



(JUDGMENT)
CNR NO.MHPA06-001496-2017

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RCC No. 287/2017
STATE -VS- SHANKAR.

Received On : 24.11.2017.
Registered On : 24.11.2017.
Decided On : 07.02.2020.
Duration : Y M D
02 02 14

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT NO. 02, HINGOLI, DISTRICT HINGOLI.

(Presided over by Mr. V.V. Joshi)

REGULAR CRI. CASE NO. 287/2017.

EXHIBIT NO.60.

The State of Maharashtra, through }
The P.S.O., Police Station, Narsi(N), } ... **PROSECUTION**
District Hingoli. }

- VERSUS -

Shankar Ramji Lambde, }
Age: 35 yrs, Occ: Agriculture, }
R/o Ghotadevi, } ... **ACCUSED**
Th. Dist. Hingoli. }

=====
APPEARANCES:-

Mr. A.M. Ingle, Learned A.P.P. for the State.
Mr. G.V. Ghuge, Learned Advocate for Accused.

=====
**CHARGE :- UNDER SECTIONS 354(A)(2) AND 506(2) OF
THE INDIAN PENAL CODE.**

=====
***** J U D G M E N T *****
(Delivered on this 07th day of February, 2020)

Accused is prosecuted for having committed an offence punishable under Section 354 (A)(2) and 506(2) of the Indian Penal Code (hereinafter referred as "the IPC" for brevity).

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PROSECUTION'S CASE IN BRIEF IS AS UNDER -

2. The Victim/Informant Sau. Jyoti Pradip Shelke, R/o Ghotadevi, Tq. Dist. Hingoli reported to Police Station, Narsi Namdeo that, on 30.10.2017 at about 10.00 am, when she was went in the field to give the Tiffin to her husband and thereafter, she went in the field of Gram (Chana) at about 03:00 pm when she was bringing water from well, at that time accused came there and caught her hands and told her, "आमचे तुरीचे शेतात चाल, तेथे कोणीही नाही"- At that time she shouted, but there were no any person present in the field, hence she self escaped from his clutches. At that time, accused intimidated to kill her, if she told the said thing to any one. Thereafter, husband of Informant saw the accused but accused did not find.

3. On the basis of oral report of the Victim, Police Head Constable Shri. M.K. Nagre, had registered an offence against the accused vide Crime No. 137/2017 for the offence punishable under Section 354(A)(2) and 506(2) of the Indian Penal Code. After investigation charge-sheet came to be laid against the accused by Investigating Officer.

4. On 30.10.2017 necessary charge has been framed against the accused below Exh.12. He pleaded not guilty and claimed to be tried.

5. Following points arise for my determination and I have recorded my findings against each of them for the reasons given there under :-

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Sr.No.	POINTS	FINDINGS
01.	Does prosecution prove that, on 30.10.2017 at about 03.00 pm, at Mauza Ghotadevi, Th. Dist. Hingoli in the field of Informant bearing Gat No.174, accused made a physical contact by holding hands of Victim/Informant with bad intention and advances involving unwelcome and explicit sexual overtures ?	In the Negative.
02.	Does prosecution prove that, on the same date, time and place accused criminally intimidated to kill the Informant and it caused annoyance to her ?	In the Negative.
03.	What order ?	Accused is Convicted.

6. To substantiate the charge against accused, prosecution has examined total 06 witnesses i.e., Shri Gajanan Prabhakar Shelke (PW-1) at Exh.21, Informant (PW-2) at Exh.26, Panch, Shri Pradip Vithal Shelke (PW-3) at Exh.29, Shri Dilip Banajirao Ghyar (PW-4) at Exh.31, Shri Arun Baliram Jadhav (PW-5) at Exh.35 and Investigating Officer, Police Head-Constable Shri Madhukar Kundlikrao Nagre (PW-6) at Exh.39 respectively. On 26.07.2019 as per the oral request of learned Spl. A.P.P. for State, the evidence of prosecution closed as per order passed below Exh.1. The prosecution relied upon the oral report Exh.27, F.I.R. Exh.28, spot map Exh.32 and spot panchnama Exh.22.

7. The accused has not lead any evidence. On 19.09.2019 Statement of the accused under Section 313(1)(b) of the Code of Criminal Procedure came to be recorded vide Exh.48. His defence is of total denial and false implication on the count of enmity in respect of election and criminal prosecution against the husband and father-in-law of Informant.

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8. Heard learned Spl. A.P.P. for State, Mr. A.M. Ingle and learned counsel Mr. G.V. Ghuge for accused at length.

9. I gave anxious consideration to rival submissions. Learned Special A.P.P. submits that the Informant and eye witnesses consistently deposed about overt act committed by accused. As such, the oral as well as documentary evidence established beyond all reasonable doubt that the Informant was subjected to outrage her modesty by accused. Therefore, accused is liable to be convicted.

10. Per contra, according to learned Advocate for accused, supporting witnesses are interested and untrustworthy. The Informant on the count of election and brother of accused lodged report against husband as well as father-in-law of Informant, lodged false report against accused. The prosecution failed to prove that the accused caught the hands of Informant. He further argued that prosecution failed to prove the alleged offence against accused beyond reasonable doubt, hence, accused is liable to be acquitted.

-: REASONS AND FINDINGS :- All Judiciary Exam

AS TO POINT NOS. 1 AND 2 :-

11. These points are interconnected with each other. Hence, I have taken it together for my discussion. At the outset, I want to make it clear that, there is no law which says that, in the absence of any independent witnesses evidence of interested witnesses should thrown out at the behest of or should not be relied upon for convicting an accused, what law requires is that, where the witnesses





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are interested, then the Court should approach with the evidence with care and caution in order to exclude the possibility of false implication.

12. The Hon'ble Supreme Court in **Shamsuddin vs State of A.P. 2005 SCC(Cri.) 842** held that the evidence of a single person, who is claimed to have been injured if credible and trustworthy, there is no requirement in law insist on plurality of witnesses. Hence, it would not be out of place to mention here that on ocular aspects there is no direct corroborative evidence of any witness than the sole testimony of Informant Jyoti Pradip Shelke recorded below Exh.26. Therefore, either to find guilt or innocence of the accused first of all it is necessary to see that whether the testimony of Victim/Informant herself is reposing confidence and there is corroboration to the same otherwise.

13. In this regard, on bare perusal of the contents of the report at Exh.27 and the examination-in-chief of Informant at Exh.26, one will not find a slightest variation in the allegations made at both places. Therefore, it would be idle and needless formality to reproduce what she has deposed. But, suffice to say that in examination-in-chief, she has deposed the facts to attract ingredients of the offence leveled against the accused.

14. In the light of above settled legal position, I have perused the evidence of prosecution witnesses. On the point of actual occurrence of incident the Informant/victim is the best witness. Victim/Informant Sau. Jyoti (PW-2) deposed that, on 30.10.2017 at about 03.00 pm,

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when she was in the field and she went to bring the water from the well, the accused came there and caught her hands. She further deposed that accused told her "Aamche Turiche Shetat Chal, Tethe Konihi Nahi" (आमचे तुरीचे शेतात चल, तेथे कोणीही नाही). Hence, the Informant shouted, at that time accused told her "Tu Kitihi Orad, Mi Tula Sodnar Nahi" (तु कित्तीही ओरड, मी तुला सोडणार नाही). At that time accused intimidated to kill her if she told the said incident to any one. Thereafter, the Informant jerked her hands from the clutches of accused. Thereafter, the Informant ran away in the field where her husband and father-in-law were present. She told the said incident to them. Thereafter, her husband came on the spot, but accused was not found there. She told the said incident to her mother Kamlabai. Due to incident the Informant was afraid and hence, on the next day of incident she lodged report (Exh.27) and crime was registered against accused accordingly.

