

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.862 OF 2006**

The State of Maharashtra)
(Through the Police Inspector,)
Palghar Police Station)Appellant/Complainant

V/s.

Suresh Mahadev Joshi)
Age : 63 years, R/at : Jivhala,)
Plot No.4, Lokmanya Pada Road,)
Middle Class Society, Near Iron High)
School, Palghar, Dist. - Thane)Respondent/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.
Mr. Sunil Kale for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 26th FEBRUARY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 10th May 2006 passed by the 3rd Ad-hoc Additional Sessions Judge, Palghar, acquitting respondent (accused) of offences punishable under Section 3 (1) (x) (*intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view*) and Section 3 (1) (xii) (*being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed*) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (SC/ST Act) and Sections 354 (*Assault or criminal force to woman with intent to outrage her modesty*), 504 (*Intentional insult with intent to provoke breach of the peace*) and 506 (*Punishment for criminal*

intimidation) of the Indian Penal Code (IPC).

2 It is prosecution's case that complainant Ashalata Amrut Jadhav (PW-1), to whom notice has been issued but has chosen not to remain present, a Hindu Warli adivasi by caste, was residing at Dahanu and was working as a Clerk in Sonopant Dandekar College, Palghar since 18th May 1994. PW-1 had separated from her husband. One Dr. Arun Madhukar Padhye (PW-2) was the Principal of the said College. Accused was the Secretary of the College with the Librarian Ashok Thakur. Complainant was in the Minimum Competency Vocational Course department and her work included completing admission formalities of students, fill up the examination forms, typing the question papers, issuing leaving certificate, preparing salary sheets etc. A part of her work included taking signatures on cheques and accused alongwith the Librarian Ashok Thakur (PW-4) were the authorised signatories. Apart from taking the signature of accused on cheques or vouchers, PW-1 had no cause to interact with accused. It is prosecution's case that after accused was elected as Secretary of the institution, the practice of sending peons to get signature on cheques was stopped because accused insisted that complainant should go to his office and take his signature and not send a peon. It seems accused regularly went over to the place where complainant was sitting without any work and would harass her and tried to talk to her. Complainant told accused not to come in her office without any reason and it was also brought to the notice of the Principal. Still there was no change. It is also alleged that when peon

was sent to obtain the signature, accused will refuse to sign and send the peon back with the direction that complainant should personally come and take his signature. This was only to harass complainant and misbehave with her. It is also alleged that while taking the cheque or returning the cheque, accused would touch her hand. It is also alleged that accused once held her hand forcibly and made her sit on his chair. This was informed to the Principal, Board of Directors etc. but PW-1 was advised to keep quiet or else would be removed from service.

3 Sometime in Diwali holidays in the year 2000 when complainant came to the College and went to the ladies room at about 10.30 a.m., accused entered the room and when he saw PW-1 was sitting alone, he went out. Once when complainant was wearing a punjabi dress, accused made vulgar gesture and by calling PW-1 by her first name said “आशालता तू आदिवासी आहे. फार चिकणी दिसते. पाठमोरी खूपच छान दिसते. बघतच राहावेसे वाटते. तुझे नितंब गोल गरगरीत छान दिसतात, मला बघायला खूप आवडतात. तू साडी मध्ये आणखीनच उठून दिसते”. Complainant reported the incident to Principal. On another occasion when accused saw complainant alone he said “तू आदिवासी जातीची असूनही तू आदिवासी वाटत नाही, अग तू आदिवासी समाजाची वाटत नाहीस त्याप्रमाणे वागत नाही”. In July 2001, when accused found complainant alone in the office, he even demanded physical relationship with him which she refused and informed the Principal and others. On 3rd October 2001 at about 4.30 p.m., when complainant had gone to the office of accused for work and after the work was over when she was leaving, accused embraced her from behind and said “तू पाठमोरी छान दिसतेस”.

Complainant got scared and she went and complained to the Principal and others. Various such instances happened and as there was no change in the conduct of accused, complainant even wrote two letters dated 4th October 2001 and 4th November 2001 for permission to lodge police complaint. As no cognizance was taken on those two letters, complainant wrote a reminder on 1st January 2002 to the Principal. Instead of taking action against accused, the President of the institution and others persuaded complainant to let go and told her that if she persisted, she may even lose her job. Later when one more incident happened, place of work of complainant was changed to another building where also accused came and harassed her.

4 As the harassment continued, by a complaint dated 15th September 2003, complainant informed the Schedule Caste Cell in Mumbai University with copy to the Women Cell in Mumbai University and narrated the harassment that she had gone through at the hands of accused and that the management was doing nothing to stop the accused. Mumbai University sent those letters to Palghar Police Station and based on that, complainant went to Palghar Police Station, gave proof of her caste as adivasi and after considering the same, an offence came to be registered for charges as mentioned above. Her statement was recorded and the statements of witnesses were also recorded. After completion of investigation, chargesheet was filed and charges were framed. Accused pleaded not guilty and claimed to be tried. Defence of accused was of total denial and false implications. The Trial Court, after considering the evidence, passed the

order of acquittal as noted above and the same is impugned in this appeal. It is also the case of accused that there were irregularities found in the work of complainant including cash book and bank passbooks which were not tallying and when that was pointed out by the Auditor and accused, complainant has filed this false complaint to cover up the irregularities in her work. It seems accused had asked complainant why she was asking him to sign cheque for two teachers who were not even fixed or whose names did not appear in the muster roll, which annoyed complainant. Defence states that this complaint has been filed to defame and lower the esteem of accused in the society.

5 To drive home the charge, prosecution led evidence of 7 witnesses, viz., Ashalata Jadhav, complainant as PW-1; Dr. Arun Madhukar Padhye, Principal of Institution as PW-2; Mahadev Kanolkar, Office Superintendent as PW-3; Ashok Ramchandra Thakur, another Secretary as PW-4; Shivrajbhai Tiwari, President of Managing Committee as PW-5; Madan Rathod, Investigating Officer as PW-6; and Anand Ramchandra Jadhav, Staff/Lecturer as PW-7.

6 Out of 7 witnesses, PW-4 and PW-5 turned hostile. Evidence of PW-3 also is inconsequential because PW-3 has no first hand knowledge and his testimony states that he came to know about the misbehaviour of accused towards complainant from newspaper report. In his cross examination, PW-3 says he does not remember which was the local newspaper which had

reported the incident that he had read.

7 Before I proceed further, from the complaint and from the evidence, it is quite obvious that no case is made out to intentionally insult or intimidate complainant with intent to humiliate her in any place within public view. Complainant has said that when all the incidents of harassment happened, there were no eye witnesses. Therefore, charge under Section 3 (1) (x) has to fail. The next is charge under Section 3 (1) (xii), which is worded as under :

“3(1) (xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed”.

Under this provision (a) accused must be in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe, (b) uses that position to exploit her sexually and (c) complainant would not have, but for the dominant position of accused, agreed to be exploited. This would have to be read as a situation where because of the dominant position of the accused, complainant would have agreed to be sexually exploited. From the evidence before this Court and the charges framed, it is not the case of prosecution that complainant agreed to be sexually exploited. The whole charge proceeds on the basis that accused harassed complainant and indulged in the acts alleged against her will and she had never agreed to be sexually exploited. Therefore, the charge under Section 3 (1) (xii) has to fail. Perhaps on the facts and circumstances of the

case the appropriate Section would have been Section 3 (1) (xi) which says “*assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty*”.

As no charge under Section 3 (1) (xi) was framed, we need not go into that aspect any further. Moreover, the stage we are at today and considering the incident happened almost 20 years ago, the question of modifying the charge also will not arise.

8 What remains is the charge under Section 354 of the IPC which reads as under :

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9 Now let us examine whether prosecution has been able to prove beyond reasonable doubt the charge. The evidence of PW-1 complainant itself is found with so many contradictions and variations that it does not enthuce confidence. In her testimony, PW-1 says that she informed about certain incidents to the Principal. The Trial Court has highlighted various incidents of contradictions and omissions but I would, for the sake of brevity, highlight only few of them. PW-1 says that in the office where she sits, one Registrar, account office Superintendent, three ladies clerks, three junior clerks and five peons were also working. PW-1 also says the place where accused used to sit, there used to be three tables and 15 to 20 chairs and

