

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1865 OF 2018****IN****CRIMINAL APPEAL NO. 1064 OF 2017**

Ashish Rajpal Kajaniya

.....Applicant

Vs.

The State of Maharashtra

....Respondent.

Mr. Satyavrat Joshi for the Applicant.

Mr. V.V. Gangurde, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 17th JANUARY, 2019.****P.C.:-**

Heard the learned counsel appearing for the Applicant-Accused No.1, who has been convicted for an offence punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code and under Section 4 read with Section 25 of the Arms Act.

2 The submission of the learned counsel appearing for the Applicant is that P.W. No. 2 who is allegedly the eye-witness, has not substantially supported the prosecution and in any case, his evidence cannot be accepted because he admitted that the police interrogated him by threatening to harass him. He submitted that, once the version

of P.W. No. 2 is discarded who was a star witness, the conviction cannot be based only on the version of P.W. No.1. He submitted that the panch witness in the Memorandum Panchanama under Section 27 of the Indian Evidence Act, 1872 regarding recovery of the weapon of offence did not support the prosecution.

3 We have perused the notes of evidence. P.W. 1 Mallesh has fully supported the prosecution who is the witness to the altercations between the deceased and the accused.

4 Evidence of P.W. 2 shows that he has partly supported the prosecution and he has established the presence of the Applicant at the spot of the incident. P.W. No. 2 himself is an injured witness. If the submissions of the learned counsel appearing for the Applicant are accepted, it will amount to re-appreciating evidence at this stage.

5 We may note here that the Application for bail made by the co-accused has been withdrawn.

6 No case is made out for enlarging the Applicant on bail.

7 Application is rejected.

(A.S. GADKARI, J.)

(A.S. OKA, J.)