

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

CRIMINAL APPLICATION NO. 4554 OF 2014

THE STATE OF MAHARASHTRA
VERSUS
AZIZ KHAN MOHAMAD KHAN AND ANOTHER

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APP for Applicant/State : Mr. V.D. Godbharle.

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CORAM : S.S. SHINDE & A.I.S. CHEEMA, JJ.

Dated: JUNE 30, 2015

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Heard learned APP for the applicant / state. He submits that the memorandum statement at Exh.74 and recovery panchanama at Exh.75 were duly proved by the prosecution. The gold ornaments were recovered from the shop of accused No.2 in pursuance to the memorandum statement given by the accused. It is submitted that when the ornaments were recovered from the shop of accused No.2, the trial Court ought to have accepted the prosecution case that the respondents / accused have committed the offences alleged. It is submitted that the application may, therefore, be allowed.

2 Heard learned APP for the applicant / State and with his able assistance, perused the record and proceedings. It appears that the identification parade was carried out after four years from the date of the incident. The trial Court has considered the manner in which the identification parade was carried out. It was not in accordance with the procedure laid down in the manual. Apart from that, so far as memorandum statement is concerned, it appears that the P.W.7 has not supported the case of prosecution. The trial Court had an occasion to see the gold ornaments allegedly recovered from the accused No.2 and observed that the said ornaments appeared to be new and did not match the prosecution case that those were snatched by the accused four years back and accused No.2 maintained the said ornaments in his shop. When the entire prosecution case rests upon circumstantial evidence and alleged offences were punishable under Sections 392, 413 r/w 34 of IPC, it was incumbent upon the prosecution to conduct identification parade at the earliest. However, belated identification parade and that too, in an improper manner, created serious doubt about the prosecution case. Apart from that, it is highly improbable that the accused No.2 would purchase and keep the stolen ornaments in his custody in the same form for more than four years. The trial

Court, after taking into consideration the evidence brought on record, has taken a possible view. There is no perversity in the findings recorded by the trial Court.

3 In the light of above, the prayer seeking leave to appeal stands rejected. Criminal Application stands disposed of.

(A.I.S. CHEEMA, J)

(S.S. SHINDE, J)

kadam/