

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.4496 OF 2015
IN
CRIMINAL APPEAL NO.669 OF 2015.**

Lotansing Sardarsing Girase Vs.The State of Maharashtra.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.B.R.Waramaa, advocate for the applicants.
Mr.A.S.Shinde, A.P.P for the State.

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.
Date : 24.11.2015.**

PER COURT :

1. Heard.
2. The applicants are convicted for offence punishable U/s 302 of the Indian Penal Code and sentenced to suffer imprisonment for life. The appeal is admitted. The present application is moved for suspension of sentence.
3. Mr.Waramaa, learned counsel for the applicants submits that the applicants are falsely involved in the case. The Court has not appreciated the evidence on record in correct perspective. The evidence of Panch witness P.W.2 ought to have been relied, wherein the deceased had specifically told P.W.2 the factum of the

husband of the deceased setting her ablaze. The learned counsel submits that even the evidence of P.W.4 i.e. the father of the deceased ought to have been considered, wherein he has specifically admitted that the deceased herself set her on fire. P.W.4 is the father of the deceased. There was no reason to disbelieve the said statement. According to the learned counsel, the said statement made to P.W.2 and P.W.4 are prior in point of time and they are to be relied and believed.

4. Mr.Shinde, learned A.P.P opposes the application and submits that the dying declaration has been recorded. The FIR is registered pursuant to the dying declaration. The Doctor has also put his endorsement on the said dying declaration, wherein all these persons are implicated. The evidence is correctly appreciated by the Sessions Court.

5. The evidence will be required to be reappreciated at the time of final disposal of the appeal. The present application is seeking suspension of sentence. The applicants were in jail during the trial. P.W.2 is only a Panch witness. P.W.4 in re-examination has clarified and has explained the reason for making statement in the cross-examination that the deceased set herself on fire. In re-examination he has explained that accused No.3 is his real sister and as the accused should not be convicted, he had made the said statement. The dying declaration is on record i.e. Exh.15, the same

is proved. The motive is also stated. In the dying declaration the specific acts committed by the accused persons while setting her on fire are detailed. There are two dying declarations. First dying declaration was given in Hindi and recorded in Marathi. In the second dying declaration there was no endorsement of pulse rate, blood pressure. However, in both the dying declarations, the present applicants are implicated. There are other corroborative evidence considered.

6. Though the said dying declaration records the details of the acts done by the accused, as far as accused No.3 is concerned, it is only stated that she helped the accused, other than that no role is attributed to her. Considering the said aspect of the matter and the fact that she is old aged lady, we are inclined to consider the application to the extent of applicant No.3. Hence, we pass the following order :

- a) The present application as far as applicant Nos.1,2 and 4 are concerned, is rejected. The applicant No.3 Jijkorbai Sardarsing Girase, be released on bail on furnishing PR bond of Rs.25,000/- (Rupees twenty five thousand) with one surety of like amount.
- b) The sentence to the extent of applicant No.3 stands suspended.

(V . K . JADHAV , J .)

(S . V . GANGAPURWALA , J .)

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Dt.24.11.2015.
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