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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.582 OF 2018

Mohd. Asif Fakir Mohd. Khan	... Applicant
Vs.	
State of Maharashtra and Anr.	... Respondents

Mr. Ganesh K. Gole for the Applicant.
Ms. M.H. Mhatre, APP for the Respondent No.1.
Mr. Mobin Solkar a/w Mr. Aamir Supariwala I/by Tabeeza Qureshi for the
Respondent No.2.

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

DATE : 7th JANUARY 2019.

P.C. :

1 Heard the learned counsel appearing for the applicant in support of this application for grant of leave. The applicant has sought leave to prefer an appeal against the order dated 17th February 2018 passed by the learned Additional Sessions Judge, Mumbai by which he has acquitted the respondent who was charged with offences punishable under section 307 of the Indian Penal Code.

2 The applicant (PW-2) is the victim of the alleged offence. When we invited attention of the learned counsel appearing for the applicant to the findings recorded by the learned Sessions Judge in

paragraph 12 of the impugned judgment and also to the statements made in paragraph 5 of the cross-examination of the applicant, the learned counsel appearing for the applicant seeks to rely upon the statement of the applicant under section 161 of the Code of Criminal Procedure, 1973 recorded in investigation and contended that the prosecution ought to have pointed out the applicant had stated therein that the respondent accused was holding an iron rod and that he assaulted the applicant.

3 For the sake of reference, we may quote paragraph 5 of the cross-examination of the present applicant which reads thus :-

“5. Out of police station my Kinetic Honda was parked when I went to police station on 11.11.2011. Two tins of paint and cement packets were kept on the Kinetic Honda on a space in between two wheels. Those articles were on the Kintetic Honda when the same was parked on footrest. Again I say that there were no articles on the footrest of the kinetic Honda when it was parked in police station. Prior to the incident the speed of my bike was 20 km per hour. At the time of incident there was traffic on S.V. Road. Due to traffic the speed of bike was 20 km PH. It is not true to say that due to the article kept on the footrest I was riding bike in slow speed from the left side of the road. I had not stated to the police that due to the articles kept on the bike I was riding in slow speed from the left side. Whatever written to that effect in statement is incorrect. Portion marked A in my statement is not correct. I cannot assign any reason why the same is recorded in my statement. It did not happen that I dashed to accused and therefore we both fall down. I had not stated before police that my bike gave dash to the accused and therefore we both fall down on road. **In incident it did not happened that my scooter gave dash to the accused and therefore we both fall down. It did not happened that accused came ahead of my scooter and therefore scooter dashed to him and we**

both fall down. Portion marked B in my statement is not correct. It did not happened in the incident that I gave fist blow on the nose of accused. Portion marked C was not stated by me before police. I cannot assign any reason why the same is recorded by police in my statement. I required 20 to 25 minutes to go to Oshiwara police station from the spot. As I was injured I went slow to police station. I have not stated before police that incident took place in front of Bombay Mercantile Bank. I raised hand to stop and I stopped the bike. I had stated before police that accused was holding iron road and he assaulted me. I cannot assign any reason why the same is not recorded by police in my statement. I stated to the police that accused thrown the iron rod and lifted one stone and hit me on my left hand due to which I fall down. I cannot assign any reason why the same is not recorded in my statement recorded by police.”

4 Acquittal of the respondent is mainly based on this portion of the evidence PW-2. The Sessions Court found that there are material omissions in the evidence of the applicant. Moreover, the Sessions Court found that there are cross-cases for the same incident which took place on S.V. Road in Mumbai in daylight but there is no witness to the incident and it is a case of word against word. Cross-cases resulted in acquittal. After having perused the evidence of PW-2 (applicant) and the findings recorded by the learned Sessions Judge, we find that the findings are certainly possible findings which could have been recorded on the basis of the evidence on record. Hence, no case is made out for grant of leave. Application is rejected.

(A.S. GADKARI, J.)

(A.S.OKA, J.)