

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (ALS) NO.4 OF 2020

The State of Maharashtra ... Applicant.
V/s.
Sanjaykumar Pannalal Harijan ... Respondent.

M. V.B. Konde-Deshmukh APP for the Applicant.
None for the Respondent.

**CORAM : S.S.SHINDE &
V.G. BISHT, JJ.**

DATE : 24TH FEBRUARY, 2020

P.C. :

1. The Appellant-State seeks leave to challenge the judgment and order dated 2/05/2019 passed in Sessions Case No.15 of 2013 whereby present accused-respondent has been acquitted of the charges under section 302, 452 read with 34 of the Indian Penal Code and under section 3 read with 35 of the Arms Act.

2. Heard Mr.Konde-Deshmukh, learned APP. Perused record and impugned judgment.

3. Learned APP submitted that there are only two eye witnesses, namely, P.W.4 – Aftab Nisar Ahmad Ansari and P.W.6 – Mohammad Shadab Ahmad Ashpaq to the incident and, therefore, their evidence ought to have been taken into

consideration by the learned trial Court properly and since it has not been done so, the accused has been acquitted.

4. In the words of learned APP there are two eye witnesses, namely, P.W.4 and P.W.6 then it becomes necessary to quickly go through their respective testimonies. From the evidence of P.W.4, it is seen that at the relevant time he was returning from power loom factory and saw one boy pelting stone against the accused. When he asked said boy as to why he was pelting stone, the boy answered that accused had fired and was running away. This is the only material part of the examination-in-chief of this witness. Rest of his evidence nowhere even remotely suggests that this witness had occasion to see personally the accused firing. This becomes more clear when in the cross examination he stated that he came to know from the public that accused had fired. In our considered opinion the trial Court rightly rejected testimony of this witness.

5. It is seen from the examination-in-chief of P.W.6 that at the relevant time he was working in the shop of Juber Akhtar and was showing clothes to the customer. One unknown person came and shot at Juber. The said person was chased by the public and apprehended. He further stated in

his evidence that he can identify accused, if shown to him and it appears that on the day of recording of evidence, the accused was not produced from jail. Thus, there is no due identification of accused before the Court at the hands of this witness.

6. It is also seen from the record that test identification parade was carried out after more than two months of the incident in question and there is no evidence to suggest that P.W.6 had also participated in said identification parade and had duly identified the accused. In such obtaining situation, it cannot be said that there was due identification of accused by P.W.6 either in test identification parade and then before the Court. The learned trial Court also took note of this fact and rightly refused to act on the version of P.W.6.

7. From the above, it is more than clear that the identity of accused in alleged offence was not at all established by the prosecution beyond reasonable doubt. This being so we do not find merit in present appeal and consequently, leave to appeal is rejected.

(V.G. BISHT, J.)

(S.S. SHINDE, J.)