



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

**CRIMINAL REVISION NO. 195 OF 2017**

**APPLICANT**

Sau Aasha Bhaskarrao Kharat,  
Aged about 65 years,  
Occu: Agriculturist, R/o Chaitanya  
Wadi Buldhana, Tq. District Buldhana.

**-VERSUS-**

**RESPONDENTS**

- 1] The State of Maharashtra, through  
PP. and D.G.P. Buldhana.
- 2] Shri Dinkar Laxman Bhosle,  
Aged 47 Years, Occu: Agriculturist,  
R/o Raipur, Tq. Chikhli,  
District Buldhana.

-----  
Mrs. Radhika Raskar, counsel for applicant.

Mrs. Ritu Sharma, APP for State.

Ms K. E. Meshram, counsel h/f Mr. Ramesh Darda, counsel for  
respondent No.2.  
-----

**CORAM**

**: URMILA JOSHI-PHALKE, J.**

**DATE OF RESERVE**

**: 27/03/2025**

**DATE OF DECISION**

**: 16/04/2025**

**JUDGMENT :**

1. The applicant, who is the original complainant assailing the judgment and order of acquittal passed by Judicial Magistrate First Class, Chikhali, in Criminal Case No. 1558/2008 dated 18/07/2012, which is confirmed in Criminal Appeal No. 55/2012 by judgment dated 01/09/2017, is challenged in the present appeal.

2. The brief facts leading to the present revision are as follows:-

The applicant and respondent No. 2 are interrelated with each other. Respondent No. 2 is the nephew of the applicant. She was holding 21 acres of agricultural land at Raipur Shivar, and there was a dispute between them on account of the said agricultural land. It is alleged that on 11/12/2008, she was working in her agricultural field and had been to the Maruti Temple for drinking water; at the relevant time, respondent No.2 came there, restrained her from entering into the agricultural field, abused her in obscene language and also assaulted her with slaps, fists, pulled her Saree, and outraged her modesty. On the basis of the said report, police have registered the crime against the respondent No. 2.

3. After registration of the crime, the investigating officer has visited the alleged spot of incident, recorded the statements of relevant witnesses, and, after completion of the investigation, submitted the charge-sheet against the accused. The trial Court subsequently framed the charges against the accused vide Exhibit No.48.

4. In support of the prosecution case, the prosecution has examined in all four witnesses, namely PW-1, the victim (vide Exhibit 21); PW-2, the husband of the victim; PW-3, the Panch; and PW-4, the investigating officer. After appreciation of the evidence, the learned trial Court held that the charges against the respondent No.2 are not proved beyond reasonable doubt and acquitted the applicant.

5. Being aggrieved with the same, Criminal Appeal No. 55/2012 was filed by the original complainant and was also dismissed by observing that there is no perversity in the judgment and order passed, and no interference is called for.

6. Being aggrieved and dissatisfied with concurrent findings of both the Courts, the present revision is preferred by the

applicant on the ground that the learned trial Court as well as the learned appellate Court failed to consider that respondent No.2 used criminal force and outraged the modesty of the victim. The evidence provided by the victim is sufficient to establish the charges against the respondent No.2. However, without assigning any reason for disregarding the complainant's evidence, the accused was acquitted.

7. Heard learned counsel, Mrs. Radhika Raskar, for the applicant. Learned counsel for the applicant submitted that the relationship between the applicant and respondent No. 2 is aunt and nephew. The incident dated 11/08/2008 was narrated by the victim on oath, but the trial Court swayed away from surmises and did not consider the evidence. The alleged incident occurred in the field, where it is unlikely that there would be any eyewitnesses to such an event. There is no reason for disbelieving the evidence of the victim; there are no material omissions and contradictions, and the evidence is inspiring confidence. In view of that, the concurrent finding of both the Courts deserves to be quashed and set aside.

8. In support of her contention, learned counsel for the

applicant has placed reliance as under :- *[a] In the case of State of Maharashtra Vs Joseph Mingel Koli [1997 1 BCR 362]; [b] Paras Yadav and others Vs State of Bihar [(1999) 2 SCC 126]; [c] Kuriya and another Vs State of Rajasthan [(2012) 10 SCC 433] and [d] Chandrappa and others Vs State of Karnataka [(2007) 4 SCC 415].*

9. The Learned APP further supported the contention presented by the counsel for the applicant, considering the facts and circumstances of the case.

10. The learned counsel for the respondent No.2 supported the judgment of the trial Court and submitted that the material fact of outraging the modesty itself is not narrated by the victim. Thus, the offence of outraging modesty itself is not proved, and omitting the said portion would affect the prosecution case. Moreover, the evidence of the victim is to be appreciated in the light of previous enmity. The previous enmity is sufficient to implicate the accused/respondent No. 2 falsely in the alleged incident. In view of that, the revision is devoid of merits and liable to be dismissed.

