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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.13 OF 2019

The State of Maharashtra ...Applicant
vs.
Chandrakant Baliba Narwade & Ors. ...Respondents

Ms M.H.Mhatre, APP for the applicant
Mr.Shailesh Kharat I/b Mr.Abhishek R. Avachat for
the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
SANDEEP K. SHINDE, JJ.
DATE : JANUARY 9, 2019

P.C.:

1 The applicant-State is seeking leave to prefer an appeal against the Judgment and Order dated 10th August 2016 passed by the learned Additional Sessions Judge, Pune. The respondent is charged with the offence punishable under sections, 302, 452, 324 read with section 34 of the Indian Penal Code.

2 According to the case of the prosecution, PW1's parents had agreed to sell a piece of land to one Baliba Bhika Narawade for consideration of Rs.75,000/-. The parents of P.W.No.1 received part consideration of Rs.50,000/-. According to the case of the prosecution, the second respondent-second accused was insisting that sale deed should be

executed only after receipt of part consideration of Rs.50,000/-. According to the case of the prosecution, on 29th April 2007 at about 6.00 a.m., the respondents-accused and one Sangita entered the house of P.W.NO.1. It is alleged that Sangita caught hold of P.W.No.1's mother who was cooking the food and she was brought outside the house. She was assaulted with sticks. P.W.No.1 and his father Lahu tried to save P.W.No.1's mother when they also received assault by sticks at the hands of the respondents. It is the case of the prosecution that the P.W.No.1's mother received injuries on right hand and she suffered a fracture. It is alleged that the P.W.No.1 and his father were treated in Sasoon Hospital. On 30th April 2007, P.W.No.1's mother was admitted to the hospital who died on 3rd May 2007. FIR was registered at the instance of the PW1. Apart from the testimony of allegedly eye witnesses P.W.No.1 and P.W.No.2, the prosecution relied upon the dying declaration of the deceased allegedly recorded on 30th April 2007 by P.W.No.3 Anant Sitaram Dongare who was Police Hawaldar attached to Chakan Police station at the relevant time.

3 The learned APP has taken us through the compilation of notes of evidence tendered today. Her submission is that firstly there was no reason to discard the dying declaration of the deceased. Secondly, even if the dying declaration is kept out of consideration, the evidence of P.W.No.1 and

P.W.No.2 who were eye witnesses could not have been discarded as their evidence is not shaken in the cross examination.

4 We have considered the submissions. We have perused the notes of evidence and the impugned Judgment. Even according to the case of the PW1, on 29th April 2007, he along with his parents were taken to Shirur police station and later on they were taken to Sasoon Hospital. P.W.No.1 claimed that his parents were admitted in Sasoon Hospital and his mother died on 3rd May 2007. We may note here that he lodged a complaint to Shirur Police Station on 4th May 2007. For the first time in the cross examination, he stated that on 29th April 2007 his complaint was not accepted by Shirur Police Station.

5 As far as P.W.No.2 is concerned, she is niece of the PW1. She claims to have been injured in the sense that according to her case, the first respondent gave a slap to her. We may note here that her statement was recorded on 8th May 2007.

6 P.W.No.3 Anand deposed that on 30th April 2007 he received information from the OPD of Sasoon Hospital that the mother of P.W.No.1 was admitted in the said hospital. He claims to have met a Doctor in Ward No.2 and that he ascertained from the Doctor that the lady was in a position to speak. He claims that the Doctor after checking the lady told him that she was in a good condition. P.W.No.3 in the

cross examination admitted that in the dying declaration, the name of the person in whose presence it is recorded is not appearing.

7 The learned Trial Judge discarded the evidence of P.W.No.3 on the ground that not only there was no endorsement of the Doctor who was allegedly present during the recording of the dying declaration but there was no attempt made to examine the Doctor. If the dying declaration was really recorded on 30th April 2007, we wonder as to why FIR was not registered on that date. The FIR was registered belatedly on 4th May 2007. As observed earlier, the FIR was registered at the instance of the PW1 on 4th May 2007. The statements of the witnesses including the P.W.No.2 were not recorded till 8th May 2007. Moreover, the Sessions Court found that the evidence of P.W.No.2 was full of contradictions and omissions. Considering the aforesaid aspects, the Sessions Court held that the prosecution has failed to prove its case beyond a reasonable doubt. After having perused the notes of evidence of witnesses carefully, we are of the view that the finding recorded by the Sessions Court is certainly a possible finding which could have been recorded on the basis of the material on record. Hence, no case is made out for grant of leave. Application is rejected.