

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.186 OF 2019**

The State of Maharashtra,
Through Police Station City Chowk,
Aurangabad

...APPLICANT

VERSUS

- 1) Jagdish Chhaganrao Pardeshi,
Age-54 years, Occu:Business,
R/o-Vasant Bhavan, Aurangabad,
- 2) Shamabai Chhaganrao Pardeshi,
Age-70 years, Occu:Nil,
R/o-As Above.

...RESPONDENTS

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

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 28th JUNE, 2023

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

1. Present Application has been filed seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of respondents by the learned

Additional Sessions Judge, Aurangabad in Sessions Case No. 142 of 2017 from the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, on 16th October 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 evidence which was before the learned trial Judge.

3. PW-1 Jagdish is the husband of deceased Basanti. Original accused No.2 Shamabai is the mother of accused No.1. Basanti was admitted, after she had received burn injuries, to G.M.C. Hospital, Aurangabad and her dying declaration came to be recorded by head constable Ganesh Bakare. It was stated that around 6.00 p.m. of 30th December 2016 Jagdish and his mother Shamabai had poured kerosene on the person of deceased Basanti and set her to fire. Accused No.1 Jagdish used to demand money from Basanti as he was addicted to liquor. On the day of incident also, he demanded money around 6.00 p.m. but Basanti refused and therefore he got annoyed and threatened that he will not allow her to live. He locked the house from inside and then poured kerosene on the person of Basanti. Accused No.2 lighted the match stick and threw it on Basanti, as

a result of which she sustained burns. On the basis of her oral dying declaration, offence under Sections 307, 504, 506 read with Section 34 of the Indian Penal Code came to be registered. However, Basanti expired on 29th January 2017, thereafter offence under Section 302 of the Indian Penal Code came to be added. In the meantime the accused came to be arrested. Panchnama of the spot was executed and certain articles were seized from the spot. Statements of the witnesses were recorded. After the death of Basanti, inquest panchnama was carried out and her dead body was sent for postmortem. The postmortem report was collected and after completion of the investigation, charge-sheet was filed.

4. After the committal of the case the charge was framed against both the accused and trial was conducted. The prosecution has examined in all six witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both the sides, the learned trial Court has acquitted both the accused. Hence the present Application.

5. The main submission on behalf of the appellant – State is that the learned trial Judge has not appreciated the evidence

properly. The dying declaration has been proved by examining PW-1 Police Head Constable – Ganesh Bakare, PW-3 Dr. Jamdhade who had given the endorsement. Further, second dying declaration came to be recorded on 1st January 2017 through Naib Tahsildar Miss S.D. Sure. At that time also PW-3 Dr. Jamdhade has given endorsement regarding the consciousness and orientation of deceased Basanti. PW-4 Bharat Pardeshi is the brother of the deceased to whom oral dying declaration was given. In spite of availability of ample evidence, the learned trial Judge has adopted a technical approach and discarded the evidence of the prosecution, which needs to be re-appreciated.

6. At the outset, it is to be noted that conviction can be based on the dying declaration of a person, if it inspires confidence and if it is legally taken and proved. If we consider the testimony of PW-1 Bakare and PW-3 Dr. Jamdhade in respect of dying declaration Exhibit-31 recorded on 30th December 2016 and also testimony of PW-5 Miss Sure, Naib Tahsildar and PW-3 Dr. Jamdhade in respect of dying declaration Exhibit-50 recorded on 1st January 2017, then those may appearing to be corroborating to each other, however the minute scrutiny of the same would show that when both the dying declarations were recorded,

already the relatives of deceased had arrived. Under such circumstance, it was the duty of the prosecution to rule out the possibility of tutoring. Another fact to be noted is that the incident is stated to have taken place at 6.00 p.m. of 30th December 2016, yet the dying declaration recorded by PW-1 Bakare is on 31st December 2016. The cross-examination of PW-1 Bakare would show that there are erasers and the fact is not matching with the station diary entry and the date on the dying declaration appears to have been inserted later on, so also certain words. Even the mobile numbers have been stated in the said dying declaration Exhibit-31, which appears to be a surprising fact. When the lady had received burn injuries to the extent of 55 to 58%, then whether she would give all those details, is a question. If we consider the dying declaration that was given on 1st January 2017 recorded by PW-5 Miss Sure, then the reason as to why the kerosene was poured is totally missing. The said dying declaration is as cryptic as it can and the date herein also appears to be inserted later on and it is in different ink. All those discrepancies have been considered by the learned trial Judge. Further it is observed that, if it is considered as a true fact that PW-4 Bharat i.e. brother of the deceased was knowing the fact byway of oral dying declaration even prior to

written dying declaration, then why PW-4 Bharat had not lodged any report with the police, has not been explained by him.

7. The prosecution appears to have not examined any witness from the locality as to who had extinguished the fire and also to confirm the fact that where the accused persons were at the relevant time. The spot panchnama has not been properly proved by examining the panch witness to bring the situation at the spot on record. Thus, it appears that the finding by the learned trial Judge is based on proper scrutiny of the evidence. That is possible view and therefore, when there are two views possible, the appellate Court is not supposed to take the second view or contrary view than that has been taken by the learned trial Court. No case is made out for interference and the Application deserves to be rejected.

8. The Application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE