

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.207 OF 2018

The State of Maharashtra,
Through Police Station Officer,
Police Station, Khultabad,
District Aurangabad.

... Applicant
(*Orig. Informant*)

Versus

Shaikh Khalil s/o. Shaikh Nabi,
Age : 40 years, Occu. Nil,
R/o. Padali, Tq. Khultabad,
District : Aurangabad

... Respondent
(*Orig. Accused*)

...
Mr. S. D. Ghayal, APP for Applicant - State
...

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

DATED : 14th SEPTEMBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Getting dissatisfied and aggrieved by the judgment and order of acquittal passed by learned Additional Sessions Judge-3, Aurangabad in Sessions Case No. 338 of 2011, State is hereby seeking leave of this Court by invoking 378(1)(b) of the Code of Criminal Procedure (Cr.P.C.).

2. According to learned APP, respondent was charge-sheeted for commission of offence under sections 302, 323 and 504

of Indian Penal Code (IPC). Respondent - husband had incinerated his wife, who had objected his bad vices. That, on receipt of MLC dying declarations of deceased were recorded. Both dying declarations are consistent about role of respondent. There was no patent variance or contradictions in the same. It is emphasized by learned APP that even learned trial court in its judgment, more particularly in paragraph no. 24 has admitted that death of deceased was homicidal one and that accused had poured kerosene over his wife and has set her on fire. However, still learned trial Court has unfortunately acquitted the accused. Thus, according to him there is total non application of mind and failure to adopt and apply law on dying declaration. Therefore, there is a good case on merits in appeal and so he prays to grant leave.

3. In the light of above submissions, we have evaluated the evidence on record, which is brought before us by prosecution itself. It seems that in support of its case and charges, prosecution has examined in all 8 witnesses. Admittedly, case of prosecution is based on dying dying declarations (Exh.84 and Exh.38). Therefore, we have gone through the both dying declarations.

4. PW1 Pralhad Ghule, Special Executive Magistrate seems to have recorded dying declaration (Exh.38) on 22.05.2011,

which is in question answer form. To the question about occurrence, answer is noted (in translated form) that “her husband used to consume liquor everyday. On 21.05.2011, since evening husband beat her upto night 3.00 a.m.. Thereafter, husband poured kerosene on her person and ignited her”. Whereas in dying declaration (Exh.84) which is also recorded on 22.05.2011, statement is given that, on 22.05.2011 around 4:00 a.m. husband did not allow her to sleep and out of anger she herself poured kerosene on her and thereafter husband threw burning match stick on her. Therefore, apparently both dying declarations are not consistent.

5. Another special feature of this case is that there is MLC at the instance of medical authorities informing police about suicidal burns.

Therefore, with such quality of material on record, we do not find any error committed by learned trial court in disbelieving the case of prosecution. For above reasons, we too are of the opinion that dying declarations fail to inspire confidence being inconsistent. Consequently, there being no merits, we proceed to pass following order :-

ORDER

The application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

Tandale