

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 275 OF 1997

The State of Maharashtra.

... **APPELLANT**
(Original Complainant)

VERSUS

1. Naushad Yakub Dafedar, age 28 yrs.
2. Rubabai w/o Yakub Dafedar, age 60 yrs.
3. Rajiya w/o Musa Shaikh, age 26 yrs.

Accused Nos.1 & 2 R/o Tisgaon,
at present R/o Pathardi.

Accused No.3 R/o Pathardi,
Tq. Pathardi, Dist. Ahmednagar.

... **RESPONDENTS**
(Original Accused)

...
Mr. M. M. Nerlikar, APP for Appellant / State.

Mr. V. S. Bedre, Advocate for the Respondents.

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

DATE : 15th October, 2015.

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

. Being aggrieved by the judgment and order dated 29th
April, 1997, passed in Sessions Case No.265 of 1996, by the

learned Additional Sessions Judge, Ahmednagar, by which Respondents were acquitted for the offences punishable under Sections 302, 498-A, 504 read with 34 of the Indian Penal Cod, the present appeal is filed by the State of Maharashtra.

2 Mr. M. M. Nerlikar, learned APP in support of the appeal vehemently contended that there was perversity on the part of the learned trial Judge in disbelieving the written as well as the oral dying declaration given to Shaikh Yusuf brother of Jakira, the deceased. He submitted that there was consistency in the evidence of Shaikh Yusuf and the written dying declaration that was duly proved. There was no reason for the learned trial Judge to record the order of acquittal.

3 Per contra, Mr. V. S. Bedre, learned counsel for Respondents supported the impugned judgment and order of acquittal and submitted that there is no direct evidence in this case and therefore, the trial Judge rightly decided not to rely upon the evidence in the form of written dying declaration and oral dying declaration.

4 We have perused the reasons recorded by the learned trial Judge and upon hearing the learned counsel for rival parties, we find that the deceased was burnt 100% and was admitted to hospital immediately. The doctor had given sedatives to her in order to reduce pressure of the pains and sufferings. Immediately, thereafter, the dying declaration was recorded by the Police Head Constable. We find that after administration of pethidine to the deceased, in the case of 100% burns, it was highly doubtful whether the dying declaration was made in the mentally sound and fit state of mind. We, therefore, do not find any fault with the learned trial Judge in rejecting dying declaration. In so far as oral dying declaration is concerned, deceased brother Shaikh Yusuf and Nasimabi mother are the interested witnesses. But then their testimonies have been shaken in the cross-examination and the learned trial Judge has given reasons for rejecting their testimonies. We quote paragraph Nos.18 and 19 of the judgment impugned, which read as under:

“18. This Shaikh Yusuf wants us to believe that when he heard the cries of Jakira he immediately rushed to the room and saw that the deceased was surround by flames. He also stated that accused were sitting silent and he extinguished the fire. Thus, according to him,

he inquired with Jakira and Jakira had explained him the episode by stating that there was a quarrel between Jakira and accused. The accused No.1 and 2 were asking her to give Rs.20,000/- or to give divorce and when she refused there were again altercation and then, the accused had set her on fire. It is difficult to accept that this entire episode stated by the deceased could have occurred within 5 minutes, in which Yusuf had passed a distance of 100'. So at the outset a story narrated by Shaikh Yusuf appears doubtful.

19. Then, this Shaikh Yusuf wants us to believe that Late Jakira was being continuously assaulted for eight days prior to the incident. But, the dying declaration shows that according to Jakira, there was only quarrels and that too since 3 days prior to the incident. This is certainly in contrary with whatever that has been stated by the witness Shaikh Yusuf.”

The learned trial Judge has given additional reasons relating to spot panchanama in paragraph No.24 of the judgment impugned, which reads thus:

“24. It has come on record that the tea and sugar utensils were lying on the floor when the panchanama was prepared and this would be an indication and the fact that Jakira might be preparing tea on the stove. It is not the duty of the accused to explain the

circumstances and to prove them, it is sufficient if the preponderance of probabilities are there in favour of accused. It has also been accepted by Shaikh Yusuf that the financial condition of the accused was sound and this gives fatal blow to the story of prosecution that accused were asking for money.”

5 In the result, we find no merit in the appeal. Hence, we make the following order:

ORDER

Criminal Appeal No.275 of 1997, is dismissed.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

ndm