

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

CRIMINAL APPEAL NO.534 OF 1998

Suresh alias Suryakant Balkrishna
Jagadale, age 28 years, resident of
Tadavale (Sammatt), Taluka: Koregaon,
District: Satara ... Appellant

Vs

The State of Maharashtra
(To be served through the learned
Public Prosecutor High Court
Bombay) ... Respondent

...

Ms. Simantini Mohite, Appointed Advocate for the
Appellant.

Mr. S.R.Agarkar, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 9th MARCH, 2021.

ORAL JUDGMENT :

Aggrieved by the conviction for the offence
punishable under Section 354 of the Indian Penal Code,
1860 ('IPC' for short) and sentence of simple imprisonment
for six months passed in Sessions Case No.178 of 1996 by

the IVth Additional Sessions Judge, Satara, accused therein has filed this Appeal.

2 Briefly stated prosecution case is, on 5th September, 1996, accused held victim's hand with intent to outrage her modesty while she had gone out, to answer nature's call. The alleged incident had taken place at 7.30 a.m. at and behind the primary school at Village: Tadavale, Taluka: Koregaon, District: Satara. She reported the incident to her mother-in-law. At the material time, her husband, being driver, had gone on duty. Her husband returned home, in the evening and after consulting him, she went to police station with, Prakash Kamble and Ramchandra Kamble and lodged the report. Whereupon the offence under Section 354 of the IPC and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC & ST Act' for short) was registered. After the investigation, final report was filed after which charge was framed.

3 Prosecution in support of the charge, had examined Shashikant Gaikwad (Panch Witness) P.W.1, Anita Ramesh Kamble (Complainant) P.W.2, Tarabai Kamble (mother-in-law of the victim) P.W.3, and Investigating Officer (P.W.5). Upon appreciating the evidence, the learned Trial Court acquitted the accused of the offence punishable under the SC & ST Act but convicted him of the offence under Section 354 of the IPC and sentenced him as stated above.

4 Against the conviction and sentence, this appeal is preferred.

5 Heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

6 The learned counsel for the appellant has taken

me through the testimony of witnesses and would contend that there are major contradictions on material aspects in the testimonies and would further submit that, in view of irreconcilable versions of witnesses, appellant is entitled to benefit of doubt. In support of the submission, she has invited my attention to a complaint filed by mother-in-law of the appellant on 5th September, 1996 against father-in-law of the victim. The learned counsel would rely on this complaint and submit that complaint was lodged at 11 a.m. on 5th September, 1996 of which, note was taken. Submission is, that dispute subsisting between the family of the victim and of the appellant motivated to lodge the false complaint in retaliation to complaint filed by mother-in-law of the appellant. The learned counsel submits that the complaint was filed nearly after 12 hours and there is no credible or possible reason for such delay in lodging the FIR. The learned counsel would, also rely on evidence of panch witness to contend that the alleged spot of the incident being abutting the busy village road, the likelihood of the

alleged incident, was unlikely. It is submitted that false complaint has been lodged by the victim to counter the complaint lodged against the father-in-law of complainant by Janakibai Gajanan Kurle (mother-in-law of the appellant). On these grounds, the learned counsel seeks acquittal of the appellant.

7 Per contra, the learned Additional Public Prosecutor supports the impugned conviction and sentence.

8 Though the alleged incident had occurred in the morning at 7 a.m., report was lodged nearly after 12 hours. Victim in her testimony, stated that at the material time, her husband was not at home, but only after consulting him, report was lodged. Her evidence shows, she had gone to police station with Prakash Kamble and another Ramchandra Kamble. Her testimony is silent, about her husband's presence in Police Station, while lodging the complaint. Infact, testimony of her mother-in-law suggest,

husband of victim did not return home on that day. Therefore, complainant's evidence, belies the explanation for not lodging the complaint, soon after the incident. Evidence of victim indicates that, Prakash Kamble and Ramchandra Kamble had accompanied her to the Police Station. Even so, her evidence does not point to when the alleged incident was disclosed to these two persons, obviously since these two persons, accompanied her, it is to be inferred that they knew the incident. Nevertheless, prosecution did not examine these two persons. Nor the evidence indicates, why these two persons did not take steps to lodge the complaint. In the light of the evidence on record, reasonably it can be inferred that, either prosecution has not placed correct facts before the Court, or a false case has been filed, to counter the complaint filed by appellants' mother-in-law against victims' father-in-law. Thus, benefit of doubt is to be extended to the accused.

9 As a result, the impugned conviction and

sentence is quashed and set aside. Appeal is allowed. Bail bond executed by the appellant is cancelled. Sureties are discharged. Fine amount, if any, paid be refunded to the appellant.

10 Appeal is disposed of in aforesaid terms.

(SANDEEP K. SHINDE, J.)