

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

APPLICATION FOR LEAVE TO APPEAL (STATE) NO. 144 OF 2019

The State Of Maharashtra
v/s.
Anwar Nasiruddin Shaikh

.. Applicant

.. Respondent

Mr. J.P.Yagnik, APP for the Applicant-State.

**CORAM : A. S. GADKARI &
SHYAM C. CHANDAK, JJ.
DATE : 30th APRIL, 2024.**

PC. :

1) This is an Application filed under Section 378 of the Criminal Procedure Code for leave to Appeal by the State, for conviction of the Respondent under Section 302 of the Indian Penal Code.

2) By the impugned Judgment and Order dated 20th March 2019, in Sessions Case No.626/2014, the learned Sessions Judge, Greater Mumbai had convicted the Respondent under Section 304(II) of I.P.C. and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default of payment of fine to further suffer rigorous imprisonment for one year. The Respondent was also convicted for the offence punishable under Section 37(1)(a) r/w. 135 of the Act and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default of payment of fine to further suffer rigorous

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imprisonment for one month. The trial Court had directed that both the sentences imposed upon the Respondent to run concurrently.

3) Heard learned APP Mr. Yagnik for the State. Perused entire record.

4) The prosecution case in brief is that, the informant (PW No.1) was engaged in the business of supplying utensils cleaners to the caterers. The Respondent was known to him. On 21st May 2014 at about 5.30p.m. the informant was standing at C.P. Tank Circle, Madhavbaug Mandir, Girgaon. The Respondent was standing opposite to the location of PW 1 near Shrungar Beauty Parlour, C.P. Tank. PW 1 saw that, two persons viz. Suraj Patel and Ramesh Chaudhary, waiters by profession came near the Respondent and started quarreling loudly. The Respondent confronted with them and questioned them as to why the said two persons assaulted him yesterday. The Respondent further told him that, now he would show them. It was alleged that, in the said quarrel after uttering the said sentences, the Respondent took out a knife from the backside of his waist and gave a blow of it in the abdomen of the Ramesh Chaudhary and in the chest of Suraj Patel. Ramesh Chaudhary held the knife which was inflicted in his abdomen. Then Suraj Patel started running towards the direction of Natural Ice-cream Shop, near C.P. Tank Circle in injured condition. It was further alleged that, the Respondent followed Suraj Patel by uttering the words that, 'now we would not leave him'. The informant in order to nab the

Respondent also ran behind him and asked him to stop. In the meantime, the Respondent caught hold of Suraj Patel and gave a stab in his abdomen. Suraj Patel started running from the said spot, the Respondent followed him and assaulted him again. The people present at the scene of offence took the injured persons to J.J. Hospital. Both the said persons succumbed to their injuries while undergoing treatment.

4.1) A crime was subsequently registered bearing C.R.No.129/2014 under Sections 302, 307 r/w. The Provisions of Bombay Police Act at V. P. Road Police Station, Mumbai.

4.2) After completion of investigation, chargesheet came to be filed against Respondent under Section 302 of the I.P.C. and under the provisions of Bombay Police Act. The trial Court committed the said case to the Court of Sessions. Charge was framed below Exhibit 2. It was read out and explained in a language with which the Respondent was well conversant. The Respondent pleaded not guilty and claimed to be tried. The prosecution in support of its case examined in all 15 witnesses. The trial Court after recording the evidence of said witnesses, had recorded the statement of the Respondent under Section 313 of Cr.P.C. The trial Court by its impugned Judgment and Order had convicted the Respondent under Section 304 (II) of I.P.C. as noted earlier.

5) The facts noted in para No. 4 hereinabove are derived from the evidence on record.

5.1) It is a fact on record that, initially the deceased started quarrel with the Respondent, upon which the Respondent questioned them as to why they bet him the earlier day and in the said quarrel the Respondent assaulted the said two persons with knife which was in his possession.

5.2) The trial Court has recorded the finding that, there was no intention at the behest of Respondent to commit murder of said two persons. However, he had knowledge that, due to his assault the said persons may loose their lives.

6) Perusal of evidence on record clearly indicates that, findings recorded by the trial Court is a probable view which can be adopted in the facts and circumstances of the present case.

7) Record further indicates that, the Respondent did not prefer Appeal against conviction against the impugned Judgment and Order and as of today has been released from jail after undergoing entire sentence.

8) In view of the above we find that, there are no merits in the Application and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)