

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.17 OF 2021

The State of Maharashtra,
Through Police Station Officer,
Police Station, Bori, Tq. Jintur,
District Parbhani.

**... Applicant / Appellant
[Orig. Prosecution]**

Versus

1. Ganesh s/o Waman Ambhure
Age: 59 years, Occupation: Agriculture

2. Kundlik s/o Ganesh Ambhure
Age: 43 years, Occupation Agriculture

3. Gulab s/o Waman Ambhure
Age: 70 years, Occupation Agriculture

4. Mangalbai w/o Kundlik Ambhure
Age: 40 years, Occupation; Household,
All R/o Chandaj, Tq. Jintur,
District Parbhani

**... Respondents
[Original Accused]**

...
Mr. S. J. Salgare, APP for the Applicant / Appellant
...

**CORAM : SMT. VIBHA KANKANWADI, J.
AND
S. G. CHAPALGAONKAR, J.**

DATE : 5th July, 2023

ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The Applicant / State of Maharashtra approaches this Court

under Section 378 (1)(b) of the Code of Criminal Procedure, 1973, thereby seeking leave to file appeal against the judgment and order dated 23rd January, 2021, passed by the Additional Sessions Judge -4, Parbhani, in Sessions Case No.163/2016, by which, the respondents / original accused are acquitted of the charges under Sections 302, 324 and 323 read with 34 of the Indian Penal Code [hereinafter referred to as 'IPC' for short].

2. The case of the prosecution narrates that one Vaijinath Vinayakrao Renge lodged a report to the Bori Police Station alleging that on 12th August, 2016, he received a phone call from his father that someone beat his sister Taramati and burnt her. The informant along with his cousin - Dinesh Renge and Uncle - Limbaji Renge rushed towards the village of Taramati in an auto-rickshaw. When they reached at the house of Taramati, they found her in burnt condition. Immediately, an ambulance was arranged and she was carried towards hospital. During the journey, she disclosed that the accused persons, namely, Kundlya, Gulbya, Ganya and Mangli used to say her that she is vagabond [Mokari] and used to tease her. On the day of incident, accused - Kundlik beat her by stones on her forehead and other accused abused and set her on fire by pouring kerosene. The informant also states that by the time ambulance reached to Takali

[Kumbhakarna], she stopped talking. On reaching the Government Hospital at Parbhani, the Doctor declared her dead.

3. On the basis of this report, the Police Officer, Bori registered Crime No.147/2016 for the offences punishable under Sections 302, 324 and 323 read with 34 of IPC against the accused persons. After completion of investigation, a charge-sheet was filed in the Court of Judicial Magistrate, First Class, Jintur against all the accused persons. The case was committed to the Sessions Court for trial and the charges were framed. Since the accused persons pleaded not guilty, they were put on trial.

4. In endeavor to bring home guilt against the accused persons, the prosecution relied upon the evidence of PW – 1, namely, Vaijinath Renge at Exhibit-22 and evidence of PW-4, namely, Dinesh Renge at Exhibit-37. Both the witnesses have stated that the deceased had told them about the incident leading to her injuries. In short, both of them claims to be witnesses on oral dying declaration made by Taramati. The prosecution has also placed its reliance on the evidence of Dr. Rameshwar Gangadharrao Rodge [PW-2], Mahesh Kishanrao Kagane [PW-3/driver of ambulance] Dinesh Bapurao Renge [PW-4], Sunil Bhaskar Awsarmal [PW-5/Investigating Officer], Chandrakant

Subhashrao Bedre [PW-6] and Vijay Ramrao Chimankar [PW-7].

5. The thrust of the prosecution case is mainly on the evidence of Vaijinath Renge [PW-1] and Dinesh Renge [PW-4], who claims to be the witnesses on dying declaration. Pertinently, PW-1 Vaijinath Renge deposed about the presence of paternal aunt along with the deceased when they reached at the home of deceased. He further states that the husband of the deceased reached on the spot after them. The Sessions Court discussed this evidence in detail and noted the inconsistency in their statements.

