



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

Criminal Revision Application No. 178 of 2023

Mohammed Ejaj Shaikh Ismail,
Aged about 36 years,
Occupation : Labour,
R/o. Station Fail, Wardha,
Tah. and District — Wardha.

... Applicant

- Versus -

(1) State of Maharashtra
Through Police Station Officer,
PS. Wardha City, Dist. Wardha.

(2) Ku. Hiteshri Sonawane,
Aged Major, Occ. Private,
R/o. Tilak Nagar, Wardha,
Tah. and Distt. Wardha.

... Non-Applicants/
Respondents

Mr. A. R. Ingole, Advocate for the applicant
Mr. A. R. Chutake, APP for the State/non-applicant no. 1
Mr. P. K. Sathianathan, Advocate for the non-applicant no. 2

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 8-12-2023

Date of pronouncing judgment : 11-12-2023

JUDGMENT

The applicant has questioned the legality, correctness and propriety of judgment and order dated 10-7-2023 passed by the Sessions Court in Criminal Appeal No. 66/2016 thereby dismissing the

appeal challenging the judgment and order dated 9-5-2016 passed in Regular Criminal Case No. 484/2015 by learned Judicial Magistrate First Class, Wardha. Learned Magistrate has convicted the applicant for the offence punishable under Section 354 of the Indian Penal Code, 1860 (IPC) and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs. 2,000/-, in default to undergo rigorous imprisonment for one month.

2. There are only three witnesses. P.W. 1 is the star witness. According to her, she was studying in Yashwant Mahavidyalaya. The incident occurred near Bombaywala Medical Stores. She has deposed that the applicant had followed her couple of times and abused her. On the date of incident, while she was going to market, the applicant, who was following her on bicycle, pushed/shoved her. She got annoyed, however, she proceeded further. The applicant followed her and, therefore, she beat him. This is how she has narrated the incident. This evidence was found to be sufficient by both the Courts below to convict the applicant for the offence punishable under Section 354 of the IPC.

3. Section 354 of IPC reads as under :

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 shall not be less than one year but which may extend to five years, and shall also be liable to fine].

4. Learned Additional Public Prosecutor has invited my attention to the judgment of the Supreme Court in the case of ***Raju Pandurang Mahale Vs. State of Maharashtra and another [(2004) 4 SCC 371]***. In this case, the Supreme Court has vividly described the essential ingredients of offence under Section 354 of the IPC. The first is that, the assault must be on a woman. The second is that, the accused must have used criminal force on her and the third is that, criminal force must have been used on the woman intending thereby to outrage her modesty. The Supreme Court then referred to its earlier judgment and on the point of ‘modesty’ of a woman and on what amounts to ‘outraging modesty’, observed in paragraph 15 as under :

“15. In State of Punjab vs. Major Singh a question arose whether a female child of seven-and-a-half months could be said to be possessed of “modesty” which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a

woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of “modesty” and the interpretation given to that word by this Court in Major Singh's case the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in [Rupan Deol Bajaj \(Mrs.\) and Anr. v. Kanwar Pal Singh Gill and Anr.](#) When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of accused appellant and the concrete role he consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminist decency. It is further to be noted that Section 34 has been rightly pressed into service in the case to fasten guilt on the accused- appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty.”

Thus, the Supreme Court has noted that the essence of a woman's modesty is her sex which she possesses by birth. The Supreme Court has held that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman.

5. In the present case, all that has been done by the applicant is that he has on bicycle given a push to P.W. 1 while she was going to market. According to P.W. 1, the applicant had earlier followed her couple of times and abused her.

6. As regards following and abusing P.W. 1, the said act cannot be said to be capable to shocking the sense of decency of a woman. The act may be annoying but definitely would not shock the sense of decency of a woman. Nonetheless keeping in mind this conduct of the applicant, the ultimate act which he has done will have to be considered, which act is pushing/shoving her while riding bicycle. It is not the case of P.W. 1 that the applicant has touched her inappropriately or has given push at a specific part of her body which made her position embarrassing. The contact with the part of the body of P.W. 1 has been not stated by P.W. 1. In these circumstances, merely because the applicant has on bicycle given a push to P.W. 1, to my mind cannot be said to be an act which is capable of shocking the sense of decency of P.W. 1. The act may be offensive or annoying but cannot be said to be compromising the decency of a woman. That being so, in my considered view, the Courts below have committed an error in

holding the applicant guilty for the offence punishable under Section 354 of the IPC.

7. That apart, P.W. 2, the shop owner, who is said to be eye witness has not supported the prosecution version. P.W. 3 is Investigating Officer who has given details of investigation.

8. Thus, except for the statement of P.W. 1, there is no other evidence to bring home the guilt of the applicant. As stated earlier, her evidence is not sufficient to attract ingredients of Section 354 of the IPC. The prosecution therefore failed to prove the case beyond reasonable doubt.

9. The Courts below have committed error in not applying the law to the admitted facts and thus rendered incorrect findings. The applicant has, therefore, made out a case. Hence, following order.

ORDER

- (i) The revision application is allowed.
- (ii) Judgment and order 9-5-2016 passed in Regular Criminal Case No. 484/2015 by the Judicial Magistrate First Class, Wardha and

judgment and order dated 10-7-2023 passed by the Adhoc Additional Sessions Judge-1, Wardha in Criminal Appeal No. 66/2016 thereby dismissing the appeal are hereby quashed and set aside.

(iii) The applicant is acquitted for the offence punishable under Section 354 of the Indian Penal Code. The applicant is already on bail. His bail bond stands cancelled.

(iv) Learned Sessions Judge has, while dismissing the appeal, suspended the sentence which course was not available to the appellate Court. Nonetheless sentence having been already suspended and the applicant having been acquitted, the application seeking suspension of sentence does not survive and stands disposed of accordingly.

(v) Rule is made absolute in above terms.

(Anil L. Pansare, J.)

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