



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLN. FOR LEAVE TO FILE APPEAL BY PVT PARTY NO.99 OF 2019

Sharifabi W/o Khaja Baig
VERSUS
The State of Maharashtra and Others

.....
Mr. Angad L. Kanade, Advocate for Applicant
Mr. D.J. Patil, APP for Respondent No.1 – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th SEPTEMBER, 2024

ORDER :

1. By this application filed under section 378(4) of the Code of Criminal Procedure, applicant/original complainant, seeks leave to file appeal against the judgment and order of acquittal dated 01.11.2017 passed by learned Additional Sessions Judge, Kandhar, Link Court, Mukhed in Criminal Appeal No.18 of 2012.

2. Prosecution case in short is that, applicant lodged FIR (Exhibit-20) alleging that the respondent Nos.2 and 3/accused entered her house by breaking doors and assaulted the applicant and her daughter. Respondent Nos.2 and 3/accused were charged under sections 324, 452 read with section 34 of the Indian Penal Code. The trial Court, in R.C.C. No.186 of

2010, convicted the respondent Nos. 2 and 3/accused and sentenced them to suffer rigorous imprisonment for six months and directed them to pay fine of Rs.10,000/- each.

3. Being aggrieved by the judgment of conviction, respondents/accused approached Sessions Court by filing Criminal Appeal No.18 of 2012, which is allowed by the appellate Court. Hence, the present application is filed by applicant/informant.

4. Heard learned advocate for applicant/informant and learned APP for respondent No.1/State. None for the respondent Nos.2 and 3/accused. Perused the application and grounds raised therein, documents placed on record, judgment of the trial Court and the impugned judgment and order of acquittal.

5. Learned advocate for applicant strenuously submits that there is sufficient material on record for conviction of the accused persons and the trial Court by assigning proper reasons has rightly convicted the accused persons. However, the appellate Court by misinterpreting the evidence on record has wrongly acquitted the accused persons. He further submits that the prosecution has led evidence of informant and her

daughter who were assaulted by accused. Independent eyewitness (PW-4) has supported the prosecution case. This evidence is ignored by the appellate Court. Hence, the impugned judgment and order of acquittal passed by the appellate Court is unsustainable. He, therefore, submits that this is a fit case to grant leave to file appeal against the order of acquittal.

6. Learned APP, on the other hand, supported the impugned judgment and order.

7. With the assistance of learned advocate for applicant and learned APP, I have perused the relevant documents placed on record.

8. Record indicates that, the spot panchanama (Exhibit 23) does not mention that the door of the informant's house was broken. Nothing was seized from the spot of incident. Weapons allegedly used in the crime were not recovered during investigation. Injuries allegedly suffered by the informant and her daughter are not proved by examining the Medical Officer or bringing injury certificates on record.

9. Considering above aspects, the appellate Court has rightly acquitted the accused persons holding that the prosecution has failed to prove their case beyond reasonable doubt. View taken by the trial Court is a possible view, which is not liable to be interfered with in the facts of the present case. Application being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE