

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.900 OF 1998

State of Maharashtra

..Appellant.

V/s.

Shantaram @ Baban Bagadu Dhanawade,

Age: 35 years, R/o. Karanje, Taluka Jaoli,

District Satara.

..Respondent.

Mrs.M.M.Deshmukh, APP for appellant-State.

None for the respondent.

CORAM : A.M.BADAR, J.

DATED : 25TH APRIL, 2016

P.C.:-

1. By this appeal, the appellant-State is challenging the judgment and order dated 16th May 1998 passed by the learned IV Additional Sessions Judge, Satara in Criminal Appeal No.18/1998 thereby reversing the judgment and order dated 20th March, 1998 passed by the learned J.M.F.C., Satara, Deputation Court, Medha in Regular Criminal Case No.26/1997 convicting the respondent / accused for offences punishable under section 457 and 354 of the Indian Penal Code, 1860.

2. Brief facts leading to the institution of the present appeal are thus :-

(a) According to the prosecution case, the respondent / accused and informant Lata Dhanawade are residents of village Karanaje, Taluka Jaoli, District Satara. On 28th August, 1997, according to the prosecution case at about 3.00 a.m. the respondent / accused entered the house of informant Lata by committing lurking house trespass in order to commit an offence and thereafter, outraged her modesty by using criminal force. The report of this incident came to be lodged by the informant on the very next date i.e. 29th August, 1997 with the Police Station, Medha which has resulted in registration of the offences punishable under section 457 and 354 of the Indian Penal Code against the respondent / accused. Informant Lata was sent for medical examination. Investigating Officer Subhash Namdeo Pawar, Police Head Constable, then visited the spot and recorded the spot panchanama. He recorded the statements of witnesses and on completion of routine investigation, the accused was charge-sheeted for offences punishable under section 457 and 354 of the Indian Penal Code.

(b) The learned J.M.F.C. framed and explained the charge for the offences punishable under section 457 and 354

of the Indian Penal Code to the respondent / accused, who pleaded not guilty. In support of the charge, the prosecution has examined in all 7 witnesses. Informant Lata Vitthal Dhanawade came to be examined as PW1 at Exhibit-10. Report lodged by her is at Exhibit-11. Her neighbourer and alleged eye witness Subhash Shankar Dhanawade was examined as PW2 at Exhibit-14. Panch witness Dagdu Laxman Bhilare came to be examined as PW3 at Exhibit-15. The spot panchanama is at Exhibit-16. Laxmi Jagannath Dhanawade, the mother-in-law of the informant is examined as PW4 at Exhibit-17. Another witness Dnyaneshwar Kondiba Dhanawade came to be examined at PW5 at Exhibit-18. Medical Officer Dr. Ravinder Digamber Kulkarni was examined as PW6 at Exhibit-22 and certificate issued by him is at Exhibit-23. Investigating Officer Subhash Namdeo Pawar was examined as PW7 at Exhibit-24. After hearing the parties, the learned Illrd Joint J.M.F.C., Deputation Court, Medha was pleased to convict the respondent / accused for offences punishable under section 457 and 354 of the Indian Penal Code and he was sentenced to suffer R.I. for two months and to pay a fine of Rs.2,000/- in default to suffer S.I. for one month. For offence punishable under section 354 of the Indian Penal Code, he

was sentenced to suffer R.I. for two months and to pay a fine of Rs.2,000/- in default to suffer S.I. for one month. Both the sentences were to run concurrently.

(c) Being dissatisfied by the said judgment and order of convicting him for offences punishable under section 457 and 354 of the Indian Penal Code, the respondent / accused carried the said judgment and order in appeal before the learned Sessions Judge, Satara. After hearing the parties, by the impugned judgment and order dated 16th May, 1998, the learned IV Additional Sessions Judge, Satara was pleased to allow the said Criminal Appeal No.18/1998 and by granting benefit of doubt to the respondent / accused, he was acquitted of the offence punishable under section 457 and 354 of the Indian Penal Code. Feeling aggrieved by this Appellate Court Judgment of acquittal, the State has come in appeal before this Court.

3. Heard the learned Additional Public Prosecutor appearing for the State at length. Perused the record and proceedings. I have carefully gone through the entire evidence adduced by the prosecution on record.

4. According to the learned Additional Public Prosecutor, the prosecution has adduced clinching evidence in order to bring home the guilt to the accused for the offences levelled against him. The learned Additional Public Prosecutor pointed out that there is no reason to disbelieve the ocular version of the victim of the crime and her evidence is well corroborated by eye witnesses to the incident in question, including PW2 Subhash, PW4 Laxmibai and PW5 Dnyaneshwar. The learned Additional Public Prosecutor vehemently argued that evidence of the informant is corroborated by the medical evidence on record coming from the mouth of PW6 Dr. Ravindra Kulkarni. Hence, according to the learned prosecutor by quashing and setting aside the impugned judgment and order, the respondent / accused needs to be convicted for the offences alleged against him.

5. Despite service, the respondent / accused is absent and considering the evidence on record, as this Court is of the opinion that there is no reason not to accept the Appellate Court's judgment, the appeal is being decided in the absence of the respondent / accused.

6. It is well settled that order of acquittal need not be ordinarily interfered with because presumption of innocence of the accused is further strengthened by his acquittal. Similarly, it is well settled that when two views are possible on the basis of evidence which is before the Court, the view which is favourable to the accused needs to be adopted. The judgment and order passed by the Criminal Courts can be interfered with only when there are compelling and substantial reasons. Keeping in mind these principles of exercising the appellate jurisdiction, let us now examine whether the view taken by the learned Additional Sessions Judge while acquitting the respondent / accused is a probable view based on the evidence on record.

