

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 285 OF 2019

IN

CRIMINAL APPEAL NO.1497 OF 2018

Santosh Shamrao Deshmukh ... Applicant

Versus

State of Maharashtra ... Respondents

Mr. Satyavrat Joshi for the applicant.

Mrs. M.H. Mhatre, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 04, 2019

P.C.:

The applicant is accused no.2. He has been convicted under section 302 IPC and sentenced to life imprisonment. He is in custody since 21/1/2015.

2. The applicant submits that only on the basis of extra judicial confession and recovery under section 27 of blood stained cloths and iron rod, the conviction has been ordered. The extra judicial confession is by accused no.1 to others and therefore, it cannot be used to prejudice of accused no. 2. The alleged discovery under

section 27 is from the place i.e. cattle shed of one Dada Kamathe and from that place earlier accused no.1 had taken out sickle and iron rod.

3. Submission is second recovery being from very same place therefore, the same cannot be accepted as conclusive. The witnesses have not supported the memorandum or this actual recovery and iron rod is not containing any blood stains. The cloths allegedly recovered at the behest of the present applicant are found to contain blood stains of Group "B" but then blood group of the deceased and both the accused persons is "B". It is submitted that the cloths are not shown to be the cloths of accused no. 2 at all.

4. Learned APP submits that accused no. 1 has accepted in front of two persons that he along with the present applicant has killed the deceased. Not only this witness PW 4 though has turned hostile, has accepted her statement recorded under section 164 Cr.PC. Similarly other witnesses namely Anita Dhivar PW 7 has also supported the extra judicial confession. The counsel for the applicant no. 2 submits that PW 4 Jyoti is wife of accused no. 1 and alleged communication by accused no. 1 to her needs to be eliminated from consideration because of mandate of section 122

of Evidence Act. Perusal of the judgment of the Hon'ble Apex Court in the case of Tejinder Singh alias Kaka Versus State of Punjab reported at (2013) 12 SCC 503 shows that inherently, extra judicial confession is a weak form of evidence. Here, on the basis of data which the prosecution may have collected on such confession, there is no independent investigation and no material has been collected but on the contrary it appears that accused no.1 has taken panch witnesses and police to cattle shed of Dada Kamthe and from that cattle shed he retrieved and gave wooden stick and sickle both blood stained to police. Two days thereafter, it is claimed that the present applicant made disclosure and then he carried pancha and police to the same cattle shed from where iron rod and blood stained clothes were taken out.

5. The iron rod does not contain any blood stains as per CA report. The prosecution has not pointed out that the clothes taken out were on the person of accused at the time of commission of offence. As such, mere finding of blood stains on those cloths by itself cannot be said to be decisive in the present matter.

6. Taking overall view of the matter, we are inclined to grant interim bail to the applicant/accused no.2 on the following terms and conditions :

- (a) The applicant be released on bail on his furnishing two independent sureties each in the sum of Rs.25,000/- and undertaking that he shall not in any way attempt to bring any pressure or contact the witnesses or victim.
- (b) The applicant shall also undertake to report to the Superintendent/Registrar of District Court at Pune on first working Monday of month once in every two months.
- (c) The direction given supra be complied within a period of three weeks from today. Failure to comply with the same shall be construed as breach of this order and the trial court shall thereafter proceed to take him in custody in accordance with law.
- (e) Application is accordingly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)

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* Corrected as per Speaking to Minutes order dated 12/04/2019.