

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

CRIMINAL APPLICATION NO. 58 OF 2018

The State of Maharashtra
Through: Police Station Renapur
District Latur

... Applicant
(Ori. Prosecution)

Versus

1. Shaikh Salim s/o Shaikh Ibrahim
Age: 32 years, Occu. Labour
R/o Kerapur, Tq. Renapur,
Dist. Atur

2. Asifabee w/o Shaikh Salim
Age: 22 years, Occu. Household
R/o. As above

... Respondent
(Ori. accused)

....
Mr. A. M. Phule, APP for the applicant - State
....

**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 23.03.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

. The application has been filed by the prosecution under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to appeal to challenge judgment and order dated 29.09.2017 passed by the learned Additional Sessions Judge-3,

Latur in Sessions Case No.11/2013, thereby acquitting the respondents / original accused from the offence punishable under Sections 302, 498-A read with 34 of the Indian Penal Code in Crime No.87/2012 registered with Chakur Police Station on 24.04.2012.

2. With the help of the learned APP, we have considered the evidence which was before the learned trial Court and considering the application on the point of whether the leave can be granted to the prosecution to file appeal.

3. In nutshell, it is the case of prosecution that ASI PW-4 Lahu Kamble received information from Casualty Medical Officer of Civil Hospital, at about 1.15 p.m., on 23.04.2012 Latur, about admission of patient Nujjat Salim Shaikh due to burn injuries, therefore, he, immediately visited the burn ward and recorded the statement of the victim. The patient stated that her marriage was solemnized with the respondent/accused No.1 Salim in the year 2003 and out of matrimonial relations she blessed with two handicapped children. Thereafter accused No.1 had sent her to her parental house by saying that he doesn't require her. Therefore, she had filed complaint before the Women's Redressal Forum, Nanded. Accused No.1 had performed second marriage

with accused No.2 Asifabee. However, there was compromise between her and her husband. Thereafter, she started cohabiting with the accused No.1 and all of them were residing under one roof. However, the accused No.2 quarreled with her on account of domestic reason at about 11.00 a.m., on 21.04.2012 and during course of quarrel, accused No.2 Asifabee poured kerosene on her person and accused No.1 Salim ignited a matchstick and set her on fire. Thereafter they both had ran away. After she raised hue and cry, her brother-in-law rushed to her and extinguished fire by putting water on her. Thereafter, her in-laws brought her at Civil Hospital. The said dying declaration has been treated as First Information Report. On the basis of said report, Crime No.87/2012 registered against the respondents/ accused for the offences punishable under Section 307 read with Section 34 of the Indian Penal Code. The Executive Magistrate and Police Station Officer of Chakur Police Station recorded separate statements of the victim. The Investigation Officer carried investigation and carried out spot panchanama and seized tin of kerosene, burnt pieces saree and recorded statement of witnesses under Section 161 of the Code of Criminal Procedure. All the seized articles were sent to the Chemical Analysis (CA) for examination and after completion of investigation, charge-sheet has been filed against

the accused. On compliance of Section 207 of Cr.PC., the learned Judicial Magistrate, First Class passed order under Section 209 of Cr.PC. and committed trial to the Court of Sessions.

4. In order to bring home the guilt of accused, the prosecution has examined total seven witnesses, viz. PW-1 Sayyed Latif at Exh.31, PW-2 Halima Pathan at Exh.35, PW-3 Baliram Kamble at Exh.37, PW-4 Lahu Kamble – ASI at Exh.41 who recorded dying declaration Exh.44, PW-5 Maruti Ghodke at Exh.48 who registered crime, PW-6 Vijaykumar Raut at Exh.49 and PW-7 Bhimrao Punjarwad - Investigating Officer at Exh.52.

5. The Investigating Officer PW-7, who has drawn spot panchanama Exh.53 and seized articles i.e. plastic Can, burnt pieces of saree, however the accused persons have not challenged the seizure and spot panchanama. The respondents accused also not challenged the inquest panchanama on dead body of deceased Nujjat. The postmortem report proves that death of deceased Nujjat was occurred due to burn injuries described in para No.17. As per the opinion of the Medical Officer, the death of deceased occurred, "Septicemia due to Burn". Prosecution was required to rule out the possibility of accidental death or suicidal; in order to prove that it was homicidal death. The postmortem report by itself

is not sufficient to prove the death as homicidal in nature. Other evidence will have to be considered here.

6. It is evident from the record that the victim Nujjat was hospitalized due to burn injuries at about 13.25 hrs. on 21.04.2012 and the hospital authority issued Exh.42 intimation and informed the Police Station, Gandhi Chowk, Latur. Thereafter the duty Constable PW-4 recorded dying declaration of the victim Exh.55 at about 1.05 p.m. on 22.04.2012. Thereafter, at about 1.30 p.m. the learned Executive Magistrate recorded dying declaration Exh.54 and thereafter the Police Inspector of Police Station, Chakur, recorded third dying declaration of the victim Nujjat. The prosecution case is based on three different dying declarations. While recording declaration Exh.44, the victim stated to the PW-4 that, on 21.04.2012, the accused Nos.1 and 2 started quarrel with her and asked her to leave her matrimonial house and while quarrel was going on, at about 11.00 a.m., the accused No.2 poured kerosene on her person from the Can and her husband accused No.1 ignited a matchstick and set her on fire and both the accused ran away. Thereafter, her brother-in-law and neighbors poured water on her person and extinguished the fire.

7. The Executive Magistrate recorded Exh.54 dying declaration of the victim and while recording statement, the victim has stated that on 21.04.2012 at about 11.00 a.m., the accused No.2, the second wife of her husband and the accused No.1 had quarreled with her on domestic issue, due to which she got anguished and she herself poured kerosene on her person from the Can and ignited matchstick and set herself on fire.

8. The fact of recording multiple dying declarations has not been denied by the prosecution. It is not the case of the prosecution that all multiple dying declarations Exhs.55, 54 and 44 are consistent. We take that those dying declarations are proved for the sake of argument without much scanning of the evidence, yet whether the accused persons can be convicted is a question. It is well settled principles of law that, if there are multiple dying declarations and they are not consistent with each other, then they cannot be relied. Those dying declarations cannot be the sole basis of conviction. Each dying declaration will have to be scrutinized separately. Prosecution has not explained that the dying declaration in favour of accused is the outcome of tutoring by accused persons. Unless the inconsistency has been explained, none of them can be believed. Rather the dying declaration which in favour of accused will have to be considered and benefit of the

same will have to be given to the accused. Another fact to be noted is that the acts of alleged harassment have not been stated in the dying declaration. When there was compromise and deceased started co-habiting with husband as well as his second wife, then the alleged cruelty should be specific. Since the husband had married second time, deceased had reason to implicate him as well as his second wife. Therefore, considering oral evidence as well as multiple inconsistent dying declarations Exhs.44, 54 and 55, the learned trial Court has passed the impugned order dated 29.09.2017 holding that the prosecution has failed to bring substantial evidence to prove the guilt of the accused under Section 498-A and 302 of the Indian penal Code and acquitted the accused. The said judgment does not warrant interference at the hands of this Court in absence of substantial ground.

9. In view of above discussion, we do not find that the prosecution has made out substantial ground to grant leave to file appeal against the acquittal. Hence, the application is hereby dismissed.

[Y. G. KHOBRADE, J.] [SMT. VIBHA KANKANWADI, J.]