


MHMM120006132021 	Presented on : 28-01-2021 Registered on : 28-01-2021 Decided on : 22-11-2022 Duration : 01 year, 09 months, 25 days
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**IN THE COURT OF METROPOLITAN MAGISTRATE, 70th COURT,
MAZGAON, MUMBAI**
(Presided over by M.V. Chavhan)
(Judgment as per Section 355 of Cr.PC)

a) The Serial number of the case	: 7000138/PW/2021
b) The date of commission of offence	: On 19.09.2020 at about 20.00 hrs.
c) The name of the complainant (prosecution), if any	: State of Maharashtra Through Dongri Police Station. (CR No. 121/2020)
d) The name of the accused person, his parentage and residence	: Rovena @ Aadnya Amit Bhosle Age : 38 yrs. R/o. : Mumbai
e) The offence complained of or proved	: U/Sec. 324, 354, 504, 509 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	: 22/11/2022

JUDGMENT

(Delivered on 22.11.2022)

This is the case for an offences punishable under section 324, 354, 504, 509 of the Indian Penal Code.

2. **Facts of the prosecution case in brief are as follows :**

It is alleged by the prosecution that, accused is the neighbour of informant. They both are residing in same building and on same floor. The accused suspecting that the informant is informing everything to her mother, and on that count, she used to abuse the informant. The accused used to raise quarrel with neighbours. The washroom of informant is just adjacent to the kitchen of accused. Therefore, the noise is clearly audible to each other. The relation of informant and the mother of accused was cordial. On that count, the accused was hating the informant and used to raise quarrel with her.

3. Before 10 days of incident, the accused was frequently and indirectly abusing the informant from her kitchen in filthy language. The informant always used to hear the same through her wash-room. The accused used to abuse in vernacular '*Randi, Chhinal, tere maa ke upar dus log chadhe honge, isliye tera bap ghar chod ke bhag gaya, Amit uske upar rape kar, tumhare baccho ko bhi cancer ho jaye*'. The informant was sure that accused is abusing her because the father of the informant had performed second marriage.

4. On 19.09.2020 at about 08.00 p.m., the informant was with her children inside the home. The accused came out from her home and started shouting. The person by name Naznin Mahate

residing on the same floor made phone call to informant and informed that the accused is abusing her. The informant came out of the home at corridor. She asked the accused reason for abusing. The accused took one chappal and throw it towards informant. Again informant asked the reason, the accused again took the chappal and assaulted on the head and on the person of informant. Informant made phone call to the mother of accused, her mother made phone to the accused and asking the accused to put the phone on speaker, but accused did not listen.

5. The accused was shouting loudly and abusing in vernacular '*tu randi hai, chhinal hai*'. She asked her husband Amit to rape the informant. The accused started scuffling with the informant. Ms. Cecelia Martis was also present there. The accused tore the nighty gown of the informant. That time, persons from that floor were present and they saw the incident. The informant felt ashamed of the incident. The informant was trying to convince the accused, when she was tearing her cloth, but accused was not listening. The husband of accused was trying to convince her, but accused was not listening. Thereafter, informant made phone call on 100 number and went to Police Station with her husband. The informant was not in a position to breath smoothly, she was referred to hospital by police. Thereafter, on the next day, she has lodged the present FIR.

6. On the basis of this report, CR no. 121/2020 came to be registered against the accused for the above mentioned offences. Investigation followed. During the investigation, the Investigating Officer had recorded the statements of the relevant witnesses, seized the chappal and nighty gown, collected medical certificate of informant

and after completion of necessary investigation, accused came to be charge-sheeted for the above mentioned offences.

7. As prima facie, there was evidence against the accused, charge is framed against the accused and read over to her, for which the accused pleaded not guilty and claimed to be tried. Defence of the accused is of total denial and false implication. The statement of the accused under section 313 of the Code of Criminal Procedure is recorded vide Exh. 33.

