

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1052 OF 2007**

The State of Maharashtra)
Through Smt. Maya Dattatraya Hendre,)
Age 27, R/o. Khojewadi,)
Taluka & District - Satara)Appellant/Complainant

V/s.

Sandip Mahadeo Salunkhe)
Age : 30, R/o. Khojewadi,)
Taluka and District Satara)Respondent/Accused

Mrs. M.M. Deshmukh, APP for State – Appellant.
None for respondent

**CORAM : K.R.SHRIRAM, J.
DATE : 9th APRIL 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 14th December 2005 passed by the Judicial Magistrate First Class, Satara, acquitting respondent (accused) of offences punishable under Section 354 (*Assault or criminal force to woman with intent to outrage her modesty*) of the Indian Penal Code (IPC).

2 According to prosecution, complainant (PW-1) was a vegetable seller residing at village Khojewadi. On 24th November 2003, PW-1 went to Umbraj to sell vegetables. PW-1 was waiting at about 7.30 p.m. at a bus stop in Borgaon to return home. After a while accused came there with his truck and stopped the truck at the bus stop. There were others waiting at the bus stop who asked accused whether he would drop them at Deshmukhnagar

but accused stated he was going to Khojewadi, where PW-1 resided. Therefore, complainant (PW-1) sat in the cabin of the truck with accused. Accused started proceeding on the Borgaon-Nandgaon Road and when the truck arrived near village Apshinge, accused made sexual overture to complainant. Complainant told accused that he should refrain from what he was doing or else she will report this fact to her husband. At that stage, accused held the hand of complainant and started pulling her towards him. When the truck reached near the limits of village Khojewadi at about 8.00 p.m., and proceeding alongside a canal, accused again held the hand of complainant by saying "*Lai Divsani Pakharu Ghavlaya*". I am told this means "after a long time I could hold your hand". At that time, to escape from his clutches, complainant pushed accused and jumped from the truck. In the bargain, complainant also sustained injuries to her hand, neck and leg. Thereafter, complainant started walking on the road towards Khojewadi. On the way, complainant noticed two men coming from behind on a scooter and she stopped those men and narrated the incident. Those people dropped her home at about 8.15 p.m. Thereafter, complainant narrated the incident to her husband Dattatraya Shankar Hendre (PW-2).

3 According to prosecution, a year before the incident, an inebriated accused had gone to the house of complainant. At that time also accused tried to outrage her modesty and when complainant started protesting loudly, her brother-in-law Gajanan Shankar Hendre

(PW-4) arrived and when he enquired with accused as to what he was doing, accused ran away from the house of complainant.

4 On the following day, which would be 25th November 2003, PW-1 went to Borgaon Police Station and lodged a complaint against accused. Thereafter, spot panchnama was conducted, seizure panchnama conducted, statements of witnesses were recorded, accused was arrested and after collecting evidence, chargesheet came to be filed. Accused has pleaded not guilty and claimed to be tried.

5 To drive home the charge, prosecution led evidence of seven witnesses, viz., Maya Dattatraya Hendre, complainant as PW-1; Dattatraya Shankar Hendre, Husband of complainant as PW-2; Sanjay Eknath Gurav, villager as PW-3; Gajanan Shankar Hendre, brother-in-law of PW-1 as PW-4; Murlidhar Ghorpade, panch witness as PW-5; Sadashiv Ganpati Phadtare, Investigating Officer as PW-6; and Dr. Ravindra Bhalchandra Bhosale, Medical Officer as PW-7.

6 The Trial Court has acquitted accused after considering the evidence and in my view, rightly so. At the outset, I have to note that the evidence of PW-2, the husband of PW-1 and evidence of PW-4, brother-in-law of PW-1 are both hearsay evidence. PW-5, the panch witness for spot panchnama has turned hostile. PW-5 has denied that the Police had even called him on 26th November 2003 for preparing the spot panchnama or on 29th November 2003 for drawing the spot panchnama.

7 Now let us consider the evidence of PW-1. According to PW-1, PW-2 and PW-4 accused had misbehaved with PW-1 a year prior to the incident. Despite that, to my surprise, complainant accepted a lift from accused and not only that, sat next to him in the driver's cabin. PW-1 says she jumped from the truck with her bag of unsold vegetables. If complainant has jumped from a moving truck, the injuries sustained would be graver than what has been noted in the medical report and not as stated by PW-7 in his testimony "simple". It has also not come on record what was the possible speed of the truck when PW-1 is supposed to have jumped. If someone jumps from the running truck and that too in a busy area, as stated by PW-6, the injuries suffered would be a lot more serious than what has been reported by PW-7.

Moreover, in the cross examination, PW-7 admits that complainant appeared before him on 25th November 2003 at 4.00 p.m. and in his report, he has mentioned the injuries happened within two hours, whereas it is prosecution's case that complainant jumped from the truck on 24th November 2003. It has come in the evidence of PW-6, Investigating Officer, that complainant PW-1 appeared before him on 25th November 2003 at 10.00 a.m. The complaint of complainant recorded by PW-6 shows that it was recorded on 25th November 2003 at 22.30 p.m. PW-6 says after recording complaint, he referred complainant for medical examination, whereas PW-7, Medical Officer, states that complainant appeared before him

on 25th November 2003 at 4.00 p.m. for medical examination. Moreover, the FIR records that after medical examination complainant has lodged complaint against accused.

In the complaint given by PW-1 before the Investigating Officer (PW-6), it is recorded that there was scuffle between accused and complainant and complainant was shouting for help but it is not stated by PW-1 in her evidence.

Therefore, there are so many contradictions/omissions.

8 DW-1 Narayan Maruti Ghorpade, who is Chairman of one Society, states that on 24th November 2003 when the incident is supposed to have happened, accused came to his place at 6.15 p.m., both sat near his cattle-shed and were chatting till 8.00 p.m. DW-1 further states that there are two political groups in the village and accused and complainant belong to opposing groups and during the previous Grampanchayat Elections there has been some altercations.

Based on these facts, the Trial Court has acquitted accused.

9 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has formulated 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 Section 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

1. (2008) 10 SCC 450

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";

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.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² 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.

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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

10 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 his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

11 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, need not be interfered with.

12 Appeal dismissed.

(K.R. SHRIRAM, J.)