

CRIMINAL APPLICATION NO.87 OF 2019

Mr. J.P. Yagnik, APP for the Applicant-State.
Mr. Kuldeep S. Patil for Respondent Nos. 1 and 2.

PC :

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2. Mr. Patil, learned counsel appearing for respondents states that genesis of crime is not proved by prosecution. It was a Rangapanchami day and allegedly there was initial dispute on applying colour. Two or three hours thereafter the alleged crime has taken place. He submits that prosecution has listed about five eye witnesses but then for reasons best known, they were not examined. One of them was examined by accused persons as defence witness. Accused persons also examined independent person who happened to be the eye witness to the incident. The trial court has accepted the version of these eye witnesses examined in defence and found that charge cannot be established against the respondents.

3. The prosecution points out that scuffle between two groups and use of weapon like wooden rod in it, however, who happened to be aggressor has not been established. The trial court has found that injured witnesses and deceased were under influence of liquor and the eye witnesses pointed out that they came to spot and attacked accused persons. The trial court has found that one witness by name Pooja who happened to be the sister of deceased Rajesh in her statement on 7.3.2015 before police had stated that deceased was suffering from problem of vomiting and kidney (urine). Her statement reveals that she had no doubt about the accidental death of

her brother Rajesh.

4. The Judgment impugned before us is delivered on 16.3.2017 in Sessions Case No.78 of 2015. Thus, this Judgment is more than two years after the statement of Pooja before police.

5. It is in this backdrop, the trial court has found it necessary to look into genesis of crime. The prosecution did not place on record report of medical examination of accused persons.

6. If there was attack on accused persons and they were injured, those injuries would have countenanced the defence. Absence of injuries may have assisted the case of prosecution.

7. We therefore find that after appreciating the material evidence, possible view has been taken. There is no perversity. Application is therefore rejected.

(SMT. SWAPNA S. JOSHI, J.)

(B.P.DHARMADHIKARI, J.)