

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.127 OF 1997

The State of Maharashtra.

**....Applicant.
(Ori. Complainant)**

Versus

Vajnath S/o Ashruba Gade,
Age:25 yers. Occu.Agriculture.
R/o Antapur Tq. Patoda.
Dist. Beed.

**...Respondent.
(Org.accused)**

.....
Shri K.S. Patil, APP for appellant.
Shri V.M. Chate, Advocate for respondent.
.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 08.10.2015

ORAL JUDGMENT (Per A.B. Chaudhari, J.) :

1] Being aggrieved by the judgment and order dated

- 2 -

15.1.1997 passed by the learned Additional Sessions Judge, Beed, in Sessions Case NO.137/1995 by which the sole respondent – accused was acquitted for the offence punishable u/s 302 of the Indian Penal Code, the instant appeal was filed by the State against the order of acquittal.

2] In support of the appeal, the learned APP contended that there is evidence of the witness PW4 Dnyandeo on the last seen theory propounded by the prosecution. It is submitted that the respondent and the deceased had gone together in a Bus and they got down at Antapur and thereafter dead body of deceased was seen by the side of the road. He, therefore, submitted that the judgment in question is perverse and, therefore, interference is required in the matter.

3] Per contra, the learned counsel for the respondent supported the impugned judgment and order and submitted that this is a case of no evidence and, therefore, the acquittal of the respondent was rightly ordered by the trial Court and, therefore, he prayed for dismissal of the appeal.

4] We have perused the impugned judgment and order. We

- 3 -

have also perused the evidence of PW4 Dnyandeo, which is the only evidence available with the prosecution. Dnyandeo stated in his evidence in paragraph no.2 that while he was talking to some other persons at the hotel in front of sugarcane factory at Jamkhed, he saw accused Vaijinath moving around him and that when he was in hotel, the deceased was also in the hotel. He then stated that he then came to know the death of Aba Gade. We do not think that this can be said to be an evidence of last seen.

5] The learned APP contended that PW9 Balu is the witness on extra-judicial confession. We have perused his evidence. We find the said evidence as it is in the category of a weak culpatory evidence. That apart, we find that the learned trial Judge found that there is no corroborative evidence to the alleged extra-judicial confession and in the absence of corroboration, it was highly risky to convict the respondent on such type of evidence, that too is said to be tape-recorded, without the authenticity of tape-recording.

6] We do not think that the approach of the learned trial Judge can be said to be faulty in any manner.

- 4 -

Consequently, we do not find any merit in this appeal.

Hence, the following order.

ORDER

Criminal Appeal No.127/1997 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)