

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION [APPA] NO.927 OF 2017

IN

CRIMINAL APPEAL NO.482 OF 2004

[Pachu Jaidev Bishwas .vs. State of Maharashtra, through Police Station Officer, Police Station, Ramnagar, Chandrapur,
Tahsil and District-Chandrapur]

.....
 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

.....
 Shri Anjan De, Advocate for Applicant-Appellant,
 Shri Amit Chutke, APP for Respondent-State.

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CORAM : MRS. SWAPNA JOSHI, J.

DATED : SEPTEMBER 11, 2019.

This is an application filed by the applicant-appellant under Sections 391 and 311 of the Code of Criminal Procedure.

The applicant-appellant has been convicted by the learned 4th Ad-hoc Additional Sessions Judge, Chandrapur for the offence punishable under Section 307 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.2,000/-, in default to suffer rigorous imprisonment for six months. The other accused have been acquitted of the offence punishable under Sections 324 and 307 read with Section 34 of the Indian Penal Code.

The learned Advocate for the applicant contended that in the instant case although the statement of PW-1 Shakti Mandal was recorded first in point of time i.e. at 9.30 pm on 2.4.1999, the said statement was not treated as First Information Report and the offence was not registered on the basis of the said statement

although it reflected commission of cognizable offence. It is submitted that the statement of PW-3 Gautam Baid was considered as First Information Report, which was recorded at 11.00 pm on 2.4.1999 and it was treated as First Information Report and on that basis offence came to be registered. It was contended that the said document i.e. the statement of PW-1 Shakti Mandal (Exh.29) which was termed as dying declaration by the prosecution has not been put up to PW-1 Shakti Mandal either in examination-in-chief or in his cross-examination. There is no cross-examination in that regard. It is submitted that since it is a vital document, opportunity may be given to the defence to show that by the said statement of PW-1 Shakti Mandal, the relevant contradictions can be brought on record. It is submitted that if at all it is not permitted, great prejudice would be caused to the defence.

The learned APP opposed the said prayer of the learned Advocate for the applicant and submitted that allowing the said application will be indirectly permitting the defence to fill up the lacuna in the case of the accused.

Considering the rival contentions of both the sides and also considering that the prosecution should have treated Exh.29 as First Information Report and should have registered the offence on the basis of it, so that the said document would have been put up to the said witness PW-1 Shakti Mandal by the prosecution and the defence might have cross-examined on the said aspect, disallowing the said application would certainly cause prejudice to the accused.

The next prayer of the learned advocate for the applicant is that the evidence of PW-3 Gautam Baid was recorded before the

Juvenile Justice Board where PW-3 Gautam Baid did not support the prosecution case, whereas he has supported the prosecution case before the learned Additional Sessions Judge. It is submitted that inadvertently the said document was not put up to the witness PW-3 Gautam Baid and the accused should not suffer for the said mistake committed by the learned Advocate who cross-examined the witness.

The learned APP also opposed the said prayer. It is however not disputed that the said document i.e. the evidence of PW-3 Gautam Baid recorded before the Juvenile Justice Board is on record at Exh.85. In view thereof, the said document can be considered at the stage of argument and no prejudice as such would be caused to the defence if the said prayer is not allowed.

In view of the facts and circumstances, it would be just and proper to recall witness PW-1 Shakti Mandal, as per the provisions of Sections 391 and 311 of the Code of Criminal Procedure. Hence, the following order :

ORDER

The application is partly allowed. Witness PW-1 Shakti Mandal be recalled. Issue summons to the said witness made returnable on 26.09.2019.

JUDGE