

MHWR010015762019



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BEFORE THE COURT OF SESSIONS AT WARDHA.

(Presided over by Shri H.B. Gaikwad, Sessions Judge, Wardha.)

Criminal Appeal No.36 of 2019**Exh. No.14**Appellant :-Roshan S/o Marotrao Dhangе,
Age 26 Years, Occu.: - Labourer,
R/o Vijaygopal,
Tah. Deoli, District Wardha.**-Versus-**Respondent :-The State of Maharashtra,
Through Police Station Officer,
Police Station, Pulgaon,
Tah. Deoli, District Wardha.**APPEAL UNDER SECTION 374(3) OF THE CODE OF CRIMINAL
PROCEDURE.**-----
Shri D. G. Sharma, the learned Advocate for the appellant.Shri G. V. Takwale, the learned Public Prosecutor for the respondent.
-----**= JUDGMENT =**
(Delivered on 20-06-2026)

The appellant has challenged his conviction and sentence for the offences punishable under Section 354 and 451 of the Indian Penal Code, recorded in Regular Criminal Case No.36/2016 on 20.07.2019 by the learned Judicial Magistrate, First Class (Court No.3), Pulgaon.

2. In a nutshell, the prosecution case is that, the husband of the victim aged about 35 years, is engaged in driving a goods vehicle and, by virtue of his occupation, is acquainted with several villagers, including the appellant, who is also a resident of the same village. As the house of Prashant Dhange is situated in close proximity to the victim's residence, the appellant used to visit that place frequently. On 19.10.2015, at 1.30 pm., she was present at her residence and was engaged in household work in the kitchen. At that time, the appellant entered her house without her permission or consent and came directly into the kitchen. He initially began fondling her minor son, who was then about two years of age. While doing so, the appellant caught hold of her hand. The victim immediately resisted his conduct, assaulted him two or three times and drove him out of the house. After being forced out, the appellant remained outside the house, abused both the victim and her husband, in filthy language and threatened them with dire consequences. In this background, she approached Police Station, Pulgaon, on the following day, i.e., 20.10.2015, and lodged the report against the appellant.

3. On the basis of that report, Crime No.221/2015 came to be registered against appellant for the offences punishable under Sections 451, 354(A)(i), 504 and 506 of the Indian Penal Code. The investigation was conducted by A.S.I. Smt. Ratnamala Nandeshwar. She prepared the panchanama of the spot of the incident. She arrested the appellant on 21.10.2015. She recorded the statements of the witnesses as well as by issuing letter to Judicial Magistrate First Class, Pulgaon recorded the statement of victim under Section 164 of the Code of Criminal Procedure. After completion of the

investigation, as there was sufficient evidence to proceed against the appellant for the offences punishable under Sections 451, 354(A)(i), 504 and 506 of the Indian Penal Code, she filed charge-sheet in the Court of Judicial Magistrate, First Class, Pulgaon.

4. The learned Magistrate framed charges against the appellant for the above-mentioned offences vide Exh.12 and additional charge vide Exh.16 and explained the contents thereof to him in vernacular. He pleaded not guilty and claimed to be tried. His defence is that of total denial and false implication.

5. The prosecution examined five witnesses to establish the guilt of the appellant for the above-mentioned offences. After scrutinizing the evidence, the learned Magistrate, found the appellant guilty of the offences punishable under Section 354 and 451 of the Indian Penal Code. However, the learned magistrate did not find any incriminating material against the appellant for the offence punishable under Section 354(A)(i), 504 and 506 of the Indian Penal Code, and therefore acquitted him of the said offences. The learned Magistrate, sentenced the appellant for the above mentioned offences as under :

Offence Punishable under Section	Punishment
Section 354 of IPC	Rigorous imprisonment for the period of 1 year and fine of Rs.1000/-, in default simple imprisonment for three months.
Section 451 of IPC	Simple imprisonment for the period of 3 months and fine of Rs.1000/-, in default simple imprisonment for one month.
	Both the sentences to run consecutively.

6. The appellant has assailed the impugned judgment of conviction and order of sentence on various grounds.

7. The points for determination along with my findings thereon are as under :

	<u>POINTS</u>		<u>FINDINGS</u>
1.	Whether the prosecution has proved beyond reasonable doubt that on 19.10.2015 the appellant used criminal force upon the victim by catching hold of her hand with the intention of outraging her modesty, or with the knowledge that his act was likely to outrage her modesty?	:	Yes
2.	Whether the prosecution has proved beyond reasonable doubt that the appellant committed house-trespass by entering the residential house of the victim with the intention of committing an offence punishable with imprisonment?	:	Yes
3.	What offence, if any, has been committed by the appellant ?	:	Offences U/s 354 and 451 of Indian Penal Code.
4.	Whether the impugned judgment and order are sustainable ?	:	Partly Yes
5.	What order?	:	The appeal is partly allowed.

