

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No. 293 Of 2002.

Nagina Munir Shaikh

Age.: 50 Years., Occ.: Household.

R/o.: Hasnapur, Tal. Rahata,

Dist. Ahmednagar.

:: **Applicant.**

Versus.

(1) Anis s/o Mansoor Shaikh.

Age : 25 Years., Occ.: Nil.

(2) Sairabi s/o Mansoor Shaikh.

Age : 45 Years., Occ.: Nil.

(3) Naziya alias Muniappa Erphan Khan

Age : 30 Years., Occ.: Household.

(4) Samira s/o Mansoor Shaikh.

Age : 20 Years., Occ.: Nil.

(5) Reshma allabaksha Sayyad.

Age : 23 Years., Occ.: Nil.

All R/o.: Lakhimpura, Sangamner,

Dist. Ahmednagar.

(6) The State of Maharashtra.

:: **Non-Applicants.**

Appearance =>

Mr. P.S. Dighe, Advocate, for the Applicant.

Mr. S.K. Shinde, Advocate a/with Mr. I.S. Thorat, Advocate for Non-Applicant Nos. 1 to 5. Not Present.

Mr. S.A. Ambad, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. DESHPANDE, J.

DATE : 6th FEBRUARY, 2015.

ORAL JUDGMENT :-

Present Criminal Revision Application is filed by Nagina Munir Shaikh, who was examined as P.W. No.1 in Sessions Case No.16 Of 2001, being mother of deceased Salma. The learned Ad-hoc Additional Sessions Judge, Sangamner, Dist. Ahmednagar on 31st July, 2002 acquitted the accused persons in Sessions Case No.16/01 for the offences punishable under Section 498(A), 302 read with 34 of the Indian Penal Code. Feeling aggrieved thereby, the present Criminal Revision Application is filed.

[2] I have heard Mr. P.S. Dighe, learned counsel for the applicant and Mr. S.A. Ambad, learned Additional Public Prosecutor for the State of Maharashtra / Respondent No.6. Though Respondent Nos. 1 to 5 – original accused were duly served, their counsel remained absent when matter was called for hearing. (For the sake convenience, the parties will be referred as per their original position, in the preset judgment.)

[3] Accused persons faced the charge for the offences punishable under Section/s 498(A), 302 read with 34 of the Indian Penal Code. As per prosecution case, deceased Salma was married with accused No.1 Anis. Other accused persons are her in-laws and close relatives of the husband. Date of incident is 6th January, 2001, at 6.00 a.m. at the house of the accused. Salma received burn injury on the said date. Salma died on 12th January, 2001. Post mortem report Exhibit - 35, shows that Salma received 100% burn injuries. It shows that, upper both limbs were sustained burn injuries to the extent of 9% meaning thereby, limbs were completely burnt.

Exhibit - 27 is the inquest panchnama. Perusal of the inquest panchnama clearly shows that her both the hands were completely burnt.

[4] During the course of trial, the prosecution has examined in all 11 witnesses and also relied on the written dying declarations of deceased Salma. The learned trial court after considering the oral as well as dying declarations reached to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and, therefore, accused were acquitted.

[5] First dying declaration is at Exhibit - 45. It was recorded by Rajendra Suryawanshi (P.W.No.8). He was the Special Executive Magistrate. In pursuant to the order of the Chief Judicial Magistrate, Nashik directing him to record the dying declaration of Salma, he visited Civil Hospital, Nashik. He visited Civil Hospital on 21.15 pm. There he met Medical Officer Mrs.(Dr.) Mangala Aatmaram Kunekar (P.W.No.7). On being satisfied in respect of the fact that Salma is fit to gave her dying declaration, on the basis of certification given by PW No.7 Mrs.(Dr.) Mangala, P.W. No.8 Rajendra Suryawanshi proceeded to record the dying declaration.

[6] Perusal of the dying declaration clearly shows that Salma did not attribute role of any of the accused. The said dying declaration shows that possibility of accident cannot be ruled out.

[7] Subsequently, Salma was shifted to Pravara Hospital at Loni. She was admitted to the hospital on 6th January, 2001 at 9.30 p.m. When Salma was admitted in the said hospital, the Investigating Officer P.S.I. Shirish Jadhav (PW No.11) recorded her dying declaration. Said dying

declaration is at Exhibit - 51. It is the claim of PW No.11 Investigating Officer that prior to recording of her dying declaration, he met to Dr. Amrish Mhatre (PW No.10) and obtained certification to the effect that Salma is fit to gave her statement. The dying declaration Exhibit - 51 shows that, Salma has attributed role of accused No.1 – her husband that he pressed her on the burning stove, resulting into the burn injuries to her.

[8] Thus, there are two written dying declarations on record. First in time Exhibit - 45 recorded by Special Executive Magistrate – Rajendra Suryawanshi clearly absolve the accused however, in the second dying declaration Exhibit - 51 recorded by Investigating Officer PW No.11, role is attributed to accused No.1 – husband.

[9] Though the certification prior to recording of dying declaration Exh.51 and certificate after it was recorded are available on Exh.51, those are not specifically proved. Further if the evidence of Dr.Amrish PW No.10 is scanned then it is clear that he gave the certification on blank paper.

[10] Further, the dying declaration is having thumb impression of Salma. Perusal of the thumb impression clearly reveals clear ridges and curves. Post-mortem report Exhibit - 35 and inquest panchnama Exhibit – 27 clearly mention that both the hands of Salma were completely burnt. Not only that, even in the dying declaration Exhibit - 51 there is mention that her both the hands were burnt. In that backdrop, appearance of clearcut ridges and curves of thumb impression creates serious doubt. Further the learned trial court in my view has correctly assessed the case of the prosecution in respect of the dying declarations and correctly discarded the dying declaration Exhibit – 51. Further the court cannot apply pick-and-chose method while appreciating the dying declaration.

[11] The learned trial court on the assessment of evidence of each of the prosecution witnesses has not accepted the oral dying declaration alleged to have been made to the parents and sister of Salma. Scope of Revision against acquittal is limited. Unless any perversity is crept in the judgment, the revisional court will not readily interfere in the order of acquittal. In the present case, view taken by the learned trial court acquitting the accused persons, appears to be based on available material. Thus, it cannot be said that view of acquittal, taken by the trial court, cannot be taken. In that view of the matter, Criminal Revision Application fails and same is dismissed accordingly. Rule discharged.

Criminal Revision Application dismissed.

(V.M. DESHPANDE, J.)