

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6152 OF 2013 IN
CRIMINAL APPLICATION NO. 6151 OF 2013

The State of Maharashtra,
Through Shalubai Raghunath Bhosale,
Age : 35 years, Occu.: Household
R/o Murum, Tq. Omerga,
Dist. Osmanabad

.. Applicant
(Orig. Complainant)

Vs.

- 1] Yogiraj Ramesh Vibhute,
Age : 31 years, Occu.: Labour,
R/o Murum, Tq. Omerga,
District Osmanabad
- 2] Padminibai Ramesh Vibhute,
Age : 63 years, Occu.: Household
R/o As above
- 3] Pushpa Yogiraj Vibhute,
Age : 28 years, Occu.: Household,
R/o As above

.. Respondents
(Orig. Accused)

Mr. S.D. Ghayal, A.P.P. for the applicant/State
Mr. S.B. Jadhav, Advocate for the respondents

CORAM : M.T. JOSHI, J.
DATE : 17/11/2015

ORAL ORDER :

Learned A.P.P. on the report of the concerned
Police Station submits that the Police Station Diary of
the year 2006 is destroyed as per rules. In the

circumstances, hearing in the present application to proceed without filing any copy of the same.

2. Heard both sides.

3. Aggrieved by the acquittal of the present respondents from the offences punishable under section 323, 452, 509 r/w. 34 of the Indian Penal Code by the learned Special Judge, Omerga Dist. Osmanabad in Special (Atrocities) Case No. 2 of 2008, the State wants to prefer the appeal and, therefore, the present application for leave to file appeal is filed.

4. The prosecution case in short is as under:-

. That the complainant PW1 - Shalubai belongs to Chambhar caste i.e. a scheduled caste. On 7/5/2006 at about 10.00 pm, when she was sleeping in her house at Murum, Tq. Omerga, Dist. Osmanabad, at that time, the respondent no.1 entered her house upon knocking the door. He was under the influence of liquor. On account of previous quarrel, he started giving abuses to the complainant and then started beating her. He also abused her over her caste. The complainant thereafter

raised the shouts. Respondent no.1 himself brought her out of the house and started assaulting her by stick on her thigh and left leg. At that time, respondent nos.2 and 3 arrived at the spot and also assaulted her by fist and kick blows. Upon hearing the shouts of the complainant, eye witnesses including PW5 - Sabubai and PW6 - Anusaya came on the spot and they separated the quarrel. Thereafter, the complainant was taken to the Rural Hospital, Murum and later-on to the Civil Hospital, Osmanabad by one Police Head Constable - Bakkal Number 707. Thereafter, the FIR came to be lodged on 9/5/2006.

5. Before the learned Special Judge, Omerga, the Medical Officer was examined as PW1 i.e. Dr. Parmeshwar Dhappadhule, the complainant was examined as PW2. Eye witnesses i.e. PW5 - Subabai and PW6 - Anusaya were also examined alongwith the peripheral witnesses like the panch witness and the Investigating Officer.

. The eye witnesses did not support the prosecution case. The learned Special Judge for the reasons forwarded in the judgment extended reasonable

benefit of doubt to the respondents and acquitted them. Hence the present appeal.

6. The learned A.P.P. submits that the statement of the complainant is corroborated by the injury certificate at Exhibit 48 and the deposition of the Medical Officer. He submits that the learned Special Judge has given undue weightage to the other peripheral matters and wrongly acquitted the respondents.

7. On the other hand, learned counsel for the respondents submits that it has become an admitted fact that the complainant was previously convicted in a criminal case, in which the present respondent no.1 was examined as an witness. Thus, there was deep animosity between the parties. He further submits that delay in filing the FIR is not explained and in the circumstances, he submits that when the learned Special Judge has taken a reasonable view of the matter, no interference is warranted.

8. Upon hearing both sides, in my view, leave to file appeal need not be granted. It is an admitted fact that the complainant was earlier convicted in a criminal

case and the respondent no.1 was a witness examined in the said case. The so called eye witnesses also did not support the prosecution case. Further the prosecution case itself is that, on 7/5/2006, the complainant was admitted to the hospital by one Police Constable, yet the FIR came to be filed on 9/5/2006. The complainant in her cross-examination gave an excuse that due to the assault in the quarrel, her mental condition was not proper and she could not lodge the FIR immediately. The Investigating Officer stated that the complainant herself came belatedly to lodge the complaint and did not speak that mental condition of the complainant was reported to be not proper by the Medical Officer. Even otherwise, the injury certificate at Exhibit 48 would show that the complainant had received simple injuries and thus, the case of complainant that her mental condition was not proper, cannot be accepted.

9. The learned Special Judge has taken into consideration all this material. A reasonable and probable view has been taken by the learned Special Judge. In the circumstances, grant of leave to file appeal would be an exercise in futility. Hence, the

following order:-

10. The Application is hereby dismissed. Leave refused.

Sd/-
[M.T. JOSHI]
JUDGE

arp/