

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.100 OF 2018

The State of Maharashtra

... Applicant

Vs.

Jagannath Javu Mhatre

... Respondent

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

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

DATE : 23rd JANUARY 2019.

P.C. :

1 By the present application under section 378(3) of Code of Criminal Procedure, 1973, the State has sought leave to file appeal against the judgment and order dated 5th October 2017 passed by the learned Additional Sessions Judge, Greater Mumbai in Sessions Case No.536 of 2016 acquitting the respondent from the offence punishable under section 302 of the Indian Penal Code.

2 Heard the learned APP and perused the entire record.

3 It is the prosecution case that the prosecution witness – Ratna (PW-3), daughter of the respondent was having an affair with the deceased Ijhar. That, on some occasions, Ratna used to reside with Ijhar. That, on the date of incident at about 12.30 am in the midnight, the deceased came to the house of Ratna and gave her call to come out.

Ratna accordingly accompanied him and went near a boat at the seashore and they were talking with each other. It is alleged that, at that time, the respondent came at the scene of offence and assaulted Ijahar with bamboo stick. After completion of investigation, Police had submitted charge sheet.

4 The evidence on record indicates that the Medical Officer has given opinion as to the cause of death as “death due to asphyxia due to throttling”. Eye witness i.e. Ratna (PW-3) in her testimony has stated about the fact that, the respondent assaulted Ijahar (deceased) with a bamboo stick causing injuries on his person. It is to be noted here that there are material inconsistencies in the two statements of Ratna (PW-3) recorded under section 161 by the Police and under section 164 of the Code of Criminal Procedure by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai. The respondent in his cross examination has brought on record material admissions at the behest of Ratna (PW-3) who was an eyewitness to the alleged incident. Ratna has admitted that she was also having habit of consuming liquor while she was staying at her parent’s house. That there used to be quarrel between Ratna (PW-3) and Ijahar after both of them consume liquor. A minute scrutiny of the evidence of Ratna indicates that her testimony is not reliable and is lacking credence.

5 After taking into consideration the entire evidence available on record, this Court is of the view that the trial Court has not committed any error either in law or on facts while acquitting the respondent from the charges framed against him. The view adopted by the trial Court is a reasonable and probable view in the facts and circumstances of the case.

6 We find no merits in the application for grant of leave.
Application is accordingly rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)