

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 643 OF 2003**

State of Maharashtra ... Appellant

V/s.

Dashrath Pandurang Gaikwad,
Age 38 yrs., R/o. Police Head Quarter,
Block No.5, Room No.15, Solapur. ... Respondent

Ms. Prajakta P. Shinde, APP for the Appellant - State.

Mr. Chaitanya Mulawkar i/b. Mr. S.S. Salunkhe for the Respondent.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

JUDGMENT RESERVED ON : 1st OCTOBER 2020.

JUDGMENT PRONOUNCED ON : 6th OCTOBER 2020.

JUDGMENT : PER SADHANA S. JADHAV, J.

1. The State of Maharashtra being aggrieved by the judgment and order dated 3rd January 2003 passed by the 2nd Adhoc Assistant Sessions Judge, Solapur in Sessions Case No.196 of 2001 acquitting the respondent herein for the offences punishable under sections 341, 342, 354, 366, 376, 504 and 506 of the Indian Penal Code has filed the present appeal.

2. The factual matrix of the case is as follows :-

(i) The respondent herein was attached to Vijapur Naka

Police Station, Solapur as a Police Constable. That the respondent was indulging into extortion and collected fixed amounts from the people who were distilling illicit liquor in the jurisdiction of Vijapur Naka Police Station.

(ii) It was the case of the prosecution that the prosecutrix Mrs. X and her husband were illegally distilling illicit liquor. The respondent used to collect installments from them and therefore, the respondent herein was acquainted with the family of the prosecutrix. It is alleged that on 7th August 2000, at about 5.00 pm, the husband of the prosecutrix had noticed her talking to the respondent in front of their house. The husband of the prosecutrix had disliked the fact that his wife was on talking terms with the respondent and therefore, had warned her that she shall have no communication with the respondent. On the following day i.e. on 8th August 2000, when Shabbir Shaikh – the husband of the prosecutrix was working in his field the respondent had threatened him against troubling the prosecutrix. The prosecutrix had learnt about it from her husband when he returned home. The prosecutrix had questioned the respondent, the reason for threatening her husband and had also further informed him that they would

approach the Police Station and lodge a report. They had approached the Vijapur Naka Police Station to complain against the respondent after 2 -3 days. Hence, on 10th November 2000 when the couple was on their way to Vijapur Naka Police Station, they were stopped by the respondent near a tea stall close to the Police Station. The respondent had threatened them of dire consequences in case they approach the Police Station against him or file a complaint against him. At that juncture, the respondent had allegedly coerced the prosecutrix to sit on his motorcycle and had taken her to Bharat Nagar slums at Kumtha Naka. He had detained her in a room and under the influence of alcohol he had ravished the prosecutrix in the said room. She was locked inside the room by the respondent when he left. The said room was unlocked by another constable Solankar, Kale. That the accused – respondent had accompanied Mr. Kale and others. He had opened the room. She was taken to the Police Station and a report was lodged. On the next day, the prosecutrix was rescued by Solankar, Kale and others. The accused had accompanied them. She was taken to the Police Station, she lodged a report against the accused and returned to her house.

(iii) On 11th August 2000, Shabbir Shaikh filed an application before the Police Authorities that his wife was abducted by the respondent and he suspected that the accused was being supported by his colleagues. The couple had addressed several letters and a telegram to the Police Commissioner and other authorities including the Home Department of the Government of Maharashtra. The cognizance was taken of her communication. Her statement was again recorded and on the basis of the said statement, Crime No.87 of 2001 was registered against the accused for the offences punishable under sections 366, 376 of the IPC. The prosecution had examined three witnesses to bring home the guilt of the accused i.e. PW1 - Shabbir Shaikh, the husband of the prosecutrix, PW2 – Prosecutrix herself and PW3 – Shivdas Taktode, Investigating Officer.

3 According to PW1, the accused had been to his house and was demanding the due instalment and had further directed his wife to send some person to the Police Station along with the installment money. PW1 had warned his wife not to talk with the Police. The following day, he was threatened by the accused. His wife was annoyed with the threat extended to her husband by the accused and therefore,

she had disclosed to him her intention to lodge the report. On 10th August 2000, the couple was apprehended by the accused and that the accused had forcibly taken his wife along with him on the motorcycle. He had informed about the said incident to the Police immediately but no cognizance was taken. Instead PW1 was directed to wait for the accused and his wife to return. PW1 had then returned home but his wife had not returned. According to him, on the next day, he had narrated the incident to the Police and had given a written application which is at Exh.31 and thereafter, in the afternoon, his wife and the accused were brought to the Police Station. PW1 was not allowed to meet his wife. He had learnt from his wife that the accused had kept her in confinement and ravished her. The statement of PW1 was recorded by PW3 belatedly. PI Shri Kale had obtained signature of PW1 on a blank paper. It is elicited in the cross-examination that the prosecutrix had lodged a report against PW1 alleging ill-treatment and harassment on account of suspecting her character. It is also admitted that on 8th no complaint was filed against the accused and that the statement of his wife was recorded in the Police Station on the next day.

