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IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS, MUL,
DIST. - CHANDRAPUR
(Presided over by A.V. Dhore)

Reg.Cri.Case No.01/2018

Ex.No. 62

The State of Maharashtra, through the
Police Station Officer, Mul, Tq. - Mul, .. **Complainant**
District – Chandrapur.

-Versus-

- 1] Shalik Dashrath Kumre,
Aged about 60 years, Occ: Priest,
- 2] Prabhakar Mahadeo Jajulwar,
Aged about 50 years, Occ: Labour, .. **Accused**

Both R/o – Pimpalzora, Zopala Maroti
Deosthan,
Tq. Mul, Dist. Chandrapur.

OFFENCE PUNISHABLE UNDER SECTIONS 354 (B), 323 R/W 34 OF THE
INDIAN PENAL CODE AND UNDER SECTION 85(1) OF MAHARASHTRA
PROHIBITION ACT

Sou. Megha Mahajan, Learned A.P.P for the State
Shri S.C. Muddamwar, Learned Advocate for the accused No.1.
Shri A.M. Wairagade, Learned Advocate for the accused No.2.

JUDGMENT

(Delivered on this day of 3rd September, 2018)

The accused nos. 1 and 2 are facing trial for the offence punishable under sections 354(B), 323 r/w section 34 of the Indian Penal Code and section 85(1) of Bombay Prohibition Act.

2] The case of the prosecution in brief is as under-

The informant/victim /prosecutrix has lodged report against accused on 17/11/2017 with police station, Mul contending that, she resides with her husband and family at mouza Haldi, Tah. Mul, Dist. Chandrapur. Since last one month she was not keeping well due to ill-health. So, she had been to Zopala Maroti temple for offering Pooja. Due to said Pooja she was feeling well. Thereafter, again on 16/11/2017 she was not keeping well. Hence, she along with her husband Duryodhan and relative Gurudev had gone to Zopala Maroti temple in the evening at 5.00 p.m. She offered Pooja there at 7.00 p.m. During that time, her husband Duryodhan and relative Gurudev were having dinner with one Kishor Mungantiwar. The accused No.1 Shalik who was also known as 'Maharaj' and accused No.2 Prabhakar were sitting at some distance from them. The priest i.e. accused No. 2 Prabhakar also sat with her husband for dinner. The accused No.1 Kumre Maharaj called her by saying "beta ithe, khatewar bas, tu maza muli sarkhi ahes, me tula kahi karat nahi". Believing on him, the informant/victim/prosecutrix sat on his cot. As she was not feeling well, said accused asked her to sleep on the cot. Said accused also slept on said cot. As she was feeling cold, she told about it to said accused No.1. Therefore, accused No.1 asked accused No.2 i.e. Prabhakar to put a blanket on her. Accordingly, accused No.2 brought one blanket and put it on her. The accused No.1

put the said blanket on him and her also. The accused No.1 started moving his hand on her breasts and tried to pull down her slacks and nicker. Because of that she started crying. On hearing it, her husband came there and pulled the blanket and seen the whole incident. She narrated the whole incident to her husband. Her husband called his father Sukhdev Gaware and to Deepak Gaware, Mahendra Sapute and Vilas Satpute on phone and thereafter, they went for lodging report.

3] On the basis of the said report, police registered an offence against the accused persons, vide Cr. No. 959/2017 for the offence punishable under sections 354 (B), 323 r/w section 34 of the Indian Penal Code and for the offence punishable under section 85(1) of Bombay Prohibition Act. The investigating officer PSI Kanta Rejiwad investigated the matter. She visited the spot of the incident in presence of panchas. She conducted and prepared spot panchanama in presence of panchas. She arrested the accused persons. She referred the injured to the hospital. She recorded the statements of witnesses. She filed charge-sheet against the accused persons after completion of investigation.

4] My Ld. Predecessor framed charge vide Exh. 18 against the accused persons for the offence punishable under sections 354(B) r/w section 34 of the Indian Penal Code and for the offence punishable under section 85(1) of Bombay Prohibition Act. The charge was read over and explained to the accused persons in their vernacular language. The accused persons pleaded not guilty and claimed to be tried. As there is incriminating evidence available

against accused, the statement of accused under section 313 (1)(b) of Cr.P.C. came to be recorded at Exh.58 and 59. Their defence was of total denial and of false implication on dispute between accused and the trust.

