

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

CRIMINAL APPLICATION (APPA) NO.84/2019

Sewakram s/o Parasram Kumbhare .vs. Smt. Sharadabai w/o Hansraj
Baghele and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. J. Thakkar, Advocate for applicant.

Mr. N. B. Jawade, A.P.P. for non applicant no.2-State.

CORAM : V. M. DESHPANDE, J.

DATED : MAY 2, 2019

Heard Mr. Thakkar, learned counsel for the applicant and Mr. Jawade, learned A.P.P. for non applicant no.2-State.

The present appeal is filed challenging judgment and order of acquittal passed by learned Additional Sessions Judge, Gondia in Special (Atro) Case No. 18/2014, whereby the Court below has acquitted respondent no.1 of the offence punishable under Section 3 (1)(v)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 427 of the Indian Penal Code. The State chose not to file any appeal against the impugned judgment and it is the informant, who has filed the appeal.

Admittedly, respondent no.1-Shardabai Hansraj Baghele, at the relevant time was Sarpancha and the appellant is retired police constable. According to the prosecution case, the appellant was constructing a wall on the Government land at the relevant time and it was

objected to by the Sarpancha i.e. respondent no.1, which has culminated into use of abusive words in the name of caste.

Admittedly, there is a delay of two months in lodging the FIR. The learned Judge of the Court below has rightly observed that the appellant, a retired police constable, knows importance of lodging of the report immediately. Further, Court below has rightly found that the appellant could not file any order to show that he possesses permission to construct the wall on Government land. The Court below has also found that the claim of the appellant is not supported by any independent witnesses namely; the masons who were working on the site.

By now, the law in respect of appeals against acquittal is well crystalized. Merely because another view is possible, it is not expected that the appellate Court should substitute its view in place of the view taken by the Court below, except when it shows that the view taken by the Court below is not based on available evidence.

In the present case, counsel for the appellant could not point out that any admissible evidence was not considered by the Court below.

In that view of the matter, I see no merit in the present appeal. Hence, both; application as well as appeal are dismissed.

JUDGE