



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 281 OF 2005

The State of Maharashtra
Through Public Prosecutor,
High Court Bench at
Aurangabad.

....Appellant

Versus

Govind S/o Hari More
Age: 25 yrs., Occu.: Agri.,
R/o. Khopegaon,
Tq. & Dist.Latur.

.....Respondent
(Ori. Accused)

.....
APP for Appellant : Mr.A.A.A.Khan
Advocate for Respondent : Mr.Mayur Salunke h/f. Mr. V.D.Salunke
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 18 JUNE, 2024
PRONOUNCED ON : 24 JUNE, 2024**

JUDGMENT :-

1. Judgment and order passed by the learned II Ad-hoc Additional Sessions Judge, Latur dated 30-11-2004 acquitting present respondent from offence under Sections 354, 448, 323 of the Indian Penal Code (IPC) and Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short “SC and ST Act”), is taken exception to by the State.

PROSECUTION CASE IN BRIEF

2. On 15-02-2004, finding informant alone in the house, accused Govind Hari More visited the house on the pretext that he has some work with her. He tried to get physical with her resulting in the scuffle. She raised shouts resulting in arrival of sister-in-law. Accused managed to flee. Informant approached Police and gave report, on the strength of which, Police registered crime bearing no.18 of 2004 for offence under Sections 354, 448, 323 of the IPC and under Section 3(1)(xi) of the SC and ST Act.

In view of said charge, investigation was entrusted to PW6 Ashok s/o Narayan Thaku3, S.D.P.O., who carried out investigation and after gathering sufficient evidence, chargesheeted accused, who was finally tried by learned II Ad-hoc Additional Sessions Judge, Latur, vide Special Case No.1 of 2004.

In support of its case, prosecution has adduced evidence of in all seven witnesses apart from adducing documentary evidence. After hearing both the sides and on appreciating oral and documentary evidence, learned trial Court came to conclusion that prosecution failed to prove guilt of the accused and thereby acquitted accused by the impugned judgment.

The above judgment is now questioned by the State on various

grounds mentioned in the appeal.

SUBMISSIONS

On behalf of appellant State :

3. Learned APP apprised this Court about background of the occurrence dated 15-02-2004 that while informant was alone in the house, he pointed out that, accused came there with ill intention when husband of informant was out. He pointed out that respondent sent child of informant out of the house by paying him money for purchase of confectionary. That finding victim alone, he tried to get physical with her. That she resisted and raised shouts, her sister-in-law immediately came, thereafter, informant approached Police and lodged report. That she had also suffered injury and so was referred for medical examination. That her testimony was inspiring confidence and her evidence remained intact inspite of extensive cross-examination. That there was no reason for false implication. That her evidence was sufficient to accept her version and hold case of prosecution as proved. That necessary ingredients for attracting the charge for offence under Sections 354, 448, 323 of the IPC and Sections 3(1)(xi) of the SC and ST Act were also available. Therefore, learned trial Court ought to have accepted version of the informant and ought to have recorded the guilt, but apparently

learned trial Court failed to do so. According to him, evidence adduced by prosecution has not been considered in correct perspective. That testimony of victim / informant has not been properly appreciated. That there was sufficient evidence and all necessary ingredients for attracting charges for offence under Sections 354, 448, 323 of the IPC and Section 3(1)(xi) of the SC and ST Act were available, but learned APP submits that learned trial Court adopted erroneous approach in appreciating such cogent, reliable evidence and acquitted accused while giving benefit of doubt. That infact case was proved beyond reasonable doubt so conviction ought to have been recorded. That as judgment and order is patently perverse, so he prays to allow the appeal by setting aside the impugned judgment.

He placed reliance on decision in the cases of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, 1983 AIR (SC) 753 and *Dhirajbhai Gorakhbhai Nayak v. State of Gujarat*, 2003 AIR (SC) 2855.

On behalf of Respondent Accused :

4. In answer to above, learned Counsel for the respondent accused supported the judgment and submitted that prosecution has miserably failed to establish the charges. That cross-examination of

prosecution witnesses, more particularly, PW5 Anuradha / informant, rendered the case of prosecution doubtful. That testimonies of informant and other witnesses were full of material omissions and material contradictions. That except uncorroborated testimony of informant, there was no other reliable evidence. That only interested witnesses were examined. That there was no independent witness and taking such aspect into consideration, learned Counsel submits that learned trial Court rightly refused to accept the case of prosecution as proved. That there is no illegality or error in acquitting accused and so he prays to dismiss the appeal.

