

FARAD CONTINUATION SHEET NO.

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

CRIMINAL REVISION APPLICATION NO. 195 OF 2012**[Gulab s/o Bajirao Hiwarde vs The State of Maharashtra and others]**

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

Court's or Judge's orders

Shri B.M.Dhanure, advocate h/f
Shri K.M.Nagarkar, advocate for the applicant
Shri V.D.Godbharle, A.P.P. for respondent/State

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CORAM : V.M.DESHPANDE, J.

DATED : 10th March, 2015

PER COURT :-

1] By the present Revision, the applicant, who is a first informant, is questioning the correctness of the judgment and order of acquittal, passed by the Ad hoc Additional Sessions Judge, Aurangabad, dated 22.1.2009 in Sessions Case No. 52 of 2006, whereby the learned Judge of the court below acquitted non-applicant nos. 2 and 3 for the offence punishable under Section 302 r/w 34 of the Indian Penal Code.

2] The State has not filed any appeal against

acquittal.

3] The applicant lodged the first information report (Exh.7) on 19.1.2005. Therefore, the Revision at his behest is perfectly maintainable.

4] The entire case of the prosecution is based on the circumstantial evidence.

By now, the criteria for evaluation of the prosecution case, which is solely based on circumstantial evidence, by the court, is laid down in the authoritative pronouncement in the case of **Sharad Birdhi Chand Sarda vs State of Maharashtra**, reported in **AIR 1984 SC 1622**, which has settled five golden principles for evaluation of the prosecution case solely based on the circumstantial evidence.

5] The learned counsel for the applicant was unable to point out any other incriminating circumstance against the non-applicant nos. 2 and 3, except motive which is also proceeded just like a lame duck in view of the statement of PW 8 Tarabai, who has also stated that even prior to the execution of the sale deed in favour of the father of one of the accused, the deceased had executed sale deed in favour of one Kala Seth.

6] In that view of the matter, it is clear that the prosecution case does not travel beyond the motive, that by itself cannot be the basis for the conviction in absence of any other incriminating circumstance.

7] The learned Judge of the trial court has correctly evaluated the prosecution case and reached to the conclusion that the prosecution has failed to bring home the guilt of the non-applicant nos. 2 and 3 beyond reasonable doubt.

8] The scope of the Revision against acquittal is limited. In view of the fact that there is no perversity in the impugned judgment, the Revision fails and it is dismissed.

[V.M.DESHPANDE, J.]

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