

MHKO060004752017



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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
JAYSINGPUR.**

(Presided over by Jagdeesh M. Dalvi)

CRI.APPEAL NO. 33 of 2017. Exh.18.
(CRN No.MHKO060004752017)
(Arising out of SCC Nos.190 and 164/1985 dt.17/11/2017)

- 1 Shri. Ravaso Appa Bhosale,
Aged :70 yrs., Occp. : Retired teacher
R/o.Shedshal Tal. Shirol, Dist.- Kolhapur. **Appellants**
- 2 Shri. Devraya Gundappa Naikwade,
Aged : 72 yrs., Occu. And
R/o.As above.

VERSUS

- 1 State of Maharashtra, **Respondent**
Through Kurundwad Police Station

Claim :- Appeal arising out of judgment and order in SCC Nos. No.190/1985 and 164/1985 dated 01/11/2018 passed by Judicial Magistrate F.C., Kurundwad.

Appearances :-
Shri. D.D.Magdum, Advocate for the appellants,
Shri. V.G.Sardesai, Ld. APP for the respondent.

-: J U D G M E N T :-
(Delivered on this 14th day of August, 2026)

The appellant are aggrieved by the judgment and order of conviction dated 17-11-2017 passed by the Ld.Trial Court sentencing them for rigorous imprisonment and payment

of fine. (for the sake of brevity the appellants shall be referred as accused).

2] **Facts in brief giving rise to present appeal are as below :-**

The informant and accused are teachers in New English School, Shedshal Tal. Shirol Dist.Kolhapur. According to the prosecution, on 17-10-1985, approximately at 12.40 P.M. the accused in collusion raised quarrel over the time table of the school entered into class room of 8th std. where the informant was teaching the students, raised quarrel with her, accused No.1 held the informant by her hand and pulled her, outraging her modesty, both accused abused & assaulted her.

3] The informant immediately reported the matter to the police through report (Exh.111). Subsequently, the informant filed another report in respect of same incident on 21-10-1985 (Exh.112). The police referred the complainant for medical examination on 18-10-1985. Subsequently, FIR No.78/1985 dated 22-10-1985 was registered leading to investigation. The investigating officer prepared panchanama at the place of incident, recorded statements of witnesses and subsequently submitted a chargesheet against the accused for the offences punishable under section 354, 509,323 read with section 34 of the Indian Penal Code.

4] In mean time, the husband of informant Subhashchandra Shahapure instituted a private complaint on 28-10-1985 in the court of Judicial Magistrate First Class having No.164/1985 against present accused and other co-accused Devraya Naikwade in respect of same offence. The

Ld.Trial Court proceeded in the private complaint against the accused, the complainant Subhash deposed in support of the complaint. Consequently, the Ld.Trial Court recorded plea of accused and concluded with evidence of complainant. The complainant then examined his two witnesses. Subsequently, by order on Exh.73 the Ld.Trial Court directed for clubbing together SCC No.164/85 instituted by the husband of informant and SCC No.190/85 instituted based upon the chargesheet submitted by the police.

5] The Ld.Trial Court after assessing the evidence on record and after hearing the Ld.Advocates concluded that the accused Nos.1 and 2 in collusion with intention used force against informant and outraged her modesty. The Ld.Trial Court further concluded that the accused in collusion with intent to outrage her modesty used obscene language. Also, the Ld.Trial Court held that accused Nos.1 to 3 in collusion assaulted the informant and intimidated her. Resultantly, the Ld.Trial Court convicted the accused Nos.1 and 2 and acquitted accused No.3 as per final order.

6] Accused/appellants being aggrieved by the judgment and order of conviction have assailed impugned judgment and order on multiple grounds.

7] Heard Ld.Advocate for accused and Ld.APP for the State at length and perused the record.

