

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

**CRIMINAL APPLICATION NO.1509 OF 2018
IN
CRIMINAL APPEAL NO.762 OF 2017**

Bhalchandra Raghunath Bhoir

...Applicant

vs.

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPLICATION NO.1629 OF 2018
IN
CRIMINAL APPLICATION NO.1509 OF 2018**

Nanda Harishchandra Gosavi

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. S. M. Gorwadkar, Senior Counsel i/b Mr. Aashish Satpute a/w Mr. R. Joshi and Mr. Nihal Mansuri for the appellant in APPA No.1509/2018.

Mr. Ganesh Gole i/b Mr. Ritesh Ratnam for the applicant in APPA No.1629/2018.

Mr. H. J. Dedhia, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
MR. SANDEEP KASHINATH SHINDE, JJ.
DATE : 21/08/2019.**

P.C.:

. Accused No.1 before this Court is seeking bail. He has been convicted under section 302 of IPC with other relevant sections of the Arms Act.

2. Submission is deceased a known criminal entered the chamber of petrol pump occupied by accused No.1 and fired bullet on him. The bullet missed and entered wall behind accused No.1. Accused No.1 hurriedly took out licensed revolver of his brother (accused No.2) kept in

drawer of table and in self defence fired on deceased.

3. Contention is according to prosecution total 4 bullets were fired revealing intention to kill. Learned counsel for applicant accused No.1 submits that in this situation when deceased armed with weapon was about to fire at accused No.1, risk evaluation cannot be balanced with mathematical precision and in order to save himself, the bullets were fired. The Trial Court could not have concluded that bullets if fired in self defence should have been on lower part of body and not on vital part or then number of bullets fired is disproportionate. He submits that without prejudice to plea of denial of any offence, at this stage accused No.1 submits that prosecution may have made out a case of exceeding right of private defence and, hence punishment could have been under section 304-II for 10 years. Accused No.1 has already completed about 11 years.

4. Learned APP and learned counsel for the intervenor both are strongly opposing the prayers. They point out that no other revolver has been found at spot and if deceased was armed with revolver, accused have not explained what happened to it. The other contention is, story of deceased firing at accused No.1 is incorrect. Deceased was called inside the chamber and was fired at.

5. The testimony of PW-22 Ballistic Expert and his report show that in said office-chamber total 4 empties were found and all empties are connected with licensed revolver used by accused No.1. Three bullets were found in the body of deceased. Fourth bullet pierced his head and after leaving head embedded itself in a wall behind i.e. the northern wall. Thus, there was no evidence of any 5th bullet being fired in the chamber.

6. Learned counsel for the applicant pointed out that bullet

removed from wall is found to be dis-formed and therefore could not be connected with the revolver used by accused No.1.

7. Finding of 4 empties in chamber is not in dispute at this stage. Three bullets are found in the body of deceased. Those bullets and 4 empties are connected with licensed revolver with accused No.1 by PW-22. Fourth bullet needs explanation. It is not in dispute that bullet injury on head of deceased has entry wound and also exit wound and a deformed bullet is found in the northern wall. The bullet was not fit for any examination. In absence of any other gun, this disformed bullet gets connected with accused only.

8. If deceased had any gun, after his death in normal circumstance gun should have been in the chamber only and accused would have in that situation to give reason, if gun is not to be seen in chamber. Thus, again accused only could have pointed out who has removed it.

9. In this situation, at this stage we do not find any case made out to release the applicant on bail. The application is rejected.

(SANDEEP KASHINATH SHINDE, J.)

(B. P. DHARMADHIKARI, J.)