

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2541 OF 2011

The State of Maharashtra,
through Police Station,
Ahmedpur, District Latur

APPLICANT

VERSUS

1. Gopal s/o Sidram Mekle,
Age : 24 years, Occu. Agri.,
R/o Sora, Taluka Ahmedpur,
District Latur
2. Maruti s/o Dhondiba Pitle,
Age : 30 years, occu. Labour,
R/o Walsangi, Tq. Ahmedpur,
District Latur

RESPONDENTS
(Ori. Accused)

Mr. M.M. Nerlikar, A.P.P. for the applicant/State
Mr. Abhay R. Rathod, Advocate for the respondents

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 14th September, 2016

PER COURT :

Heard the learned A.P.P. for the
applicant/State and the learned counsel for the
respondents/original accused.

2. The learned A.P.P. invites our attention to the

evidence of the prosecution witnesses and submits that the findings recorded by the learned Trial Court and in particular, in paragraph No. 12 thereof are contrary to the evidence of Devidas Dhole (PW4). He submits that in the absence of any cross-examination, there was no occasion for the learned Trial Court to record the finding that in the FIR, the informant has not stated that the accused were sitting in Sonalika tractor and they were standing in the field. He, therefore, submits that the application deserves to be allowed.

3. On the other hand, the learned counsel for the respondents/accused submits that in the FIR, the informant has stated that the accused were standing in the field. The prosecution has not brought on record that the said field belongs to him and also there is improvement in the version of Devidas (PW4) inasmuch as, in his evidence before the Court, he has stated that the accused were sitting in Sonalika tractor and therefore, the learned Trial Court, in paragraph No. 12 of the impugned judgment, has recorded the finding that the version of Devidas (PW4) is an improvement before the Court.

4. We have considered the submissions advanced by the learned A.P.P. and the learned counsel for the respondents. With their able assistance, we have perused the notes of evidence. Upon careful perusal of the evidence of Devidas (PW4) and in particular his cross-examination, it appears that the said witness was not specifically confronted with the contents in the FIR. Therefore, in the absence of such exercise in the cross-examination, prima facie it appears to us that the findings recorded by the learned Trial Court in paragraph No. 12 of the judgment are not correct. In that view of the matter, the application deserves to be allowed. Hence, the following order :-

O R D E R

- (i) The criminal application is allowed.
- (ii) The leave to file appeal is granted.
- (iii) The office to register the appeal.
- (iv) On registration of the appeal, it stands **admitted**. On admission of the appeal, the learned

counsel for the respondents waives notice for them.

(v) The action under section 390 of the Code of Criminal Procedure to follow before the Sessions Court at Udgir.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE

npj/criapln2541-2011