11. After hearing both sides and on perusal of the evidence of PW-1, the victim testified by Exhibit No. 21 on 11/02/2008 when she was in the agricultural field, the respondent No.2 came there and asked her not to enter the land. Thereafter, when she disclosed that the land belongs to her, she assaulted her and also abused her in a filthy language. He also threatened to kill her and snatched her Saree.

12. Her cross-examination shows that there is no cordial relationship between her and her husband. Initially, she also lodged the complaint against respondent No. 2, but later she denied that the accused has not done such type of act. PW-2 Bhaskar Devsing Tharat is the husband of the complainant, who has not witnessed the said incident. His evidence is that the accused gave slaps and fist blows to his wife and abused her, snatching her Saree and holding her hair. During his cross-examination, the omission is brought on record that he has not stated in his statement that accused assaulted his wife by holding her hair. PW-3 and 4 are the formal witnesses.

13. On appreciating the evidence, it reveals that there was a previous dispute between the victim, her husband, and the

respondent No. 2 on account of agricultural land. As per the allegation, the respondent No. 2 outraged her modesty by pulling her Saree. The essential ingredients of the offence under Section 354 of the Indian Penal Code, 1860, are that the person assaulted must be a woman, that the accused may have used criminal force on her, and that criminal force must have been used on the woman intending thereby to outrage her modesty.

14. On perusal of the evidence as far as the ingredients that the accused has used the criminal force on her, she has not deposed about the same. As far as the allegations regarding the slaps and fist blows are concerned, they are not narrated by her. She only stated that the accused assaulted her. It is further revealed from her cross-examination that there was a previous complaint filed by her against the accused. The evidence of PW-1 and PW-2 is also not consistent, as the victim nowhere stated that she was assaulted by pulling her hair. The alleged incident has taken place in the Maruti Temple. The spot panchanama shows that nothing suspicious was found at the spot of the incident. In the said spot panchanama, the boundary marks as to the spot of incident are also not mentioned.

15. The learned trial Court observed that from the evidence, it reveals that no independent witness was present at the spot of incident. There was a previous enmity and dispute between the victim and the accused on account of an agricultural field. On the balance of probability, the trial Court noted that it is difficult to accept that no one came forward upon hearing shouts, particularly given that the alleged spot of the incident was near Maruti Temple.

16. The appellate Court has also observed that the alleged incident occurred near Maroti Temple, which is situated near the field of the victim. In her evidence, she has changed her version about the spot of incident and stated that the alleged incident occurred in her field. The spot panchanama shows that near the boundary of Gut No. 244, towards its north side, Hanuman Temple is shown, which is installed in the field of one Dinkar Suryabhan Bhosale. Suffice it to state that there is a material discrepancy as regards the spot of incident in the testimony of the victim. Considering the nature of the evidence and on appreciation of the same, especially while exercising the judicial powers while dealing with the revisions against the acquittal, the principal to be kept in mind is that there is a presumption of innocence in favour of the

accused unless the accused is proved guilty. The presumption of innocence continues and finally culminates into a fact when the case ends in acquittal. The possibility of two views in a criminal case is not an extraordinary phenomenon, particularly when considering appeals against the acquittal or the revision wherein the concurrent finding of acquittal is challenged. One thing cannot be loose sight that the trial Court as well as the appellate Court has appreciated the criminal evidence and passed an order of acquittal. Reversing such an order of acquittal is not to be based on the near existence of different views or differences of opinion. Normally while exercising the revisional jurisdiction, it is to be seen whether there is any perversity or illegality in the order passed by the trial Court or the Appellate Court. It is the duty of the Court to determine whether the decision is correct or erroneous based on the law and facts. While dealing with the revisions, the Court cannot examine or re-appreciate the evidence; the only thing is to see whether there is any perversity in the order passed. After considering the impugned judgment as well as oral and documentary evidence, it is evident that the view adopted by the trial Court and the Appellate Court is a plausible one. Therefore, the acquittal cannot be overturned solely on the basis

that an alternative view is also plausible, especially as the victim's account regarding the use of criminal force or assault has been disbelieved. It is not required to examine the intention on the part of the accused, and therefore, the decision cannot be considered erroneous. It is also nowhere apparent that there was non-compliance with legal provisions, the findings are also not perverse, and there was no arbitrary exercise of the powers, and therefore, no interference in the concurrent findings is called for.

17. In light of the above facts and circumstances, no grounds have been established to justify interference. The revision application is devoid of merit and is liable to be dismissed. Accordingly, I proceed to pass the following order.

### **ORDER**

- a] The Criminal Revision Application is **dismissed**.

**[URMILA JOSHI-PHALKE, J.]**