8. **The following points emerge for my determination and I record my findings thereon as under :**

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does the prosecution prove that accused voluntarily caused hurt to the informant by means of chappal and committed an offence punishable under section 324 of the Indian Penal Code ?	Offence u/sec. 323 IPC is committed.
2)	Does the prosecution prove that accused used criminal force to the informant and tore her clothes, which were intending to outrage her modesty and committed an offence punishable under section 354 of the Indian Penal Code ?	In the affirmative.
3)	Does the prosecution prove that accused insulted the informant by words and thereby gave provocation to her intending it to be likely that such provocation will cause her to break public peace and committed an offence punishable under section 504 of the Indian Penal Code ?	In the negative.

4)	Does the prosecution prove that accused intending to insult the modesty of informant uttered the words intending that the same shall be heard by her intrudes upon the privacy of the informant and committed an offence punishable under section 509 of the Indian Penal Code ?	In the negative.
5)	What offences are proved?	Offence under section 323 and 354 are proved against the accused.
6)	What Order?	As per final order.

REASONS

9. In order to prove the guilt of accused, the prosecution has examined in all six witnesses :

Sr no	Name of Prosecution Witnesses	Witness no.	Status of witness	Exhibit no.
1	The informant (this is offence against modesty of informant, thus, her name is not disclosed here.)	(P.W.1)	Who is the informant	(Exh.8)
2	Subhash Waman Shirsath	(P.W.2)	Who is the panch witness	(Exh.11)
3	Naznin Abdul Salam Mahate	(P.W. 3)	Who is the neighbour of informant	(Exh.16)
4	Cecelia Martis	(P.W. 4)	Who is the neighbour of informant	(Exh.20)
5	Vikas Daulatrao Bendbhar	(P.W. 5)	Who is the Investigating Officer	(Exh.26)
6	Dr. Khan Mohd. Danish	(P.W.6)	Who is the Medical Officer	(Exh.31)

10. Besides this, the prosecution also relied on the documents like Report (Exh.9), Statement of informant u/sec. 164 of the Cr.P.C. (Exh.10), spot panchanama (Exh.12), Chappal (Article A) and Maxi (Article B) and Medical Certificate (Exh.32).

11. After considering the oral as well as documentary evidence on record and after giving full regard towards the heavy burden on the prosecution under criminal law, I proceed to decide the factual aspects of the present case.

12. Heard Ld. APP Shri P.P. Mule for the State and advocate Shri Patnekar for accused. The submissions of both sides will be taken into consideration at the time of appreciation of evidence and at relevant time.

The learned advocate for the accused has placed his reliance of the following judgements :

1. **Vikas Motiram Ghodke V/s. State of Maharashtra reported in 2011 ALL LR (Cri) 3084**
2. **Pandurang Sitaram Bhagwat V/s. State of Maharashtra reported in 2005 CRI.L.J. 880.**

Point no. 1 to 5

13. All the points are interlinked and co-related to each other. Thus, to avoid the repetition and reproduction of evidence, I have taken all the points together for discussion.

Admitted facts

14. Before entering into the merits and demerits of the case, admitted facts is required to be mentioned. It is admitted position on record that the informant, accused, Naznin Mahate (PW No. 3) and Cecelia Martis (PW No. 4) are residing in the same building and on the same floor i.e. on 8th Floor.

15. The accused is facing trial under section 354 IPC. To bring home the guilt of accused under section 354 IPC, the prosecution has to prove the following requirements, mentioned as under.

- (i) the person assaulted must be a Woman
- (ii) the accused must have used criminal force on her.
- (iii) the criminal force must have been used on the woman intending thereby to outrage her modesty.

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

16. Informant (P.W. No.1) has stated the incident in two parts. The first part of incident is about prior to the actual date of incident in the present case and the second part of incident is about happening of incident dated 19.09.2020. About the first part of evidence, the informant stated that she is residing in flat no. 802. The accused is residing in flat no. 803 in the same building. The informant was having cordial relations with the mother of accused. They used to talk with each other. The mother of accused is very close to the informant. The accused was not having good terms with her mother. Therefore, accused started hating the informant. Accused intentionally abusing the

informant in filthy language from her kitchen. The informant could have heard the same from her wash-room. The accused used to abuse in vernacular '*Randi Chhinal, tere ma ke upar das log chadhe the, isliye tera bap chhod ke gaya, tumhara bacche ko cancer ho jaye*'. The accused used to tell her husband to go and rape the informant.

