

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

**INTERIM APPLICATION NO.179 OF 2019
IN
CRIMINAL APPEAL NO.505 OF 2018**

Mr. Narayan Shankar Raut ..Applicant/Appellant
Versus
The State of Maharashtra ..Respondent

Mr. Aabad H. Ponda, Senior Advocate & Karma Vivan i/by Balwant
V. Salunkhe, for the Applicant/Appellant.
Mr. V. B. Konde-Deshmukh, APP for the Respondent/State.

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

DATE : 23rd JANUARY, 2023

PC.

1. The applicant/accused No.6 came to be convicted in Sessions Case No.25 of 2009 for causing murder of one Tanaji on the differences over the land dealings. The applicant along with other two co-accused came to be convicted and sentenced for life imprisonment.

2. PW-1/complainant, a cousin of deceased Tanaji alleged that the applicant along with other co-accused has assaulted deceased Tanaji with wooden log. PW-2, PW-3 and PW-4 are the other eye witnesses, who in their evidence have stated about the applicant along with other co-accused assaulting deceased Tanaji. After deceased Tanaji was initially taken to Primary Health Centre, PW-8/doctor certified in all three injuries and was advised x-ray. He

was also advised to be taken to JJ Hospital, however, on the next day, deceased Tanaji was taken to JJ Hospital where he was declared dead. Dr. Sachin/PW-10 who has conducted postmortem has reported in all five injuries, some of which are internal one.

3. Mr. Aabad Ponda, learned senior counsel appearing for the applicant in the aforesaid background would urge that the applicant, a senior citizen needs protection under Section 389(1) of the CrPC, particularly, when there is disparity in the injuries suffered by the deceased Tanaji as reflected from the testimony of doctors viz. PW-8 and PW-10. In addition, his contentions are, eye witnesses have made vague allegation of use of wooden logs by the applicant without specifying the role. According to him, even if the weapon i.e. wooden logs are recovered from the house of the applicant, the fact remains that the wooden loges are not stained with the blood, as could be inferred from the testimony of the Investigating Officer, so also eye witnesses, whereas panch witnesses have given a contradictory evidence, even though same was not forwarded to Forensic Science Laboratory (FSL).

4. While opposing prayer, Mr. V. B. Konde-Deshmukh would strenuously urge that there is enough evidence of eye witnesses to connect the complicity of the applicant to the serious offence punishable with life imprisonment. According to him, the disparity in the evidence of the doctor, the recovery of weapon without blood stains will have hardly any bearing over the merits of the case.

5. We have appreciated the submissions.
6. The fact remains that the PW-8 and PW-10 have given different version about the suffering of injuries by deceased Tanaji. It appears that the eye witnesses have specifically named the applicant as one of the accused armed with wooden log while assaulting deceased, however, there is not specific attribution against the applicant as to the manner of assault on a particular part. A general statement is made that the applicant has assaulted the deceased along with other co-accused. Apart from above, disparity in certifying injuries will have bearing on merit of the matter.
7. This Court is equally required to be sensitive to the fact that the applicant, a senior citizen is behind the bar for more than four years. That being so, a case for suspension of sentence and grant of bail is made out.
8. The application as such stands allowed.
9. Applicant is directed to be released on bail on executing PR bond of Rs.25,000/- with one or two sureties in the like amount.
10. Till the conclusion of hearing of appeal, applicant shall remain outside the jurisdiction of concerned police station.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]