8] The Ld.advocate for the accused at foremost draws attention towards the multiple litigations pending between husband of informant and the accused in respect of post of

Headmaster in the school. In the context, he submits that the teachers in the school are involved in chronic dispute in respect of post of Headmaster and present litigation is result of animosity between husband of informant and accused. Further he mentions that the Ld.Trial Court has erroneously believed the informant. Also, the informant and her husband have filed multiple complaints in respect of same offence that shows their intention to pressurize the accused. Further he has disputed the registration of report on 17-10-1985 and mention that the informant has materially improved her allegations in the complaint dated 17-10-1985 and 21-10-1985. Further he contends that as per the time table prevailing at the relevant time accused No.1 was taking class of history and informant entered in the class room and created hustle and took disadvantage by filing false report. In addition he submits that the husband of informant has tried to falsely implicate accused No.3 in the alleged incident and therefore he was acquitted by the Ld.Trial Court and this fact alone is sufficient to show the mind set of informant and her husband. The Ld.Advocate also submits that the Ld.Trial Court has erred in appreciating definition of offence punishable under section 354 of the Indian Penal Code and has come to wrong conclusion. Concluding the arguments he submits that the set of facts put forth by the prosecution is completely unbelievable, the witnesses are not reliable, the Ld.Trial Court has misread the evidence and without justifiable reasons has believed in the veracity of informant therefore, findings are not sustainable. Hence, the appeal should be allowed by acquitting the accused.

9] The Ld.APP has supported impugned judgment and

order of conviction. According to him, the informant is woman teacher not having any specific reason to falsely implicate the accused. Also, the witnesses examined by the prosecution have duly corroborated the version put forth by the informant. Further he mentions that the medical evidence i.e. testimony of Dr.Kamble (PW3) duly establish injuries sustained by informant at the time of alleged incident. In addition, he submits that the accused No.1 has filed a complaint against informant and others in respect of same offence and this fact duly establish happening of incident at the relevant time. The Ld.APP further mentions that the Ld.Trial Court has appreciated the evidence correctly, the witnesses are believable therefore, the appeal needs to be dismissed.

10] Points for determination along with findings thereon and reasons therefor are as below:

POINTS	FINDINGS
i) Whether Prosecution proves that on 17-10-1985 at about 12.40 P.M. in New English High School, Shedshal Tal. Shirol, accused in furtherance of their common intention assaulted informant by holding her hand intending to outrage her modesty?	..No..
ii) Whether prosecution proves that on aforesaid, date, time and place, accused in furtherance of their common intention intending to insult the modesty of informant uttered obscene language?	..No..
iii) Whether prosecution proves that on aforesaid, date, time and place, accused in furtherance of	..No..

their common intention
voluntarily caused hurt to
informant?

iv) Whether prosecution proves that ..No..
on aforesaid, date, time and
place, accused in furtherance of
their common intention
committed criminal intimidation
of informant?

v) Whether the impugned judgment ..Yes...
and order needs interference?

vi) The relief. The appeal is
allowed.

REASONS

Point No.1 to 4 :

11] The records reveals that the informant Usha informed police about alleged incident through report Exh.111 on 17-10-1985. Subsequently, she filed another report on 21-10-1985 in respect of same offence. Also, the husband of informant registered a private complaint having Criminal Case No.164/85 in respect of same offence. Based upon the information provided by informant police instituted Crime No.78/85 on 22-10-1985, investigated the allegations and submitted a chargesheet on 20-11-1985. In mean time, the criminal complaint filed by the husband of informant was proceeded, the process was issued against accused, plea was recorded and three witnesses were examined by the complainant. Subsequently, the Ld.Trial court directed for clubbing of SCC No.190/1985 and 164/1985. Accordingly both matters were tried simultaneously. The Ld.Trial Court therefore, considered the testimonies of three witnesses from SCC No.190/85 and four witnesses from SCC No.164/85 to reach its conclusion.

12] In Summary Criminal Case No.190/85, the husband of informant Subhashchandra has testified in support of informant. Also, he has examined Jyotiram, Baburao Kale and Saubai. These witnesses were numbered as Jyotiram (PW5), Baburao (PW6) and Saubai (PW7).

13] The record coupled with the testimonies of witnesses prominently disclose a chronic dispute related to the post of Headmaster in the school between the husband of informant on one side and the accused on other side. The dispute is so chronic and deeply embedded that it led to multiple rounds of litigation in the form of writ petitions before the Hon'ble High Court and CRA before the Hon'ble Apex Court. The litigation even was filed in the office of Education Officer and the Minister of Education. The seething view of this multifarious and prolonged litigation do clearly show a grave hatred and animosity between the rival groups of teachers in the school. In fact, a civil litigation was initiated to restrain the accused No.3 from entering into the school for a brief period.

