

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

CRIMINAL APPLICATION (APPA) NO.135/2018

AND

CRIMINAL APPEAL NO...../2018

Purushottam Patruji Dange

..VS..

Dayaram Lahanu Ramteke and anr

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

Court's or Judge's Order

Shri S.D.Chande, Counsel for the applicant.

None for N.A.No.1.

Shri A.M. Joshi, Addl.P.P. for N.A.No.2/State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 10, 2019.

1. Heard learned counsel Shri S.D.Chande for the applicant and learned Additional Public Prosecutor Shri A.M.Joshi for non-applicant No.2/State. Though duly served, nobody is appearing for non-applicant No.1.

2. By the present proceedings, the applicant is challenging judgment and order of acquittal dated 11.10.2017 passed by learned Judicial Magistrate First Class, Sindewahi, District Chandrapur in Regular Criminal Case No.41/2009.

3. By the impugned judgment and order of acquittal, learned Magistrate acquitted non-applicant No.1 of offences punishable under Sections 323, 294, and 506 Part-II of the Indian Penal Code.

4. It is submission of learned counsel for the

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applicant that learned Magistrate committed mistake in rejecting testimonies of complainant Purushottam Patruji Dange (PW3); Dhrupadabai Patruji Dange (PW5), and Sangita Sukhdev Sakhare (PW6). He, therefore, submitted that there is a need for reconsideration of the prosecution case.

5. As per the prosecution case, on 27.7.2009 when complainant Purushottam (PW3) came out of his courtyard, all of a sudden the accused, his neighbour came and used abusive language and threw chilly powder in his eyes on account of lodging of previous case against him. After completion of investigation, chargesheet was filed before learned Magistrate. During the Trial, in all 6 witnesses were examined. Learned Judge below found that inspite of availability of independent witnesses, no independent witness was examined.

6. Further, inspite of chances being offered to the prosecution, the prosecution failed to cross-examine doctor, resulting into the fact that whether there was injury to the eyes of the complainant due to chilly powder remained to be proved. It is also brought on record that in the year 2005 also the applicant prosecuted non-applicant No.1. However, in that case also non-applicant No.1 was acquitted. These aspects were properly considered by learned Magistrate while acquitting non-applicant No.1.

7. By now, the law in respect of the powers of the Appellate Court to interfere with appeal against acquittal is well settled. Merely because another view is possible, it is

not permissible for the Appellate Court to substitute its view in place of view taken by the Trial Court, except when it is noticed by the Appellate Court that approach of the Court below is perverse one and has failed to consider available admissible evidence brought on record. In the present case, nothing that sort is found.

8. Consequently, no case is made out. Hence, the application and the appeal are dismissed and disposed of accordingly.

JUDGE

!! BRW !!

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