

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

CRIMINAL REVISION APPLICATION NO.634 OF 2017

Sudhakar Gopal Pawar

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.M.K. Kocharekar i/b R.A. Kale for the Applicant

Mr.Vinod Chate, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 18, 2019

P.C.:

1. In this revision application, the applicant/accused is prosecuted under sections 302, 397 of the Indian Penal Code r/w sections 37(1)(a) and 135 of the Mumbai Police Act in Sessions Case No.701 of 2011. It is the case of the prosecution that on 20th May, 2011, the accused persons had entered the shop of one Dharmaraj Jewellers at Chembur and they murdered the owner Shri Pankaj Vinod Soni by cutting his throat. The accused persons murdered and thereafter robbed the said shop. They sold the gold ornaments and obtained money. There are in all 5 accused who

are prosecuted before the Sessions Court for these offences. The present applicant/accused is accused No.4. He had moved the application under section 227 of the Criminal Procedure Code before the Sessions Court. However, the said application was rejected by order dated 27.9.2017. Hence, this revision application.

2. Learned Counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused and he has not committed any offence muchless the offence of robbery and murder.

3. Per contra, learned Prosecutor has argued that this is a murder and robbery case and the applicant is prosecuted in this case as he is the main person who has with help from other accused, had sold the gold ornaments which they have taken from the jewellery shop. The learned Prosecutor relied on the panchanama dated 20.8.2011 under section 27 of the Evidence Act. He pointed out that the co-accused Mangesh Sonar has given a statement before the police pursuant to which the gold ornaments and the knife were recovered by the police under panchanama. He has taken the name of this person as accused

as the main person who helped him and other accused to dispose of the ornaments.

4. At the outset, the portion and the statement relied on by the learned Prosecutor in the memorandum recorded under section 27, is inadmissible. If at all, even if this person has played some part in selling the gold ornaments which were robbed by the co-accused after murdering the owner of the jewellery shop, the said act cannot constitute any offence of either under section 302 or section 397. In the impugned order, the learned Sessions Judge has referred to and held that the FIR, panchanama and the documents reveal that there is material against the applicant/accused. However, the statements under the recovery panchanama are inadmissible and do not constitute any offence. After query with the learned Prosecutor, nothing is shown and found in the FIR or any document implicating the applicant / accused.

5. Thus, there is no material to frame charge under sections 397 or 302 r/w section 34 of the Indian Penal Code. Hence, the order of the trial Court dated 27.9.2011 is hereby quashed and set aside.

6. Revision Application is allowed and disposed of accordingly.

(MRIDULA BHATKAR, J.)