IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.696 OF 2016

. Hussain @ Dumma Maheboob Shaikh
Age: 32 years, Occu.: Auto Driver,
R/o. Bori, Tq. and District Latur .. Appellant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Latur (Rural),
Taluka and District Latur.

2. Priya @ Priyanka D/o. Vitthal Kamble
Age: 30 years, Occu.: Private Job,
R/o. Village Bori, Tq. And District Latur. .. Respondent

...

Mr. Tukaram M. Venjane, Advocate for the appellant.
Mr. N. D. Raje, APP for respondent No.1/State.
Mr. Prasanna N. Kutti Puthenkulam, Advocate for respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27-10-2026
Pronounced on : 28-10-2026

JUDGMENT :-

1. In this appeal, there is challenge to judgment and order dated 25-10-2016 rendered by learned Additional Sessions Judge, Latur in Special Case (Atro) No.2 of 2014 convicting the appellant for offence under Sections 354 and 341 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for 1 year and 1 month respectively and to pay fine.

2. On report of PW1 informant, crime was registered at Latur Police Station wherein she reported that on 02-10-2013, while she was washing clothes in the courtyard of her house, accused came there, abused her in filthy language as well as on caste basis and so out of fright she went inside the house. That, accused entered into her house too, caught hold of her hand, dragged her out of the house and thereby outraged her modesty. On above report, Crime bearing No.163 of 2013 was registered for offence under Sections 323, 341, 354, 452, 504, 506 of the IPC and under Section 3(1)(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Trial of accused was conducted after being chargesheeted, which culminated in the conviction for above offence. Hence, instant appeal.

3. Learned counsel for appellant took this Court through the evidence and would submit that, there is false implication to avoid repayment of money taken by informant. That, there was no episode of catching hold of hand of informant as alleged. That, accusations are that, at the time of alleged incident, accused entered her house while her mother was inside and then after catching hold of her hand, accused dragged her out of house, but mother's evidence is not recorded. Neighbour is examined, but evidence of this witness is full

of material omissions rendering her version doubtful. Learned counsel pointed out that, learned trial Court already acquitted accused from charge of Section 452 of the IPC as well as for offence under the provisions of Scheduled Castes and Schduled Tribes (Prevention of Atrocities) Act and therefore, learned trial Court ought not to have convicted appellant for offence under Section 341 and 354 of the IPC. According to him, there is erroneous approach while appreciating evidence. That, no distinct findings are recorded on the point of offence under Section 341 of the IPC and as such, judgment being perverse, he prays to set aside the same by allowing the appeal.

4. In answer to above, learned APP for respondent No.1 as well as learned counsel for respondent No.2 victim would support judgment of conviction and pray to dismiss the appeal for want of merits.

5. Here, conviction is under Section 341 and 354 of the IPC, which provides for punishment for wrongful restrain, and assault or criminal force to woman with intent to outrage her modesty. In order to establish both the charges, it is incumbent upon prosecution to establish following ingredients.

Essential ingredients for offence under Section 341 :

This section prescribes punishment for wrongful restraint. Wrongful restraint has been defined under Section 339. Essential ingredients of an offence of wrongful restrain are as follows :

(i) That there was some voluntary obstruction caused;
(ii) That the obstruction was such as to prevent any person from proceeding in any direction;
(iii) That the person obstructed had a right to proceed in that direction.

Essential ingredients for offence under Section 354 :

(i) That the assault must be on a woman.
(ii) That the accused must have used criminal force on her, and
(iii) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

6. Here, the prosecution has adduced evidence of six witnesses. Crucial evidence is of two witnesses i.e. **PW1** Priya Vithal Kamble, informant herself and **PW2** Dropadi Sambhaji Lamture, neighbour of victim at Exhibit Nos.20 and 24 respectively.

PW1 informant gave sequence of incidents as she to be washing clothes in the courtyard of her house at 01:00 p.m. and at that time, her mother was in the house. That, accused came by abusing her and saying that he would take her. She claims that, out of fright, she

went inside the house. That, accused followed her inside the house and there he caught hold of her hand with bad intention and he took her out of house and she shouted. She claims that, because of her loud shout, her mother came out of the house and she separated them, but accused assaulted her mother also and thereafter, she and her mother approached Police.

In paragraph 7 of the **cross-examination**, she initially denied that there was any money transaction between herself and accused, but answered that she mentioned in the complaint that accused was demanding money. Thereafter, she admitted that, it is correctly mentioned in her statement that accused was demanding money borrowed by her. She further volunteered that accused was threatening that if she would not pay him, he would defame her in the village. However, regarding this later part of statement regarding defamation, this seems to be an improvement as she admitted that, in her complaint she had not stated that accused would threaten her and defame her if she does not pay him money.

Omission is also brought in paragraph 8 that, at the time of incident, Pandharinath Shirsathe and Dropadi Lamture had come to the spot.

