


MHMM260011522019 	Filed on	: 23/09/2019.
	Registered on	: 23/09/2019.
	Decided on	: 04/12/2023.
	Duration	: 04 Y., 02 M., 11 D.
	<u>Exh.</u>	: 25

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
36TH COURT, MUMBAI CENTRAL, MUMBAI.
(JUDGMENT U/SEC. 355 OF CRIMINAL PROCEDURE CODE)**

- (a) The serial No. of the case ; : 520/PW/2019.
CNR Number : MHMM260011522019.
- (b) The date of commission of the offence ; : 13/008/2019.
- (c) The name of the complainant (prosecution) : The State of Maharashtra
(Through Bandra Railway Police Station (in C. R. No.1503/2019)).
- (d) The name of the accused person and his parentage and residence; : Raju Dattaram Chavan.
Age :- 45 Years, Occ. :- Service,
R/o. :- Virar (E), Palghar.
- (e) The offence complained of or proved ; : U/Sec. 354 (A) of The Indian Penal Code.
- (f) The plea of the accused and his examination (if any) ; : Accused pleaded not guilty and claimed to be tried.
- (g) The final order ; : **Accused is convicted as per final order.**
- (h) The date of such order ; : 04/12/2023.

Appearance : Learned A.P.P. Smt. Shaikh Naziya for the State.
Learned Advocate Shri. Vidya Gaikwad for accused.

J u d g m e n t

D a t e :- 04/12/2023

1. The accused is facing trial for the offence punishable under section 354 (A) of the Indian Penal Code. (To be referred hereinafter as

the said Code.)

2. In short prosecution case may be stated as follows :

That, on 13-08-2019 the informant along with her brother started to travel from Borivali Railway Station by Up Churchgate Local in Handicapped Compartment. At about 10.15 hrs. the said local train reached at Bandra Railway station and again started. The informant was about to alighted at Dadar Railway Station and therefore, she came in the door of the said local train. At that time, her brother was seated on his seat. When she was standing in the door, the accused had been to her back side and touched her buttock repeatedly and thereby outraged her modesty. Informant scolded the accused for his said act. Thereafter, she herself and her brother took the accused in custody and handed over him to police. Thereafter, the informant lodged the report against the accused with Bandra Railway Police Station.

3. Accordingly, C. R. No. 1503/2019 came to be registered against the accused for the offence punishable under section 354(A) of the Indian Penal Code. During the investigation, Investigating Officer prepared personal search and arrest panchanama in presence of two pancha witnesses. Thereafter, recorded the statements of witnesses and after completion of formalities filed the charge sheet against the accused for the offence punishable under section 354(A) of the Indian Penal Code for disposal according to law.

4. After securing the presence of the accused my Ld. Predecessor framed the charge against the accused for the offence punishable under section 354 (A) of the Indian Penal Code vide (Exh.02) to which he pleaded not guilty and claimed to be tried. The prosecution has examined witnesses. An incriminating evidence read over to the accused in view of section 313 of the Code of Criminal Procedure vide (Exh.24). The defence of the accused is of total denial.

5. In the light of aforesaid facts, following points arise for my determination. The findings thereof are recorded against each of them as under :-

<u>POINT</u>	<u>FINDINGS</u>
1. Does prosecution prove that on 13/08/2019, at about 10.15 hrs, while the informant was standing in the door of local train accused touched her buttock, repeatedly, and sexually harassed her by above act and thereby committed an offence U/s 354 (A) of I.P.C.?	.. In affirmative.
2. What order ?	As per final order

REASONS

6. To prove the guilt of the accused, the prosecution has examined in all five witnesses.

Sr. No	Name of prosecution witnesses	Witness No.	Status of Witness	Exh. No.
1.	Victim	P.W. No. 1	Informant	Exh. 10
2.	Yashwant Chandrakant Wadkar	P.W. No. 2	Witness	Exh. 13
3.	Nasir Hussain Shaikh	P.W. No. 3	Panch	Exh. 15
4.	Varsha Gangadhar Rekulge	P.W. No. 4	Police Witness	Exh. 18
5.	Gorakshanath Balasaheb Bankar	P.W. No. 5	Investigating officer	Exh. 23

Besides this, prosecution has relied upon documents those are complaint (Exh.11), F.I.R. (Exh.12), Personal search and Arrest Panchanama (Exh.16).

As to Point No. 1 :-

7. It is useful to state here the relevant section i.e. section 354 (A) of the Indian Penal Code, which states as under :-

Section 354(A) :- Essential Ingredients

(1) A man committing any of the following act--

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks;

shall be guilty of the offence of sexual harassment.

Looking into the above requirement of the provision, I am going to peruse and appreciate the entire evidence came on record by both sides.

8. Firstly it is just and proper to discuss the evidence of the Informant (P.W. 1). She deposes that, the incident took place on 13/08/2019 between 09-24a.m. to 9.28 a.m. at Bandra Railway Station. On the day of the incident, she herself and her brother namely Yashwant Wadakar were traveling from Borivali Railway Station to Elphinstone by Churchgate Fast local train. At that time, they had a Hotel Business in Elphinstone. While traveling when Bandra Railway Station was about to come she stood near the door of the said train, as she was about to get down at Dadar Railway Station. At that time, the accused had been to her back side and started touching to her buttocks. At that time, she shouted to the accused "what is going on." At that time, the accused said, " It was wrong, Sorry." Thereafter, a few times later, the accused did the same thing. At that time, she picked up the quarrel with the accused. At that time, her brother noticed the said incident. At that time, he was seated on his seat. Thereafter, she herself and her brother got down the accused at Bandra Railway Station. There they informed the police about the said incident and thereafter lodged the complaint against the accused.

9. During cross-examination she deposed that, she boarded the Fast Local train from Borivali Railway Station. The time she boarded the train was early morning, so it was a rush hour. She was seating in the handicapped compartment. She does not have disability certificate. It was also suggested that, the Bandra Station Platform comes on the right side of the train and the Dadar Station platform comes on the left side of the train. Her brother is not handicapped, even though he was sitting in the handicapped compartment. She was standing by the Dadar Station platform. She do not remember the seat number on which her brother was sitting on the coach, when she was standing near the door of the train. She has denied that, she wanted to get down at Dadar Station, but because the coach was crowded, she stood near the door of Bandra Station itself. There were ten to fifteen passengers in the coach. She has denied that, because she stood on the opposite side of the door she touched the hands of any of the passengers coming behind. She has also denied that, she does not know whose hand was touched as she was touched from behind. She has denied that, the accused did not touch her in any way. She also denied that, she did not even have conversation with the accused at the time of the incident.

10. Thereafter, there is evidence of Yashwant Wadakar (P.W. 2). He deposes that, he know the accused since the incident. At the time of the incident, he himself and his sister were traveling from Borivali towards Churchgate by Local Train. They had to get down at Dadar Station. At that time, they had taken the fast train. They were going to change train from Dadar and alight at Prabhadevi. After, they boarded the train, they were standing for some time. At that time, the accused was sitting in the coach. At that time, the accused molested the woman in the said coach. Therefore, other passengers in the said coach tried to force him down. At that time, the accused kept crawling in the compartment. At that time, other passengers in the train were shouting

his sister was sitting on the seat. After that, they had to get down at Dadar Station, when his sister was getting down, the accused pushed her from behind. At that time, he was standing aside. Thereafter, initially they took the accused to Dadar Police Station. At that time, they asked them to go to bandra police station. Therefore, they took the accused to Bandra Railway Police Station. A complaint regarding the incident was registered there.

11. During cross-examination it has come on record that, the incident took place on 09/08/2019. The police took his statement on 04th. At time of recording statement his sister was with him. It has also brought on record in the form of omission that, they were going to change the train from Dadar to Elphinstone, they were standing for some time after boarding the train, at that time, the accused was sitting in the coach, at that time, the accused molested a woman in the said coach, due to which other passengers in coach forced him and tried to get him off, at that time the accused kept crawling in the coach, at that time, other passengers in the coach were screaming, his sister was sitting on the seat, after that they were taken to the accused to Dadar Station, as they were to get down, when his sister was getting down the accused pushed him behind, his sister told him about the incident. It was also suggested that, when he boarded the disabled compartment he did not have any documents regarding his disability. He has admitted that, the time they boarded the train compartment was crowded. He has also admitted that, he stood beside his sister to get off. Therefore, he can not say what happen behind the scenes.

12. Thereafter, there is evidence of Nasir Hussain Shaikh (Panch) (P.W. 3). He deposes that, on 13-08-2019, police called him to the police station. Accordingly, he went to the police station, where there was a man and woman and other police personnel. The woman who was there said that, the man who was present at that place,

slapped her on the back side. Accordingly, the police made a panchanama and took his signature on it. During the cross-examination it was suggested that, he does not know the full name of the informant. So also he does not know the whether said woman was handicapped or not. He has admitted that, he can not read and write Marathi language.

13. Thereafter, there is evidence of Vasha Rekulge lady police officer (P.W. 3). She deposes that, on 13/08/2019 she was attached with Bandra Railway Police Station. On that day, when she was on duty at the police station, the informant came to the police station and told the reality of the incident. As the said crime was related to a woman S.H.O. called her to his office. At that time, both the informant and the accused were brought to the police station. There the informant told about the incident. During the cross-examination it has come on record that, when she saw the informant and the accused in the police station, she did not find any objectionable item with the accused. He has admitted that, the informant did not tell the facts of the incident before her to the investigating officer. She has also admitted that, the informant and her brother did not produce the documents to show that they are handicapped. It has also come on record that, the name of the informant was Jyoti Masurkar. It is not mentioned in the panchanama that informant had told to S.H.O. facts of the incident before telling her.

14. The evidence of Investigating officer is formal so far as his examination in chief is concerned. It has come on record that, during the investigation it was found that, the accused molested the informant by touching the back of the informant knowingly. It has come on the cross-examination that, he did not arrest the accused. So also he did not meet the informant even once since the occurrence of the incident till date. He has admitted that, he had not received the railway ticket as well as disability certificate from the witness Yashwant. He also admitted that, the C.C.T.V. footage was not even received. He has also

admitted that, the period when the incident took place was a rush hour. He has also admitted that, he has not taken the evidence of independent witness.

15. As such from the evidence of Prosecution witnesses specifically from the evidence of the informant, it appears that, at the relevant time of evidence, the informant was standing in the door and accused touched her buttocks. Her evidence is corroborated in material particular by the evidence of Yashwant Wadakar (P.W. 2) and also Varsha Rekulge (P.W. 3).

16. The Ld. A.P.P. has argued that, prosecution has proved the charge levelled against the accused beyond all reasonable doubts. He has further argued that, evidence of (P.W.-1), is corroborated by the evidence of other witnesses. Therefore, accused is liable to be convicted.

17. On the contrary the Ld. counsel Smt. Vidya Gaikwad for the accused has argued that, the prosecution failed to prove the charge levelled against the accused beyond all reasonable doubts. She has further argued that, the accused is mentally ill and therefore, he prays for acquittal of the accused.

