
(2011) 09 BOM CK 0124

In the Bombay High Court

Case No : Criminal Application No. 5470 of 2009

The State of Maharashtra

APPELLANT

Vs

Maruti Ananta Bhosale

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 292, 293

Evidence Act, 1872 — Section 45, 74

Penal Code, 1860 (IPC) — Section 323, 325, 504, 506

Citation : (2012) BomCR(Cri) 829

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : Y.S. Shinde, APP for State, for the Appellant;

Judgement

J.H. Bhatia, J.—Heard Mr. Shinde, the learned APP for the applicant-State. Perused the impugned judgment.

2. This application is moved by the State Government seeking leave to prefer appeal against the order of acquittal dated 18th July, 2009, passed by the Sessions Court in Criminal Appeal No. 258 of 2005, whereby the appeal preferred by the accused-Respondent against his conviction for the offences punishable under Sections 325, 323, 504 and 506 of the Indian Penal Code was allowed and the conviction was set aside.

3. According to the prosecution, the first informant had suffered several injuries including fracture. Record reveals that though the medical certificate was produced, the Medical Officer was never examined to prove the injuries and therefore, the accused also did not get opportunity to cross examine the Doctor. Before the trial Court, it was argued that the medical certificate is a public document and therefore, non examination of the Medical Officer is not fatal to the prosecution. The Sessions Court rejected this argument and gave benefit of doubt to the accused.

4. The learned APP contended that in view of the provisions of Section 74 of the Indian Evidence Act, medical certificate having been prepared by a Public Officer should be treated as public document and it can be proved by producing before the Court without examining the author of the document. It is difficult to accept this contention. In fact, the Medical Officer, who had examined the injured person and issued injury certificate stands in a position of an expert and his opinion about the injuries suffered by the victim have to be treated as an opinion of expert u/s 45 of the Indian Evidence Act and needs to be proved. Naturally, if such an opinion is tendered by a Doctor, the accused also should get an opportunity to cross examine the Doctor to show that the opinion given by him is not correct. When medical certificate to a particular person is issued by a Doctor in discharge of public duty, that certificate is for a particular purpose and cannot be equated with the public document nor it can be equated with the public documents forming the acts or records of the acts of the sovereign authority or of official bodies and tribunals or of the public officers, nor it can be equated with the public record kept in any state of private documents. If such argument is accepted, the accused persons may be deprived of their valuable right to cross examine the medical officer and to point out that the opinion of the medical officer is not correct. It may seriously prejudice the rights of the accused and affect his life and liberty.

5. It is material to note that Sections 292 and 293 of the Code of Criminal Procedure specifically provide in what circumstances and whose reports may be admitted in evidence without examining the concerned expert. u/s 292 of the Code of Criminal Procedure, any document purporting to be a report under the hand of any such Gazetted Officer of the Mint or any of Note Printing Press or of any Security Printing Press or of any Forensic Department or Division of Forensic Science Laboratory or any Government Examiner of questioned documents or any State Examiner of questioned documents, as the case may be, as the Central Government may, by notification, specify in this behalf, upon any matter or thing duly submitted to him for examination and report in the course of any proceeding under the Code, may be used as evidence in any inquiry, trial or other proceeding without such officer being called as witness before the Court. Similarly, as per Section 293 of the Code, reports of certain Government Scientific experts, namely Chemical analyzer or Assistant Chemical Analyzer to the Government, Chief Controller of Explosives, the Director of the Finger Print Bureau, The Director of Haffkeine Institute, The Director or Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory or the Serologist to the Government or any other Government scientific expert specified, by notification, by the Central Government for this purpose, are also admissible in evidence without calling the expert before the Court as witness. This shows that wherever the legislature felt that certain opinions given by certain experts may be admitted in evidence without examining such expert before the Court, it has specifically provided in the Criminal Procedure Code. No such provision is made in respect of an injury

certificate issued by a Medical Officer or a doctor. Therefore, the contention of prosecution that even if the Medical Officer is not examined, the medical certificate showing injuries should be treated to have been proved as it is a public document, cannot be accepted and stands rejected.

6. In view of these circumstances, I find no substance in the appeal and therefore, leave to prefer appeal against the acquittal is refused. The application stands rejected.