REASONS

AS TO POINTS NO.1 TO 3 :-

8. The evidence on these points is common and interconnected. Hence, they are being taken together for consideration.

9. To establish the charge, the prosecution examined the victim/informant (PW1) at Exh.20. She deposed that she was

acquainted with the appellant, as he was a resident of her village. According to her, the incident occurred on 19.10.2015 at about 1:30 p.m. at her residence. At the relevant time, she was present in the house along with her son. Her husband, who was engaged in driving a goods vehicle, had gone out in connection with his work. She stated that while her husband was away, the appellant came to her house on the pretext of showing affection towards her son. The appellant entered the house and caught hold of her hand. She immediately resisted his conduct, struck him two times and drove him out of the house. Thereafter, the appellant abused her. As her husband was not present at home on the day of the incident, she lodged a report (Exh.21) at Police Station, Pulgaon, on the following day. She further stated that the police visited her house thereafter and recorded her statement. Subsequently, her statement (Exh.23) was also recorded before the Court at Pulgaon. She identified the appellant, who was present before the Court, as the person who had entered her house and caught hold of her hand.

10. In her cross-examination, she stated that she had been married for about ten years. She stated that at the time of the incident, she was residing in a house situated amidst neighbouring dwellings and that she was acquainted with the persons residing in the vicinity. She stated that her mother-in-law was residing separately and that she had informed her about the incident. She reiterated that the occurrence had taken place during the afternoon hours. She admitted that thereafter some neighbours had gathered near the house and that it was customary in the village to inform others when such incidents occurred. She further admitted that, whenever

difficulties arise in the absence of family members, assistance is generally sought from neighbours or other villagers. She stated that her husband was engaged in agriculture, but immediately clarified that he was not exclusively engaged in agricultural activities. She expressed ignorance as to whether any complaint had been lodged by the relatives of the appellant against her husband prior to her marriage. She further stated that when the police visited her residence and recorded information, her husband was present.

11. She admitted that the Dange family was a large family in the village. However, she categorically denied the suggestion that she had falsely implicated the appellant or that she had lodged a false report at the instance of her husband. She also denied the suggestion that she deliberately refrained from seeking assistance from neighbours despite the alleged incident having occurred. She admitted that her native village was Vijaygopal and that it was situated at a distance of approximately half an hour from Pulgaon. She denied that she was possessing a mobile phone at the relevant time. She further admitted that her mother-in-law was present in the house at the time of incident. She stated that there were several houses belonging to the Gulhane family in the village. She reiterated that at the time of the occurrence she was inside her house. She admitted that witness Jirekar Kaka had not witnessed the incident. She further stated that she had studied up to the 12th standard and was capable of understanding matters relating to dates, months and years. She firmly denied the suggestion that, due to political rivalry or at the instance of her husband, she had lodged a false report against the appellant.

12. The prosecution next examined the husband of the prosecutrix (PW2) at Exh.24,. He deposed that he was acquainted with the accused, as the accused was a resident of his village. The victim is his wife. The incident took place in the year 2016. On the day of the incident, he had gone to Yavatmal in connection with his work by his vehicle and returned home on the following day. Upon returning home, his wife informed him that the accused had entered the house, engaged affectionately with their child, and proceeded into the kitchen where he took hold of her hand. Thereafter, he departed with his wife to deliver information. The police subsequently recorded his statement.

13. During his cross-examination, he stated that he had been residing at village Vijaygopal since his childhood. He admitted that the population of the village was approximately three thousand. He denied the suggestion that his house was surrounded by several neighbouring dwellings, but volunteered that there was one adjoining household in the vicinity. He further admitted that there were numerous houses belonging to both the Gulhane and Dange families in the village and that members of both families were engaged in agricultural activities as well as local politics. However, he categorically denied the suggestion that, he was on inimical terms with either the Dange family or the accused. He also denied the suggestion that his wife had never informed him that the accused had entered their house, fondled their child and caught hold of her hand in the kitchen. He further refuted that, owing to political rivalry, he had falsely implicated the accused with a view to eliminating him as a political opponent.

14. The learned Advocate for the appellant submitted that the impugned judgment and order are contrary to law and the evidence on record. According to him, the prosecution has failed to prove the charges beyond reasonable doubt. He contended that the testimony of the victim is not wholly reliable and suffers from material omissions and inconsistencies. It was argued that no independent witness has supported the prosecution case, though the alleged incident is stated to have occurred in a residential locality surrounded by neighbouring houses. He further submitted that PW3 and PW4 did not support the prosecution and were declared hostile. The evidence of the husband of the victim, being hearsay in nature, does not advance the prosecution case as he was admittedly not present at the spot.

15. He further contended that the prosecution has failed to establish the essential ingredient of intention required for constituting an offence punishable under Section 354 of the Indian Penal Code. He submitted that the allegations, even if accepted at their face value, do not conclusively establish that the appellant intended to outrage the modesty of the victim. He further argued that there existed political rivalry between the families of the victim and the appellant, giving rise to a possibility of false implication. He therefore, submitted that the evidence on record falls short of the standard required in a criminal trial and that the appellant is entitled to the benefit of doubt. In support of his submissions, he relied upon the case of **State of Maharashtra .Vs.. Balu s/o Narayan Shinde and Others, reported in 2014 All MR (Cri) 180** and **Hanumandas s/o Pandurang Raut Vs. State of Maharashtra and Another, reported in**

2012 All MR (Cri) 1527 and prayed for acquittal of the appellant by allowing the appeal.

16. As against this, the learned Public Prosecutor supported the impugned judgment and order. He submitted that the testimony of the victim is natural, cogent and trustworthy and that there is no reason to discard her evidence merely because independent witnesses have not supported the prosecution. He argued that the evidence of the prosecutrix is consistent with the First Information Report and her statement recorded under Section 164 of the Code of Criminal Procedure, thereby lending assurance to her version. According to him, the prosecution has satisfactorily established that the appellant entered the house of the prosecutrix without permission and caught hold of her hand, thereby using criminal force upon her with the intention or knowledge contemplated under Section 354 of the Indian Penal Code.

