

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APPA) No.659 of 2017

(Filed by Shri R.M. Daga, Advocate for Appellants/Accused)

And

Criminal Application (APPA) No.667 of 2017

(Filed by Shri S.A. Aashirgade, Additional Public Prosecutor for State of Maharashtra)

In

Criminal Appeal No.45 of 2016

1. Rajesh @ Pappu s/o Madanlal Joshi,
Aged about 32 years,
Occupation – Handcart Puller.
2. Smt. Vimal w/o Madanlal Joshi,
Aged about 53 years,
Occupation – Housewife.
3. Pawan @ Omi s/o Madanlal Joshi,
Aged about 31 years,
Occupation – Handcart Puller.

All R/o. C/o. Govind Mahajan,
Near Sargam Bichhayat Kendra,
LalGANj Gujri, P.S. LakadGANj,
Nagpur.

... Appellants

Versus

The State of Maharashtra,
through P.S.O.,
P.S. LakadGANj,
Nagpur.

... Respondent

In Criminal Application (APPA) No.659 of 2017 :

Shri R.M. Daga, Advocate for Appellants/Accused – [**Applicant**].

In Criminal Application (APPA) No.667 of 2017 :

Shri S.A. Aashirgade, Additional Public Prosecutor for State of Maharashtra – [**Applicant**].

Coram : R.K. Deshpande & Manish Pitale, JJ.

Date of Reserving the Order : 24th August, 2017

Date of Pronouncing the Order : 28th August, 2017

Order (Per R.K. Deshpande, J.) :

1. By judgment and order dated 18-8-2017, this Court has allowed Criminal Appeal No.45 of 2016 by setting aside the decision of the Sessions Court, Nagpur, in Sessions Trial No.110 of 2014 and the accused persons are acquitted of the offences under Sections 302, 498-A and 304-B read with Section 34 of the Indian Penal Code. In paragraph 53 of the said judgment, this Court made certain observations against Shri R.M. Daga, the learned counsel for the appellants/accused; and Shri S.A. Aashirgade, the learned Additional Public Prosecutor

representing the State of Maharashtra. The said paragraph 53 is reproduced below :

“53. In the present case, Shri R.M. Daga, the learned counsel, appeared for the appellants/accused, having substantial number of years' practice in criminal matters, and Shri S.A. Ashirgade, the learned Additional Public Prosecutor, representing the State of Maharashtra, i.e. the prosecution. Shri Daga, the learned counsel appearing for the appellants/accused, was well aware that there was hardly any assistance to us from the side of the prosecution in meeting his propositions on facts and law both either in pointing out anything from the original record or inviting our attention to the relevant evidence of the witnesses to support the findings recorded by the Sessions Court. As we see and which is also apparent from the findings recorded by us, several propositions on facts could not have been advanced, if Shri Daga was aware of getting proper assistance by the Court from the prosecution side. We spent three days' time in this matter, which, according to us, could have been finished within a day, had the learned counsel Shri Daga being fair to the Court in raising several contentions on facts and law both. We have the feeling that lot of time is wasted in testing the

arguments of Shri Daga for the appellants/accused. We were required to make sure of the statements made by him on facts by searching the record to reconcile the factual position; for instance, a plea that the victim herself has reported the accidental death. Once Shri Daga was asked to point the source of information of the accidental death in the station diary, to which he invited attention, but he claimed ignorance of it. Similar are the pleas raised about the additional dying declarations, said to have been recorded by Head Constable Raju and PSI Dubey. We need not point out the other instance, which we have already dealt with in our judgment. We would only say that it was not possible for us to rely upon the statements of facts made by the learned counsel Shri Daga, and we did not expect him to consume the valuable time of this Court in such fashion. We expect him to be fair to the Court in future so that the time of the Court could be saved and in case of improper or lack of assistance by the prosecution, the correct facts on record are brought to the notice of this Court. With this view, we close the chapter.”

2. Both these applications are filed for expunging the remarks made in paragraph 53, reproduced above.

3. Shri R.M. Daga, the learned counsel, who appeared for the appellants/accused, has stated in paragraphs 3 to 8 of the application as under :

“(3) The applicant honestly tenders his apology for the inconvenience caused to the Hon'ble Court during the course of hearing of appeal.

(4) The applicant respectfully submits that he is having remorse and repentance for his act of non-cooperation, because of which inconvenience was caused to this Hon'ble Court.

(5) It is most respectfully submitted that the act of applicant was un-intentional and had happened due to oversight and the same had never occurred in past.

(6) The applicant undertakes to be cautious in future and further submits that such type of act will not be repeated in future.

(7) The applicant also undertakes to extend full co-operation in future while arguing the matters and also

to assist the Hon'ble Court to the best of my knowledge.

(8) The applicant once again tenders his apology to this Hon'ble Court for the inconvenience caused to non-cooperation on his part, while arguing aforesaid appeal.”

4. Shri S.A. Aashirgade, the learned Additional Public Prosecutor, has tendered apology for the inconvenience caused to this Court and has undertaken to be cautious in future, and has assured to extend his best possible assistance to this Court.

5. In view of above, we substitute paragraph 53 of the judgment and order delivered in Criminal Appeal No.45 of 2016 on 18-8-2017, as under :

53. In the present case, Shri R.M. Daga, the learned counsel, appeared for the appellants/accused, having substantial number of years' practice in criminal matters, and Shri S.A. Ashirgade, the learned Additional Public Prosecutor, representing the State of Maharashtra, i.e. the prosecution. We expected both the

lawyers to be precise and fair in their arguments and expressed our displeasure in respect of lack of proper assistance in dealing with the factual controversy involved in the matter and wasting valuable time of this Court in testing the arguments on facts and law, both. The learned counsels have tendered apology for the inconvenience caused to this Court and have also expressed remorse and repentance, stating that the act of non-cooperation shall not be repeated and have assured this Court to assist on facts and law in a just and fair manner. In view of this, without expressing anything more, we conclude this aspect of the matter.

6. The aforesaid substitution be carried out in the judgment, which be reloaded after substitution.

7. In view of above, both this criminal applications stand disposed of.

(Manish Pitale, J.)

(R.K. Deshpande, J.)