

1. This application has been filed seeking leave to appeal, challenging the judgment and order of acquittal dated 4th July, 2014 passed by the Sessions Judge, Osmanabad in Sessions Case No.176 of 2013.
2. The learned APP appearing for the applicant / State invited our attention to the contents of the dying declaration at Exh.48 and submitted that, upon careful perusal of the

contents of the said dying declaration, it is abundantly clear that the accused – husband was present in the parental house of the deceased Meerabai. He poured kerosene on the person of the deceased and set her ablaze. There is an endorsement by the Medical Officer that Meerabai was in a fit mental condition and well oriented when she gave the dying declaration. It is submitted that merely because the complainant - father of the victim turned hostile that by itself is no ground to discard other evidence brought on record by the prosecution and in particular, dying declaration (Exh.48). The learned APP also submitted that the dying declaration (Exh.48) can alone form basis of conviction and therefore, the findings recorded by the trial Court, deserve to be interfered with.

3. On the other hand, learned Counsel for the original accused, relying upon the findings recorded by the trial Court, submitted that the view taken by the trial Court is a possible view and, therefore, once a possible view is taken, this Court may not interfere in the order of acquittal.

4. We have given careful consideration to the

submissions of the learned APP appearing for the applicant / State and learned Counsel for the original accused. With their able assistance, we have perused the entire notes of evidence and in particular, contents of Exh.48 dying declaration. Some undisputed facts on record are that, the incident had taken place in the house of complainant i.e. father of the victim Meerabai. Marriage of Meerabai with the accused had taken place seven years prior to the date of incident. The couple was blessed with children.

5. So far as evidence about ill-treatment is concerned, the complainant himself has turned hostile and not supported the prosecution case. Rather, in his evidence he stated that there was no ill-treatment at the hands of the accused to the deceased. In that view of the matter, so far as ill-treatment is concerned, this Court is of the opinion that the findings recorded by the trial Court deserve no interference.

6. The Medical Officer who was examined by the prosecution has categorically stated that the victim

Meerabai has narrated the incident and stated that burns sustained by her were accidental. At that stage, victim Meerabai did not implicate the accused No.1. In the present case, evidence of the complainant is important since the incident had taken place in his house. It has come in the dying declaration that the victim Meerabai was accompanied by her father, mother and other relatives. Therefore, it will have to be presumed that there was no any coercion or pressure of accused on the victim while narrating the incident / history to the Medical Officer.

7. Upon careful perusal of contents of the dying declaration, it shows that there was some quarrel between herself and husband and then husband brought Can of kerosene, poured kerosene on her person and set her ablaze. However, we find that the Thumb Impression of the declarant i.e. Meerabai has not been attested by the Police Officer who had recorded the dying declaration. The dying declaration itself can form basis of conviction if it is truthful and hundred percent believable. However, in the peculiar facts of this case and more particularly, the medical history narrated by the victim to the Medical Officer that the burn

injuries sustained by her were accidental, coupled with the fact that the prosecution did not bring on record the dying declaration recorded by the Special Executive Magistrate and further the incident had taken place in the house of parents of the deceased and prosecution case has not been supported by the complainant – father of the deceased. Therefore, upon re-appreciating the evidence, we find that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. The view taken by the trial Court is a possible view and therefore, there is no ground to interfere with the order of acquittal.

8. For the reasons aforesaid, the application seeking leave to appeal stands rejected.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)