



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.219 OF 2020

Swati d/o Anilkumar Jambhulkar,
aged about 22 years, occupation:
education, r/o Police Nagar,
Nagpur.
Permanent r/o Goregaon, tahsil
Goregaon, district Gondia. **Appellant.**

:: V E R S U S ::

1. State of Maharashtra,
through PSO Dhanora, district-
Gadchiroli.

2. Pramod s/o Wasudeo Salve,
aged about 58 years, occupation:
President-Narsingh College, Chatgaon,
r/o Chatgaon, tahsil Dhanora, district
Gadchiroli. **Respondents.**

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Shri M.V.Rai, Counsel for the Appellant/Victim.
Shri K.R.Lule, Additional Public Prosecutor for
Respondent No.1/State.
Shri R.M.Daga, Counsel for Respondent No.2/Accused.
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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 10/10/2024
PRONOUNCED ON : 22/10/2024

JUDGMENT

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1. By this appeal, the appellant (the victim) has challenged judgment and order dated 21.12.2019 passed by learned Special Judge/Additional Sessions Judge, Gadchiroli (learned Special Judge) in Special (Atrocities) Case No.2/2017.

2. By the said judgment and order impugned, learned Special Judge acquitted respondent No.2 (the accused) of offences punishable under Sections 294, 504, 506, and 354A of the Indian Penal Code and 3(1)(w), 3(2)(va), 3(1)(r), and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, (the SC ST Act).

3. The case of the prosecution, in brief, is as follows:

The victim was admitted in B.Sc. Part-II, Nursing College, Chatgaon, tahsil Dhanora, district Gadchiroli. The accused is founder of the said college. The victim was residing in a hostel. It is alleged that behaviour of the accused towards girls students was not proper. In first week of January 2017, when the victim was present in her room along with her friends, the accused came in

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front of her room, called her outside the room, and asked her to come in office for preparing record. On her refusal, he threatened her that he would see how she obtains degree. Due to which, she got scared and went along with the accused. He asked her to fill up registers and when she got busy to fill up registers, the accused subjected her for sexual harassment by physically touching her. The act of the accused was resisted by her and after her shouting, her friends came there. She as well as her friends were gathered. The accused threatened them that if they disclose the incident to anybody, he would kill them and, thereafter, the victim approached police station and lodged a report. On the basis of the said report, the police registered the crime as the aforesaid.

4. After registration of the crime, wheels of investigation started rotating. During investigation, statements of the victim and her friends were recorded. Spot panchanama was drawn and after completion of

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the investigation, chargesheet came to be filed and learned Sessions Judge framed charge.

5. In support of the case, the prosecution examined in all eight witnesses namely the victim vide Exhibit-11 (PW1) (due to mandate of Section 228-A of the Indian Penal Code, name of the victim is not mentioned); Shweta Ghume Exhibit-22 (PW2); Gunshree Betal Exhibit-26 (PW3); Heena Sheikh Exhibit-27 (PW4); Raju Thakare Exhibit-28 (PW5), the witness on spot panchanama; Yashpal Suryawanshi Exhibit-29 (PW6); Anusaya Poreti Exhibit-33 (PW7); and Ajit Tike Exhibit-37 (PW8).

6. Besides the oral evidence, the prosecution also relied upon documentary evidence such as report Exhibit-11, First Information Report Exhibit-13, Report Exhibit-12, spot panchanama, and complaint filed by the victim at Chatgaon Police Help Centre Exhibit-20.

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7. Heard learned counsel Shri M.V.Rai for the the victim, learned Additional Public Prosecutor Shri K.R.Lule for respondent No.1/State, and learned counsel Shri R.M.Daga for respondent No.2/accused.

8. Learned counsel for the victim submitted that as far as the appeal is concerned, this Court can reappreciate the evidence adduced. He further submitted that learned Special Judge has not considered consistent evidence of the victim and her friends, which unerringly points out involvement of the accused in the offence of sexual harassment of girls. Learned Special Judge swayed away by facts that the victim has not disclosed the prior complaint filed by her before Chatgaon Police Help Centre. As far as corroboration is concerned, the evidence of the victim is corroborated by PW2 Shweta Ghume, PW3 Gunshree Betal, and PW4 Heena Sheikh. There is no reason for the victim to implicate the accused falsely.

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Thus, the judgment and order impugned in the appeal is erroneous and liable to be set aside.

9. Learned Additional Public Prosecutor for the State supported submissions canvassed by learned counsel for the victim.

10. *Per contra*, learned counsel for the accused submitted that the entire evidence of prosecution witnesses sufficiently shows that the victim along with PW2 Shweta Ghume, PW3 Gunshree Betal, and PW4 Heena Sheikh, who were taking education in Nursing College, left the college without informing the accused and Principal. On the say of the accused, the Principal lodged a report. Being annoyed with the same, the present First Information Report is lodged by the victim. He submitted that cross examination shows falsity of allegations. The prosecution miserably failed to prove charges against the accused beyond reasonable doubt and, therefore, learned Special Judge rightly acquitted the accused.

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11. After going through rival submissions of both parties, it reveals that the accused was founder of “Salve Nursing College” whereat the victim as well as PW2 Shweta Ghume, PW3 Gunshree Betal, and PW4 Heena Sheikh, were taking education. As per allegations of the victim, she was called by the accused at 6:00 pm in his office to fill up registers and she was sexually harassed. The evidence of PW2, PW3, and PW4 is on the similar line. They all have stated that on the day of the incident, the victim was called by the accused in his office and after some time, they heard a noise of the victim and, therefore, they came out of rooms. The victim disclosed the entire incident to them.

