

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (STATE) NO. 104 OF 2019

The State of Maharashtra

...Applicant
(Orig. Complainant)

V/s.

Sagar Sarjerao Shinde

....Respondent
(Orig. Accused no.2)

Mr. H.J. Dedhia, APP for the appellant-State.

Mr. Priyal G. Sarda, Advocate for respondent no.1.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 15th October, 2019.P.C. :

1. Judgment and order dated 27th November, 2018 delivered by Additional Sessions Judge, Pune in Sessions Case No.981 of 2013 acquitting accused no.2-Sagar (present respondent) is being questioned by State Government in these proceedings under Section 378(4) Criminal Procedure Code, 1973.

2. We have heard learned APP as also learned Counsel for the respondent.

3. The facts show that as per story of prosecution, on 11th September, 2013 in the night convicted accused no.1-Avinash with two juvenile accused persons arrived at his home and then they took deceased, Somnath with them. Body of Somnath was found on next day i.e. on 12th September, 2013.

4. Complainant, Mahadev father of Somnath has disclosed presence of Sagar alongwith accused no.1 belatedly i.e. almost after two days.

5. Learned APP has placed strong reliance upon deposition of P.W.3-Kailash and recovery of blood-stained clothes and blood-stained knife at the instance of Sagar under Section 27 of the Indian Evidence Act.

6. We find that, the trial Court has rightly refused to believe deposition of Kailash. It is not

in dispute that, Section 161 Criminal Procedure Code, statement of Kailash has been record after the presence of Sagar was belatedly disclosed by complainant, Mahadev. Not only this, he is a chance witness who claims to have visited the paanshop of deceased, Somnath in night when there was no electricity. He claims that Somnath was present in the shop and at that time convicted accused, present respondent - Sagar and two juvenile arrived. Somnath went with them. According to PW-3 Kailash, motorcycle was being driven by convicted accused Avinash while Somnath and Sagar both were pillion riders upon it.

7. Story of prosecution is, convicted accused and two juvenile came to residence of Somnath and took him with them. Thus the deposition of PW-3 Kailash militates with story of prosecution.

8. The trial Court has also found that prosecution could not establish any motive for Sagar to eliminate Somnath. This finding is not

shown to be perverse.

9. It is in this backdrop that alleged recoveries under Section 27 need to be considered. Blood stained clothes are claimed to be recovered from an open sight accessible to all. Not only this only weapon in the crime i.e. knife is also shown to be recovered at the instance of Sagar from the plants, again in an open space. The trial Court has accepted these recoveries.

10 In any case, the recoveries under Section 27 cannot be treated as substantive evidence. The learned APP has attempted to urge that on clothes so seized as also the said knife, blood of group B which happens to be the blood group of deceased Somnath, is found. However, when Sagar was not seen with Somnath and his name has been added belatedly, we cannot accept this evidence of recovery under Section 27 as an incriminating piece of evidence.

11. We find that the trial Court has taken a possible view in the matter. No case therefore is made out for intervention. Leave rejected.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)