

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

CRIMINAL APPLICATION NO. 1785 OF 2014

The State of Maharashtra **....Applicant**

Versus

Laxman Gonda Pasare & Ors. **....Respondents.**

Mrs. R.K. Ladda, APP for State/applicant.

Mr. V.B. Deshmukh, Advocate for respondent Nos. 1 to 3.

CORAM : INDIRA JAIN, J.
DATED : 28th April, 2015.

ORDER :

This application under section 378 (1) (3) of the Code of Criminal Procedure is filed for grant of leave to appeal against the judgment and order of acquittal passed by the learned Ad-hoc Additional Sessions Judge, Osmanabad in Sessions Case No. 148/2013 for the offences punishable under sections 498-A, 306 r/w. 34 of Indian Penal Code.

2) Heard learned Additional Public Prosecutor and the learned counsel for respondents extensively. Perused original record.

3) The facts giving rise to the present application may

be stated in nutshell as under :-

Sunita was married to respondent No. 1 - Laxman 20 years before the incident. She was issueless. It is alleged that she was often illtreated by her husband and in-laws as she could not deliver a child. According to the prosecution, husband of Sunita was addicted to liquor and under the influence of liquor, he used to torture her.

4) On 31.1.2013 Sunita called her brother Mahadev on phone. So, he went to the house of Sunita, but accused pushed him out. That time Sunita poured kerosene on her person and set herself on fire. Mahadev brought Sunita to Civil Hospital, Osmanabad. Her dying declaration was recorded. During treatment, she succumbed to injuries on 4.2.2013. On her death, report came to be lodged by her brother.

5) After the report was lodged, investigation was set in to motion. Chargesheet was filed and the case was committed to the Court of Sessions. During trial, prosecution examined in all nine witnesses. The case is mainly based on dying declaration of Sunita recorded by PW 6, Police Head Constable - Hanmant Kolangade. Hanmant Kolangade was attached to Civil Hospital, Osmanabad as Chowki Amaldar. After Sunita was admitted by

her brother, Medical Officer on duty issued M.L.C. letter to the Police Chowky. Hanmant Kolangade was on duty. He informed the police station to record statement of patient. As Executive Magistrate did not attend, Hanmant Kolangade requested D.M.O. Dr. Sandip Patil to certify whether patient is in fit state of mind to give statement. After Dr. Sandip Patil certified that Sunita was fit to give her statement, Hanmant Kolangade recorded statement of Sunita as per her say. Dying declaration, Exh. 36, is proved by the Police Head Constable, P.W. 6 - Hanmant Kolangade.

6) It can be seen from the judgment of the Trial Court that this dying declaration, Exh. 36, was disbelieved considering the infirmities in the evidence of other witnesses. On the face of it, dying declaration shows that Sunita was compelled to commit suicide in view of illtreatment at the hands of respondents. Needless to state that dying declaration alone can form the basis for conviction, in case it crosses all the legal hurdles and inspires confidence.

7) In this premise, this Court finds that there is an arguable case for the State against the respondents.

8) Application is, thus, allowed. Leave is granted.

Appeal is **admitted**. Comply with the provisions of section 390 of the Code of Criminal Procedure.

[INDIRA JAIN, J.]

ssc/