15. Turning to her cross examination, the Informant deposed that she educated up to 8th class and her marriage was solemnized on 26.07.2007. The learned counsel for accused invited my attention towards the omissions and contradictions. At the time of statement she stated to police that, "on the day of incident, she was afraid, hence she lodged report on the next day of incident". After perusal of the statement of this witness, it reveals that she deposed first time the said thing before this court. She admitted that, her husband having motorcycle and the distance between Ghotadevi to Narsi Narmdeo is about 04 to 05 Km. She further admitted that, vehicles are always available to go from Ghotadevi to Narsi. She further admitted that, Uttam Bapuji Shelke is her father-in-law and he is the president of Dispute Redressal

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Committee of village. She further admitted that, Suresh Rajaram Shelke is the cousin father-in-law and he is the Sarpanch of village Ghotadevi.

16. The Informant deposed that inside of the spot there were fields of accused and his cousin brother, Dr. Malekar as well Sayajirao Gawande. She admitted that, there is well and cattle shed in the field of Dr. Malekar and cousin brother of accused. She further admitted that, the cousin brother of accused resided in that cattle shed and there is 'Dhoora' situated towards the Eastern side of the alleged spot and it is thoroughfare. All other remaining suggestions put forth on behalf of accused are denied by Informant.

17. **Pradip (PW-3)** is the husband of Informant. He deposed that, the incident took place on 30.10.2017 at about 03.00 pm in the field where well is situated. On the day of incident, he and his father went at the field, at about 10:00 am the Informant was came in the field and she went to bring the water at the well, the accused came there and caught the hands of the Informant. He further deposed that at about 03:15 pm the informant ran away in the field and she told to him the alleged incident. Hence, the Informant shouted, but there were no any person hence, the Informant jerked her hands from the clutches of accused. At that time accused intimidated to kill her if she told the said incident to any one. Then he and his father went on the spot, but accused was not found there. He further deposed that, thereafter they came at home along with Informant and made a phone call to the father and mother of Informant and told them the said incident. Thereafter, his

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mother-in-law and brother-in-law came at Ghotadevi. On the next day, the Informant lodged the report to Police Station Narsi Namdeo.

18. The learned counsel for accused invited my attention towards the contradiction and omission. During cross-examination Pradip (PW-3) deposed that, he stated to police that, "the Informant ran away", but this thing is missing from his statement. From which it reveals that, he deposed the said thing first time before the court. He deposed that Prabhakar Shelke is his uncle. He admitted that, Gajanan (PW-1) is his the cousin brother and his uncle Prabhakar Shelke is active in politics. He further admitted that, in his village there are two political parties i.e. the party of Suresh Shelke and the party of Prabhakar Shelke. He specifically admitted that, in the election of Grampanchayat they became rivals and Suresh Shelke is the Sarpanch of Grampanchayat, Ghotadevi. He specifically admitted that till alleged incident happened he was never seen to anyone in the field. He further deposed that, inside of the spot there were field of accused and his cousin brother, Dr. Malekar as well Sayajirao Gawande. He admitted that, there is well and cattle shed inside his field. He specifically deposed that, the pot of water was on the Spot till police reached on the spot and there was wound on the hands of Informant. He deposed that, police had not issued any letter to refer the Informant in the Hospital and on the next day of incident at about 04:00 pm, they went in the Hospital. All other remaining suggestions put forth on behalf of accused are denied by this witness.

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19. **Dilip (PW-4)** is the Circle Inspector. He deposed that, on 03.11.2017 he was serving as Circle Inspector at Narsi Namdeo. Police called him by letter for the preparation of spot panchanama. He saw the spot panchanama prepared by police and thereafter, he prepared map (Exh.32).

20. During cross-examination Dilip (PW-4) deposed that, he has not brought the letter issued by police to him. Prior to one day of preparation of panchanama police met with him. He further deposed that, on 03.11.2017 he reached on the spot at 12:00 to 01:00 pm. But he had not made any entry in the register of his office. After preparing rough sketch map he saw the 7/12 extract. All remaining suggestions put-forth by accused are denied.

21. **Arun (PW-5)** is the brother of Victim/informant. He deposed that, the incident took place one year ago in the field of Informant at about 02:00 to 03:00 pm. At the time of incident he was at his home. At that time, Informant called to his father- Baliram and then his father told the incident to him. On the next day of incident he and his mother came at Ghoti. Thereafter, Informant told the incident to him.

