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

**INTERIM APPLICATION NO. 143 OF 2022
WITH
INTERIM APPLICATION NO. 142 OF 2022
IN
CRIMINAL APPEAL NO. 492 OF 2022**

Bilal Malang Shaikh ... Applicant
Versus
State of Maharashtra ... Respondent

Mr. Sandeep R. Karnik for the Applicant/Appellant.
Mrs. M. M. Deshmukh, APP for the Respondent-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 16th JANUARY, 2023

P.C. :-

. Heard Mr. Sandeep Karnik, Counsel appearing for the applicant/
appellant.

2. In Sessions Case No. 296 of 2016, the applicant/accused came to
be convicted for an offence punishable under Section 302 with life
imprisonment.

3. By drawing support from the evidence of PW1-Mr. Sohel at
Exh.31, PW2-Smt.Mumtaj Exh.37 and PW7-Dr. Sneha at Exh.74, the
contentions are the dying declaration which is formed to be basis for
conviction was executed in a doubtful circumstances. So as to
substantiate the said claim, our attention is invited to the nature of
burns suffered by the victims (90%), the specific statement made by

PW2 that the body of the deceased was wrapped in bandages, so as to claim that execution of dying declaration is under doubtful circumstances.

4. The evidence of PW5-PSI Ashwini Khambe at Exh.60, sufficiently demonstrates that the thumb of the deceased was not bandaged, which was used for putting the thumb impression. The evidence of the doctor in categorical terms speaks of the deceased being in fit mental condition for giving dying declaration and the thumb impression was taken on the dying declaration in his presence.

5. We have appreciated the said submissions in the light of resistance shown by learned APP.

6. The evidence of the Doctor at Exh. 74 in categorical terms speaks of the 90% burns suffered by the victim, fact that from elbow to fingers including palm were not burned and the thumb impression of the victim was taken in the presence of said Doctor. This evidence went uncontroverted and as such rightly so, relied on by the Sessions Court forming to be basis for the conviction of the applicant. No illegality is noticed in the appreciation of the said evidence as such the case for grant of relief under Section 389 of the Code of Criminal Procedure is not made out.

7. The Interim Application No. 143 of 2022 stands rejected.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]