

MHOS130004012015



Presented on : 15.05.2015
Registered on : 25.05.2015
Decided on : 12.07.2024
Duration : Y M Ds
09 01 17

CNR No. : MHOS13000401-2015

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT NO.2, BHOOM**

PRESIDED OVER BY HUSNA R. KHAN

Delivered on 12.07.2024

RCC No.39/2015

Exh.40

(FIR No.06/2015 dated 14.01.2015
registered with Bhoom Police Station)

PROSECUTION **State of Maharashtra,**
Police Station Bhoom,
Tal. Bhoom, Dist. Osmanabad.

REPRESENTED BY APP. D. U. Patil

ACCUSED **Sunil Vitthal Jikre,**
Age-52 years, Occu.-Labour,
R/o. Nagoba Galli Bhoom,
Tal. Bhoom, Dist. Osmanabad.

REPRESENTED BY Adv. P. P. Mote

Date of Offence : 14.01.2015

Date of FIR : 14.01.2015

Date of Charge-sheet : 15.05.2015
 Date of Framing of Charges : 15.01.2018
 Date of commencement of evidence : 06.03.2018
 Date on which judgment is reserved : 01.07.2024
 Date of the Judgment : 12.07.2024
 Date of the Sentencing Order, if any : N A

ACCUSED DETAILS

Name of 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.
Sunil Vitthal Jikre	16.01.2015	16.01.2015	Section 354-A & 354-D of IPC	Acquitted	NA	NA

LIST OF PROSECUTION WITNESSES

Prosecution :

	NAME	NATURE OF EVIDENCE
1.	PW1	Spot Panch Witness
2.	PW2	Husband of Informant

3.	PW3	Station Officer
4.	PW4	Investigating Officer

LIST OF PROSECUTION DOCUMENTS

Prosecution :

	Exhibit Number	Description
1.	Exhibit P-34	FIR
2.	Exhibit P-37	Spot Panchnama

J U D G M E N T

(Delivered on 12.07.2024)

Accused is facing this trial for allegedly having committed an offence punishable under section 354-A and 354-D of Indian Penal Code, 1860. (*Hereinafter referred as "IPC" in short*).

The case of the prosecution in brief is as under:

02. Accused Sunil Vitthal Jikre is also works as Peon in the same bank where informant works. Since last 3-4 years accused used to follow informant while going to bank with evil eyes. Likewise, he used to abuse informant by making phone calls on coin box of informant. Therefore, on 04.08.2021, she made written complaint with bank managing authority against accused thereby he was suspended from the job. Thereafter accused was reinstated on job after executing bond of good behaviour for six months.

03. On 04.07.2014, while going to Hospital, accused abused

and threatened to kill informant therefore, she had lodged complaint against him with Bhoom Police Station thereby N.C. was registered against him. Again on 14.01.2015, at around 10:30 pm, while going to the bank, accused followed informant from Onkar Chouk and made noise 'shuk shuk'. Informant avoided him and proceeded forward. When she reached at Golai Chouk Bhoom, accused held hand of informant with ill intention and said "are you coming / येतीस का?" In the evening when husband of informant came to home she narrated him all the incident thereafter, went to Bhoom Police Station and lodged the report against accused.

04. On the basis of report, FIR No.6/2015 dated 14.01.2015 was registered for the offence punishable under section 354-A and 354-D of IPC. Investigation was assigned to M.P.Kashid. During the course of investigation, spot panchanama was drawn and statement of witnesses were recorded. Statement of victim was recorded under section 164 of Code of Criminal Procedure (*hereinafter referred as "Cr.PC" in short*) before the Hon'ble Judicial Magistrate First Class, Bhoom. After completion of investigation, final report came to be filed against accused.

05. Charge for the offence punishable under section 354-A and 354-D of IPC was framed against accused at Exh.13. Charge was read over and explained to accused in Marathi. Accused understood it and he was asked whether he pleads guilty or claims to be tried. Accused pleaded his innocence and opted for trial.

06. From the course of cross-examination and examination of accused under section 313(1)(b) of Cr.PC. His defence appears to be of total denial and false implication.

07. After considering the detail arguments advanced by learned APP and learned advocate for accused coupled with the charge framed and the evidence brought on record, following points arise for determination. I have recorded findings thereon for the reasons thereof as follows.

POINTS FOR DETERMINATION	FINDINGS
1. Does prosecution prove that, accused made physical contact and advances involving un-welcome and explicit sexual overtures and made demand for sexual favours?	NO
2. Does prosecution prove that, accused has followed and contacted or attempted to contact informant to foster personal interaction repeatedly despite a clear indication of disinterest by her?	NO
3. What Order?	Accused is acquitted.

08. At the out set of assigning reasons for finding supra, it will be appropriate to set out the ingredients of offence supra which the prosecution intend to prove. In order to prove the offence punishable under **section 354-A** of IPC, prosecution must prove that -

- i. Sexual harassment in the form of physical contact and advances involving unwelcoming explicit sexual overture is committed or,

- ii. Demand or request is made for sexual favour or,
- iii. Pornography is shown against the will of woman.

