



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

CRIMINAL APPEAL NO. 317 OF 2005

The State of Maharashtra
Through PSO, Majalgaon
Police Station, Dist. Beed

Appellant

Versus

Vithal Hariba Misal
Age : 50 yrs, occ : Kotwal
R/o Majalgaon Tahsil,
Majalgaon, Dist. Beed.

Respondent

...
Mr. R.D. Raut, A.P.P. for the appellant / State.
Mr. B.S. Kudale, Advocate for the respondent.
...

CORAM : SANDIPKUMAR C. MORE, J.

JUDGMENT RESERVED ON : 12 FEBRUARY 2025
JUDGMENT PRONOUNCED ON : 21 APRIL 2025

JUDGMENT :

1. The appellant-State has preferred this appeal against the judgment and order dated 18.01.2005 passed by the learned Additional Sessions Judge, Majalgaon in Criminal Appeal No.10/2004. Under the impugned judgment, the learned Additional Sessions Judge has acquitted the present respondent/accused by setting aside the judgment and order of conviction dated 05.05.2000 passed by the learned Judicial Magistrate, First Class, Majalgaon in R.C.C. No. 97/2000 i.e. the learned trial Court. The learned trial Court had convicted

the respondent/accused for the offence punishable under Sections 295, 504 and 506 of the Indian Penal Code (for short, "I.P.C.") and sentenced him accordingly. However, the learned trial Court acquitted the respondent/accused of the offence punishable under Section 510 of the I.P.C.

2. As per the prosecution story, respondent/accused at the relevant time was Kotwal. He belongs to 'Mang' caste and resides at Indiranagar area of Majalgaon. There is one temple of God Hanuman at Indiranagar and so many people of Hindu religion used to visit the same for worship. On 01.03.1999 on the day of Holi, respondent/accused in drunken state entered into Gabhara of the said temple and by lifting his Lungi, started urinating on the idol of God Hanuman. One Gayabai Shinde, who was present in the temple, by noticing act of the accused, shouted loudly. Complainant Sheshrao Yadav, who was sitting on the Ota of nearby house, rushed to the spot and found respondent/accused passing urine on the idol of God Hanuman. When tried to prevent, the respondent/accused started abusing in loud voice in filthy language. The neighbouring people namely Dilip Pawar, Mahadu Waghmode, Subhash Rasve, Sanjay Kajale, Sumanbai Kumbhar, Mathurabai Shinde, Satyabhamabai Shinde, Kamalbai

Murumkar and others, on hearing the shouts, had also rushed to the spot of incident and they caught hold of the respondent/ accused and made him to sit on the Ota of temple. Respondent/accused still was not in a mood to listen to the request of the aforesaid people so gathered and therefore, complainant Sheshrao Yadav went to the police station and lodged report of the incident.

3. After investigation, the respondent/accused was charge-sheeted for the offence under Sections 295, 504, 506 and 510 of the I.P.C. The learned trial Court, after conducting the trial, convicted respondent/accused for the offence punishable under Section 295 of I.P.C. and sentenced him to suffer R.I. for one year and to pay fine of Rs. 1,000/-, in default to suffer R.I. for one month and for the offences punishable under Sections 504 and 506 of I.P.C. sentenced to suffer S.I. till rising of the Court and to pay fine of Rs. 500/- in default to suffer R.I. for one month for each. However, the learned Additional Sessions Judge, Majalgaon under the impugned judgment and order, set aside the conviction recorded by the learned trial Court and acquitted the respondent/accused of the offences levelled against him.

4. Learned A.P.P. strongly submitted that the learned Additional Sessions Judge has ignored the evidence of eye witness and gave unnecessary importance to the other factors, such as, absence of C.A. report, sole testimony, etc. According to him, the learned Additional Sessions Judge should not have observed that the prosecution withheld evidence of star witness Gayabai, who noticed the act of accused for the first time. The learned A.P.P. further submitted that the evidence of eye witness i.e. complainant Sheshrao is well corroborated by the evidence of PW-3 Sanjay Kajale, who had in fact seen the villagers bringing the respondent/accused out of the temple after the main incident was over. Thus, he reiterated that there was absolutely no necessity for the prosecution to examine Gayabai when the evidence of eye witness Sheshrao was well corroborated by PW-3 Sanjay Kajale. Thus, he prayed for restoration of conviction recorded by the learned trial Court against the respondent/accused.

