

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 124 OF 2017

The State of Maharashtra

..Applicant

Vs.

Baban Gundu Pawar and Others

..Respondents

Mrs. M. H. Mhatre, APP, for the Applicant State.

CORAM:-B.R.GAVAI & B. P. COLABAWALLA,JJ.

DATE :- JANUARY 11, 2018.

P. C.:

The State has approached this Court seeking leave to Appeal against the judgment and order of acquittal as recorded by the learned Additional Sessions Judge, Solapur in Sessions Case No. 235 of 2014. The Respondents were charged with offence punishable under Section 307 of the Indian Penal Code.

2 The prosecution case was that, on 4th August, 2013 the Appellants had assaulted victim Shevanta-PW-1. It was the prosecution case that, the accused has given blow of stick on her head. The accused was holding an Axe and assaulted by the said

Axe on her nose. The star witness on behalf of the prosecution was victim PW-1 Shevanta. The learned trial Judge disbelieved the said witness and acquitted the accused. Being aggrieved thereby, the present application.

3 Mrs. Mhatre the learned Additional Public Prosecutor submits that the learned Sessions Judge has grossly erred in acquitting the accused. She submits that when the injured witness had herself supported the prosecution case, the learned trial Judge ought not to have acquitted the accused. She submits that the assault was sought to be made on the vital parts of the body i.e. the head and the neck and as the intention of the accused to do away the deceased was very clear.

4 In an Appeal against acquittal, the interference would be warranted only when the finding is found to be perverse or impossible.

5 We find that before going to the evidence of PW-1-Shevanta, it will be necessary to refer to the evidence of PW-7-Ravindra who has been examined as a medical expert. His evidence would show that when the victim was brought to the

hospital for examination, he was conscious and oriented. The injuries- CLW on forehead of size of 2.5 x 0.5 x 1 cm and incise wound of size 4 x 1 x 0.5 cm on anterior 1/3 of nose was found. He further deposed that according to the C. T. Scan report she has not sustained any injury to her skull. However, in his cross examination, he has clearly admitted that both the injuries mentioned in the medical certificate were simple in nature. He has further admitted that incise wound would be possible even by nail. He has further admitted that the Axe which was shown to him does not have sharpness like a razor.

6 In the light of the medical expert examination, let us examine the evidence of PW-1. She states that after the incidence, she was unconscious. However, it is to be noted that PW-7 himself has admitted that when PW-1 was brought to the hospital, she was conscious and oriented. Apart from that, PW-1 has admitted with regard to the previous enmity between her family on one hand and family of the accused on the other hand. By now it is the settled principle of law that previous enmity is the double edged weapon. No doubt, possibility of false implication in the crime also could not be ruled out.

7 From the nature of the injuries which are simple and which according to the medical expert can also be caused by nail, we find that, the trial Judge was not unjustified, in resting conviction solely, on the basis of the evidence of PW-1- Shevanta. The other circumstantial evidence also does not corroborate the evidence of PW-1. In that view of the matter, no case is made out for interference. The application is rejected.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)