

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 608 OF 2024

Narayan Krishna Gurav

..Appellant

Versus

Manohar Vishnu Kerkar & Anr.

..Respondents

Mr. Dushyant Pagare for Appellant.
Mr. Dheeraj Patil for Respondent No.1.
Smt. M. H. Mhatre, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 14 JANUARY 2025

PC :

1. This Appeal is against the acquittal filed by the father of the victim Eknath. This appeal is filed U/s.372 of the Cr.p.c. by the aggrieved party.

2. The prosecution case is that, on 14.09.2017, the deceased Eknath was working on a contract basis with M.S.E.B. office, Ajara. He and the Respondent No.2 were working on a main line at Yemekond. The deceased Eknath suffered heavy electric shock. He was taken to Mission Hospital, Miraj. After a few days,

he succumbed to injuries. Initially, the F.I.R. was lodged at Ajara police station vide C.R.No.114 of 2017 under sections 337 and 338 of the I.P.C. Subsequent to his death, Section 304(II) of the I.P.C. was added.

3. Learned counsel for the Appellant submitted that the F.I.R. was lodged on the basis of statement given by the deceased Eknath himself. It describes the circumstances in which the incident had occurred which ultimately resulted in his death. Therefore, it is a dying declaration. But in the entire Judgment, there is absolutely no discussion on his dying declaration, and as to why it was disbelieved or not acted upon.

4. We have perused the said dying declaration which was treated as the F.I.R. Deceased Eknath has described the incident. He has stated that the Respondent No.1-accused instructed him to carry out that work. Deceased Eknath was working on a pole when the incident took place.

5. This was an important statement and the learned Judge should have considered the effect of that statement. Without such

consideration, the findings recorded by the learned trial Judge become vulnerable. Therefore, arguable points are raised.

6. Hence, the following order:

O R D E R

- i) Admit.
- ii) Call record and proceedings with paper-books.
- iii) Action U/s.390 of the Cr.P.C. be taken to the satisfaction of the trial Court.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)