

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 135 OF 2016**

The State of Maharashtra

.....Applicant

Vs.

Karan Paresh Kakkad & Anr.

....Respondents.

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

Ms. Vrishali R. Raje for Respondent No.1.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 4th JANUARY, 2019.

P.C.:-

This is an Application for leave to prefer an Appeal, under Section 378 (3) of the Code of Criminal Procedure, 1973. The Respondents have been acquitted from the offence punishable under Sections 302, 201 and 328 read with Section 34 of the Indian Penal Code, by the learned Additional Sessions Judge, Palghar in Sessions Case No.65 of 2013, by its Judgment and Order dated 19th January, 2016.

2 Heard the learned APP and the learned counsel appearing for the Respondent No.1. Perused the record.

3 The Respondents were charged for commission of murder of Narendrabhai Punjabhai Tilwa, by assaulting on his head with the aid of a stone and for destruction of evidence as contemplated under Section 201 of the Indian Penal Code.

 The record indicates that, the vital connecting link for establishing the identity of Narendrabhai P. Tilwa, is missing from the case of the prosecution. The prosecution has failed to prove the vital aspect of the matter that, the body which was found by P.W. No. 1 was of Narendrabhai P. Tilwa.

4 The Respondents were specifically charged for murder of Narendrabhai P. Tilwa and as the identity of the alleged dead body of Narendrabhai P. Tilwa, itself is doubtful. The prosecution has miserably failed in connecting the Respondents with the commission of murder of Narendrabhai P. Tilwa. It is to be further noted here that Dr. Chandrajeet Rawal (P.W. 28) in his deposition has stated that, the dead body was in a totally decomposed condition and it was very difficult to even identify as to whether the body sent for autopsy was of a male or a female.

5 After perusing the entire record, we are of the considered opinion that, the view adopted by the Trial Court, acquitting the

Respondents is a probable view in the facts and circumstances of the present case. No interference by this Court is necessary with the impugned Judgment and Order.

Application for leave is accordingly rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)