

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 19 OF 2017

The State of Maharashtra

.....Applicant

Vs.

Santosh Devkant Zha & Anr.

....Respondents.

Mr. J.P. Yagnik, APP for the Applicant.

Mr. Dadhich S. Mhaispurkar for the Respondents.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 24th JANUARY, 2019.

P.C.:-

Heard the learned APP for the Applicant and the learned counsel appearing for the Respondents.

2 This is an Application under Section 378 of the Code of Criminal Procedure, 1973 filed by the State seeking leave to prefer an Appeal against the Judgment and Order dated 13th May, 2015 passed by the learned Ad-hoc Additional Sessions Judge, Kalyan. The Respondents were acquitted by the offences alleged against them under Section 302, 323., 342 read with Section 34 of the Indian Penal Code.

3 The victim of the offence is Shivani, the wife of the

Respondent No.1 (the accused no.1). Their marriage was performed on 2nd March, 2001. The Respondent no.2 (accused no.2) is the wife of Respondent No.1's brother. It is alleged that the Respondent no.1 was maintaining illicit relationship with the Respondent no.2 and that they were ill-treating deceased Shivani. The incident is of 8th February, 2009. On that day, Abhaykumar Zha (P.W. no. 1) received telephone call that Shivani had expired. Abhaykumar Zha (P.W. no. 1) had lodged the Complaint.

4 The case of the prosecution appears to be that the deceased sustained injuries and the Respondents are authors of the said injuries. The case of the prosecution is that after the incident, the accused no.2 went on the ground floor to bring an Auto-rickshaw. She requested one Mr. Gopal Iyyer to help her to take the deceased to hospital. The prosecution case is that with the help of said Mr. Gopal Iyyer and one Mr. Jitendra Chaudhary, the accused no.2 brought the deceased to the hospital.

5 Both Gopal and Jitendra have not been examined as prosecution witnesses. There is no other evidence adduced to show that when the deceased was injured in the house of the accused no.1, the accused no.2 was present and she took the deceased to hospital by

an Auto-rickshaw. The best witnesses Gopal and Jitendra have not been examined by the prosecution. As regards the presence of Respondent no.1 (accused no.1), even the Investigating Officer accepted that he was not present in the house on the relevant day and that he came 3 to 4 days after the incident.

6 After having perused the notes of evidence, we find that the finding recorded by the learned Trial Judge that there is no evidence to connect the Respondents to the injuries on the person of the deceased in a possible view. The learned Additional Sessions Judge also considered Section 106 of the Indian Evidence Act, 1872. The prosecution could not establish the presence of both the accused in the house on the day on which the deceased sustained injuries.

7 The view taken by the Sessions Court is a possible view which could have been taken on the basis of the evidence on record. Hence no case is made out for grant of leave to file an Appeal. Hence, the Application is rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)