

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders		Court's or Judge's orders
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CRIMINAL APPLICATION NO. 1928 OF 2017

DILIP MADHAV MADNE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Adv. R.B. Temak
A.P.P for the R-State No.1 : Mr.S.Y. Mahajan
Advocate for the Respondents No. 2,4,5,6 : Mr. A.G.Ambetkar
Respondent No. 3 and 7 reported to be dead

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CORAM : V.L. ACHLIYA, J.

Dated: JULY 19, 2017

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The applicant/ complainant has moved this application seeking leave to file appeal against the impugned judgment and order of the acquittal passed by the Session Court in Criminal Appeal No. 40 of 2009.

2. Heard the learned counsel for the applicant-victim, respondent No.2 -accused and A.P.P for the respondent No.1-State.

3. Learned counsel for the applicant strenuously contended the impugned judgment and order passed by the appellate court is not sustainable in

law. He submits the trial court has thoroughly considered the evidence and convicted the accused. In absence of perversity the appellate court ought not to have interfered with the judgment and order passed by the trial court.

4. On the other hand the learned counsel for the respondents supported the judgment and order passed by the Appellate Court . He submits that there was no consistency in the evidence of complainant and the witnesses to the incident, examined by the prosecution. On due consideration of the evidence the appellate court has set-aside the judgment and order passed by the trial court.

5. In order to appreciate the submissions advanced I have perused record and proceedings. In my view a good case is made out to entertain the appeal against the impugned judgment and order. There are conflicting decisions on facts recorded by the courts below. Prima facie it appears that reasons and findings recorded by the trial court convicting the accused based upon due appreciation of evidence. It is quite settled position of the law while dealing with the appeal against the judgment and order of acquittal the appellate court is expected not to interfere with the reasons and findings recorded by trial court unless such records and findings are perverse based upon

improper appreciation of the evidence. In this view I am, inclined to allow the application. Accordingly, application is allowed. Leave granted to file an appeal. Appeal be registered and placed for admission on 26th July 2017. Learned counsel for the respondent waives the notice of application for the respondents. A.P.P waives the notice for the respondent-State.

6. Stand over to 26.07.2017

(V.L. ACHLIYA, J)

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