

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.56 OF 2018

(for leave to appeal)

The State of Maharashtra.	]	... Applicant / Orig. Complainant
Versus		

Ganesh @ Prakash Balbhim Waghmare & Ors.	]	... Respondents / Orig. Accused
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Mr. Ajay Patil, APP for State - Applicant.
None for Respondents.

**CORAM :- B. R. GAVAI &
SARANG V. KOTWAL, JJ.**
DATE :- 19 JUNE, 2018

P. C. :-

1. The State has approached this Court being aggrieved by the Judgment and Order dated 31/01/2018 passed by the learned Additional Sessions Judge, Solapur, in Sessions Case No.176 of 2016, thereby acquitting all the accused of the offences punishable under Sections 302, 323, 504 and 506 read with 34 of the IPC.

2. The prosecution case was that on 08/02/2016 between 7.30 p.m. to 8.15 p.m., in front of Gangour Dhaba, near R.T.O. check post at village Nandani, all the accused committed murder of Prakashkumar.

3. Mr. Patil, learned APP for the State – Applicant, submitted that the learned trial Judge has erred in passing an order of acquittal when the prosecution has placed on record voluminous evidence.

4. The star witness on behalf of the prosecution is PW 7. PW 7, in his evidence, stated that he was working as a Watchman in Gangour Dhaba since 20 days prior to the date of the incident. The deceased was also working as a Watchman. He stated that on the date of the incident, around 7.30 p.m., the said witness and the deceased were in the parking area. At that time, the accused no.1 Ganesh came there on a motorcycle and he abused Kumersingh, PW 1, owner of Dhaba. Prakash informed him that the Kumersingh was not there and he had gone to Rajasthan and therefore, he should talk with him after he returns. Thereafter, Ganesh started abusing the deceased. PW 7 told him that the deceased was a new person and he

should not abuse him. At that time, the accused no.1 threatened by saying that, *"I am local resident of the village. I would return with boys and kill him"*. After saying that, the accused no.1 left the spot. At around 8.00 p.m., the accused persons came there armed with weapons. They started beating the witness. After that, they released this witness and went to Prakash who was standing at a distance of 20 ft. away. They started assaulting the deceased. Thereafter, the deceased rescued himself and ran in the field after crossing the road. The four persons started chasing the deceased on motorcycles. Thereafter at around 9.00 p.m., an ambulance came there. The driver called him. The witness as well as the other two persons went near the ambulance. The driver asked them as to whether the person in the ambulance was their colleague. The witness and the other two persons saw and identified the person to be the deceased. He was taken to the hospital. At around 10.00 p.m., an information was received that Prakash had expired during treatment. On the next day when the police had come to Dhaba, this witness gave statement to the police which was treated as FIR. The witness stated that since the accused persons were visiting the Dhaba daily, he was knowing them in person. A perusal of the cross-examination of this witness had

revealed that his evidence is totally shattered. His evidence is full of omissions and contradictions. The learned trial Judge had an opportunity to witness the demeanor of the said witness and has found his evidence not to be trustworthy.

5. The interference in an Appeal against acquittal is warranted only if any finding recorded by the trial Judge is found to be perverse. No perversity is found in the impugned Judgment. Hence, leave is rejected. The Application is disposed of.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)