17. As far as the incident on which basis FIR is lodged is concerned, the informant stated that the said incident is occurred 19.09.2020 at about 08.00 p.m. She stated that she was at her home along with her two daughters. Accused came out of his house and started using the same filthy language. Her neighbour Naznin (PW No. 3) called the informant on cellphone and told her about the abusing incident by accused. Then informant came out of her house at corridor and inquired with the accused why she is abusing. Informant questioned her, 'what is the problem let me know?'. Accused threw chappal at her. Accused lifted the chappal lying besides the door and started hitting on the head of informant. Cecelia Martis (PW No. 4) came over there and tried to intervene the quarrel. Accused caught hold the neck of informant and started abusing by using same bad words and also torn her nightie. At that time, informant became helpless. Three mens from the said building standing over there and watching the incident. Informant felt ashamed. Informant called the mother of accused on phone and narrated the incident. That time, accused was saying '*fuck my mother*'.

18. It is seen from the evidence of informant that, at the time of alleged incident, two witnesses referred above were present there. under such circumstances, their evidence also required to be scrutinized with great caution. The prosecution has examined both these witnesses.

19. Naznin Mahate (PW No. 3) stated about the main incident that, on 19.09.2020, at about 07.45 p.m., the accused started abusing the informant by calling her name. Her younger brother was playing in the lobby, thus, she came out of her flat to take him inside the home. That time, she called the informant on mobile phone to take her daughter inside as accused was abusing her kids. Witness Naznin was on her doorstep. Informant also came out of her home and standing on her doorstep. Informant asked the reason for abusing her. The accused came outside of her home, took one chappal from her doorstep and thrown it at the informant. Accused was abusing the informant in filthy language viz '*Randi Chhinal*'.

20. Witness Naznin Mahate further stated that she shut her door and was standing near the lift. The other person from the same building were also standing there. She could see everything. Again the accused went near the informant and started beating her by chappal. Accused torn her nightie pant. Informant was completely naked due to the said incident and the men were also present there.

21. Likewise, Cecelia Martis (PW No. 4) stated that, on 19.09.2020 at about 08.00 pm., she heard hue and cry from outside. She went out. The accused was present outside her flat. Accused was abusing in filthy language to informant. Informant came at her door and inquired about the same. The accused took her slipper and thrown it at the informant. The accused again took the chappal of informant and assaulted her. Accused pulled her hairs and torn her nightie. The witness Cecelia Martis caught the hand of accused and gave her understanding. The accused was not willing to understand. The accused was going on beating to the informant. Thereafter, informant went

inside her home and called the police.

22. If the evidence of these two witnesses i.e. Naznin Mahate (PW No. 3) and Cecelia Martis (PW No. 4) are minutely perused, then it is seen that these two witnesses have witnessed the incident personally. As far as the evidence of witnesses are concerned, Ld. APP argued that the informant had categorically stated as per the contention in FIR. The testimony of informant is very well corroborated by the evidence of two eye witnesses. As far as the defence of accused is concerned, it finds no place in existence of the concrete evidence came on record.

23. On the other hand, the learned advocate for the accused argued that it is the false FIR and false evidence came on record. In fact, no incident as such is taken place. The advocate for accused took the defence that the informant having good relations with the mother of accused and only to harass the accused, she has lodged false FIR against her. Further, the learned advocate for the accused vehemently argued that there are omissions, improvements and contradictions in the evidence of informant and other two eye witnesses. The omissions and improvements are of such a nature, which fatals the prosecution case. The learned advocate for the accused also challenged the presence of these two eye witnesses at the scene of incident. Consequently, he prayed not to place reliance upon their testimony.