5] Taking into consideration, the documents on record, the following points arise for determination. I have recorded my findings thereon for the reasons given below :

<u>POINTS</u>	<u>FINDINGS</u>
1 Does the prosecution further prove that on 16/11/2017 in between 17.00 to 19.00 hours at Pimpalzora Zopala Maroti the accused persons in furtherance of their common intention used criminal force upon prosecutrix by pressing her upper part of breast and also tried to take out her panty intending to outrage, or knowing it to be likely that the accused would thereby outrage her modesty and thereby committed an offence punishable under section 354(b) r/w section 34 of I.P.C.?	..In affirmative against the accused no.1 ..In negative against accused no.2
2 Does the prosecution further prove that on the above date, time and place the accused No.1 found under the influence of liquor while committing the offence and thereby committed an offence punishable under section 85(1) of Bombay Prohibition Act ?	.. In negative
3 What order?	As per final order.

REASONS

6] In support of the case, the prosecution has examined in all thirteen witnesses such as informant/ prosecutrix vide Exh.22, Sau. Rupali Subhash Santoshwar (PW.2) vide Exh.25, Namdeo Sakharam Ade (PW.3) vide Exh.27, Duryodhan Wasudeo Gawhare (PW.4) vide Exh.31, Sukhdev Kawadu Gawhare (PW.5) vide Exh.34, Gurudev Wasudev Gawhare (PW.6) vide Exh.35, Kishor Madhukar Mungantiwar (PW.7) vide Exh.36, Mahendra Vilas Satpute (PW.8) vide Exh.41, Dr. Devendra Gurudasji Lade (PW.9) vide Exh.44. Sachin Digamber Wakade (PW.10) Exh.45, Anandrao Pandurang Titirmare (PW.11) Exh.47, Dr. Manisha Jivanrao Revatkar (PW.12) Exh.51 and Investigating officer Kanta Kondiba Rejiwar (PW.13) vide Exh.53. On the submission of the Ld. A.P.P. the evidence of prosecution was closed. The statement of the accused persons u/s 313 of Cr. P. C. were recorded vide Exh.58 and 59. Heard learned APP for the State and learned Advocates Shri S.C. Muddamwar, for accused No. 1 and Shri A.M. Wairagade, for accused No.2

7] The learned Public Prosecutor submits that, there is sufficient, cogent, and reliable evidence on record to establish that, the accused persons committed the offence. The offence committed by the accused is against woman, thus, is a serious offence and needs to be dealt with stern hands, with no leniency. On this grounds Learned APP submits that, the accused may be convicted and be punished with maximum imprisonment for the above mentioned offence. On the other hand, the learned Advocate for the accused submits that, the case of the prosecution is totally false and concocted. They further

submits that there is absolutely no evidence to show that, the accused persons committed the said offence. On these grounds they submits that, the prosecution has failed to bring home the guilt of the accused persons for the above mentioned offence. They, therefore, submits that, accused persons may be acquitted.

As to Point No. 1 to 3:

8] Prosecution came up with the case that accused no.1 Shalik unbuttoned the blouse of prosecutrix and moved his hand on her breasts and tried to pull down her slacks and nicker and thus outraged the modesty of prosecutrix and was under the influence of liquor at the time of incident. Accused no.2 shared common intention by helping him. As per prosecution case, at the time of incident, the husband Duryodhan and one relative namely Guudev of prosecutrix and one independent person Kishor Mulgantiwar were having dinner by the side of temple where alleged incident took place. So also as per prosecution case, the accused no.1 asked prosecutrix to sleep on his cot and asked the accused no.2 to put a blanket on her and thereafter he also slept by the side of prosecutrix on same cot and unbuttoned her blouse and moved his hand over her breast and pulled down her slack and nicker. To prove the aforesaid facts the prosecution has examined in all 13 witnesses. The essential ingredients of the offence under section 354(b) of IPC are as under :

- i) that person assaulted must be a woman;
- ii) that accused must have used criminal force on her, and

iii) that criminal force must have been used on the woman intending to disrobe her and thereby to outrage her modesty

