

Presented on : 21/10/2022
Registered on : 21/10/2022
Decided on : 21/06/2023
Duration : YY MM DD
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	<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS AT JALGAON JAMOD, DIST. BULDANA</u>	
	Presided Over By Chandramohan Mohan Kharkar	
	Date of Judgment	21/06/2023
	Regular Criminal Case No.	284/2022
	Exhibit No.	29
	FIR No.	953/2021 Registered For the offence punishable U/sec. 354, 354-A R/w. 34 of the Indian Penal Code, 1860.
	Police Station.	Jalgaon Jamod Police Station, Dist. Buldana

Complainant		The State of Maharashtra. Through P.S.O. Jalgaon Jamod, Police Station, Tq. Jalgaon Jamod, Dist. Buldana
Represented By		Ld. A.P.P. Mr. S.R. Sahu
Accused.	01.	Nandkishor Vamanrao Date Age:- 46 years, Occupation:- Service,
		Accused no.1 R/o. Jalgaon Jamod, tq. Jalgaon Jamod, Dist. Buldana
	02.	Shrikrushna Bhikaji Sanduke Age:- 34 years, Occupation :- Service,
		Accused no. 2 R/o. Jigav Tq. Nandura, Dist. Buldana
Represented By		Ld. Adv. S.A. Gupta.

Part "B"	
Date of FIR	1/12/2021

Date of Charge-sheet	12/10/2022
Date of Framing Charge	06/02/2023
Date of Commencement of Evidence	28/03/2023
Date of which the Judgment is reserved	NIL
Date of Judgment	21/06/2023
Date of sentencing Order if any.	Nil

Accused Details.							
Rank of the Accused.	Name of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
01.	Nandkishor Vamanrao Date	02/12/2021	02/12/2021	Section 354, 354-A of Indian Penal Code, 1860	Acquitted.	Nil.	Nil.
02.	Shrikrushna Bhikaji Sanduke	02/12/2021	02/12/2021	Section 354, 354-A of Indian Penal Code, 1860	Acquitted.	Nil.	Nil.

:: J U D G M E N T ::

(Delivered on this day 21st June 2023)

The accused are facing trial for the offence punishable U/sec. 354, 354-A R/w. 34 of the Indian Penal Code,

1860.

The factual matrix of prosecution's case is recapitulated in brief as follows :

02. Informant namely, ABC (*The name of the Informant is Masked as the offence is relating to the modesty and dignity of the woman*) contended that, on 17/11/2021, the informant was sitting in her house and at about 08.00 pm, the somebody had opened the door of her house. The accused were standing in front of her house. She inquired what was purpose to visit her house, thereupon the accused told her that, some person who were playing cards did come this side. The accused also asked whether she has a mobile phone. Thereupon, the informant said no, but the accused no. 2 said that he can get her a mobile. The informant warned to him not speak in such respect. However, the accused no. 1 contended that, the accused no. 2 is new here and hence she should pay him a proper attention. Thereupon the accused touched the chest of the informant and said to look after him. Thereafter, the informant warned them, hence the accused went away. The informant further contended that, on 19/11/2021, the accused no. 2 had contacted her on mobile and demanded sexual favours from her. On 23/11/2021, the accused no. 2 contacted her and demanded to spend a night with him. Hence, the informant was constrained to file a report against the accused.

03. The informant lodged the FIR with Jalgaon Jamod Police station and crime was registered as C.R.No. 953/2021, for the offence punishable U/sec. 354, 354-A R/w. 34 of the Indian

Penal Code, 1860. Investigation was carried out by concerned police station. During investigation, investigating officer has carried out spot panchanama. He also recorded the statement of witnesses. After, completion of investigation he has forwarded the charge sheet i.e. final report U/sec. 173 of Code of Criminal Procedure.

04. Cognizance for the offence punishable U/sec. 354, 354-A R/w. 34 of the Indian Penal code 1860 and process was issued. In response to summons the accused appeared before court and secured their presence by furnishing bail as per order. The charge for offence punishable U/sec. 354, 354-A R/w. 34 of I.P.C. was framed at Exh. 17. The said charge was read over and explained to the accused in vernacular. The accused pleaded not guilty and claims to be tried. The defence of the accused is of total denial and false implication in the crime.

05. To bring home the guilt of the accused person, the prosecution has examined the following witnesses. As the informant has not supported the prosecution theory and the informant has denied the entire course of the incident the prosecution evidence was closed.

Part "C"			
LIST OF PROSECUTION/ DEFENCE / COURT WITNESSES.			
A. PROSECUTION			
Rank	Name	Nature of Evidence	Exh. No.
PW NO. 1	Rajendra Mandev Sasane	Panch Witness	20
PW No. 2	ABC (<i>The name of the Informant is Masked as</i>)	Informant	27

	<i>the offence is relating to the modesty and dignity of the woman)</i>		
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B. DEFENCE			
Rank	Name	Nature of Evidence	Exh. No.
:: N I L ::			

C. Court Witness if any.			
Rank	Name	Nature of Evidence	Exh. No.
:: N I L ::			

Part "C"			
LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS			
A. PROSECUTION			
Sr. no.	Exhibit Number	Description	
01.	21	Intimation Letter	
02.	22	Spot panchanama	
03.	28	Signature on the Oral Report.	

