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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.155 OF 2017
IN
CRIMINAL APPEAL NO. OF 2017

The State of Maharashtra	... Applicant
Vs.	
Dattatray Sopan Khosale	... Respondent

Mr. J.P. Yagnik, APP for the Applicant.

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

DATE : 7th JANUARY 2019.

P.C. :

1 Heard the learned APP in support of this application for grant of leave to prefer an appeal against the judgment and order dated 12th October 2017 passed by the learned Additional Sessions Judge, Mumbai. By the impugned judgment and order, the respondent – accused was acquitted for the offences punishable under section 302 of the Indian Penal Code as well as sections 4 and 25 of the Arms Act.

2 The deceased was the wife of the respondent. The case of the prosecution is that there used to be frequent quarrels between the respondent and the deceased and therefore, very often she was forced to visit the place of residence. The case of the prosecution is that due to the

efforts made by a women's organisation that on 14th May 2014 the deceased came back to her matrimonial home. The case of the prosecution is that even thereafter, the disputes continued. On 4th June 2014, the children of the deceased had gone for a trip with the neighbour. On that day, the respondent – accused came to the house at 9.30 pm. At about 1.00 pm, he started mercilessly beating the deceased which led to her death.

3 PW-1, 2, 5 and 6 are the eye-witnesses to the alleged incident. They were related to both the respondent as well as the deceased. All of them were declared as hostile. The learned APP submitted that PW-4 Mandar who was on patrolling duty in the relevant night, came to know about the incident. He was the first to reach the spot at about 1.45 am. He found the respondent – accused in the room and dead body of the deceased was lying in a pool of blood and he took the respondent into custody. He pointed out that the evidence on record shows that clothes on the person of the respondent were stained with blood. The learned APP would, therefore, submit that in the close proximity of the incident, the respondent – accused was found in the same room in which the body of the deceased was lying and therefore, this is a fit case where trial Court ought to have convicted the respondent – accused.

4 We have considered the submissions. As stated earlier, the four prosecution witnesses who were allegedly the eye-witness did not support the prosecution. We have perused the evidence of PW-4 – Mandar. In his evidence, he has stated that some people outside the house

of the respondent told him that the respondent has assaulted his wife with Suri and Koyta. As noted by the learned Additional Sessions Judge, these persons have not been examined by the prosecution. As per the prosecution case, there were blood stains on the shirt and trouser found on the person of the respondent. Though there is some dispute raised by the respondent about that, we find that there is a clear finding recorded in paragraph 49 that the evidence regarding the blood group of the deceased is not placed on record by the prosecution and in fact her blood sample was not sent to FSL for determination of blood group. Therefore, assuming that there were blood stains on the clothes of the person of the respondent at the time of his arrest, it was not possible to hold that the blood stains were of the blood group of the deceased.

5 After having gone through the notes of evidence which are annexed to the application, we find that the view taken by the Additional Sessions Judge is certainly a possible view which could have been taken on the basis of the evidence on record. We find no perversity in the said view. Therefore, no case is made out for grant of leave. Application for leave is rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)