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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 319 OF 2018
(For leave to appeal)

Shri. Pravin Thumbe ..Applicant
Versus
Santosh alias Bobby Ramchandra Gaikwad
and others ..Respondents

Mr. Rajesh A. More, Advocate for the Applicant.
Mrs. S. S. Kaushik, APP for Respondent - State.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 18th JULY, 2018

P.C.:-

- 1] Application for leave to appeal is taken on board.
- 2] Heard Mrs. Kaushik, learned APP appearing on behalf of the State.
- 3] The learned APP, appearing on behalf of the State, submitted that, when there were two eye witnesses viz. P.W. 2 – Pravin and P.W. 4 - Mangla, the learned Sessions Judge has grossly erred in disbelieving their evidence and acquitting the accused.
- 4] We have perused the judgment and order dated 16/09/2017 passed by the learned Trial Judge, Pune in Sessions Case No.13 of

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2002, thereby acquitting all the accused for the offence punishable under Section 302 of IPC alongwith other offences.

5] Perusal of material placed on record, would reveal that the prosecution basically relied on the evidence of P.W. 2 – Pravin and P.W. 4 – Mangla. The learned APP submitted that since both the witnesses have identified accused in the Court, the learned Sessions Judge ought to have relied on such identification and convicted the Respondents/Accused.

6] We have perused the evidence. No doubt, that identification parade was held. However, neither the Executive Magistrate who conducted the identification parade nor those who acted as panchas, have been examined. As such, the learned Sessions Judge found that the identification of accused by P.W. Nos. 2 and 4 for the first time in Court and that too after a period of 16 years from the date of occurrence was not sufficient to establish the case of the prosecution beyond reasonable doubt.

7] No perversity or impossibility is noticed in the impugned judgment and Order to warrant interference. Hence, the application for leave to appeal is rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)