

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

**CRIMINAL APPLICATION NO.5199 OF 2016
IN
CRIMINAL APPEAL NO.523 OF 2016**

Prabhakar s/o Ramdas Shinde,
Age-35 years, Occu:Agri.,
R/o-Village Kolegaon Wadi,
Tq-Jafrabad, Dist-Jalna

**...APPLICANT
(Ori. Accused)**

VERSUS

- 1) The State of Maharashtra,
Through Police Station, Jafrabad,
Tq-Jafrabad, Dist-Beed,
- 2) Sudam s/o Rama Makode,
Age-55 years, Occu:Agri.,
R/o-Shindi, Tq-Jafrabad,
Dist-Jalna.

...RESPONDENTS

...
Mr.Mukund D. Gitte Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1.
Mr.Govind Kulkarni Advocate h/f. Mr. R.S.
Deshmukh Advocate for Respondent No.2.
...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE : 30TH NOVEMBER, 2016

ORDER :

1. Heard the learned counsel appearing for the Applicant and learned A.P.P. appearing for the State.

2. The learned counsel appearing for the Applicant submits that if the contents of the dying declaration at Exhibit 66 are perused carefully, it shows that the victim - Lata died due to accidental burns. The said dying declaration create serious doubts about the prosecution case and therefore benefit of doubt deserves to be given to the Applicant/ Appellant. The trial Court has not properly appreciated the said dying declaration and came to the erroneous conclusion that said dying declaration was given under pressure of the Applicant. He further submits that the Applicant has to look after two sons, who are minor and on that ground also the Application for bail deserves to be favourably

considered.

3. On the other hand, the learned A.P.P. appearing for State assisted by the learned counsel appearing for Respondent No.2, submits that the trial Court has rightly concluded that dying declaration at Exhibit 66 was under pressure of the Applicant, since the Applicant was accompanying victim Lata at the relevant time. It is further submitted that dying declarations at Exhibit 22 and 58 are consistent and they corroborate with each other. The version in said dying declarations get corroboration from oral dying declaration given to PW-1 Sudam Rambhau Makode and PW-2 Punjabrao Sudam Makode.

4. Upon hearing the learned counsel appearing for the Applicant and learned A.P.P. appearing for the State and upon careful perusal of the dying declarations at Exhibit 22 and 58, we are of the opinion that both the dying

declarations are consistent. The said dying declarations also get corroboration from the oral evidence of PW-1 and PW-2. Therefore, prima facie it appears that the findings recorded by the trial Court are in consonance with the evidence brought on record. The Applicant was not on bail during the trial. We do not wish to elaborate any further on the evidence, as the Appeal filed by the Applicant is pending.

5. For the reasons afore stated, the Application stands rejected.

6. The Registry of this Court shall send original Record and Proceedings to the Registry of Additional Sessions Judge, Jalna. Upon receiving the original Record and Proceedings by the Registry of the Additional Sessions Judge, Jalna, the Registry of concerned Court shall prepare the Paper Book and send it back along with original Record and Proceedings, as expeditiously as

possible, and preferably within three months from receipt of the original Record and Proceedings.

7. After receipt of the Paper-Book along with the original Record and Proceedings, liberty to mention for early hearing of the Appeal.

[K.K. SONAWANE, J.]

asb/NOV16

[S.S. SHINDE, J.]