

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.118 OF 2017**

Kishor Pandharinath Satkar

... Applicant

v/s

Tushar @ Gotya Tanaji Satkar
and others

... Respondents

Mr Abhaykumar Apte for Applicant.

Mr J.P. Yagnik, APP for Respondent - State.

**CORAM : B.R. GAVAI &
B.P. COLABAWALLA, JJ.****DATE : JANUARY 9, 2018****P.C.:**

1. The present Application is filed by the victim seeking leave to appeal against the order passed by the learned Sessions Judge, Pune in Sessions Case No.263 of 2014 thereby acquitting the Respondents - Accused. The delay in filing this Application is condoned.

2. It is the prosecution case that the deceased Pandharinath Satkar was assaulted by the accused persons. It is the prosecution

case that the accused had given blow on the head of the deceased by rifle as a result of which the deceased succumbed to injury and died.

3. The learned counsel appearing on behalf of the Applicant submitted that the learned Trial Judge has grossly erred in acquitting the accused. He submitted that when the ballistic report shows that the bullet which is found on the person of deceased could have been fired from the revolver, therefore the learned Trial Judge could not have acquitted the accused.

4. The law with regard to conviction on the basis of circumstantial evidence is very well crystallized. It is necessary for the prosecution to prove each and every incriminating circumstance beyond reasonable doubt. The prosecution is further required to establish chain of circumstances so proved, which leads to no other conclusion than the guilt of the accused.

5. In the present case, it would reveal that the prosecution has relied on the circumstances of certain recoveries at the instance of the accused person. According to the prosecution, the said recoveries

are made on the basis of memorandums of accused under section 27 of Indian Evidence Act.

6. In so far as recovery on the basis of memorandum under section 27 of the Indian Evidence Act is concerned, only such recoveries which are made from a place exclusively within the knowledge of the accused could be admissible.

7. In so far as recoveries are concerned, some are from open place. In so far as hand-made revolver is concerned, it was recovered at the instance of Yuvraj Mane from roof of bus stop of Tikona Peth.

8. Another circumstances is recovery of clothes as described. We find that only on the said circumstances, conviction under section 302 of IPC could not be made.

9. We find that no interference is warranted in the present case. Application is disposed off.

(B.P. COLABAWALLA, J.)

(B.R. GAVAI, J.)