

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

CRIMINAL APPLICATION (APPA) NO.392/2021 IN
CRIMINAL APPEAL NO. /2021

State of Maharashtra through PSO P.S. Dattapur, Tq. Dhamangaon Rly,
Dist. Amravati .vs. Sachin Bapurao Pimpale and Ors.

AND

CRIMINAL APPLICATION (APPA) NO.218/2021

Savita Chandu Bawne .vs. State of Maharashtra, through its Station Officer,
P.S. Dattapur, Tq. Dhamangaon Rly, Dist. Amravati and Ors.

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

Court's or Judge's orders.

Mr. T. A. Mirza, A.P.P. for applicant-State in Criminal
Application No.392/2021.

Mr. B. M. Kharkate, Advocate for applicant in Criminal
Application No.218/2021

CORAM : V.M. DESHPANDE AND AMIT B. BORKAR, JJ.
DATED : AUGUST 27, 2021

Heard Mr. Mirza, learned A.P.P. for applicant-State in Criminal Application No. 392/2021. We have also heard Mr. Kharkate, learned counsel for applicant in Criminal Application No.218/2021.

The State is aggrieved by the judgment and order of conviction passed by learned Special Judge and Additional Sessions Judge-2, Amravati in Special Case No. 169/2016 dated 06.01.2021, whereby though the learned Judge has convicted accused for the offence punishable under Section 304-II of the Indian Penal Code, all the accused persons were acquitted of the offence punishable under Section 302 of the IPC.

Learned A.P.P. would submit that though the accused persons in the appeal were acquitted of the offence punishable under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the State has not filed appeal questioning their acquittal for the same.

The impugned judgment would show that all the three accused persons were convicted for the offence punishable under Section 304-II read with Section 34 of the IPC. The original accused no.1-Sachin Pimpale is sentenced to suffer rigorous imprisonment for 10 years. Whereas, accused no.2-Atul Sorate and accused no.3-Atish Hatwal were directed to suffer rigorous imprisonment for five years and a fine amount. With the assistance of the learned A.P.P. we have gone through the impugned judgment. In our view, second thought is necessary for appreciation of the evidence adduced during the course of the trial by the prosecution, especially while considering the evidence of the injured persons.

Learned A.P.P. also pointed out that the original accused no.2-Atul and accused no.3-Atish have filed Criminal Appeal Nos. 147/2021 and 56/2021. Those appeals are admitted and they are already released on bail by the Hon'ble Single Judge of this Court on 28.07.2021 and 02.02.2021, respectively.

It is also a submission of the learned A.P.P. that the original accused no.1-Sachin, who is directed to suffer imprisonment for 10 years, has not filed any appeal before this Court.

Since, prima facie, we are of the view that second thought is necessary, we are allowing this application. Consequently, leave is granted to the State for filing the appeal challenging the acquittal of non applicants of the offence punishable under Section 302 of the IPC.

The application is disposed of.

CRIMINAL APPEAL NO. _____/2021

Heard.

ADMIT.

Since the accused no.1 is already in jail and accused nos. 2 and 3 have approached to this Court, this is not a case wherein action under Section 390 of the Code of Criminal Procedure should be taken. Accordingly, it shall not be taken.

CRIMINAL APPEAL NO. _____/2021

Criminal Application (APPA) No.218/2021 is filed seeking leave to file appeal on behalf of victim-Savita, who is an injured witness.

It is not at all necessary on behalf of the victim to file application, seeking leave to file appeal. The application itself be treated as an appeal.

ADMIT

The appeals filed on behalf of the State and victim be tagged together. Along with their appeals, Criminal Appeal Nos. 147/2021 and 56/2021 are also ordered to be tagged and those shall be taken for final hearing.

CRIMINAL APPLICATION (APPP) No.1383/2021

Since this Court has already admitted the appeal filed by the victim, no orders are necessary on this application.

The application is disposed of.

JUDGE

JUDGE