

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

CRIMINAL APPLICATION NO.4693 OF 2016

The State of Maharashtra
Through Rahuri Police Station,
Dist. Ahmednagar.

APPLICANT

[Orig.complainant]

VERSUS

1. Ashutosh Bansilal Andore,
Age 21 years.
2. Sushila Bansilal Andore,
Age 58 years, Occu. Household.
3. Bansilal Kisan Andore,
Age 62 years.
4. Mangesh Bansilal Andore,
Age 30 years.
5. Dipali Mangesh Andore,
Age 35 years.
6. Abhijeet Bansilal Andore,
Age 38 years.

All R/o. Plot Nos.1 & 2,
Flat No.159, Jaju Plaza,
Kamathwada, Trimurti Chowk,
Tryambakeshwar Road,
Nashik.

RESPONDENTS

[Ori. accused]

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Mr.S.G.Karlekar, APP for the applicant-State
Mr.N.B.Patekar, Advocate holding for Mr.P.R.
Katneshwarkar, advocate for respondent nos.1
to 6.

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WITH
CRIMINAL APPLICATION NO.1120 OF 2017

Rekha w/o. Ashutosh Andore,
Age 28 years, Occu: Household,
R/o. Rahuri [Kh], Tq.Rahuri,
Dist. Ahmednagar.

APPELLANT

[Orig.complainant]

VERSUS

1. The State of Maharashtra
2. Ashutosh s/o. Bansilal Andore,
Age 31 years.
3. Sushila w/o. Bansilal Andore,
Age 60 years, Occu. Household.
4. Bansilal s/o.Kisan Andore,
Age 64 years.
5. Mangesh s/o.Bansilal Andore,
Age 32 years.
6. Deepali w/o. Mangesh Andore,
Age 27 years, Occu. Household.
7. Abhijeet s/o. Bansilal Andore,
Age 40 years, Occu:

Respondent nos.2 to 7
R/o. Plot No.1 & 2,
Flat No.159, Jaju Plaza,
Kamathwada, Trimurti Chowk,
Tryambakeshwar Road,
Nashik.

RESPONDENTS

[Respondent nos.2 to 7
are orig.accused]

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Mr.Y.V.Kakde, Advocate for applicant
Mr.S.G.Karlekar, APP for the respondent-State
Mr.N.B.Patekar, Advocate holding for Mr.P.R.
Katneshwarkar, advocate for respondent nos.2
to 7.

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

Reserved on : 20.04.2017
Pronounced on : 02.05.2017

ORDER: (Per S.S.Shinde, J.):

1. Both applications are filed seeking leave to appeal from the judgment and order dated 17th May, 2016, passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No.148/2014.

The applicant in Criminal Application No.1120/2017 has filed withdrawal *pursis* on 13th April, 2017. It is stated in the said withdrawal *pursis* that, the applicant and respondent no.2 original accused has arrived amicable settlement before the Family Court at Nashik in Petition

No.A-470/2016. In the said petition, the terms of compromise has been filed on 3rd February, 2017. Those compromise terms are also placed on record with the withdrawal *pursis* and in view of the terms of the compromise filed before the Family Court, the prayer is made for withdrawal of the present application.

2. Upon careful perusal of the said compromise *pursis*, it appears that, applicant – Rekha Ashutosh Andore has agreed to withdraw the present Criminal Application No.1120/2017 filed by her. It is further agreed between the parties that, Criminal Application No.1120/2017 will be withdrawn before final decision in the proceedings instituted before the Family Court at Nashik for divorce with mutual consent.

3. We cannot entertain the prayer of the applicant to allow her to withdraw the

Application. The said application is arising out of the final judgment and order passed by the Additional Sessions Judge, Ahmednagar in Sessions Case No.148/2014, dated 17th May, 2016, and therefore, it is not appropriate to accede to the prayer of the applicant for withdrawal of the application, seeking leave to appeal, in view of the fact that, the State has also filed application seeking leave to appeal from the same judgment and order.

4. The learned APP appearing for the applicant-State in Criminal Application No.4693/2016 submits that, the trial Court has not properly appreciated the evidence brought on record and by recording the perverse findings, acquitted respondent nos.1 to 6 – original accused. He invites our attention to the evidence of the Medical Officer and also the evidence of other witnesses and the statements of Rekha [PW2]

and submits that, the application deserves to be allowed.

5. On the other hand, the learned counsel appearing for the original accused i.e. respondent nos.1 to 6 submits that, the trial Court has minutely considered the evidence and reached to the conclusion that, the said evidence is not sufficient to convict the accused and the benefit of doubt is rightly extended in favour of the accused. He invites our attention to the findings recorded by the trial Court and submits that, those findings are in consonance with the evidence on record.

6. We have given careful consideration to the submissions of the learned counsel appearing for the applicant-State and the learned counsel appearing for the original accused. With their able assistance, we have carefully perused the notes of evidence and

in particular the medical evidence. If the deposition of Rekha [PW2] is considered in the light of the medical evidence, the reasonable inference can be drawn that, her version is an exaggeration. If really the accused nos.1 to 4 have attempted to kill Rekha [PW2] by pouring kerosene on her person, in that case, percentage of burn should have been very high. As rightly observed by the trial Court in the impugned judgment that, in spite of pouring the kerosene by all the accused and setting on fire the saree of victim, in that case, victim should have suffered high percentage of burn and the medical evidence shows that, even 1% burn injury has not been caused to her, and those injuries are also simple in nature. The place of incident as alleged is the house of father of Rekha [PW2] and as per the prosecution case, all four accused i.e. accused no.1 to 4 called Rekha [PW2] in a

sapar situated nearby the house of the father and inquired about amount of Rs.5 lacs. After the said discussion, accused no.1, husband of Rekha [PW2], pressed her mouth and other accused caught hold her and poured kerosene and set her ablaze. The trial Court, upon appreciation of the evidence, found that, the prosecution story is improbable and not believable one, and therefore, the benefit of doubt is given to the accused.

7. In that view of the matter, in our opinion, the view taken by the trial Court is plausible, and therefore, the order of acquittal passed by the trial Court needs no interference. Hence, both Criminal Applications stand rejected.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE