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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.19 OF 2013

The State of Maharashtra ... Applicant.

V/s.

Sagar Maruti Bhabad and anr Respondents

Mr. H. J. Dedhia, for Applicant.

Mr. Sham V. Walve, for the Respondent Nos 1 and 2.

CORAM : P.V.HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 2ND MARCH, 2015.

P.C. : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. This application is preferred under Section 378 (3) of the Code of Criminal Procedure by State seeking leave to appeal against the judgment of acquittal in Session Case No.256 of 2013 dated 25.6.2014, recorded by the additional Sessions Judge-4, Nashik.

2. By the said judgment, respondent Nos.1 and 2 were acquitted for the offence punishable under Sections 307, 323, 504, 506 read with

Section 34 of the Indian Penal Code.

3. The perusal of the judgment of the trial Court reveals that the case of prosecution was based on the evidence of three injured witnesses and one independent eye witness P.W.4, who is declared hostile and has not supported the prosecution case. As regards three injured eye witnesses viz P.W.1 Imran, P.W.2 Juber and P.W.3 Akila, they have admitted that they were not knowing any of the accused including respondent Nos 1 and 2, before the incident. The complaint itself is lodged against unknown person.

4. In the evidence before the Court, though P.W.1 Imran has identified accused by their names, as per his further admission, prior to this incident he was not knowing any of them. P.W.2 injured Juber has also admitted in his cross examination that names of all the accused persons were told to him by police at the time of recording his statement. P.W.3 Akila has also admitted that she was not knowing any of the accused prior to the incident. As per evidence of P.W.1 Imran all the accused persons were shown to him after the incident in the police station and their names were also told to him by police. The trial Court, therefore, held that no material is brought on record by P.W.11 Investigating Officer

on which basis he arrested accused, without there being any identification by the informant.

5. Admittedly test identification parade of the accused was not conducted during the course of investigation. In such situation the trial Court has observed that the identification of the unknown accused at the time of trial without being corroborated by the evidence of test identification parade cannot be relied upon. The evidence of injured witnesses therefore, is not helpful to prove the involvement of the accused in the said offence.

6. Except for the evidence of injured eye witnesses, there was no other evidence connecting respondents/accused in the incident of assault and the evidence of eye witness has failed to prove the identification of the respondents. In the light of the same, the trial Court has acquitted the respondents.

7. With the assistance of learned APP and on perusal of the judgment of the trial Court, we find that the view taken by the trial Court is a possible view on the basis of evidence adduced before it. We do not find any perversity in the judgment of the trial Court. Therefore, there is no

reason to interfere. Hence leave to appeal stands refused. Accordingly this application is dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]