

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

CRIMINAL APPLICATION NO.123 OF 2018

Vitthal Pandurang Khatal

.... Applicant
(Orig. Complainant)

versus

Shivaji Laxman Tele & Ors.

... Respondents

.....

- Mr.V.V. Purwant a/w Mr.Rushikesh Kale, Advocate for the Applicant.
- Mr.H.J. Dedhia, APP for the State/Respondent.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 23rd JULY, 2018.**

P.C. :

1. For the reasons recorded in the Application, the Application is allowed. The delay is condoned. The Appeal is taken for Admission.

2. Heard the learned Counsel Mr.V.V.Purwant on behalf of the Applicant. The Applicant, who is the Original Complainant seeks leave to Appeal against the Judgment and

Order passed by the learned Sessions Judge, Solapur, in Sessions Case No.231/15 dated 25/10/2007 to the extent of acquittal of accused Nos.1, 2 and 3.

3. The learned Counsel Mr.Purwant on behalf of the Applicant submits that from the perusal of the evidence of P.W.1 it is clear that all the four accused were involved in the offence of committing murder of the daughter of the P.W.1 namely Deepanjali.

4. We have perused the Judgment and Order passed by the learned Trial Judge. The learned Trial Judge has found that the case was basically based on circumstantial evidence. The learned Trial Judge convicted the accused No.4 Navnath Laxman Tele i.e. the husband of the deceased after finding that various incriminating circumstances are established against him. It has been found that the accused No.4 had failed to discharge the burden which shifted on him under the provision of section 106 of the Evidence Act. It may be noted that we are not examining correctness of the order of conviction of the accused No.4.

5. However, insofar as the acquittal of the accused Nos.1, 2 and 3 who are brother, mother and sister of the accused No.4 is concerned, the learned trial Judge has found that the prosecution has failed to prove the case beyond reasonable doubt. The only evidence against the accused was P.W.1 Vitthal Khatal who states that he has seen the accused Nos.1, 3 and 4 running out of the house when he came on the spot and when he went inside the accused No.2 went out of the house.

6. He also refers to the oral Dying Declaration given to him by the deceased. The learned Trial Judge on the basis of medical evidence found that in all probabilities the deceased must have become unconscious immediately after receiving the injury. Therefore the said oral Dying Declaration has been disbelieved. The learned Trial Judge has further found that it was the case of P.W.1 that accused Nos.1, 2 and 3 were instigating the accused No.4 to act against the deceased. However it is admitted that no such complaint was filed.

7. Interference in the acquittal would be warranted only if the view taken by the learned Trial Judge is found to be perverse or impossible. Merely because the Appellate Court finds another view more probable, it cannot be a ground to interfere with the acquittal of the accused.
8. No perversity or impossibility is noticed to warrant interference. Hence the Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)