

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 717 OF 2019
IN
CRIMINAL APPEAL NO. 1408 OF 2018

Gajanan Pralhad Kakade ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Ateet Shirodkar for the applicant.

Mr.H.J. Dedhia, APP for the respondent State.

CORAM : B.P. DHARMADHIKARI &
SMT.SWAPNA JOSHI, JJ.
DATE : JUNE 21, 2019

P.C.:

Matter is heard in the backdrop of order dated 07/06/2019. Today it is not in dispute that the name of the applicant appears in supplementary FIR and statement under section 161.

2. The limited contention raised before us is without prejudice to the plea of total denial for the present, it can be seen that the alleged attack by a sword is not on any vital part of the body and only fingers of the deceased have been wounded. It is further pointed out that the death occasioned due to trauma to chest caused by iron rods in possession of other three accused

persons. To show that the applicant/accused never intended to cause any serious injury, our attention is invited to deposition of PW 1 and it is submitted that though he was holding a sword, he did not use it and he attacked the alleged female members with fist and blows. In the process he also lost possession of that sword. Learned APP submits that at this stage, distinction between the intention of accused no.1 to 3 on one hand and accused no. 4 on the other hand cannot be made. All attacked together. Deceased was made to fall down and after he fell down, accused nos. 1 to 3 gave blows of iron rod on his chest. The present applicant used sword which caused multiple injuries to the fingers of the deceased.

3. It appears that four accused persons attacked with weapons and the sharp edged weapon sword was with the present applicant. Post mortem report shows the death caused due to trauma to chest and the iron rod appears to be the weapon employed for that purpose. Post mortem also shows multiple wounds to fingers and those were incised wounds. It could not have been caused by iron rod. It is prima facie clear that in the effort to ward off the sword blow, the deceased might have used his hands and cut his fingers. This cannot be a ground

to make distinction at this stage in the case of other accused persons and the applicant. The fact that he did not attack the female members with sword also cannot be said to be decisive here.

4. We therefore, find no case made out for release of the applicant on bail. Hence, Application is rejected.

(SMT.SWAPNA JOSHI, J.)

(B.P. DHARMADHIKARI, J.)