

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.38 OF 2006

The State of Maharashtra,
through Police Station, Kannad,
District Aurangabad ... APPELLANT

VERSUS

1. Rajkumar Ganeshlal Chudiwal,
Age 52 years, Occ. Business,
R/o Bhilpaltan Galli,
Kannad, Taluka Kannad,
District Aurangabad **(Appeal abated against
respondent No.1)**
2. Bharat Dhanendra Chudiwal,
Age 30 years, Occ. Business,
R/o Bhilpaltan Galli,
Kannad, Taluka Kannad,
District Aurangabad ... RESPONDENTS

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Mrs.R.K. Ladda, A.P.P. for appellant
Shri Rupesh A. Jaiswal, Advocate holding for
Shri N.S. Ghanekar, Advocate for respondent No.2
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CORAM: A.I.S. CHEEMA, J.

DATED: 16th January, 2015.

ORAL JUDGMENT :

1. This appeal against acquittal was admitted on 4.9.2008. Heard learned A.P.P. for the appellant/ State and learned Advocate for respondent No.2 - original accused No.2.

The accused No.1 Rajkumar expired during pendency of the appeal and the appeal abated with regard to respondent No.1 (original accused No.1) vide order dated 24.2.2010.

2. It is the case of prosecution that on 17.8.1999 at about 1.30 p.m., at Bhilpaltan, the accused No.1 and 2, in furtherance of common intention, committed house trespass in the house of complainant Shalini Padmakar Sontakke (P.W.1) and started keeping household articles in the house of complainant. She objected and stated that her husband was not at home and why the household articles were being kept there. The accused persons abused her and accused No.1 Rajkumar held hand of the complainant and pulled her inside the house and abused her (abuse is mentioned in the complaint). The complainant claimed that, her modesty has been outraged because of such act. The F.I.R. claimed that, the accused No.1 Rajkumar threatened her that if she tells anybody, she would be killed. Both the accused then left. The F.I.R. was filed at the Police Station, Kannad of Crime No.1/1999 on the same day under Sections 452, 354, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (IPC in brief). The offence was investigated by P.W.3 A.S.I. Ramesh Jagannath. He recorded the spot panchanama. Statements of witnesses were recorded and subsequently, the charge sheet came to be filed.

3. The matter came up before Judicial Magistrate, First Class, Kannad and to the charge, the accused persons pleaded not guilty.

4. The prosecution examined the complainant Shalini Sontakke (P.W.1) and her son Mahavir Sontakke (P.W.2) as regards the incident. The investigating officer deposed as P.W.3. The defence of the accused, as can be seen from the cross-examination and statement under Section 313 of the Cr.P.C., is of denial. It was claimed by the accused that the husband of the accused was paid Rs.1,25,000/- and it was agreed that there would be no rent to the house and no interest to the amount. The accused claimed that, in order not to give back the money and to forcibly evict, false case has been filed.

5. Trial Court considered the evidence brought on record and for reasons recorded, acquitted both the accused of the offences with which they were charged.

6. It has been argued by the learned A.P.P. that the trial Court acquitted the accused persons only on the count that the house of the complainant was on busy road and there was no independent witness brought in support of the case of

prosecution. According to her, the incident took place in the house and so, the judgment of the trial Court needs to be set aside and accepting the evidence of P.W.1 and P.W.2, the accused should be convicted.

7. Counsel for respondent N.2 (accused No.2) has argued that, the evidence of P.W.1 and P.W.2 is not reliable. Whatever allegations were made by them are more against deceased accused No.1 Rajkumar who is now no more. Even otherwise, according to the learned counsel, the offence is not established as the allegations made in the evidence were not reflecting in the F.I.R. which was filed.

8. Having heard counsel for both sides and going through the record, it can be seen that, P.W.1 and P.W.2 in the evidence claimed that the accused persons came to the house and they were keeping household articles and that the complainant objected. The evidence of P.W.1 is that, there was scuffle because of the incident. She deposed that, accused No.1 Rajkumar caught hold of her right hand with ill intention and had taken her inside room and outraged her modesty. She deposed that he had pressed her chest and abused her. She claimed that he threatened to kill her. Her evidence was that, the accused thereafter left the house. Her evidence was that accused No.2

Bharat removed pallu of her saree. She was supported in this regard by P.W.2, her son. However, the F.I.R. Exhibit 27 shows that as far as regards outraging modesty is concerned, it was merely stated that accused No.1 Rajkumar, in the course of incident, held her hand and pulled her inside the house and abused her. Trial Court considered that the details of the incident as deposed to by P.W.1 and P.W.2 did not find place in the F.I.R. Exhibit 27. It was also noticed that, although the evidence was that bangles of P.W.1 had broken, but the panchanama was silent in this regard. The trial Court also discussed evidence of P.W.2 that clothes of his mother tore in the course of incident, but the panchanama in that regard was not there. The evidence of P.W.2 was that, his mother sustained injury in the incident, but no medical evidence was there.

9. Although the learned A.P.P. submitted that the observations of the trial Court are not correct that there should have been independent witness as the house concerned is on busy road, fault cannot be found with the observations as the evidence of the complainant P.W.1 in cross-examination is that the incident concerned went on for about two hours. The complainant admitted in cross-examination that six rooms of first floor of their house were let out on rent to the accused persons. It appears that, there was some dispute regarding the tenancy.

The trial Court has thus considered the evidence and came to the conclusion that the offence was not proved. Apart from Section 354, the trial Court discussed the evidence in the context of Section 452 as well as Sections 504 and 506 of the Indian Penal Code and found that there was insufficient evidence on this count and the offence was not made out. Regarding Section 452, there was dispute relating to tenancy. For Section 504 provocatively insulting was not proved and criminal intimidation was also not established was found. Looking to the evidence on record and the reasons recorded by the trial Court, it cannot be said that the reasons recorded by the trial Court are perverse. There is no reason to interfere in the present appeal against acquittal.

10. Criminal Appeal is dismissed.

(A.I.S. CHEEMA, J.)