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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.344/1995

The State of Maharashtra.

...Appellant..
(Org.complainant)

Versus

Prabhakar Hema Fegade,
age 26 yrs., r/o Nhavi Tq.Yawal
Dist.Jalgaon.

...Respondent...
(Org.accused)

.....

Shri B.L.Dhas, APP for appellant.

Shri N.L. Jadhav, Advocate for respondent.

.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 01.10.2015

JUDGMENT (Per A.B. Chaudhari, J.):

1] Heard learned APP for the appellant - State.

2] This appeal at the behest of the State is directed against the judgment and order of acquittal of the respondent - accused for the offence u/s 376 (f) of the Indian Penal Code, 1860.

3] We have perused the impugned judgment and order dated 11.8.1995 passed by the learned Vth Additional

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Sessions Judge, Jalgaon, in Sessions Case No.21/1995. We find from the perusal of the judgment that the respondent was convicted for the offence u/s 354 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for two years and fine of Rs.2,000/-.

4] We have kept in mind the limitations in respect of the appeal against acquittal as enunciated by the Supreme Court in the case of *State of Rajasthan v. Darshan Singh alias Darshan Lal* (**AIR 2012 SC 1973**). We quote paragraph no.24 of the said decision :-

"24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

5] Having regard to the above dictum of the Supreme Court, have examined the instant appeal. We find that

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there is a fair martialing of evidence by the trial Judge and having given reasons in the judgment in paragraph no.23, the trial Court came to the conclusion that there was no proof about the penetration and, therefore, consequently the offence of rape was not proved. The trial Court, however, found the respondent guilty of the offence of outraging the modesty.

6] The learned counsel for the respondent – accused submitted that the accused underwent the sentence and did not challenge the finding and sentence regarding conviction u/s 354 of the Indian Penal Code. Be that as it may. Insofar as the present appeal is concerned, we find no reason to take another view of the matter.

7] In the result, we make the following order.

ORDER

Criminal Appeal No.344/1995 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)