

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1346 OF 2006**

The State of Maharashtra	)	...Appellant
Vs.		
Tanaji Yallappa Gawade	)	
Age 22 yrs. Occupation- Agriculture	)	
R/o Sonarwadi Taluka Chandgad	)	
District Kolhapur	)	...Respondent (Original Accused)

Mrs. M.M. Deshmukh, Addl. PP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATE : 2nd JULY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 16th May 2005 passed by the Learned JMFC, First Class Chandgad, acquitting accused of offense punishable under Section 354 (*Assault or criminal force to woman with intent to outrage her modesty*) of the Indian Penal Code.

2 It is prosecution's case that on 1st January 2003, P.W.-1 Geeta alongwith her sister Reshma (P.W.-5) and one Gangubai Gawade (P.W.-8) had gone inside the forest for collecting fire wood. While P.W.-1 and P.W.-5 were cutting the wood together at the same spot and P.W.-8 was at another spot cutting wood. At about 4.00 p.m., accused came near Geeta and told her that he has been following her since four weeks but she is not paying any attention to him and since they were both together there, they could have some good time together or else he will not allow her to go away. Accused caught hold of Geeta's hands and Geeta tried to get her

hands free. Geeta threatened accused that if he does not leave her hands, she will inform her husband and mother-in-law (PW-7). Accused told that she could tell everybody and also tried to force her to the ground. When Geeta started protesting and shouted loudly, PW-5 started crying. PW-8 after hearing noise rushed towards the spot. PW-8 told accused if he did not leave Geeta's hand, she will report the incident to her brother-in-law. Hearing that, accused ran away. Geeta then went home and informed about the incident to her mother-in-law (PW-7) who disclosed it to Geeta's husband, who has not been examined. The Village elders, who are referred to panchas in the evidence as well as in the impugned order, called accused and after warning, they tried to settle the matter. It is alleged that accused was told to sign an apology document and also pay some fine. Accused refused and ran away. Therefore, PW-1 lodged complaint on 4th January 2003, three days later.

3 The offence was registered and charges were framed. Accused pleaded not guilty and claimed to be tried. The case of accused was of total denial and that he was not even at the spot on the date and time as mentioned in the complaint.

4 To drive home the charge, prosecution led evidence of 9 witnesses, namely; Geeta Balematti (complainant) as PW-1, Shankar Gawade, spot panch as PW-2, Mahadev Tembe, panch as PW-3, Tukaram Rode, Panch as PW-4, Reshma Hoswekar, sister of Geeta, as PW-5, Vilas Patil, police patil as PW-6, Laxmi Balemantti, mother-in-law of Geeta, as PW-7, Gangutai

Gawade as P.W.-8 and Vasant Bagal, Investigating Officer as P.W.-9. P.W.-3, P.W.-4 and P.W.-8 were declared hostile. P.W.-5 was declared incompetent.

5 Trial Court after considering the evidence acquitted accused. I have gone through the evidence and the impugned order with the assistance of Learned Additional PP and see no cause for interference with the order passed by the Trial Court.

6 The only eye witnesses to the incident of 1st January 2003, were complainant- Geeta, Reshma – P.W.-5 and Gangutai P.W.-8, who was declared hostile. Therefore, the entire prosecution's entire case hinges on evidence of P.W.-1-Geeta. If one considers evidence of Geeta and evidence of her mother in law (P.W.-7) as to what happened after the incident, there are many inconsistencies, which raised a doubt on the veracity of what Geeta narrated about the incident. There are also quite a few omissions. Geeta in her complaint has stated that accused, prior to the incident had visited her house in the absence of Geeta's husband and P.W.-7 and misbehaved with Geeta. At that time, when P.W.-7 entered the house, accused ran away from the back door and Geeta mentioned about it to P.W.-7. P.W.-7 advised Geeta to let her know if the incident is repeated. P.W.-1 is silent about this in her testimony. P.W.-7 in her cross-examination states accused used to come their house and talk to Geeta but they did not make any complaint about it. Even in panchayat meeting, there is no mention about it.

In her complaint, P.W.-1 Geeta states accused tried to push her down to ground but she does not say about this in her testimony. P.W.-1 Geeta does

not state in her complaint that accused admitted his guilt before the panchayat but it is found in the testimony. P.W.-1 Geeta has not stated in her complaint what she has stated in her evidence that the mother of accused started showering abuses during the panchayat meeting. But P.W.-7 states that the mother of accused started showering abuses during the panchayat meeting on them. P.W.-1 Geeta does not state that panchas told accused to sign on blank papers but accused refused to sign it, whereas, P.W.-7 states that panchas told accused to sign on blank papers and accused refused to sign it. In her complaint, P.W.-1 Geeta states that she reported the incident on the same day to her mother-in-law only, i.e., P.W.-7 but P.W.-7 in her deposition states that P.W.-1 Geeta came to their house after the incident and narrated about the incident to her and husband of Geeta, who has not been examined. P.W.-7 states that she told P.W.-1 Geeta not to disclose the incident to her husband and P.W.-7 informed her son, who is Geeta's husband only on the following day, when they called the panchayat meeting. We have to note that the evidence of P.W.-7 about the incident is hearsay.

P.W.-2 and P.W.-6, who had called to depose to prove the meeting called by panchas where accused is alleged to have admitted his guilt but the testimony of these two witnesses are not consistent with each other. P.W.-2 does not state that Geeta narrated about the incident in the meeting but only P.W.-5 Reshma and P.W.-8 Gangutai told about the incident. But P.W.-7 states that Geeta mentioned about the incident in the panchayat meeting. P.W.-2 Shankar states accused admitted his guilt in the meeting but

P.W.-6 does not say anything about that.

7 There are various discrepancies in the impugned order which, for the sake of brevity, I am not discussing. Suffice to say, I agree with the inconsistencies noted in the impugned order.

8 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 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

1. (2008) 10 SCC 450

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.

2. (2014) 5 SCC 730

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.

9 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the 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.

10 In the circumstances, in my view, the opinion of the Trial Court cannot

3. 1996 SCC (cri) 972

be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

11 Appeal dismissed.

(K.R. SHRIRAM, J.)