

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram,	Court's or Judge's orders.
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CRIMINAL APPLICATION NO. 5874 OF 2014
IN APEAL/650/2014 WITH APEAL/650/2014

PARVATIBAI W/O KANTRAO WARLE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Sakolkar Vijay G.
APP for Respondent: Mr. V. D. Godbharle.

CORAM: T. V. NALAWADE &
SMT. I. K. JAIN, JJ.
DATED: 30th MARCH, 2015.

PER COURT:

1. The application is filed for suspension of substantive sentence and for grant of bail.
2. The appellant is convicted and sentenced for the offence punishable under section 302 of I.P.C. by learned Additional Sessions Judge, Biloli. Both the sides are heard.
3. The conviction is given on the basis of dying declarations of the deceased. Appellant is the wife of brother in law of the deceased. Allegations are made

that in the incident dated 2nd April, 2011 the present appellant poured kerosene on the person of the deceased and set fire to her in the matrimonial house of the deceased. The first dying declaration was recorded by the police officer and the second dying declaration was recorded by one Executive Magistrate. The learned Judge of the trial Court has appreciated this evidence and on that basis the conviction is given.

4. The learned counsel for the Appellant submitted that the police officer did not send the first dying declaration to the police station for registering the crime immediately and it was used for registering crime first time on 5th April, 2010, 3 days after recording of the dying declaration. He submitted that this delay is not explained. He also submitted that the doctor who made endorsement on the two dying declarations is not examined and so it cannot be that the deceased was fit to give dying declaration. He has placed reliance on a case reported as **1999 (7) SCC 695** in the case of **"Paparambaka Rosamma V/s State of A.P."** On this point. Learned trial Judge has referred the subsequently decided case viz. **"Laxman V/s State of**

"Maharashtra" reported in **AIR 2002 SC 2973**. It is held by the Apex Court that there is no law making it compulsory to take the endorsement of doctor regarding fitness of the patient. What is important is the satisfaction of the person who records the dying declaration.

5. The learned counsel for the applicant submitted that the applicant was granted bail after filing of the charge sheet and she was on bail during trial and so the applicant may be granted bail. The trial Court has appreciated the evidence and the case itself can be expedited. This Court holds that this is not a fit case to suspend the substantive sentence. The application is rejected.

6. Private paper book can be prepared and matter can be moved for early hearing.

[SMT. I. K. JAIN, J.] [T. V. NALAWADE, J.]

Dt.30/03/2015
ans/5874