14] The husband of informant was one of contender for the post of Headmaster of the school. In back drop of this chronic civil and criminal litigation, the informant has registered instant report in the police station alleging that the accused outraged her modesty assaulted and abused her in obscene language. As afore stated animosity and hatred between the rival groups do necessitates a very minute appreciation of the evidence on record.

15] Another important dimension of alleged incident is a report filed by accused No.1 in the police station on 17-10-

1985 in respect of same offence wherein he alleged that on 17-10-1985 while he was teaching in class of 8th std. Prakash Shahapure the brother-in-law of the informant entered into class holding stones and assaulted him on the face causing injuries. Thus, it is clear that a incident occurred on 17-10-1985, approximately at 12.40 P.M. in the 8th std. class room of the school with two different versions.

16] According to prosecution, the incident occurred on 17-10-1985, approximately 12.40 P.M. in the New English School. Foremost record in this respect is the report filed by informant Usha Exh.111. The record reveals that a non cognizable case having No.131/85 was registered based upon the report. The testimony of I.O. Raghunath (PW4) is material in this regard. He also states that on 17-10-1985 a crime No.77/1985 was registered upon the report of Usha Shahapure for the offences punishable under sections 323, 504, 506 read with section 34 of IPC. Thus, the fact is clear that immediately after alleged incident informant Usha reported the incident to the police through the report Exh.111 and police registered non cognizable complaint for the offences punishable under sections 323, 504, 506 r/w 34 of IPC. The contents of first report are material. The scrutiny of the report Exh.111 reveals that the informant has vividly described past grievances against the accused and also mentioned about the multiple litigations between the teachers of school in respect of post of Headmaster. Further the report reveals that the teachers have a dispute *inter-se* regarding old and new time table. She has further mentioned that her husband on multiple occasions pin pointed mistakes made by the accused No.1 therefore the

accused No.1 is harbouring a grudge. Thus, from the report itself a fact is clear that a professional rivalry is harbouring between the accused and husband of informant since even before the alleged incident.

17] The informant has vividly described about alleged incident in this report. She states that when she was to start teaching in her class, the accused No.1 entered into the class room and started to teach history to the students therefore she asked students to come out side and sit under the tree to continue her class. However, the accused raised quarrel with her, went to staff room and brought a footwear i.e. Chappal, caught hold of her right hand and assaulted her by the footwear, she raised hues and cries therefore her brother in law came to her rescue and also clerk Patil and another teacher Shri Kale immediately reached the spot. Also, the accused No.2 caught hold of her hand and assaulted her. Further, she states that the accused No.1 voluntarily torn his own shirt at that time. Briefly, these are the allegations levelled by informant in the report Exh.111 dated 17-10-1985. The record shows that the informant was apparently not satisfied by the action of police and subsequently on 21-10-1985 submitted another report Exh.112 in respect of same incident. In the report she has stated that at the time of incident while she was teaching in class 8th of the school, accused No.1 and 2 without reason and authority entered in the class room intentionally attempted to outrage her modesty and assaulted her. She further states that the accused abused her in obscene language causing degradation of social status in front of other teachers and children. In this report she has stated that the police have

not acted upon her report dated 17-10-1985 therefore she is constrained to file the instant report.

18] In continuation of these circumstances is a private complaint filed by husband of the informant Subhashchandra Shahapure in the court of Judicial Magistrate F.C. on 23-10-1985 further leading to a summary complaint No.164/85. In the complaint complainant Subhashchandra has stated about multiple disputes related to headmastership between the teachers *inter-se* and has levelled multiple allegations against the accused. Importantly, the complainant has stated that accused No.1 Ramchandra instigated accused No.2 and 3 (present appellants) to commit the crime. The complainant has mentioned in the complaint that he got information about the incident from his wife i.e. Usha and police failed to act upon her report therefore he was constrained to institute the complaint against accused. Also, he has stated in the complaint that his brother Prakash rescued Usha at the time of incident.

19] The record reveals three different set of facts in respect of alleged incident all three put forth by the informant of her husband. First a report (Exh.111) registered by the informant on 17-10-1983, second a report registered by informant on 21-10-1985 (Exh.112) and subsequent a private complaint registered by husband of informant on 23-10-1985. These three set of facts constituted fundamental allegations levelled by the prosecution against the accused. Therefore the veracity of these reports needs to be examined more particularly considering the prominent angle of deep rooted animosity between two groups of teachers.

20] According to the prosecution, the incident took place on 17-10-1985, approximately 12.40 P.M. in the 8th std class of New English School wherein the accused outraged the modesty of informant abused and assaulted her. As afore stated, the informant reported the matter to the police immediately on same day through the report (Exh.111) and a non cognizable complaint for the offences punishable under section 323 504, 506 read with section 34 of IPC was registered by the police. The contents of this report are material because it was immediately registered after the incident. In the report the informant has specifically stated that while she was teaching in the class, the accused No.1 came and started to take class of history subject leading to quarrel between them. Thereafter, the accused went to staff room, brought a footwear i.e. Chappal, held her by hand and assaulted her on the back. She has also alleged that at that time accused No.2 also assaulted her. In this report the informant has not uttered a single word or alleged about any intention of accused to outrage her modesty. Resultantly, police registered a non cognizable complaint and even the informant was not referred for medical examination. The informant then subsequently on 21-10-1985 approached the police station and filed instant report leading to registration of CR No.78/1985. In the report the informant has specifically alleged that accused Nos.1 and 2 without justifiable reason entered into class room with intent to outrage her modesty and assaulted her. She has specifically alleged that the intention of accused was not to assault her but to outrage her modesty.

21] The alleged incident took place on 17-10-1985

and immediately the informant registered report (Exh.111) in this regard. In the report as afore stated she nowhere alleged about any intention of accused to outrage her modesty or accused in collusion with an intent entering into her class room. But in the report (Exh.112) dated 21-10-1985 i.e registered after four days after the incident the informant has categorically stated different set of facts. The foremost variation and improvement is regarding both accused with intent to outrage her modesty entering into the class room. In the report (Exh.111) dated 17-10-1985, she specifically states that there was a dispute regarding a time table, she followed a new time table and accordingly was teaching in the class room at that time the accused No.1 entered into the class room and started to teach history. These reports contains two different contradicting facts. Firstly, related to the entry of accused No.1 in the class room. In the context, in the earlier report (Exh.111) the informant specifically mentions that the accused No.1 entered into the class room without authority and started to teach history to the students and led to further quarrel between them. To the contrary in the report (Exh.112) dated 21-10-1985 she specifically states that both accused with intention and collusion entered into class room and outraged her modesty. Thus, if the initial report is to be believed then the accused No.1 alone entered into the class room started to teach history while informant was conducting her teaching and quarreled with her. In the report (Exh.111) the informant does not state that both accused entered into the class room with their intent to outrage the modesty and subsequently outraged her modesty and also abused her in obscene language and assaulted. This difference in the narration of incident by the

informant shows a clear improvement in respect of allegations. Therefore, if the report (Exh.112) is to be believed then there is a delay of four days to report alleged outraging of modesty to the police. The informant has not put forth any justifiable reason in respect of the delay. Moreover, the record clearly shows that immediately after alleged incident the informant went to the police station and registered report (Exh.111). In the report the informant did not mention anything about outraging of her modesty by the accused therefore a non cognizable complaint was registered by the accused. The informant being aggrieved by alleged inaction by police subsequently after four days filed instant report (Exh.112) and levelled allegations of intentionally outraging her modesty against both accused. Thus, the information of the incident provided to the police by the informant herself shows material improvement that are not believable. There has been no explanation by the prosecution regarding conspicuous silence maintained by the informant in respect of alleged outraging of her modesty by the accused in the complaint/report dated 17-10-1985. These two material improvements in the report casts serious doubt about the veracity of the complaint itself. This fact gains importance more particularly in back drop chronic enmity between the teachers of the school fighting to tooth and nail for the position of a headmaster in school having multiple litigations both civil and criminal *inter-se*.

