

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

CRIMINAL APPEAL NO. 194 OF 1998

The State of Maharashtra,
Through P.S.O., Edlabad.

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

VERSUS

1. Shaikh Babulal Shaikh Ramjan,
Age 42 years,
2. Kurshidbi Shaikh Babulal,
Age 35 years,
3. Sk. Kalu Sk. Babulal,
Age 22 years,
4. Sk. Ahamad Sk. Babulal,
Age 18 years,

All resident of Edlabad,
Tq. Edlabad, Dist. Jalgaon

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

...
Mr. A. S. Shinde, APP for Appellant / State.

Mr. S. V. Mundhe, Advocate i/b Mr. K. C. Sant, Advocate for the
Respondents.

...

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

DATE : 21st October, 2015.

. This appeal was dismissed vide judgment dated 15th October, 2015. It was arising out of judgment and order in Sessions Case No.280 of 1994. In the paper-book instead of copy of judgment in Sessions Case No.280 of 1994 copy of judgment in Sessions Case No.295 of 1995 was placed. The learned counsel for parties did not bring it to the notice of the Court that copy of judgment was wrongly included in the paper-book.

2 As operative order remains the same, we are re-writing the reasons for dismissing the appeal as copy of judgment in Sessions Case No.295 of 1995 was wrongly placed in the paper-book and copy of impugned judgment in Sessions Case No.280 of 1994 was not the part of paper-book. We permit the Registry to remove the judgment dated 15th October, 2015 in the present appeal from the website and upload this judgment.

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

3 Being aggrieved by the judgment and order dated 15th

November, 1997, passed by the learned IIIrd Additional Sessions Judge, Jalgaon, in Sessions Case No.280 of 1994, by which order of acquittal of the Respondents/ Accused was recorded by the learned trial Judge, the present appeal is filed by the State of Maharashtra.

4 We have seen the reasons recorded by the learned trial Judge. Prosecution case is mainly based on dying declarations of deceased Shamimbi recorded by PW-6 Naib Tahsildar Vasant Sonar and PW-7 Head Constable Hatesing Raul. In addition reliance is also placed on the oral dying declaration to PW-5 Shaikh Chhanu father of deceased.

5 On appreciation of evidence of PW-5 Shaikh Chhanu, PW-6 Naib Tahsildar Vasant Sonar and PW-7 Head Constable Hatesing Raul the Trial Court came to the conclusion that dying declarations Exhibits 42 and 45 are inconsistent as they were not recorded in the language of deceased. Another reason to reject to dying declarations was that in both the dying declarations Shamimbi had implicated different Accused. So far as Exhibit 45 dying declaration is concerned, it was admitted that Police Constable Arun Mahajan had reduced the said dying declaration to writing. This

witness was not examined. The persons whose names were disclosed in both the dying declarations and who were present at the time and after the incident were not examined. The Investigating Agency did not record statements of material witnesses during investigation.

6 Considering the serious lapses in investigation and glaring infirmities in dying declarations Trial Court observed that benefit of doubt must be given to Accused. We think learned Trial Judge was right in saying so in paragraph No.20 of the judgment, which we quote below:

“20/- In the present case dying declaration Exh.42 and 45 are not consistent as name of accused No.4 is added in Exh.45 and touching feet of mother-in-law. The recording of statement by P.W.6 without following rules, no explanation is given by P.W.6 for the same. P.Ws. 6 and 7 claimed that deceased was speaking in Hindi whereas P.W.1 claimed that patient was speaking in Marathi. Though time of recording statement cannot be said vital, however, evidence about oral declaration of P.W.5 is not reliable. The conduct of P.W.5 is not rational. He contradicted with his statement about presence of ladies who extinguished fire whereas P.Ws.

6 and 7 did not record statement of the deceased in her own language. The writer of statement Exh.45 P.C.Arun Mahajan is not examined. The names of the persons disclosed in both the dying declarations who were present at the time after the incident, are not examined by the prosecution. Their statements are not recorded by the investigating officer. Therefore, it is argued by the learned defence counsel that the dying declarations are not worth of placing reliance. I do not mean to say that accused are innocents and no concern with, as for reasons that her leg touched feet of her mother-in-law, it could be a good motive for committing the offence. The motive for committing the offence could be formed at any moment. The arguments advanced by the learned defence counsel about absence of motive cannot be accepted. However, the prosecution evidence in the form of dying declaration referred above to prove prosecution case is not worth of reliance, for reasons discussed above.”

7 In the above premise we find that the view taken by the Trial Court is a reasonable and possible view. In any case we have not noticed any perversity in the judgment of the Trial Court. We are therefore not inclined to interfere in the appeal. In the result, we make the following order:

ORDER

Criminal Appeal No.194 of 1998, is dismissed.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]

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