24. Having regard to the submissions of both sides, I minutely perused the cross-examination of informant and above two eye witnesses. The learned advocate for the accused conducted cross-examination and denied evidence of informant and above two eye

witnesses. Not only this, the learned advocate for the accused also challenged the presence of eye witnesses at the scene of incident. The defence is that only because these eye witnesses are very close to the informant, they are deposing false against the accused.

25. I am not in agreement with the submission of the learned advocate for the accused. The evidence come on record goes to show that all these witnesses are residing in the same building and on the same floor. It is nowhere seen that, these eye witnesses have personal grudge against the accused for any special reason. No litigation is seen to be pending in between accused and the eye witnesses. If it is so, then question arise why the supporting witnesses would lie.

26. Upon appreciating the evidence of informant and two eye witnesses, the presence of eye witnesses is very well established and proved when the actual incident was taken place. Not only this, witness Naznin (PW No. 3) has called the informant on mobile narrating that accused is abusing her. Subsequent thereto, the actual beating incident and other incidents are taken place. Cecelia Martis (PW No. 4) come with the evidence that she has rescued the quarrel and witnessed the incident. Therefore, the defence of accused that both the eye witnesses were not present at the spot of incident cannot be accepted. Accordingly, the defence in that regard find no place.

27. The learned advocate for the accused argued that, though there is evidence that accused assaulted the informant by means of chappal, the medical certificate is totally silent to show that there is any injury to the informant. On the other hand, Ld. APP argued that, no

specific injury is sufficient to attribute simple hurt.

28. Having regard to the submissions of both sides, I perused the evidence of Dr. Khan Mohd. Danish (PW No. 6). He stated that on 19.09.2020, he was attached to J.J. Hospital at Casualty Medical Officer. On that day, informant was brought up by WPN Buckle no. 00838. Informant narrated history of assault by known person by fist blow. She was complaining breathlessness. There was no history of loss of consciousness, ENT bleed and vomiting. He medically examined her. The informant had history of blunt trauma to head and chest, but no history of trauma to abdomen. He advised skull AP lateral, chest x-ray, x-ray of right shoulder. He referred the informant to emergency surgery resident (ESR) and also advised ECG. He further stated that on local examination, no external visible injury were found. Accordingly, he issued MLC under his signature which is at Exh. 32.

29. The learned advocate for the accused conducted his cross-examination. In his cross-examination, it is come on record that the identification mark of informant is not mentioned in MLC and there is no mention of blunt trauma in certificate. It is pertinent to note that, no question is raised by accused's side saying that, the informant was not medically examined by PW No. 6. There is no defence from accused side in that regard. Under such circumstances, I am of opinion that though identification mark is not there, it will not make much difference. It cannot make difference on the point that, the informant was medically examined by said doctor.

30. It is true that on local examination, doctor has found no

external visible injury. However, the oral evidence of informant goes to show that she was beaten at the hands of accused by means of chappal on her head. Not only this, the said version of informant is very well corroborated by above two witnesses. As far as the term 'hurt' is concerned, it is defined u/sec. 319 of IPC. As per the said definition, '*whoever causes bodily pain, disease or infirmity to any person is said to caused hurt*'. If the definition is minutely perused, then it transpired that mere causing infirmity is also amounting to cause hurt, provided that the hurt should be caused voluntarily.

31. Section 324 of Indian Penal Code is charged against the accused. To fulfill the ingredients of section 324 IPC, the first and foremost ingredient is that the hurt as contemplated should be caused by dangerous weapon or means. As far as the case in hand is concerned, evidence came on record that the accused assaulted the informant by means of chappal. I am of the firm opinion that the chappal does not falls under the ambit or category of dangerous weapon or means. Therefore, it cannot be said that section 324 IPC is attracted.

32. Though it is so, it is concrete evidence on record that the accused voluntarily caused hurt to the informant by assaulting her by means of chappal. If there is any infirmity caused to any person, it would not suppose to seen any visible injury on the body of person. Consequently, under the medical examination, no external injury would suppose to have been seen. However, it does not mean that, no hurt or bodily infirmity is caused to said person. In the case in hand, the testimony of informant is very well corroborated by the evidence of two eye witnesses on the point that the accused assaulted the informant by means of chappal. The said fact is duly proved in evidence and the

defence in that regard is not probable and find no place.

