
**Lakhiyo @ Laxmanbhai Jhaverbhai Rathod Thro Kanubhai Barkulbhai
Rathodiya Vs State Of Gujarat**

**Criminal Misc.Application (For Suspension Of Sentence) No. 2 Of 2023 In
R/Criminal Appeal No. 1121 Of 2018**

Court: Gujarat High Court

Date of Decision: Oct. 19, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 389#Indian Penal Code, 1860 " Section
120B, 302, 377

Hon'ble Judges: A.S. Supehia, J; Gita Gopi, J

Bench: Division Bench

Advocate: Mayuri P Chauhan, Ronak Raval

Final Decision: Allowed

Judgement

A.S. Supehia, J

1. The present Application is preferred by the applicant under Section 389 of the Code of Criminal Procedure, 1973 praying for suspending the

sentence imposed upon him vide judgment and order dated 31.07.2014 passed by the learned Additional Sessions Judge, Bharuch in Sessions Case

No.48 of 2013 whereby the applicant has been convicted under Section 302 of the Indian Penal Code (IPC) and has been awarded imprisonment for

life and also pay a fine of Rs.2,500/- and in default of payment of fine, to undergo further rigorous imprisonment of two months. As per the jail

remarks, the accused has completed more than 10 years and 6 months of sentence.

2. The applicant has preferred the Appeal being Criminal Appeal No.1121 of 2018 challenging the aforesaid judgment and order and the same has

been admitted by this Court on 10.08.2018.

3. RULE. Learned Additional Public Prosecutor waives service of notice of Rule on behalf of the Respondent " State.

4. Learned Advocate for the applicant Ms. Mayuri P. Chauhan has invited the attention to the deposition of PW7 and PW9. She has submitted that

the PW9 " Babu Dahyabhai Rathod has not identified the present applicant. She has similarly submitted that the PW7 " Babubhai Rathod has only

referred to the presence of the accused No.1 " Pravin. She has further submitted that the present case is of circumstantial evidence and is premised

on the theory of last seen together. Further it is submitted that initially as per the charge " Exhibit 3, all the three accused were charged for the

offences punishable under Sections 302, 377 and 120(B) of the Indian Penal Code (IPC). However the accused were acquitted for the offences

punishable under Sections 377 and 120(B) of the IPC and the only act attributed to the present applicant is that he was holding the deceased. She has

further submitted that there is no eye witness and hence, the role attributed to the present applicant is also doubtful. Hence, she has urged that the

present application may be allowed.

5. Per contra, learned Additional Public Prosecutor submitted Mr. Ronak Raval submitted that the present application should not be entertained and

the applicant should not be released by suspending the sentence since he has been convicted for a serious offence like Section 302 of the IPC.

Learned Additional Public Prosecutor also referred to the observations made by the learned Trial Court as well as the post mortem report and

submitted that the same also reveals that the deceased was strangled by the applicant and the co-accused and hence, no leniency should be shown

to the applicant. Thus, it is submitted that the present application requires no interference.

6. Heard learned Advocate for the applicant and learned Additional Public Prosecutor for the respondent " State and perused the record.

7. The jail remarks shows that the present applicant who is arraigned as accused No.2 has completed more than 10 years and 6 months of sentence.

The entire case of the prosecution is premised on circumstantial evidence and there is no eye witness. It is also not in dispute that as per the charge

" Exhibit 3, the applicant alongwith the co-accused were charged for the offences punishable under Sections 302, 377 and 120(B) of the IPC.

However, the trial Court has acquitted the accused for the offences punishable under Sections 377 and 120(B) of IPC and convicted the accused

under Section 302 of IPC. Even if the role attributed to the present applicant is believed, the same would be of holding the deceased. The prime

witnesses PW-7 and PW-9 have only attributed the role of the accused No.1. PW-9 has not identified the present applicant who has been arraigned

has accused No.2. Prima-facie on appreciation of evidence of the star witness and in light of the sentence of 10 years and 6 months which the

applicant has undergone, we are inclined to consider this application.

8. This Court has taken into consideration the decision of Apex Court in case of Bhagwan Rama Shinde Gosai v/s. State of Gujarat, reported in (1999)

4 SCC 421.

9. Considering the aforesaid, the present Application deserves to be allowed, and therefore the same is hereby allowed. The sentence imposed vide

judgment and order dated judgment and order dated 31.07.2014 passed by the learned 4th Additional Sessions Judge, Bharuch in Sessions Case No.48

of 2013 is hereby suspended pending hearing and final disposal of the Criminal Appeal.

10. The applicant shall be released on bail by executing a fresh bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety of the like

amount to the satisfaction of the trial Court, on the following

(a) shall not take undue advantage of liberty or misuse liberty;

(b) shall not leave India without prior permission of this Court;

(c) shall furnish the present address of his residence to the Court concerned at the time of execution of the bond and shall not change the residence

without the prior permission of this Court;

(d) shall proceed with the Criminal Appeal as and when it may be listed.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

12. Registry shall intimate the present order to the Jail Authority forthwith.