7. According to the prosecution case, the incident of outraging the modesty of PW1 Lata after committing lurking house trespass by the accused happened at about 3.00a.m. on 28th August, 1997. As per the version of PW1 Lata, the accused is her neighbour and she was residing in her house along with her mother-in-law PW4 Laxmibai and her daughters. Version of PW1 Lata further goes to show that they all used to sleep in the second room of the house which

is behind the padvi. Evidence of this witness goes to show that there was door of bamboo sticks to the first room called as padvi and then there was door of wooden planks to the second room where the informant along with her mother-in-law PW4 Laxmibai and her daughters used to sleep. As seen from the evidence of PW1 Lata they used to latch the second door i.e. door of their bedroom. Keeping in mind this situation of the spot of incident where the incident in question had allegedly taken place, let us examine the prosecution evidence.

8. PW2 Subhash is a neighbour and undisputedly close relative of informant Lata and her mother-in-law PW4 Laxmibai. His evidence reveals that he is neighbourer of informant Lata. His house is at a distance of 5 to 7 houses from the house of informant Lata.

9. Considering the fact that PW2 Subhash is a near relative of the informant, his evidence needs to be scrutinized with great care and caution. In order to test the veracity of this witness, let us keep in mind the topography of the scene of occurrence. Cross-examination of this witness goes to show

that his house is located at the southern side of the house of informant. Then to the south of his house, there is a river where residents of the village used to go for answering the call of nature. It is in the evidence of this witness PW2 Subhash that he got up to answer the call of nature and went towards the house of informant PW1 Lata on hearing some shouts. This witness deposed that he saw the accused coming out of the house of the informant and he asked the accused to stop but the accused ran away. PW2 Subhash then stated that he went to the house of the informant and the informant narrated the incident to him.

10. Learned Additional Sessions Judge disbelieved the testimony of this witness by keeping in mind the topography of the locality where the incident happened. The learned Additional Sessions Judge considered this witness as a chance witness and concluded that there was no reason for this witness to go to the northern side of the village when the residents of the village goes for easing to the southern side where the river is located. The learned Additional Sessions Judge further doubted the version of this witness as there was no evidence on record to disclose the source of light at and

near the place of incident. The learned Additional Sessions Judge considered the defence of the accused that he and Bhivram Sidhu Dhanawade, who is a relative of the alleged victim, were on inimical terms and therefore, disbelieved the version of this witness. The reasoning given by the learned Additional Sessions Judge in disbelieving the version of PW2 Subhash cannot be said to be perverse or not in consonance with the evidence on record.

11. At this juncture, it needs to be noted that the entire evidence on which the prosecution is resting the charges is coming from the mouth of witnesses who are interested in the informant. The house of PW2 Subhash is located at a distance of 7 houses from the house of the informant. It is some what strange to note that no other immediate neighbour is coming forward to depose about the alleged incident. Even evidence of the informant does not show that she has shouted loudly to call for help. Therefore, finding of the lower Court regarding presence of this witness on the scene of occurrence found to be doubtful by the learned Additional Sessions Court cannot be faulted with.

12. Then, there is the evidence of PW5 Dnyaneshwar Dhanawade, another alleged eye witness. It is in his evidence that after hearing the sounds of shouting at about 3.00 a.m., he rushed to the house of PW1 Lata and saw the accused running from the said house. He further deposed that informant Lata told him that accused caught hold of her hand. This evidence of PW5 Dnyaneshwar is proved to be coming on record by way of improvements over his previous statement. These improvements are proved by the defence through the cross-examination of the Investigating Officer PW7 Subhash Pawar. PW5 Dnyaneshwar is also a relative of informant Lata and if viewed from this context, improvement made by this witness before the Court are material and going to the root of the case. These material improvements made by this witness makes his testimony wholly unreliable. As such, the learned Additional Sessions Judge has rightly disbelieved this witness.

13. Let us examine the evidence of PW1 Lata. Her version that she, along with her mother-in-law and daughters were sleeping in the second room of the house, the accused came and held her right hand. She claimed to have seen the accused entering in the house because of the sound of opening of the door. As per her version, as the accused

caught hold of her hand, her bangles were broken causing injury to her hand. Similar is the version of her mother-in-law PW4 Laxmibai. She also claims to have seen the accused while she opened the door of the second room i.e. the door of the room where they were sleeping. As per her version, the accused caught hold of her daughter-in-law Lata.

14. If evidence of PW1 Lata, her mother-in-law PW4 Laxmibai and PW5 Dnyaneshwar are considered, there is an element of improbability in their version. It does not stand to reason that respondent / accused would enter into the bedroom of the informant, that too opening two doors and will catch hold of the hand of the informant in presence of her mother-in-law PW4 Laxmibai. Evidence of informant Lata goes to show that second door of the house always used to be closed by putting the latch. With such evidence, one fails to understand as to how the accused would be in a position to enter inside the house of the informant and that too for outraging the modesty of informant in presence of her mother-in-law. Such cannot be the natural conduct of a normal human being and no reasons for taking this action by the accused are coming on record. Because of such

improbabilities, version of the informant as well as the mother-in-law, does not pass the test which is required in the criminal trial. The injuries on wrist of the informant are explained by PW6 Dr. Ravindra Kulkarni and his cross-examination shows that such injuries are possible even if the bangles are broken during domestic work. As such no over bearing importance can be given to the medical evidence on record to infer guilt of the accused..

15. For the reasons discussed above, it cannot be said that the learned Additional Sessions Judge erred in granting the benefit of doubt to the accused while acquitting him of the offences punishable under section 457 and 354 of the Indian Penal Code. There are no compelling and substantial reasons to interfere with the impugned judgment and the order of acquittal. The appeal is, therefore, devoid of merits and the same is dismissed.

(A.M.BADAR, J.)