

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

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.43 OF 2019

The State of Maharashtra,
Through PSI, Vivekanand Chowk
Police Station, Latur, Tq. & Dist-Latur.

...APPLICANT

VERSUS

- 1) Gautam Sopan Gaikwad,
Age-47 years, Occu:Labour,
R/o-Near Raghuvir School,
Anjali Nagar, Latur,
- 2) Sidheshwar @ Sidharth
Gautam Gaikwad, Age-24 years,
R/o-Near Raghuvir School,
Anjali Nagar, Latur,
- 3) Shital Shrikant @ Nitin Jawade,
Age-25 years, Occu:H.H.,
R/o-Katpur, Tq. & Dist-Latur,
- 4) Rukmini Gautam Gaikwad,
Age-41 years, Occu:H.H.,
R/o-Near Raghuvir School,
Anjali Nagar, Latur.

...RESPONDENTS

...
Mrs. V.S. Choudhari, A.P.P for Applicant – State.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 20th JUNE, 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondents by the learned Sessions Judge, Latur in Sessions Case No.16 of 2017 of the offence punishable under Sections 302, 323, 504, 506, 201 read with Section 34 of the Indian Penal Code, on 10th December 2018.

2. We have heard Mrs. Choudhari, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the entire record which was before the learned trial Judge.

3. The prosecution story, in short, was deceased Nitin @ Shrikant Sheshrao Jawade was son-in-law of accused No.1 and husband of accused No.3. He received burn injuries on 14th October 2016 in front of the house of accused No.1. Nitin was admitted to Civil Hospital, Latur and between 10.30 a.m. to 11.00 a.m. of 14th October 2016 his dying declaration was recorded by police attached to Gandhi Chowk Police Station, Latur. In his dying declaration, Nitin has stated that on 13th

October 2016 he had gone to the house of father-in-law to fetch his wife, accused No.3. The father-in-law, mother-in-law and brother-in-law started abusing him. When father-in-law rushed towards him by holding stone in his hand, Nitin ran from the said place and came to his village Kathpur, Taluka and District-Latur. However, Nitin was not comfortable in absence of his wife and therefore, on the next day morning i.e. on 14th October 2016, at 6.00 a.m. he again went to the house of accused No.1. Nitin gave call from outside to his wife. At that time the brother-in-law started abusing him and accused No.1, father-in-law told that he would set Nitin to fire and by saying so accused No.1 brought a bottle containing petrol, poured it on the person of Nitin and set him to fire by igniting match stick. When Nitin could not sustain the heat, he took out his clothes. The cousin father-in-law then extinguished the fire by wrapping towel on his person. Thereafter he went running towards his aunt Vandana Suryawanshi, who then took him to hospital in auto rickshaw. Upon the said dying declaration, offence was registered under Section 307, 504, 506 read with Section 34 of the Indian Penal Code. On the next day i.e. 15th October 2016, his second dying declaration came to be recorded between 10.00 a.m. to 10.30 a.m. by the Executive Magistrate, Latur. However, Nitin

succumbed to the injuries on 18th October 2016 and Section 302 of the Indian Penal Code came to be added. After completion of the investigation, charge-sheet was filed.

4. After the committal of the case, the trial was conducted. Prosecution has examined in all ten witnesses to bring home the guilt of the accused. After considering the evidence as well as hearing both sides, the learned Sessions Judge, Latur acquitted all the accused. Hence the present Application.

5. Perusal of the evidence would show that the prosecution case rests on two dying declarations and oral dying declaration to PW-1 Vandana, PW-2 Sheshrao Jawade – father. The testimony of PW-8 Dr. Nomani Mohammad Mufti Taher – autopsy doctor would show that Nitin had sustained 66% superficial to deep burn and therefore, cause of death was “shock due to 66% superficial to deep burn”. Unless it is proved that the burn injuries were caused by the accused, it cannot be said that death was homicidal in nature. In other words, the prosecution should rule out the possibility that it was an accidental or suicidal death. Another fact that has come on record that there was dispute between Nitin and his wife Shital. Their marriage had taken place in 2011 and they had one son and one daughter.

6. Even if for the sake of arguments the technicalities are not seen and it is taken that both the dying declarations are proved, then whether those were consistent is required to be seen. In first dying declaration Exhibit-40 Nitin has stated about alleged incident dated 13th October 2016 also, which is missing in dying declaration Exhibit-44. Exhibit-44 is giving an impression that Nitin had gone for the first time on 14th October 2016 around 6.00 a.m. to fetch wife who was there since one month prior to that day. No role is attributed to the wife and what was her reaction is stated, still she has been made as an accused. It has been stated that accused No.1 picked up quarrel and then brought petrol from the house, poured it on the person of Nitin and set him to fire. The doubt that can be raised is, when accused No.1 was bringing petrol, what the deceased was doing, why he could not have resisted or rescued. Further, it appears that what was seized from the spot was a plastic bottle and as per the spot panchnama, it was the half burnt petrol bottle. It appears that it was not forwarded in the same condition to the Chemical Analyzer because Chemical Analyzer's Report describes it as, Molten plastic piece wrapped in paper in a packet marked Exhibit-B. Though the results of the test for detection of both the

exhibits were petroleum hydrocarbon residues, it shows that if the petrol would have been poured, it would have suddenly caught fire and it would have caused damage to the bottle also before it could be removed from the periphery of the flames. It would have definitely caused burn injury to the person pouring it, but no such burn injuries could be found in the arrest panchnama of accused No.1. It appears to be a case of suicide given colour of dying declaration and murder.

7. The learned trial Court has taken note of the cross-examination of PW-1 Vandana, wherein she has made improvement that accused Nos. 1 and 2 had poured petrol and set Nitin to fire. Brother of accused No.1 is the eye witness as per the prosecution story and he had extinguished the fire, however he has not supported the prosecution story. As aforesaid, deceased had reason to implicate all the accused as he was not on good terms with them. The possibility of dying declarations being outcome of tutoring has not been ruled out. The door of the house of the accused appears to be at some distance from the actual spot of alleged offence. That means, as aforesaid, the deceased had every opportunity to flee from the said spot when he could have seen accused No.1 coming with petrol bottle. From the contents of the dying declaration itself, it

can be seen that accused No.1, who was inside the house, expressed his intention that he would come and pour the petrol on the person of the accused and set him to fire and then had come out of the house in that way, for which it would have definitely taken some fraction of minutes. That also would have alarmed the deceased and therefore, due to fear of such injury he could have fled away. But when deceased has not done so and the situation on the spot shows that it is the likelihood of the outcome of suicidal attempt, the acquittal of the accused cannot be doubted. There is no perversity in the order passed by the learned Sessions Judge and the Application deserves to be rejected.

8. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE