

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 97 OF 2018

The State of Maharashtra. ... Applicant.
V/s.
Suresh Dhondu Nakate and others. ... Respondents.

Ms.P.P.Shinde, APP for the applicant.
Mr.A.S.Kadam i/b. S.C.Mangle for respondent Nos.1 to 4.

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

DATE : 13th February 2019.

P.C. :

The applicant- State has sought leave to prefer an appeal against the Judgment and Order dated 13th June 2017 passed by the learned Sessions Judge, Ratnagiri in Sessions Case No.7 of 2015 acquitting the respondents for the offences punishable under sections 302, 326, 324 read with 34 of Indian Penal Code (for short "IPC").

2. Heard the learned APP for the applicant-State and the learned counsel for the respondents. Perused the record including the notes of evidence.

3. The name of the deceased is Eknath Nakate. The date and time of the incident is 24th September 2014 at about 10.30 p.m.

It is the case of the prosecution that, prior to the alleged date of incident, during Ganesh festival of the year 2014, 'Aarati' of Lord Ganesh was in progress when the respondent No.1- accused No.1 came at the said place in inebriated condition to which the complainant/deceased objected and reprimanded him. The complainant/deceased also admonished him warning not to come to Aarati in a drunken condition. Therefore, the respondents were having grudge in their mind against the deceased. That on 24th September 2014 at about 10.30 p.m. when the informant (deceased Eknath) was returning home, it is alleged that the respondents assaulted him. It is further alleged that the respondent No.1- Suresh Nakate assaulted him with a wooden stick and other accused persons assaulted him with fists blows. When the informant tried to get up, the respondent No.1 pushed him below the road because of which the informant sustained injury to his head, neck and waist and he became unconscious. The informant (deceased Eknath) was admitted to Civil Hospital, Ratnagiri on 25th September 2014 and was, subsequently, shifted to K.E.M. Hospital at Mumbai. On 27th September 2014, Eknath regained consciousness. From the record, it appears that on 4th October 2014, Eknath was discharged from K.E.M. Hospital and thereafter, on 9th

October 2014, he lodged present crime with Nate Police Station under section 326 read with section 34 of IPC.

Eknath subsequently died on 16th November 2014 due to medical complications and after his death section 302 of IPC was added to the crime.

4. The chronology of events mentioned hereinabove is as per the record. The record further indicates that, as the deceased had admonished the respondent No.1 in Ganesh festival of 2014, not to attend the religious function 'Aarati' in inebriated condition, the respondents were having grudge in their mind and therefore, on 24th September 2014, they assaulted Eknath with stick and fist blows. It is to be noted here that though Eknath Nakate was discharged from K.E.M. Hospital on 4th October 2014, he lodged FIR under section 326 read with section 34 of IPC on 9th October 2014. The record indicates that the prosecution has not explained the said delay on the part of the first informant in lodging the complaint belatedly. The record further indicates that the Medical Officer, namely, Dr.Mahesh Ardale (PW4) in his cross-examination has admitted that, anti-mortem injuries on the body of patient (deceased Eknath) "can be caused due to fall from the height of 5 feet". He has

further admitted that the patient (deceased Eknath) was properly treated and due care of the injuries was taken. He has further admitted that, had the patient did not have bed sores, he would not have died. In view of the aforesaid facts, the trial Court has recorded a finding of acquittal of the respondents.

5. After perusing the entire record, we are of the opinion that the view adopted by the trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case is made out for grant of leave to prefer appeal.

The application is accordingly rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)