22. During cross-examination Arun (PW-5) deposed that, his father told him the alleged incident at about 07:00 to 08:00 pm and the Informant called his father at 07:00 pm. He deposed that, he having motor-cycle. After receiving the information regarding alleged incident

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he had not called to the Informant or her husband. On the next day at about 02:00 pm they reached at Ghota.

23. Moreover, the Investigation Officer **Madhukar (PW-6)** deposed that, on 31.10.2017, when he was on duty at Police Station, Narsi Namdeo, the case diary of Crime No.137/2017 has been handed over to him for the investigation. During investigation, he went on the spot and prepared the Spot Panchnama (Exh.22) in presence of two witness on spot. Prior to which he issued notice (Exh.40) to panch witnesses. He deposed that, for the recording of statement he issued notice (Exh.41) to the witnesses. He had recorded statements of witnesses as per their say. During investigation he got 7/12 extract of spot. Thereafter, he arrested the accused. On 03.11.2017 he got Nazari Map. After completion of the investigation, he filed charge-sheet against accused.

24. During cross-examination Madhukar (PW-6) deposed that there is 8 to 9 km distance in between Ghotadevi to Police Station, Narsi. He could not deposed that in the month of September-October, 2017 Grampanchayat Election was conducted or not. He admitted that, at present the wife of Suresh Shelke is the Sarpanch of Ghotadevi. He admitted that, there are two political parties in Ghotadevi. One is of Prabhakar Shelke and another is of Suresh Shelke. He further admitted that, witnesses are the relatives of Informant. During investigation he had not seized any document of clinic. He specifically admitted that, field of accused, Dr. Malekar, Sayaji Gawande and Laxman Gawande are adjoining to the spot. He also admitted that, there is well and cattle

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shed in the field of Dr. Malekar. He deposed that there were no any crop in the field of spot. He deposed that, there is a crop of cotton in the adjoining field of spot. He had not inquired about Shankar Ramji Jadhav in Ghotadevi. He admitted that, he had written in the spot panchanama that, Shakar Ramji Jadhav had caught the hands of Informant with bad intention. He further deposed that, the name of accused in the spot panchanama written by mistake. He specifically admitted that, there is a 'Dhura' situated in between the field of accused and Informant. He specifically admitted that, N.C. report (Exh.44 and 45) are in respect of C.R.No.13/2015 and 14/2015 and C.R. No.13/2015 lodged by brother of accused against the husband and father-in-law of Informant. He also admitted that, C.R. No.14/2015 lodged by the mother-in-law of Informant against the brother of accused. He also admitted that, Suresh Shelke won the election against Prabhakar Shelke. All remaining suggestions put-forth by accused are denied.

25. As per the argument advanced by accused is that, as per the prosecution if the incident took place in noon then why Informant lodged report on the next day of incident. He further argued that, only to take revenge against accused, the Informant lodged false report. Thus, the testimony of the Informant is not self explanatory to infer that on given date, time and place accused made a physical contact and advances involving unwelcome and explicit sexual overtures to her to attract the ingredients of offence punishable under Section 354(A)(1) of I.P.C.

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26. It is a cardinal principle of criminal jurisprudence that, benefit of every reasonable doubt has to be given to the accused. Upon proof as is adduced, if there is a real and reasonable doubt as to guilt of accused, he is entitled to the benefit of doubt. The law always requires that the conviction should be certain and not doubtful. When there is doubt to the case of prosecution, then benefit of doubt deserves to be given to the accused. After going through the documents on record, it is seen that testimony of prosecution witnesses consisting material improvements, omissions and contradictions.

27. The record further reveals that the informant and her family on one hand whereas, accused and his family on other hand, were having some disputes, pertaining to the election. Even brother of accused lodged police report against the husband and father-in-law of informant to have committed the obscene act. In view of this position, it can safely be arrived at that their relations are strained. I am aware that on the ground of any animosity/enmity between the parties, the accused can not claim their exemption from criminal liability. Still, the fact remains that in the light of this contingency, the court is expected to scan the version of prosecution witnesses carefully. As such, on careful scrutiny of the prosecution witnesses, more precisely of the informant and Pradip (PW-3), it is crystal clear that they have not presented the true facts before this Court and hence, they do not inspire much confidence.

