

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

**CRIMINAL APPLICATION NO. 291 of 2019
IN
APPEAL NO. 268 of 2019**

Mahendra @ Mohan Balkrishna Gavandi .. Applicant

v/s.

The State of Maharashtra . ..Respondents

**Mr. Sadashiv Deshmukh a/w. Sneha Bhange for the Applicant.
Mr.N.N.Gangurde, APP for the Respondent/State.**

**CORAM : B.P.DHARMADHIKARI &
PRAKASH D. NAIK, JJ.
DATED : APRIL 15, 2019.**

P.C. :

1. After narrating the facts, Counsel for the Applicant-Appellant submitted that the material on record does not show commission of culpable homicide amounting to murder. Though trial Court has not accepted use of iron rod, external injuries i.e. injury nos.1 and 2 on face of deceased are admittedly not the cause of death. According to PW7, Doctor, internal injury i.e. liver tear and hematoma are the reasons which caused death. This internal injury is attributed to fist

blows. In these facts and contentions as fist blows could not have inflicted any injury sufficient in ordinary course of nature to cause death, the finding and conviction under Section 302 IPC is unsustainable. The learned Counsel states that, at the most conviction could have been ordered under Section 326 of IPC.

2. The learned APP has opposed the bail application. He has taken us through the consideration by trial Court in paragraphs 39 and 40 of its judgment and deposition of PW7. He submits that fist blow can also inflict an injury sufficient in ordinary course of nature to cause death. He further submits that PW1 has supported use of iron rod as a weapon.

3. Confronted with absence of medical opinion on record that fist blow would have ordinarily caused an injury sufficient to cause death, the learned APP without prejudice invited our attention to Section 304 of IPC and submitted that the applicant was in jail for a period of less than three months as under trial prisoner, and thereafter is in prison hardly for two months after judgment. According to him, niceties, as has been argued at this stage, call for the sifting of evidence and this Court should not undertake that

exercise at this juncture.

4. We have perused the material available on record. PW7, Doctor, does not state that by using fist blow an injury sufficient in ordinary course of nature to cause death could have been inflicted. The deceased was a patient who had undergone by-pass surgery few months back before his death, and the accused has also urged that because somebody blew a whistle, there was commotion and the deceased might have fallen on some furniture items like a including table.

5. Prima facie, we in this situation, find it difficult to support the conviction under Section 302 IPC. Whether conviction has to be under Section 304 (ii) or then under Section 326 IPC are the questions which need not be answered at this stage. The Applicant-Appellant was on bail during trial and hence we are inclined to enlarge him on bail during pendency of this appeal, particularly when trial Court has acquitted the other two accused persons. Present appeal is not likely to be heard in near future.

6. Hence, on the same terms and conditions as imposed by the trial Court, but subject to the Applicant-Appellant complying with

following terms and conditions, we order his release on bail during pendency of the present appeal.

- i) The Applicant-Appellant and his sureties shall execute fresh documents/ bonds before trial Court within two weeks from today;
- ii) He shall on affidavit disclose the place at which he will continue to stay during pendency of this appeal and give his contact number.
- iii) His Guarantors/Sureties shall also accordingly furnish details of their residence and contact numbers.
- iv) During pendency of this Appeal, he shall on every first working Monday, once in a period of two months after his release, report to the Superintendent of the Sessions Court at Raigad and mark his attendance.
- v) Failure to comply with these terms and conditions shall entitle the trial Court to take the Applicant-Appellant in custody, in accordance with law.

. Application is accordingly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B. P. DHARMADHIKARI, J.)