

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.635 OF 2014

Kishor Mahadev Tonpe	 Appellant
Vs.	
State of Maharashtra & Others	 Respondents

None for the Appellant.
Ms M.M. Deshmukh, APP, for the Respondent-State.
Mr. Tanmay Vispute h/f Mr. Hasan Patel for Respondent No.2.
Mr. Nitesh J. Mohite i/by Mr. J.D. Mane for Respondent No.3.
Mr. Sagar Tambe h/f Mr. Ritesh Thobde for Respondent Nos.4, 5 & 6.
{Mr. D.G. Khamkar for the Appellant in connected Appeal No.126/2013}

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 29, 2017

P.C:

1. This appeal was called out in the morning session. It invokes Section 372 of the Code of Criminal Procedure, 1973. By relying on that provision the appellant contends that being a

victim, by virtue of the proviso to Section 372, he shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

2. The appellant says that he is the first informant in C.R. No.14 of 2012, registered with Kurduwadi Police Station alleging offences punishable under Sections 364 & 302 of the Indian Penal Code against accused No.2 (the second respondent to this appeal) as also the other accused, namely, respondent Nos.3 to 6 for together they have caused the murder of Kasturabai, mother of this appellant. A property dispute led to this gruesome act and that is how the crime was registered, investigations were completed, charge-sheet was laid and the case committed to trial by the Competent Criminal Court. The Sessions Case No.147 of 2012 resulted in acquittal of the accused in that case. That is how, as a victim being dissatisfied with the Judgment and Order of acquittal, dated 18-12-2012,

this appeal is presented on several grounds.

3. Though this appeal was filed in this Court way back on 15-4-2014, it is unfortunate that initially nobody appeared when the matter was listed on 26-8-2014.

4. On 9-9-2014 as well, this Court on humanitarian grounds adjourned the appeal when neither the appellant nor his Advocate were present. After that date same thing followed on 12-9-2014.

5. It has been repeatedly told to this Court that this criminal appeal was dismissed but that dismissal has resulted in serious miscarriage of justice. That is how on the request of the applicant/appellant, the appeal was restored to file on 29-11-2016.

6. At that time this Court was informed that one Rajesh S. Jadhav was engaged by the appellant as his Advocate. Advocate Mr. Priyal G. Sarda was discharged and that is reiterated by him today as well.

7. However, on 22-12-2016 once again this Court noted that the appellant and his Advocate are absent. The appeal, therefore, was adjourned to 23-2-2017. It did not appear on the board or appeared but did not reach or was not taken up. On 18-4-2017, once again the appellant was absent and the matter was adjourned to 20-6-2017. On 20-6-2017, the appellant's Advocate was present but did not argue the appeal. There was an adjournment sought and thus continues the story that though listed but not called out or listed and called out, both the appellant and his Advocate were absent or were seeking adjournments. Beyond that they are not evincing any interest in proceeding with this appeal.

8. Today also, it was called out twice but on both occasions we noted that the appellant and his Advocate are absent. Though the name of Mr. Priyal G. Sarda has appeared on the board, he has not been engaged to argue the appeal by the appellant. In these circumstances and purely by the conduct of the appellant, we are constrained to dismiss this appeal for want

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of prosecution. It is accordingly dismissed.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)