17. He further submitted that the evidence on record clearly establishes the offence of house-trespass punishable under Section 451 of the Indian Penal Code. He contended that the defence theory of political rivalry is a mere suggestion unsupported by any substantive evidence and does not create any flaw in the prosecution case. He therefore, submitted that the learned Magistrate has properly appreciated the evidence and rightly convicted the appellant. Accordingly, he prayed for dismissal of the appeal.

18. The evidence brought on record now requires appreciation with a view to determining its credibility, relevance, and probative value in relation to the facts in issue.

19. The prosecution case essentially revolves around the testimony of the victim, who is not only the author of the First Information Report, but also the victim of the alleged offence. Therefore, before examining the remaining evidence, it becomes necessary to scrutinize her testimony with utmost care. It is a settled principle of criminal jurisprudence that the testimony of a victim of an offence affecting the modesty of a woman stands on a footing different from that of an ordinary witness. The law does not insist upon corroboration as an indispensable requirement. If the testimony of the victim is found to be natural, trustworthy, consistent and free from material infirmities, conviction can safely be founded upon such evidence alone. At the same time, since the liberty of an accused is at stake, the Court is duty-bound to subject such testimony to careful scrutiny and ascertain whether it inspires confidence.

20. The victim stated that the appellant was known to her since he belonged to the same village. According to her, on the relevant day she was present in her house with her minor son, while her husband had gone outside the village. She has consistently maintained that the appellant entered her house and caught hold of her hand. She immediately resisted his conduct, assaulted him and drove him out of the house. Her account of the occurrence appears to be a spontaneous narration of an event experienced by her rather than a carefully tailored version designed to secure conviction. What particularly deserves notice is that the witness has not attempted to exaggerate the incident. She has not attributed any overt act beyond what she claims actually occurred. It is also to be noted that, where a witness refrains from making exaggerated allegations and confines

herself to the actual occurrence, such conduct lends assurance to the truthfulness of her version. Had there been an intention to falsely implicate the appellant, it would have been easy for the victim to make allegations of a far more serious nature. Instead, her version has remained confined to the specific allegation that the appellant entered the house and caught hold of her hand. This circumstance lends an inherent ring of truth to her testimony.

21. Despite considerable efforts on the part of the defence, nothing substantial could be elicited in her cross-examination, which would affect the core of the prosecution case. The defence has not succeeded in bringing on record any contradiction between her substantive evidence before the Court and her previous statements. No material omission has been proved in accordance with law. No circumstance has been brought on record demonstrating that the witness was physically incapable of witnessing the occurrence or that her version was inherently improbable. Significantly, the defence has not been able to establish any circumstance suggesting that the victim had any reason to falsely implicate the appellant by sacrificing her own dignity and reputation.

22. The victim admitted that neighbouring houses were situated in the vicinity and that some persons had gathered thereafter. The defence seeks to draw an adverse inference from this circumstance and contend that the absence of supporting independent witnesses creates doubt regarding the prosecution case. The submission, however, does not merit acceptance. The occurrence in question is alleged to have taken place inside the residential premises of the victim. The prosecution does not claim that the act of

catching hold of her hand occurred in a public place or in the presence of independent persons. Merely because neighbouring houses existed nearby does not necessarily mean that the incident itself was witnessed by outsiders. Human experience shows that incidents occurring inside a dwelling house often remain unnoticed by persons residing in neighbouring houses. Therefore, the absence of independent eyewitnesses cannot be regarded as an unnatural circumstance.

23. One cannot lose sight of the social realities governing offences against women. Experience shows that such incidents frequently occur in circumstances where independent witnesses are unavailable. If Courts were to insist upon independent corroboration in every such case, many genuine victims would be denied justice. The law has therefore evolved the principle that where the testimony of the victim inspires confidence, absence of corroboration is not fatal. The real test is whether the evidence of the victim is trustworthy. Applying that test to the present case, there is no reason to discard the testimony of the victim.

24. The defence has attempted to suggest that political rivalry existed between the family of the victim and the family of the appellant and that the appellant has been falsely implicated on account of such rivalry. It is true that suggestions to that effect were put during cross-examination. However, suggestions are not evidence. Unless such suggestions are supported by independent material, they cannot be treated as proved facts. The appellant has neither entered the witness box nor examined any independent witness to establish the existence of such serious political hostility. No documentary

evidence has been produced to demonstrate previous disputes, litigation, complaints or incidents giving rise to a motive for false implication.

25. Even assuming for the sake of argument that political differences existed between the families, that circumstance by itself would not be sufficient to discard the prosecution case. Political rivalry may provide a motive for false implication, but it may equally provide a motive for commission of the offence. Therefore, mere existence of political differences is not conclusive. It has to be ascertained, whether the evidence of the victim is otherwise reliable. In the present case, the testimony of the victim remains substantially unshaken despite lengthy cross-examination. Consequently, the vague suggestion regarding political rivalry does not create any reasonable doubt about the truthfulness of her version.