22] Another set of the allegations is in respect of a private complaint instituted by the husband of informant in the court of JMFC which was later clubbed together with instant case. The record shows that on 23-10-1985, the husband of

complainant filed a private complaint in the court in respect of same incident alleging inaction by the police on the report registered by the informant. The material point in this complaint is regarding accusations against accused No.3 (Ramchandra Khilare). So far report (Exh.111 and 112) registered by informant Usha are concerned, she has levelled accusations specifically against accused No.1 and 2 only. However, in the private complaint her husband Subhashchandra has alleged that the accused No.3 instigated accused No.1 and 2 commit the offence. Importantly, the private complaint is registered on 23-10-1985. The chronology in this regard is clear. On 17-10-1985 the informant alleged happening of certain incident and report the matter to police constituting reported Exh.111. Further on 21-10-1985 she registered another report leading to present prosecution at Exh.112 and on 23-10-1985 the husband of informant registered a private complaint in respect of same offence and levelled allegations against accused No.3 alongwith accused No.1 and 2.

23] The registration of multiple reports in respect of same offence by the informant and her husband shows a clear intent to prosecute the accused. Moreover, Usha (PW3) has admitted that on 26-04-1984 before alleged incident the accused No.3 (Ramchandra) filed an application claiming the headmastership of the school and the application was further inquired into by the Education Officer. She has also admitted that the accused No.3 was terminated from the service and later he was reinstated by the order dated 29-06.1985. She also admits that at the time when accused No.3 was

terminated from service her husband was looking after the day today affairs of the school as a secretary. These facts clearly shows an open rivalry between accused No.3 and the husband of informant in respect of affairs of school. The rivalry was so intense that the service of accused No.3 was terminated for some period when husband of informant was acting as a secretary of school. Also, the record reveals that the husband of informant instituted a civil suit and sought injunction against the accused No.3 preventing him from entering into the school premises. In back drop of these facts the complaint filed by the husband of informant needs to be assessed.

24] In the complaint he has reiterated the grievance mentioned by informant in the police report however has also implicated accused No.3 alleging that he colluded and instigated accused Nos.1 and 2 to commit alleged offence. Again this chronology of registration of multiple police complaints and a private complaint in respect of same incident and the husband of informant implicating accused No.3 in that crime based upon apparently evasive allegations shows a collusion between informant and her husband to implicate the accused in the crime. There is no feasible justification for registration of these multiple reports and again a private complaint by the husband of informant in the court of law more particularly when a crime was registered against the accused and they were subsequently arrested by the police. These facts indicates only towards a malice and ill-intention of the informant and her husband against the accused. Therefore again the testimonies of witnesses needs to be scrutinized closely to ascertain the veracity and genuineness.

25] According to the prosecution, at the time of incident the informant was teaching in 8th std class of the school as per scheduled time table. From the testimony of Ushal (PW1) as well Shrishail (PW2) it is clear that a dispute regarding headmastership of the school resulted two different time tables. There were two factions of teachers in the school one was following old time table and another was following a new time table prepared by the husband of informant. This fact becomes material because according to Usha (PW1) while she was teaching in the class room the accused came and as per the report (Exh.111) started to teach history subject to the students. The time table of the school is material in this regard. According to Usha (PW1), her husband took the charge of headmastership of the school on 01-07-1984 and later the accused No.3 filed an application claiming the post. Further she admits that the Education officer on 14-09-1984 appointed accused No.3 as Headmaster of the school. In this reference the testimony of Shrishail (PW2) is material. According to him, the husband of informant prepared the time table of the school effective from 04-10-1985. Further he states that the time table was followed by seven teachers and three teachers were not following this time table including accused. Further he states that these three teachers were taking the classes as per the old time table.

26] The prosecution has alleged that the accused No.1 and 2 entered in the class room of informant at the time of incident. However, from the testimonies of witnesses more particularly Usha (PW1) and Shrishail (PW2), it is clear that the time table of the school was disputed at the relevant time.

