

3. The applicant, vide Judgment and Order dated 9th June, 2017, passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No. 675 of 2013, has been convicted for the offences punishable under Sections 302, 452, 392, 397 of the Indian Penal Code. The maximum sentence imposed on the applicant is for the offence punishable under Section 302 of the Indian Penal Code, to suffer rigorous imprisonment for life and to pay fine of Rs.2,000/-, in default of payment of fine, to suffer rigorous imprisonment for one month. Separate sentences are awarded for the other offences.

All the said sentences are directed to run concurrently.

4. Perused the papers. Admittedly, the prosecution case rests on circumstantial evidence i.e. alleged recovery of ornaments of the deceased at the behest of the applicant and the applicant being seen walking out of the building on the date of the incident. Admittedly, there is no last seen evidence.

5. As far as recovery of ornaments is concerned, it is pertinent to note that the incident took place on 26th April, 2013 and the applicant came to be arrested on 1st May, 2013. On that day i.e. on 1st May, 2013, there is recovery under Section 27 of the Evidence Act, at the instance of the applicant i.e. recovery of the deceased's Mangalsutra and four bangles and on 7th May, 2013, there is recovery of one ring also at the instance of the applicant. A perusal of the evidence of PW-1 – Shamal Sawant, son of the deceased, reveals that he was called to the Police Station on 20th April, 2013 to see the ornaments which are alleged to have been recovered later. Under these circumstances, the recovery of ornaments at the instance of the applicant becomes doubtful.

6. As far as identification of the applicant on the day of the incident is concerned, the prosecution had examined two witnesses i.e. PW3 and PW15. Both the said witnesses are friends of the deceased. It is only after four days, that the PW3 and PW15 have disclosed that they saw somebody walking out of the building around that time and

have identified the applicant as being the said person in the Test Identification Parade. This is the only evidence *qua* the applicant which cannot be termed as last seen or for that matter, *prima facie*, incriminating. The applicant is in custody for about 10 years and the appeal not likely to be heard in the immediate near future.

7. Considering the aforesaid and the fact, that the applicant is in custody for about 10 years, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his appeal, on the following terms and conditions;

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.