

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 85 OF 2016
[For leave to appeal]
IN
CRIMINAL APPEAL No. OF .

State of Maharashtra. ..Applicant.
Versus
Khuba Basu Rathod & Others. ..Respondents.

Ms. S. D.Shinde APP for the State.

Coram : Ranjit More &
G. S. Kulkarni, JJ.
Date : **November 18, 2016.**

P. C. :

1. The State is seeking leave to appeal against the judgment and order dated 13th April 2016 passed by the learned Sessions Judge, Solapur in Criminal Appeal No. 152 of 2013. By the said judgment and order, appeal filed by the Respondents is allowed and conviction of the Respondents in RCC No. 591 of 2007 by the JMFC, Solapur on 26th November 2013 for the offence punishable under sections 326, 427, 435 and 506 read with 34 of the Indian Penal Code, 1860 is set aside.

2. Having considered the submissions of learned APP and having perused the impugned judgment and order, we find that date of the incident is 8th March 2007, however, FIR is registered on 20th March 2007, i.e., after about 12 days of the

alleged incident. Be that as it may, the prosecution has heavily relied upon the evidence of PW-6, who is eye-witness. However, he has not supported the prosecution. The learned Sessions Judge refused to rely upon medical evidence on the ground that the alleged injury could not be connected with the alleged assault. The learned Sessions Judge also held that no independent witness is examined. Taking totality of the facts and circumstances of the case into consideration, the Respondents are acquitted by the learned Sessions Judge. The view taken by the learned Sessions Judge is possible view and we are therefore not inclined to grant leave to appeal. Application is, therefore, dismissed.

[G. S. KULKARNI, J.]

[RANJIT MORE, J.]