18. Having regard to the submissions of both sides, I minutely perused the evidence of witnesses. The informant clearly deposed that, on the relevant day of incident when she was standing in the door as she was about to alight at Dadar Railway Station, the accused had been to her back side and touched her buttocks. Thereafter, she herself and her brother caught him. It was suggested to the informant in her cross-examination that, at the relevant time there was crowd of passenger. It was also suggested that, as she was standing in the door in opposite direction, some other passenger may touch her. It is already on record that, the informant was not knowing the accused prior to the incident. There is no enmity between the informant and the accused to implicate him in a false case. Therefore, suggestion given by the defence in the

cross-examination of the informant are without any basis. In fact, from perusal of evidence of the informant and her cross-examination, it can very well be inferred that, she was not even knowing the accused prior to the incident and there is no reason to implicate the accused falsely. As far as the defence of the accused is concerned, it finds no place in existence of the concrete evidence came on record. If evidence of the informant and other witnesses are minutely perused, then it is very well established that, the incident as stated by the informant is actually taken place. By bring the evidence on record, the prosecution has proved that, the accused on relevant date, time and place touched the buttocks of the informant. The evidence of the informant clearly established that, the accused did the said act with an intention and knowledge that by doing such act modesty of the informant would certainly be outraged. The defence of the accused is not so probable to discard the evidence of the witnesses. It is also submitted that no lady will put stigma upon her merely because somebody touched her buttocks and without any reason. Therefore, the defence of the accused is not acceptable. Accused is not disputing his presence on the spot at the relevant time of incident.

19. Therefore, in view of the aforesaid discussion, it is submitted that, the prosecution has proved the charge for the offence punishable under section 354 (A) of the Indian Penal Code against the accused beyond all reasonable doubt. Therefore, I hold the accused guilty for the offence U/s 354 (A) of I.P.C. and I answered point No.1 in the affirmative.

20. Here I stopped to hear the accused on the quantum of sentence.

Sd/-

(B. K. Gawande)

Metropolitan Magistrate,

36th Court, Mumbai Central, Mumbai.

Date :- 04/12/2023.

21. Heard the accused on the quantum of sentence. He has submitted that minimum sentence may be imposed. I have also heard the Ld. Counsel for the accused. She has submitted that, this is the first offence of the accused. She prayed that, lenient view may kindly be taken, while imposing the sentence. On the contrary, the Ld. A.P.P. has submitted that the accused has committed serious offence. The accused had intention to commit the said offence and therefore, he is not entitled to give any relaxation. Hence, maximum punishment be given to the accused.

22. It is submitted that, offence is against woman and, therefore serious in nature. Therefore, if benefit of provisions of Probation of Offenders Act is extended to the accused, it will amount to showing misplaced sympathy to him. In a case of *State of Rajasthan V/s. Srichand* (Criminal Appeal No.561/2009) decided by the Hon'ble Apex Court on 11th May, 2015, it was held that, the benefit of the Probation of Offenders Act should not be extended to persons convicted of crimes against woman. So far as, the case in hand is concerned, it is clear from the evidence on record that, the accused was found while outraging the modesty of the informant, which goes to show that, the accused could have had worse intention. The offence is heinous in nature and there is no reason for granting benefit of probation in this case. Therefore, the benefit of the Probation of Offenders Act is rejected. Hence, in answer to point No.2, I pass the following order :-

ORDER

1. The accused viz. Raju Dattaram Chavan is hereby convicted for the offence punishable under section 354 (A) of the Indian Penal Code vide Section 248 (2) of the Code of Criminal Procedure and he is sentenced to suffer sentence till rising Court and to Pay fine of ₹ 1,000/- (One Thousand) in default of

payment of fine he is sentenced to suffer Simple Imprisonment for 07 (Seven) days.

2. The accused to surrender his bail bonds.
3. The copy of the said judgment be given to the accused free of cost immediately.
4. Judgment dictated and pronounced in open court.

Sd/-

(B. K. Gawande)

Metropolitan Magistrate,
36th Court, Mumbai Central, Mumbai.

Date :- 04/12/2023.
ASS.

Dictated on :- 04/12/2023

Transcribed on :- 04/12/2023

Signed on :- 04/12/2023

ASS.