9] It has come in the evidence of prosecutrix (PW.1) that, incident occurred on 16/11/2017 at about 7.00 to 8.00 p.m. at Zopala Maroti Deosthan, Pimpalzora. She along with her husband and relative had been to Zopala Maroti Deosthan. She was not keeping well, hence, they visited accused no.1 Kumre Maharaj. She told him about her ill-health. Her husband and relative had gone for dinner beside the temple. She and accused no.1 was there. Accused no. 1 asked her to sit on his cot and said to her that she is like his daughter. Believing on him, she sat on the cot. Thereafter, accused gave her a pill and asked her to sleep on that cot with him. Accordingly she slept with accused no. 1 on that cot. Accused no.2 put bedsheet on them. Thereafter accused no.1 Shalik unbuttoned her blouse and pull down her slacks and nicker upto her thigh. Thereafter, she started crying and called her husband. On hearing her calls, her husband, her relative and Kishor Mulgantiwar came there and she narrated the incident to them. After that, her husband informed about the incident to his family members on phone and also called to the police. Thereafter police came there. She narrated the whole incident to the police and thereafter she lodged the report (Exh.23). She further stated that, she was taken to the hospital by the police. She was also taken to the spot on the next day. The police seized blanket bed sheet and bed.

10] In the light aforesaid facts and evidence of prosecutrix i.e PW-1 it can be gathered that when the prosecutrix and accused no.1 were lying on the cot, they were covered by bedsheet and nobody were present near them. On hearing the cry and call of prosecutrix, her husband Duryodhan, relative Gurudev and one Kishor Mulgantiwar came there and she narrated the incident to them. As such, the evidence of husband and relative of prosecutrix as well as Kishor Mulgantiwar along with the evidence of prosecutrix is most important.

11] PW-4 Duryadodhan is the husband of prosecutrix. He deposed on the same line as that of prosecutrix. It has come in his evidence that prosecutrix is his wife and he had been to Zopala Maruti Deostahan, Pimpalzora along with his wife I.e, prosecutrix and his relative Gurudev by motorcycle. He told about ill health of his wife i.e, of prosecutrix to accused no.1. Accused no.1 Shalik told his wife that he is the incarnation of Lord Bajarangbali and she is like his daughter. His wife told him about her body pain. Accused no.1 Shalik asked the accused no.,2 to bring pill box and he gave a pill to his wife. His wife told him that she was not feeling well therefore she will not have dinner. So, he along with his relative Gurudev, also with one Kishor and accused no.2 had gone for having diner on the open space beside the temple. While they were having dinner, accused no.1 Shalik called accused no.2 and asked him to bring a blanket. Accordingly accused no.2 Prabhakar gave them a blanket and returned back. Later he heard the noise of crying of his wife. So he went there and saw that accused no.1 Shalik sleeping with his wife. He pulled down the blanket on them and he found that blouse of his

wife i.e, of prosecutrix was unbuttoned and hand of accused no.1 was on the breast of his wife and her slack and nicker were pulled upto her thigh. Thereafter his wife i.e, prosecutrix narrated the whole incident to him. As such the evidence said witnesses i.e, of husband of prosecutrix is in consonance with the evidence of prosecutrix.

12] Gurudeo (P.W.6) who is the relative of the prosecutrix was present at the time of incident along with the prosecutrix and her husband. He deposed on the same line as that of Duryodhan (P.W.4), the husband of prosecutrix. It has come in his evidence that, he had gone to Zopala Maroti Deosthan along with the prosecutrix and her husband. Kishor Mungantiwar was with them at that time. The prosecutrix was not keeping well hence, she has not joined them for dinner. The accused no. 1 was sitting on his cot. Accused no.1 asked accused no. 2 to bring tablet for prosecutrix. The accused no. 2 gave the box of tablet to accused no.1. The accused no. 1 gave tablet to prosecutrix. The accused no.1 told prosecutrix that she was like his daughter and to sit on the cot. Thereafter he along with the husband of prosecutrix i.e, Duryodhan, Kishor Mungantiwar and accused no. 2 went for having dinner. Thereafter accused no.1 called accused no.2 and told him to bring the bedsheet. Accordingly accused no.2 gave the bedsheet to accused no.1 and returned back for having dinner. After some time, they heard the cry of prosecutrix. The husband of prosecutrix Duryodhan went towards prosecutrix. That time accused no.1 was sleeping by holding prosecutrix. The husband of prosecutrix pulled down the blanket and called them. Thereafter they went there and saw that blouse of prosecutrix was unbuttoned and hand of

accused no.1 was on her breast and her slack and nicker were pulled down. On perusal of his evidence, it can be seen that his evidence is also in consonance with the evidence of prosecutrix and the evidence of her husband Duryodhan (PW.4).