PROSECUTION EVIDENCE IN TRIAL COURT

5. In support of its case, prosecution has examined as many as seven witnesses. Sum and substance of their evidence is as under :

PW1 Dr.Shirish Gopinathrao Maske is Medical Officer. He deposed that on 15-02-2004 Rural Police Latur referred informant for medical examination. That he noticed abrasion over left wrist. That injury was simple in nature and caused within six hours. He identified certificate exh.18 authored by him.

PW2 Suman Maruti Ransule is sister-in-law of complainant.

She deposed that she knew informant, who is wife of her cousin brother-in-law. That alleged incident took place seven months back at around 07:00 p.m. when she returned from land, she heard loud voice of informant and so she ran to her house and saw informant lying on the floor and saw accused had caught her and scuffling with her. That she tried to catch accused, but he ran away. That thereafter, informant narrated incident to this witness. That informant sustained injury at wrist. She identified accused.

PW3 Ashok s/o Tukaram Magar acted as Pancha to spot. He deposed about Police preparing spot panchanama exh.22.

PW4 Babita w/o Rohidas Ransule deposed that informant is wife of her cousin brother-in-law. That before seven months at around 07:00 p.m., she claims to have heard shouts of informant and so she went towards house of informant. She found informant lying on the floor and on being asked, informant stated that accused fell on her person.

PW5 Anuradha w/o Shreemant Ransule is informant. She deposed that incident took place 7-8 months back. That her husband was outside the house i.e. at Latur. That she was cooking meals, at

that time, accused entered her house and asked whereabouts of her husband and she told that he had been to Latur for some work. That he asked at what time he would return and further said that he had work with her. She deposed that when she asked what was work with her, accused said that she may realize what work he has with her. That he scuffled with her by catching her hairs, made her fall on ground, he sat on her person and he pressed her breast. That she shouted loudly. That wife of her cousin brother-in-law namely Sumanbai came, she caught accused but he gave jerk and ran away. That thereafter, wife of another cousin brother-in-law namely Babita came and she reported to her also and thereafter, she went to Police Station and lodged FIR.

PW6 Ashok s/o Narayan Thakur is the S.D.P.O. and Second Investigating Officer.

PW7 Chandrakant s/o Mahadeo Gore is the first Investigating Officer, who entertained the complaint and carried out investigation.

LAW ON APPEAL AGAINST ACQUITTAL

6. This is an appeal by State against acquittal. Therefore, before re-appreciating the evidence to ascertain correctness of the impugned

judgment, it is desirable to give a brief account of settled principles to be borne in mind while dealing with appeal against acquittal.

Recently, the Hon'ble Apex Court in the case of ***Ravi Sharma v State (Government of N.C.T. Delhi and another)***, 2022 LiveLaw (SC) 615 has considered and discussed the law settled by the Hon'ble Apex Court in the case of ***Chandrappa v. State of Karnataka***, (2007) 4 SCC 415, which are as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him 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, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

7. Likewise in the same judgment, the Hon’ble Apex Court has touched and dealt with as to what is meant by perverse findings by taking recourse to the earlier decisions in the cases of ***Arulvelu and another v. State***, (2009) 10 SCC 206; ***Babu v. State of Kerala*** (2010) 9 SCC 189 and ***Anwar Ali and another v. State of Himachal Pradesh***, (2020) 10 SCC 166.

Similarly, while dealing with the aspect as to what is meant by “possible view”, the Hon’ble Apex Court in ***Ravi Sharma*** (supra), by referring to the Judgments in the cases viz. ***N.Vijay Kumar v. State of Tamil Nadu***, (2021) 3 SCC 687; ***Murugesan v. State***, (2012) 10 SCC 383, ***Hakeem Khan v. State of M.P.***, (2017) 5 SCC 719, observed that “if the “possible view” of the trial Court is not agreeable for the High Court, even then such “possible view” recorded by the trial Court cannot be interdicted. It is further held that as long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial Court

cannot be interdicted and the High Court cannot be supplant over the view of the trial Court”.

8. Keeping the above discussed legal position in mind, appeal filed by State against acquittal is taken up for consideration.