Part “C”		
LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS		
B. Defence		
Sr. no.	Exhibit Number	Description
:: N I L ::		

Part "C"		
LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS		
C. Court Exhibits if any.		
Sr. no.	Exhibit Number	Description
:: N I L ::		

06. As the informant has not supported the prosecution, and no incriminating circumstances have been found on record, the statement of the accused U/sec. 313 of the Code of Criminal Procedure is dispensed by order below Exh. 1

07. Heard Both the counsels appearing for the parties.

08. After going through the prosecution case and defence of accused and documents produced on record the following points arise for my consideration, to which I have recorded my findings hereinafter as follows.

Sr. No	Points for determination	Findings
1	Whether prosecution proves beyond reasonable doubt that, in between 17/11/2021 to 19/11/2021 at Jalgaon Jamod the accused in furtherance of their common intention used criminal or assault against the body of a woman insulting the modesty of a woman ?	No.
2	Whether prosecution proves beyond reasonable doubt that, on the above date, time and place the in furtherance of their common intention tried to have a physical contact which involved unwelcome explicit sexual overture and also demanded for sexual favours ?	No.

3	What offences are made Out ?	No Offence is made Out.
4	What Order ?	As per final Order the accused are acquitted.

::R E A S O N S::

AS TO POINT NO 1 & 2.

09. As these points are interlinked with each other, I have discussed them together for avoidance of repetition of evidence. In order to prove the charge levelled against the accused the prosecution has first examined Rajendra Namdev Sasane as PW no. 1 who deposed that, police had given him an intimation letter to remain present as a panch witness. Accordingly, he was present for spot panchanama on 01/12/2021 in front of the residential house of the informant. The residential house of the informant is near to Janata School. He had identified the spot panchanama and his signature and therefore, the said spot panchanama was marked with Exh. 22.

10. The witness was cross examined by the Ld. Counsel for the accused. In cross examination he had admitted that, he had verified the fact personally that, the house which has been shown by the informant is really owned by the informant or not. He has also admitted that, he is also the member of the Azad Hind Sanghatana. He daily visits informant and her husband in connection with work of the Azad Hind. He also admitted that, as per informant's request the police has called him for

panchanama.

11. The prosecution has further examined “ABC” *(Informant. Her name is masked as the offence is relating to modesty and dignity of the woman.)* as PW no. 2 below Exh. 27. The incident took place on 17/11/2021. She was at her home. Thereafter somebody opened the front door of her house. There were three people and out of them one of the person had touched her chest. She cried for help, as her daughter who sitting in the next room came outside but they ran away. She came outside and inquired , however the people standing outside told her, that some police personnel went therefrom. Thereafter, nothing had happened. She denied the contents of the FIR and only admitted her signature. The prosecution cross examined the witness but noting fruitful which will inculcate the accused in the commission of the crime was brought on record.

12. I have gone through the entire oral evidence in background of documents placed on record. The witness has not supported the prosecution. As the entire story of the prosecution had been thrown away by the victim of the crime itself, it can not be safely concluded that, there was some sort of the demand for sexual favours from the victim on the behest of the accused. None of the essential ingredients of the offences levelled against the accused person are attracted. More over it is pertinent to note that, the informant (PW no. 1) who contended that, on the day of incidence, as there was no lights in the area some unknown persons came and touched, but as there was not sufficient light, it was unable to recognize the real culprit.

Hence, the evidence which is brought on record does not point its fingers towards the accused person as they real preparators of the crime.

13. In totality the evidence of P.W. No.1 & 2 is shrouded with grave suspicion and serious doubts. Prosecution have examined only interested witnesses and not examined any independent witness. Prosecution have failed to prove that accused is the author of the crime committed. The evidence on record is creating clouds of suspicion around the story brought by the prosecution and the prosecution have failed to dispel the same. The story of prosecution is doubtful and the benefit of doubt goes in favour of the accused person. Also there is no iota of evidence, which will suggest any inference to the fact that, the accused had committed the crime and voluntarily caused hurt to the informant. Owing to which, I am of the view that prosecution have failed to saddle the accused with the criminal liability beyond all reasonable doubts. **Consequently, I answer points No.1 & 2 in Negative.**

AS TO POINT NO. 3

14. The prosecution has not lead any cogent evidence to bring the accused within the ambit of offences punishable U/sec. 354, 354-A R/w. 34 of the Indian Penal Code, 1860. Further more the informant has not also supported the prosecution to bring the accused person within the ambit of ingredients of sections levelled against them. Hence, as the essential ingredients of the offences are not satisfied ,no offence is made out against the accused . **Hence I answer the point no.**

3 accordingly.

AS TO POINT NO. 4

15. In view of my findings to point no. 1 to 3 the prosecution has failed to prove charge against the accused beyond all reasonable doubt, hence in answer to point no.4, I proceed to pass following order ,

<u>:: O R D E R ::</u>	
01.	The accused namely, 1) Nandkishore Vamanrao Date 2) Shrikrushna Bhikaji Sanduke are found not guilty for the offences punishable U/sec. 354, 354-A R/w. 34 of Indian Penal Code 1860 and are hereby acquitted vide section 248(1) of Code Of Criminal Procedure 1973.
02.	PR bond of the accused is cancelled and surety stands discharged.
03.	The accused are directed to furnish PR bond of Rs. 7,500/- and surety bond in like amount U/sec. 437(A) of Code of Criminal Procedure, to appear before the higher court as and when such court issues notice in respect of any appeal or petition against the present Judgment. The said bail bond shall be in force for six months.

(Dictated and Pronounced in open court)

Date: 21/06/2023.

(C. M. Kharkar)
Judicial Magistrate F.C, (Court No.2)
Jalgaon Jamod (MHBU09-3003)