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

CRIMINAL APPLICATION NO. 36 OF 2018

The State of Maharashtra

..Applicant

Vs

Rupesh Balaji Lingayat.

..Respondent

Ms. P.P. Shinde, APP for Applicant-State.

Mr. N.N. Gawankar for the Respondent.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 1st February 2019.

P.C.:

1] This is an application under Section 378 (3) of Code of Criminal Procedure, 1973 seeking leave to file an appeal against the impugned Judgment and Order dated 26th June 2015 passed by the learned Additional Sessions Judge, Ratnagiri in Sessions Case No. 33 of 2013 acquitting the respondent for the offence punishable under Section 302 of the Indian Penal Code.

2] Heard the learned APP for the State and the learned counsel for the respondent. Perused the record including the notes of evidence.

3] The name of deceased is Ulhas Lingayat. The date and time of incident is 1st April 2013 at about 7.30 a.m. The case of the prosecution in brief is that, wife of Ulhas Lingayat (deceased) namely Smt. Runali was running a business of tailoring from her shop. It was rumored in the village that the respondent used to go to her shop when she used to be alone and tease her. He also made some unwarranted comments against her. Therefore, Ulhas (deceased) and his brother Rajendra Lingayat (PW No.2) admonished the respondent and told him not to come to her shop in their absence. It is the prosecution case that, due to the said admonition given by Ulhas and his brother Rajendra (PW No.2), the respondent assaulted Ulhas with wooden log (Dandaka). Ulhas fell down on the spot. The said incident was witnessed by Amiruddin Khan (PW No.1) and Santosh Pawar (PW No.7). After completion of investigation, the police have submitted chargesheet.

4] The prosecution in support of its case examined in all 19 witnesses. The evidence of Amiruddin Khan (PW No.1) and Santosh Pawar (PW No.7) is full of exaggerations and material omissions. It creates a doubt in the mind of the Court about its veracity as to whether the said two witnesses really witnessed the incident of assault on Ulhas by the

respondent. Santosh Pawar (PW No.7) in his cross-examination has admitted that Rajendra (PW No.2) brother of deceased Ulhas has narrated to the Medical Officer at the Primary Health Centre at Malgund, District-Ratnagiri that, Ulhas met with an accident on the road and therefore, he should be admitted to the hospital. Dr. Ganesh Patil (PW No.18) in his cross-examination has admitted that when Ulhas (deceased) was brought to the hospital, the history of the patient in the medical case papers was mentioned as “road traffic accident”. The said history was given by the persons who brought patient (Ulhas) to the hospital.

In view of the evidence available on record, the Trial Court has acquitted the respondent from the charge framed him.

5] After considering the evidence on record, we are of the opinion that the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the case and based on the evidence on record.

6] No case is made out for grant of leave to file appeal against the impugned Judgment and Order.

Application is accordingly rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)