

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

CRIMINAL APPEAL NO. 917 OF 2015

Sudipta Nalini Bhattacharya.

..Appellant.

Vs.

Rajesh Narvekar & ors.

..Respondents

WITH

CRIMINAL APPLICATION NO. 41 OF 2017

The State of Maharashtra.

..Applicant.

Vs.

Rajesh Narvekar & ors.

..Respondents.

Mr. S.B. Shelar, advocate for the appellant in Appeal No. 917/15.

Mrs. P.P. Shinde, APP for State.

**CORAM : RANJIT MORE, J &
SMT.SADHANA S. JADHAV,J
DATE : SEPTEMBER 6, 2017**

P.C.

1 The Criminal Appeal No. 917/2015 is filed by the original complainant and the Criminal Application No. 41/2017 is filed for seeking leave to appeal by the State. Both appeal and application are filed being aggrieved by the Judgment and Order dated 29/7/2015 passed by the learned Additional Sessions Judge, Gadhhinglaj in Sessions Case No. 6 of 2014, whereby the Respondent accused were acquitted of an offence under section 395, 427, 143, 506 of the Indian Penal Code.

2 The prosecution in order to prove their case examined as many as 11 witnesses. Out of these witnesses, P.W. Nos. 3, 4, 6 are alleged to be eye witnesses. The trial Court did not rely on the evidence of these witnesses on the ground that the said evidence is shaken in the cross-examination.

3 We have also gone through the deposition of these eye witnesses. So far as P.W.3 is concerned, he admitted in the cross-examination that he did not state before the police that the accused himself opened the gate of the company and entered in it alongwith his car and JCB machine while recording his statement. This omission is proved by examining the investigating officer. The omission creates doubt whether P.W. 3 had an occasion to see the incident.

4 P.W. 4 who claims to be the manager of the company has stated in his statement that he reached in the company at about 9.30 a.m. He however, admitted that the incident took place at about 9 a.m. Thus, it is doubtful that this witness has witnessed this incident.

5 So far as P.W. 6 is concerned, in his cross-examination he had admitted that he did not state before the police while recording the statement that accused had entered in the company by opening small gate. He has also admitted that while recording the statement before the police he did state before the police that he got the information of breaking of the articles

hearsay. Thus evidence of this witness also cannot be taken into consideration.

6 That apart, the incident in question alleged to have occurred on 1st July, 2013 and the Crime was only registered on 26/7/2013. There is some explanation given by the investigating officer. That is however not justified in the facts and circumstances of the case. Taking the totality of the facts and circumstances into consideration, we find that the conclusions arrived at by the Trial Judge are possible. Cogent reasons are given in support of the said conclusions. In the circumstances, the view taken by the Trial Judge is possible view and therefore, we are not inclined to interfere in the Judgment passed by the learned Additional Sessions Judge, Gadhinglaj dated 29/7/2015. Both the Appeal as well as Application are rejected and disposed of accordingly.

[SMT.SADHANA S. JADHAV,J]

[RANJIT MORE, J]