

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.470/1996

The State of Maharashtra.

...Appellant..

(Org.complainant)

Versus

1] Bhagwat Kashinath Dhote, age 30 yrs.,

2] Nanabai w/o Kashinath Dhote,
age 60 yrs.,

Both r/o Palaskhede, Gujarache,
Tq.Jamner, Dist.Jalgaon.

...Respondents...

(Org.accused)

.....

Shri B.L. Dhas, APP for appellant.

Shri T.M. Tandale, Advocate h/f Shri A.B. Kale, Advocate
for respondent nos.1 & 2.

.....

**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 01.10.2015

JUDGMENT (Per A.B. Chaudhari, J.) :

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1] Heard learned counsel for the parties.

2] Being aggrieved by the judgment and order dated 24.1.1996 passed by the Vth Additional Sessions Judge, Jalgaon, in Sessions Case No.207/1995 by which an order of acquittal was recorded acquitting the accused nos.1 and 2 u/s 498-A and 302 r/w 34 of the Indian Penal Code, the present appeal was filed by the State against acquittal.

3] We have perused the judgment under challenge so also the reasons recorded by the learned trial Judge. The trial Judge found that though there was no direct evidence, the evidence was in the form of dying declarations numbering three. But then he found that all the three dying declarations were not trustworthy beyond reasonable doubt. We have perused the evidence of doctor so also the reasons recorded by the learned trial Judge. It is not in dispute that the burn injuries were to the extent of 88% caused to the deceased. It is not in dispute, as admitted by the doctor, that the patient was administered pathedene injunction and compose tablets and thereafter the dying declarations were recorded. It is in this background, the learned trial Judge has held that

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though there is evidence of consciousness of the deceased, there is no contemporaneous evidence about the mental fitness of the deceased to give dying declarations. All the more so, she being under the influence of pathedene and compose tablets, we think, the reason given by the learned trial Judge cannot be said to be perverse and it is a possible view in the light of evidence on record. The learned trial Judge has also discussed the motive as a weak piece in the instant case for corroborating the case of the prosecution, but then that may not be relevant since the question is about the truthfulness of the dying declarations.

4] In our opinion, the learned trial Judge made no mistake in not choosing to rely on the three dying declarations since it was risky to rely thereon for recording order of conviction. The learned trial Judge was not sure whether he could convict the accused and, therefore, a view based on sound judicial principles, he decided to record the order of acquittal. The presumption of innocence is obviously in favour of the respondents as held by the Apex Court in paragraph no.24 of the decision in the case of *State of Rajasthan vs.*

Darshan Singh alias Darshan Lal (AIR 2012 SC 1973). We quote Para 24 of the said decision as under:

"24. We are fully aware of our limitation to interfere with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

4] In the result, we find no reason to interfere with the order of acquittal recorded by the learned trial Judge. Hence, we pass the following order.

ORDER

Criminal Appeal No.470/1996 is dismissed.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)