

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO.4 OF 2021**

DEVIDAS GAONKAR,
PRESENTLY LODGED AT
CENTRAL JAIL, COLVALE
REP. BY UDAYDAS

SHANTARAM GAONKAR

... Appellant

VS

STATE OF GOA, THR. THE
OFFICER-IN-CHARGE,
QUEPEM POLICE STATION,
QUEPEM GOA

... Respondent

Mr. A. D. Bhobe, Advocate for the Appellant.

Mr. P. Faldessai, Additional Public Prosecutor for the Respondent.

Coram : M. S. SONAK, J

Date : 16th February, 2021

P.C.

Heard Mr. A. D. Bhobe, learned counsel for the Appellant and Mr. P. Faldessai, learned Additional Public Prosecutor for the Respondent.

2. Considering the issues raised with the consent of the learned counsel for the parties this Criminal Appeal is itself taken up for final disposal.

3. This appeal challenges the order dated 18th January, 2021

by which the Appellant (Accused No.2) has been convicted under Section 201 read with 34 of Indian Penal Code for having assisted the Accused No.1 in concealing the evidence. This conviction is based on a plea of guilt entered by the Appellant.

4. Mr. Bhobe, learned counsel for the Appellant submits that the Appellant did not understand fully the implication of pleading guilty. He points out that the Advocate appointed under the Legal Aid Scheme to represent the Appellant was not present at the time of record of such plea of guilt and only his Assistant, who had no proper knowledge of the matter was present. He submits that acceptance of such plea is discretionary and discretion, in the present case has not been exercised in accordance with law and therefore the impugned order warrants interference.

5. Mr. Bhobe in alternate and based on the instructions from the Appellant submits that the sentence of two years is quite harsh and disproportionate. He points out that the Appellant has already undergone incarceration of around one year pending the trial and therefore, if the sentence is reduced to that which the Appellant has already suffered, the Appellant would be satisfied.

6. Mr. P. Faldessai, learned Additional Public Prosecutor submits that the plea of guilt was recorded in the presence of the

Appellant's Advocate and there is no error in the exercise of discretion by the learned Sessions Judge. He points out that this is a serious offence and therefore, there is nothing disproportionate in the sentence awarded.

7. According to me, there is no error in the record of plea of guilt. The plea was recorded in the presence of Appellant's Advocate and there is really no material on record to accept that the Appellant was not made aware of the implication of pleading guilty. The learned Sessions Judge, it appears, has taken care to explain the implication to the Appellant. The learned Sessions Judge has also taken cognizance of the record which indicated that the Appellant was under influence of alcohol when he helped other accused in shifting the dead body of the deceased in order to either destroy the evidence or conceal. Therefore, there is no case made out to interfere with the conviction of the Appellant in the facts and circumstances of the present case. However, when it comes to the sentence according to me, the sentence of one year would be proportionate. This is because the Sessions Judge has noted that the Appellant was under the influence of alcohol and further, the Appellant, was not at all involved in committing main offence but the Appellant was only involved in shifting the dead body of the deceased. The record also indicates that from 8th June, 2019 till August, 2020 in the course of the investigation the Appellant has suffered incarceration. Thereafter, from 18th January, 2021, the Appellant is in jail post his

conviction. This means that the Appellant has already suffered incarceration a little in excess of one year. According to me, the sentence which the Appellant has already suffered would be proportionate sentence in the facts and circumstances of the present case.

8. Therefore, this appeal is partly allowed. The conviction of the Appellant is maintained. However, the sentence to undergo imprisonment for a period of two years is substituted with the sentence which the Appellant has already undergone till date. The fine amount and in default imprisonment is however maintained.

9. Mr. Bhobe states that fine amount would be paid at the earliest. No sooner the fine amount is paid, the Appellant to be released from jail unless he is required in connection with any other matter.

10. The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

11. Registry to do the needful at the earliest.

11. Criminal Misc. Application No.9 of 2021 does not survive and is disposed of accordingly.

M. S. SONAK, J

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