

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2683 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
SANTOSH @ BANDU BABURAO BORHADE AND ANOTHER

...

APP for Applicant : Mrs. P. J. Bharad
Advocate for Respondent No.1 : Mr. K.N. Shermale
Advocate for Respondent No.2 : Mr. S.D. Kotkar

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 7TH JANUARY, 2015.

PER COURT:

1] Heard learned APP for the applicant, learned counsel for the respondent/accused. Perused the notes of evidence.

2] Learned APP invited our attention to the evidence of eye witnesses and also to medical evidence and submits that the trial court has not properly appreciated the evidence of the eye witnesses and passed the impugned judgment and order.

3] On the other hand, learned counsel for the original accused, invited our attention to the fact that the prosecution has not brought on record the place of the incidence and, therefore, the benefit of doubt is rightly given to the accused. There was inordinate delay in lodging FIR. The learned counsel for the respondent relied upon the findings recorded by the trial court to contend that the application may be rejected.

4] We have heard the learned APP for the State, learned counsel for the respondent and perused the findings recorded by the trial court. Prima facie, it appears to us that the findings recorded by the trial court are

not in consonance with the evidence of the eye witnesses, taking into consideration the evidence of the eye witnesses that they were about to proceed from village Tarol to Talegaon and on the way, accused No.2 Sopan met the deceased. Therefore, prima facie, it appears to us that the appreciation by the trial court is not correct. In the circumstances, case is established to allow the application. The application is allowed in terms of prayer clauses (A)(B)(C) and (F). The application is disposed of.

5] Admit Appeal.

6] Learned counsel waive notice for respondents.

7] Action under Section 390 of Cr.P.C. to follow before the Sessions Court at Sangamner.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-