

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

**CRIMINAL APPLICATION NO. 6227 OF 2015 IN
CRIMINAL APPEAL NO.512/2012**

**GANESH S/O RAMA CHARHATKAR AND ANR
VERSUS
THE STATE OF MAHARASHTRA.**

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Advocate for Applicants : Ghanekar N.S.
APP for Respondents: Mr.S.P.Sonpawale

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**CORAM : A.V.NIRGUDE &
INDIRA K. JAIN, JJ
DATED : 8TH JANUARY,2016**

PER COURT :-

The learned counsel for the applicants invited our attention to the present application and urged us to decide it before we could hear the appeal. We accepted his request and examined the merits of this application.

2] This application is made u/s 391 of Criminal Procedure Code seeking permission of the Court to record further evidence. The appeal arose from judgment and order dated 24/7/2012 passed by Additional Sessions Judge, Beed, in Sessions Case No. 104/2011 convicting appellants for offence punishable u/s 302, 304-B, 498-A r.w. 34 of IPC. This was case of bride burning. The victim was wife of appellant no.1 who died due to burn injuries. The incident occurred on 4/4/2011 at about 5.30 p.m. The victim was admitted to civil hospital, Beed where at about 8 p.m. police head constable Jagtap approached to victim for recording her statement. He recorded said statement and then reported the matter back to police station. It is therefore, the police requested P.W.10 Abhay Mhaske,

Executive Magistrate to record dying declaration of the victim. Accordingly, at about 10.30 p.m. dying declaration was recorded on the basis of which offence was registered against appellants and others.

3] It is pertinent to note that the fact that during the evening of 4/4/11 two different officers recorded two different statements of the victim. In normal circumstances, both these statements ought to have been proved before the trial Court. Somehow, the earlier dying declaration recorded by police head constable was not proved. Even the appellant accused did not make any attempt to get the statement proved either through cross examination or by prosecution witness or by recording evidence of police head constable Jagtap. This statement in our view is very important in this case. As a matter of principle this statement ought to have been proved by the prosecution itself. We are therefore, convinced that the lapse on the part of the parties is required to be corrected/removed. Exercising our power u/s 391 of Cr.P.C. we are directing learned Sessions Judge, Beed to record deposition of police head constable Jagtap as Court witness allowing his cross examination as per law. The learned Judge after recording this deposition shall then record his finding as to 'whether the deposition he recorded is believable or not.' He shall then return such finding to this Court on or before 30/1/2016. Criminal Application disposed of.

[INDIRA K. JAIN,J]

(A.V.NIRGUDE,J.)

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