

(2017) 10 BOM CK 0081
In the Bombay High Court
Case No : 32 of 2006

Naushad s/o Chhotekha

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

Indian Penal Code, 1860, Section 506,
Section 354 - Punishment for criminal ,intimidation - Assault
or criminal force to woman with intent to outrage her modesty
Scheduled

Citation : (2017) 10 BOM CK 0081

Hon'ble Judges : Rohit B. Deo

Bench : SINGLE BENCH

Advocate : Abdul Subhan, F.T. Mirza, A.V. Palshikar

Final Decision : Dismissed

Judgement

1. The appellant is aggrieved by the judgment and order dated 28.11.2005 in Special Case 2/2002 delivered by the 2nd Adhoc Additional Sessions Judge, Amravati, by and under which, the appellant (hereinafter referred to as "the accused") is convicted of offence punishable under section 354 of IPC and is sentenced to suffer rigorous imprisonment for six months and to payment of fine of Rs.500/. The accused is also convicted of offence punishable under section 506 of IPC and is sentenced to suffer rigorous imprisonment for three months and to payment of fine of Rs.200/. The accused is however, acquitted of offence punishable under section 3(i)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. Shri Abdul Subhan, the learned counsel for the accused submits that the entire trial is vitiated due to noncompliance with Rule 7 of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (hereinafter referred to as "the rules"). Shri Subhan submits that the investigation is not conducted by a Police Officer of the rank of Deputy Superintendent of Police (Dy.S.P. for short).

Shri Subhan relies on a Division Bench judgment of Andhra Pradesh High Court in Viswanadhula Chittibabu vs. State of Andhra Pradesh 2002 LawSuit (AP) 1344.

3. In rebuttal, Shri Palshikar, the learned Additional Public Prosecutor would submit that the grievance of the accused is absolutely misconceived, since the investigation was conducted by an Officer of the rank of SubDivisional Police Officer who is not below the rank of Dy.S.P. The learned A.P.P. would submit that no suggestion is given to P.W.3 Hansraj Meshram who deposed that the offence was investigated by S.D.P.O. Meshram, that the said Officer is of the rank lower than Dy.S.P. The learned A.P.P. would submit that the accused is acquitted of offence punishable under section 3(i)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and the Division Bench judgment of the Andhra Pradesh High Court is distinguishable since in that case the accused was convicted of offence punishable under section 3(i)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

4. Shri Subhan, the learned counsel for the accused would urge that the conviction recorded by the learned Special Judge is against the weight of the evidence on record. P.W.2 Yasmin who was accompanying the complainant P.W.1 when the accused allegedly outraged the modesty of P.W.1, has not supported the prosecution, is the submission. Shri Subhan invites my attention to certain omissions in the evidence of P.W.1. However, the omissions brought to my attention are not significant and material and pertain to collateral and peripheral facts and circumstances. The credibility of the testimony of P.W.1 is not dented by the omissions to which my attention is invited by the learned counsel for the accused.

5. The case of the prosecution hinges on the testimony of the complainant who is examined as P.W.1 since the only other witness to the incident did not support the prosecution. The testimony of the complainant is broadly consistent with the First Information Report Exh.19. P.W.1 has deposed that on the date of the incident, which was the market day, P.W.1 and Yasmin had been to the market. On the way back, near the lane of Laxmi Dal Mill, the accused accosted her from behind, caught her hand, pressed her mouth and breasts. The accused threatened to kill P.W.1 if she raised an alarm, is the deposition. P.W.1 has deposed that P.W.2 Yasmin ran away due to fear. She started weeping and shouting. One Balu Jare and the parents of P.W.1 came to the spot to whom P.W.1 narrated the incident and the report was lodged at 09:15 p.m. on 05.09.2001.

6. In the crossexamination P.W.1 has denied the suggestion that due to darkness, she has not correctly identified the accused. She has also denied the suggestion that due to dispute with the accused, she has falsely implicate the accused.

7. The evidence of the complainant P.W.1 has withstood the test of the crossexamination. I find her testimony implicitly reliable and confidence

inspiring. A vague suggestion is given to P.W.1 that due to a dispute she is falsely implicating the accused. However, nothing is brought on record by the accused to suggest the existence of inimical terms between P.W.1 and the accused. It is true that P.W.2 admits that her mother resides near the house of the accused and the inter se relations are not good. However, the existence of bad blood is a double edged sword and may as well be the motive for the accused to outrage the modesty of P.W.1 to spite her mother. I am not persuaded to agree with the learned counsel for the accused that the admission that the terms of the mother of P.W.1 and the accused are not good necessarily renders the evidence of P.W.1 suspect.

8. The prosecution has proved the offence punishable under section 354 of IPC beyond reasonable doubt.

9. The learned Special Judge has acquitted the accused of offence punishable under section 3(i)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act on the ground of violation of Rule 7 of the rules. However, since the State has not challenged the acquittal, I refrain from making any further observations on the finding recorded that the investigation is not conducted by an Officer of the rank of Dy.S.P.

10. Shri Subhan, the learned counsel for the accused then contends that the sentence awarded is harsh. The accused was then only 20 years old and deserves leniency, is the submission.

11. In *State of Madhya Pradesh vs. Surendra Singh*, (AIR 2015 SC 3980), based on the theory of proportionality, it is laid down by Hon'ble Apex Court that, "Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of the society. One of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers. Imposition of sentence must commensurate with gravity of offence."

12. The submission that the accused deserves leniency must be noted only for rejection. The act of accosting P.W.1 and pressing her mouth and breasts is reprehensible. To my mind, the learned Special Judge has been extremely lenient in sentencing the accused to only six months rigorous imprisonment. Any reduction of the sentence would erode public confidence in the justice dispensation system.

13. The appeal is sans substance and is dismissed.

14. The accused be taken into custody forthwith to serve the sentence and a compliance report be submitted to the Registry of this Court within four weeks.

15. The bail bond of the accused shall stand cancelled.