

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

CRIMINAL APPLICATION NO. 63 OF 2016

The State of Maharashtra ... Applicant
V/s.
Mallikarjun @ Mallinath @ Mallu & Ors. ... Respondents

Ms.S.D. Shinde, APP for the Applicant-State.

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

DATE : 24th NOVEMBER, 2016.

P.C. :

- 1] Heard Ms.Shinde, learned APP for the Applicant-State.
- 2] This application is filed for leave to appeal against the judgment and order dated 5th January 2016 passed by the learned Sessions Judge, Solapur in Sessions Case No.306 of 2012. By the said judgment and order, the respondents came to be acquitted of the offences punishable under Sections 302, 201 read with Section 120-B and 506 read with 34 of Indian Penal Code.
- 3] On 6th August, 2012 the Karnataka Police found dead body of PW-1's brother Bhaskar in forest. After the post mortem was done, the dead body of Bhaskar was buried on 9th August, 2012. The body was exhumed at the instance of PW-1, who, identified the same, as his brother.

4] The prosecution heavily relied upon deposition of PW-7. He has deposed that deceased Bhaskar has hired his vehicle and he saw the respondents entered into the said vehicle along with deceased on 5th August, 2012. He also deposed that when this vehicle was returned by the respondents to him, the deceased was not there. There were blood stains on the clothes of one of the respondents. Learned Sessions Judge disbelieved this witness as his statement is recorded about fifteen days after the incident. The prosecution has not explained the delay in recording the statement. In any case, the evidence of last seen together is very weak kind of circumstance and that cannot be the sole basis for conviction of the respondents for the offences punishable under Sections 302, 201 read with Section 120-B and 506 read with 34 of Indian Penal Code.

5] The view taken by the learned Sessions Judge is plausible and we are therefore, not inclined to entertain the said application.

6] Criminal Application is, therefore, dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]