

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3192 OF 2015

THE STATE OF MAHARASHTRA
VERSUS
RAJABAI W/O MANIK MADALE AND OTHERS

...
A.P.P. for Applicant : Mr. A.G. Magre

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

DATED : 2nd DECEMBER, 2015

P.C. :-

1. This application is filed seeking leave to file appeal against the judgment and order dated 11.3.2015, passed by the learned Sessions Judge, Aurangabad, thereby acquitting the accused persons for the offences punishable under Sections 302, 498-A r.w. 34 of I.P.C.

2. The learned A.P.P. submits that the court has not considered both the dying declarations on record. The minor inconsistencies would not be fatal to the prosecution case. The mother-in-law is implicated in both the dying declarations Exh.71 and Exh.84. Learned counsel submits that even oral dying declaration is made to P.W.4 who has also testified about the said fact and the respondent mother-in-law of the deceased had ignited the deceased and set her on fire. Learned A.P.P. submits that evidence of P.W.1 and P.W.4 has not been properly appreciated by the Sessions Court. Learned A.P.P. submits that the

dying declaration would be on a higher pedestal and there is no possibility of deceased Manisha being tutored at the time of recording of dying declarations.

3. We have considered the judgment and the evidence on record.

4. It has been observed that even the Investigating Officer had recorded the statement of deceased but the same has not been brought on record and is suppressed. No reason is forthcoming for not producing the same on record.

5. Even the dying declarations Exh. 71 and 84 are not consistent with each other. In dying declaration Exh.71, the allegations are made against mother-in-law and no role is attributed to the husband and father-in-law whereas in second dying declaration Exh.84, the deceased implicates the husband, mother-in-law and father-in-law. In the oral dying declaration, which has been made to P.W.3, the role is attributed to the husband, mother-in-law and no role is attributed to father-in-law. One of the important facet of the matter, which has been considered by the Sessions Judge is that when the deceased was brought to the Hospital, at the time of admission, doctor has recorded the history and it has been stated by deceased that because of fall of lamp, her Saree caught fire. The same appears as per the evidence of P.W.6. In para 30 of the judgment, it has been observed by the Sessions Court that

when deceased Manisha was admitted in the hospital, she had given history of burning by fall of lamp on the Saree and thereby sustained the burn injuries. P.W.6 Dr. Maniyar further stated even after her admission in the ward, history given by the patient was confirmed. When deceased Manisha was admitted in Bembde hospital at Aurangabad, her husband was not present as he had also sustained burn injury and was admitted in another ward. The learned Sessions Judge has observed that there is nothing on record to show that deceased Manisha was under the pressure of accused while giving the history to the doctor P.W.6. It has been observed that oral dying declaration allegedly given to two witnesses does not inspire confidence. The same is also not in consonance with the dying declaration Exh. 71 and 84. The dying declaration Exh.84 was recorded after 21 days of her admission wherein the improvisation was made and all three accused were implicated which we do not find place in the dying declaration Exh.71.

6. The learned Sessions Judge after considering the evidence has arrived at plausible conclusion. In the light of that, application is rejected. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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