

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.825 OF 2017
IN
CRIMINAL APPEAL NO.425 OF 2017**

Vakil Ahmed Abdul Kalam Ansari	..Applicant
Versus	
State of Maharashtra	..Respondent

**Mr. Satyavrat Joshi, Advocate for the Applicant.
Mr. J. P. Yagnik, APP for the Respondent.**

**CORAM : B. R. GAVAI &
B. P. COLABAWALLA, JJ.
DATE : 15th FEBRUARY, 2018**

PC.

1] This is an application for suspension of sentence and grant of bail during the pendency of the Appeal.

2] The Applicant has been convicted for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, for committing murder of Kashim Shaikh.

3] It is the prosecution case that the present Applicant was having illicit relations with the accused No.2 – wife of the deceased. It is therefore contention that with an intention to remove obstacle of the deceased, the Applicant has ran away by strangulating him.

4] The prosecution relies on Finger Print Expert's report and the evidence of PW-3 to establish seizure of the nylon rope on the memorandum under Section 27 of the Indian Evidence Act.

5] The prosecution rests merely on circumstantial evidence. The conviction on the basis of circumstantial evidence has been very well crystalized by the Apex Court in the case of Sharad Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622. It is held by the Apex Court that unless the prosecution proves every circumstance beyond reasonable doubt, guilt of the accused for the offence punishable under Section 302 of the Indian Penal Code would not be tenable.

6] In so far as evidence of PW-4 Nawab Pathan is concerned, the learned Trial Judge has found that he has turned hostile and inspite of cross-examination by the learned APP nothing favourable has come on record.

7] In so far as evidence of Finger Print Expert is concerned, the same has also not been believed by the learned Trial Court. The conviction is based on the seizure of nylon rope at the instance of the present Applicant on the memorandum under Section 27 of the Indian Evidence Act. The evidence of PW-3 is inconsistent with the Panchanama,

whereas in the evidence he as stated that room was locked and the lock was opened by the police. However, perusal of the Panchnama would reveal that the door of the room was latched from the outside. One lady Hasina was standing outside and she stated that the room was owned by her and was given on rent to the present Applicant. It is further stated that after seeking her permission, Police entered the room and seized the nylon rope from one box. It could thus be seen that it cannot be said that recovery of nylon rope was from a place, which was exclusively within the knowledge of the present Applicant.

8] At least, at this stage, prima-facie we are of the view that conviction only on the basis of such recovery may not be sustainable. In that view of the matter, the application is allowed. The order of sentence shall stand suspended. The Applicant is directed to be released on bail on furnishing solvent surety in the sum of Rs.15,000/- with one or more sureties in the like amount.

[B. P. COLABAWALLA, J.]

[B. R. GAVAI, J.]