

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 237 OF 2018
IN
CRIMINAL APPEAL NO. 947 OF 2017

Amir Ismail Sayyad @ Billa .. Applicant
V/s
The State of Maharashtra & Anr. .. Respondents

Mr. S.G. Kudle for the applicant.
Ms. M.H. Mhatre, APP for the State.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : 5TH APRIL 2018

P.C.:

This is an application for bail. The applicant-accused is convicted of an offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life.

2. Mr. Kudle appearing on behalf of the applicant invites our attention to page 12 of the paper-book to submit that the injured witness – PW 8 was examined for an injury which she suffered and that was due to fall from stairs at about 8.30 p.m. on 8th June 2015. At page 13, the medical case paper would indicate the entries made therein in respect of injuries sustained by this PW 8.

3. He submitted that the wife of the applicant-accused, who gave her statement to the police, did not in any manner implicate the present applicant. Thus, there was no version on record of the applicant-accused having assaulted the deceased minor and causing his death.

4. The inconsistency in the version of the witnesses is also highlighted by Mr. Kudle, and in that he would submit that the lady Fatma Nazim Shaikh turned hostile and did not support the prosecution version. Instead she narrated and placed a positive case of the deceased Rizwan falling down from bed due to an epileptic attack and sustaining head injury. The lady also reports that PW 8 – Nagma fell down and suffered a fracture. In such circumstances, the Trial Court should not have recorded a conviction under Section 302 of IPC.

5. Our attention is also invited to the deposition of PW 2 – Iqbal Abdul Razak Naik. It would thus be clear that the panchanama at the site of incident was not supported by this vital witness, according to Mr. Kudle.

6. Finally, he argued that the doctor, who was first approached and was requested to examine Rizwan, in his cross examination stated that all the four injuries suffered are simple in nature and may be caused due to fall on hard surface. In the

circumstances, this is a clear case where the applicant is falsely implicated and deserves to be enlarged on bail. Mr. Kudle urged that this is a fit case where the Court should award compensation for such a false accusation.

7. On the other hand, Ms. Mhatre, learned APP, would submit that at this stage it is not for this Court to express any final opinion. There is an injured eye witness. PW 8 - the injured eye witness has been consistent in her version and she has very categorically named the present applicant. In these circumstances, we should not consider the case of the present applicant and the application for bail must be rejected.

8. With the assistance of both the counsel, we have perused the appeal paper-book including the copy of the judgment of the learned Trial Judge. The learned Trial Judge in paragraph 12 of the judgment has observed that PW 8 – Nagma Nazim Shaikh was aged about 13 years at the time of her deposition before the Court. She has deposed about the date and time of the incident. She was studying in 5th standard. She has categorically stated that in the year 2013, she was residing at Mumbra along with her mother, brother Rizwan and sister Alina. Her father used to reside separately in Gaondevi. The appellant used to frequently visit their house. He used to take lunch and dinner with them and also sleep in their house. Though he was called Billa uncle, he used to call him as

Daddy. There was a fear in her mind and out of that she would call him Daddy. He frequently quarrelled with her mother and used to beat her, her sister and brother Rizwan. On 8th June 2015, when Rizwan was given breakfast and after which he vomited, PW 8 specifically says that Billa uncle beat him and he cried loudly. Thereafter the accused closed the door and windows and increased the volume of TV and started beating Rizwan with a belt. Nagma tried to intervene and save Rizwan, but he twisted her hand. Her mother also tried to save him, but she was also beaten. The accused assaulted Rizwan by a remote 5 to 6 times on his head which rendered him unconscious. Thereafter the accused left the house and the mother took Rizwan to hospital.

9. The deposition has thus been referred in extenso and the learned Judge has observed that in the cross examination beyond giving some suggestion, nothing could be elicited which could be termed as an admission to falsify the prosecution version totally. Thus, the version of this witness could not be shaken in the cross examination. To our mind, therefore, prima facie, it is not necessary for us to look into the other material. If the version of the injured eye witness is consistent and unlike her mother she has not turned hostile nor anything elicited in her cross examination which can falsify the prosecution case. This is not a fit case for enlarging the applicant on bail. Prima facie, a minor was assaulted by him in a brutal manner. In such circumstances, the application for bail is dismissed.

10. Needless to clarify that we have made tentative and prima facie observations and they shall not influence this Court while deciding the appeal finally.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)