13] Another witness who was present with the prosecutrix and her husband Duryodhan is the Kishor (PW.7). He also deposed on the same line as that of Duryodhan (PW.4) and Gurudeo (PW.6). His evidence is also in consonance with the evidence of prosecutrix, Duryodhan and relative Gurudeo. As such there is corroboration from all these witnesses to the version of prosecutrix .

14] The accused came up with the defence of total denial and false implication at the behest of the members of the Trust. It is also contended on behalf of the accused that prosecutrix, Duryodhan (PW4) and Gurudev (PW6) are relatives of each other, hence are interested witnesses. Therefore, no much value can be given to their evidence. It is worth to mention here that, it has been suggested to prosecutrix by the learned Advocate of the accused no.1 during cross-examination that the husband of prosecutrix has asked him to draw utara of her and it was also suggested that her husband and his relative Gurudev provided liquor to accused no.1. These suggestions itself shows the presence of accused on the spot at the relevant time and that accused was under the influence of liquor. As such, the presence of accused no. 1 on the spot is not in dispute.

15] On perusal of cross-examination of prosecutrix by accused no.1, it can also be seen that accused no.1 tried to show that prosecutrix was haunted by ghost or evil spirit and therefore she was brought to him for getting rid of that. The prosecutrix admitted in her cross-examination that, her husband and his relatives used to take her to Zopala Maroti Deosthan believing that she was haunted by the ghost. However, she denied other suggestions put to her in that respect. The accused no.1 also tried to show that there used to be a rush of the people on Saturday and Tuesday. However, prosecutrix denied that there used to be a rush of people on other days. The accused no.1 also suggested to her that, no woman will be ready to sleep or sit on cot to which she declined. By this suggestion, accused no.1 wants to show that there is no possibility that the prosecutrix being woman has not sat or slept on his cot. However prosecutrix immediately volunteered that accused no.1 has called her as his daughter and therefore, on his say she sat on the cot. The prosecutrix has immediately given her clarification which shows that she was having trust on the accused no.1 Shalik. Moreso it can also be seen that the husband and relative of prosecutrix were present near to her. In such circumstances, obviously no woman would sleep on the cot of other person unless she was having trust on that person. The prosecutrix (PW-1), her husband Duryodhan (PW-4), her relative Gurudev (PW-6) and independent witness Kishor (PW-7) have categorically stated in their evidence that accused no.1 said to prosecutrix that she is like his daughter. In such circumstances, I do not find any reason to disbelieve the aforesaid testimony of prosecutrix that as accused no.1 said to her that she is like his

daughter and therefore on his say prosecutrix sat and slept on his cot.

16] It is the contention of accused no.1 that he has been false implicated at the behest of the members of the Trust. As regards to plea of false implication, it has been held by the **Hon'ble Supreme Court** in the case of **Vidhyadharan ... vs.... State of Kerala reported in 2004(2) Mh.L.J 596** that *when a plea of false implication is taken, Courts have duty to make deeper scrutiny of the evidence and decide the applicability or otherwise of the accusation.* However, in the present case, accused no.1 has not brought on record any material which would show that the prosecutrix or his relative including her husband were members of trust or they are related in any way with any of the members of the trust with whom the accused no.1 has enmity or who wants to evict the said accused no.1 from either trust or from the premises of the temple in any way. *Apart from that no woman would take recourse to such type of incident to falsely implicate anyone by putting her character at stake.* Therefore, I do not find much force in the said defence raised by the accused no.1.

