

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 50 OF 2019**

The State of Maharashtra

.....Applicant

Vs.

Balaji @ Anant Ashok Sable & Ors.

....Respondents.

Ms. M.H. Mhatre, APP for the Applicant.

None for the Respondents.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 18th FEBRUARY, 2019.

P.C.:-

The Applicant State has sought leave of this Court under Section 378(3) of the Code of Criminal Procedure, 1973 for filing an Appeal against the Judgment and Order dated 5th August, 2016 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 593 of 2008 acquitting the Respondents for the offences punishable under Section 143, 147, 148, 302, 323 and 504 read with Section 34 of the Indian Penal Code and under Section 4 read with Section 25 of the Arms Act.

By the same impugned Judgment and Order, the Respondents have been convicted under Section 304 (part-I) read with Section 34 of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-.

2 Heard the learned APP and perused the entire record, including the notes of evidence.

3 It is the prosecution case that, on 21st April, 2008, at about 6.30 p.m. the injured namely Chetan had been to Mahatma Gandhi Garden situated at Bundgarden along with his nephew namely Gaurav. Altercation took place between the Respondent No.1 Shri. Balaji @ Anant Sable and Chetan which ensued in a scuffle.

During the said scuffle, it is alleged that the golden ring amounting to Rs.12,000/- which was in the ear of Chetan was misplaced. Chetan disclosed this fact to his family members, therefore, the family members of Chetan including Shri. Vikas Dodke (P.W. 1), Smt. Sangita Dodke (P.W. No. 6) and Smt. Malan Dodke (P.W. No. 7) had been to the house of Respondent No.1 at about 9.30 p.m. They abused Respondent No.1 and therefore, quarrel took place. During the said quarrel Smt. Bhagyshree Agate (P.W. No. 13) and Smt. Sunita i.e. the relative of the Shri. Vikas Dodke (P.W. No.1) started assaulting the

Respondents. It is alleged that, therefore, the Respondents who were armed with Kukari and Sword assaulted Chetan. Chetan sustained bleeding injuries and fell down on the spot. It is the further prosecution case that, the actual assault took place at about 11.30 p.m.

4 Initially, the charge under Section 302 of the Indian Penal Code read with other allied Sections of the Code were framed against the Respondents. The Trial Court has convicted the Respondents for the offences mentioned in the earlier paragraph by opining that the Respondents have exceeded the right of private defence and with intention to cause the injuries and/or culpable homicide not amounting to murder, assaulted Chetan. As noted earlier, the Trial Court has convicted the Respondents for the offence punishable under Section 304 (part-I) of the Indian Penal Code.

5 A minute perusal of evidence on record indicates that, the Trial Court has rightly assessed it and has convicted the Respondents under Section 304 (part-I) of the Indian Penal Code.

6 After perusing the entire evidence on record, it appears to us that, the offence under Section 302 of the Indian Penal code is not made out against the Respondents and the view adopted by the Trial Court in convicting and sentencing the Respondents under Section 304

(part-I) of the Indian Penal Code is a reasonable and probable view, in the facts and circumstances in the present case.

No case for grant of leave to file an Appeal is made out.

Application is accordingly rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)