

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

CRIMINAL REVISION APPLICATION NO. 72 OF 2015

(Raya Gopalrao Moon Vs. The State of Maharashtra through P.S.O., Pulgaon)

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

Court's or Judge's orders

Shri R. M. Daruvala, Advocate (appointed) for the
appellant.

Shri R. S. Nayak, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : 06 JUNE, 2016

Heard.

This revision has been filed challenging legality and correctness of the judgment and order passed by the learned Ad-hoc Additional Sessions Judge, Wardha on 16/9/2009 in Criminal Appeal No. 47 of 2004, thereby dismissing the criminal appeal filed by the revision-applicant against the judgment and order of his conviction under Section 380 of the Indian Penal Code by Judicial Magistrate, First Class, Pulgaon in Regular Criminal Case No. 127 of 2002.

I have carefully gone through the judgments of both the Courts below as well as copy of the depositions filed on the record of the case. On carefully going through them, I do not see any perversity or arbitrariness or any patent illegality committed by either of the Courts below.

This is a case based upon the recovery made under Section 27 of the Indian Evidence Act. The evidence of the Investigating Officer, P.W.-7, P.S.I. Dekate in this regard is extremely important. On course, the learned Counsel for the revision-applicant has submitted that both the panch witnesses on this part of the evidence have turned hostile and, therefore, Section 27 recovery cannot be believed. But, the law in this regard is well settled. It makes the evidence of the Investigating Officer who records discovery statement and effects the recovery of the incriminating articles at the instance of the accused as pivotal while considering the reliability or otherwise of the evidence relating to recovery made under Section 27 of the Indian Evidence Act. On going through his evidence, I find that there is nothing in his entire evidence which enables me to doubt the discovery statement recorded by him as well as the recovery effected at the instance of the accused. There is also corroboration to his statement from P.W.-5 Gajanan, the swimmer, who jumped into the well water and brought out from its bottom the incriminating article, a tin box, which has been identified by the complainant P.W.-1 Vishwanath. In view of such an evidence available on record, there is no scope for making any interference with the impugned judgment

and order. The revision application, therefore, deserves to be dismissed.

The revision application stands dismissed.

The fee of Shri Daruvala, learned Counsel for the revision-applicant is quantified to be at Rs.5,000/- (rupees five thousand only).

The copy of the order be forwarded to the appellant through the concerned Superintendent of Jail.

JUDGE