17] It is one of the contention of the accused no.1 that all the witnesses are relatives of prosecutrix and her husband. However, it is settled position of law that merely witnesses are relatives of prosecutrix, hence their evidence can not be discarded solely on this ground. However, it put the Court on guard while accepting their evidence. The Court have to carefully scrutinize their evidence before arriving at any conclusion. As per discussion made above, the evidence of prosecutrix and her husband Duryodhan is trustworthy

and reliable which is supported by the evidence of their relative Gurudev and independent witness Kishor. Moreso, it can be seen that there is prompt lodging of report with the police. Soon after the lodging of the report, the investigation of crime was handed over to the Investigation Officer Kanta Rejiwad (PW.No.13). As per the evidence of I.O. Kanta Rejiwad, she was entrusted with investigation of said crime on 17.11.2017. She proceeded on spot with prosecutrix, panch and with a member of Mahila Dakshata Sammittee Sau. Raupali. She prepared spot panchanama and seized the bedsheet and blanket in presence of panchas. Sau. Rupali (PW No.2) supported the version of I.O.Kanta by stating that she accompanied the prosecutrix, her relatives and police on 17.11.2017 when they visited the spot. Admittedly she is hearsay witness. As per her evidence, prosecutrix narrated the incident to her and prosecutrix showed the place where incident occurred. However there is omission about the narration of incident by prosecutrix to her. But her evidence discloses that she was present with prosecutrix, her relative and police on 17.11.2017 and prosecutrix showed the spot to the Investigation Officer. PW No.3 Namdeo Ade is spot panch witness. He supported the prosecution by stating that police prepared spot panchanama Exh.28. It has also come in his evidence that police also seized the bed and bedsheet from the spot under seizure panchanam Exh. 29. As such he duly proved the spot and seizure panchanam and thus corroborated the evidence of Investigation Officer.

18] It can also be seen that soon after the incident, the husband of prosecutrix informed about the incident to his family

members. It has come in the evidence of PW No.5 Sukhdev, who is father-in-law of prosecutrix and father of Duryodhan, that his son Duryodhan has narrated the incident on phone. So also it has come in the evidence of Mahendra Satpute (PW No.08) that Duryodhan (PW No.04) has called him on phone and narrated the incident occurred with him and asked him to come on spot. It has also come in his evidence that he along with Sukhdev (PW No.5) and one Bandu Gavare went on the spot by motorcycle. It has also come in his evidence that thereafter they called police and police came on the spot. It is worth to mention here that, it is obvious and natural for any person to inform about any bad incident occurred with them to their family members. Admittedly the Sukhdev (PW.No.5) who is father in law of prosecutrix and witness Mahendra are hearsay witnesses. Their evidence only confirms that soon after the incident Duryodhan (PW.No.04) has informed them about the incident and they went on the spot. This shows that natural conduct of the prosecutrix and her husband soon after occurrence of incident which support to their cause for lodging report against the accused.

19] It has come in the evidence of Dr. Devendra Lade (PW No.9) that the WPC Archana has brought the prosecutrix at 2=45 a.m on 17.11.2017 for medical examination. So also PC Kewal brought the accused for medical examination. He examined both the accused. He found the accused no.1 has consumed the alcohol but he was not under the influence of liquor and he also took the blood sample of the accused no.1. It has come in the evidence of Dr. Manisha Revatkar (PW No.12) that she examined the prosecutrix and found no injuries

on her person. The prompt lodging of report, the prompt arrest of the accused and referral for medical examination to the accused and prosecutrix by Investigation Officer rules out the possibility of concoction and false implication against the accused no.1.

20] It has been held by the **Hon'ble Bombay High Court** in the case of **Waman ..vs.. State of Maharashtra reported in 2005(2) Mh.L.J 1154** that in the offence of outraging the modesty of woman, culpable intention of the accused is crux of the matter and reaction of woman is relevant. Most important observation is in para no.9 of the said authority which is reproduced as under -

“ Charge under section 354 is one which is easy to make and very difficult to rebut and when such charge is made, it is necessary to see whether it is supported by independent evidence besides that of woman herself or is corroborated by her conduct and the surrounding circumstances and is consistent with ordinary probabilities. The essence of woman's is her sex. The modesty of adult woman is writ large on her body young or old intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant. In this case the accused with corrupt mind entered into the bed of the prosecutrix and stealthily touched the public portion of her body with an intention to have sex with her when she was sleeping and she immediately woke up and therefore, it is clear that the accused has committed an offence punishable under section 354 of Indian Penal code and nothing sort of short of it”

In the light of above observation, if the facts of present case are seen then it can be gathered that accused no.1 asked the prosecutrix to sleep on the cot under the pretext of curing her and he also slept with her and unbuttoned her blouse and touched her breast and also lowered her slack and nicker upto her thigh and thereafter prosecutrix cried and called her husband immediately. As such accused no.1 was having culpable intention to committ the offence. Moreso, as per discussion made above, the evidence adduced by prosecutrix, her husband Duryodhan and relative Gurudev is supported by independent witness Kishor along with prompt lodging of report. Hence I found the evidence of prosecutrix and her husband is trustworthy and reliable. Therefore, I hold that accused no.1 is guilty for outraging the modesty of the prosecutrix by using criminal force with intent to disrobing her.

