

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 101 OF 2017
IN
STAMP NUMBER MAIN NO. 2331 OF 2016

MR. JOAQUIM FERNANDES., ... Applicant
Versus
STATE, THR. THE PUBLIC PROSECUTOR ... Respondents
AND ANR.,

Mr. Rohit Bras De Sa, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for respondent no.1.

Mr. J. R. Serrao, Advocate for respondent no.2.

Coram:- C. V. BHADANG, J.

Date:- 13th June, 2017

P.C.

This is an application for leave to appeal against acquittal.

2. The applicant is the original complainant. On the basis of the complaint lodged by the applicant, the respondent no.2 was prosecuted for the offence punishable under Sections 325 and 506 of Indian Penal Code (IPC, for short). According to the prosecution, the incident occurred at around 6.00 p.m., on 20/02/2012 in front of Maina-Curtorim Police Station, in which the respondent/ accused assaulted the applicant by first blows on his chick, resulting into dislocation of one of his teeth.

3. The learned Magistrate convicted the respondent no.2, which was set aside by the learned Sessions Judge.

4. With the assistance of the learned Counsel for the parties, I have gone through the judgment of the learned Magistrate and that of the learned Additional Sessions Judge.

5. It is submitted by the learned Counsel for the applicant that the learned Magistrate, on proper consideration of the evidence, has rightly found the respondent no.2 guilty of the offences punishable under Sections 325 and 506 of IPC. The learned Counsel has taken me through the observations of the learned Sessions Judge in para 16 onwards, in order to submit that the evidence of the prosecution is discarded on grounds, which are not acceptable.

6. On the contrary, it is submitted by the learned Counsel for the respondent no.2 that there are several missing links in this case. The learned Counsel points out that according to the applicant, the incident occurred at around 6.15 p.m. while the applicant was examined by the Medical Officer Dr. Kulkarni at 8.45 and FIR came to be registered at 9.15 p.m. As such, there is delay in lodging of FIR. Secondly, it is submitted that the Investigating Officer had not drawn any spot panchanama. There was no blood found on the spot nor on the clothes of the

applicant and these circumstances are sufficient to raise a reasonable doubt as to the involvement of the respondent no.2 in the alleged offences. It is also submitted that tooth has not been recovered.

7. The learned Public Prosecutor supports the applicant.

8. I have carefully considered the circumstances and the submissions made.

9. The applicant having been examined by the Medical Officer at 8.45 p.m. and the FIR being lodged at 9.15 p.m., prima facie, cannot be said to be delayed. The question about the presence of the blood stains, obviously would depend on the extent of the bleeding. Here, prima facie the only injury caused is about dislocation of one of the teeth. It is not the prosecution case, that there was any external injury. The effect of non-drawal of spot panchanama and whether or not it causes prejudice, can be examined when the appeal is finally heard. Prima facie, I find that a case for grant of leave is made out. From the reasons articulated by the learned Appellate Court only, it is clear that the Appellate Court has gone threadbare not only on the nature of the injuries, but also on the medication, which are prescribed, which aspect is normally to be left to the medical expert.

10. Considering the overall circumstances, the application is allowed, granting leave to appeal against acquittal. The appeal be registered. The appeal shall be treated as admitted.

11. The learned Magistrate to take action under Section 390 of Cr.P.C.

C. V. BHADANG, J.

SMA