

Presented on : 19/08/2017.
Registered on : 19/08/2017.
Decided on : 18/10/2022.
Duration : D 30 M 2 Y 5
Exh.15

IN THE COURT OF THE METROPOLITAN MAGISTRATE,
28th COURT, ESPLANADE, MUMBAI.

(Presided over by Yashshree Marulkar)

C.C.No.2800609/PW/2017

(C.R.No.199/2017)

(CNR No.MHMM11-005307-2017)

J U D G M E N T

(u/Sec. 355 of Cr.P.C.)

- 1) The serial No. of the case : 2800609/PW/2017.
- 2) The date of the Commission of offence : Dated 03/08/2017
- 3) The name of the Complainant (if any) : State of Maharashtra,
Through P.S.O. of P.S.
L.T.Marg, Mumbai.
- 4) Name of the Accused, his parentage and residence : Shailesh Jayantilal Tanna,
Age : 40 years,
R/o. 7th Cross Lane, Dr.
Vigas Steet, Gaiwadi,
Chirabazar, J.S.S. Road,
Mumbai.
- 5) The offence complained of or proved : Under Sections 354(d) of
the Indian Penal Code.
- 6) The plea of the accused and their examination : Accused Pleaded not guilty.
- 7) The Final Order : Accused is acquitted.

8) The date of such order : Date: 18/10/2022.

Appearance : Ld. A.P.P. For State

Advocate Giri for the accused

1. Accused sitting in a dock is facing trial for the offence alleged to have been committed punishable under Section 354(d) of the Indian Penal Code (*for the sake of brevity hereinafter referred to as the "IPC" in short*).

2. In nutshell the case of the prosecution is as under:-

The informant reside at Gajdhar Street, Chirabazar, Mumbai. She used to leave the home for the office at about 8.30 a.m. to catch the train from Marine Line Station. On 03/08/2018 and before that almost for 3 months continuously, the accused was following the informant and he used to stare the informant. As she was walking on the footpath, the accused was following her from other side of the road on his bike. On the day of incident, when she arrived on the bridge, the accused was waving hand at the informant. Due to that, the informant was scared and she talked to her friends Chandrakant and Sudhakar. They both advised her to lodge Report in the police station. Hence, the informant lodged Report against the accused in the police station.

3. On the basis of the Report of the informant, crime against the accused was registered vide C.R. No.199/2017 vide Section 354(d) of the IPC in L.T.Marg Police Station. PSI Ralebhat investigated the crime.

During investigation he arrested the accused. He recorded statements of witnesses. After completion of the investigation, he filed the chargesheet against the accused in the Court.

4. My Ld. Predecessor has framed the charge on 29/11/2017 at Exh.2 against the accused under Section 354(d) of the IPC. The contents of the charge read over and explained to the accused in his vernacular. The accused pleaded not guilty and claimed trial. The defence of the accused and as per his statement recorded vide Section 313 of the Code of Criminal Procedure on 29/09/2022, is of the total denial and false implication.

5. On the basis of the case of the prosecution and evidence led, following points arose for my determination. I have given my findings on those points for reasons to follow are as under:-

<u>Sr.</u>	<u>Points for consideration</u>	<u>Findings</u>
<u>No</u>		
1	Whether the prosecution proves that, the accused committed the offence by stalking the informant to have personal interaction repeatedly despite a clear dictation of disinterest by the informant ?	... No.
2	What order?	.. As per final order.

: REASONS :

6. In order to establish charge against the accused, the prosecution has examined in all four witnesses i.e. the informant at Exh.8,

Chandrashekhkar (P.W.No.2) at Exh.11, Sudhakar (P.W. No.3) at Exh.12, and IO API Ralebhat (P.W.No.4) at Exh.13. The prosecution has relied on the documentary evidence such as Report at Exh.9. Heard the Ld. APP and the Ld. Advocate for the accused at length.

AS TO POINT NO. 1 :-

7. It has come in evidence of the informant that, in the year 2017, she was residing at Gajdhar Street, Chirabazar, Mumbai. She was working with Percept Ltd. at Lower Parel. Her duty hours was from 9.30 a.m. to 6.30 p.m. She used to leave her home for the office at about 8.15 a.m. to catch the train from Marine Line Station. She used to take road from house to the station i.e. Jagannath Shankar Sheth Road then Sonapur Galli and from by crossing Hindusmashan and Kabrasthan, she used to reach Maharshi Karve Road and by crossing the road, she reached the station. She knew the accused. The workshop of the accused was situated at the end of Gajdhar Street. The incident took place on 03/08/2017 and before that for almost 3 months continuously, the accused used to stare at her continuously whenever she exit the building and then the accused used to take his bike and used to reach the Marine Line station and used to wait there for the informant and as soon as she reached there, the accused used to stare at her. It was totally uncomfortable feeling she had, when the accused was staring at her.

