

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 21 OF 2017

The State of Maharashtra ..Applicant

Vs.

Anil Berma Kamble ..Respondent

Mrs. S. V. Sonawane, APP, for the Appellant State.

CORAM:-**B.R.GAVAI & B. P. COLABAWALLA, JJ.**
DATE :- **JANUARY 11, 2018.**

P. C.:

The State has approached this Court seeking leave to Appeal against acquittal as recorded by the learned Sessions Judge in judgment and order dated 7th May, 2015 in Sessions Case No.204 of 2013.

2 The Respondent-accused was charged for committing murder of one Yunus Shaikh. The learned Trial Judge has found that the prosecution has failed to prove its case beyond reasonable doubt and as such acquitted the accused.

3 Mrs Sonawane, the Additional Public Prosecutor vehemently submits that the learned Sessions Judge has grossly erred in passing an order of acquittal. She submits that there are two eye witnesses i.e. PW-1 - Sureshsingh Rawat and PW-2- Rajendra Wadkar who have seen the deceased being assaulted by the Respondent-accused. She, therefore, submits that the learned Trial Court ought to have accepted the evidence of these witnesses and convicted them.

4 We have perused the material placed on record. No doubt, the prosecution has examined two eye witnesses. However, insofar as PW-1 -Sureshsingh is concerned, he has admitted that he had visited police station at least on 10 to 12 occasions for paying the fine. Insofar as the another eye witness PW-2-Rajesh is concerned, he is said to have lifted the deceased putting in auto and carried to hospital. However, in his deposition he has stated that when he lifted the accused, no blood stains were sprinkled on his cloth or his cloths were not stained with blood of the deceased. The Hon'ble Apex Court has, in an unequivocal term, held that if the witness claimed that he has lifted the deceased and got him admitted into the hospital and if the cloths of said witness are not

having found with blood stain, then, evidence of such witness cannot be held to be reliable.

5 Our interference in the Appeal against acquittal would be warranted only when the findings as recorded by the Trial Court are found either to be perverse or impossible. No perversity or impossibility is noticed to warrant interference. The application is rejected.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)