ANALYSIS

9. Here on re-appreciating the prosecution evidence, admittedly, evidence of PW5 Anuradha / informant is only of relevance followed by evidence of PW2 Suman, who claims to have reached the house of PW1 informant and had seen accused. PW4 Babita has apparently hearsay information. Therefore, evidence of PW1 informant and PW2 Suman is put to careful scrutiny.

On doing so, it is noticed that according to **PW5** informant, finding her alone, accused entered her house in the evening, scuffled with her, caught hold of her hairs, made her fall and then pressed her breasts. She raised shouts. Wife of her cousin brother i.e. PW2 Suman came, she tried to catch accused but he gave her jerk and ran away. PW4 Babita also reached there hearing her shouts. Thereafter, informant approached Police Station and lodged FIR.

In **cross-examination**, she admitted that she went to Police Station on instructions of Sumanbai and Babita. She further

answered that their houses are at west side and east side respectively. She denied contents of FIR to be narrated by Rohidas. In paragraph 10 of her cross-examination, she claims that she informed Police about accused making her fall down on the ground, sat over her, and she sustained injury to her left hand. She admitted that she did inform Police about arrival of PW4 Babita at the spot. She further answered that she informed Police that her son Akash went out crying. She further answered that she is unable to assign any reason as to why the above facts are missing from her statement before Police.

Her FIR exh.25, on close scrutiny, also shows that therein she has not reported that accused sat on her and pressed her breasts, which is finding place in her substantive evidence. Infact on her such complaint, crime is registered.

10. Next crucial witness is PW2 Suman. On re-appreciation, her evidence shows that at around 7:00 p.m. she heard shouts of PW5 informant and so she ran towards her house. According to her, she saw informant lying on the ground in front of the door of the house and accused scuffling with her. She went to catch him, but he ran away. She claims that she questioned informant as to what happened

and informant told her that accused asked whereabouts of her husband and when she told that her husband has gone outside, informant told her that she had questioned accused why he came there and he reportedly said to the informant that she may realize it. Therefore, this witness does not speak about informant telling her about her modesty being outraged by accused by sitting over her and pressing her breasts, which is a version of informant in the witness box.

11. As stated above, statement of PW4 Babita is of no avail as she is not party to the occurrence and she has mere hearsay information.

12. Even first Investigating Officer PW7 Gore, in cross-examination admitted that informant did not state before him that accused sat on her person and pressed her breasts and she also did not state that PW2 Suman came and made her stand up. Similarly, she did not state about arrival of PW4 Babita.

13. Therefore, the sum total of above discussed evidence is that, there is no evidence whatsoever about accused outraging modesty of informant, attracting offence under Section 354 of the IPC. FIR is silent about accused sitting over her person and pressing her breasts. Police Official, who entertained the complaint, admitted to that

extent. PW2 Suman also does not speak about above outraging of modesty.

14. PW2 Suman claims that when she went to the house of informant on hearing shouts, she found informant lying on the ground in front of the door of the house. Therefore, apparently there is no entry by accused in the house of informant to attract Section 448 of the IPC.

15. PW1 Dr.Maske, Medical Officer, in examination-in-chief itself has stated that injury noticed was an abrasion over left wrist and it was simple in nature. Injury certificate exh.18 is silent about history. Therefore, even there is no convincing and full proof evidence regarding offence under Section 323 of the IPC.

16. Though charges were also slapped for offence under Section 3(1)(xi) of the SC and ST Act and though caste certificate of informant is gathered by the investigating machinery, evidence on record does not suggest that accused deliberately knowing that victim was belonging to Scheduled Caste, scuffled with her to intimidate, humiliate or outrage her modesty.

CONCLUSION

17. For above reasons, as charges are not proved beyond reasonable doubt, it is a case of benefit of doubt. Learned trial Court has committed no error in appreciating the available evidence and acquitting the accused by extending benefit of doubt. It is the possible view that could emerge on appreciation of such quality of evidence.

18. I have gone through the cases relied by the learned APP for the appellant State. The facts in the cases relied by the learned APP are quite distinguishable and therefore, the same cannot be applied to the case in hand.

19. No good ground being made out in appeal, no interference is called for. Accordingly, I proceed to pass following order :

ORDER

Criminal Appeal No.281 of 2005 is dismissed.

(ABHAY S. WAGHWASE)
JUDGE