

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

CRIMINAL APPLICATION NO. 58 OF 2016

The State of Maharashtra ... Applicant
V/s.
Achyutrao Shiddharao Kale (Deceased)
& Anr. ... Respondents

Mr.J.P. Yagnik, APP for State.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 21st NOVEMBER, 2016.

P.C. :

- 1] Heard Mr.Yagnik, learned APP for the Applicant-State.
- 2] This application is filed seeking leave to appeal against the judgment and order dated 22nd December, 2015 passed by the learned Sessions Judge, Thane in Sessions Case No.172 of 2013. By said order, the respondent is acquitted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.
- 3] The main reliance of the prosecution is on the evidence of PW-1 Head Constable Mr.Vijay Bodas, who, claimed to be an eye witness. Admittedly, he was not knowing accused No.1 Achyutrao Kale (deceased) and accused No.2 Govindrao Kale at the time of the incident in question. Accused No.1 Achyutrao Kale expired during the

pendency of the trial. The incident was taken place on 26th January, 2013 at about 8.00 pm. The evidence on record does not show that there was sufficient light at the time of incident. The Investigating Officer has not conducted Test Identification Parade. The identification of the present respondent No.2 Govindrao Kale by PW-1 Head Constable Mr.Vijay, for the first time, at the trial in the Court cannot be sufficient.

4] Having considered the submissions and having gone through the impugned judgment and order, we find that the learned Sessions Judge has arrived at the conclusion that the evidence against the present respondent No.2 Govindrao Kale is not free from doubt and conviction cannot be based on such evidence. Accordingly, the learned Sessions Judge has given benefit of doubt to the present respondent No.2 Govindrao Kale. Learned Sessions Judge has given cogent reasons in respect of his conclusion. We find that the view taken by the learned Sessions Judge is plausible and we are therefore, not inclined to entertain this application. Therefore, this application is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]