

Received on : 21/06/2017
Registered on : 21/06/2017
Decided on : 12/09/2022
Duration : 05 Y. 02 M. 22 D.
Exh. : 12

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
44th COURT, ANDHERI, MUMBAI.
(PRESIDED OVER BY A. I. SHAIKH)**

(JUDGMENT U/SEC. 355 OF CODE OF CRIMINAL PROCEDURE)

(CNR NO.:MHMM19-005848-2017)

- (a) The serial No. of the case; : 1547/PW/2017
- (b) The date of commission of the offence; : June, 2014
- (c) The name of the complainant (if any); : The State (Versova Police Station in C. R. No. 96/2017)
- (d) The name of the accused persons and their parentage and residence; : **Arunabh Nathuni Kumar,**
Age - 34 years,
Occupation - Business,
R/o. C-1001, Juhu Abhishek Apartment, Juhu Versova Link Road, Andheri (W), Mumbai.
- (e) The offences complained of or proved ; : Under Sections 354 (A) of the Indian Penal Code.
- (f) The plea of the accused and their examination (if any); : The accused pleaded not guilty
- (g) The final order; : The accused is acquitted.
- (h) The date of such order; : 12/09/2022,
-

Mr.Khade, APP for the State.

Mrs. Rohini Wagh, Advocate for the accused.

J U D G M E N T

(Delivered on 12th September, 2022)

The accused is prosecuted for the offence punishable under Section 354 (A) of the Indian Penal Code.

2. In brief, it is the case of the prosecution that, in the 1st week of June, 2014, informant alongwith her friends were sitting in front her office. While talking on mobile she went to the ground which is situated to her office. At that time accused Arunabh Kumar called her. Therefore, she went to him. He kept her hand on her shoulder and pulled her and passing his hand on her back and breast and outraged her modesty and told 'Tum Mere Sath Mere Ghar Main Chalo Main Tumbe Aam Khilata Hoon' and call her to his house. Therefore, she feared and shouted him and left there. Till date she never told about the incident to anybody. On 30/03/2017 she came to know about bad behaviour with one lady by accused Arunabh Kumar and crime was registered at MIDC police station. Therefore, she narrated the incident happened with her to her friend Sonu Khanna. Her friend told her to lodge the complaint about the incident and she along with him went to police station and lodged report against the accused.

3. On the basis of the report given by the informant, crime no. 96/2017 came to be registered against the accused. During investigation I.O. arrested the accused and after completion of investigation, I.O. filed charge-sheet.

4. The charge is framed against the accused for the above mentioned offence. The accused pleaded not guilty and claimed to be tried. The accused pleaded not guilty and claimed to be tried. The prosecution has examined four witnesses in total. The statement of the accused under Section 313 of the Code of Criminal Procedure came to be recorded. The defence of the accused is that of total denial.

5. The points for determination alongwith my findings thereon as under :-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Does the prosecution prove that accused used criminal force to informant Rafiya Ismail Khan with intent to sexually harass her i.e. by passing hand on her back and her breast to outrage her modesty by such criminal force?	In the negative
2]	What order ?	The accused is acquitted

REASONS

AS TO POINT NO.1 :-

6. The prosecution examined in all four witnesses in this case. PW-01 Rafiya Ismail Khan, she is the informant, P.W.2 Mohd. Nazim Anis Khan and P.W.3 Mohd. Raza Ayub Surti, they are witnesses and PW-04 Vijay Gangadhar Raskar, he is the Investigating Officer.

7. PW-01 Rafiya Ismail Khan has deposed that on the day of incident she is at her office and accused who has also having office in front of her office. He called her. He put his hand on her shoulder. He also asked her 'Aam Khayagi Kya' and also passing his hand on her

back. Therefore, she is very shocked and immediately she left the place. She came to her friends and narrated the incident. There upon she along with friend went to office of accused but he was not there. Thereafter she ignored this incident about three years. On 30/03/2017 one article published on facebook against the accused about unappropriated touch and behaviour. On the same day 8 to 9 girls again uploaded the stories on facebook of similar nature. Therefore, she also uploaded the story and then she decided to take some action against the accused. Hence, she lodged report against the accused.

8. During her cross-examination she stated that she had worked 30 to 35 of casting project and she had contact with several people and friends in the industries. She met the accused for 3 to 4 times. She also admitted that the distance between the office of accused and her office is approximately 40 meters and there is a ground and children were playing cricket on that ground. She also admitted that she used to work late night. She also used to return to her house at Malad. she used to auto rickshaw or bike for work and herself used to ride. She also admitted that after the incident she do nothing, she did not shout, she did not slapped, when the accused had done alleged incident. Even she has not directly went to the police station. She also admitted that she had silent about the incident for three years. She has not given any print of the screen shot of facebook which were uploaded by the different girls. The suggestions put to her she had filed false case only to extort the accused.

9. The prosecution has examined another eye witness P.W.2 Mohd. Nazim Anis Khan, who is supported to the case of prosecution and stated that at the time of incident he was present with informant

and another friend Raza Surti P.W.3. At the time of actual incident the Rafiya has attended her mobile phone and she was talking and also walking. He saw that somebody called her. He saw the accused. He had seen from the distance of 50 meter that accused put his hand on her shoulder. Her body language was changed. She come to them and told misbehaved of accused.

10. During cross-examination there are many material omissions and contradictions. He stated that the informant and accused are standing in such position, he can saw from their back portion. He felt something wrong when the accused had put his hand on her shoulder. But his statement is not found in police statement which is material omission. He also admitted that he felt something wrong to Rafiya. He has to rushed to her for help, but he has chitchat with his friend as he thought that they are discussing about the some work. He has not sure what had happened between accused and informant. He further stated that he visited the office of the accused after the incident after two hours. He also stated that he did not go with the Rafiya for lodging FIR and Rafiya has given his name to the police. There is also omission in the police statement about his statement that accused has put his hand on her shoulder. He also admitted that informant is his girl friend and now he is husband of informant. Therefore, he is interested witness in the present case. His evidence not appeared truthful or natural. There are so much discrepancy and omission because of that his evidence is to be seems unbelievable.

11. The prosecution has again examined Mohd. Raza Ayub Surti, P.W.3, who is also eye witness. He stated that at the time of incident he also with informant and Nazim Khan is present at the studio

of informant. The informant told him that accused is put his hand on her shoulder and asked her to come with him his house where he has mango from Ratnagiri. Within half an hour they went to the office of accused but he was not present. After one year he has given his statement.

12. During his cross-examination he admitted that informant was attending the call and he was discussing with Nazim Khan. He was busy in chit-chat. He is denying many suggestions put up by the advocate of the accused.

13. Prosecution has again examined the investigating officer. His evidence is formal in nature. He admitted that he is not taken any document to show that the accused has taken office on rental basis. He also not inquired about business transaction between the accused and informant. He also admitted that he has not recorded the statement of independent witness. His evidence is formal in nature. Therefore, it is not helpful for the prosecution case.

14. There is no concrete evidence produced by the prosecution. There are material discrepancy and contradiction. Even, there is unreasonable and unexplained delay in filing F.I.R. which raised the clouds on the case of prosecution. Even it can be said that the said complaint is filed out of grudge or rivalry on reason of business between accused and informant. All witnesses are interest witnesses. They are involved in the same industry where the accused also doing the business. Therefore, the prosecution failed to prove their case beyond reasonable doubt. Hence, I hold that the prosecution failed to prove guilt of the accused. Hence, I answer point no.1 in the negative.

AS TO POINT NO.2:

15. The prosecution failed to prove guilt of the accused beyond reasonable doubt. Therefore, the accused is liable to be acquitted. In the result, in answer to Point No.2, I pass the following order.

ORDER

- 1 The accused **Arunabh Nathuni Kumar** is acquitted of the offence punishable under Sections 354 (A) of the Indian Penal Code vide Section 248 (1) of the Code of Criminal Procedure.
- 2 Bail bond of the accused stands cancelled.
- 3 The accused to execute P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) vide Section 437-A of the Code of Criminal Procedure for appearance before the higher court, if said court issues notice to him for his appearance in the matter in which present judgment is challenged, if any.

The Judgment is transcribed directly on the computer and pronounced in open Court.

Mumbai

Date:- 12/09/2022

spj

Typed on :- 12.09.2022
Signed on :-12.09.2022

(A. I. Shaikh)
Metropolitan Magistrate,
44th Court, Andheri, Mumbai.