Ashok Thakur (PW-4) also used to sit with accused. PW-1 also admits that there was no separate cabin for accused and whenever the President or Treasurer would come to the College, they all would sit in the same room where accused would sit. PW-1 also says that in the same place where accused used to sit was also the Library and there were big windows to the said room over looking parking lot where staff and teachers would park their two wheeler. PW-1 states that there were 50 incidents of harassment but there were no eye witnesses. PW-1 also agrees that the cheques and vouchers could have been signed either by accused or PW-4 but has no explanation as to why she continued to go to accused for signature when she could have gone to PW-4 for signature if she was being harassed. PW-1 also admits that she had purchased a chair for Rs.2,000/- for herself without approval and when she sent the cheque book with the peon for signature, accused refused to sign the cheque because PW-1 had purchased the chair without approval. PW-1 also admits that she was asked by the President of the Institution and Joint Secretary (PW-4) as to why she had not prepared the balance-sheet for the year 2002-2003 and she was also issued a letter (Exhibit 28) in which the auditor had raised objection for the difference in bank accounts and College account for the year 2002-2003, 2003-2004 and 2004-2005. PW-1 also admits that the letter indicated that bank passbook and cash book that she used to maintain did not tally and those audit objections were received in evidence as Exhibit 29. PW-1 says in her cross examination that 50 times whenever she went to accused for taking signature on cheques, accused

would hold her hand and made her sit. PW-1 could not tell the date, month or year of 50 incidents but admits that those 50 incidents occurred in the management office. PW-1 then says nobody was present during those 50 incidents to witness those incidents. Strangely, PW-1 says she did not raise her voice against accused or inform about 50 incidents to ladies and staff but informed the Principal 50 times. PW-1 also says that she did not raise her voice when the comments as mentioned above in Marathi were made and when those comments were made, nobody was present. PW-1, however, later states that she informed about the incidents to one Shaila Urade and Swati Patil, who have not been examined and do not even figure in the list of witnesses. In the testimony, PW-1 says in July 2001 accused asked her to have physical relationship because his wife was ill but admits that it is not referred to in her complaint to the Police. PW-1 admits that her complaint is silent about her making a grievance to PW-4 that accused demanded sexual relationship. After stating that nobody has ever witnessed any of the 50 incidents, PW-1 states that on one occasion after accused signed the cheque when PW-1 turned to go back to her office, accused suddenly caught hold of her from behind. PW-1 says she did not shout for any help and nobody was an eye witness. At the same time, PW-1 says it happened in the middle of the office and when accused was holding her, she saw people around the said office but did not shout to attract the attention of those people. PW-1 says she narrated the incident to the people around who were present but PW-1 does not know the name of those persons and none of

those persons even went to ask accused about the incident. PW-1 then says she informed on the same day of the incident to PW-2 and PW-4 but admits that in the letters dated 4th October 2001 and 4th November 2001, which were addressed to the University, she has not mentioned about these incidents. PW-1 says she did not even enquire with the management as to what happened to her complaints. PW-1 also states that all the ladies working in the institution, after she lodged the complaint, have stopped talking to her and all staff of the College have been boycotting her. But the last nail on the prosecution's case is complainant (PW-1) admits that she has made similar complaint against others also.

10 PW-2 agrees that complainant had informed him about misbehaviour of accused but only two or three times and not 50 times. PW-4, in his testimony, says that when PW-2 and himself called PW-1 to ask her about the allegations that she had made, PW-1 said that due to emotional feeling she made the said complaint and she was withdrawing the same. PW-4 also mentions about accused informing about the lapses in the work of complainant and when complainant was asked about those lapses, she replied due to health problems she was unable to complete her work. PW-5, who was the President of the Managing Committee, says that when a meeting was convened to enquire, complainant did not turn up and accused denied any incident. PW-5 also says that there were lapses on the part of complainant while purchasing articles and the Managing Committee had replied to the University and mentioned that it was not brought to the notice

of the Committee about any harassment, mental or sexual to PW-1. PW-5 also admits that they had informed the University that complainant was not punctual in attending the office work and she was found roaming in the College here and there and not found in her seat. PW-5 also denies about any complaint by complainant about accused commenting on her caste. PW-5 also says that complainant was never working under the supervision of accused. PW-6, Investigating Officer, says that he made investigation taking into consideration the complaint lodged with the College authority as well as Mumbai University and no incidents, as mentioned in the complaint, were appearing therein. PW-7, who was also a Lecturer in the College, says he had no personal knowledge about any incident and complainant never told him that accused had commented on her caste.

11 Considering these facts and circumstances, the Trial Court acquitted accused. The Apex Court in ***Ghurey Lal V/s. State of U.P¹*** 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

1. (2008) 10 SCC 450

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";

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.

12 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless, the conclusions

2. (2014) 5 SCC 730

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.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***³ 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.

13 I have, with the assistance of the learned APP Mrs. Malhotra, considered the evidence and the impugned judgment. I do not find anything

3. 1996 SCC (cri) 972

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 the accused.

14 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.

15 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.

16 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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