

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR
CRIMINAL REVISION APPLICATION NO. 49 OF 2022

Mayur s/o Babarao Yelore .. Applicant

Versus

The State of Maharashtra, through PSO, .. Respondent
Wardha City Police Station, Wardha.

...

Mr. Amol Hunge for the applicant.
Mr.V.A. Thakre, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 10th FEBRUARY 2023.

JUDGMENT:-

1 The present Revision Application is preferred by the applicant being aggrieved by the concurrent finding rendered by the JMFC, Vardha in Regular Criminal Case No. 175/2012 and by the Addl. Sessions Judge, Vardha in Criminal Appeal No. 93/2016.

By the impugned judgments, the applicant stand convicted for the offence punishable u/s.451 of the IPC and sentenced to suffer RI for four months and to pay fine of Rs.1,000/-, in default to suffer RI for one month. Apart, he is also

Tilak

convicted for the offence punishable u/s.354 of IPC and sentenced to suffer RI for six months and to pay fine of Rs.2,000/-, in default, to suffer RI for two months. The sentence of Imprisonment being directed to run concurrently, the fine was directed to be paid to the prosecutrix.

2 Heard learned counsel Mr.Amol Hunge for the Applicant and learned APP Mr.Thakare for the State.

The incident reported by PW 1 Jayshree Sanjay Chore which is alleged to have taken place on 15/3/2012 at around 1.30 p.m in her house, resulted in registration of C.R.No. 95/2012 which invoke Section 451 and 354 of the IPC. It was informed by PW 1, mother of the victim girl, aged 12-13 years, that while her daughter was all alone at home, the accused entered in the house on the pretext of handing over documents of R.D and though her daughter objected to his entry by protesting that her mother was not at home, he gained entry into the house and asked for drinking water. When the victim offered him water, he sat next to her, rolled his hand over her back and head and uttered the words “you have grown up so much”.

This scared the victim and she shouted for help, when PW 3 and PW 5, residing in the neighborhood came to her rescue and called the persons in the neighborhood. The applicant/accused was caught hold of, and the informant PW 1 was called home. According to her, she visited his place and tried

Tilak

to make him understand the gravity of the situation, but when he threatened that they are at liberty to take whatever steps they want to, she lodged a report in the police station in Wardha city.

The complaint resulted in invoking Section 451 and 354 of the IPC against the accused.

3 To establish its case, the prosecution examined eight witnesses and the accused was also examined u/s.313 of the Cr.P.C where he denied the case of the prosecution, but specifically took a stand that the mother of the victim owed some money to his mother and on death of his mother, when he demanded the money back, he was falsely prosecuted.

4 With the able assistance of the respective counsel, I have perused the evidence placed before the Magistrate during the course of trial.

PW 1, the complainant, deposed that she was in her office, at the time when the incident took place, when her daughter aged 12-13 years was all alone at home and when her husband asked her to reach home, she rushed back, to find several people having gathered there. They had caught hold of the accused and she found her daughter whimpering, who informed her that accused had visited the house on the pretext of handing over some papers. She was told that he entered the house on pretext of handing over the papers, and he inquired about the mobile number of her mother. She was informed by her daughter

Tilak

that he entered the house and sat on a chair and asked for water. She offered him water and sat on the diwan (bed) and came next to her when she stood up. At that time, he moved his hand on her back and expressed that she had grown up.

As per PW 1, being frightened, she shouted, when PW 5 rushed to her house and took the keys of the vehicle of the accused and called her husband. As per this witness, the accused could not leave the place as the persons in the neighborhood caught hold of him. However, when PW 1 reached the spot, she asked people to free him since she was acquainted with his mother, as she was having R.D with her. According to PW 1, she went to his house to caution him and also tried to have a dialogue with him, but on the contrary, he threatened her and therefore, she approached the police.

In cross-examination, PW 1 admitted that she was visiting the house of the accused once in a month. She also admit that since they were acquainted with each other, his mother had invested in a Recurring Deposit (RD) with her. She also admit that before lodging of the report, the mother and father of the accused had expired and the accused had demanded the money of R.D, before the incident.

There are various omissions which have been brought on record from the testimony of PW 1 and they have been proved through the statement of PW Nos.7 and 8. PW No.1 also

Tilak

accepted that her daughter or her family members were not acquainted with the accused or his family.

