



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO APPEAL BY STATE NO. 84 OF 2019

The State Of Maharashtra
VERSUS
Mahendra Dattatraya Nikalje And Another

.....
Mr. R.B. Dhaware, APP for Applicant - State
Mr. A.A. Nimbalkar, Advocate for Respondent No.1
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 05th AUGUST, 2024

ORDER :

1. By this application, the State seeks leave to file appeal challenging the judgment and order of acquittal passed by learned Additional Sessions Judge, Ambajogai in Criminal Appeal NO.12/2015.

2. Respondents-accused were charged for offences under sections 325, 504, 506 read with section 34 of the Indian Penal Code. Trial Court convicted them in R.C.C. No. 347/2010. In appeal filed by respondents/accused, Sessions Court has acquitted them. Hence, the present application for leave to file appeal.

3. Heard learned APP for applicant-State and learned advocate for respondents-accused. Perused the record.

4. Perusal of documents placed on record show that there was dispute going on between accused and complainant side. Accused had lodged criminal case against informant alleging impersonation and forgery in alienation of immovable property in which accused no.1 had interest. The alleged incident of assault has taken place on 24.12.2009, whereas F.I.R. was lodged on 26.12.2009, without explaining the delay. Informant allegedly suffered fracture of femur bone due to assault on the part of accused. PW-4 has admitted that informant was of advanced age and was suffering from osteoporosis, which weakened her bones. Thus, possibility of free fall and suffering fracture cannot be ruled out. The stone allegedly used for assault was not recovered. PW-5 appears to be chance witness and his presence on the spot was not informed either by the informant or PW-2. There are contradictions in the evidence of prosecution witnesses. Considering all these aspects, Sessions Court has rightly come to a conclusion that prosecution has miserably failed to prove accusations under section 325 of the Indian Penal Code.

5. The Appellate Court has properly appreciated the evidence on record. The view taken by Sessions Court is possible view. No case is made out by the prosecution to warrant interference in the same. Application being devoid of merits is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE