

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 45 OF 2016
IN
SESSIONS CASE NO. 786 OF 2013

Aliraza @ Salman Sirajuddin Shaikh

.....Applicant/
Original Accused no.1

V/s.

The State of Maharashtra

.....Respondent

* * * * *

Ms. Naima Shaikh i/by. Khan Abdul Wahab, Advocate for the applicant.

Mr. Deepak Thakare, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2016.

P.C. :-

1). The applicant is accused no.1 in Sessions Case No. 786 of 2013 for the offences punishable under Sections 302, 201 Indian Penal Code for the murder of his wife, Parveen and disposing off her body. The evidence in the trial was completed on 29th September, 2015. The statement of the accused persons under Section 313 Criminal Procedure Code was concluded on 6th November, 2015. The arguments on behalf of the State and accused no.2 were heard and completed on 26th November, 2015. The submissions on behalf of

accused nos.1 and 3 were completed on 2nd December, 2015 and the matter was adjourned to 4th December, 2015 on which date the citations on behalf of the accused were submitted. On 9th December, 2015 the State filed an application at Exhibit-89 for recall of witnesses. By the order dated 23rd December, 2015 that application was allowed. The original accused, has therefore filed the present Revision Application to challenge the order.

2). During the course of their submissions in the trial, it was pointed out on behalf of accused nos.1 and 3 that the prosecution case of use of a two-wheeler “Activa” by accused no.1 in disposing off the body is not established since the vehicle was not shown to the pancha who had been examined. The learned APP, therefore on 9th December, 2015 filed the application at Exhibit-89 stating that the prosecution had examined P.W.4 and 5 to establish recovery of the vehicle but it was unable to point out the vehicle to them. The application, further states that the vehicle was not in a condition to produce before the Court and therefore the same was not shown to the witnesses for identification. The request for recall of the witnesses was made with a submission that the case was serious in nature and important evidence was required to be produced before the Court.

3). Perusal of the application, shows that it does not specify the witnesses to be recalled. In the circumstance, the same ought to have been treated as an absolutely vague application and rejected on that ground itself. In any case, in the absence of a specific prayer, the application could have been treated as application for recall of only P.W.4 AND P.W.5 and no one else. The

impugned order, at para-8 considers recall of P.W.9, the Investigation Officer. But the operative part of the order is silent on the witnesses to be recalled. Further perusal of the record shows that, P.W.4 and P.W.5 are not really concerned with the recovery of the vehicle. P.W.5 is the owner of the vehicle who claims to have allowed accused no.1, at his request to use the same. He further states that, on the next day, the vehicle had been returned to him. Since this witness has not referred to use of the vehicle in connection with the crime, there was no question of showing the vehicle to him. It is the Investigation Officer alone, who makes a statement connecting the vehicle to the crime. According to him, one of the co-accused has disclosed during interrogation that the vehicle was used in committing the offence. The statement of the accused cannot be used in evidence. In the circumstances, the impugned order is completely unsustainable. Hence, the Revision Application is allowed in terms of prayer clause (i).

(SMT. R.P. SONDURBALDOTA, J)