5 PW 2, the victim, who was aged 17 years when she stepped into the witness box, deposed that when she opened the window of the house at around 1.00 to 1.30 p.m on 15/3/2012, on hearing the door bell, she found the accused standing there. He inquired with her whether his mother was at home and though she answered that no one was at home, he asked her to open the door. Thereafter, he sat on the nearby chair, while she was studying by sitting on the bed. As per the victim, he came and sat next to her and when she went near the Television, he followed her and by moving his hand over her back, held her hand and told her that she has grown up so much.

The victim categorically deposed that she felt bad about such conduct and therefore, she shouted and called her aunt who arrived on the spot, when she narrated the happenings to her. As per the victim, PW 3 Prakash also arrived on the spot and he caught hold of the accused. Thereafter, she made a phone call to her mother, upon which her mother arrived, and the accused threatened that they can do whatever they want to do and therefore, the complaint was lodged.

In her cross-examination, the victim categorically admit that she is not aware about the relationship between her mother and the mother of the accused.

Tilak

6 From the testimony of PW 2, certain omissions have surfaced on record, the relevant being that on the act of the accused touching her, she felt bad and she called her mother, upon which her mother arrived at the spot. PW 3 and PW 5 are the husband and wife, who are tenants of the complainant and who were the first one to arrive at the spot when PW 2 cried for help.

PW 3 has deposed that the accused was caught by him but he ran away from the spot and therefore, the complaint was lodged with the police station. PW 5 state that after the persons in the neighborhood arrived at the spot, her husband i.e. PW 3 had made a phone call to the complainant and the accused had left the spot. PW 6, another person in the neighborhood, however, give a different version when he deposes that when he reached the spot on the call of PW 5, the victim was crying and the accused was seated on a swing fitted in the porch. According to him, when the complainant reached there, she was asked whether she knew this man and she stated that he is her friend's son.

7 PW 7 is the Officer who has reduced the complaint into writing, pursuant to which an FIR was registered. In cross-examination, PW 7 has admitted that the complainant had not disclosed to him that while she was in the Sahara office, she received phone call from her husband who had asked her to immediately reach home. He has also admitted that she had not

Tilak

disclosed that the accused shifted himself from the chair to the cot and therefore, the victim stood up. He also admitted that she did not disclose that PW 5 arrived at the spot and thereafter, she called PW 3, her husband. He also admit that it was not disclosed to him by the informant that PW 5 had picked up the keys of the vehicle of the accused and when the complainant came home, she permitted him to leave. It was also not disclosed to him that the complainant had visited the house of the accused to warn him, but was threatened by him.

8 PW 8 is the Investigating Officer, who has conducted the spot panchnama and arrested the accused and who has recorded the statement of the informant. During his cross-examination, certain omissions in the testimony of PW 1, PW 2 and PW 5 are brought on record.

As far as PW 5 is concerned, though she has deposed that she had noticed the accused crossing the gate for some time, PW 8 deposed that this was not disclosed to him while her statement was recorded. He has also specifically deposed that PW 5 has not told to him that since the victim called her, she went inside the house when she was crying and asked her not to leave. She also had not disclosed in her statement, that the victim told her that accused had touched her head and when she called for help, two to three persons in the neighborhood came to the spot. She had not disclosed the names of the persons to whom she had made a reference in her testimony before the Court.

Tilak

PW 8 has specifically admitted in his cross-examination that during the course of investigation, it has come on record that the mother of the accused had an RD account with the complainant though he denied the suggestion that there was some quibble going on between his mother and the accused on account of the non-payment of R.D amount. He specifically admit the fact that no Test Identification Parade was conducted.

9 It is in the background of this evidence which is brought on record, it is necessary to examine whether the offence u/s.451 and 354 has been sufficiently established.

The accused faced charge u/s.354 which provide the punishment for outraging the modesty of woman. Section 354 reads thus :

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.

10 In order that an act amounts to an offence punishable u/s.354, the two necessary ingredients are to be necessarily established; it has to be either an assault or criminal force applied to a woman. Criminal force is defined in IPC in section 350:-

Tilak

“350. Criminal force.—Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other”

11 As per Oxford Dictionary, modesty is something lewd or scrupulously chaste. In general terms, modesty means the sexual dignity of a woman which is acquired by her since her birth. Outrage necessarily imply a physical act. Essence of woman’s modesty is acceptably her sex and the culpable intention of the accused is the crux of Section 354. Any attempt made to disrobe or disrobbing of a woman, uttering any defamatory remarks which would violate her modesty are the instances which would justify invoking Section 354 of IPC.

