

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.48 OF 2014

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

DAGADU SITARAM NIKAM)...RESPONDENT

Mrs.S.V.Gajare, APP for the Applicant - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 23rd MARCH 2015.

P.C. :

1 The respondent was prosecuted on the allegation that he had committed offences punishable under Sections 354, 504 and 506 of the Indian Penal Code (IPC). The Judicial Magistrate First Class, Khed, after holding a trial, passed an order acquitting him. The State of Maharashtra is aggrieved by the said order of acquittal, and is, therefore, by the present application, seeking leave to appeal therefrom.

2 I have heard Mrs.S.V.Gajare, the learned APP, for the State, in support of the application. I have gone through the application and the annexures thereto, which include not only the copy of the impugned judgment, but also the notes of evidence that was recorded during the trial.

3 The allegation was that on 8th July 2010, at about 6.00 p.m., the respondent outraged the modesty of the First Informant – wife of one Prakash Jadhav.

4 The actual witness to the incident was only the first informant herself. However, according to the prosecution case, her shouts had been heard by a number of persons, who assembled there after the incident.

5 In the judgment, the learned Magistrate observed that no independent witnesses were examined in support of the prosecution case. The learned Magistrate also observed that, that there was enmity between the husband of the First Informant and

the respondent, was an admitted position. The Magistrate also observed that there was some delay in making a report of the matter to the police and for explaining the delay, independent witnesses such as Police Patil, Members of Tantamukti Samiti, were required to be examined, but the same was not done.

6 The entire reasoning of the learned Magistrate cannot be accepted. However, the principles governing the approach of the appellate court in appeals against acquittals need to be kept in mind while dealing with an application for leave to appeal. It is well settled that, where on the evidence adduced during the trial, two views of the matter are possible, and the trial court has taken one of them, resulting in acquittal, then the appellate court would not interfere with that view, even if had it been the trial court itself, it might not have taken the same view.

7 In the instant case, the result of the case primarily depended on the appreciation of the oral evidence of the victim herself. The learned trial Magistrate had an opportunity to

observe the demeanor of the witnesses. If the trial Magistrate has felt the uncorroborated testimony of the First Informant / victim to be unsafe to be acted upon, it would not be proper to interfere with the order of acquittal.

8 It appears futile to grant leave to appeal.

9 Leave refused.

10 The application is rejected.

(ABHAY M. THIPSAY, J.)