

Sessions Judge is totally perverse. It is submitted that the then learned Sessions Judge has observed that the prosecution has established recovery of mobile phone at the instance of the Applicant, still the learned Sessions Judge has acquitted the accused.

4 It is now well settled that the scope for interference with the Judgment and Order is very limited and unless it is found that the view taken by the learned Trial Judge is perverse, this Court would not interfere.

5 It is further to be noted that in the present case the case is based on the circumstantial evidence and there is no direct evidence. In case of circumstantial evidence, the prosecution has firstly to prove incriminating circumstances beyond reasonable doubt. Secondly, the prosecution has to establish the chain of circumstances so as to prove that it leads to no other conclusion than the guilt of the accused. As held by the learned Apex Court in the case of **Sharad Sarda Vs The State of Maharashtra**¹, between 'may' and 'must' it is not

1 AIR 1984 (SC) 1622

only the grammatical distinction which is made, but also a legal distinction.

6 Perusal of the Judgment and the Order of the Learned Sessions Judge would reveal that insofar as the recovery of mobile is concerned, though the same is sought to be made on the basis of the information under Section 27 of the Evidence Act, such circumstances have not been found to be proved. By now it is settled principle of law that the recovery on the basis of information under Section 27 of the Evidence Act is to be from a place exclusively within the knowledge of the Accused.

7 In this view of the matter, the view taken by the learned Sessions Judge in holding that the recovery of mobile is not proved warrants no interference.

8 The learned Sessions Judge has found that the prosecution has also failed to prove that the mobile recovered belongs to the deceased person. It is further found that the prosecution has not been in a position to establish any motive against the accused person.

9 Perusal of the Judgment would reveal that the sister of the deceased had stated that the investigation is not done in fair manner. The sister of the deceased stated that she has strong suspicion against one Pravin. However, no investigation was done in that direction.

10 In that view of the matter it cannot be said that the view taken by the legal Sessions Judge warrants any interference in the present appeal. It is, accordingly, dismissed.

(B. P. COLABAWALLA, J.)

(B.R.GAVAI, J.)