8. It has further come in her evidence that, on 03/08/2017 at about 8.15 a.m. she left the home. As usual the accused was staring at her at the Lane. Thereafter the accused reached the station. The informant reached the station around 9.00 a.m. She walked approximately 15 fts. to

take the bridge to reach the station. As she was walking on the footpath, the accused was following from the other side of the road on his bike. When she got on the bridge, the accused started waving hand at the informant. Therefore, the informant gave him very angry look. Even then the accused started smiling and waving hand. At that time nobody was on the bridge. Then she felt that, the accused was crossing his limit, so she talked to his friends Chandrashekhar (P.W.No.2) and Sudhakar (P.W.No.3). They both advised her to lodge Report in the police station. Then the informant spoke to her brother. Then she went to the police station along-with her brother and lodged report. At the time of lodging Report (Exh.9), she was not knowing the name of the accused. The informant gave description of the accused to the police while lodging Report (Exh.9) i.e. the accused is short and used to apply orange *tilak* on his forehead. After lodging Report, police came along-with her to check her route. Then she shown the workshop of the accused to the police and he was there.

9. It has come in the evidence of Chandrashekhar (P.W.No.2) that, he did not know the accused. he knew the informant as the informant is his friend. On 03/08/2017 at about 8.30 p.m. he was at Churni Road in his Karate class. At that time, the informant met him outside his class and told him that, someone was following her since last so many days. So, he told her to report the police about the same.

10. It has come in the evidence of Sudhakar (P.W.No. 3) that, he knew the informant as she is his Junior in Karate Class. He did not know the accused. In the year 2017 the informant gave him a phone call and

told him that, someone was following her since last so many days. So, he told her to report the police about the same.

11. It has come in the evidence of IO API Ralebhat (P.W.No.4) that, in the year 2017 he was attached to L.T.Marg police station as PSI. On 06/08/2017 he was on duty. On that day, the informant came to the police station and lodged Report (Exh.9) stating that, one unknown person who was working in her vicinity was stalking her since last 3 months. She also stated in Report (Exh.9) that, on 03/08/2017 at about 9.00 a.m. when she was proceeding on Maharshi Karve Road that person came there and was staring and laughing at her and also made some gestures. Due to that, she was frightened and felt that she should lodge Report against the said person. She told about the same to Chandrashekhar (P.W.No.2) and Sudhakar (P.W.No.3). They advised her to lodge Report in the police station and therefore on 06/08/2017 Report (Exh.9) was lodged by the informant.

12. It has further come in his evidence that, accordingly C.R.No. 199/2017 came to be filed and investigation was carried out by him. Then they searched for the accused and found him. He told his name as Jayantilal Tanna i.e. the accused. Then he arrested him. Thereafter he recorded statement of witnesses and after completion of investigation, he filed charge-sheet against the accused in the Court.

13. To establish the guilt of the accused punishable under Section 354-D of the I.P.C., the prosecution has to prove following ingredients :

To establish an offence under Sec 354-D of Indian Penal Code, the presence of following ingredients is a must. These are as follows:

- *it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or*
- *it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or*
- *in the particular circumstances such conduct was reasonable and justified.*

14. The case of prosecution is that, the accused was continuously following the informant and staring at her almost for 3 months and on 03/08/2017 he followed her and at last he waved his hand while staring at her. Therefore, the informant talked to her friends Chandrashekhar (P.W.No.2) and Sudhakar (P.W.No.3). They advised the informant to lodge the Report in the police station. Hence, she lodged Report (Exh.9) against the accused in the police station.

15. On perusal of evidence of the informant, though she deposed that, almost for three months before the incident dtd. 03/08/2017, whenever she used to leave from her building, the accused was continuously followed her on his bike and used to stare her. Further in view of the informant, it is clear that, the informant was walking on the

footpath and as per her allegations, the accused was following her on his bike. Basically she has deposed that, it used to happen in the morning time. On the busy roads of Mumbai, in the morning hours, when there is always rush of the people to reach the railway stations and their respective offices, is beyond explanation. Basically it is highly impossible to follow somebody who is walking on the footpath at busy morning office hours on bike from the other side of the road. So, basic version of the informant considering the situation of the road and the time and for long duration of three months, is impossible cannot be believed upon. Further, if at all the accused was following the informant for long duration of three months regularly then the question arise why she has not approached police immediately ? and why she waited for such a long period. It is the defence of the accused that, he was having his garage at the end of the lane where the informant is residing. So, the defence of misunderstanding of the informant that, the accused was following her, is believable. Thus the prosecution has failed to prove that, the accused committed the offence by stalking the informant to have personal interaction repeatedly despite a clear dictation of disinterest by the informant. As such the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Hence, I answer to point No.1 in Negative and in answer to point No.2, I pass the following order :

ORDER

1. Accused is hereby acquitted as per section 248(1) of the Code of Criminal Procedure, for the offence punishable under Section 354(d) of the IPC.
2. The bail bond of the accused if any is cancelled.
3. Accused shall execute P.R. of Rs. 15,000/- to appear before the higher court as and when such court issues notice in respect of any appeal or

petition filed against this judgment, in terms of Sec. 437-A of Code of Criminal Procedure.

Place: Mumbai
Date: 18/10/2022

(Yashshree Marulkar)
Metropolitan Magistrate,
28th Court Esplanade, Mumbai.

Dictated on : 18/10/2022

Transcribed on : 18/10/2022

Signed on : 18/10/2022