Also, it is clear that all the teachers were not following same time table, some of the teacher were following a new time table prepared by the husband of informant and others were following the time table that was in force earlier to the incident. In the reference, in the report dated 17-10-1985 (Exh.111) Usha (PW1) has stated that while she was teaching in her class room the accused No.1 came and started to teach history subject. This fact mentioned by Usha (PW1) clearly states that both teachers i.e. Usha (PW1) as well accused No.1 were claiming over period in the class and attempted to do their own job. In this respect though Usha PW1 in the report dated 21-10-1985 states that both accused No.1 and 2 entered into class room with intent to outrage her modesty however as afore sated this being material improvement over her report (Exh.111) cannot be believed. Therefore, considering the facts mentioned by Usha (PW1) in her earlier report (Exh.111), it is clear that at the time of incident the accused No.1 as well Usha (PW1) were attempting to enforce different time tables in the class room.

27] In this regard the report registered by accused No.1 in the police station in respect of same offence is material. In the report he has stated that while he was taking the class of history at that time Prakash the brother-in-law of informant entered into class room and assaulted him by the stones. In this respect the panchanama Exh.36 is material. The investigating officer prepared the panchanama in the class room where the alleged incident took place. The panchanama mentions that the words, 'Geometry' and below "Commissioner" are mentioned. According to panch witness

accused No.1 taught history and civics to the students therefore, mention of word commissioner indicates teaching by the accused No.1 in class at relevant time. Thus, the doubt arises about alleged intrusion of accused No.1 in the class that was allegedly conducted by informant at the relevant time. Therefore a doubt arises in respect of the accused being intruder in the class room while Usha (PW1) was conducting her class. According to Sharishail (PW2) the time table of the school commences till the conclusion of academic year. Further he admits that as per the effective time table on 17-10-1985, approximately at 12.45 P.M. it was history period in class 8th of the school. He further admits that on the day of incident the accused No.1 had started class of history approximately at 12.35 P.M. He also admits that the class commenced at 12.35 P.M. Thus, if Shrishail (PW2) is to be believed in this regard then the accused No.1 was following original time table of school and was teaching history in class 8th at the relevant time. Therefore, in juxtaposition of these facts allegations levelled by Usha (PW1) that accused No.1 and further that accused No.1 and 2 intruded in her class gets shrouded in doubt.

28] Another important facet of the allegations is in respect of presence of Prakash Shahapure at the time of incident. Usha (PW1) in the report (Exh.111) mentions that her brother-in-law Prakash rescued her during the incident. She has corroborated this fact in her testimony. The fact for consideration is a reason for presence of Prakash (PW1) in the school at the relevant time. Admittedly, according to Usha (PW1) Prakash is neither the employee in the school nor

related with the affairs of the school. She further admits that Prakash resides at a considerable distance from school. Therefore, the presence of Prakash at the spot of incident at the relevant time is intriguing and needs to be explained by prosecution. A person not having any connect with the school suddenly appearing the school and that too relating of the informant is the fact that needs to be carefully considered. Importantly the prosecution has not examined this witness. According to prosecution, Sharishail (PW2) is an eye witness to the incident. According to him, after hearing hue and cry from the class room he went to the place and saw accused No.1 holding left hand of Usha and assaulting her with a footwear i.e chappal with his right hand. Also, at that time accused No.2 assaulted Usha (PW1) with a duster. Further, according to him, he alongwith Kale sir took Usha (PW1) to the office. Importantly, Shrishail (PW2) nowhere hints as presence of Prakash at the place of incident or his rescue of Usha (PW1). This fact also raises doubt about presence of Prakash at the place of incident as alleged by Usha (PW1). If Prakash was present at the place and rescued Usha (PW1) then there is no reason for Sharishail (PW2) for non mentioning his presence on the spot. As afore sated, Prakash is brother- in-law of informant, he is not connected with the school and resides at considerable distance from the school therefore failure of Shrishail (PW2) to mention his presence at the place of incident further raises doubt about the presence of Prakash at time of alleged incident and this doubt further creates suspicion about the allegations levelled by informant against the accused in respect of alleged incident.