Therefore, in the complaint atleast she does not name Dropadi. However, still this witness is examined by prosecution as PW2 and

this witness PW2 Dropadi deposed that, in between 02:00 to 02:30 p.m. when she was sitting in courtyard of her house, accused came, abused complainant on caste basis and when complainant went inside the house, he also entered in the house and holding her hand, he dragged her out of house.

In paragraph 4, omission is brought to the extent that accused held the hand of victim and dragged her out of house.

7. Therefore, what is emerging upon above discussion is that, though PW1 informant deposed that accused came to her house abusing her and that he would take her and though she denied initially any money transaction between her and accused, in cross-examination, she affirmed that it is mentioned in the complaint that accused was demanding money which was borrowed by her. Therefore, as submitted by learned counsel for appellant, there is background to the incident and informant herself admitted that she owed money to accused. Though she volunteered that accused threatened to defame her, it is also shown as omission. Similarly, informant has admitted that she did not mention in the complaint about Pandharinath and PW2 Dropadi coming to the spot, but still Dropadi is projected as witness and her testimony shows that there is material omission about accused catching hold of hand of informant

and dragging her out of house. Apparently, as stated above, in the backdrop of money transaction, the episode seems to have taken place.

8. Learned counsel for appellant would submit that there is nothing to indicate that act of holding hand was with ill intention or intention to outrage modesty.

To counter said submission learned APP has placed on record judgment of Hon'ble Apex Court in the case of ***State of Punjab v. Major Singh***, *1996 SCC OnLine SC 51* wherein Section 354 is reproduced and what is meant by "criminal force" as defined in Section 350 of the Code is dealt and in paragraph 4, one comes across following observations :

> *"4. Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be : will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In*

considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression "outrage her modesty" must be read with the words "intending to or knowing it to be likely that he will". So read, it would appear that though the modesty to be considered is of the woman concerned, the word "her" was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge."

9. Thus, intention of the accused at the time of the act is to be ascertained. In the very judgment relied by learned APP reproduced above, it is clear that intention and knowledge being courses of state of mind, it is not possible to adduce direct evidence to that regard and that inference has to be drawn from circumstances of each case.

Here, precisely what was the intention of accused to visit house of informant and what was purpose to allegedly caught hold of her hand is ascertained in the backdrop of money borrowed by informant from accused which she admitted in cross-examination. She claims that, after she entered the house, accused also entered the house and held her hand and brought her out of the house. Though she claims that her mother was inside the house and there was assault on her mother, but mother is not examined to lend support to her version as

apparently incident of catching hold of hand happened inside the house. Even otherwise, at that point of time in the backdrop of money transaction, ill intention cannot be directly attributed to accused for catching hold of her hand and bringing her out of house. There is possibility of she being brought out of house to question her regarding repayment of money owed by her. Element of sexual intent is patently missing so as to hold that act of holding hand was with intention to outrage modesty.

10. The Hon'ble Apex Court in the recent Judgment of ***Naresh Aneja @ Naresh Kumar Aneja v. State of Uttar Pradesh***, *(2025) 2 SCC 604* has observed that "*for invoking Section 354, the offence, held, must be committed against a woman, where criminal force must have been applied against her and that such application of force must be with the* ***intention of outraging her modesty.***" It is further observed that, "*Ultimate test for ascertaining whether modesty has been outraged, the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman*."

11. Taking note of above legal requirements and turning to facts of instant case, here, it is to be noted that firstly, there is money transaction between informant and accused. Accused had been to her

house and informant herself reported to Police that, accused threatened to defame her, if she fails to pay his money. Therefore, there is evidence to show that there was no clear intention or *mens rea* to outrage the modesty of informant as his intention was to secure his money back. Therefore, even if it is presumed that accused applied criminal force for pulling her out of her house, evidence on record does not suggest that he carried any guilty mind or ill intention while doing so.

12. Here, another distinct feature, which is emerging on going through impugned judgment is that, learned trial Court was pleased to acquit the accused from offence under Section 323 (for causing simple injury); Section 452 (for house tress pass) and Sections 504, 506 of the IPC, however, surprisingly, learned trial Court has held appellant guilty for offence under Section 341 and 354 of the IPC. Case of very prosecution was that accused entered house of informant and dragged her out of her house, but here, learned trial Court seems to have acquitted the accused from charge of committing house trespass. Thus, approach of trial Court is apparently incorrect while rendering conviction.

13. On complete re-appreciation of evidence, for above reasons,

this Court does not find the present case to be proved beyond reasonable doubt for charge of Sections 341 or 354 of the IPC. Hence, interference is called for. Accordingly, following order is passed :

ORDER

I. The appeal is allowed.

II. The conviction awarded to the appellant Hussain @ Dumma Maheboob Shaikh by learned Additional Sessions Judge, Latur, in Special Case (Atro) No.2 of 2014 under Sections 341 and 354 of the Indian Penal Code, on 25-10-2016 stands quashed and set aside.

III. The appellant stands acquitted of the offence punishable under Sections 341 and 354 of the Indian Penal Code

IV. The bail bonds of the appellant stand cancelled.

V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

[ABHAY S. WAGHWASE, J.]

SPT