

22.8.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1360 OF 2018

IN

CRIMINAL APPEAL NO. 709 OF 2016

Tausif Iqbal MemonApplicant

V/s.

State of MaharashtraRespondent

For the applicant : Ms. Anjali Patil.

*For the respondent : Mr. Aashay B. Topiwala with
Mr. H.J. Dedhia, APP for State.*

**CORAM : B.P. DHARMADHIKARI, &
SANDEEP K. SHINDE, JJ.**

Thursday, 22nd August, 2019.

P.C. :

1. Heard respective Counsel.
2. We find certain material omissions in the

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deposition of eye witness, P.W.2. Those omissions have been put to Investigating Officer and are proved. The portion marked "A" in Exhibit-41 is declared to be not stated to police by this witness. This portion is to the effect that, when there was chitchatting in front of office, Taufik Iqbal Memon, Nafis Nasim Khan, Nadeem, Arif Iqbal Memon and Tausif assaulted Saddam on his chest with knife like weapon. Witness has not stated accordingly and he could not explain why it is appearing as part of his statement.

3. The other eye-witness (P.W.3) has surfaced after arrest of present applicant.

4. The learned APP has urged that, alleged omissions in deposition of P.W.2 stand accounted for if his supplementary statement is looked into. It is further submitted that statement of P.W.3 has

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been recorded after arrest but then he had seen the incident and he has identified the accused persons in Test Identification Parade as also in the Court. He also points out that, on clothes of deceased and on weapon, blood of Group-B is found meaning thereby, the blood group of deceased was "B".

5. The omissions which are brought on record are about P.W.2 and one, Zakir taking tea on ground floor outside the building, they seeing four persons climbing the staircase of building, disclosing names of those persons to police, disclosing to police apprehension of some untoward incident then felt by P.W.2, P.W.2 climbing staircase and reaching passage of first floor, he watching three persons holding Saddam and present applicant assaulting him on chest with knife. P.W.2 could not explain why these facts were not appearing

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in his police statement.

6. Similarly, fact of Zakir catching hand of present applicant and present applicant rescuing himself by giving jerk has come by way of omission. P.W.2 was never called for the Test Identification Parade. These omissions are put to P.W.8 Shirish Mangave (Investigating Officer). He has accepted that, P.W.2 did not disclose those facts. He has not mentioned that those facts were disclosed by P.W.2 by supplementary statement. The prosecution claims that supplementary statement of P.W.2 was recorded on next day. P.W.2 does not mention that his supplementary statement was recorded.

7. In this situation, when there were totally four accused and on the basis of this evidence only, other three persons have been acquitted by the trial Court, we are inclined to grant bail to applicant

who has already been more than seven years in jail.

8. Accordingly, he is directed to be released on following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers.

(c) Similar details in relation to his sureties shall also be furnished.

(d) He shall not in any way directly or

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indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.

(e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.

(f) He shall report to the Superintendent/Registrar of Sessions Court, Vasai on first working Monday in every two months as a condition of his release.

(g) His failure to observe any of the terms and conditions shall entitle the respondent

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State to take him in custody forthwith.

(h) Application is accordingly allowed and
disposed of.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)