21] So far as regards to the accused no.2 is concerned, it is the case of prosecution that accused no.2 has helped the accused no.1 while committing the offence. However, it can be seen from the evidence of prosecutrix, her husband Duryodhan and relative Gurudev and independent witness Kishor that accused no.2 was with them for dinner. As per their evidence, when accused no.1 called him and asked for bedsheet he provided it to the accused no.1 and soon after giving it returned back for dinner. As such I found no intention or any overt act on the part of accused no.2 in commission of said crime. It is worth to mention here that prosecutrix admitted in the cross examination of accused no.2 that there is no relation of accused no.2 with this crime and he has not done anything. Said fact is also

admitted by the Duryodhan, the husband of prosecutrix, in his evidence. Hence I found that accused no.2 was not having any intention to commit aforesaid crime and has not done anything.

22] As regards to the charge for the offence punishable under section 85(1) of Bombay Prohibition Act, is concerned, allegation of prosecution is that accused no.1 was under the influence of liquor while committing the crime. As per section 85(1) of Bombay Prohibition Act the accused must behave in disorderly manner under the influence of drink in a public place, street or thoroughfare or in any place where public have access. However in the present case, incident occurred in temple premises where public have access. As such it is a public place. As per evidence of Dr. Devendra (PWNo.09), he found that accused no.1 Shalik has consumed alcohol but was not under the influence of liquor. It is worth to mention here that learned Advocate for accused no.1 have suggested the prosecutrix PW No.1 that her husband and relative have provided the liquor to the accused no.1. Therefore, it can safely be inferred that accused no.1 has consumed the liquor. But as per evidence of medical officer, the accused no.1 Shalik has consumed the alcohol but was not under the influence of liquor at the time of medical examination. It is worth to mention here that as per evidence of medical officer Dr.Devendra he took blood sample which was then referred by I.O. for chemical analysis. As per evidence of P.C Anandrao (PW No.11) he took the sample to the laboratory at Nagpur for chemical analysis. However, it is pertinent to note here that there is no evidence which would show that accused behaved in disorderly manner on record. Although the

accused no.1 has outraged the modesty of prosecutrix by using criminal force to disrobe her, but this is different from behaving disorderly manner. Thus, prosecution has failed to prove the disorderly behaviour of the accused no.1. Hence I do not find accused no.1 guilty of offence punishable under section 85(1) of Bombay Prohibition Act.

23] On perusal of entire evidence adduced by the prosecution and in view of aforesaid discussion, I found the testimony of the prosecutrix is corroborated by the testimonies of her husband Duryodhan, relative Gurudev and independent witness Kishor. I found the evidence of these witnesses reliable and trustworthy. The evidence of these prosecution witnesses is consistent with the F.I.R. By strict scrutiny of the evidence, I found that the testimonies of the prosecutrix and the other prosecution witnesses are sufficient, reliable and trustworthy to prove the guilt of the accused no.1 beyond all reasonable doubt for the offence punishable under section 354(B) of the I.P.C. Prosecution failed to prove that accused no.2 shared common intention with accused no.1 in committing the said crime and has done some overt act which will induct him in the said crime. So also prosecution failed to prove that accused no.1 behaved in disorderly manner under the influence of drink. Hence, I answer point no. 1 in affirmative against accused no.1 and negative against accused no.2. Along with this I answer point no.2 in negative.

24] In view of aforesaid discussion accused no.1 thus held guilty for the offence punishable under section 354(B) of IPC. The

accused no. 2 is held not guilty of the offence punishable under section 354(B) of IPC and deserves to be acquitted. Therefore, I hereby stop the judgment to hear the prosecution as well as accused no.1 on the point of sentence.

