

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 APPLICATION FOR LEAVE TO APPEAL BY STATE NO.248 OF 2018

The State of Maharashtra
Through Police Inspector,
Shrigonda Police Station,
Dist. Ahmednagar.

... Applicant

... **Versus** ...

- 1 Dada Ashok Mapari,
Age 28 yrs., Occ. Agri.,
- 2 Kanka @ Bhaskar Shankar Mapari,
Age 52 yrs., Occ. Agri.,
- 3 Ushabai Akash @ Ashok Mapari,
Age 52 yrs., Occ. Household,
- 4 Dipali Dada Mapari,
Age 25 yrs., Occ. Household,
- 5 Ashabai Bhaskar @ Kanka Mapari,
Age 48 yrs., Occ. Agri.,

All are r/o Pimpri Kolandar, Tq. Shrigonda,
Dist. Ahmednagar.

... Respondents

...

Mrs. V.S. Choudhari, APP for applicant

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

DATE : 16th 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 14.09.2018 passed by learned Additional Sessions Judge, Ahmednagar in Special Case No.192/2017, thereby acquitting respondents – original accused persons from the offence punishable under Section 302, 143, 147 read with Section 149 of the Indian Penal Code, 1860 and under Section 3(1)(x), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard learned APP Mrs. V.S. Choudhari for the prosecution and with her help we have gone through the record which was available before the learned Trial Judge.

3 The prosecution story, in short, is that – deceased Janabai was aged 50 and was residing at Dhawalgaon, Tq. Shrigonda, Dist. Ahmednagar.

She was residing alone in a temporary shed. Her husband had expired about 10 years prior to the incident. She has one son and one daughter. Her daughter was residing adjacent to her house. Even her son was also residing nearby with his family. Accused Mohan Dhawle has house near to the house of deceased. The cow belonging to PW 1 Malan – daughter of deceased had entered the field of Mohan and, therefore, there was quarrel between deceased, her daughter on one part and accused on the other. One Akash Mapari was the friend of Mohan Dhawle. Akash, who is having criminal background, used to harass Janabai, her daughter and son-in-law without any reason. Around 3.00 p.m. on 07.08.2011 all the accused persons went to the house of deceased Janabai. They started asking, where is her son-in-law. When she told that he has gone out of station, at that time the accused persons started abusing her and were giving threats to kill the deceased, her daughter and son-in-law. Accused No.5 after holding deceased allowed accused No.1 to bring kerosene drum from the house of deceased and poured it on her person and then set her on the fire. PW 1 Malan was inside her house, but after hearing noise she came out and when she tried to help her mother in extinguishing fire, she was restrained. After the accused went away, Malan made arrangements to bring mother Janabai to hospital. Thereafter her Dying Declaration came to be recorded through Executive Magistrate. On the basis of said Dying Declaration the First Information

Report came to be lodged, however, before it could be registered deceased expired and, therefore, directly offence under Section 302 of the Indian Penal Code came to be registered.

4 After completion of investigation of the case charge sheet came to be filed, charge was framed against the accused and prosecution has examined in all seven witnesses to bring home the guilt of the accused. After considering the evidence on record and hearing both sides the learned Trial Judge has acquitted the accused from all the charges. Hence, the present application.

5 Here, the case is based on sole eye witness PW 1 Malan and the Dying Declaration. PW 4 Dr. Ashokkumar Madhavrao Karale has conducted the autopsy. He has stated that the cause of death of the patient was “due to cardio respiratory arrest due to hypo volumic shock with anaemia due to 100% thermal burn”. He was unable to tell as to whether the death was homicidal or suicidal or accidental. The testimony of this witness will not lead us to any way. The fact remains is that deceased had sustained burn injuries and had succumbed to the said injuries. Another fact to be noted is that initially it appears that the AD was registered and inquiry under Section 174 of the Code of Criminal Procedure has been got done through PW 5 Dilip

Dashrath Gaikwad. The first and the foremost fact is that the DD appears to have been recorded on 07.08.2011 around 7.00 p.m. to 8.00 p.m. If we consider the said Dying Declaration Exh.25 as it is, it can be seen that it is unbelievable. What has come by way of autopsy report that she had received 100% burn injuries and a very detailed Dying Declaration has been recorded. There is absolutely one or two mistakes done in the same. Therefore, apparently it creates doubt as to whether those contents in the said language could have been given by the injured who had sustained 100% burn injuries. No doubt, the Doctor has certified about the fitness of the deceased to take statement; yet, we should know the answer as to whether it was possible for a person with 100% burns and uninterrupted with full flow a Dying Declaration can be recorded. Further, it can be seen from the testimony of PW 1 Malan that there were many inconsistencies between her evidence and the evidence in Dying Declaration Exh.25. As per the testimony of PW 1 Malan, there was no reason at all for deceased to interfere with the dispute the accused persons had with the son-in-law of the deceased (who is husband of PW 1 Malan). The testimony of PW 1 Malan is totally silent about the alleged reason for the acts of the accused. Certainly they have not made any such act only because deceased was a member of scheduled caste. The reason given in Exh.25 about the quarrel appears to be too trifle. The inconsistency could be seen from the Dying Declaration that at one breath

she says that the accused had set her to fire and in another breath she says that she was unable to get when the burning match stick was thrown on her after kerosene was poured. The kerosene is stated to have brought by accused Dada Mapari from the house of the deceased. How he was able to locate the place where she has kept such articles, is a question. The conduct of PW 1 Malan is also doubtful. At the costs of repetition, it can be said that she has not given the reason or motive behind the crime. It is her story in examination-in-chief that she was watching TV around 3.00 p.m. on 07.08.2011. When she heard noise and shouts, she came outside and saw that some persons were abusing and beating mother. She went there and then the accused started abusing her. They were asking where her husband is and then threatened to kill her. It is to be noted that five persons have been arrayed as accused. It could have been possible for accused persons to caught hold of PW 1 Malan but then she says that when the threats to kill were given her mother asked her to go home. Accordingly, she went home and bolted the door of her house. Therefore, it is hard to believe that leaving the old lady behind, how the daughter could have thought of not rescuing the mother, and thereafter in her examination-in-chief itself she herself says that after the mother was put to fire she came out with a bucketful of water, but accused Dada Mapari kicked the bucket and pressed the bucket with his legs. That means, she was not allowed to pour water on her mother. She says that

the mother rolled herself on the grass and thereby she herself extinguished the fire. Here, it is to be noted that the target appears to be the husband of PW 1 Malan and when he was not there the accused persons went to deceased and asked whereabouts of her son-in-law. If threats to kill were given to PW 1 Malan also, then she could have been easily caught hold by five of the accused persons. From the cross-examination it can be gathered that there are many houses around the house of deceased and none of the independent witnesses, though the incident is stated to have taken place at 3.00 p.m., have been examined by the prosecution. Thus, the learned Trial Judge was justified in not relying upon the Dying Declaration as it was not free from doubt and the testimony of PW 1 was not inspiring confidence. The story told by her was unbelievable. There was reason to implicate the accused persons for the deceased and, therefore, the acquittal of the respondents is justifiable. We do not find any perversity or error in the law as well as appreciation of evidence by the Trial Court. Application, therefore, stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)