

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Criminal Appeal No. 754 of 2003
[State of Mah. Vs. Ganesh Ramrao Bhuskat]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Bangadkar, APP for appellant.

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CORAM : A.B. CHAUDHARI, J.

DATE : 03rd February, 2016

Being aggrieved by the Judgment and Order dated 18th September, 2003 passed by Judicial Magistrate First Class [Court No.7], Amravati, in S. Criminal Case No. 2206 of 2002, by which the respondent, accused, Ganesh Ramrao Bhuskat, is acquitted of the offence punishable under Section 354 of Indian Penal Code, the State filed the instant appeal in this Court.

In support of the appeal, learned APP for the State submitted that the Trial Judge has for no reasons rejected the prosecution case, whereas, as a matter of fact, the evidence of Pushpa Mondhe [PW 1] was corroborated by her oral report that was lodged with the Police Station immediately. He then submitted that the Trial Judge should not have rejected the evidence of the witness, only because there was variance of time in

respect of the incident. He, therefore, submitted that the order of acquittal needs reversal.

None appears for the respondent, though served.

I have perused the evidence of Pushpa [PW 1]. I have perused the reasons recorded by the Trial Judge. Learned Trial Judge found in para 10 of the Judgment that there was variance of time in relation to the description of the incident, which para is quoted hereunder:-

“10. On scrutiny of the evidence of PW 1 Pushpa, i.e., complainant and witness PW 5 namely Chetan, the son of complainant it is found to me that these two witnesses are not telling same time of incident as when incident was occurred. The complainant volunteers in her cross-examination that incident occurred at about 2 p.m. There is variance in time as she had stated before the police that the time of incident was 10.00 a.m. It creates doubt in my mind that whether the incident was occurred or not, and if occurred when occurred.

Learned Trial Judge also found that the testimonies of Pushpa [PW 1] and Chetan [PW 5] could not be relied upon without independent evidence.

In the light of the above, I quote relevant portion of para 13 from the Judgment of the Trial Judge, which reads thus:-

“13. The testimonies of PW 1 complainant Pushpa and PW 5 Chetan are not trustworthy as these witnesses are not

deposing the timing of incident. The conviction cannot be sustained in the absence of any cogent and reliable evidence on the prosecution side. Solitary evidence of prosecutrix that her modesty was outraged inside the house by accused was not reliable, worth acceptance in the absence of any other corroborative evidence. Prosecution has not cited any independent witness as the spot of incident was in locality. The statement of Anil Yawale is not recorded by the prosecution in order to show whether the son of complainant had been in his shop for bringing stone of weight. The testimony of complainant is not trustworthy on the point of timing. In absence of reliable evidence on record.....I am unable to convict the accused. Prosecution has miserably failed to prove the guilt of the accused which is levelled against him."

In the light of the decision of Supreme Court in the case of **Darshan Singh Vs. State of Punjab** [(2010 2 SCC 333] [**para 61**], I think, no interference in the order of acquittal can be made.

In the result, Criminal Appeal No. 754 of 2003 is **rejected**.

Judge