

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL APPLICATION NO. 5190 OF 2015

IN

CRIMINAL APPLICAION NO. 5189 OF 2015

Smt. Latabai w/o Ashraji Daunde ...Applicant

VERSUS

The State of Maharashtra & ors. ...Respondents

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Shri K.J.Suryawanshi, advocate for applicant

Shri N.T.Bhagat, A.P.P. for respondent no.1

Shri C.K.Shinde, advocate for respondent nos. 2 to 7

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CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

Heard Shri Suryawanshi, learned counsel for the applicant. Since the application for condonation of delay is not objected, Criminal Application No. 5190 of 2015 is allowed and the delay caused in preferring the application for leave to appeal is condoned for the reasons stated in the application.

2. With the consent of the learned counsel for the respective parties, Criminal Application No. 5189 of 2015 for grant of leave to prefer appeal against the order of acquittal is taken up for hearing.

3. In Regular Criminal case No. 224 of 2009, learned Judicial Magistrate, First Class, Ashti vide judgment and order, dated 30.6.2012 has acquitted the respondent/accused for an offence punishable under Section 354 r/w 34 of the Indian Penal Code.

4. The case of the applicant/complainant is that the accused no.1 Dadasaheb is the brother of one Ashraji, the husband of the complainant. It is further case of the applicant that another accused Balu is cousin of her husband. Ashraji was initially married to one Malanbai. It is then claimed that Ashraji died due to drowning in the well and as such the applicant was staying alone.

5. It is the case of the applicant that there exists a dispute in relation to immovable property and civil suit to that effect has resulted into settlement. It is alleged in the complaint that the complainant stated before the Court below that Survey No. 322 was the land which has come to the share of Ashraji and after his death it is the present applicant who succeeded to the same. Since the applicant was staying alone in the village, she was illtreated and the respondents/accused misbehaved with the applicant. As such, she has decided to sell the agricultural land. Accordingly, she called her father and uncle on 25.12.2005 and at that time the accused person committed the offence punishable under Section 354 of the Indian Penal Code.

6. It is claimed that though the incident in question took place on 25.12.2005, however, the complaint case in question came to be lodged on 2.1.2006 with the Court without lodging the complaint to police station.

7. In support of the claim, the complainant present applicant examined herself and also examined PW 2 Sudam i.e. uncle of the applicant. The testimonies of both these witnesses did not corroborate with each other. So far as testimony of Sudam PW 2 is concerned, he is not an eye witness to the incident, however, a witness who was present on the spot but at some other place. The incident in question and the spot of the alleged incident is not in dispute as is observed by the learned Magistrate.

8. The learned Magistrate then recorded that the delay in lodging the complaint with the Court and without preferring the complaint to the police is considered to be an issue weighing in favour of the accused person.

9. Shri Suryawanshi, learned counsel for the applicant strenuously urged that the conviction under Section 354 of the Indian Penal Code could have been based on the testimony of the

complainant herein. He then submits that the fact remains undisputedly that there exists enmity between accused no.1 and complainant over the immovable property, particularly the share of complainant's husband Ashraji. According to him, once the presence of the accused person on the spot is not disputed, the cumulative effect of the evidence of PW 1 complainant and PW 2 Sudam is sufficient to infer the commission of the crime by the accused.

10. Per contra, learned counsel for the respondent Shri Shinde would urge that the complaint, as was brought before the Court and the considerations before the learned Magistrate were duly looked into and an order of acquittal is recorded. According to him, no case for grant of leave to file appeal is made out.

11. With the assistance of the learned counsel for the respective parties, I have perused the findings recorded by the learned Court below for

acquittal of the accused. So far as testimony of PW 1 original complainant is concerned, though the same speaks of offence under Section 354 of the Indian Penal Code, however, if the evidence in support thereof is analyzed, there is hardly any material placed on record by the complainant so as to prove the said offence. It is claimed that the accused person has tried to remove clothes of the present applicant, however, there is hardly any evidence to that effect. The father of the applicant and her uncle who claim to be the witnesses to the incident, have not supported the case of the prosecution, particularly the applicant for an offence under Section 354 of the Indian Penal Code.

12. Apart from above, it is claimed that the incident took place on 25.12.2005 and the same was reported to the police, however, there is hardly any material on record to infer that the matter was reported to the police. For the incident dated 25.12.2005 a complaint came to be lodged on

2.1.2006 and the delay in lodging such complaint is not at all explained. In view of existence of civil dispute, particularly in relation to the landed property, false implication of the respondents/accused, in my opinion, cannot be ruled out, particularly on the analysis of the evidence of PW 1 complaint and Sudam PW 2.

13. In view thereof, no case for grant of leave to file appeal is made out. Leave stands refused. Criminal Application No. 5189 of 2015 stands disposed of accordingly.

(N.W.SAMBRE, J.)

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