33. As stated above, though section 324 IPC is not attracted, by taking recourse of section 222 Code of Criminal Procedure, the minor offence i.e. offence under section 323 IPC is very well attracted. The material placed on record is sufficient to believe the fact that, on the given spot of incident, the accused voluntarily caused hurt to the informant by assaulting her.

34. As far as section 354 IPC is concerned, Ld. APP argued that, the act of accused clearly fulfilled the ingredients of section 354 of IPC and the evidence in that regard is very well sufficient. On the other hand, the learned advocate for the accused argued that, both i.e. informant and accused are the women. They are neighbours and there was no intention of accused to outraged her modesty. Consequently, he raised question about applicability of section 354 IPC against the accused.

35. It is true that accused is also a woman against whom there is a charge under section 354 IPC. It is pertinent to note that the offence under section 354 IPC is not sexual offence, rather it falls under the Chapter '*Criminal Force and Assault*'. The offence under section 354 IPC is committed only when a person assaults or uses a criminal force to a woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. It is not the act of outraging the modesty that is made an offence under this section. In order to constitute an offence under section 354 IPC, there must be an assault or use of criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged. The offence under section 354 IPC can be committed by any man or a woman with the necessary intent or

knowledge. For, a woman can assault or use criminal force to any other woman as equally and effectively as any man; and the intention or knowledge that the modesty of the woman assaulted or against whom criminal force has been used will be outraged, is not of a kind which a woman on account of inherent differences from man is incapable of having. The pronoun 'he' use in the expression '*that he will thereby outraged her modesty*' must therefore be taken under section 8 of Indian Penal Code as importing a male or a female. It is thus clear that under section 354 IPC, a man as well as a woman can be held guilty of the offence of assaulting or using criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged and be punished for the offence. Section 354 IPC, therefore, operates equality upon all persons whether males or females and it cannot be maintained that as woman are exempted from any punishment under this section.

36. In view of the above discussions, a woman can be held guilty for committing offence under section 354 IPC provided that, the assault or criminal force should be used with intention or knowledge on the part of accused that by doing such act, modesty of woman is likely to be outraged. So far as the case in hand is concerned, I again turned back to the evidence of informant and eye witnesses referred above.

37. The informant categorically stated that, the accused thrown chappal at her, not only this accused caught hold her neck and started abusing. The accused also torn her nightie. To corroborate her testimony, Naznin Mahate (PW No. 3) and Cecelia Martis (PW No. 4) also supported the same version of informant. Ld. APP argued that, the evidence of these witnesses on that point remains unshaken. Not only

this, the torn nightie and chappal seized under this crime were also produced before the court and the witnesses also identified the same.

38. The learned advocate for the accused invited my attention towards the cross-examination of Naznin Mahate (PW No. 3) and argued that she has stated contrary to the version of informant. He argued that in the evidence of Naznin, she stated that the accused torn her nightie and the informant was completely naked. I perused her evidence and find that witness Naznin stated the said fact in her evidence. It is equally true that witness Naznin was exaggerated in her evidence that due to the said act, the informant became naked.

39. The above referred omission in the evidence of witness Naznin is very well proved in the evidence of Investigating Officer. It is also true that informant in her evidence nowhere stated that, the accused torn her nightie and thereafter, she became naked. However, it is to be mentioned here that the said exaggerated statement of witness Naznin Mahate will not go into the root of case. In her evidence, it is not come on record that no incident as stated by informant is actually taken place. On the contrary, in her evidence, she stated that accused torn the nightie of informant, but while stating so, she exaggerated that due to which the informant became naked. However, the first part of her statement very well established the fact that the accused torn the nightie of informant.