28. The prosecution relied on 1) **Criminal Appeal No.2126/2010 S.P.S. Rathore vs C.B.I. & Anr. Decided on**

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23.09.2016 in which Hon'ble Apex court held that, *"the accused is liable to be convicted for the offence punishable under Section 354 of I.P.C."*

2) Ramesh @ Lalya Anand Jagtap vs State of Maharashtra decided on 19.12.2000 in which Hon'ble Bombay High Court held that

"it should always be borne in mind that, where two inferences are open from medical evidence, the court should accept the inference which is in consonance with the other evidence available direct or circumstantial as the case may be provided the same is beyond reproach and confirmed the conviction under Section 376(f) of I.P.C."

As this authority is not applicable to the case in hand. As there is no medical evidence.

3) Vidyadharan vs State of Kerala decided on 14.11.2003 in which Hon'ble Apex court held that,

"though there were some delay in lodging the FIR, it is but natural in a traditional bound society to avoid embarrassment which is inevitable when reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. When a plea is taken about false implication, Courts have a duty to make deeper scrutiny of the evidence and decide acceptability or otherwise of the accusations. In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object".

So far as this authority is concerned, the delay came in the case in hand in the form of omission. Hence, this authority is not applicable.

29. Accused relied on **1) Buli Dei vs Krushna Mohan Pahadsingh & Anr. Decided on 19.05.1995** Honble Orissa High Court held that,

"Any of the neighbours ought to have been examined by the prosecution to prove it's case. But instead, it chose to examine P.W.1 on whose evidence the trial court refused to put implicit reliance. Further the learned

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Magistrate while assessing the evidence of P.W.s also doubted the prosecution case, since no motive was ascribed for the accused to commit the alleged crime. Added to it, he also noticed discrepancies in the evidence of the witnesses and so was not inclined to accept the same on its face value. Therefore, the ultimate conclusion arrived at by the trial court being based on appreciation of the evidence”.

2) Sohan & Anr. Vs State of Haryana & Anr. Decided on 02.03.2001

in which Hon'ble Apex Court held that

“credibility of prosecution witness truthfulness of his evidence in the circumstances needed to be scrutinized with great care and caution. It was unsafe to act on his evidence without corroboration”.

3) Hanumandas Vs. State of Maharashtra decided on 19.03.2012 in

which Hon'ble Bombay High Court held that

“sole testimony of the first informant ought not to have been relied upon when there were discrepancies in the evidence of the first informant. The independent witnesses who were around at the time of incident, ought to have been examined to inspire confidence in judicial mind to conclude conviction with reasonable certainty. Furthermore, there is no plausible explanation for delay in lodging F.I.R. when the incident had occurred on the earlier day”.

4) Jagdish & Anr. Vs. State of Harayana (2019(3) Crimes 185(SC) in

which Hon'ble Apex Court has held that

“in the entirety of the facts and circumstances of the case, the relationship between PW 01 and deceased, the existence of previous animosity, we do not consider it safe and cannot rule out false implication to uphold the conviction of the appellants on the evidence of doubtful solitary witness”.

Authorities filed by accused are applicable to the instant case.

30. As per the informant (PW-2) there is a well and cattle-shed are situated in the field of Dr. Malekar. She admitted that the cousin brother of accused is resided in the cattle-shed situated in the field of accused. She also admitted during cross-examination that the cousin brother of the accused is residing in the field of accused. It is pertinent





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to mention here that as per the situation on the spot, there is 'Dhoora' situated in the same survey number and persons are using the path of said 'Dhoora'. As per the evidence of informant the incident took place in the month of October and agricultural work was going on, then obviously the workers may be present in the field of adjoining lands. The informant specifically admitted that on the day of incident in the field of accused the work was going on in respect of plucking of cotton. Then the question arises that none any person came on the spot, when the informant shouted to escape from the clutches of accused. It is also pertinent to mention here that the prosecution has not examined any independent witness and whole case is completely depends on the testimony of informant. After scanning the evidence of informant in her evidence it came that on the next day of alleged incident her husband and father-in-law were went in their field for the routine agricultural work. Then question arose that if the alleged incident took place and on the very next day the husband and father-in-law doing their routine work, which creates doubt about the alleged incident.

