

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 313 OF 2016

Laxmi Mahadev Jadhavar	.. Applicant
Versus	
Datta Sandipan Dhakane & Anr	.. Respondents

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Mr. B.G. Tangsali for the applicant.

Mr.Y.Y. Dabake, APP for the State.

Ms.Vilasini Balasubramanian i/b Jaydeep Mane for respondent no.1.

CORAM: BHARATI DANGRE, J.

DATED : 31st MARCH 2021.

JUDGMENT :-

1 The scope of Appeal against acquittal under the Code of Criminal Procedure is well demarcated. Unless there are substantial and compelling reasons, the judgment of trial Court cannot be overruled. The order of trial Court shall not be interfered with because the presumption of innocence of accused is further strengthened by his acquittal. When the trial Court take a reasonable view of facts of the case, interference is not justifiable unless there are really strong reasons to hold otherwise and if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal.

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2 The law as regards interference by the Appellate Court in an Appeal against acquittal under Section 378 of the Code of Criminal Procedure is well settled.

3 The present Appeal is instituted by the complainant being aggrieved by the judgment dated 25th July 2016 of the Addl. Sessions Judge, Barshi in Sessions Case No.188 of 2014, whereby the accused stands acquitted of the charges slapped against him for the offence punishable under Section 324A of the IPC and under Section 8 of the POCSO Act. The appellant is the complainant who had lodged a complaint which resulted into the accused being charge-sheeted.

As per the complainant, her two children accompanied their grand-mother to the native place as a religious function was scheduled. While they were returning back to village Chumb, the accused was also returning on his motor-cycle. The grand mother of the children asked the accused to carry them on his motor bike and reach them to their house. One of the child was a victim girl aged seven years. As per the complaint, the accused stopped the motor bike near his field and made the boy wait there, and on the pretext of getting drinking water for the girl from the well in the field, took her away from the main road. It is alleged that he brought her under a neem tree, removed his undergarments as well as the under-wear worn by the victim and

slept over her body. It is also alleged that he kissed her and thereby outraged her modesty.

4 The victim narrated the incident to the complainant and on ascertaining the same from the mother-in-law, the complaint was lodged on 6th May 2013 and the aforesaid sections were invoked. On completion of investigation, charge-sheet was filed and the accused pleaded not guilty and therefore, he was tried for the offence with which he was charged.

5 The prosecution examined the complainant as well as the victim girl as PW 1 and PW 2. The brother of the victim was also examined along with the grandmother. Panch witness is examined as PW 4 and the Investigating Officer, ASI of Pangri Police Station was examined as a prosecution witness. The Medical Officer of PHC, Pangra Shinde was examined as PW 6 who deposed that there was no external injury on the body of victim and a medical certificate accordingly was issued. In the statement recorded under Section 313 of Cr.P.C, the appellant denied the case of the prosecution and pleaded innocence.

6 With the assistance of the counsel for the appellant and the learned counsel for the respondent and the learned APP, I have perused the impugned judgment.

The prosecution story is found to be not reliable by the learned Judge on two counts; firstly, being the spot panchnama do not disclose any well in the field of the accused and secondly, the medical evidence as regards any sort of sexual assault is Nil. The Court did not believe the version of the child witness and the reason cited is, the defence has brought on record in evidence of PW 7 Sumitra, that she was trying for engagement of Sheetal – her grand daughter with the accused. Though this is denied by PW 7 and PW 1, but Vicky i.e. brother of the victim(PW 3) has admitted this in cross-examination. On consideration of the evidence on record, the case of the prosecution is found suspicious and the benefit of doubt has been granted to the accused.

7 The impugned judgment has appreciated the evidence on record in minute detail and it is found that there is discrepancy in the version of the witnesses on the aspect of carrying the victim girl to the well, and the spot panchnama do not reveal existence of such well in the field of the accused and the reason for the victim girl being separated from the brother and taken away from the highiway in the field, does not appear to be plausible. The victim girl has categorically stated in her deposition that there is no well in the field of the accused. However, in her chief, she has stated that the accused gave her

water from the well to drink and thereafter had taken her under the lemon tree where he molested her.

8 Further, the medical evidence in no way has corroborate the prosecution case and in absence of any independent witnesses being examined and the prosecution witnesses being interested in prosecuting the accused and the reason which has surfaced in the cross-examination of Vicky i.e. PW 3, the prosecution has failed to prove its case beyond reasonable doubt and the benefit granted in favour of the accused by the Addl. District Judge vide the impugned judgment, cannot be faulted with.

By applying the parameters of scope of interference in an Appeal against acquittal, on appreciation of evidence resulting in acquittal, the Appeal is not worth consideration and hence is dismissed.

SMT. BHARATI DANGRE, J