

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 640 OF 2015  
IN  
CRIMINAL APPEAL NO. 653 OF 2014**

Shaikh Mushtaq Ahmed S/o Gulam Rasool,  
Age : 38 Years, Occu. : Nil,  
R/o Near Badi Masjid, Mukund Nagar,  
Ahmednagar, Tq. & Dist. Ahmednagar. .. Applicant

**Versus**

The State of Maharashtra,  
Through Chhawani Police Station,  
Aurangabad, Tq. & Dist. Aurangabad. .. Respondent

Shri Shaikh Mazhar A. Jahagirdar, Advocate for the Applicant.  
Shri A. S. Shinde, A.P.P. for Respondent/State.

**CORAM : S. V. GANGAPURWALA AND  
V. K. JADHAV, JJ.**

**DATE : 17TH NOVEMBER, 2015.**

**PER COURT :**

. The present applicant is convicted for the offences punishable U/Sec. 302 read with Sec. 120-B and 148 of the Indian Penal Code and is sentenced to suffer imprisonment for life and fine. The present applicant has assailed the said judgment by filing appeal bearing Criminal Appeal No. 653 of 2014. The said appeal is admitted. The present application is filed seeking suspension of the sentence.

2. Mr. Jahagirdar, the learned counsel for the applicant submits that, during the trial the applicant was on bail. The applicant has not been identified in any test identification parade. It is only P.W. No. 9 who for the first time in her evidence has pointed out finger at the present applicant that too before the Court. The applicant is not at all involved in the offence. According to the learned counsel, another eye witness has also nowhere identified the present applicant. There were two eye witnesses. No overt act on the part of the present applicant was stated by the P.W. No. 9 before the police authorities. It was stated that, only one person had caught hold of the deceased and had identified in the test identification parade another accused and not the present applicant. According to the learned counsel accused Nos. 1 and 5 are already released on bail. The role attributed to the present applicant is the same as attributed to accused No. 5. According to the learned counsel except the bare statement of identifying the present applicant by the P.W. No. 9 before the Court, there is absolutely no evidence of whatsoever nature against the present applicant.

3. Mr. Shinde, the learned Assistant Public Prosecutor submits that, P.W. No. 9 is an eye witness and P.W. No. 9 has identified the present applicant before the Court. The same is sufficient to convict the applicant U/Sec. 302 read with Sec. 120-B and 148 of the Indian Penal Code.

4. The appeal is already admitted. It is not disputed that accused Nos. 1 and 5 are granted bail. Even as per the prosecution, the sole reason for conviction against the present applicant is that, P.W. No. 9 who is an eye witness and wife of the deceased had identified him before the Court. The test identification parade was conducted. The present applicant was not put for identification in the said test identification parade. The P.W. No. 9 in para 8 of her deposition has stated that, one person who caught hold her husband is present in the Court and pointed towards the present applicant. The other eye witness nowhere states about the presence of present applicant, nor has identified the present applicant. Apart from the said fact, there is absolutely no evidence against the present applicant attributing any role to the present applicant. The mobile found is of another accused. It is also not case of prosecution that the present applicant had fired on the deceased.

5. Considering the above, we are inclined to consider the present application.

6. The sentence of the present applicant/accused awarded in Sessions Case No. 376 of 2011 vide judgment and order dated 10.10.2014 of Sessions Judge, Aurangabad is suspended and the applicant/accused is released on bail on submitting P.R. bond of Rs. 1,00,000/- (Rs. One Lac only) with one surety of like amount.

The criminal application as such is allowed and disposed of.

**[ V. K. JADHAV, J. ]**

**[ S. V. GANGAPURWALA, J. ]**

bsb/Nov. 15