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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.99 OF 2017

The State of Maharashtra

... Applicant

Vs.

Santosh Trimbak Pakhare

... Respondent

Ms. M.H. Mhatre, APP for the Applicant.

Mr. Sushrut Jadhwar for the Respondent.

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

DATE : 7th JANUARY 2019.

P.C.

1 This is an application seeking leave to file appeal under section 378(3) of Code of Criminal Procedure, 1973 impugning the judgment and order dated 24th April 2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.829 of 2015 acquitting the respondent under section 235(1) of Code of Criminal Procedure, 1973 for the offences punishable under sections 302, 324, 323, 143, 144, 146, 147, 148 and 149 of the Indian Penal Code.

2 Heard the learned APP at length and the learned counsel appearing for the respondent. Perused the record.

3 It is the prosecution case that the deceased Amir Jamil

Ahmed Khan - a juvenile in conflict with law (aged about 17 years) on the date of incident i.e. on 18th May 2015 tried to escape from the David Sassoon Hostel between 3.00 am to 7.00 am along with other boys of the said hostel. That when the said boys were attempting to escape from the hostel they were caught by the Karim and respondent employees of the said hostel. It is alleged that the said Karim and respondent mercilessly beat Amir with the aid of a cricket bat. That the respondent along with the co-accused intoxicated by administering bhang to Amir and therefore, Amir could not lodge any complaint with the authorities of the said David Sassoon Hostel.

On 20th May 2015, deceased Amir was released on bail and his father took him to his house. In the night of 25th May 2015, due to the alleged injuries sustained by the deceased Amir he started suffering severe pains and therefore, he was taken to Rajawadi Hospital, Ghatkopar for treatment by his father Jamil Khan. Between 20th May 2015 to 22nd May 2015 Amir was treated in the Outdoor Patient Department of the said Hospital. On 23rd May 2015, Amir (deceased) started feeling difficulty in breathing and therefore, he was again admitted in the I.C.U. Ward of the said Hospital on 23rd May 2015 C.R.No.134/2015 under section 326 r/w of I.P.C. came to be recorded by the Shivaji Park Police Station.

On 28th May 2015 Amir expired. Section 302 was thereafter added to the said crime i.e. C.R.No.134 of 2015 which was already lodged on 23rd May 2015 under section 326 read with 34 of IPC. After completion of investigation, police submitted charge sheet. The trial Court by the

impugned judgment and order was pleased to acquit the respondent from the charges framed against him.

4 As noted hereinabove, the record clearly indicates that on 18th May 2015, the applicant who was an employee of the David Sassoon Hostel along with other accused assaulted Amir with the aid of a cricket bat as Amir had tried to escape from the their lawful custody in the early hours between 3.00 am to 7.00 am. The record further clearly indicates that on 20th May 2015 the deceased was released on bail. After release of the deceased on bail in late night of 20th May 2015 till his death on 28th May 2015, he was taking treatment at Rajawadi Hospital.

In his evidence Shri. Pravin Mhatre (PW-6) who was also a co-detenu with deceased Amir, he has stated that, some of the boys from the said hostel made a plan to escape from the hostel and out of six boys two boys were successful in escaping from the hostel and other boys were unsuccessful. Amir is one such person who is unsuccessful. The record indicates that, it is due to the attempt of escape by Amir, the applicant who was on duty at the relevant time at the said David Sassoon Hostel with a view to teach a lesson to Amir, thrashed him with the aid of a cricket bat. The deceased was alive upto 28th May 2015.

It appears to us from the record that, the respondent did not have intention to commit murder of Amir and as noted earlier, it was with a view to either admonish and/or teach a lesson to Amir, the respondent assaulted him.

5 There is another facet to the prosecution case. The trial Court in its impugned judgment and order has observed that, the autopsy surgeon in its testimony has deposed that some of the injuries on the person of the deceased Amir were friction contusions and were possible due to strong friction. The trial Court has recorded a finding that, there was possibility that, during the time of attempt of escape by deceased Amir the children who had already came out of the broken door would have been dragging him out from the narrow broken door. During the said attempt the deceased Amir might have sustained the said injuries (abraded contusion).

 In view of the above, we are of the considered opinion that the view adopted by the trial Court is a reasonable and probable view in the facts and circumstances of the present case.

 We find no merits to grant leave to file appeal.

 Application is accordingly rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)