

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.7 OF 2019
IN
CRIMINAL APPEAL NO. OF 2017

The State of Maharashtra ... Applicant
Vs.
Bhajanlal Ramlal Bishnoi and Anr. ... Respondents

Ms. P.P. Shinde, APP for the Applicant.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 7th JANUARY 2019.

P.C. :

1 Heard the learned APP in support of the application for leave to prefer an appeal against the judgment and order dated 27th January 2017 passed by the learned Additional Sessions Judge, Thane. The respondent was charged with the offence punishable under section 302 of the Indian Penal Code of committing murder of one Imtiyaz Ali – deceased. Imtiyaz Ali was learning the work of mechanic in a showroom of Honda Company. The prosecution case is based on testimony of alleged eye-witness deceased Ali Hussain Jamatali Pathan (PW-6). The learned Additional Sessions Judge has disbelieved the version of PW-6 on various grounds.

2 The learned APP has taken us through the notes of evidence. The learned APP submitted that the evidence of PW-6 who is an eye-witness ought not to have been discarded by the trial Court. She urged that though there was a delay of two days in recording his statement, there was nothing brought on record to discredit his version.

3 We have perused the evidence of PW-6. He was employed as a worker on power-looms. He was on night duty on the night of 31st July 2015. After learning that in the neighbouring power-loom factory, one thief was caught by the people, he rushed there. He found that gate of the factory was locked. Even the gate on the rear side of the factory was locked. He peeped through the window and could see one boy being assaulted by the respondents. The case of the prosecution is that at about 5.00 am on 1st August 2015, the incident was narrated by PW-6 but his statement was recorded two days thereafter on 3rd August 2015. The witness admitted in cross-examination that at relevant time about 15-20 persons gathered near the factory where the alleged incident of assault had been committed. Even PW-4 Akram deposed that there were about 100 persons gathered outside the factory when the incident took place. None of these persons have been examined. Considering the failure of the prosecution to examine the other persons who were present at the spot and the delay of two days in recording statement of PW-6 which is not explained by the prosecution, the learned Additional Sessions Judge declined to believe the testimony of the PW-6.

4 The view taken by the learned Additional Sessions Judge could have been certainly taken on the basis of evidence on record. Hence, no case is made out for grant of leave. Application for leave is rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)