31. Pradip (PW-3) and Arun (PW-5) who are the hearsay witnesses. Hence, on their evidence the accused cannot be convicted. In view of N.C. report vide Exh.44 and Exh.45, it reveals that the brother of accused Vishnu Lambde lodged the said report against the husband and father-in-law of informant. From which it reveals that the relationship between the family of accused and informant became strained and on this back ground and in such circumstances false implication of accused in the instant case cannot be ruled out.

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32. In the backdrop of all these aspects, again if one can turn to the testimony of Investigating Officer Shri Madhukar (PW-6) then anyone can find the material in his cross-examination which would create crowd of suspicion about his credibility. Apart from this, it is to be noted that the report of alleged incident lodged on 31.10.2017 and he prepared spot panchnama. Though Spot panchnama (Exh.22) clearly manifest that, it was drawn by the Investigating Officer, but only from the spot panchnama accused can not be held guilty. It is pertinent to mention that, he had not recorded the statements of adjoining land holders. From the record it reveals that, the I.O. had recorded the statements of witnesses as per say of Informant. He had not filed the letter on record, issued by him to Circle Inspector. He had not seen any water pot (पाण्याचा हांडा किंवा कळशी) on the spot.

33. Consequent thereto, I am of the opinion that the prosecution failed to substantiate guilt of the accused beyond all reasonable doubt and therefore, benefit of said doubt should be extended to him. The prosecution failed to shift the burden and failed to prove the case beyond reasonable doubt, and hence, in such circumstances, it would not be proper to base conviction against accused on the basis of weak evidence adduced by the prosecution itself. Therefore, benefit of doubt goes to the accused and he may entitle to be acquitted from the present case. It is pertinent to mention here that, though the prosecution has proved spot panchnama. But, in absence of direct or cogent evidence, prosecution failed to prove that, the so called alleged act is committed by accused. There is no corroborative evidence on record to prove the guilt of accused beyond all reasonable doubts.

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The same and substance of the above discussion no implicit reliance can be placed on the testimony of so called prosecution witnesses. Hence, the cumulative effect is that, in absence of the cogent evidence, prosecution failed to establish alleged charge against the accused. In such circumstances, it would be just and proper to acquit the accused on the ground of benefit of doubt. Hence, I answered **point Nos.1 and 2 in the Negative.**

AS TO POINT NO.3 :-

34. In view of above discussions and my findings to point Nos.1 and 2, accused is deserved to be acquitted for offence leveled against him. In the result, I proceed to pass following order as under:

O R D E R

01. Accused **Shankar s/o Ramji Lambde**, is hereby acquitted vide Section 248(1) of the Criminal Procedure Code,1973 of the offence punishable under Section 354(A)(2) and 506(2) of the Indian Penal Code, 1860.
02. His bail bond stands cancelled.
03. He be set at liberty, if not required in any other crime.
04. Accused to furnish P.B. & S.B. of Rs. 15,000/- with one solvent surety of like amount as per mandate of Section 437(A) of the Code of Criminal Procedure, 1973 to appear before the appellate court.

(Dictated & pronounced in open court)



Digitally signed by
Vaibhav Vasanttrao
Joshi
Date: 2020.02.07
17:33:36 +0530

Hingoli.
Dated:-07.02.2020.

(V.V. Joshi)
Judicial Magistrate First Class,
Court No.2, Hingoli, Dist. Hingoli.

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ENDORSEMENT

Case Argued on	:	08.01.2020
Judgment dictated on	:	07.02.2020
Transcription Ready on	:	07.02.2020
Judgment checked and signed off	:	07.02.2020

CERTIFICATE

It is affirmed that the contents of this PDF file Judgment are same word to word, as per the original Judgment.

Typed By :- Presiding Officer.

