

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.383 OF 2019

Shri Amin @ Kallu Bashir Ahemad Siddiqui ... Appellant

Vs.

Sufiyan Sheikh Sha Mohammad @

Akhtar Sheikh & Ors.

... Respondents

Mr. Vinod S. Gupta, advocate for the appellant.

Mr. Vinod Prajapati i/b Mr. M.K. Sanghai, advocate for the respondent Nos. 1 to 4.

Mr. V.B. Konde-Deshmukh, APP for the respondent No.5-State.

**CORAM : S.S. SHINDE &
N.B. SURYAWANSHI, JJ.**

DATE : 9TH OCTOBER, 2019.

P.C. :

1. This is an appeal filed by the witness No.6 in the sessions trial being Sessions Case No.377 of 2006, claiming himself to be a victim.

2. The learned counsel for the respondent Nos. 1 to 4 raised issue of maintainability of the present Appeal on the ground that the appellant cannot be called as a victim.

3. Heard the learned counsel for the appellant, the learned counsel for the respondent Nos.1 to 4 and the learned APP on the point of the maintainability of the present Appeal.

4. The learned counsel for the appellant has argued that the appellant was injured during the assault, and therefore, he is a victim and hence the present Appeal is maintainable.

5. With a view to ascertain the maintainability of the present proceeding, we have perused the judgment impugned. The learned trial court has recorded a finding that, witness No.6 claims to have sustained injuries on his head and back, but there is no medical evidence in support of his injuries, which he has admitted in his cross-examination. In absence of the injury certificate of the appellant-witness No.6, he cannot be termed as a victim. The Division Bench of this Court in **Criminal Appeal No.970 of 2019** in the case of **Mahendrasinh Jorubha Zala Vs. Central Bureau of Investigation & Ors.**, in similar facts, has held that “an appeal by a witness, who cannot be termed as victim, as defined under section 2(wa) of the Cr.P.C. against an order of acquittal, is not maintainable and the same is liable to be dismissed at the very threshold”.

6. The facts of the present Appeal are identical. The appellant cannot be called as a victim and the Appeal filed by him is not maintainable and the same is therefore dismissed as not maintainable.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)