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ALS-2-2016 (SR. 38)

Monday, 30.10.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (ALS) NO. 02 OF 2016

The State of Maharashtra

....Applicant

V/s.

Dilip Uttam Jadhav and Ors.

....Respondents

* * * * *

Mrs. M.M. Deshmukh, APP for the petitioner, State.

Mr. R.V. Bansode i/by. Mr. R.V. Shinde, Advocate for respondents no.1 to 4.

CORAM :-

SANDEEP K. SHINDE, J.

DATE :-

30TH OCTOBER, 2017.

P.C. :-

1. The State has preferred this application under Section 378 (3) Criminal Procedure Code seeking leave to appeal against the judgment and order dated 10th August, 2015 passed by the Judicial Magistrate First Class, Sinnar, District-Nashik in R.C.C. No. 114 of 2015 (Old SCC No. 594 of 2006).

2. The Learned trial Court was pleased to acquit the accused of the offences punishable under Sections 324, 323, 504, 506, 427 read with Section 34 of the Indian Penal Code in principle on the following grounds :-

(i) the prosecution has not examined the independent witness though the incident had taken place at public place.

(ii) though the incident had occurred on 23rd February, 2006 the FIR was registered on 28th February, 2006 and there was no explanation for the delay in lodging the complaint.

(iii) the incident had taken place across the police station and therefore it was expected that the injured would first approach the police station.

(iv) that the injured had first approached the Medical Officer attached to Sinnar Nagar Parishad who then referred the injured to the Civil Hospital at Nasik and it is only after seeking discharge from the Hospital at Nasik, the FIR was lodged on 28th February, 2006.

(v) that the evidence of P.W.4, Dr. Vasant Karande was

not inspiring the confidence of the Court.

(vi) that Dr. Karande had not produced the x-ray plates or such other record indicating the treatment given by him to the injured when he was approached by them at the first instance.

(vii) that mere production of medical certificate at Exhibits-40 and 41 without there being any material to prove the nature of injuries was not sufficient to hold that accused caused grievous injury to complainant.

(viii) that the prosecution has not examined Investigating Officer.

3. Mrs. Deshmukh, the Learned APP for the State, in support of her application has taken me through the evidence of P.W.1, P.W.2, P.W.3 and Dr. Karande (P.W.4). She would submit that the learned trial Judge has ignored the evidence of Dr. Karande who had stated that the injured had suffered grievous injury and had produced the Certificate at Exhibits-40 and 41.

4. Against this, the Learned Counsel for the

respondent, has taken me through the observations of the learned trial Judge recorded in para-15 of the judgment.

. The applicant-State has not placed on record to dislodge the observations made in the said paragraph. The learned trial Judge in clear terms has observed that the FIR was not recorded on the date of the incident but it came to be recorded when he was discharged from the Civil Hospital at Nasik. It was expected on the part of the State to place on record the evidence atleast to indicate the date on which the FIR was lodged. Be that as it may, the prosecution had also not examined the Investigating Officer before the trial Court. Besides, P.W.4, Dr. Karande had not produced such other medical evidence like clinical notes and/or x-ray plates in support of the Certificates at Exhibits-40 and 41 to hold that the injured had suffered the fracture to the middle finger. It is not in dispute that, the incident had taken place in the morning at about 9.00 clock at public place i.e. near the Panchayat Samiti and as such it was expected that the prosecution

would examine atleast one independent witness.

5. Mrs. Deshmukh, the learned APP would contend that the FIR was registered on 23rd February, 2006 and therefore the observations in para-15 of the judgment are not correct. Be that as it may, even for the sake of arguments, if it is accepted that the FIR was registered on 23rd February, 2006, in my view, the evidence of Dr. Karande was not sufficient to hold that the injured had suffered grievous injuries in absence of the evidence in the nature of clinical notes and/or x-ray plates. More so, the prosecution had not examined the independent witness though the incident had taken place at a public place. That even otherwise, State has not pointed out any gross irregularity and/or illegality in appreciating the evidence and/or perversity while recording the finding. In my view, findings of the trial Court are neither palpably wrong nor erroneous. Thus, taking into consideration the facts of the case and the nature of evidence brought on record, I am not inclined to grant relief. No interference is called for in the judgment

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and order passed by the Learned Judicial Magistrate First

Class in R.C.C. No.118 of 2015 and hence leave is refused

and the application is dismissed.

(SANDEEP K. SHINDE, J)