29] Shrishail (PW2) has specifically mentioned and stated the abuses allegedly hurled by accused No.1 at the time of incident. But importantly Usha (PW1) is silent in her report (Exh.111 & 112) and in her testimony regarding the nature of abuses allegedly hurled by the accused at the time of incident. Her testimony in this respect is general and evasive without any particulars thereof. Therefore, it is clear that Shrishail (PW2) is attempting to provide aggravated facts in respect of alleged incident. In fact according to Shrishail PW2 at the time of incident he believed that the accused were going to rape Usha (PW1). This aggravation in the testimony of Shrishail (PW2) raises concern and serious doubt about his veracity and genuinity. Furthermore, the record shows a chronic multi level dispute between teachers *inter-se* more pertinently between husband of informant and the accused No.3 in respect of affairs of the school. However, astonishingly Shrishail (PW2) though an employee of the school has put forth his ignorance about these disputes. Though he admits that they both have a dispute related to headmastership but put forth his ignorance regarding the multiple litigations between them.

30] Another important aspect in this regard is a narration of incident by the witnesses. As afore stated, in the reports (Exh.111 & 112) Usha (PW1) has narrated different set of facts and levelled complete different allegations against the accused. In her testimony, she states that accused No.1 during dispute went to the staff room, brought footwear (chappal) and assaulted her. In the reference, Shrishail (PW2) mentions that the accused No.1 was pulling Ushal (PW1) towards him by holding her hand. Thus, there is material

contradiction in the testimonies of Usha (PW1) and Shrishail (PW2) so far alleged incident is concerned. This contradiction shows an attempt of Shrishail (PW2) to narrate aggravated and falsified facts because he has stated the facts that are not stated by informant herself. Thus again the testimony of Shrishail become unreliable.

31] The prosecution has examined Jyotiram (PW5), Baburao (PW6) and Saubai (PW7) in respect of alleged incident however, has given up their testimonies. The record thus shows that there are only two witnesses to alleged, incident first is Usha (PW1) informant and other is Sharishail (PW2), the employee of the school. As afore stated for the above mention reasons the testimony of Usha (PW1) is unreliable rather there is necessity of independent corroboration of her testimony more particularly due to chronic enmity between her husband and the accused in respect of affairs of the school. The improvements in the report (Exh.111 & 112) and her testimony coupled with a private complaint filed by her husband also makes her testimony unreliable. As afore stated the testimony of Shrishail (PW2) is also not believable. Thus the witnesses examined by prosecution can not believable.

32] Another aspect in this regard is application of section 354 of the IPC. The prosecution has alleged that the accused outraged the modesty of informant at the time of incident. In the first report (Exh.111) the informant has not uttered a single word or levelled any allegation in respect of alleged outraging of her modesty by accused. In the subsequent report registered after four days she specifically mentions that

accused with intention entered the class room and outraged her modesty. Therefore, her allegations in respect of outraging modesty are not believable. Also for the sake if it is presumed that there was a quarrel between informant and accused as narrated by the informant Usha (PW1) in her testimony then also mere quarrel fails to constitute an offence under section 354 of IPC. In her testimony Usha (PW1) specifically states that at the time of incident the accused raised quarrel with her, went to the staff room and came back with chappal and assaulted her. For sake, if these allegations are believed, then also there is no tint of any intention of accused to outrage her modesty. Further more in this respect Usha stated that during quarrel the accused went to staff room and brought the chappal that means his intention if believed for sake then also was to assault and not outraged her modesty. So far allegations against accused No.2 are concerned in the report (Exh.111) the informant has levelled allegation in a single line that accused No.2 assaulted to her with duster. There is not other evidence in this respect.

