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

CRIMINAL APPLICATION NO.76 OF 2017

The State of Maharashtra	..Applicant
Versus	
Deepak Shivprasad Kori	..Respondent

Mr. V. V. Gangurde, APP for the Applicant.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 20th JUNE, 2018

P.C.:-

1] The appeal challenges Judgment and Order passed by the learned Additional & Sessions Judge, Mumbai, thereby acquitting the accused for the offence punishable under Section 302 of the Indian Penal Code.

2] Mr. Gangurde, learned APP appearing on behalf of the State, submitted that, the learned Trial Judge has grossly erred in acquitting the accused when the prosecution has produced voluminous evidence on record. The investigation was set in motion on the basis of information of one Bhaudas Jadhav, who was working in the Sion Fort, that the dead body of one person was found. The deceased was identified to be one Sonu Vishwkarma.

3] It is the prosecution case that, the deceased had love affair with the sister of the accused. It is further the prosecution case that, the deceased had taken an amount of Rs 10,000/- from the accused but it was not returned. It is the prosecution case that, for these two reasons, the accused decided to remove the obstacle of the deceased Sonu and when the deceased was under the influence of Tadi, the accused pelted stone on his head and killed him.

4] Undisputedly, present case rests on circumstantial evidence. In a case of circumstantial evidence, conviction can be made only if prosecution proves each and every incriminating circumstance beyond reasonable doubt and establishes chain of events, which leads to no other conclusion than the guilt of the accused. The material placed on record would reveal that, the prosecution has mainly relied on the evidence of Suman (P.W.5) for establishing theory of last seen together and also on extra judicial confession.

5] The learned Trial Judge, after scrutinizing the evidence of Suman (P.W.5), found that the said witness went on improving her case from statement to statement. In all, four statements of this witness were recorded and in the fourth statement, she has implicated the present Respondent/original accused. The learned Trial Judge found that, there were material contradictions in the evidence of Suman (P.W.5). He has found that, though P.W.5 has deposed about last seen theory, from her evidence itself, it would be clear that she could not have been the witness to last seen theory, inasmuch as she

was in house. The learned Judge found that, the said witness could not be held to be a credible witness to believe her testimony. Insofar as the alleged discoveries are concerned, the learned Trial Judge found that such discoveries were from the open place accessible to one and all. As such, no reliance could be placed on such discoveries as well as on DNA and C.A. Reports.

6] No perversity or impossibility is noticed in the impugned judgment and order warranting interference. Hence, the application stands rejected.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)