12. It is well settled that in sexual assault cases, if evidence of victim inspires confidence, it needs no corroboration.

13. The cross examination of the victim shows that at the relevant time, 150 students were residing in the hostel and using dining room for meal. The spot of the

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incident was next to the dining room. A lady cook and watchman was also deputed. Two-three ladies were helping in kitchen. Her cross examination further shows that during 6:00 pm to 7:00 pm, there used to be prayer and attendance at the prayer was mandatory. Her evidence further shows that an employee was deputed for official work. There is an association of students. She did not raise any grievance to the association of students. Her cross examination further shows that as she and her friends left the hostel without permission of authority, a complaint was made against them and a meeting was also called wherein parents of girls were present. During the said meeting, there was altercation between the accused and students as well as their parents. Her evidence further shows that initially she approached the Police Help Centre and lodged her complaint, but no action was taken. It also came in evidence that initially, she did not make allegations as to the sexual harassment by the accused.

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14. The cross examination of PW2 Shweta Ghume, PW3 Gunshree Betal, and PW4 Heena Sheikh is on the similar line. They also admitted that as they left the hostel without permission, an action was taken against them. They also lodged a report at Chatgaon Police Help Centre and a report was also lodged against them. They also admitted regarding altercation between them and the accused and their parents during the meeting.

Thus, the evidence consistently shows that the dispute arose between the accused and the victim and her friends on account of leaving hostel by them without permission.

15. PW6 Yashpal Suryawanshi, the police official at Chatgaon Police Help Centre, was examined to prove that prior lodging of the report, complaint was filed by the victim at Chatgaon Police Help Centre. His cross examination shows that he did not find any registers or documents written by the victim though he took a

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search of the office or college, room of the accused or in any place of the college.

Thus, foundation of allegation, that the victim was called by the accused to take entry in registers or documents, itself is not established.

His cross examination also shows that there was a dining room near the office and other staff is also deputed in the hostel.

16. PW8 Ajit Tike, the investigating officer, narrated about the investigation carried out by him.

17. PW5 Raju Thakare and PW7 Anusaya Poreti are formal witnesses.

18. Insofar as Exhibit-20 is concerned, which is earlier complaint lodged by the victim, there was no allegation as to sexual harassment by the accused.

19. Learned Special Judge dealt with the evidence extensively and observed that no lady would lodge a

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false report, but considering entire facts and circumstances, it can safely be concluded that the prosecution has not brought satisfactory evidence on the point that the victim was called in the room and subjected for sexual harassment. The said observation by learned Special Judge is on the basis of the evidence.

20. On re-appreciation of the evidence, it reveals that the foundation of the incident, that the victim was called in the office room on a pretext of filling up registers or documents and at the relevant time, she was sexually harassed, itself is not established. The cross examination of all witnesses shows that as the action was taken against them for leaving the hostel without permission, may be one of reasons for them to lodge the report. The cross examination further shows that 150 students were residing in the hostel. The time of the incident, admittedly, was of prayer time. It is difficult to accept that the incident in question is not

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noted by any of students except by friends of the victim.

Thus, on this appreciation, the accused is acquitted of offences

21. It is well settled that when two views are possible, one, which is in favour of the accused, will prevail.

22. It is also well settled that while exercising appellate powers, especially while dealing with appeals against acquittal, cardinal principle to be kept in mind is that there is a presumption of innocence in favour of accused unless the accused is proved guilty. The presumption continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in criminal cases is not an extraordinary phenomenon while considering appeals against acquittal. A fact cannot lose sight of the same. The trial court has appreciated the entire evidence and reversal

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of an order of acquittal is not to be based on mere existence of different views or mere difference of opinion. Normally, while exercising the appellate jurisdiction, it is the duty of the appellate court to see, whether decision is correct or incorrect on law and facts. While dealing with appeals against acquittal, the court cannot examine the impugned judgment only to find out whether the view taken was correct or incorrect. After re-appreciating oral and documentary evidence, the Appellate Court must first decide whether the Trial Court's view was a possible view. The Appellate Court cannot overturn acquittal only on the ground that after re-appreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

23. Recently, the Hon'ble Apex Court, in the case of **Kalinga @ Kushal vs. State of Karnataka by Police Inspector Hubli, reported in (2004)2 SCR 391**, in paragraph No.25, reiterated that this Court cannot lose

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sight of the fact that the Trial Court had appreciated the entire evidence in a comprehensive sense and the High Court reversed the view without arriving at any finding of perversity or illegality in the order of the Trial Court. It is also well settled law that the High Court, in exercise of appellate powers, may reappreciate the entire evidence. However, reversal of an order of acquittal is not to be based on mere existence of a different view or a mere difference of opinion. To permit so would be in violation of the two views theory, as reiterated by this Court from time to time in cases of this nature. In order to reverse an order of acquittal in appeal, it is essential to arrive at a finding that the order of the Trial Court was perverse or illegal; or that the Trial Court did not fully appreciate the evidence on record; or that the view of the Trial Court was not a possible view.

24. In the instant case, as observed earlier, after appreciating the evidence, learned Special Judge came

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to conclusion that the prosecution failed to prove charges beyond reasonable doubt.

25. Thus, on re-appreciation of the evidence on record, I do not find any error or perversity in the judgment impugned in the appeal. The appeal filed by the victim is devoid of merits and no interference in the judgment impugned is called for.

26. In the light of the above, as the appeal is devoid of merits and liable to dismissed, the same is **dismissed**.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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