26. Another important aspect which cannot be overlooked is the conduct of the victim immediately after the occurrence. According to her, she resisted the appellant, assaulted him and drove him out of the house. Such conduct appears natural and consistent with ordinary human behaviour. There is nothing unnatural in a woman reacting in such a manner when confronted with an unwelcome invasion into her personal dignity. The natural resistance offered by the victim lends further assurance to her version.

27. The First Information Report came to be lodged at the earliest reasonable opportunity. The occurrence took place on 19.10.2015 and the report was lodged on 20.10.2015. Thus, the delay is hardly of one day. The explanation offered by the victim that

her husband was away and returned only on the following day appears entirely plausible. In cases involving allegations touching the modesty of a woman, hesitation in approaching the police immediately is a normal human reaction. Such delay, unless excessive and unexplained, cannot be viewed as a circumstance discrediting the prosecution case. The prompt lodging of the report assumes importance, because it considerably reduces the possibility of fabrication or false implication after deliberation. The First Information Report was lodged before sufficient time had elapsed for concoction or tutoring. The material particulars disclosed in the report are substantially reflected in the subsequent evidence before the Court. Such consistency between the earliest version and the substantive evidence provides a valuable assurance regarding the truthfulness of the prosecution case.

28. The statement of the victim recorded under Section 164 of the Code of Criminal Procedure furnishes another important circumstance. Although such statement is not substantive evidence, it can undoubtedly be used for corroborative purposes. A comparison of the statement under Section 164 with the testimony before the Court reveals substantial consistency regarding the material features of the occurrence. There are no significant deviations affecting the substratum of the prosecution case. This consistency assumes importance because the statement was recorded before a Judicial Magistrate at a comparatively early stage of the investigation, thereby reducing the possibility of subsequent improvement or embellishment.

29. The testimony of the victim is cogent, consistent, natural,

probable and hence, reliable. It receives assurance from the prompt First Information Report, from her statement under Section 164 of the Code of Criminal Procedure, from the surrounding circumstances proved on record and from the absence of any convincing motive for false implication. The testimony of the victim is thus, wholly trustworthy and worthy of acceptance.

30. The evidence of the husband (PW2) of the victim, also requires careful consideration. Undoubtedly, he is not an eyewitness to the actual occurrence. He was admittedly away from the village in connection with his occupation and returned on the following day. Therefore, his testimony cannot be treated as direct evidence regarding the incident itself. However, it is equally well settled that evidence is not to be discarded merely because a witness is not an eyewitness. A witness may still provide valuable corroboration regarding surrounding circumstances, subsequent conduct of the parties and other relevant facts which lend assurance to the prosecution case.

31. The testimony of the husband of the victim assumes importance, because it corroborates the explanation offered by the victim regarding the timing of the report. The victim has consistently stated that her husband was not present at home when the incident occurred and that she lodged the report after his return. The husband of the victim has supported this aspect by stating that he had gone to Yavatmal and returned only on the following day. Thus, the evidence of the husband of the victim provides assurance to the explanation regarding the short delay in lodging the First Information Report.

32. The defence has attempted to point out certain discrepancies in the evidence of the husband of the victim, particularly regarding the year of occurrence. In his examination-in-chief, he referred to the incident as having occurred in the year 2016, whereas the prosecution case relates to an occurrence dated 19.10.2015. Such discrepancy, however, does not affect the core of the prosecution case. Human memory is not expected to possess photographic precision, especially when witnesses depose several years after the event. Minor errors regarding dates, months or years are not uncommon. Unless such discrepancy affects the substance of the prosecution case or creates doubt regarding the occurrence itself, it cannot be elevated to the status of a material contradiction. What is important is that he consistently maintained that he was away from home on the relevant occasion and returned on the next day. The defence has not been able to demonstrate that this aspect of his testimony is false. Therefore, the minor discrepancy regarding the year of occurrence cannot be treated as sufficient to reject his entire testimony.

33. The defence has further attempted to suggest that the husband of the victim and the accused belonged to rival political groups and that the appellant has been falsely implicated owing to political animosity. It is true that during cross-examination, the husband of the victim admitted that both the Gulhane family and the Dange family were politically active in the village. However, mere political activity does not necessarily imply hostility. Rural society often witnesses participation of different families in local politics. Such participation by itself cannot lead to an inference that every

criminal allegation arising between members of such families is necessarily false. Significantly, no specific incident of political hostility has been brought on record by the defence. No evidence has been adduced regarding previous complaints, litigation, electoral disputes or other circumstances indicating deep-rooted enmity. In the absence of such evidence, the suggestion of political rivalry remains a mere speculation.

34. The Court is mindful of the settled principle that existence of enmity is a double-edged weapon. While enmity may furnish a motive for false implication, it may equally provide a motive for commission of an offence. Therefore, proof of enmity by itself does not render prosecution evidence unreliable. The real question is whether the substantive evidence regarding the occurrence inspires confidence. As already discussed, the testimony of the victim has withstood careful scrutiny. Consequently, the vague allegation of political rivalry is insufficient to discredit the otherwise reliable prosecution evidence.

