

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5663 OF 2015
IN APEAL/427/2015

BHAUSAHEB S/O VASANT TARKASE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Ghanekar Nilesh S.
APP for Respondents: Ms. Rashmi P. Gour
.....

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

DATED : 7th DECEMBER, 2015

P.C. :-

1. The present applicant is prosecuted and convicted for the offence punishable under Section 302 of I.P.C. alongwith other accused persons.
2. The appeal is admitted.
3. The present application is filed for suspension of substantive sentence.
4. Mr. Ghanekar, the learned counsel submits that the case of the prosecution is based on two written dying declarations and one oral dying declaration. The dying declarations are inconsistent with each

other. In dying declaration Exh.78 the role is attributed to each and every accused whereas in second dying declaration no specific role is attributed to the accused persons. Learned counsel submits that the child of the deceased and accused No.1-present applicant has been examined as Court witness. He has not supported the case of the prosecution and on the contrary he has supported the defence case. Learned counsel submits that even D.W.1 who is neighbour and has been examined, has also supported the case of the defence. According to the learned counsel, the other accused persons have been released on bail on the basis of the same set of evidence by this court.

5. Ms. Gour, the learned A.P.P. submits that the evidence of child witness cannot be relied, as he was of tender age at the time when the incident has taken place. He was residing with grand parents. The fact of him being tutored cannot be negated. Learned A.P.P. submits that as far as the first written dying declarations and oral dying declaration made to P.W.3 both are consistent with each other. The second dying declaration does not give specific acts or role played by each and every accused. However, implicates all accused alongwith one additional person. According to learned A.P.P. the applicant was in jail during trial. The fact that the applicant suffered burn injuries on the knee supports the prosecution case that he had

suffered the burn injuries at the time of igniting fire on the person of the deceased.

6. We have considered the submissions of the learned counsel. Alongwith the present applicant, there were other three accused, who were prosecuted for the offence punishable under section 302 of I.P.C. on account of death of wife of the present applicant. The other three accused have been granted bail by this court vide order dated 26.8.2015 in criminal application No. 2646 of 2015.

7. The earlier dying declaration Exh.44 implicates all accused persons and attributes specific role to each and every accused persons. Exh. 78 does not attribute independent roles to each accused. The evidence of child witness supports the defence case, who is examined as Court witness as per the order passed by this court. The D.W.1 is a neighbour who has also supported the case of the defence.

8. This court while releasing the other three accused on bail had considered the merits and de-merits and had granted bail. The same evidence is against the present applicant also. On the basis of same evidence all accused persons are convicted. As other three accused on basis of same evidence are granted bail, the present applicant will be entitled for parity.

9. In the light of above, the substantive sentence imposed upon the present applicant vide judgment and order dated 6.5.2015 passed by the learned Additional Sessions Judge-3 Aurangabad in Sessions Case No. 26 of 2012 is suspended. The accused is released on bail on furnishing P.R. Bond of Rs.25,000/- with one surety of like amount.

10. The application is disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/