

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 5158 OF 2015
IN
CRIMINAL APEAL/734/2015**

UDHAV S/O NAGORAO SALVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S.S. Naik
APP for Respondents: Mr A S Shinde

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CORAM : S V GANGAPURWALA & V.K. JADHAV, JJ.
Dated: November 16, 2015

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PER COURT :-

1. The present applicant is convicted for offences punishable under section 302, 498-A, 323, 504, 506-II read with - Indian Penal Code and sentenced with life imprisonment. The appeal is admitted. Present application is filed seeking bail.

2. Mr. Naik, the learned counsel for the applicant submits that there is no direct evidence. The case is based only on circumstantial evidence. There are discrepancies in the dying declaration which have been spelt out, however, said discrepancies were not considered. Doctor has also admitted that hands were burnt, thumbs are swollen. As such there cannot be thumb impressions of deceased on dying declaration. It is also submitted that, the statement of

the officer recording the dying declaration states that left hand thumb impression was obtained of the deceased. Subsequently, it is stated that right hand thumb impression was obtained. According to the learned counsel, thumb impression of the deceased are not attested by any witness/scribe on dying declaration. On Exh.53 there is no whisper that thumb impression is of deceased. The seizure panchnama is also prior to the arrest. Complaint is lodged after two days of the incident. No explanation is forthcoming for the same. PW 1 has narrated the manner in which deceased died.

3. Mr. Shinde, the learned APP submits that, case is based on two dying declarations Exh.44 and Exh.53 so also circumstantial evidence supports the dying declaration.

4. We have considered the application. Case is based on dying declaration Exh.44 and Exh.53. Exh.53 is recorded by the Executive Magistrate. Exh.73 is CA report which states that the kerosene is found on the pant of the accused so also on the clothes of the deceased. In both the dying declarations, accused is implicated. Accused was under trial. He was not on bail during the trial.

5. Considering the aforesaid aspects, application is rejected, however, hearing of the appeal is expedited.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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aaa/-