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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 66 OF 2014**

The State of Maharashtra

... Appellant

Versus

1.Arjun Manohar Jadhav,  
Age : 25 Years, Occu. : Agriculture,  
R/a. : Gotewadi, Tal. : Tasgaon,  
District : Sangli.

... Respondent No.1  
(Orig. Accused No.1)

2.Mrs.Rekhatai Namdeo Mane,  
Age : 35 Years, Occu. Agriculture,  
R/a. : Gotewadi, Tal. : Tasgaon,  
District : Sangli.

... Respondent No.2  
(Complainant-Victim)

Mr. H. J. Dedhia – APP for the Appellant – State.

Ms.Megha Bajoria, Advocate–Appointed as Amicus Curiae for Respondent No.1.

**CORAM : S. M. MODAK, J.**

**DATED : 14<sup>th</sup> FEBRUARY, 2023**

**P. C. :-**

1. At the beginning itself, learned APP Shri.H.J.Dedhia for the Appellant-State pointed out one lacuna in the Appeal memo. Though, the first informant is joined as Respondent No.2, she was included as if she is accused and not described as Respondent-Complainant. Even, this Court has initiated action against her also under Section 390 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”]. Certainly, there was a mistake. It is clarified that the Respondent No.2 is joined not as an accused but as Complainant-victim. There is no appearance on her behalf though she served. So, this Appeal is treated only against the Respondent No.1.

2. The only issue arises in this Appeal is as to why not testimony of the witness – first informant – victim Rekhatai Namdeo Mane should be believed. Amongst three witnesses, there are two witnesses on the point of

the incident. They are ;

(i) PW No.1 - Rekhatai Namdeo Mane and

(ii) PW No.2 – Santosh Shivaji Kumbhar

Though as per the FIR, the incident of outraging modesty took place in the presence of PW No.2 – Santosh, while deposing PW No.1 – Rekhatai has deposed that the incident of outraging modesty took place first and then she shouted and thereafter, two persons from Kumbhar family arrived there. The trial Court has considered this variance and given the Respondent benefit of doubt. The said judgment is under challenge at the instance of the State. Respondent-Accused was tried for the offence punishable under Section 354 of the Indian Penal Code, 1860 [“IPC”].

3. I have heard learned APP Shri.H.J.Dedia for the Appellant-State and learned Advocate Smt.Megha Bajoria – appointed as Amicus Curiae. Both of them apprised me about the evidence and findings of the trial Court. According to learned APP, why not there can be conviction only on the sole testimony of PW No.1. Whereas, according to learned Advocate Smt.Bajoria, if any witness is examined in order to corroborate the version of the victim, there has to be consistency and if it is not there, the trial Court rightly given benefit of doubt to the Respondent.

4. The incident took place on 9<sup>th</sup> November, 2009 at about 9.00 a.m., in the field locally called as “Ratyache Shet” at the field belongs to the family of first informant. She is a resident of village Gotewadi, Taluka : Tasgaon, District : Sangli. Her husband works at Sangli. She had gone to the field for the purpose of covering the creeper of groundnuts. At that time, Accused came there. As per her version before the Court, two persons from Kumbhar family came as to why she shouted. There were some utterances from the Accused. Somehow, she freed her hand from the hand of the Accused and ran away. So, as per her testimony, there were

certain utterances by the Accused and Accused has already caught hold the hand of the first informant. So, in the presence of those two Kumbhar persons, nothing happened. Out of those two Kumbhars, PW No.2- Santosh is one of them.

5. Then, earlier to arrival of two Kumbhar persons, what happened as per PW No.1 is important to be seen. She gave following details :-

- (a) The Accused caught her left hand and told her ‘‘जोधळ्याचे शेतात चल’’. (come in sorghum field).
- (b) The Accused started striving with her body and pressed her chest.
- (c) Then she shouted.

6. All above events have taken place prior to arrival of PW No.2. Even when I have read the evidence of PW No.2 - Santosh, what he has stated is Accused caught hold the hand of the PW No.1 and some utterances by the Accused. So, even he does not say about happening of any incident about outraging modesty taken place in his presence.

7. The trial Court emphasized on the change of chronology of events by PW No.1. Before the Police, she has given certain chronology of events, whereas, before the Court, she has changed that. An FIR is at Exhibit-33. I have perused it. She has said the following facts :-

- (a) When she was covering the creepers of groundnut with the help of plastic paper, Accused came there and asked her to come to the field wherein sorghum crop is cultivated. She shouted and at that time, Hanamant Kumbhar and Santosh Kumbhar came there.
- (b) Accused threatened her to drag PW No.1 towards the village temple and he did it with the help of showing fingers at her. Accused tried to hassle with the first informant and at that time, pressed her breast.

8. So before the Police, she has narrated that incident took place in the

presence of two Kumbhars. She supposed to stick up to her version. However, she has narrated the main incident which took place after the arrival of said Kumbhars. We do not know why she has deviated from her version before the Police. The Accused put up a case that he was having relations with the first informant and even he had given financial assistance to the Complainant. After the marriage, Accused told the Complainant to discontinue the relationship. She demanded the money, that is why there was a dispute. However, it is denied by the first informant.

9. Learned Advocate Smt.Bajoria is right that there has to be an intention to outrage the modesty and then only it violates the provisions of Section 354 of the IPC. Merely catching of the hand is not objectionable unless coupled by an intention. The learned trial Court has emphasized on this variance. Even, he has emphasized on the discrepancies on the spot of the incident. Even though, the Investigating Officer is examined, the spot panchas were not examined. As said above, there are no other witnesses on the point of incident. Considering the above discussion, I feel that the trial Court was right in giving benefit of doubt.

10. No doubt, sole testimony of the victim is sufficient evidence if it is reliable and trustworthy. By changing the version, the first informant has not helped the Court so as to repose trust on her. Hence, I am not inclined to interfere in those findings of the trial Court. Hence, the Appeal is dismissed.

11. Office is directed to pay the fees as per the Rules to the learned Advocate for Respondent No.1.

**(S. M. MODAK, J.)**