

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.288 OF 2024

XYZ

...Appellant

VS.

Arsalan Muniroddin Shaikh and Ors.

...Respondents

Mr. P.B. Kulkarni:	Advocate for the Appellant.
Mr. A.B. Tajane:	Advocate for the Respondent.
Mr. V.N. Sagare:	APP for the State.
<u>Lateron:</u>	
Mr. P.B. Kulkarni:	Advocate for the Appellant.
Mr. Ashok B. Tajane a/w Mr. Yuvraj A. Tajane:	Advocate for the Respondent.
Mr. V.N. Sagare:	APP for the State.

CORAM : S. M. MODAK, J.

DATE : 18th APRIL 2024

P. C. :-

1. Heard learned advocate for Appellant / Victim. It is true that initially the proceedings were filed for grant of leave to Appeal. However, it is converted into an Appeal as per liberty granted by this Court on 28th February 2024. On 2nd April 2024, I have heard both the learned advocates. Accordingly, today the

Pallavi / Kishor

matter is listed for hearing of both the sides at an admission stage.

2. Learned advocate Mr. Kulkarni advanced arguments:-

- (i) According to him, the evidence on of point of defence of **alibi** taken by accused No.1 is not satisfactory. To prove the said defence, the defence witness by name Sidram Patil who is Trainer of Athletes was examined. According to him, Respondent No.1 has participated in the Net Ball Competition at Sangli on 20th February 2013 i.e. on the date of incident and he has produced certificate of participation and he is one of the signatories. According to Mr.Kulkarni, what was produced before the trial Court is, the copy of that certificate and not the original. Even original score card is not produced. What is produced is the photocopy.
- (ii) He also invited my attention to the observations of the trial Court to the said evidence in paragraph No.17 of the impugned judgment. According to him, the trial Court has overlooked the aspect of producing the original certificate.
- (iii) On the point of incident, he read over the evidence of the victim. It is true that he has made a reference of accused No.1 and accused No.2 only.
- (iv) He also read over the observations in paragraph No.19 and 20 of the judgment.

3. On the point of satisfying the ingredients of the offence, he has made following submissions :

- (i) The offence under all those Sections is made out against accused No.1.
- (ii) The interpretation by a Court that Section 354 cannot be invoked against a family is incorrect. Because the word 'whoever' is used in the Section 354.
- (iii) After the incident according to him the victim is in grave mental shock.
- (iv) He insisted that Record and Proceeding is necessary. To buttress this submission, he relied upon the observations in case of *Jitendra Kumar Rode Vs. Union of India*¹. The High Court has dismissed the Appeal filed by the accused against conviction without calling for Record and Proceeding. The provisions of Section 385 of Cr.P.C., were considered. It is observed, it is necessary to go through the Record and Proceeding if the Appeal is not dismissed summarily.

4. After hearing learned advocate for Respondents, matter kept in the second half.

Later on:-

5. It is true that this Court has kept the matter for hearing the

1. 2023 SCC OnLine SC 485

learned Advocate for the Respondents. However, due to other fixed matters, his arguments could not be heard. It is submitted that now, the Postal Department is time and again asking for the progress of this matter.

6. Stand over to 2nd May 2024. High on Board.

7. The Respondents are at liberty to give copy of this order to the Postal Department.

[S. M. MODAK, J.]

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