

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 96 OF 2002

The State of Maharashtra
Through Surekha Dinkar Randive,
R/at. Mahud (B.), Taluka - Sangola,
District - Solapur

... Appellant

V/s.

- 1) Mahadeo Maruti Kamble,
Age - 36 years.
- 2) Chandrakant Aaba Kamble,
Age - 25 years.

Both R/o. Mahud (B.),
Taluka - Sangola, District - Solapur

... Respondents

.....

Mr. R. M. Gandhavi, APP for the Appellant - State.
None for the Respondents.

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CORAM : S.B. SHUKRE, J.

DATED : OCTOBER 28, 2015.

ORAL JUDGMENT :

This is an Appeal preferred against the Judgment and order dated 7th September, 2001 delivered in Regular Criminal Case No.47 of 1998, thereby acquitting both the respondents of the offences punishable under sections 354, 452, 323, 504 read

with Section 34 of the Indian Penal Code (hereinafter referred to as "IPC", for short)

2 Briefly stated, the facts of the case are as under:

It is the case of the prosecution that in the night of 28th April, 1998, at about 11.30 p.m., when the complainant was sleeping in her house situated at Mahud (B.), Taluka Sangola, District - Solapur along with her grandparents Sampati Kamble and grant mother Sakhubai Kamble, both the accused persons unlawfully entered her house with an intention to commit offences and both the accused did commit offences such as outraging of modesty of the complainant, intentionally insulting the complainant and her grandparents in order to provoke breach of the peace and also house trespass after preparation for hurt, assault or wrongful restrain. The complaint of the incident was lodged with police on the next day and investigation was made. Both the accused were charge-sheeted for the offences of outraging of modesty, house trespass, intentionally insulting with intent to provoke the breach of peace and house trespass. The charge for these offences was framed against both the accused to which they pleaded not guilty and claimed to be tried. On merits

of the case, the learned Judicial Magistrate, Sangola found that the prosecution case was doubtful and therefore giving benefit of doubt to both the accused, the learned Magistrate by his judgment and order dated 7th September, 2001, acquitted both the accused-respondents of the offences punishable under Sections 354, 452, 323, 504 read with Section 34 of the IPC. Not satisfied with the same, the State is before this Court in the present Appeal.

3 I have heard the learned A.P.P. for the State. I have carefully gone through the record of the case including the impugned judgment and order. Nobody is present on behalf of the respondents.

4 Although the learned A.P.P. for the State has submitted that the inferences drawn by the learned Magistrate are the result of improper appreciation of evidence, upon a careful consideration of the prosecution evidence, I hardly find it to be so. It is seen from the impugned judgment and order that the view taken by the learned Magistrate is possible in the facts and circumstances of the case and as such there is no scope for making any interference in the impugned judgment and order.

5 The learned Magistrate, has found that the grandparents of the complainant were sleeping in the same room, as the complainant where the alleged incident took place in which it has been alleged that respondent no.1 had outraged modesty of the complainant by touching her breasts and as it was done without switching off the lights, which were already burning at that time, the story of the complainant could not be believed. According to the learned Magistrate, if at all the respondents had unlawfully or forcibly entered into the house of the complainant with an intention to outrage her modesty, ordinarily one would expect that such accused persons with such devilish intentions in their mind would first put off the electric lights so that they are not seen or their identity is not established by anybody. According to him, presence of grandparents of the complainant in the same room would further make one believe that no person in his ordinary senses would try to outrage modesty of a young girl like the complainant in such a situation unless some basic care is taken by him to conceal his identity. But, that was not the case here. The learned Magistrate has also found that even though Sampati Kamble had woken up on hearing of the noise or commotion, it was not clear as to what was exactly done by

Sampati Kamble, the grandparent of the complainant. He was also not examined as a prosecution witness though he was available, and this fact created further doubt about genuineness of prosecution case against the respondents. For these reasons, the learned Magistrate disbelieved the prosecution evidence and according benefit of doubt to both the respondents and acquitted them of the offences with which they were charged in the instant case.

6 In the circumstances, I find that the view taken by the learned Magistrate, being based upon the evidence of the prosecution available on record, cannot be said to be a view not logically arising at all from the facts of the case or an impossible view. Therefore, this is not a fit case for making any interference with the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)