40. Not only this, Cecelia Martis (PW No. 4) also corroborated the version of informant that she saw the incident of tearing the nightie of informant at the hands of accused. As far as the defence in that regard is concerned, I perused the cross-examination of all these

witnesses. The learned advocate for the accused only denied the evidence of these witnesses about particular fact. Time and again, it is well settled law that mere denial of the evidence of any witness cannot become the evidence and it cannot make much difference in prosecution's case. There is no justiciable reason seen in the cross-examination of any of the witnesses to believe that for any particular reason, the witnesses are lying. Naznin Mahate and Cecelia Martis are the best possible witnesses at the scene of incident. They both have corroborated the evidence of informant on material particulars.

41. If evidence of informant and above two witnesses are minutely perused, then it is very well established that the incident as stated by informant is actually taken place. By bringing the evidence on record, the prosecution has proved that, the accused on relevant date, time and place, assaulted the informant and torn her nightie.

42. The evidence of these witnesses clearly established that the criminal force was used upon the informant by the accused with an intention and knowledge that by doing such act modesty of informant would certainly be outraged. By beating the informant and tearing her nightie, the accused has infringed the right of privacy of informant. It is come in the evidence of all witnesses that when the said incident was taken place, mens from the same building were also standing there.

43. The informant in her evidence stated that when accused torn her nightie, mens were standing there and she felt ashamed of the said incident. It is categorically proved that, accused assaulted and torn the nightie of informant. As stated above, the essential ingredient of section 354 IPC is the use of criminal force or assault against the

woman for the purpose of outraging her modesty. It will, thus, be clear that, there must either an assault or the use of criminal force. The use of force will become criminal when it is done against the consent of that woman. In the present case, the evidence clearly goes to show that, the informant resisted the act of accused by opposing the accused. The act of accused clearly covered under the definition of assault under Section 351 of IPC, because, mere gesture is also amounts to assault. In the present case, the entire evidence came on record is sufficient, trustworthy, probable and believable to hold that, the accused has outraged the modesty of informant by tearing her nightie in presence of other persons. The defence of accused is not so probable to discard the evidence of witnesses. The accused has placed his reliance upon the above referred two authorities. The facts and circumstances in the case in hand is different than that of the facts and circumstances of cited supra case. In the case in hand, no previous strong enmity is seen in between both the parties. The two eye witnesses are best and probable witnesses. Hence, the said authorities would not be helpful to the accused and not squarely applicable to the case in hand.

44. Charge under section 504 and 509 Indian Penal Code is also framed against the accused. It is pertinent to note that, the FIR is about two different part of incident. The first part of the FIR and the evidence of informant is about the incident prior to the present incident. While stating about the prior incident, the informant categorically stated about the abusive words uttered by the accused. However, the said incident is before 20 days of the present incident. There is no specific date, time or occasion is stated either by

informant or other witnesses about the said incident. In short, though specific abusing words are stated by informant, these are about the prior incident which is vague in nature without any date, month or time. Similarly, as per the informant, the accused used to abuse her in filthy language from her kitchen and the informant could have heard the same from her wash-room. It means, no public place is come on record in so far as this abusing incident is concerned. The evidence is totally silent that the abusing incident was intending to insult the informant and to provoke her to breach the public peace. Similarly, so far as the incident about which the FIR is lodged is concerned, no specific word is come on record by informant and other witnesses to believe that on the date of incident, accused uttered a specific word and thereby insult the modesty of informant in view of section 509 IPC. In short, the material and evidence came on record is not sufficient to fulfilled the ingredients of section 504 and 509 of IPC against the accused.

45. In so far as the spot of incident is concerned, the panch witness Subhash Shirsath (PW No. 2) categorically stated about preparation of panchanama in his presence. In his evidence and the evidence of Investigating Officer, spot of incident is proved and the spot panchanama and seizure panchanama (Exh.12, 13 and 14) are proved. Panch witness and Investigating Officer categorically stated about seizure of chappal and nightie gown of informant. These two articles are very well identified by witnesses before the Court (Article A and B).

