

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

6. CRI.APPLN/2478/2013 In CRI.APPLN/2477/2013 WITH
CRI.APPLN/2477/2013 WITH CRI.APPLN/3299/2015 In
CRI.APPLN/2477/2013

THE STATE OF MAHARASHTRA
V/S
CHHAYA DATTATRAYA SURWASE AND OTHERS

Mr. P.N. Mule, APP for State/applicant.

Mr. A.T. Ghute, Advocate for respondent Nos. 1, 3 to 5.

Mr. E.G. Irale, Advocate for respondent No. 2.

Mr. S.J. Salgare, Advocate for applicant in Cri. Appln. No.
3299/2013.

CORAM : T.V. NALAWADE, J.
DATED : 3rd August, 2015.

ORDER :

1. Criminal Application No. 2478/2013 is filed for condonation of delay of 12 days caused in filing appeal against the judgment and order of Sessions Case no. 132/2011 which was pending in the Court of of Adhoc Assistant Sessions Judge-2, Osmanabad. The Trial Court has acquitted the respondents of the offences punishable under sections 306, 504 r/w. 34 of Indian Penal Code. In view of the grounds mentioned in the application and submissions made by both the sides, this Court holds that sufficient cause is shown. So, the application is allowed. Delay is condoned.

2. Criminal Application No. 2477/2013 is filed by the State for grant of leave to file appeal against the judgment and order of Sessions Case No. 132/2011 which was pending in the Court of learned Adhoc Assistant Sessions Judge-2, Osmanabad. The trial Court has acquitted the respondents of the offences punishable under sections 306, 504 r/w. 34 of Indian Penal Code. Heard the learned APP. Hearing was also given to learned counsel Shri. Salgare appearing for original complainant.

3. This Court has perused the original record. The case of the prosecution rests mainly on the record of dying declarations. Deceased Sulan was the wife of one Talathi. Accused Nos. 1 and 2 are her neighbours and remaining accused are relatives of accused No. 1 and 2. They live together. One incident of quarrel took place on 20.4.2011 after 12.30 p.m. In the quarrel, some abuses were allegedly given by accused Nos. 1 and 2 to deceased Sulan and due to that, she became angry and she poured kerosene on her person and she set herself on fire. At the relevant time, her son and husband were not at home. Her neighbours extinguished the fire and she was taken to hospital. She succumbed to the burn injuries in the hospital. In the hospital, dying declarations of Sulan were recorded by Police Head Constable and then by Executive Magistrate. She blamed

accused Nos. 1 and 2 for her suicide.

4. In the trial Court, both the dying declarations, Exhs. 32 and 33 are proved. The doctor, who was present at the time of recording the dying declaration is examined. Some neighbours are also examined. There was quarrel between deceased and accused Nos. 1 and 2 at the relevant time.

5. In the dying declarations, the deceased disclosed that accused Nos. 1 and 2 were quarreling with her and this was going on continuously for six months and due to that, she was fade up. According to her, due to this conduct of accused Nos. 1 and 2, she set herself on fire. The C.A. report shows that there was kerosene on her clothes. There is some evidence of neighbours. It can be said that there was quarrel between the deceased and accused. The husband of the deceased has given evidence about specific instances of quarrel, but he has no personal knowledge as to what happened on that day.

6. For proving the offence punishable under section 306 of I.P.C., 'abetment' as defined under section 107 of I.P.C. is to be proved. Even if the two dying declarations are accepted as they are, it is difficult to draw inference that there was intention of

accused Nos. 1 and 2 as mentioned in section 107 of I.P.C. There are virtually no allegations made by the deceased against the other accused. In view of these circumstances, this Court holds that nothing can be achieved by granting leave to the State to file appeal.

7. In the result, application is rejected. Leave is refused.

8. Criminal Application No. 3299/2015 filed by original complainant to assist the the learned APP is allowed and disposed of.

[T.V. NALAWADE, J.]

ssc/