

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 969 OF 2001**

State of Maharashtra	..Appellant
Vs.	
Sunil Gajanan Suryavanshi	..Respondent

Ms Pallavi Dabholkar APP for State

**CORAM : K.R.SHRIRAM, J.
DATE : 14th OCTOBER 2019**

P.C.:

1 This appeal is filed by the prosecution impugning the order and judgment dated 17-7-2001 passed by the Learned Civil Judge Junior Division and Judicial Magistrate First Class, Wai, Mahabaleshwar.

2 Accused in this case was facing trial for the offence under sections 354 and 506 of the Indian Penal Code. Section 354 relates to assault or criminal force to woman with intent to outrage her modesty and Section 506 relates to punishment for criminal intimidation.

3 It was the prosecution's case that the prosecutrix who was aged about 16 years was residing in postal colony, Mahabaleshwar along with her parents and her brother. The father of prosecutrix was working in the postal department with whom the accused was also working in the postal department. It is the case of the prosecutrix that the accused used to tease her time and again and has been regularly abusing her in foul language

whenever she would go to fill water at the tap which was being used by the people residing in the postal colony. It is also stated in the complaint that the accused used to tease her whenever he found her alone and also nudge her and she complained about this to her parents and her brother. It is also stated that even her father tried to explain to the accused not to tease the prosecutrix in vain. It is the case of the prosecutrix that at about 10.00 p.m. on 17-3-1998 when she was cleaning utensils in the tap outside the house, the accused came from behind and embraced her, touched her chest inappropriately with both his hands and covered her mouth to prevent her from screaming or raising an alarm and also threatened her with death if she disclosed to anybody what happened to her.

4 On 18-3-1998, the prosecutrix, alongwith her brother went to the police station at about 9.00 a.m. and, lodged a complaint about the alleged outrage of modesty on the night of 17-3-1998.

5 Accordingly charges were framed under Sections 354 and 506 of the IPC. On the part of the prosecution, three witnesses were examined namely; prosecutrix (PW.-1), her mother (PW.-2) and the Investigating Officer (PW.-3). The statement of the the accused was recorded under Section 313 of the Cr.PC. The accused also led evidence of two independent witnesses one Sanjay Gawade (D.W.-1) and Pandurang Deshpande (D.W.-2).

6 After considering the entire evidence the accused was acquitted primarily on the ground that there was a delay in lodging of the complaint

and also relying on the defence witnesses' statements that wife of the accused and the mother of prosecutrix had a quarrel on 17-3-1998 at about 5.00 to 5.30 p.m. near the water tap and there was another major quarrel between the two ladies at about 10.00 p.m. on the same night, i.e., 17-3-1998. The complaint was cooked up only to get even with the accused. The court also went on the basis that the incident was so serious as according to the prosecutrix that her modesty was outraged and there was no satisfactory explanation for lodging the complaint late particularly when the police station was within walking distance.

7 APP Ms Dabholkar submitted that there is a possibility that the prosecutrix would have been in total shock when her modesty was outraged in the manner explained in the complaint. There are social repercussions and the family would have thought over the matter over night and decided in the morning that matter should not be left where it is, but should be taken to its logical conclusion and the accused should be taught a lesson and punished in accordance with law. Ms Dabholkar submitted that Learned Magistrate did not consider any of these factors and, therefore, could not have found fault with the prosecutrix delaying in lodging the complaint. Though I am impressed by the submissions of APP, the fact is none of these are found in the complaint and in the evidence of the prosecutrix or PW-2 (mother) and PW-3 (Investigating Officer). There is absolutely no explanation anywhere that could be found for the delay.

8 Even for a moment, I accept what Ms Dabholkar submitted and I also accept that Learned Magistrate was wrong in making too much of the delay of 12 hours in lodging the complaint and that too, when the incident has happened at 10.00 p.m. at night and the complaint was lodged at 9.00 a.m. in the morning, still the evidence of the prosecutrix itself does not give me the reason to interfere with the impugned judgment and order.

9 The prosecutrix in her complaint has stated that the accused used to regularly tease her and pass disparaging comments whenever she was found alone and would even nudge her whenever she was found alone and these facts were brought to the notice of her parents and her brother. What is glaring is, a) no complaint was ever lodged for any of these alleged incidents, (b) the father and the brother have not been examined and (c) the mother, who was brought in as P.W.-2, is also totally silent about these alleged incidents in her examination in chief. Therefore, it is safe to assume that these were only alleged to build up a case against the accused.

10 In the complaint, the prosecutrix states that the accused came from behind embraced her and touched her chest inappropriately with both hands. The prosecutrix at that time was about 16 years old and any woman, if her body is touched without her consent or inappropriately or her modesty is outraged in the manner the accused is alleged to have done, would have, as a reflex action, let out a scream or even raised an alarm. In the evidence, it has come to light that the tap where the utensils were

cleaned was in front of the door of the prosecutrix's house. The prosecutrix has stated that the house door was open and she was using the light from the house and also her parents and brother were awake. Even if, the accused would have gagged her or closed her mouth to prevent her from raising an alarm, the accused has only two hands and as per the evidence and the complaint, both hands were on the chest of the prosecutrix first. The accused could have only later gagged her mouth. There was enough time to raise an alarm. It is not the case of the prosecutrix that the accused came from behind and gagged her mouth with one hand and touched her chest with the other hand.

11 As against this, the case of the defence is more plausible. It is the case of the defence that wife of the accused and the mother of the prosecutrix had a quarrel in front of the tap on 17-3-1998 at about 5.00 to 5.30 p.m. and all others who were there, pacified them. It is the case of the defence that there was another major quarrel at about 10.00 p.m. on 17-3-1998. This is the time at which, the accused is supposed to have outraged the modesty of the prosecutrix. D.W.-1 and D.W.-2 have in their cross-examination also reiterated about the quarrel. In fact D.W.-2 states that he heard the quarrel and came out of the house. Therefore, the version of the defence that this complaint has been lodged only to get even with the accused due to quarrel that happened on 17-3-1998 in the evening and later in the night, is more plausible.

12 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***¹ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

13 There is an acquittal and therefore, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to the the accused under the fundamental principle of criminal

¹ (2007) 4 SCC 415

jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the the accused, the Trial Court observed that the prosecution had failed to prove its case. The Trial Court has come to a conclusion that the prosecutrix has lodged the complaint at the instance of her father and other family members against the accused. Probably that is why the father of the prosecutrix and the brother of the prosecutrix chose not to give evidence in the matter.

14 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)