

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1335 OF 2012

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The State of Maharashtra
(Through P. S.O. Tembhurni
Police Station, Taluka : Madha,
Solapur).

... Appellant
(Original Complainant)

Versus

Chandu Sarjerao Vyavhare,
Age : Major, R/o. : Adhegaon,
Taluka : Madha, District : Solapur.

... Respondent
(Original Accused)

Mr. Y. Y. Dabke – APP for the Appellant – State.
Mr. P. G. Sarda, Advocate for Respondent.

CORAM : S. M. MODAK, J.

DATED : 16th FEBRUARY, 2023

P. C. :-

1. The only issue arisen in this Appeal is ; whether the trial Court was justified in discarding the testimony of PW No.1 – Vandana Shivaji Bhagyawant – Complainant victim. Her modesty was outraged on 13th December, 2009 3.30 p.m., in the agricultural field belonging to the Respondent. The spot is situated at village Wadoli, Taluka : Mhada, District : Solapur. The Complainant is an agricultural labourer. On that day, she was working in the field belonging to one Dattatraya Kale and she went to the agricultural field of Respondent for attending nature's call. By taking disadvantage of her loneliness, the Accused came her and fondled with her breast from backside. As she shouted, other female agricultural labourers came there, as a result, the Respondent-Accused ran away.

2. She narrated that incident to her husband and then, an FIR is lodged with Temburni Police Station. The Respondent was arrested and he was prosecuted for committing an offence punishable under Sections 354, 506 of the Indian Penal Code, 1860 [“IPC”] and under Section 3(1) and 7(1)(d) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [“SCST Act”]. During the trial, in all 6 witnesses were examined.

3. Out of them, PW Nos. 3 and 4 are panch witnesses in respect of a seizure of bangles of the Complainant in the Police Station and about carrying out the spot panchnama. Whereas, PW Nos. 5 and 6 are the police personnel ; one who registered the complaint and another is the Investigating Officer. The Complainant is PW No.1 and Sunita More who came there after hearing shouts is the PW No.2. Though not boldly, but indirectly the Respondent took a defence that PW No.1 – Vandana was damaging the sugarcane crop belonging to him and she was driven out by the Respondent-Accused.

4. The evidence about seizure of bangle and seizure of pieces of bangle from the spot is a corroborative piece of evidence and can be considered only if the testimony of the eye witnesses is reliable. On the point of role of the Appellate Court, learned Advocate relied upon a judgment in case of *Murugesan s/o Muthu and Others V/s. State Through Inspector of Police*¹ and more specifically, Para No.32. It was observed that the judgment of acquittal cannot be interfered with only because the High Court wants to take a different view. If the view of the trial Court is probable view, the acquittal cannot be interfered with. Whereas, according to learned APP, the trial Court ought to have believed the testimony of the first informant and in such cases, testimony of the victim stands on a higher pedestal.

1 (2012) 10 Supreme Court Cases 383

5. Admittedly, the caste certificate is not proved that the Complainant belongs to Chambar caste, whereas, the Respondent belongs to Maratha caste. It is important to note that PW No.2 – Sunita who came on the spot after hearing shouts, had seen the Respondent-Accused catching hold the hand of the first informant. Unfortunately, this statement is made before the Police and she admits the same during the course of cross-examination. That has to be excluded. The trial Court that is why has doubted her presence at the time of spot.

6. It is true that the incident of outraging modesty does not take place openly but they take place in a secret environment. So, the findings of the trial Court need to be looked into after having deeper scrutiny. It is true that the agricultural field of Dattatraya Kale is not adjacent to the agricultural field of the Accused. There is an unripened road. Sugarcane crop was standing in the agricultural field of the Respondent. It is also true that even though the Complainant has said that some of the ladies by name Manisha Laxman Bhagyawant, Vidya Hanumant Bhagyawant, Parwati Vibhishan Bhagyawant, Dipali Sadhu More and Rekha More arrived there, she had not said that when they came there, Accused has caught hold her hand. So, even otherwise, the facts stated by PW No.2 not corroborated by PW No.1.

7. PW No.1 has stated about the lands situated in and around the spot. It is also true that except PW No.2, no one is examined even though there are persons available in and around the spot. Learned Advocate Shri.Priyal Sarda argued that if such an incident took place, there ought to be some injury to the hand of the Complainant and there is bound to be some damage to the sugarcane crop at the spot and that, both these things are absent.

8. The trial Court disbelieved the Prosecution case also for the reason

that there is a delay in lodging of an FIR. That FIR was lodged on 9.30 p.m., whereas, incident took place at 3.30 p.m. The husband of the Complainant called Dattatraya Kale and informed him about the incident. Thereafter, the complaint is lodged at 9.30 p.m. As stated above, indirectly the Respondent has put up a theory that the Complainant has damaged his sugarcane crop and he protested her and drove her out. She has denied the same. So, whether the incident has taken place as deposed by the Complainant or whether the incident happened as put up by the Respondent-Accused is the question.

9. The trial Court has not believed the version of the Complainant for the reasons mentioned in the judgment. There is one more factor ; the field of the Respondent is not adjacent to the field of Dattatraya Kale, but at least there is a distance of more than 150 feet. So, the question is why she went for attending nature's call at a longer distance. It is also true that there are no injuries to her hand caused by broken piece of bangles. It is also true that FIR is lodged after 6 hours. These are the factors though could have been discarded but they are very important particularly when the Respondent has taken a defence about damaging his crop by the Complainant.

10. So, I am of this opinion that the view taken by the trial Court is probable view and it cannot be interfered with. No case is made out. Hence, Appeal is dismissed.

(S. M. MODAK, J.)