Mul
Dt. 03.09.2018

(A. V. Dhore)
Judicial Magistrate First Class, Mul

25] Heard learned A.P.P. for the State. The learned Advocate for the accused no.1 absent when called repeatedly. Heard accused no.1 in person on the point of sentence. The Ld. A.P.P. submitted that the offence committed by the accused is against woman, thus, is a serious offence and needs to be dealt with stern hands, with no leniency and urged for awarding maximum sentence provided in law. In rebuttal, the accused no.1 in person submitted that he is old of age of 60 years with no criminal antecedents and having wife depending on him. In case he is sent to the jail his wife will be subject to the starvation. He also urged that he is in jail since last nine months, therefore, he has undergone sufficient imprisonment. Hence, lenient view may be taken. He also prays for benefit of the Probation of Offender Act to lead an honest peaceful life.

26] Having heard the rival submissions, I have gone through the provision under section 354(B) of Indian Penal code.. The penal provision provides punishment of imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

27] Now turning to question of sentence, it is settled law that while deciding the quantum of punishment, it is required that Court should maintain a balance between the aggravating circumstances and mitigating circumstance. The aggravating circumstance relates to the crime and mitigating circumstance relates to criminal. In this case, so far as aggravating circumstance are concerned, a ailing woman is disrobed and thus outraged her modesty when her husband and relative were present near and thus she was sexually abused by accused no.1. The wound caused to woman is not only to the body and mind of victim but also to the mind of entire family members. The stigma which victim is carrying will be forever and not erasable. Thus aggravating circumstance are grave in nature. Now turning to the mitigating circumstances accused no.1 is aged about 60 years with his wife. He is in jail since last nine months. However said crime is committed against the woman. There is increase in the crime against woman. Hence, such tendencies in the society and crime against woman needs to be deprecated. The legislation by introducing the Section 354(B) has increased the punishment which shows the seriousness of the offence. So, I do not find accused no.1 to be entitled for the benefit of Probation of Offender Act. However his age and days spent in jail can taken into consideration while imposing punishment.

28] The punishment for the offence under section 354 (B) of I.P.C. is imprisonment for not less than three years which may extend upto seven years and with fine also. As such section 354(B) prescribes a minimum punishment of three years which may extend to seven

years and also with fine. When the intention of the Legislature is to impose stringent punishment for not less than three years, this Court has no option, except to impose minimum punishment of three years. Having regard to aforesaid fact, mitigating and aggravating circumstances, accused no.1 can be sentenced to three years with fine of Rs. 2,000/- in default to undergo rigorous imprisonment for one month. The amount of fine, if deposited, be paid to prosecutrix as compensation u/s 357(1)(b) of Cr.P.C.

In the result, I pass the following order.

ORDER

1] The accused no. 1 Shalik Dasharath Kumare is hereby convicted for the offence punishable under section 354(B) of the Indian Penal Code vide section 248(2) of the Code of Criminal Procedure and sentenced to suffer simple imprisonment of three years and also to pay fine of Rs. 2,000/- in default to pay fine he shall suffer simple imprisonment of one month.

2] The accused no. 1 Shalik Dasharath Kumare is hereby acquitted for the offence punishable under section 85(1) of the Maharashtra Prohibition Act vide section 248(1) of the Code of Criminal Procedure

3] The accused no. 2 Prabhakar Madhav Jajulwar is hereby acquitted for the offence punishable under section 354(B) of the Indian Penal Code vide section 248(1) of the Code of Criminal Procedure.

- 4] The period of detention already undergone by the accused no.1 shall be given as set off to the accused no.1 under section 428 of Cr.P.C.
- 5] The bail bond of accused no.2 stands cancelled.
- 6] The accused no.2 shall furnish PB & SB of Rs. 15,000/- in compliance of Section 437-A of Cr.P.C.
- 7] The seized muddemal i.e, bed, blanket and two sealed bottles of blood sample of accused no.1 being worthless be destroyed after appeal period is over.
- 8] The amount of fine, if deposited, be paid to prosecutrix as compensation u/s 357(1)(b) of Cr.P.C.
- 9] Copy of judgment be provided to the accused no.1 free of costs forthwith.

(Dictated and pronounced in open court)

Date-03-09-2018.

(A. V. Dhore)
Judicial Magistrate,First Class
Mul.