

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.425 OF 2008**

The State of Maharashtra  
(Through P.S.O. Deorukh P.S.  
Tal. Sangmeshwar, Dist. Ratnagiri  
V/s.

....Appellant/Complainant

Prasanna Vitthal Patil  
Age – 25 years, R/o. Deorukh  
Warchi Ali, Sangmeshwar

....Respondent/Accused

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Ms. Anamika Malhotra, APP for State – Appellant.  
Mr. Rakesh Bhatkar for respondent.  
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**CORAM : K.R.SHRIRAM, J.  
DATE : 5<sup>th</sup> JANUARY 2021**

**ORAL JUDGMENT :**

1           This is an appeal impugning an order and judgment dated 9<sup>th</sup> March 2005 passed by the Judicial Magistrate First Class, Deorukh, Ratnagiri, acquitting accused of offences punishable under Sections 354 (*Assault or criminal force to woman with intent to outrage her modesty*) and 506 (2) of Indian Penal Code (IPC).

2           It is prosecution's case that on 26<sup>th</sup> February 2004 at about 3.00 p.m. while Deepali (PW-1) was alone in her house, accused went to the house and asked PW-1 to give him a glass of water. When PW-1 went inside to get water and was taking the water out of the mud pot, accused hugged her from behind. PW-1 tried to shout and escape from his clutches but accused closed her mouth and pulled her back. PW-1 pushed accused and escaped from his clutches raising a hue and cry. Thereafter, PW-1 came out of

the house but accused continued to sit inside the house. When accused left the house, PW-1 locked the house and went to the market for buying kerosene. At that time, accused is supposed to have followed her and tried to hush her up by offering Rs.10/- to her, which PW-1 refused. It is alleged that accused threatened PW-1 with dire consequence if she told about the incident to her parents. PW-1 got frightened and kept quite. On 29<sup>th</sup> February 2004, when PW-1's mother, complainant (PW-2) found PW-1 unnaturally silent, she asked PW-1 as to what happened and PW-1 confided in her. PW-2, therefore, lodged the FIR. Investigation commenced, chargesheet was filed and charges were framed. Accused pleaded not guilty and claimed to be tried. According to accused, since he refused to marry PW-1, PW-2 filed false case against him.

3           To drive home the charge, prosecution has examined three witnesses, viz., victim as PW-1, complainant and mother of PW-1 as PW-2 and the Investigating Officer as PW-3. Having considered the evidence, the conduct of PW-1 appears to be rather strange. If accused has hugged her from back and according to PW-1 she pushed accused and came out of the house, I wonder why she went and stood under the jack fruit tree. According to PW-1 accused was sitting inside the house when she came out. PW-1 does not lock the house when she left the house so that accused could have been trapped inside the house. Instead PW-1 simply stood under the tree and locked the house after accused left the house. PW-1 also states that immediately after the incident she went to market to buy kerosene and

accused followed her and offered Rs.10/- and asked her not to disclose the incident to anyone. It is to be noted that the incident happened during the day time and for PW-1 to go to the ration shop to buy kerosene she had to pass through one Pant Joshi Mangal Karyala where her parents were working. PW-1 does not go to the place of work of her parents and report the incident to her parents even though she went passing the Pant Joshi Mangal Karyala to buy kerosene.

4 PW-1 says she was mentally disturbed but admits that she was going to school from 26<sup>th</sup> February 2004 to 29<sup>th</sup> February 2004 with her friends. PW-1 does not disclose anything to her friends either. Importantly, PW-1 in her cross examination admits that before giving evidence she had a discussion with her mother about the manner in which she should depose in the Court. PW-1 also states that one Sujata Shinde and Rajeshri More had witnessed the incident from the window of her house but they are not called to give evidence. Therefore, the evidence of PW-1 cannot be relied upon.

5 PW-2 is a hearsay witness. Moreover, according to PW-2, PW-1 narrated the incident to her on 29<sup>th</sup> February 2004 at 4.00 p.m. but the FIR has been lodged on 1<sup>st</sup> March 2004 at about 8.30 p.m. Though prosecution has explained the delay between 26<sup>th</sup> February 2004 to 29<sup>th</sup> February 2004, there is no explanation for the delay between 29<sup>th</sup> February 2004 to 1<sup>st</sup> March 2004. In the circumstances, in my view, the Trial Court has correctly acquitted accused.

6           The Apex Court in ***Ghurey Lal V/s. State of U.P***<sup>1</sup> has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under :

*72. The following principles emerge from the cases above:*

*1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

*2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

*3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.*

*73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*

*1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

*A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :*

*i) The trial court's conclusion with regard to the facts is palpably wrong;*

*ii) The trial court's decision was based on an erroneous view of law;*

*iii) The trial court's judgment is likely to result in "grave miscarriage of justice";*

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1. (2008) 10 SCC 450

*iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*

*v) The trial court's judgment was manifestly unjust and unreasonable;*

*vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.*

*vii) This list is intended to be illustrative, not exhaustive.*

*2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

*3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.*

7           The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***<sup>2</sup> has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

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2. (2014) 5 SCC 730

The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*<sup>3</sup> has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

8           I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

9           There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

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3. 1996 SCC (cri) 972

10            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. I cannot find any fault with the judgment of the Trial Court.

11            Appeal dismissed.

(K.R. SHRIRAM, J.)