

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 14 OF 2019**

The State of Maharashtra

.....Applicant

Vs.

Sagar Shivaji Vhanmane & Ors.

....Respondents.

Ms. M.H. Mhatre, APP for the Applicant.

None for the Respondents.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 10th JANUARY, 2019.

P.C.:-

Heard the learned counsel appearing for the Applicant.

2 The Applicant-State has sought leave to prefer an Appeal against the impugned Judgment and Order dated 3rd December, 2016 by which the Respondents Accused who were charged with offences punishable under Sections 302 and 506 read with Section 34 of the Indian Penal Code, have been acquitted the Respondents.

3 The prosecution case is based on three dying declarations as well as, the recovery of sword which is allegedly the weapon of the offence at the instance of the accused. The first dying declaration is before P.W. No. 5 Surekha, who is the mother of deceased Rupesh.

We may note here that, the incident is of 22nd November, 2010 and from that day, Rupesh was hospitalized and he eventually died on 13th January, 2011. The alleged dying declaration is of 14th November, 2010. In paragraph 2 of the cross-examination, the said witness admitted that, she had not stated in her statement recorded by the Police on 11th December, 2010 that the Respondents accused had assaulted Rupesh by sword. She accepted that the names of the Respondents are not mentioned in the said statement. She accepted that she did not file any complaint with the police. Thus, notwithstanding the alleged dying declaration on 24th November 2010, she did not report to police.

5 There are other two dying declarations. The second one is dated 24th November 2010 in presence of P.W. No. 8, a Police Constable and the third one is before a Revenue Officer on 27th November, 2010. Apart from the defence of inconsistency in the said two dying declarations what is material to note is that, the case papers of the hospital are admittedly not produced by the prosecution along with the charge-sheet or even thereafter. This is relevant in the context of the fact that, the incident took place on 22nd November 2010 and the deceased died on 13th January, 2011. Both the

witnesses accepted that they had not seen the medical papers of deceased Rupesh. The medical paper was the best evidence to show whether the deceased was conscious at the relevant time. P.W. No. 8 admitted that, on 22nd and 23rd November, 2010, the deceased was not in a position to give any statement. In absence of the case papers of the hospital, the learned Additional Sessions Judge has discarded the said two dying declarations. This finding is certainly a possible finding which could have been recorded on the basis of record. As regards the discovery of the weapon of offence, the learned Additional Sessions Judge found that the report of the Chemical Analyser was not placed on record.

6 Therefore, the view taken by the learned Additional Sessions Judge that the guilt of the Respondent was not proved by the prosecution is certainly a possible view. Hence, no case is made out to grant any relief.

7 Application is rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)