

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

**CRIMINAL APPLICATION NO. 5759 OF 2015
IN
CRIMINAL APPEAL NO. 800 OF 2015**

Pandurang S/o Shankar Rajbhoj
and another

.. Applicants

Versus

The State of Maharashtra

.. Respondent

Shri Anil M. Gaikwad, Advocate for Applicants.
Shri A. S. Shinde, A.P.P. for the Respondent/State.

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

DATE : 08TH DECEMBER, 2015.

PER COURT :

. The present applicants are prosecuted and convicted for the offence punishable U/Sec. 302 of the Indian Penal Code. The appeal filed by present applicants is admitted. The present application is for suspension of substantive sentence.

02. Mr. Gaikwad, the learned counsel for applicants submits that, the evidence of P.W. No. 1 is unreliable. He has stated that, the accused No. 2 was not present in the village since two days

prior to the incident. According to the learned counsel, the deceased was having 98% burns, as such was not in a fit condition to give statement. Even doctor has admitted the said fact. According to the learned counsel, the evidence of P.W. No. 1 cannot be believed. Even dying declaration cannot be believed in as much as having severe 98% burns, the deceased was not in a position to make any statement. The learned counsel submits that, the Sessions Court committed an error in relying on dying declaration.

03. Mr. Shinde, the learned Assistant Public Prosecutor submits that, the dying declaration is proved by deposition of P.W. No. 4, who has recorded the dying declaration. The doctor is examined who has made endorsement that, the patient was in a fit condition to give dying declaration. The same is properly relied.

04. No doubt, the applicants were on bail during trial. There is written dying declaration and oral dying declaration made to P.W. No. 1. The same is consistent to each other. Of course, at the time of final hearing of the appeal, the evidence will have to be reappreciated by this Court. However, considering written dying declaration and oral dying declaration made to P.W. No. 1, wherein both the accused are implicated, we are not inclined to consider the present application. The present criminal

application as such is rejected. However, hearing of criminal appeal is expedited.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec. 15