

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE SIDE

CRIMINAL APPLICATION NO.3078 OF 2010

In

CRIMINAL APPEAL NO. OF 2010

The State of Maharashtra : Applicant/Appellant  
V/s. (Orig. Complainant)

Devidas Sharad Jore & Ors. : Respondents  
(Orig. Accused)

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Mr. Rajesh More, Addl. Public Prosecutor for the applicant.

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CORAM : D.D. SINHA &amp; A.P. BHANGALE, JJ.

DATE : SEPTEMBER 30, 2010.

P.C.:

Heard the learned Addl. Public Prosecutor for the applicant.

2. The present Criminal Application is filed by the State seeking leave to file an appeal against the judgement and order passed by the trial Court whereby the present respondents came to be acquitted for the offence punishable under sections 302, 201, 120-B and 364 r/w. section 34 of the Indian Penal Code. The learned Addl. Public Prosecutor has submitted that originally, five persons were prosecuted for the said

offences, out of whom original accused nos.2 & 3 were convicted by the trial Court whereas the present respondents were acquitted.

3. The learned Addl. Public Prosecutor submitted that the entire case of the prosecution primarily is based on the testimony of eye-witnesses, viz., P.W.1 Kailas Pawar and P.W.3 Harshad Gumbade. It is contended that the trial Court failed to appreciate the evidence of these eye-witnesses who have deposed about the presence of the respondents at the relevant time along with the other co-accused. It is contended that the charge was framed against all the accused read with section 34. It is submitted that a careful scrutiny of the evidence of P.Ws.1 and 3 would show that the present respondents also shared common intention to commit the offence along with the other co-accused. It is contended that since the trial Court has believed the part of the evidence of the prosecution and convicted the original accused nos.2 and 3, there is no justifiable reason given by the trial Court to disbelieve the prosecution evidence in respect of the present respondents. It is, therefore, contended that the impugned judgement is unsustainable in law.

4. Considered the contentions canvassed by the learned Addl. Public Prosecutor for the applicant and perused the impugned judgment. In

paragraph 22 of the judgement, the trial Court has discussed the evidence of P.W.1 Kailas Pawar and P.W.3 Harshad Gumbade insofar as the original accused no.1 is concerned. After considering the evidence of these two eye-witnesses, the trial Court has come to the conclusion that so far as the presence of the accused no.1 is concerned, there is a material omission in this regard which creates suspicion about the testimony of these witnesses.

5. In paragraph 23 of the judgement, the trial Court has discussed the evidence of P.Ws.1 and 3 pertaining to accused nos.4 and 5. The finding recorded by the trial Court would show that these witnesses have admitted that they could not see the person sitting in the vehicle (TATA Sumo) and, therefore, the evidence of these witnesses came to be disbelieved by the trial Court in view of the above referred admission given by the witness.

6. We have asked the learned Addl. Public Prosecutor that apart from the evidence of these eye-witnesses, is there any other evidence adduced by the prosecution in order to prove the charge against the respondents, the learned Addl. Public Prosecutor has submitted that except the testimony of these two eye-witnesses, there is no other material

circumstance against the respondents-accused. In view of the findings recorded by the trial Court in paragraphs 22 and 23, we are of the view that the State has failed to make out a case for showing indulgence. Leave refused.

7. Criminal Application is dismissed.

(D. D. SINHA, J.)

(A.P. BHANGALE, J.)