshi, convicted the applicant for commission of offence punishable under Section 354 and 506 of the Indian Penal Code. The applicant was directed to suffer the simple imprisonment for two years and

pay fine of Rs.2,000/-. Default sentence was also imposed, for offence of commission punishable under Section 506 of the Indian Penal Code, the applicant was directed to suffer imprisonment for three months and pay fine of Rs.1,000/-. Default sentence was also imposed. Both the sentences were ordered to run concurrently.

(9) The accused then preferred Criminal Appeal No.7/2010, before the Additional Sessions Judge, Amravati, which vide its order dated 09.07.2021 dismissed the appeal and maintained the conviction. It is pertinent to note that for commission of offences punishable under Section 323 read with Section 34 of the Indian Penal Code, the applicant was acquitted by the trial Court. For all the offences, accused No.2 was further acquitted by the trial Court.

(10) With the assistance of both the learned counsels, I have perused the record and I have given thoughtful consideration to the arguments.

(11) Mr. Kukday, learned appointed counsel has contended that story advanced by the prosecution is not believable. There is a delay in lodging FIR since according to victim, offence was committed on 16.07.2007, whereas FIR was lodged on 19.07.2007. According to him, since the delay is

not explained, benefit of doubt should have been given to the applicant/accused. He further contended that testimony of PW-1 and PW-2 consist of omissions and therefore, hardly believable. In order to support his contention and prayer for acquittal Mr. Kukday, has also brought my attention to the record of the case and stated that prosecution has given absolutely no reason for non-examination of Doctor, who examined the victim and the investigating Officer. According to him, those two aspects also goes to the root of matter, for which, the applicant is required to be acquitted.

(12) Per contra, learned Assistant Public Prosecutor Mr. Pendke, has stated that the victim was 13 years old at the time of commission of offence and therefore, delay in lodging FIR will not go to the root of the matter. Considering the further fact that victim was residing in village, normally such incidents are not immediately reported, in order to avoid defamation in society.

(13) Mr. Pendke, further contended that non-examination of medical practitioner and investigating officer will not go to the root of the matter, as according to the case of prosecution, accused has only touched her private part and therefore, there was no question of causing any injury.

(14) Perusal of record shows that though there is a delay in

lodging FIR, but same would not go to the root of the matter. When modesty of minor girl is outraged, immediate lodging of FIR by the family members is rarely seen, considering the defamation, which may be caused to the family.

(15) Be that as it may, victim has categorically stated that the accused No.1 was a friend of her father, who on the date of the incident entered the house and committed the illegal act, narrated above. Absolutely no reason is brought on record by the defence to show that there was any previous enmity between the family of the victim and the accused to lodge a false case.

(16) Contention of Mr. Kukday, that omissions in testimony of PW-1 and PW-2 could not be put to the accused and therefore, benefit of it should be given to him, is also required to be rejected since omission is only regarding touching breast and it is not regarding touching of vagina. The fact remains that PW-1 has, in clear terms, deposed that the accused on the day of the incident, had touched the private part of the victim.

(17) The conduct of the father in immediately rushing to the house of the accused persons for seeking an explanation also shows that there was an element of truth in the version narrated by the victim. Evidence Act,

recognises fact that that the previous and subsequent conduct of the person is important in the proceedings. The conduct of the father in immediately rushing to the house of the accused and seeking an explanation can be seen from the said angle. Though the prosecution has not examined, medical officer same will not benefit the accused, for the reason that there was no question of causing injury since the accused had only touched the private part of the victim. No doubt PW-3, shop owner and PW-4, Panch witness, did not support the case of the prosecution, but those witnesses cannot be called as star witnesses for proving the case of the prosecution.

(18) It is pertinent to mention here that when victim was sleeping in house, she was alone there. Neither the parents nor the brother of the victim was present. Thus, there was no question of lodging the FIR immediately since the act was informed by the victim to the father and thereafter, father went to the house of the accused person.

(19) It is further necessary to mention here that during cross-examination, no specific questions were put by the accused which would compel this Court to disbelieve the story of the prosecution. Plea taken by the accused in statement recorded under Section 313 of the Code of Criminal Procedure could have been very well taken to a logical end by examining the

defence witnesses. That has not been done. It cannot be forgotten that concurrent findings of the Courts are required to be tested in revisional jurisdiction with certain principles. Unless and until perversity is pointed out Court will have a very limited role of interference in the revisional jurisdiction. There is nothing to show that inadmissible evidence was taken into consideration by the Courts below.

(20) That being so, the application being devoid of any substance is liable to be rejected. At this stage, I must appreciate the assistance given by Advocate Mr. Amit Kukday, appointed counsel. He has argued the matter in a very systematic way without seeking any adjournment. The fees of the appointed learned counsel be quantified as per the rules. Pending applications, if any, also stand disposed of.

[RAJNISH R. VYAS, J.]

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