46. It is true that there are some omissions in the evidence of

PW No. 3 and 4, however, the said omissions do not lead the court to another conclusion. The Investigating Officer thoroughly investigated the crime and filed charge-sheet before the Court. In view of the forgoing discussions, the court has already come to the conclusion that thought offence under section 324 Indian Penal Code is not proved, offence U/sec. 323 IPC is clearly attracted and proved against the accused. The evidence come on record is sufficient to held that by doing such acts, the accused had outraged the modesty of informant. Hence, in view of the forgoing reasons, I answer point no. 1 and 2 accordingly and answer point no. 3 and 4 in the negative. The offence under section 323 and 354 of Indian Penal Code is proved against the accused. Consequently, the accused is liable for conviction. Hence, I took pause to hear the accused on the question of sentence.

47. I hold the accused guilty of the offence punishable under section 323 and 354 IPC. As far as applicability of provision of Probation of Offender Act 1958 is concerned, I am of the view that, the accused is not entitled to get the benefit under the said Act, because, the offence is against the woman, her modesty and character. The accused being woman should be protective and sensitive towards the informant. In the attending circumstances and facts of the case, I do not wish to give the benefit of Probation of Offender Act 1958 to the accused and here I took pause to hear the accused on the question of sentence.

48. I heard accused in person and her learned advocate on

the question of sentence. Accused submitted that, she is having three small children. Her younger son is of 1.5 years old. No one is there to look after them. It is the dispute between neighbours and accused is not habitual offender and she prayed for leniency. On the other hand, learned APP submitted that looking into the nature of case, maximum punishment and fine may be awarded.

49. Recently, Section 354 IPC is amended w.e.f. 03.02.2013. As per the said amendment in section 354 IPC there is mandate that, court shall not award sentence less than one year, but, which may extend to five years. The present case is after the date of above referred amendment as the incident is taken place on 19.09.2020. Under such circumstances, court cannot impose sentence less than one year under section 354 IPC. Similarly, imprisonment either description for a term which may extend to one year or fine which may extend to Rs.1000/- or with both is provided for the offence punishable under section 323 of Indian Penal Code.

50. Section 354 IPC is enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force on any woman with intent to outrage her modesty or with the knowledge that her modesty will be outraged, he or she is to be punished. In the present case, it cannot be forget that the accused is also a woman. She is having three children. Her younger son is 1.5 years old. There is no other criminal record against her. Hence, considering the above reasons, I am of the opinion that, following sentence will meet the ends of justice. Hence, to give the final effect and answer to point no. 5 and 6, I pass following order :

ORDER

- 1) Accused **Rovena @ Aadnya Amit Bhosle** is acquitted of the offences punishable under section 324, 504 and 509 of Indian Penal Code vide section 248(1) of the Code of Criminal Procedure.
- 2) Accused is hereby convicted of the offences punishable under section 323 and 354 IPC vide section 248 (2) of Code of Criminal Procedure.
- 3) The accused is sentenced to suffer **rigorous imprisonment for three months** and to pay fine of **Rs. 1,000/- (Rupees One Thousand Only)** in default to suffer rigorous imprisonment for one month in respect of offence punishable under section 323 IPC.
- 4) The accused is sentenced to suffer **rigorous imprisonment for one year** and to pay fine of **Rs. 5,000/- (Rupees Five Thousand Only)** in default to suffer rigorous imprisonment for six months in respect of offence punishable under section 354 IPC.
- 5) Both the substantive sentences shall run concurrently.
- 6) Set off be granted to the accused as per rule, if any.
- 7) The accused to surrender her bail bonds and surety bonds or cash surety if any.
- 8) Out of the fine amount, Rs.5,000/- (Rupees Five Thousand Only) be paid to the prosecutrix / informant as a compensation after the appeal period is over.

- 9) Seized chappal and torn nightie gown seized under this crime be destroyed after appeal period is over.
- 10) Copy of this Judgment be given to the accused free of cost forthwith.

(Judgment dictated and pronounced in open Court.)

(M.V. Chavhan)
Metropolitan Magistrate,
70th Court, Mazgaon, Mumbai.

Dt. 22.11.2022

shk*

Judgment dictated on	22.11.2022
Judgment transcribed on	22.11.2022
Judgment signed on	22.11.2022

