

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 65 OF 2019
IN
CRIMINAL APPEAL NO. 193 OF 2016

Lalasaheb @ Raghunath Shankar Naik ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Ashok Mundergi, Sr. counsel i/by Mr. Hrishikesh Mundergi for the applicant.

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

CORAM : B.P. DHARMADHIKARI &
MRS.SWAPNA JOSHI, JJ.
DATE : JULY 11, 2019

P.C.:

This is a second bail application moved by accused no. 1. His earlier bail application was disposed of as withdrawn with a liberty to move afresh for bail if the appeal was not heard finally within one year. Exercising that liberty, present application has been filed.

2. Learned Senior counsel submits that there appears to be a clash between two communities and the evidence on record show that not only the present accused but also the other accused persons assaulted the deceased. The trial court has

found that accused no. 1 hit on the head of the deceased with an iron rod. However, the arrival of accused no. 1 on the spot with iron rod is an omission on the part PW 1. It is further stated that PW 1 and other witnesses speak of the other persons assaulting the deceased with wooden strips and in the light of this omission, the fatal injury noted in post mortem cannot be said to be authored by accused no. 1. Without prejudice, it is added that on the piece of property, two rival groups had some issues and quarrel took place when the rival group attempted to unload the building material at the spot. The gram panchayat members asked the other group not to do so but the other group did not adhere to their suggestion. Contention is in this situation, in sudden fight when without any premeditation, a single blow is alleged to be delivered, the offence under section 302 is not made out.

3. Learned APP submits that though under section 161 Cr.P.C. statement of PW 1, coming of accused no. 1 on the spot with iron rod is omission, the fact that he arrived and thereafter he delivered a blow with an iron rod is not omission. She also relies upon the evidence of the independent witnesses namely PW 2 Sarejrao to show that his evidence is consistent with the story narrated by PW 1.

4. A small piece of land on which Samaj Mandir was to be built, is claimed by two groups. The deceased and his group brought bricks to proceed with the construction and wanted to stack the same on that plot in question. It was opposed by the accused persons. Even Gram Panchayat members suggested that the bricks may be unloaded at some other place.

5. The material prima facie shows that the dispute already existed and on that day, deceased and his group proceeded further with their design. Accused persons therefore, arrived at the spot prepared. We at this stage find non-mentioning of the iron road with accused no. 1 at the time when he arrived at the spot, is not sufficient to disbelieve PW 1. In any case, PW 2 has supported him. Perusal of evidence of PW 1 and 2 at this stage does not enable us to hold that accused no. 1 at that time had no intention to inflict the fatal injury.

6. We therefore, reject the bail application.

(MRS.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)