35. It is difficult to accept that a married woman would falsely level allegations affecting her own modesty solely for advancing a political agenda of her husband. Allegations relating to a woman's dignity and honour occupy a distinct position. Such accusations invariably expose the victim and her family to social scrutiny. Therefore, before accepting a defence theory of false implication, it requires strong and convincing evidence demonstrating a compelling motive. No such evidence is forthcoming in the present case.

36. Madhukar Tukaramji Jirekar (PW3) and Nalini Madhukar Jirekar (PW4), it is apparent that both witnesses have not supported the prosecution. Madhukar (PW3) was examined as a witness to the spot panchnama. However, he stated that he was merely called by the police and his thumb impression was obtained on a document. He denied knowledge of the contents of the panchnama and did not support the prosecution regarding the proceedings allegedly conducted in his presence. Likewise, Nalini (PW4), who was examined with a view to proving that the victim had disclosed the incident to her, did not support the prosecution case. She denied knowledge of the occurrence and denied making the statement attributed to her during investigation. Merely because some witnesses turn hostile, their evidence does not become wholly inadmissible nor does the prosecution case automatically fail. It is required to examine, whether the remaining evidence on record is sufficient to establish the guilt of the accused beyond reasonable doubt.

37. In the present matter, it is important to note that neither Madhukar (PW3) nor Nalini (PW4) claims to be an eyewitness to the actual occurrence. Madhukar (PW3) was examined only as a panch witness, while Nalini (PW4) was sought to be examined as a witness to whom the incident was allegedly disclosed subsequently. Therefore, their evidence is essentially corroborative in nature. Their hostility does not directly affect the testimony of the victim regarding the occurrence itself. It is settled law that, where the testimony of the victim is reliable and inspires confidence, failure of independent witnesses to support the prosecution is not fatal. Criminal Courts are concerned primarily with the quality of evidence and not with the

quantity of witnesses. Therefore, merely because Madhukar (PW3) and Nalini (PW4) have not supported the prosecution, the otherwise trustworthy testimony of the victim cannot be discarded.

38. In fact, upon close scrutiny, the hostility of Nalini (PW4) does not create any serious lapse in the prosecution case. Even if, the evidence relating to disclosure of the incident to Nalini (PW4) is completely excluded from consideration, the substantive evidence of the victim remains unaffected. The prosecution case does not derive its strength from Nalini (PW4). Rather, it rests principally upon the testimony of the victim herself. Consequently, the failure of Nalini (PW4) to support the prosecution cannot be treated as a circumstance creating reasonable doubt.

39. The defence has attempted to suggest that the investigation was unfair and was conducted at the instance of the victim and her husband. However, a close reading of her testimony does not reveal any material irregularity affecting the fairness of the investigation. The Investigating Officer (PW5) has deposed regarding the various steps undertaken by her during the course of investigation. She stated that after receiving the case diary she visited the spot, prepared the spot panchnama, recorded statements of witnesses and obtained the statement of the victim under Section 164 of the Code of Criminal Procedure. She has withstood cross-examination on material aspects. It is true that the investigation by itself cannot prove the guilt of the accused. Equally, every defect or irregularity in investigation does not necessarily benefit the accused unless prejudice is demonstrated. It is required to ascertain, whether any alleged deficiency in investigation goes to the root of the

prosecution case. In the present matter, the defence has failed to point out any serious lapse which would undermine the credibility of the prosecution evidence.

40. Particular importance attaches to the fact that the Investigating Officer initiated the process for recording the statement of the victim under Section 164 of the Code of Criminal Procedure before a Judicial Magistrate. Such a course of action reflects an attempt to secure an independent and contemporaneous account of the occurrence. The statement so recorded substantially corroborates the version later given by the victim before the Court. Merely because the defence disputes the prosecution case does not imply that the investigation was unfair. When the evidence of all witnesses is assessed cumulatively rather than in isolation, a clear picture emerges. The evidence of the victim remains firm and trustworthy. The evidence of the husband of the victim lends assurance regarding surrounding circumstances. The statement recorded under Section 164 of the Code of Criminal Procedure furnishes corroboration on material particulars.

41. The hostility of Madhukar (PW3) and Nalini (PW4) affects only marginal aspects and does not strike at the core of the prosecution case. The investigation conducted by the Investigating Officer does not suffer from any defect of such magnitude, as would render the prosecution case doubtful. Thus, after independently reappreciating the entire oral and documentary evidence, this Court finds that the prosecution version remains substantially intact notwithstanding the hostility of certain witnesses and the defence plea of political rivalry. The evidence, when viewed as a whole,

inspires confidence and points precisely towards the guilt of the appellant.

42. Section 354 of the Indian Penal Code makes punishable the assault or use of criminal force against a woman with the intention of outraging her modesty or with the knowledge that such act is likely to outrage her modesty. Therefore, the prosecution is required to establish three essential ingredients, namely, firstly, that the victim is a woman; secondly, that criminal force or assault was used against her; and thirdly, that such force was used with the intention to outrage her modesty or with the knowledge that such act was likely to outrage her modesty. In the present case, the first ingredient admits of no controversy. The real controversy centres around the second and third ingredients, namely whether the appellant used criminal force against her and whether such act was accompanied by the requisite intention or knowledge. Physical violence of a grave nature is not a prerequisite. Even an unwelcome physical contact, if intentionally made without consent and accompanied by the requisite intention, may amount to use of criminal force.

