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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 33 OF 2019

The State of Maharashtra

..Applicant

Vs

Vitthal Hanmantu Gaikwad

..Respondent

Ms. P.P. Shinde, APP for Applicant-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 22nd January 2019.

P.C.:

1] This is an application for leave to file appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 against the Judgment and Order dated 11th September 2015 passed in Sessions Case No.216 of 2013 by the learned Sessions Judge, Solapur, thereby acquitting the respondent from offences punishable under sections 302, 201, 498A and 342 of Indian Penal Code.

2] Heard the learned APP for the Applicant/State. Perused the entire record.

3] It is the prosecution case that, the deceased Smt. Yamuna Nagnath Gaikwad was the sister-in-law of the respondent. That the respondent along with other two accused namely Smt. Yamavati V. Gaikwad and Smt. Ambubai M. Jadhav were suspicious about the conduct of Smt. Yamunabai and alleged that Smt. Yamunabai committed theft of the house-hold articles including food-grains from their house and therefore, used to cause harassment to Smt. Yamunabai. It is alleged that, therefore on 8th January 2013, in the afternoon, the respondent along with said two accused persons poured kerosene on the person of Smt. Yamunabai and ignited it. Smt. Yamunabai was engulfed in the flames. However, she some how managed to douse the flames and started crying. The neighbours gathered at the scene of offence and took her to the hospital. Smt. Yamunabai was conscious enough to give statement to the police and also gave her dying declaration to the Special Executive Magistrate. The first dying declaration (Exh.26) was recorded by the Special Executive Magistrate namely Mr. B.S. Ulagadde (PW No.5).

The police attached to Salgar Wasti Police Station also recorded the statement of Smt. Yamunabai which was treated as the first information

report (Exh.46). In the dying declaration, Smt. Yamunabai, has stated that, for the aforestated reasons, on the date of incident, the respondent along with Smt. Yamavati V. Gaikwad and Smt. Ambubai M. Jadhav poured kerosene on her person and set her ablaze.

4] The prosecution in support of its case examined in all 10 witnesses. The Trial Court after recording the evidence and after hearing the parties to the case, was pleased to acquit the respondent and discharge accused namely Smt. Yamavati V. Gaikwad and Smt. Ambubai M. Jadhav from the charges levelled against them by the impugned Judgment and Order dated 11th September 2015.

5] The evidence on record indicates that at the time of recording the dying declarations (Exhs. 26 and 46 respectively), the close relatives of Smt. Yamunabai were present near her. There was every possibility that, Smt. Yamunabai might have been tutored and/or influenced by her relatives to implicate the respondent in the case. The respondent has examined a defence witness namely Yallavva Gaikwad, a neighbour of Smt. Yamunabai. She has stated that, on her way to hospital, Smt. Yamunabai told her that she herself poured kerosene on her person and she herself set her ablaze. Thus there are two versions as far as the alleged

burn injuries suffered by Smt. Yamunabai are concerned.

6] The Trial Court has disbelieved the dying declarations of Smt. Yamunabai on the ground that the same are not free from reasonable suspicion of being tutored. It is to be noted here that, the first dying declaration (Exh.26) recorded by the Special Executive Magistrate is in question and answer form. The said dying declaration is in a printed format and the Special Executive Magistrate has asked certain questions which were already typed. In our view, the questions which are typed in the said dying declaration would amount to prompting injured and/or soliciting from her certain answer information in furtherance of the questions which were already recorded by the concerned Magistrate.

7] It is further to be noted that the nature of harassment alleged to have been meted out to Smt. Yamunabai by the accused persons has not been elaborated in both dying declarations or through the witnesses examined by the prosecution.

8] After perusing the entire evidence available on record, we are of the opinion that, the view adopted by the Trial Court is a reasonable and probable view in the facts and circumstances of the present case.

No case for grant of leave to file appeal is made out.

9] Accordingly, application for grant of leave to file appeal against the impugned Order is rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)