

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO.251/2016

Sau. Sudha @ Sudama w/o Kallu Mogre ..vs.. The State of Maharashtra, through PSO
Ambazari, Nagpur and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Waghmare, Advocate for applicant.
Mrs. M. N. Hiwase, A.P.P. for non applicant-State.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.
DATE : JUNE 7, 2016

The present application seeks leave to file an appeal against the order of acquittal as recorded by the learned Additional Sessions Judge, Nagpur vide judgment and order dated 02.02.2016 in Sessions Trial No.169/2013.

It is the prosecution case that there was an enmity between the family of the deceased on one hand and the accused on the other hand. It is the prosecution case that on the date of the incident also, there was a quarrel between the accused persons and the appellant. It is further the prosecution case that on the date of the incident, the accused persons caught hold of the deceased, poured petrol on his person and set him on fire.

All the accused were tried for the offence under Section 302 of the IPC and ultimately were acquitted. Being aggrieved thereby, the present application is filed.

Mr. A. K. Waghmare, the learned counsel appearing on behalf of the applicant submits that the

findings given by the learned trial Judge are shocking. He submitted that the incident shocked the conscience of the entire society and, therefore, the learned trial Judge has grossly erred in acquitting the accused. He further submitted that though the dying declaration is recorded, the learned trial Judge has not believed the same. The learned trial Judge has failed to take into consideration the settled position of law that even on an uncorroborated dying declaration, conviction could be based.

The learned counsel further submits that there are three eye witnesses and the learned trial Judge has erred in not believing their testimony.

By now, the law with regard to the interference in finding of acquittal is well settled. Unless, the finding is found to be perverse or impossible, it will not be possible for this Court to interference with the same. Equally, if this Court finds that the other view is possible, it will not be possible for this Court to substitute the view of the trial Court unless it is found to be perverse or impossible.

No doubt, the legal position as stated by Mr.Waghmare the learned counsel for the appellant, that the conviction could be based solely on the dying declaration is correct, however, the law requires that such a dying declaration must be found to be trustworthy, reliable and cogent and such that the Court could safely rely on such a dying declaration.

The dying declaration was recorded by the Head Constable Khode (PW7). Perusal of the dying declaration

would reveal that there is no mention in the dying declaration that the deceased was physically and mentally fit to give the dying declaration. No doubt, that there is one endorsement by the Doctor stating that Rajesh Kallu Mogre is fit to give statement. The said endorsement is at 9.30 p.m., however nobody known who the doctor was. Even, Police constable Khode (PW7) has admitted that he cannot remember as to whether the doctor was male or female. Not only that, the Investigating Officer (PW10), who has immediately reached the hospital, has admitted in his deposition that when he went to the hospital, the doctors were treating the patient and he is not fit to give dying declaration.

In that view of the matter, it cannot be said that the dying declaration is of such a nature that it could be said to be trustworthy, cogent, reliable and came to be individually recorded, for resting an order of conviction. Furthermore, so far as the three eye witnesses Sudha (PW1), Raju (PW2) and Rakesh (PW3) are concerned, the learned trial Judge has disbelieved their testimony since there are material discrepancies in their evidence. Sudha (PW1) is the mother of the deceased. Her evidence is full of omissions. Insofar as Raju (PW2) is concerned, he is working as Sweeper in the office of the Deputy Commissioner of Police (Crimes). His statement is recorded after six days. The statement of Rakesh (PW3) is also recorded after six days. Both these witnesses have admitted in their deposition that the police personnels were regularly

visiting the area. Not only that, two police constables were permanently posted in the area for two months.

Thus, their conduct of not speaking anything for about six days, creates serious doubts with regard to their veracity.

In her evidence, Sudha (PW1) herself admitted that there was a long standing enmity between the accused and her family. She also admitted that various non cognizable offences were registered at her instance against the accused. By now, it is the settled provision of law that the enmity is a double edged weapon. At times, on account of previous enmity, the evidence could be disbelieved. However, at the same time, on account of previous enmity, possibility of false implication cannot be ruled out.

The learned trial Judge has given an elaborate and cogent reasons while recording the order of acquittal. In our view, the said reasonings cannot be said to be either perverse or impossible.

In view of above, the application is rejected.

JUDGE

JUDGE