

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPLICATION (MAIN) NO. 265 OF 2015

STATE OF GOA, THROUGH P.I. MAPUSA
POLICE STATION. .

.... Applicant

Versus

1)PRAMOD KALANGUTKAR,
Major, Son of Suryakant Kalangutkar,
Resident of House No.159,
Xell, Bastora, Bardez, Goa.

2. SURYAKANT KALANGUTKAR,
Son of Sakharam Kalangutkar,
65 years of age,
Indian National,
R/o H. No.159, Xell,
Bastora, Bardez, Goa (Expired)

... Respondents

Mr. S. R. Rivankar, Public Prosecutor for the State.

Mr. D. Zaveri, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.
Date:- 28th March, 2016

P.C.:

Heard Mr. Rivankar, the learned counsel for the applicant and the
learned counsel appearing for the respondents.

2. This is an application for leave to appeal against acquittal. By the

Judgment dated 27/2/2015 passed by the Judicial Magistrate First Class in Criminal Case no.281/S/2010/A the first respondent has been acquitted of the offence punishable under sections 341, 323 and 354 r/w section 34 of I.P.C.

3. The brief facts are that :- the respondents were tried for the aforesaid offences in the said criminal case, in which the prosecution had examined in all six witnesses. The second respondent, who was the original accused no.2 died during the pendency of the trial. The contention raised on behalf of the applicant is that although the material allegations under section 354 of I.P.C were against the second respondent, the charge framed was against both the accused with the aid of section 34 of I.P.C. The learned Public Prosecutor strenuously urged that this is a case of common intention and as such, although there may not be any material to show any overact so far as an offence under section 354 of I.P.C. is concerned, which may be attributed to the respondent no.1., still the trial Court ought to have held him guilty, as there was sufficient material to gather common intention.

4. With the assistance of the learned counsel for the parties, I have gone through the evidence. It appears that the incident occurred when the complainant/victim along with others were proceeding by Scorpio vehicle. The allegation was that when they reached near Xell at Bastora near a chapel they saw some 3 to 4 bikes parked on the road with some persons sitting on

them and the others standing. PW.2 ,who is the material witness had deposed that she was sitting on the front seat next to her husband, who was driving the vehicle. She stated that her husband stopped the vehicle a few meters away from the motorbikes. She further stated that on account of the persons sitting on the bikes, they could not move further. It was at that point of time that it is alleged that there was some assault and also an attempt by respondent no.2 to outrage the modesty of PW.2. A perusal of the impugned judgment shows that respondent no.1 had also filed a counter complaint against PW2 arising out of the same incident, a chapter case was also initiated.

5. The learned Magistrate has noticed that during the investigation it had transpired that the villagers from Bastora had gathered near the chapel on the road to meet the local MLA at his residence. It was at that point that PW.2 along with her husband was proceeding in Scorpio vehicle which was stopped by the villagers who had gathered on the road. The learned Magistrate has further noted that the complainant in the present case became aggressive and started abusing the respondent no.1 and also assaulted him. Thereafter there are some allegations about the act which is primarily attributed to the second respondent (since deceased) of outraging the modesty of PW.2. The learned magistrate after considering the entire evidence has come to the conclusion that as some villagers had gathered on the road, the road was blocked and as such, the Scorpio jeep in which the complainant

and her husband were sitting could not move. The learned Magistrate in such circumstances had found that there was no intention made out, as is required under section 341 of I.P.C. Even so far as the other sections and particularly section 354 is concerned, the evidence of PW.2 goes to show that no overact in that regard is attributed to the first respondent. Having regard to the nature of the incident and the circumstances in which it occurred, the learned magistrate has found, and to my mind rightly so, that common intention cannot be gathered.

6. It is now well settled that in a challenge to the judgment of acquittal, this Court cannot re- appreciate the evidence. Thus, where two views are equally possible, this Court cannot substitute its view, in the place of the one recorded by the trial Court. It is only when the finding recorded is either perverse or is an impossible view that this Court can justifiably interfere. The view taken by the learned Magistrate appears to be a plausible view. In such circumstances, no case for grant of leave is made out. In the result, the criminal application is hereby rejected. The registration of Criminal Appeal stands refused.

C. V. BHADANG, J.

AP/-