09. For the offence punishable under **section 354-D** of IPC, prosecution must prove that -

- i. Follow a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman,
- ii. Monitors the use by woman of internet, e-mail or any other form of electronic communication

R-E-A-S-O-N-S

AS TO POINT NO.1 & 2:-

10. Just to have convenience in discussion, reasons pertaining to these points are taken together for discussion to avoid repetition. Offence of sexual harassment or outraging the modesty of women are generally committed in secrecy and except seldom cases, they lack eye witnesses. Needles to say here that, sole testimony of informant is sufficient to prove particular fact and plurality of witnesses is not mandatory. Sole testimony is sufficient to prove particular fact of the case. However, such sole testimony must be cogent, reliable, free from discrepancies and must inspire the confidence of the Court. Therefore, I proceed to see whether the sole testimony of informant or other witness is of such kind or not in the present case?

11. To prove the guilt of accused, prosecution has examined in total four witnesses. Witness Bharat Shravan Sathe PW1 is the panch witness who did not support the case of the prosecution and turned hostile. Considering non supporting nature of panch witnesses, permission was granted to learned APP to put questions under section 154 of The Indian Evidence Act. However, even during these questions by learned APP, not a single admission could be brought on record which will enable prosecution to prove this panchnama.

12. Nagesh Vasantao Dongare PW2 is the husband of informant who deposed that, on 14.01.2015, while going to bank, accused follow the informant and made a noise of 'shuk shuk' and told her ' येतीस का ?'. He further deposed that, since 2011 accused used to abuse informant on phone calls. Though this witness deposed as per the narration of informant in FIR however, this witness is not either eye witness or circumstantial witness but hearsay witness who deposed on the say of informant. Hence, his testimony is not of use for the prosecution.

13. Dattatray Bhagwan Kambale PW3 is the witness who registered the FIR on the say of informant and Manjusha Pandurang Kashid is the Investigating Officer who investigated the offence. Considering the fact of not examining informant, I dont find it fir to place entire reliance on the sole testimony of investigating officer. Corroboration and specifiaction is necessary which is unfortunately is missing in the present case. As a result of of it, there is no sufficient

cogent and reliable evidence on record to hold the accused guilty of supra offence.

14. It is clear case of the prosecution that, on 14.01.2015, at around 10:30 pm, while going to the bank, accused followed informant from Onkar Chouk and made noise '*shuk shuk*'. Informant avoided him and proceeded forward. When she reached at Golai Chouk Bhoom, accused held hand of informant with ill intention and said "are you coming / येतीस का?" In this case the alleged offence occurred at Onkar Chauk which is crowded area of Bhoom Taluka. And therefore, there are numbers of person who could have seen the incident. However, Investigating Officer did not recorded statement of any person from the spot. The reason for doing so is not explained by the Investigating Officer. Not examining the independent witness fatal the case of the prosecution.

15. Sole testimony of informant available on record is sufficient to prove as to how and in what manner the incident has taken place. Despite several opportunities given to prosecution, it failed to examine informant. Informant is the star witness of the prosecution. Sole testimony of informant if cogent and reliable could be the basis of conviction of accused. In the present case the informant itself is not examined by the prosecution and therefore, the case of the prosecution could not be proved.

16. As a result of it, I conclude that there is not a single direct witness who could support the case of the prosecution to prove the

guilt of accused. Prosecution miserably failed to prove the guilt of accused. Hence, I answer point Nos.1 & 2 in negative.

AS TO POINT NO.3:-

17. As discussed above, I have already held that prosecution failed to prove the guilt of accused beyond reasonable doubt and therefore, I am inclined to acquit the accused for the offences supra. Hence, following order is passed.

ORDER

1. Accused namely Sunil Vitthal Jikre R/o. Nagoba Galli, Bhoom, Tal. Bhoom, Dist. Osmanabad is held not guilty and is acquitted as per section 248(1) of the Code of Criminal Procedure, 1973 for the offence punishable under section 354-A and 354-D of Indian Penal Code and he is set at liberty.
2. Bail bond of accused stands cancelled.
3. Accused to furnish bond with surety of Rs.50,000/- (Rupees Fifty Thousand Only) to appear before Hon'ble Appellate Court till next six month in comply of section 437-A of Code of Criminal Procedure, 1973.

(Judgment dictated and pronounced in open Court.)

Date :12.07.2024

(Husna R. Khan)
Judicial Magistrate First Class,
Court No.2, Bhoom.

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment are same, word to word, as per the original judgment.

Name of Stenographer	...	N. V. Koli Stenographer Grade-3
Name of Court	...	JMFC, Court No.2, Bhoom, Tal. Bhoom, Dist. Osmanabad.
Judgment Date	...	12.07.2024
Judgment signed by the Presiding Officer on	...	15.07.2024
Judgment uploaded on	...	15.07.2024