

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 753 OF 2015
IN
CRIMINAL APPEAL NO. 145 OF 2015.

Sainath s/o. Vishwanath Rokade
and another

....Applicants.

Versus

The State of Maharashtra

....Respondents.

Mr. A.S. Kale, Advocate for applicants.

Mr. V. D. Godbharle, APP for State.

**CORAM : T.V. NALAWADE &
SMT. I.K. JAIN, JJ.**

DATED : 21st April, 2015.

ORDER :

1. The application is filed for suspension of substantive sentence and for granting bail. Both the applicants/appellants are convicted and sentenced for the offence punishable under section 302 r/w. 34 etc. of Indian Penal Code. Both the sides are heard. This Court has gone through the original record.

2. The deceased was wife of appellant No. 1 and appellant No. 2 is the mother of appellant No. 1. The marriage of deceased with appellant No. 1 took place in the year 2005. She has left behind two issues. She sustained burn injuries in the

matrimonial house in the noon time. She was shifted to hospital where she died on 5.4.2012.

3. The crime came to be registered on the basis of second dying declaration of the deceased recorded on 4.3.2012. The material was collected which was to the effect that there was suspicion about the character of the deceased in the mind of husband and due to that, there was harassment to the deceased and that was the reason behind the incident. Before the Trial Court, parents of the deceased turned hostile. The conviction is given on the basis of dying declarations of the deceased.

4. The first dying declaration was recorded on 3.3.2012 (Exh. 36) by police head constable and it was to the effect that her clothes caught fire when she was attempting to start kerosene stove. Second dying declaration was recorded on 4.3.2012 by A.P.I. (Exh. 43). In the second dying declaration the deceased blamed the appellants. She disclosed that the appellant No. 1 poured kerosene on her person and appellant No. 2 set her on fire by using match stick. The third dying declaration was recorded on 14.3.2014 by the Executive Magistrate. In second and third dying declarations, the deceased

blamed the appellants and aforesaid version was given by the deceased. The Trial Court has considered and scrutinized all the three dying declarations and the Trial Court believed the subsequently recorded two dying declarations. Much was argued by the learned counsel for the applicants on the discrepancies in the three dying declarations. He also submitted that the conduct of the husband and other appellant need to be considered which was to the effect that they had shifted the deceased to hospital. However, neither the husband nor the mother in law sustained any burn injuries. However, admittedly, both the appellants were present in the house at the relevant time.

5. The spot panchanama was prepared on 4.3.2012. The spot panchanama shows that there was a kerosene stove, but there was match stick. The C.A. report shows that kerosene was detected on the clothes of the deceased. Thus, the spot panchanama, P.M. report and C.A. report are not consistent with the so called first disclosure given on 3.3.2012.

6. The learned counsel for the applicants argued much about the circumstance like the second and third dying declarations were not read over to the deceased and there is no substantive evidence to the effect that the deceased had

admitted the contents of the dying declarations. The learned counsel placed reliance on two cases like **2005 (1) LJSOFT 124 [Shivaji s/o. Tukaram Patdukhe Vs. State of Maharashtra]** and the judgment delivered by this Court (at Principal Seat) in **Criminal Appeal No. 688/2014 dated 18.9.2014**. The facts and circumstances of each and every case are always different. In section 32 of the Evidence Act, no procedure of recording of dying declaration is given. In the case reported as **(2002) 6 Supreme Court Cases 710 [Laxman Vs. State of Maharashtra]**, the Apex Court has discussed the provision of section 32 of the Evidence Act and held that there is no such procedure for recoding the dying declaration. Further, the document needs to be given more importance than the oral evidence of witness who has given substantive evidence about the recording of dying declaration.

7. Another circumstance was argued by the learned counsel that bail was granted to the applicants by this Court and they were on bail during trial. This circumstance cannot be considered as there is evidence of aforesaid nature which is believed by the Trial court. The record produced shows that the parents of the deceased turned hostile. As there are two kids left behind by the deceased, there was no alternative before the

parents of the deceased than to support the applicants. This Court cannot ignore the provisions of law. Such incidents of bride burning are increasing day by day. In view of the aforesaid circumstances, suspension of substantive sentence is not possible. In view of the aforesaid circumstance, this court holds that substantive sentence cannot be suspended.

8. In the result, the application stands rejected.

[SMT. I.K. JAIN, J.]

[T.V. NALAWADE, J.]

ssc/