

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

913 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.193 OF 2018

THE STATE OF MAHARASHTRA

VERSUS

LAHU DEVSINGH PAWAR

...

Mr. S.J. Salgare, APP for applicant

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

DATE : 14th JUNE, 2023

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the prosecution seeking leave under Section 378 (1)(b) of the Code of Criminal Procedure, 1973 to file appeal challenging the Judgment of acquittal dated 22.05.2018 passed by learned Additional Sessions Judge, Aurangabad in Sessions Case No.81/2017, thereby acquitting respondent – original accused from the offence punishable under Section 302 of the Indian Penal Code, 1860.

2 Heard learned APP Mr. S.J. Salgare for the prosecution and with his help we have gone through the record which was available before the

learned Trial Judge.

3 The prosecution story is that the deceased was the wife of present respondent – original accused. She was admitted to Government Hospital and Training Institute, Aurangabad (GHATI) with burn injuries. Her Dying Declaration was taken by Executive Magistrate, Aurangabad on 20.10.2016 between 7.10 to 7.30 p.m. and on the basis of said Dying Declaration the offence came to be registered on 27.10.2016 under Section 307 and 302 of the Indian Penal Code as deceased Shakuntala expired around 3.00 a.m. on 26.10.2016. In her said First Information Report deceased Shakuntala has stated that quarrel took place between herself and accused at 6.00 p.m. on 18.10.2016. It was on the count that the accused was asking her to go for labour work in the field, but she refused and he was not ready to do labour work.

4 After the completion of investigation charge sheet came to be filed. The prosecution has examined in all 08 witnesses to bring home the guilt of the accused and after considering the evidence on record and hearing both sides the learned Trial Judge has acquitted the accused. Hence, the present application.

5 It will not be out of place to mention here that Exh.34 is the

endorsement on Dying Declaration dated 20.10.2016 and it has come in the evidence of PW 8 Dr. Rohini Sapkal that it was the police person from Police Station, Pachod who had recorded the statement of Shakuntala between 3.00 to 3.30 p.m. on 20.10.2016. In the said statement Shakuntala has stated that there was trifle quarrel between herself and accused around 7.00 p.m. on 18.10.2016 and thereafter she was cooking food in anger. The pallu of her sari caught fire during that process and she sustained burn injuries. She was firstly taken to Primary Health Centre, Adul and then referred to Aurangabad in ambulance. She was admitted by accused as well as her co-sister (wife of brother-in-law). Thus, it can be seen that from the said Dying Declaration which was earlier in point of time she had not arrayed accused as the culprit. However, the second Dying Declaration has been recorded between 7.10 to 7.30 p.m. by the Executive Magistrate Mrs. Pallavi Ligade. The endorsement is by the same Doctor i.e. PW 8 Dr. Rohini Sapkal. It is to be noted that at both the point of time the Medical Officer has certified that she was conscious and oriented. Even if we take the Dying Declaration Exh.25 as it is, we can see the inconsistencies in the same. At one place she is saying that her husband had set her to fire due to the quarrel, but on the next breath she is saying that she is having suspicion over the husband and she could not get to know that she has been put to fire. Bare perusal of Dying Declaration Exh.25 would show that it is not only the inconsistent within itself; yet, there are

additions and erasers. It states that the husband and wife were quarreling for about 4-5 days. If that was the fact, what course she had adopted for subside the quarrel, would be a mute question. In the Dying Declaration she does not say that after the dispute arose she had narrated the dispute to any of the relative and tried to have settlement with the husband. Possibility of tutoring by the relatives of deceased as they arrived cannot be ruled out. PW 2 Raju Chavan is the brother of deceased Shakuntala. He has stated that after his sister caught fire and sustained severe injuries, underwent treatment for about 5-6 days at GHATI. He has stated that he has no idea as to why the accused has been arrested. Surprisingly this witness has not be declared as hostile by the prosecution. None of the lady in the neighbourhood or any other neighbour has been examined. Even the Dying Declaration says that the brother-in-law of the deceased resides next door and his wife had come to extinguish the fire. She has been kept away from the witness box by the prosecution. Under such circumstance, the said inconsistent Dying Declarations were rightly not believed by the learned Trial Judge. We do not find there is sufficient ground to entertain the application as the impugned Judgment is not perverse. Application stands rejected.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)