



Judgment

454 revn209.23

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

CRIMINAL REVISION APPLICATION NO.209 OF 2023

Samir Suresh Waghmare,
age: 35 years, occupation: labour,
r/o Tukaram Ward, Ramnagar, Wardha,
tahsil and district Wardha. **Applicant.**

:: VERSUS ::

State of Maharashtra,
thr.PSO Ramnagar, Wardha,
tahsil and district Wardha. **Non-applicant.**

Shri Chintan Tamhane, Counsel for the Applicant.
Shri N.R.Rode, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 23/07/2025

PRONOUNCED ON : 21/08/2025

JUDGMENT

1. By this revision, the applicant (the accused) has challenged order dated 7.7.2023 passed by learned Additional Sessions Judge, Wardha in Criminal Appeal No.52/2018 dismissing the appeal of the accused and

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thereby confirming the judgment and order of sentence dated 4.9.2018 passed by learned JMFC, Wardha in RCC 155/2016.

2. Brief facts of the prosecution case emerge from the police papers and recorded evidence are as under:

On 29.1.2016, at about 8:00 pm, the victim was alone in the house. At the relevant time, the accused allegedly committed trespass, entered inside the house, and pressed her breast and thereby outraged her modesty. On the basis of the report lodged by father of the victim, the crime was registered against the accused.

3. During investigation, the investigating officer has recorded relevant statements of witnesses, drawn spot panchanama, and after completion of the investigation, submitted chargesheet against the accused. The charge was

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framed against the accused vide Exh.3 to which he pleaded not guilty and claimed to be tried.

4. In support of the prosecution case, the prosecution has examined in all 6 witnesses, as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	The father of the victim	5
2	The mother of the victim	15
3	The brother of the victim	17
4	The victim	18
5	Shankar Bhalave, the investigating officer	19
6	Moreshwar Suryawanshi, pancha on spot panchanama	22

5. Besides the oral evidence, the prosecution placed reliance on report Exh.6, FIR Exh.7, spot panchanama Exh.20, and arrest panchanama Exh.21. On the basis of the oral as well as the documentary evidence, the prosecution has proved its case beyond reasonable doubt.

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6. After appreciation of the evidence, learned JMFC convicted the accused for offence under Section 452 of the IPC and sentenced to undergo rigorous imprisonment of 2 years and to pay fine Rs.5000/- in default, rigorous imprisonment for one month. He is further convicted for offence under Section 354 of the IPC and sentenced to undergo rigorous imprisonment for 2 years and to pay fine Rs.5000/-, in default, to undergo rigorous imprisonment for 1 month.

7. The accused preferred an appeal before learned Sessions Judge and learned Sessions Judge confirmed the said sentence and dismissed the appeal.

8. Being aggrieved and dissatisfied with the same, the present revision preferred by the accused.

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9. Heard learned counsel Shri Chintan Tamhane for the accused and learned Additional Public Prosecutor Shri N.R.Rode for the State.

10. Learned counsel for the accused submitted that the cross examination of the victim itself shows that there was money transaction between the father of the accused and the mother of the victim and the said amount was not paid and on that count, there was dispute between the complainant and the father of the accused. On the day of the incident, the accused had been to the house of the victim to demand the money and, therefore, he is falsely implicated in the crime. He invited my attention to the cross examination of the victim and submitted that in specific words she has admitted that she has deposed before the court as narrated by her father. Admittedly, the victim was child and it is easy to tutor the child. As the victim was

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tutored by the complainant, this false report is lodged. He submitted that the evidence on record shows that the house of the victim is situated in a dense locality. There is inconsistent statement as to the time of the incident. Even, accepting the version of the complainant, that the alleged incident occurred at 8:00 pm, then also it is difficult to accept that none of neighbours came by hearing the shouts and only brother of the victim came. The story narrated by witnesses itself is improbable and unacceptable. The evidence of the father of the victim is inconsistent not only as to the timing of the incident but also he has given complete contradictory version. Thus, the evidence on record is not inspiring the confidence and the Trial Court as well as the Appellate Court wrongly relied upon the said evidence and, therefore, interference is called for by invoking the jurisdiction under the revisional powers.

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11. *Per contra*, learned Additional Public Prosecutor for the State submitted that the scope of the revisional powers is very limited. In exercise of revisional powers, the High Court cannot conduct a detailed minutest reexamination of the entire evidence and put concurrent findings of the Trial Court and First Appellate Court. The evidence on record sufficiently shows involvement of the accused in the crime. The revision being devoid of merits is liable to be dismissed.

12. The conviction and the sentence by learned JMFC and confirmed by learned Sessions Judge is under challenge in the present revision. There is no dispute as far as the powers under 397 of the CrPC are concerned. The minutest reexamination of the whole evidence is not expected. There has to be self restraint while exercising the powers under revision. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of

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the provisions contained in Section 401 of the Cr.PC. Section 401 of the CrPC is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Court. Section 397 of the CrPC confers power on the High Court or Sessions Court, as the case may be, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior court.

