

CRIMINAL APPLICATION NO. 74 OF 2018

V/s.

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Mr. Shekhar Ingawale with Ashok Misal for Respondent Nos. 1 to 6.

**CORAM : S.S. SHINDE AND  
A.S.GADKARI, JJ.**  
**DATE : 09th October, 2018**

P.C.:

1. This is an application under Section 378(4) of the Code of Criminal Procedure preferred by the State against the acquittal of the respondents for the Charges punishable under Sections 302 and 326 of the Indian Penal Code by the learned District Judge-1 and Additional Sessions Judge, Islampur in Sessions Cased No.11/2009 by its Judgment and Order dated 17.8.2016.
2. Heard the learned APP. and perused the entire record produced before

this Court including the notes of evidence.

3. The respondents were charged for the offence punishable under Section 302, 323 and 326, 147,148 read with 149 of the Indian Penal Code for commission of murder of Prakash Govind Thorat.

4. The medical evidence indicates that, there is one solitary injury caused to the deceased and the Medical Officer in his testimony has opined that, the same is possible by a fall. It is the prosecution case that, the accused persons assaulted the deceased with fist and kick blows.

5. In view of the evidence available on record, the Trial Court convicted the accused persons under Section 324 read with 149 of the Indian Penal Code. The Criminal appeal No.696/2017 preferred by the State for enhancement of sentence prescribed under Section 324 read with 149 of the Indian Penal Code, this Court by its Order dated 1.10.2018 has dismissed the same by observing that the prosecution has not established the charge under Section 302 or under Section 326 of the Indian Penal Code. The said finding is recorded by well reasoned Order dated 1.10.2108.

6. After perusing the entire record made available before us, we are of the considered view that, no case for grant of leave to file an appeal against

the acquittal under Section 302 and 326 of the Indian Penal Code is made out. The application is devoid of any merits. Leave rejected.

7. Application is accordingly dismissed.

**(A.S. GADKARI, J.)**

**(S.S. SHINDE, J.)**