12 If one look at the case of the prosecution which is full of inconsistencies right from the version of the complainant, the victim and specifically PW 5, and certain relevant omissions and inconsistencies have been brought on record through the cross-examination of PW 7 and PW 8, the incident which is alleged to have been reported is about the accused moving his hand over the victim and saying she has grown up. The victim girl appear to be frightened on account of the said act when the accused said to her that she has grown up.

Tilak

The utterance by the accused definitely indicate that he had seen her as a child and hence, he expressed that she has grown up. In order to outrage the modesty of a woman, what is most important is having an intention to outrage the modesty. At the time when the incident took place, the accused was 18 year old and the victim girl was approximately 12 to 13 years. It is not the case of the prosecution that the accused did something more than what has been alleged, that is, moving his hand over the back and head of the victim. Neither the victim girl aged 12 – 13 years spoke of any bad intention on his part, but what she deposed is she felt bad or indicating some unpleasant act, which made her uncomfortable.

Even, this is an omission as she did not state so in her statement to PW 8. Apart from this, PW 5 who reached on the spot after the incident was over, has stated that she heard the victim calling her, but she has never stated that it was a frantic call for help, but when she went to the spot, she saw the victim crying.

13 In absence of a specific intention, being established by the prosecution, being to outrage the modesty, it is not understood as to how Section 354 has been invoked and even held to be proved, with the specific version that the victim was frightened on the accused touching her on her back and saying that she has grown up. Even the accused, at the relevant time, was a boy aged 18 years and it is surprising as to how the victim

Tilak

take his name, when she has deposed that she was not acquainted with him. There is no Test Identification Parade conducted and there is also no consistency in the version, that when the informant PW 1 came there, the accused was still there, as PW 3 state that he ran away from the spot after the mother arrived, whereas PW 1 – mother state that she asked the people present to leave him, as he was her friend's son and PW 5 state that after the husband made a phone call to the complainant, the accused left i.e. before she arrived there. It is therefore, not clear as to how the identity of the accused has been established as he was never subjected to Test Identification Parade.

14 As far as Section 451 is concerned, though he has entered the house, he gained an entry only when the victim opened the door and when he disclosed to her that he has come in relation to the work of R.D, and she was aware that her mother collect R.D. It is necessary to establish that the house trespass was attempted in order to commit an offence punishable with Imprisonment. Admittedly, if offence u/s.354 is not made out, the entry into the house cannot be construed as an house trespass covered within the purview of Section 451.

15 Both the Courts below have seriously erred in appreciating the testimony of the witnesses which is full of inconsistencies which make the prosecution case doubtful. Apart from this, the prosecution has not definitely proved with cogent and reliable evidence that the act alleged to have been committed

Tilak

by the accused would amount to outraging the modesty of the victim, since there was neither an assault nor criminal force applied, as contemplated u/s.350 IPC, which necessarily contemplate use of such force to cause or knowing it to be likely that by use of such force, he will cause injury, fear or annoyance to the person to whom the force is used, and since prima facie it appear to be a impromptu action, with no sexual intent involved, the Courts below have erred in appreciating the evidence and construing it to be amounting to an offence u/s.354. If there was no intention to commit the offence for outraging of modesty of the victim girl, the entry into the house, could not be said to be amounting to house trespass with an intention to commit an offence.

Apart from this, one has to take into consideration that the accused was aged 18 years at the relevant time and he has no antecedents to his credit, the Court ought to have conferred him the benefit of probation of offenders Act and release him instead of ordering him to undergo Imprisonment on being convicted for the offence u/s.451 and 354.

16 In any case, as on date, since the fine has been paid to the victim girl as directed by the Courts below, the applicant must get the benefit of doubt since the prosecution has failed to prove that the act complained of, necessarily fell within the purview of Section 354 and Section 451 IPC. Resultantly, the judgment of conviction and sentence imposed by the JMFC, Vardha in

Tilak

Regular Criminal Case No. 175/2012 and the judgment by the Addl. Sessions Judge, Wardha in Criminal Appeal No. 93/2016, upholding the same deserve to be set aside. Hence, the concurrent finding and the punished imposed pursuant thereto, is set aside.

Revision stand allowed in the aforesaid terms.

Since the applicant is already on bail, he shall continue to avail his liberty.

(SMT. BHARATI DANGRE, J.)