

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4891 OF 2013

The State of Maharashtra,
Through Police Station Officer,
Nilanga, Dist-Latur.

...APPLICANT
(Ori. Complainant)

VERSUS

Shrirang s/o Setinga Gobade,
Age-60 years, Occu:Agri.,
R/o-Dadgi, Tq-Nilanga,
Dist-Latur.

...RESPONDENT
(Ori. Accused)

...
Mrs.S.D. Shelke, A.P.P. for Applicant.
Mr.V.R. Dhorde Advocate for Respondent.
...

CORAM: A.I.S. CHEEMA, J.

DATE : 10TH MARCH, 2015

ORAL ORDER :

1. Heard learned A.P.P. for State and learned
counsel for Respondent - original Accused, finally
with consent.

2. Learned A.P.P. submitted that in this matter the complaint was filed by Jijabai Namdeo Suryawanshi that when she had gone to cut the grass in the field of Accused, the Accused assaulted her and abused her on the basis of caste. She stated that she was beaten by kicks and fists blows. The incident was witnessed by PW-3 Sheshrao Gaikwad and PW-4 Pandit Navsare. In spite of such evidence, the trial Court acquitted the Accused. The learned A.P.P. submits that the trial Court did not even discuss the evidence of PW-3 and PW-4. The learned A.P.P. submitted that the trial Court wrongly held that the caste certificate was not duly proved. She claims that leave may be granted in the matter.

3. Learned counsel for Respondent submitted that complainant says that incident took place at 4.00 p.m. while PW-3 Sheshrao says that incident took place at 3.00 p.m. and PW-4 Pandit says that

it took place at 5.00 p.m. According to him all the witnesses have given different versions. The counsel pointed out from the record that Exhibit 33, medical certificate of the accused shows that he had suffered various injuries. The certificate at Exhibit 34 is of the complainant. According to the counsel if both the certificates are seen, rather the Accused suffered more serious injuries. According to the counsel, the genesis of the incident has been suppressed by the prosecution witnesses, is apparent on the face of record. The counsel submitted that this is not a fit case to grant leave.

4. I have gone through the material available. The trial Court discussed the evidence of complainant and found that the caste certificate although exhibited, was not duly proved regarding its contents. Trial Court discussed the fact that the complainant had gone in the field of the Accused and was cutting the

grass and was committing theft and thus, according to the trial Court even if the Accused had objected, it could not be said that he had exceeded the right of private defence.

5. The trial Court has, no doubt, not discussed the evidence of PW-3 and PW-4. It would have been appropriate for the trial Court to consider all the necessary material which had been brought on record by the prosecution. However, at present I am concerned, whether it is a fit case to grant leave against acquittal and going through the original Record and Proceedings, I find that even if the oral evidence of PW-3 and PW-4 is to be considered, and the medical certificates are kept in view, it would not be a case to interfere with acquittal. Learned counsel for Respondent - Accused is right in his submission that when evidence regarding incident brought by prosecution is read with the medical certificate of Accused and which shows that he also had similar injuries

like that of the Complainant, it must be said that prosecution witnesses suppressed the genesis of the incident and whole incident was not brought before the trial Court.

6. It would not be appropriate to grant leave in this matter where acquittal has been recorded by the trial Court.

7. For above reasons, there is no substance in the Application. The Criminal Application is rejected.

[A.I.S.CHEEMA, J.]