4 PW2 – Prosecutrix has also concurred with her husband. According to her, she was abducted in the presence of her husband and accused had taken her to the house of his paternal aunt in a slum area. She was locked inside the room. He returned at night under the influence of alcohol and had ravished her. According to her, the Police personnel who had come to rescue her had asked the accused the reason for keeping the prosecutrix in confinement and ravishing her and the accused had replied that it was only to teach her a lesson. She has also deposed that she was being forced to withdraw the case against the accused. She has denied that there are several cases filed against him since 1997 for distilling illicit liquor, chapter cases were also filed against her. It is admitted by the prosecutrix that she had not raised any hue and cry while she was being taken on the motorcycle neither she had raised any alarm when she was put into confinement. In fact, she had returned to the Police Station with the accused. Exh.35 telegram written by the prosecutrix to the higher authorities indicates the allegation that the accused had attempted to ravish her.

5 PW-3 – Taktode has only admitted recording of the statement of the husband and wife and has proved their contentions. It

cannot be believed that the wife of PW1 was abducted by the accused in his presence, she did not raise any hue and cry and the husband was indifferent passive and did not report to the Police Station immediately.

6 This is an appeal against acquittal and all that needs to be seen is as under :-

- (i) Whether the acquittal of the accused has resulted into miscarriage of justice;
- (ii) Whether the judgment is perverse;
- (iii) Thirdly, whether the evidence adduced by the prosecution has been appreciated in its proper perspective or whether the judgment is based on surmises and conjectures.

7 The learned Judge has considered insufficiency of cogent and convincing evidence in order to bring home the guilt of the accused. The learned Judge has rightly observed that the prosecution, for the best reasons known to it, has not examined PI Shri Umbarje who was in-charge of Vijapur Naka Police Station at the relevant time. The prosecution has placed on record criminal antecedents of PW1 and PW2 but has not summoned any witnesses to substantiate the same while evaluating the substantive evidence of PW2. It is true that there is no logical reason for the accused to threaten PW1 for abusing his

own wife. The incident dated 8th August 2000 was reported by PW1 on 11th August 2000. On 10th August 2000, there was a telephonic conversation between the accused and the prosecutrix. The cognizance of the offence is taken on the basis of the telegram sent by the prosecutrix on 2nd October 2000. The allegation was that the accused had attempted to ravish the prosecutrix after abducting her in the presence of her husband and, therefore, she had sought Police protection as she had threat perception. The preliminary departmental enquiry was conducted against the accused. The statement of the prosecutrix was not recorded in the course of investigation but it was recorded on 23rd January 2001 in the preliminary enquiry against the accused. The learned Judge has, therefore, rightly held that the said statement, recorded in the course of departmental enquiry would be irrelevant and inadmissible and more so since Advocate Mrs. Neela More from Women Protection Cell (Mahila Suraksha Samittee) was present at the time of recording the statement. There is no plausible explanation for the delay in reporting the incidence dated 10th August 2000 i.e. during the period 11th August 2000 to 2nd October 2000. The reason assigned by the prosecution is that she was threatened by the constable when she had been to obtain the certified copy of 7/12

extract. It is rightly observed that the allegation that she was abducted in the presence of her husband and yet the same was not reported to the Police Station would again speak volumes for itself. In the absence of any material to corroborate oral allegations of prosecutrix it cannot be said that the prosecution has substantiated the allegations against the accused. Chronology of events as narrated by PW1 and PW2 do not inspire the confidence of the Court. There appears to be a missing link in the chain of events and the witnesses have made a frail attempt to frame accused in the present case. It is more than clear that there is suppression of genesis.

8 It would be necessary to refer to the pronouncement of the Apex Court in the case of *Shivaji Sahebrao Bobade and Anr. Vs. State of Maharashtra reported in AIR 1973 SC 2622*, the Hon'ble Apex Court has held as follows :-

“An acquitted accused should not be put in peril of conviction on appeal save where substantial and compelling grounds exist for such a course.”

9 It is also held that :

“In law, there are no fetters on the Plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinize the probative material de novo, informed

however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to up set the holding without very convincing reasons and comprehensive consideration.”

10 In the case of *Bhagwan Das Vs. State of Rajasthan, reported in AIR 1957 SC 589*, the Apex Court has held as follows :

“High Court should not set aside an acquittal unless there are substantial act compelling reasons for doing so.”

11 We find no reason to hold that the judgment delivered by the trial Court is unreasonable, perverse or passed on surmises and conjectures. The learned Judge has rightly held that there is no cogent and convincing evidence on record to hold the accused guilty of any of the charges levelled by the prosecution. The conduct of the victim and her husband are not sufficient to hold the accused guilty of the offences. It is not possible for us to take any other view but to uphold the judgment of acquittal in favour of the respondent.

12 Hence, the judgment dated 3rd January 2003 passed by the 2nd Adhoc Assistant Sessions Judge, Solapur in Sessions Case No.196 of 2001 calls for no interference. The appeal stands dismissed.

13 This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

(N.J. JAMADAR, J.)

(SMT. SADHANA S. JADHAV, J)