43. The evidence of the victim clearly establishes that the appellant caught hold of her hand against her will. The act was neither invited nor consented to. On the contrary, the immediate reaction of the victim was to resist the appellant and drive him out of the house. Her conduct unmistakably demonstrates that the contact was unwelcome and against her wishes. Consequently, the prosecution has successfully established use of force by the appellant upon the victim.

44. The learned counsel for the appellant has vehemently argued that mere catching hold of a hand, without anything more, would not automatically attract Section 354 of the Indian Penal Code. It is submitted that the prosecution has failed to prove any overt act indicating sexual intent or intention to outrage modesty. The submission deserves serious consideration because criminal liability under Section 354 of the Indian Penal Code cannot be imposed merely on the basis of physical contact divorced from surrounding circumstances. It is required to carefully examine the context in which the act occurred. Intention is a state of mind. It is rarely capable of direct proof and ordinarily has to be inferred from conduct, circumstances and probabilities emerging from the evidence.

45. In this regard, the surrounding circumstances assume critical importance. The evidence of the victim, which has been found reliable, establishes that the appellant entered the residential house of the victim when her husband was absent. He did not merely remain outside the house or engage in ordinary conversation. He entered the house, approached the victim and caught hold of her hand. There is no evidence suggesting any legitimate reason for such conduct. The defence has not offered any explanation whatsoever, as to why the appellant entered the house and physically contacted the victim in such a manner. The conduct of the appellant cannot be viewed in isolation. It is required to assess conduct in the light of ordinary human behaviour and surrounding circumstances. When a man enters the house of a married woman in the absence of her husband and catches hold of her hand against her will, such conduct cannot ordinarily be regarded as innocent or accidental. The act

acquires significance because of the circumstances in which it was committed.

46. The law does not require proof that the accused intended to commit a more serious sexual offence. Nor does Section 354 of the Indian Penal Code require proof of actual physical injury. What the law seeks to protect is the dignity, bodily autonomy and feminine decency of a woman. Any deliberate and unwelcome physical act directed towards a woman which is capable of violating her sense of dignity may fall within the ambit of the provision. The expression modesty has not been defined in the Indian Penal Code. Nevertheless, judicial pronouncements have consistently held that modesty is an attribute associated with womanhood and feminine dignity. An act which is capable of shocking the sense of decency of a woman or which invades her bodily integrity with a sexual or improper intent may amount to outraging her modesty. Applying these principles to the facts of the present case, it becomes evident that the act attributed to the appellant was not a casual or innocent act. The appellant deliberately entered the house of the victim and physically caught hold of her hand. The act was sufficiently objectionable for the victim to immediately resist and expel him from the house. Her reaction itself provides an indication regarding the nature and impact of the appellant's conduct.

47. It is also to be bear in mind that offences under Section 354 of the Indian Penal Code are often committed in secrecy and seldom in the presence of independent witnesses. Direct evidence regarding the mental state of the accused is ordinarily unavailable. Therefore, intention is inferred from proved circumstances. In the

present matter, the circumstances proved on record lead to a reasonable and irresistible inference that the appellant either intended to outrage the modesty of the victim or, at the very least, possessed the knowledge that his conduct was likely to have that effect. The defence has sought to rely upon the fact that the learned trial Court acquitted the appellant of the offence punishable under Section 354-A of the Indian Penal Code. However, such acquittal does not assist the appellant. The ingredients of Section 354 and Section 354-A are distinct. Failure of the prosecution to establish the specific ingredients of sexual harassment under Section 354-A does not necessarily mean that the broader offence punishable under Section 354 is not established. The evidence must be examined with reference to the ingredients of each offence independently. Thus, the prosecution has established not merely physical contact, but criminal force accompanied by the requisite intention or knowledge contemplated under Section 354 of the Indian Penal Code. The essential ingredients of the offence therefore stand proved beyond reasonable doubt.

48. Section 451 provides punishment for house-trespass committed in order to commit an offence punishable with imprisonment. Thus, the prosecution must establish, firstly, commission of house-trespass and secondly, that such trespass was committed with the intention of committing an offence punishable with imprisonment. The evidence of the victim leaves no room for doubt that the appellant entered her residential house. The entry itself is not seriously disputed. The real question is whether such entry amounted to house-trespass within the meaning of law. House-

trespass is nothing but criminal trespass committed by entering into or remaining in a building used as a human dwelling. Criminal trespass, in turn, involves entry into property in possession of another with intent to commit an offence or to intimidate, insult or annoy the person in possession thereof.

49. The evidence of the victim clearly establishes that the appellant entered her house without invitation or authority. There is nothing on record to indicate that he had any legitimate business requiring such entry. More importantly, his conduct immediately after entering the house provides the clearest indication regarding the object of his entry. Hardly had he entered the house when he caught hold of the victim's hand. The act which followed the entry, supplies the key to understanding the intention accompanying the entry. The intention is ordinarily gathered from the conduct. Direct evidence regarding the intention existing in the mind of the accused at the time of entry is rarely available. Therefore, the intention is required to be inferred from the subsequent acts and surrounding circumstances. In the present case, the immediate use of criminal force upon the victim clearly demonstrates that the entry was not innocent. The object of entering the house stood revealed by the conduct which immediately followed.