6. Pertinently, Dinesh Renge [PW-4] states that he did not meet their paternal aunt and traveled in the ambulance along with Vaijinath Renge [PW-1] and one Limbaji, whereas Vaijinath Renge [PW-1] states that Mandabai / paternal aunt was present at home and she accompanied with them in the ambulance till Parbhani. Similarly, Vaijinath Renge [PW-1] deposed that Ramprasad [husband of the deceased] reached on the spot after five minutes of their arrival, whereas Dinesh Renge [PW-4] deposed that Ramprasad never reached on the spot. The presence of Dinesh [PW-4] at the spot and thereafter, in the ambulance along with Vaijinath Renge [PW-1] appears to be doubtful. It can be noted here that paternal aunt

Mandabai was from the same village where the deceased was living and when Vaijinath Renge [PW-1] and Dinesh Renge [PW-4] reached at village, she was at the spot where the deceased was lying in burnt condition. However, the prosecution failed to examine her though she could have been the best witness to tell about the nature of incident and if the deceased was alive, she was the first person who could have gathered information from the deceased regarding exact nature of incident. Even the husband of the deceased - Ramprasad is not examined by the prosecution. The entire case of the prosecution rests upon the so called oral dying declaration given to the real brother of PW-1 and cousin PW-4. The surrounding circumstances and contradictions in the statement of these witnesses makes prosecution's case unbelievable. It is pertinent to note here that Dr. Rameshwar Rodge [PW-2], in his deposition, admits that the deceased died due to 93% burn injuries and it is possible that with such a burn, the patient may suffer Neuralgic shock. He further admits that looking to the burn injuries, the instant death is possible. If this medical evidence is considered along with the attending circumstances, the case of the prosecution that deceased made her oral dying declaration before her death appears to be doubtful.

7. It is trite that the oral dying declaration is a weak piece of evidence and needs corroboration or at least it should inspire the confidence. However, in the present case, on close scrutiny of the evidence, it is doubtful as to whether the deceased was conscious and, in a position, to give such statements. Further, the presence of PW-4 with deceased is doubtful.

8. The prosecution further relied upon the evidence of the ambulance driver, namely, Mahesh Kishanrao Kagne [PW-3]. He admits, in his deposition, that while he was putting the burned Taramati in the ambulance, she was unconscious and not talking to anyone. As per the evidence of prosecution, Dr. Jagannath Dhakre was present in the ambulance so also a nurse was accompanied them. The PW-1 accepts that the nurse was in the vehicle and she might have heard the conversations between him and the deceased during the course of journey. In that case, the nurse was a best independent witness available to prove the oral dying declaration. No explanation is coming on record for non-examination of the nurse. Considering the aforesaid evidence on record, it is difficult to believe that the deceased was in a position to record her oral dying declaration as claimed by the prosecution witnesses.

9. The spot panchanama [Exhibit-28] shows that the alleged incident took place on a public road surrounded by many houses. If the narration of the incident in the dying declaration that accused no.1 hit the deceased and thereafter, all the accused persons have burnt her by pouring kerosene and putting her ablaze, is accepted, in that case, the evidence of independent witness could have been easily brought on record. It is to be noted here that in the report of Vaijinath Renge [PW-1] to the police, he did not specify the role of each of the accused persons. However, Dinesh Renge [PW-4], in his deposition, attempts to specify the role of the accused persons. He deposed that the accused persons, namely, Mangali, Gulbya and Ganya poured the kerosene and accused - Kundlya set the fire. If such a specific version of the incident was given by the deceased, then in the report lodged to the police, it could have been reflected. This is one more reason why the case of the prosecution cannot be accepted. The Sessions Judge on appreciation of the evidence acquitted the accused persons by giving benefit of doubt.

10. The learned APP could not point out any perversity in the judgment of the Sessions Judge. It is trite that the Appellate Court while dealing with the appeal against acquittal will not replace the view taken by the Trial Court unless some perversity is pointed out or

some ignorance on the part of the Trial Court to look into the material piece of evidence is demonstrated.

11. The Supreme Court of India in case of **Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra** reported in **(1973) 2 SCC 793** laid down certain principles to be adhered by the Appellate Court while dealing with the appeal against the acquittal. The relevant part of Paragraph No.5 of the judgment reads thus:

“In law there are no fetters on the plenary power of the appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration.”

12. Having applied the aforesaid principles of law in the facts of the present case, we do not find any reason to interfere in the finding of fact recorded by the Trial Court which is based on the material tendered into service on behalf of the prosecution.

13. In that view of the matter, we do not find any substance in the application seeking leave to file appeal. Hence, the application is rejected.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE