

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 73 OF 2018

Adv. Aires Rodrigues ... Applicant

Versus

Luis Remo De Maria
Bernardo Fernandes & Anr. ... Respondents

Shri Arun Bras De Sa, Advocate for the Applicant.

Shri S.R. Rivankar, Public Prosecutor for the Respondent No. 2.

CORAM:- C.V. BHADANG, J.

DATE:- 3rd OCTOBER 2018

ORAL ORDER:

Taken up for final disposal with consent of parties.

2. Although this appeal is filed as an appeal against acquittal, Shri De Sa, the learned Counsel for the applicant, on instructions, has restricted the challenge to expunging of certain remarks made by the learned Children's Court, against the applicant in paras 27, 44 and 48 to 50. The appeal is heard on this limited ground.

3. The brief facts are that the applicant (PW-1), on the basis of an information received from PW-9, Fr. Savio Barreto, had met the victim (PW-5) in GMC and on the basis of the information received from the victim (about she being abused by the respondent no. 1), had set the criminal law in motion, by filing a complaint before the police.

4. Eventually, the respondent no. 1 was tried in the Children's Court in Special Case No. 129/2016, for the offence punishable under Section 2(m)(i) read with Section 8(2) of the Goa Children's Act, 2003. By a judgment and order dated 06.09.2018, the respondent no. 1 came to be acquitted. In the judgment of acquittal, the learned Children's Court has made the following remarks against the applicant in paras 27, 44 and 48 to 50:

“27. Specifically, by taking into consideration the fact that PW1 belongs to the legal fraternity and is a practicing lawyer in the State of Goa for last around 20 years, practicing on civil, as well as criminal side, as categorically stated by him in the cross, the aforesaid explanations in the testimony of PW1 appears unreasonable.

44. Here it is material to note that the testimony of PW1 reveals that he does not like accused, since

the time of death of some of his musicians in an accident, at Kanpur, some years ago. The testimony of PW1, otherwise, appears to be full of inferences drawn by him personally against the accused, as reflected in the blogs published by him on his website, in the name of airesrodrigues.com and produced in his cross, at Exhibit C-11 and C-12, by the accused.

48. Further it is seen that it is PW1, who suggested PW5 to file a complaint to the Police against the accused. PW1 himself drafted the complaint, at Exhibit C-31, for PW5 and filed another complaint on his behalf, at Exhibit C-10, against the accused. Such act of PW1, read with the earlier noted facts on the count of jurisdiction and delay etc. in the cross of PW1, are sufficient to reveal his adverse interest against the accused.

49. The motive of such complaints against the accused is evident from the testimony of PW5 in the cross, wherein she has clearly stated that when the accused came to meet her at GMC, he was cordial with her and the misunderstanding arose later, as the accused was ready to give them Rs.50,000/- and their expectation was that he should pay them Rs.3,00,000/-.

50. Such motive of complaints against the accused, coupled with the considerable delay in

the complaint filed against him and the inconsistencies in the testimonies of PW1, PW5 and also her sister (PW6), read together, makes the solitary testimony of PW5 on the count of occurrence of alleged incident fully unreliable.”

5. It is contended by the learned Counsel for the applicant that the applicant was neither an eye witness to the accident, in which the victim was hit, nor to the conversation, which ensued between the victim and the respondent no. 1/accused at the GMC. It is contended that PW-5, having resiled from the statement, it was for the prosecution to declare her hostile or the Children's Court could have posed certain questions to PW-5. It is contended that the applicant had no control on the evidence, which was given by PW-5.

6. Shri Rivankar, the learned Public Prosecutor, in all fairness, submits that this Court may pass appropriate orders, having regard to the circumstances and the evidence on record.

7. I have carefully gone through the evidence of PW-5 as also PW-9. It is evident from the record that the applicant has not witnessed the accident, in which the victim was allegedly hit by the son of the respondent no. 1 or was a

witness to the conversation between the respondent no. 1 and the victim, when the victim was at GMC. The learned Counsel for the applicant is right in saying that the applicant had only set the law in motion by lodging a complaint at the police station. Thus, if the victim (PW-5) has failed to support the prosecution case, no motive can be attributed to the applicant.

8. In that view of the matter, the adverse remarks and the observations made in the aforesaid paras by the learned Children's Court are hereby expunged. Needless to mention that this Court has not expressed any opinion on the acquittal of the respondent no. 1.

9. The Criminal Appeal is disposed of.

C.V. BHADANG, J.

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