50. Once it is held that the appellant entered the house and committed an offence punishable under Section 354 of the Indian Penal Code, the second ingredient of Section 451 automatically stands satisfied. The offence punishable under Section 354 of the Indian Penal Code is undoubtedly an offence punishable with imprisonment. Consequently, the house-trespass committed for the

purpose of committing that offence squarely attracts Section 451 of the Indian Penal Code.

51. In the light of the above, the evidence on record establishes a continuous chain of events. The appellant entered the house without authority, approached the victim, caught hold of her hand and thereby used criminal force with the intention or knowledge contemplated under Section 354 of the Indian Penal Code. The entry and the subsequent act form part of one continuous transaction. The circumstances proved by the prosecution are wholly consistent with the guilt of the appellant and inconsistent with any reasonable hypothesis of innocence. Therefore, this Court has no hesitation in holding that the prosecution has successfully established all the essential ingredients of the offences punishable under Sections 354 and 451 of the Indian Penal Code beyond reasonable doubt.

52. The learned counsel for the appellant has placed reliance upon the decisions in Balu (supra) and Hanumandas (supra). There can be no quarrel with the proposition that in order to sustain a conviction under Section 354 of the Indian Penal Code, the prosecution must establish not only physical contact or use of force, but also, the intention to outrage modesty or the knowledge that such act is likely to outrage the modesty of a woman. It is equally true that every physical contact between a man and a woman would not automatically amount to an offence punishable under Section 354 of the Indian Penal Code. The intention of the accused has to be gathered from the totality of the facts and circumstances of each case.

53. The facts of the present case stand on a distinct footing.

Here, the prosecution has succeeded in establishing through reliable evidence that the appellant entered the residential house of the victim during the absence of her husband and thereafter caught hold of her hand without her consent. The evidence of the victim has been found trustworthy and has remained substantially unshaken in cross-examination. The surrounding circumstances clearly indicate that the act was not accidental, casual or innocent. Therefore, the ratio of the authorities relied upon by the appellant cannot be mechanically applied to the facts of the present matter. What is more significant is that the defence has not been able to demonstrate any material inconsistency, contradiction or improbability in the prosecution case which would justify extending the benefit of doubt to the appellant. The authorities relied upon by the defence were rendered in the context of the evidence available in those particular cases. Thus, the rulings cited are with due respect of no help to the appellant.

54. As a sequel to the above discussion, there appears no reasonable ground to doubt the prosecution version. The circumstances established on record form a clear and consistent narrative pointing towards the guilt of the appellant. The prosecution has successfully discharged its burden of proving that the appellant entered the residential house of the victim without authority and used criminal force upon her by catching hold of her hand with the intention or knowledge contemplated under Section 354 of the Indian Penal Code. The prosecution has further proved that such entry constituted house-trespass committed for the purpose of committing an offence punishable with imprisonment and therefore attracted Section 451 of the Indian Penal Code. Consequently, this

Court is satisfied that the prosecution has proved beyond reasonable doubt that the appellant committed the offences punishable under Sections 354 and 451 of the Indian Penal Code. Hence, I answer points No. 1 and 2 in the affirmative and point No.3 accordingly.

AS TO POINT NO. 4 :-

55. The learned Magistrate rightly convicted the appellant for the offences punishable under Section 354 and 451 of the Indian Penal Code. The conviction of the appellant for the said offences does not call for any interference. So far as the sentence is concerned, the learned Counsel for the appellant submits that the appellant is not having any criminal antecedent. He is a person of responsibility. Therefore, the punishment should have been minimum and modified. There are no previous conviction at the credit of the appellant. He is having the responsibility of his family members.

56. Having affirmed the findings of guilt recorded by the learned Magistrate, it becomes necessary to examine whether the sentence imposed upon the appellant calls for any interference in appellate jurisdiction. The object of punishment is not merely retribution but also deterrence, reformation and protection of society. While imposing sentence, the Court is required to maintain a balance between the rights of the accused and the legitimate expectations of society. Excessive leniency may undermine public confidence in the administration of justice, whereas unduly harsh punishment may defeat the reformatory object of criminal jurisprudence. The sentence must therefore be proportionate to the gravity of the offence and the circumstances in which it was committed.

57. The record reveals that the learned Magistrate sentenced the appellant to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 354 of the Indian Penal Code. For the offence punishable under Section 451 of the Indian Penal Code, the appellant was sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.1,000/-. The learned Magistrate further directed that both the substantive sentences shall run consecutively.

58. At the outset, it must be observed that the substantive sentence of imprisonment imposed for the offence punishable under Section 354 of the Indian Penal Code cannot be said to be excessive or disproportionate. The offence concerns the dignity and bodily autonomy of a woman. Crimes affecting the modesty of women strike at the very foundation of a civilized society. The law has always regarded such offences seriously, because, they not only cause individual harm, but also, generate a sense of insecurity among women in society. The sentence of rigorous imprisonment for one year imposed for the offence punishable under Section 354 of the Indian Penal Code appears to be commensurate with the gravity of the proved misconduct. The learned Magistrate has not imposed the maximum punishment permissible under law. Rather, a moderate minimum sentence has been awarded keeping in view the nature of the act established by the evidence. Therefore, no case is made out for reduction of the substantive sentence imposed for the offence punishable under Section 354 of the Indian Penal Code.

59. Similarly, the sentence of simple imprisonment for three months imposed for the offence punishable under Section 451 of the

Indian Penal Code cannot be regarded as excessive. The offence of house-trespass committed with the object of committing another offence punishable with imprisonment is a serious invasion of the sanctity of a person's dwelling house. The legislature has treated such conduct as deserving of separate punishment because unlawful entry into a dwelling house threatens the safety and security of its occupants. The sentence imposed by the learned Magistrate for the said offence is neither harsh nor disproportionate.

60. However, a different consideration arises in relation to the direction that both substantive sentences shall run consecutively. Section 31 of the Code of Criminal Procedure empowers a criminal Court to direct that sentences awarded for different offences at one trial may run either concurrently or consecutively. The provision confers a judicial discretion upon the Court. Such discretion, however, is required to be exercised upon sound legal principles and not arbitrarily. Consecutive sentences are generally considered appropriate where the offences are distinct, independent of each other and arise out of separate transactions.

61. In the present case, the offences punishable under Sections 354 and 451 of the Indian Penal Code are not the result of separate or independent transactions. The evidence clearly demonstrates that both offences arose from a single occurrence. The house-trespass constituted the means through which the offence under Section 354 of the Indian Penal Code was committed. The unlawful entry into the house and the use of criminal force upon the victim formed part of one continuous and indivisible transaction. The same evidence has been relied upon to establish both offences. The

offence under Section 451 of the Indian Penal Code was not an independent criminal act disconnected from the offence under Section 354 of the Indian Penal Code. Rather, the house-trespass was committed for the purpose of facilitating the commission of the latter offence. The two offences are therefore closely interlinked and inseparable in terms of time, place and purpose.

62. Upon careful examination of the impugned judgment, no special reasons are recorded by the learned Magistrate for directing the sentences to run consecutively. While the learned Magistrate was undoubtedly empowered to issue such a direction, the exercise of discretion ought to have been supported by reasons demonstrating, why departure from the ordinary rule of concurrent running of sentences was considered necessary. It is a settled principle that sentencing discretion must be exercised in a reasoned manner. Recording reasons assumes particular importance when the Court adopts a course which results in enhancement of the actual period of incarceration.

63. Having regard to the facts of the present case, this Court is of the opinion that the direction requiring the sentences to run consecutively does not appear to be justified. Both offences arise out of a single transaction and constitute parts of the same occurrence. The ends of justice would be adequately served, if the substantive sentences are directed to run concurrently. Such a direction would not in any manner dilute the seriousness of the offences established against the appellant. At the same time, it would ensure that the sentence remains proportionate to the overall criminality involved in the occurrence. The purpose of sentencing is to punish the offender

fairly and not to impose a punishment greater than what is warranted by the facts of the case. Therefore, while maintaining the conviction of the appellant for the offences punishable under Sections 354 and 451 of the Indian Penal Code and while affirming the quantum of sentence imposed for each offence individually, this Court finds it appropriate to modify the impugned order to the limited extent that the substantive sentences shall run concurrently instead of consecutively.

64. As a necessary consequence, the appeal fails on merits insofar as the challenge to conviction is concerned and deserves to be dismissed subject to the limited modification regarding the manner in which the substantive sentences shall operate concurrently instead of consecutively. In the result, I think fit to interfere with the order of sentence passed by the learned Magistrate to this extent. Hence, I answer point No.4 partly in affirmative.

AS TO POINT NO. 5 :-

65. The appeal is liable to be partly allowed so far as the challenge as to conviction of the appellant for the offences punishable under Section 354 and 451 of the Code is concerned are maintained. However, the appeal will have to be partly allowed to the limited modification regarding the manner in which the substantive sentences shall operate concurrently instead of consecutively awarded by the learned Magistrate, as discussed in connection with point No.4. In the result, in answer to point No.5, I pass the following order.

: ORDER :

- 1] The Criminal Appeal is partly allowed.
- 2] The judgment and order dated 20.07.2019 passed by the learned Judicial Magistrate, First Class (Court No.3), Pulgaon, in Regular Criminal Case No.36/2016, convicting the appellant for the offences punishable under Sections 354 and 451 of the Indian Penal Code, is hereby confirmed.
- 3] The sentence imposed upon the appellant for the offences punishable under Sections 354 and 451 of the Indian Penal Code is maintained.
- 4] The direction of the learned trial Court that the substantive sentences shall run consecutively is hereby modified and it is directed that the substantive sentences imposed upon the appellant for the offences punishable under Sections 354 and 451 of the Indian Penal Code shall run concurrently.
- 5] The order regarding payment of fine, default sentence and set-off, if any, is maintained.
- 6] The appellant to surrender to his bail bonds.

Wardha.
Dt. 20-06-2026

[H. B. Gaikwad]
Sessions Judge, Wardha.

CERTIFICATE

The contents of this P.D.F. file Judgment are same word to word, as per the assigned Judgment.

(G. A. Umate)
Stenographer