

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3635 OF 2016

The State of Maharashtra, Through
Jyoti Ganpat Kavade, Age : 25 years,
Occu. : Tailoring, R/o Kanherwadi,
Tq. Kallam, Dist. Osmanabad. ...Applicant

Versus

- 1] Ravindra Shivaji Kawade,
Age : 29 years, Occu. : Agri.,
R/o Kanherwadi, Tq. Kallam,
Dist. Osmanabad.
- 2] Shivaji Govardhan Kawade,
Age : 65 years, Occu. : Agri.,
R/o As above.
- 3] Audumbar Shivaji Kawade,
Age : 33 years, Occu. : Agri.,
R/o As above. ...Respondents

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Mr. A. A. Jagatkar, A. P. P. for Applicant-State.

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CORAM : T. V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.
DATE : 10-12-2018.

JUDGMENT : [Per Shri. T. V. Nalawade, J]

01. The proceeding is filed for grant of leave for
the State to file appeal against the order dated

10.12.2015 passed by learned Sessions Judge, Osmanabad, Dist. Osmanabad, in Sessions Case No. 186 of 2014 which is pending in the Court of learned Sessions Judge, Osmanabad. The Trial Court has acquitted the respondents of the offences punishable under Sections 302, 452, 115 and 34 of I. P. C. Heard learned A. P. P. Seen the record of evidence. Seen the reasoning given by the Trial Court.

02. The respondent No. 2 is the real brother of the husband of deceased. The respondent No. 1 and 3 are the issues of respondent No. 2. Husband of deceased Jyoti was missing since more than 5 years prior to the date of incident. There was a whisper that the deceased had illicit relations with respondent No. 1 Ravindra. In the case of prosecution that there was some dispute over the sharing of the agricultural produce also and respondent No. 1 had not given the price of Soyabean which was given to him by deceased for sale. Incident in question took place on 26.7.2014 after 6 PM. The deceased was present inside of the house and the allegations are made that Ravindra came there with can containing kerosene and then set fire to the deceased by using kerosene from the can. Allegations are made that other respondents were the associates of Ravindra.

03. There is record of 3 dying declarations. In 2 dying declarations the deceased declared that Ravindra had entered her house and then pouring kerosene on her person set to fire to her. In the third dying declaration she disclosed that when she had gone outside of the house for attending natural call, Ravindra came there and there he poured kerosene on her person and set fire to her. The spot panchnama shows that the incident took place inside of the house. The panchnama also shows that Sunder and Sudhakar are the immediate neighbours of the deceased. Sudhakar is examined by prosecution as PW-1 but, he is declared hostile. He has given evidence that Ravindra was present there, but, he was extinguishing the fire. There were burn injuries on the person of Ravindra mostly on the front side including on tip of nose, right hand and knee.

04. The Trial Court has considered the inconsistencies appearing in the 3 recorded dying declarations. In the ordinary course, the neighbours would have reached the spot and deceased would have also shouted, if the Ravindra was attempting to finish her by setting fire to her. In view of the inconsistencies in dying declaration, as there is no corroboration of other independent evidence and as there are other circumstances creating different possibilities like the suicide by the

deceased, the Trial Court has given the decision of acquittal. The view taken by the Trial Court is a possible view. This Court holds that nothing can be achieved by granting the leave to the State to file appeal.

05. In the result, application stands dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-