33] The witnesses examined by the prosecution are not believable. Usha (PW1) has reported the matter twice to the police. First on 17-10-1985 and subsequently on 21-10-1985. In the report (Exh.112) registered on 21-10-1985 she has made material improvements in respect of allegations against the accused. Thus, if the report dated 21-10-1985 (Exh.112) is considered then there is material delay of four days in reporting alleged incident to the police more particularly in respect of outraging of her modesty. The informant immediately went to the police station after alleged

incident on 17-10-1985 however does not mention any attempt of accused to outrage her modesty therefore the report (Exh.112) became doubtful. Further on 23-10-1985 the husband of informant instituted a private complaint in respect of same offence against accused. Importantly he gave additional allegations of instigation against accused No.3 pertinently there was no mention of any role of accused No.3 in report (Exh.111 & 112) or the testimony of Usha (PW1). This fact clearly shows collusion between informant and her husband to falsely implicate the accused without justifiable reason. This fact also becomes more material from the mention of name of Prakash by the informant. Prakash is the brother-in-law of the informant and not connected with the school, However, according to Usha (PW1) he intervened and rescued her at the time of incident. There is no justification for presence of Prakash at the relevant time in the school. Thus, the fact shows that the informant registered two different reports of same incident, her husband filed a private complaint and both of them alleged Prakash was present at the time of incident. These facts again clearly indicates towards the collusion to falsely implicate the accused. In fact accused No.1 has filed a complaint in the police alleging assault by brother-in-law of informant at the relevant time but then also the presence of Prakash at the spot at the relevant time is not justifiable and needs to be explained by the prosecution or the witnesses however they have failed. Shrishail (PW2) though examined as a witness to the incident by the prosecution is not believable due to aggravations in his testimony. The prosecution has also failed to put forth any evidence to establish that the accused at the time of alleged incident in

collusion attempted to out rage the modesty and assaulted informant.

34] The prosecution has alleged assault by the accused and has examined Dr.Kamble (PW3) to prove this fact. However, from the testimony of Dr.Kamble, it becomes clear that he examined Usha on 18-10-1985 and found a minor abrasion on her right hand as well a contusion on back. This witness at the same time admits that the injuries can be suffered due to multiple reasons. In this regard it is material to note that alleged incident took place on 17-10-1985, the informant reported it to police on 17-10-1985 however she was referred for medical examination on 18-10-1985 and later the crime was registered based upon her subsequent report dated 21-10-1985. This chronology of events raises serious doubt about the medical examination of Usha (PW1) as well the injuries suffered by informant in alleged incident. The informant is silent regarding alleged obscene language used by accused at the relevant time. Her silence negates the testimony of Shrishail (PW2) in this regard. Thus, there is no believable evidence in respect of allegations regarding assault and abuses as well use of obscene language by the accused against Usha (PW1) at the relevant time. Thus, the prosecution fails to establish beyond reasonable doubt that the accused intentionally outraged the modesty of the informant at the time of incident, assaulted her and used obscene language as well intimidated her hence answered point Nos.1 to 4 in the negative.

Point No.5:

35] The Ld.Trial court has failed to appreciate

foundational fact regarding chronic enmity between husband of informant and the accused. The Ld.Trial court has also failed appreciate the delay in registration of report in respect of allegations regarding outraging of modesty. The trial court failed to consider a fact that the informant and her husband tried to register multiple reports in respect of same incident. The Ld.Trial court also failed to appreciate the fact that the testimony of Usha (PW1) is not believable in respect of outraging her modesty more particularly considering omissions and contradictions in her testimony and the report Exh.111 & 112. The Ld. Trial court also has failed to consider a fact that the husband of informant attempted to implicate accused No.3 in the present matter in fact when the informant was silent and had not levelled any allegation against accused No.3. Though the Ld Trial court acquitted accused No.3 of the offences however failed to consider cumulative effect of all these circumstances. The reasoning put forth by Ld.Trial court in support of its findings is not sustainable therefore the judgment and order needs an interference hence answered point No. 5 in the affirmative and pass the following order.

:: ORDER ::

1. The appeal is allowed.
2. The judgment and order of conviction passed by the Ld.Trial Court in Summary Criminal Case Nos.190/85 and 164/85 is set aside.
3. The accused are acquitted of the offences punishable under sections 354, 509, 323, 504 r/w 34 of the Indian Penal Code.

4. The bail bonds of the accused are cancelled.
5. The fine amount if any be returned to the accused.
6. The record and proceeding be sent to Ld.Trial Court.

Jaysingpur.
14-08-2026

Jagdeesh M.Dalvi
Addln.Sessions Judge, Jaysingpur