

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (APPA) No.115/2016
in
Criminal Appeal No.458/2015.
(Maroti Baliram Nagare .vs. Pradip Ramsingh Chavan and others.)

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

Smt. Neeta Jog, Advocate for Applicant.
Ms. Geeta Tiwari, APP for Respondent No.3.

CORAM : B.R. Gavai & V.M. Deshpande, JJ.
DATED : June 08,2016.

1. The appeal challenges the order of acquittal as recorded by the learned Sessions Judge, Washim dated 3.8.2015 thereby acquitting accused nos. 1 and 2.

2. Smt. Jog, learned counsel appearing on behalf of the victim submits that the learned trial Judge has grossly erred in disbelieving the testimony of PW3 Prakash Kalapad who is an eyewitness. The learned counsel submits that on the basis of the testimony of the said witness, a conviction ought to have been rested by the learned trial Judge.

3. The learned trial Judge has disbelieved the testimony of PW3 on the ground that his evidence is not credible and appears to be a got up witness.

4. We have also examined the testimony of the said witness. This witness states that when he had started from his village on his motorcycle via Asegaon-

Dhanora for going to Ansing to take hand loan from Satish Laxman Kalpad, he noticed that one person was lying on earth soaked with blood by the side of the road. He has further stated that he had seen it from the distance of 20 to 25 feet. There was a boy of the age of 18 to 20 years wearing black colour jean pant and curdi colour full shirt. He lifted a stone and struck it on the head of the person lying on the earth. There was flow of blood and brain came out of head. When he reached near that boy, he saw towards him with anger and, therefore, he had frightened. The witness thought that boy may assault on him as he had seen the incident. Therefore, he went to Ansing. From Ansing, he went to Washim. He took tea at Washim and thereafter went back to his village via Shelu-bazar. He reached at his house at 7 p.m. He came to know that there was murder of Haribhau Nagre. It struck to him that the incident which was witnessed by him was in respect of Haribhau Nagre. He states that on the next day he informed to Keshav Kalapad on phone that he had witnessed the incident. Thereafter he attended the funeral. After attending the funeral, he went to the Police Station.

5. The perusal of his cross-examination would reveal that though he had an opportunity to inform the relatives of the deceased in the funeral itself, he had informed none. No doubt that in the identification parade held by the Tahsildar he has identified accused no.1. The perusal of his evidence would reveal that though he states that he had gone to Wshim and took

tea there and though various traffic Police were available on that road, he did not find it necessary to inform about the incident to anyone.

6. It is further to be noted that the evidence of the Tahsildar would show that the necessary formalities with regard to conducting of the identification parade as per the Manual were also not complied by him. As such the identification parade also cannot be said to be in accordance with the Manual.

7. The view taken by the learned trial Judge cannot be said to be either perverse or impossible to warrant interference. It cannot be said that the approach of the learned trial Judge in disbelieving the testimony of PW3 can be said to be perverse. If the testimony of PW3 goes, then the case would be based on circumstantial evidence. In such a case the prosecution would be required to prove each and every circumstance beyond reasonable doubt which is so interwoven to each other that it leads to no other conclusion than the guilt of the accused. Undisputedly the same has not been done in the present case.

8. In that view of the matter it cannot be said that the view taken by the learned trial Judge is either perverse or impossible. The application is, therefore, rejected.

JUDGE

JUDGE