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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 362 OF 2018
(For leave to file appeal)

Balu Kondiba Dudhawade

..Appellant

Versus

The State of Maharashtra

..Respondents

Mr. Prashant C. Mohite h/f Mr. Kishor G. Pashte, Advocate for the Appellant.

Mr. V.V. Gangurde, APP for Respondent/State.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 7th AUGUST, 2018

P.C.:-

1] By way of present application, the applicant, who is the original complainant, seeks leave to file appeal against the Judgment and Order dated 17/06/2016 passed by the learned Trial Judge whereby accused Nos. 1 and 2 were acquitted.

2] All the three accused were prosecuted and tried for kidnapping Vikas @ Akshay Balu Dudhavade and subsequently committing his murder.

3] Undisputedly, the case rests on circumstantial evidence. The learned Trial Judge, at the conclusion of trial, has convicted accused No.3, relying on the basis of evidence of witnesses that the accused and the deceased were last seen together. However, by the same

judgment, the learned Trial Judge has acquitted accused Nos. 1 and 2. Being aggrieved thereby, the present appeal.

4] The prosecution was relying on two circumstances in so far as accused Nos. 1 and 2 are concerned. The first circumstance is evidence of P.W.1 – Balu with regard to previous enmity between the the said accused and the deceased. The other circumstance was memorandum under Section 27 of the Evidence Act wherein the accused have given information about the place where the murder was committed.

5] Undisputedly, the dead body was not recovered at the instance of accused Nos. 1 and 2. As such, memorandum wherein the witnesses have said to made the statement with regard to the place where the murder was committed, by itself could not be an incriminating circumstance. Insofar as motive is concerned, no doubt that, in a case based on circumstantial evidence, motive is an importance circumstance. However, for resting the order of conviction the chain of incriminating circumstances has to be established.

6] We therefore find that the view taken by the learned Trial Judge is neither perverse nor impossible. Hence the application for leave to appeal filed by the appellant/original complainant is rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)