

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

Criminal Application No. 7062 of 2014
(In Criminal Appeal No. 813 of 2014)

1. Sheela w/o. Balasaheb Chikhale,
Age : 52 years,
Occupation : Household,
R/o. Subhadra Nagar, Kopargaon,
Taluka : Kopargaon,
District : Ahmednagar.

2. Sarika d/o. Balasaheb Chikhale
(Now married and hence her name
is Sarika w/o. Pradip Dharam),
Age : 28 years,
Occupation : Household,
R/o. Musalgaon Industrial Area,
Taluka : Sinnar, District : Nashik.

.. Applicants /
Appellants
(Original accused
nos.3 and 4)

versus

The State of Maharashtra,
through the Police Inspector,
Kopargaon Police Station,
Kopargaon, Taluka : Kopargaon,
District : Ahmednagar.

.. Respondent
(Original
complainant)

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Mr. Rajendra S. Deshmukh, Advocate, for the applicants.

*Mrs. M.B. Gangwal (Patni), Additional Public Prosecutor,
for the respondent - State.*

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**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

DATE : 11TH MARCH 2015

COURT'S ORDER (Per A.M. Badar, J.) :

1. This is an application by original accused nos.3 and 4 for releasing them on bail during pendency of Criminal Appeal No. 813 of 2014.

2. Heard Mr. R.S. Deshmukh, the learned Counsel appearing for the applicants, who vehemently argued that the entire evidence of the prosecution, if taken at its face value, is not sufficient to convict the applicants and other accused persons of the offences alleged against them as the dying declaration on which the conviction is based, is itself not proved by the prosecution. He further argued that the oral dying declarations cannot be relied upon in the wake of very first dying declaration of the deceased. Hence, according to the learned Counsel for the applicants, the applicants, who were enjoying liberty during trial, need to be released on bail.

3. Per contra, according to the learned Additional Public Prosecutor, the offence stands proved in trial and, therefore, application deserves to be dismissed.

4. Renuka married with accused no.1 Pawan Chikhale on 21-1-2006 and she sustained burns on 9-6-2006. She succumbed to the burn

injuries at Pravara Rural Hospital at Loni, on the very next day i.e. 10-6-2006. Both the applicants are convicted of the offences punishable under Sections 302, 304-B and 498-A of Indian Penal Code, apart from Section 4 of the Dowry Prohibition Act, 1961.

5. The conviction is mainly based on officially recorded dying declaration of deceased Renuka Pawan Chikhale. Applicant / accused no.3 Sheela is her mother-in-law and applicant / accused no.4 Sarika is her sister-in-law. According to the prosecution, both these applicants / accused caused burns to deceased Renuka leading to her death. Evidence of Autopsy Surgeon PW 15 Dr. Sayyed Numan Hussaine shows that Renuka died because of sustaining 100 % burn injuries on 10-6-2006.

6. As the case of the prosecution is rested upon dying declarations, oral as well as written and as those were accepted by the learned trial court, let us put on record, the settled position regarding evidence in respect of dying declaration. It is settled that the dying declaration enjoins sacrosanct status as a piece of evidence as it comes from the mouth of dying person and a sense of impending death prevents such person from making any false statement. However, at the same time, it needs to be kept in mind, that dying declaration is not a deposition in the court. It is neither made in presence of the accused nor it is a statement made on oath. Its credence cannot be tested on the touchstone of cross examination. Because of these inherent weaknesses, no initial presumption can be drawn that the dying declaration contains nothing but the truth. Therefore, for testing reliability of the dying declaration, the court has to consider various factors and apply several tests. Consistency

in case of multiple dying declarations is one of such tests. Generally, dying declaration made first in point of time is accepted provided all such multiple dying declarations are consistent in material particulars. The court is required to rule out the possibility of statement being result of vindictiveness prompting, tutoring or product of imagination of the deceased.

7. In this case, the very first dying declaration of deceased Renuka was recorded in her medical case papers by DW 1 Dr. Paresh Ambalal Jain, Medical Officer at Pravara Rural Hospital, Loni. It is at Exhibit 149. It reads thus :

“ Brought by Raju Ghote (Relative).
History by patient herself.
Alleged history of burns due to burst of stove
at home at Niwara, kopargaon, at 11.00 a.m. on
09/06/2006 ”

It needs to point out here that Renuka was brought to that hospital by PW 4 Raju Ghotekar, husband of her own sister. This dying declaration indicating accidental death appears to have been recorded in his presence by DW 1 Dr. Paresh Jain.

8. As against this, the second dying declaration of Renuka relied by the learned trial court, as appears to us, is not at all proved by the prosecution. It is below the signature of Dr. Sarang Gaikwad at Exhibit 157. This signature is proved by Autopsy Surgeon PW 15 Dr. Sayyed Numan Hussaine. In that dying declaration recorded by some Police Head

Constable, deceased Renuka had stated that her mother-in-law Sheela poured kerosene on her person and her sister-in-law Sarika set her ablaze by means of burning matchstick. Prima facie, we fail to understand, as to how this dying declaration can be read in evidence because prosecution has not examined the Police Head Constable who has recorded this dying declaration. Unless a person who records the dying declaration or a person who has heard it being made are examined, dying declaration cannot be said to be proved and unless proved, it cannot become a substantive piece of evidence.

9. The third dying declaration of deceased Renuka is recorded by PW 14 Dattatray Eknath Shejul, Naib Tahsildar, wherein also, the declarant is alleged to have stated that her mother-in-law poured kerosene on her and her sister-in-law ignited her.

10. Then, there are oral dying declarations coming from the mouth of PW 4 Raju Annasaheb Ghotekar and his wife Sangita. At this stage, we are not supposed to examine meticulously the evidentiary value of these two oral dying declarations, but suffice it to say, that the very first dying declaration of the declarant is giving totally different version leading to the accidental death of Renuka. Even if we peruse the dying declaration below signature of Dr. Sarang Gaikwad at Exhibit 157, then it is seen that the thumb impression of deceased Renuka is showing clearly visible ridges of the thumb though she is said to have suffered 100 % burns. This appears to be the nature of evidence against applicants / accused.

11. Viewed from all these angles and the fact that both these

applicants / accused were on bail during pendency of the trial and they had not misused the liberty granted to them, we see no impediment for releasing the applicants / accused nos.3 and 4 on bail, during the pendency of appeal.

12. Hence, the Application is allowed and substantive sentence of imprisonment imposed on applicants / accused nos.3 and 4 is suspended during pendency of the instant appeal.

The applicants / accused nos.3 and 4, namely, Sheela w/o. Balasaheb Chikhale and Sarika d/o. Balasaheb Chikhale, in Sessions Case No. 36 of 2006, decided on 5-12-2014, by the Additional Sessions Judge, Kopergaon, are directed to be released on bail, pending hearing and final disposal of Criminal Appeal No. 813 of 2014, on their executing P.R. Bond of Rs. 10,000/- [Rupees ten thousand] each, with one or two sureties in the like amount by each of them, before the learned trial court.

13. The Application is accordingly disposed of.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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