13. It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 of the CrPC conferring powers of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section

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of the CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

14. The Hon'ble Apex Court, in the case of **Duli Chand vs. Delhi Administration**, reported in (1975)4 SCC 649, observed that the High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.

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It is necessary to note in the said decision that the High Court re-appreciated the whole evidence and findings of the two courts below.

15. In the light of the above observations, if the findings of the Trial Court as well as the Appellate Court are considered, it is relied upon on the evidence of evidence of PW1 the father of the victim, PW3 brother of the victim, and PW4 the victim.

As per the evidence of the father of the victim, on the day of the incident, at about 5:00 to 6:00 am, he had been to “Tukaram Math” and returned after 10-15 minutes. His daughter and son were at home. When he returned the home, the victim was found weeping and she disclosed that the accused has pressed her breast and outraged her modesty. Admittedly, PW2 the mother of the victim was not at home at the relevant time.

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Thus, his evidence is on the basis of disclosure made to him.

As per evidence of PW3 the brother of the victim, his father had been to the temple and the accused came at his home and gave money for purchasing chocolate. When he was proceeding to purchase the chocolate, he heard the shouts of his sister and, therefore, he returned home and his sister disclosed to him that the accused has outraged her modesty.

The evidence of the victim is also on the similar line.

16. During cross examination, it is specifically admitted by the victim as well as the father and the brother of the victim that PW1 the father of victim has obtained amount Rs.2000/- from the father of the accused and the said amount was not returned.

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17. PW3 the brother of the victim has also admitted that the accused was on visiting terms at his house. In specific words, the victim has admitted that at the time of the incident, the accused came to demand money and on that count there was quarrel between them. She further stated that she is not aware what is mentioned in the report by her father. She also specifically admitted that her father has disclosed to her what is to be deposed before the court.

18. Learned counsel for the applicant submitted that these admissions sufficiently show that the victim was tutored and as there was money transaction between the father of the victim and the father of the accused, the accused came to the house to demand money and, therefore, this false report is lodged.

19. Appreciation of the evidence reveals that recital of the FIR and the evidence of the PW1 the father of the victim

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is not consistent as far as time of the incident is concerned. As per the recital of the FIR, the alleged incident has taken place at 8:00 pm. Whereas, as per the evidence, the incident has taken place at 5:00 to 6:00 pm. The spot panchanama shows that the house of the victim is situated in dense locality. As per the evidence of the brother of the victim, when he was proceeding to bring chocolate, he heard the shouts and asked the victim what happened and she disclosed the incident. There are houses adjacent to the house of the victim. No independent witness came forward to show presence of the accused at the time of the incident.

20. Thus, as far as foundational fact is concerned, i.e. presence of the accused at the spot, the same itself is not established by the prosecution. There is reason for the accused to be present there as the evidence of the victim itself shows that the accused came to her house to demand

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the money which was obtained from his father as a hand loan. This fact is also admitted by the father of the victim. Admittedly, PW1 the father of the victim has not repaid the money, till the date of the incident and, therefore, the accused was at the house. Further admission of the victim is that she was asked to depose by her father as narrated by him.

21. It is well settled that the child witness is competent witness under Section 118 of the Evidence Act. PW3 the brother of the victim and PW4 the victim are child witnesses. The Trial Court was under obligation to verify whether the child witnesses are competent to depose before the court and, therefore, preliminary enquiry is to be conducted. It is to be ascertained whether the child witnesses are aware about the facts and for what purpose they are before the court. Thereafter, the Trial Court must

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also record its opinion that the child witnesses understand the duty of speaking of truth and state why he is of the opinion that the child understands the duty of speaking truth.

22. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring and, therefore, careful scrutiny of the evidence of the child witness is must. “A reasonable likelihood of tutoring” wherein the foundational facts suggesting a possibility of tutoring is established, then such evidence is to be appreciated in the light of the facts of the case and reason behind the said tutoring.

23. Having appreciated the entire facts and material on record, it reveals that the Trial Court as well as the Appellate Court has not considered these facts and totally

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ignored the evidence of the victim who during the cross examination specifically admitted that the accused had been to the house for demanding hand loan amount. There was quarrel between her father and the accused. PW1 the father of the victim has also admitted that he has obtained the amount as a hand loan from the father of the accused and he did not not return back the amount. Though the evidence of the victim and her brother shows that the victim shouted, none of neighbouring witnesses came forward substantiating the contention as to the incident. Additionally, the evidence of PW1 the father of the victim is inconsistent as to the timing of the incident. These all aspects create doubt about the prosecution case. Apparently, there is an error committed by both the courts below which needs to be corrected and, therefore, the revision deserves to be allowed, as per order below:

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ORDER

(1) The Criminal Revision is **allowed**.

(2) The order dated 7.7.2023 passed by learned Additional Sessions Judge, Wardha in Criminal Appeal No.52/2018 and the judgment and order of sentence dated 4.9.2018 passed by learned JMFC, Wardha in RCC 155/2016 are hereby quashed and set aside.

(3) The accused is acquitted of offences for which he is convicted and sentenced.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

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