5. On the contrary, learned Counsel for the respondent/accused strongly supported the impugned judgment passed by the learned Additional Sessions Judge. According to him, the learned Additional Sessions Judge rightly observed that no scientific evidence in the form of C.A.

report was obtained by prosecution by taking sample as regards the act of urinating on the idol of God Hanuman. He submitted that the learned Additional Sessions Judge rightly observed that on the basis of sole testimony of Sheshrao, the respondent/accused should not have been convicted as the other witness i.e. PW-3 Sanjay Kajale was not an actual eye witness, but had come to the spot later on. He relied on the following judgments and prayed for dismissal of the appeal.

*(i) Umedbhai Jadavbhai vs The State of Gujrat
AIR 1978 SC 424*

*(ii) State of Goa vs Mervin Thomas Menezes & anr
2017 All MR (Cri) 1818*

*(iii) Umesh Pralhad Jadho vs State of Maharashtra
2014 (4) Mh.L.J. (Cri.) 694*

6. Heard rival submissions. Also perused the impugned judgment alongwith the judgment of the learned trial Court and also the record and proceedings of both the courts below.

7. On going through the judgment of the learned trial Court, it is evident that the prosecution has examined in all four witnesses in support of the charge against the respondent/accused. Out of those witnesses, PW-1 Sheshrao Yadav is the complainant whereas PW-2 Laxman Kolhe is a panch witness of the spot panchnama. PW-3 Sanjay Kajale is

the person who had seen the people bringing accused out of the temple, whereas PW-4 Arunsingh Parihar is the Investigating Officer whose evidence is only on procedural aspect.

8. The learned trial Court has relied on the evidence of PW-1 Sheshrao Yadav i.e. the eye witness and PW-3 Sanjay Kajale and found that both of them have corroborated each other on material aspects. Thus, the learned trial Court found the evidence sufficient to convict the respondent/accused.

9. On the other hand, the learned appellate Court acquitted the accused disbelieving the testimony of sole eye witness Sheshrao Yadav since PW-3 Sanjay Kajale was not an eye witness. The learned Additional Sessions Judge has also observed that despite presence of so many villagers on the spot, the prosecution did not examine them to corroborate the testimony of PW-1 Sheshrao, and therefore, adverse inference was to be drawn against the respondent/accused. The learned Additional Sessions Judge has also observed that the prosecution did not examine star witness Gayabai Shinde and also did not try to collect scientific evidence, such as, C.A. report to establish conclusively that the respondent/accused urinated on the idol of Got Hanuman.

10. Learned Counsel for the respondent/accused placed reliance on the judgment of the Apex Court in the case of *Umedbhai Jadavbhai vs State of Gujrat* (supra) wherein it is observed as follows :

“In an appeal against acquittal, the High Court would not ordinarily interfere with the trial court's conclusion unless there are compelling reasons to do so, inter alia, on account of manifest errors of law or of fact resulting in miscarriage of justice. Ordinarily the High Court would give due importance to the opinion of the Sessions Judge, if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case”.

However, in the instant matter, earlier there was conviction by the learned trial Court by discussing the entire evidence on record which the learned Additional Sessions Judge, in appeal, set aside. In the aforesaid judgment it is specifically mentioned that reappriciation of evidence is permissible in case the Sessions Judge has made absolutely wrong assumption of a very material and clinching aspect in the circumstance of the case. Thus, considering the same, reappriciation of the evidence at the hands of this Court is necessary to ascertain whether the opinion of Additional Sessions Judge has come on proper appreciation of the evidence. In the case of *State of Goa vs Mervin Thomas Menezes* (supra) this Court has observed that unless and until

finding recorded by Sessions Judge is found to be perverse or an impossible view, no interference is called for. However, this observation is no bar to ascertain from the evidence on record as to whether the acquittal recorded by the learned Additional Sessions Judge is contrary to the evidence on record. In the case of *Umesh Pralhad Jadho vs State of Maharashtra* (supra), this Court has observed that if there was previous dispute between the complainant party and party of the accused, then the conviction order is liable to be set aside. Here in this case, the respondent/accused has come out with a defence that he was prohibited from entering into the temple of God Hanuman on account of his caste, and therefore, when he was trying to enter the temple for worshipping God Hanuman, he was involved in false case. However, whether such defence is established by the respondent/accused, can only be ascertained on the basis of evidence on record and merely on the previous dispute, the conviction cannot be set aside unless there are flaws in the evidence of prosecution.

