

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2169 OF 2015

THE STATE OF MAHARASHTRA  
VERSUS  
SHAIKH MAHEBOOB S/O SHAIKH MAULA & ORS

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A.P.P. for Applicant : Mr. D.R. Kale  
Advocate for Respondent No.1: Mr. S.S. Thombre

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**CORAM : S. V. GANGAPURWALA AND  
V. K. JADHAV, JJ.**

**DATED : 2<sup>nd</sup> DECEMBER, 2015**

**P.C. :-**

1. The accused persons were prosecuted for offence punishable under Sections 498-A, 302, 504, 506 r/w 34 of I.P.C. The learned Sessions Judge, Beed acquitted the said accused persons. The State has filed the present application seeking leave to file appeal.

2. The learned APP submits that the dying declaration Exh.97 has been erroneously discarded by the Sessions Judge. The dying declaration Exh.97 is recorded by following proper procedure. The same is recorded by P.W.6. According to the learned APP, P.W.6 has proved the said dying declaration. The Doctor P.W.7 has also put an endorsement that the deceased is in a fit condition to give dying declaration. The reason is also specifically stated in the said dying declaration. The said dying declaration is discarded only on the ground

that in the oral dying declaration made to P.W.3, the reason mentioned is different. In fact, the acts of the accused persons have been specifically mentioned in the oral dying declaration made to P.W.3 and the dying declaration Exh.97. Minor discrepancies would not be fatal to the prosecution case. The first dying declaration Exh.116, though was recorded by the Executive Magistrate, the same was under pressure, as such, has to be discarded. Application was given by P.W.3 about earlier dying declaration given under pressure and thereafter the dying declaration Exh.97 has been recorded. No flaw can be found in the said dying declaration. Still, the same is erroneously discarded by the learned Sessions Judge. The ill-treatment meted out to the deceased has been specifically stated in the dying declaration Exh.97, so also, in the oral dying declaration made to P.W.3.

3. Mr. Thombre, the learned counsel submits that there is material discrepancies between the dying declaration Exh.97 and the oral dying declaration made to P.W.3. In fact, the dying declaration Exh.97 is under pressure of P.W.3. He gave an application for recording second dying declaration. Exh.116 is the first dying declaration recorded wherein the deceased has specifically stated about accidental burns. The Court has rightly considered all the aspects of the matter.

4. We have gone through the papers supplied by the APP. In fact, it is a case based on dying declaration Exh.97, dying declaration Exh.116

and oral dying declaration made to P.W.3. The case is based on multiple dying declarations. Whenever there are multiple dying declarations, those have to be consistent with each other. The first dying declaration is ordinarily to be preferred as is laid down by the Division Bench of this Court in the case of ***Lahu Ramchandra Bandpatte Vs. State of Maharashtra reported in 2008 All M.R. (Cri.) 2492.***

5. The first dying declaration Exh.116 is also recorded by the Executive Magistrate. We have gone through the said dying declaration wherein, it is specifically stated that her clothes caught fire because of fall of lantern on her body and her brother-in-law had doused the fire. There is nothing on record to show that the said statement was given under pressure. At the time of recording dying declaration Exh.116, D.W.3 – Doctor has given a certificate that the deceased is in a fit condition to give statement. In the admission papers also, there is reference of dying declaration on 29.09.2009 and the endorsement of the treating doctor. D.W.3 was a Surgeon attached to the burn ward. D.W.3, in the admission case papers Exh.100, has also noted history of accidental fall of lantern on the body of deceased and the history was narrated to none other than the patient. It is also brought on record that the patient was conscious. These noting were recorded on 29.09.2009 at 11.10 hrs. D.W.4 started recording of the said statement at 11.15 hrs. and continued up to 11.30 hrs. There is an endorsement of D.W.3

below Exh.100 that on 11.30 p.m. police had recorded statement of the deceased.

6. The second dying declaration is oral dying declaration made to P.W.3 and Exh.97 is the dying declaration also recorded by the Magistrate. It has been observed that in Exh.97, it was stated that the in-laws used to insult the deceased and used to tell her not to live in the house and had poured kerosene telling that she should not reside in the house. Whereas, P.W.3 has stated that the deceased told him that as she could not bring money, her husband and in-laws poured kerosene on her person and her mother-in-law, by igniting matchstick, put her on fire. Whereas, igniting the fire is attributed to many persons in dying declaration Exh.97.

7. Considering the aforesaid aspects of the matter, the learned Sessions Judge has taken a plausible view by relying on dying declaration Exh.116, which is first in point of time.

8. In the light of above, the criminal application is rejected. No costs.

**( V. K. JADHAV, J.)**

**( S. V. GANGAPURWALA, J. )**

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