

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 164 OF 2017

Tarachand Namdeo Kalavane. ... Applicant.
V/s.
Ashok Ganpat Dhage and others. ... Respondents.

Ms.Sneha G. Sanap for the applicant.
Mr.Arfan Sait, APP for respondent No.7- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 11th January 2019.

P.C. :

By this application, the father of the deceased has sought leave to prefer an appeal against the judgment and order 31st August 2015 by which the respondents- accused were acquitted. They were charged with the offence punishable under section 302 read with section 34 of Indian Penal Code (for short "IPC")

2. The first respondent is the husband of the deceased. The present applicant is the first informant. According to the case of the prosecution, on 14th January 2012, the deceased had quarrel with the first respondent- husband. The second to sixth respondents are the members of the the family of the first respondent. The allegation is that on 14th January 2012, kerosene was poured on the person of the deceased and she was set on fire. The applicant (P.W.3) was informed on 14th January

2012 by the first respondent about the fact that the deceased had severe burn injuries. The case of the applicant is that when he visited the hospital where the deceased was admitted at 9.00 p.m. on that day, he was informed that she has suffered 98% burn injuries and, therefore, he shifted her to National Burns Centre, Airoli. According to him, at 4.00 p.m. on 15th January 2012, his deceased daughter made a dying declaration before him that the respondents have committed the offence. It is pertinent to note that the present applicant lodged the complaint for the first time on 28th March 2012. That is the reason given by the learned Sessions Judge for disbelieving the said dying declaration of the deceased.

3. The defence has brought on record another dying declaration at Exhibit-61 which is recorded by D.W.2- Tulshiram in which the deceased has stated that as the stove suddenly burst, she caught fire. Apart from the alleged dying declaration made by the deceased on 15th January 2012 before the applicant, there is no other evidence on which the prosecution has relied upon for connecting the respondents with the death of the deceased. Even if the dying declaration relied upon by the respondents is kept out of consideration, the view taken by the learned Sessions Judge cannot be faulted with. We may also note here that the marriage of the deceased was performed on 17th December 2003. P.W.3- the present applicant accepted in the cross-examination that during nine years of her marriage, his daughter did not send him a chit or a letter about any ill-treatment. He also stated that when the marriage of his daughter was solemnized, she was not ready for marriage by heart. More

importantly, in the cross-examination, the applicant was confronted with the suggestion that the first respondent had gifted room No.31 in Vijay Sadan to Saurav (son of the deceased) on 6th February 2012 by way of gift-deed. The applicant pleaded ignorance about the gift-deed. However, he admitted that he demanded from the accused, a sum of Rs.10 lakh in the name of above son of the deceased but the accused refused. That appears to be the reason for the applicant to belatedly register the crime on 28th March 2012.

4. Therefore, the view taken by the Sessions Court is certainly a possible view. Accordingly, the application is rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)