11. In the instant matter, the complainant Sheshrao Yadav has specifically deposed that on hearing the shouts of Gayabai, he immediately rushed to the spot and found the accused urinating on the idol of God Hanuman. He also stated

the abuses hurled by the respondent/accused. He further deposed that so many villagers also gathered at the spot of incident and he then dragged the accused from the place of idol to Ota outside the temple. His testimony remained unshattered despite searching cross-examination on behalf of the respondent/accused. So many suggestions were given to him to falsify the case of prosecution, but he remained firm on the fact that he had actually seen the accused urinating on the idol of God Hanuman. He also denied the suggestion that prior to 3 to 4 days of the incident, they prohibited respondent/accused from entering into the temple. Such denial has definitely washed out the defence of respondent / accused.

12. The evidence of PW-1 Sheshrao Yadav has been corroborated by PW-3 Sanjay Kajale. Though the learned Additional Sessions Judge observed in his judgment that his witness was not an eye witness, but from the evidence of this witness, it is clearly evident that he did not claim to be an eye witness, but deposed that he went to the spot when people were taking out the accused from the temple. Thus, the main act was witnessed by complainant Sheshrao i.e. PW-1 and the evidence of PW-3 Sanjay has supported the testimony of the

complainant in respect of the happenings took place after the main incident. The testimony of this witness also remained unshattered in the cross-examination and like the complainant, this witness has also denied the defence of accused that earlier to the incident, he was prevented from taking Darshan.

13. Learned Additional Sessions Judge has observed that the prosecution has not examined star witness Gayabai Shinde who had seen the act of accused for the first time. However, the complainant in his cross-examination stated that after hearing the shouts of Gayabai, he rushed to the spot of incident within a minute which indicates that he was very much present close to the temple. Further, when the complainant had clearly witnessed the incriminating act of the accused, then there was no necessity for the prosecution to examine Gayabai Shinde on the same point. Whatever evidence produced by the prosecution was to be scrutinized by the learned Additional Sessions Judge to ascertain whether the respondent/accused had committed any crime. Therefore, it was not open to the learned Additional Sessions Judge to observe that some other persons were required to be examined.

14. Further, the learned Additional Sessions Judge has observed that though PW-2 Laxman Kolhe being a panch to the spot panchnama supported the prosecution case, but he did not utter anything about derogatory act of the respondent/accused insulting religion of Hindu people. However, the prosecution had examined this witness Laxman Kolhe for specific purpose i.e. to prove the contents of spot panchnama, and therefore, he was not supposed to make any comment on the act of respondent/accused since he was not present at the time of actual incident. Thus, the observation of learned Additional Sessions Judge to that effect is definitely erroneous.

15. Further, it appears that the learned Additional Sessions judge has observed that the prosecution did not make any effort to collect sample to establish conclusively that the respondent/accused really had passed urine on the idol of God Hanuman. Admittedly, no such sample was collected by the Investigating Officer. However, the investigation must have started after lodging of F.I.R. and after about 2 to 3 hours of the incident. The learned trial Court has specifically observed that the spot panchnama was recorded after two hours of the incident, and therefore, there was every possibility of drying of floor and in that case there was no opportunity of collecting

sample. It is settled position that ocular evidence definitely prevails over medical or scientific evidence. In the instant case, as observed earlier, there is reliable evidence of an eye witness already on record. Thus, considering the evidence on record, the prosecution has definitely established the act of passing urine on the idol of God Hanuman by the respondent/accused. Eye witness Sheshrao, who had lodged the report, has convincingly established the incriminating act of the accused and his version is well supported by PW-3 Sanjay Kajale who had immediately saw the people bringing accused out of the temple just after the incident. Moreover, the prosecution witnesses have also stated the abuses uttered by respondent/accused in filthy language. Therefore, the observation of the learned Additional Sessions Judge and finding thereon are definitely perverse and contrary to the evidence on record. Therefore, interference in the impugned judgment is necessary.

16. The learned trial Court has infact appreciated the evidence on record in proper manner and held that act of the accused was sufficient to hurt the feelings of a particular class of the people. Thus, the ingredients of Sections 295, 504 and 506 of I.P.C. have been clearly established in the instant case,

and therefore, the conviction recorded by the learned trial Court needs to be restored by setting aside the impugned judgment and order of the learned Additional Sessions Judge, Majalgaon.

17. In the result, the appeal stands allowed and the impugned judgment and order dated 18.01.2005 passed by the learned Additional Sessions Judge, Majalgaon in Criminal Appeal No. 10/2004 is hereby set aside and the judgment and order of conviction dated 05.05.2000 passed by the learned Judicial Magistrate, First Class, Majalgaon in R.C.C. No. 97/2000 is upheld and restored. The respondent/accused shall surrender himself before the concerned Police Station within three months to undergo the sentence awarded to him.

18. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)