

JPChavan

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

7 APPLN. FOR LEAVE TO APPEAL BY STATE NO.10 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
GOVIND GULAB DEVKATE AND OTHERS

...

APP for the Appellant -State: Mrs. V. S. Chaudhari

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

DATE : 24th April, 2023

ORDER:

1. The present application is filed by the State seeking leave to appeal under section 378 (1)(b) of the Criminal Procedure Code against the judgment and order dated 28.09.2018 passed by the learned Additional Sessions Judge-2, Ahmednagar, in Sessions Case No.73 of 2014; thereby acquitting the respondents/original accused for the offences punishable under section 302 read with section 34 of the Indian Penal Code.

2. Heard learned APP Mrs. V. S. Chaudhari. With her able assistance, we have gone through the evidence which was before the trial court.

3. The case of the prosecution is based on two dying declarations of deceased Balasaheb Keskar as well as direct evidence of PW-1 Angad

Shendkar. The prosecution has examined the police officer PW-7, then API Laxman Rakh attached to Karjat Police Station who had recorded dying declaration and then it was treated as FIR. The said dying declaration has been recorded on the same day of incident i.e. on 06.09.2013 around 7.30 p.m. and thereafter Naib Tahsildar appears to have recorded the second dying declaration between 11.40 p.m. to 11.55 p.m. on the same day i.e. 06.09.2013. The Medical officer who gave endorsement is also examined. The Naib Tahsildar who recorded the second dying declaration was reported to be dead when his turn to be in the witness box came. However, that second dying declaration is exhibited taking into consideration the endorsement.

4. In case of multiple dying declarations, the law is clear and it says that each dying declaration will have to be considered independently. Another fact to be noted here is that the MLC that was sent by PW-6 Dr. Sucheta Yadav also refer to the history that was allegedly given by the deceased Balasaheb Keskar and whether that could have been treated as FIR and also the dying declaration within the meaning of section 32(a) of the Indian Evidence Act is required to be considered. No doubt, it appears that the learned trial judge has discarded both the dying declarations considering the discrepancies but then his reasons are required to be revisited taking into consideration the law on the point that each dying declaration is required to be

considered on its own merits and then cumulative effect, if at all, is required to be considered.

5. Here, the testimony of PW-1 Angad is also required to be considered as he is the eye witness. Further, the prosecution has also examined PW-8 Dr. Pushpa Narote, the medical officer who had examined the accused Govind and it appears to be before the arrest. She had found superficial burn injuries on his person and therefore, it is also required to be seen as to whether the accused has given explanation for the said injuries. The suggestion would show that there was dispute between the deceased and the accused No.1. The enmity is the double edged weapon and, therefore, the evidence will have to be considered from all the angles.

6. We are, therefore, of the view that re-appreciation of the evidence is required in this case taking into consideration the seriousness of the offence and the material that has been brought on record. Hence, the following order:

O R D E R

- (i) The application stands allowed.
- (ii) The prosecution is allowed to file appeal to challenge the impugned order acquitting the respondent. Registry to verify and register appeal.
- (iii) The appeal is **admitted**.

- (iv) Issue notice to the respondent, returnable on 23.06.2023.
- (v) Call record and proceedings with paper-book.
- (vi) Compliance under section 390 of the Criminal Procedure Code should be made to the satisfaction of the trial court.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)