



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Appeal No. 37 of 2025

Jaitun Bee w/o Rahim Bhawaniwale,
Aged about 36 Years, Occ : Household
R/o Gawali Pura, Karanja, Tah. Karanja,
Distt: Washim.

... Appellant

- Versus -

- (1) State of Maharashtra,
through P.S.O., Police Station,
Washim (Rural),
Tq. & Dist. Washim.
- (2) Hiriyabi Piru Bhawaniwale,
Age 56 years, Occupation : Agriculturist,
- (3) Rahim Piru Bhawaniwale,
Age 36 years, Occupation – Labour,
Both R/o Surkundi (Khurd),
Tq. Dist. Washim.

... Respondents

Mr. Piyush Rewatkar, Advocate instructed by Mr. A. J. Mirza, Advocate
for the appellant

Mr. A. B. Badar, APP for the State/respondent no. 1

Mr. A. Z. Mirza, Advocate for respondent nos. 2 and 3

**CORAM : ANIL L. PANSARE AND
RAJ. D. WAKODE, JJ.**

DATED : 09-12-2025

JUDGMENT (Per : ANIL L. PANSARE, J.)

Heard.

2. Admit.

3. Mr. A. B. Badar, learned Additional Public Prosecutor waives service of notice for respondent no. 1 and Mr. A. Z. Mirza, learned counsel waives service of notice for respondent nos. 2 and 3. With consent of learned counsels for the parties, the appeal is taken up for final hearing.

4. Victim's sister has filed appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Code'), being aggrieved by the judgment and order dated 16-1-2023 passed by the Additional Sessions Judge, Washim in Sessions Case No. 23/2017 thereby acquitting respondent nos. 2 and 3. They were tried for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC).

5. Briefly stated, the case of prosecution was that the sister (victim) of appellant suffered homicidal death at the hands of respondent nos. 2 and 3. The case is based on three dying declarations given by victim to three different persons. The first dying declaration was given to P.W. 2 Police Officer. He was attached to Washim(Rural) Police Station. He received letter from Reynolds Hospital, Washim that Raziya Bhawaniwale (victim - appellant's sister) is admitted to hospital with burn injuries. He met the Medical Officer on duty, who stated that the injured was in condition to give statement. Accordingly, he

recorded her statement. The victim stated that in the year 2010, she got married to Karim Bhawaniwale. They were residing in joint family. Her brother-in-law Rahim (respondent no. 3) and mother-in-law Hariyabi (respondent no. 2) tortured her as she could not conceive. On 5-2-2017, her husband had been to Nashik to attend marriage. On that day, at about 11.00 a.m., she was talking to her sister Jaitun Bee (P.W. 4 and appellant), who is also wife of respondent no. 3 Rahim. The respondent nos. 2 and 3 asked them as to why are they discussing about in-laws. They pushed victim to ground and started beating. At that time victim said that she will go to her parents house. Then respondent no. 3 poured kerosene on her person and respondent no. 2 set her on fire with the help of match box.

6. Second dying declaration is given by P.W. 1 Sahebrao Napte. He was attached to Tahsil Office as Naib Tahsildar. He has recorded dying declaration as per requisition received. The victim informed him that incident took place at her house. She said that her brother-in-law Rahim and mother-in-law set her on fire.

7. The third dying declaration is a oral dying declaration given before P.W. 4 Jaitun Bee (appellant herein). She and deceased were in the courtyard of the house. Respondent no. 2 came there and started suspecting that they were taking about her. She called respondent

no. 3. He started beating both P.W. 4 and the victim with stick and kicks. Victim asked her (P.W. 4) to pack up luggage so that they can go to their parents house. P.W. 4 went to neighbours to call them and when she came back, she saw victim was in burn condition. She then deposed that respondent no. 3 gave kick blows to her sister. Respondent no. 3 was carrying lamp in his hand and respondent no. 2 was having match box. Her father-in-law Mohammad and Babulal extinguished the fire. When she asked victim about the incident, she told her that respondent no. 3 poured kerosene on her person and respondent no. 2 set her on fire by igniting match box.

8. The trial Court found these dying declarations to be not trustworthy for following reasons.

P.W. 3 is a spot panch. The spot of incident is the room of victim and her husband. The kerosene can, lamp and match box were found in the room. The door of the room was broken. This evidence, according to trial Court, if looked into in the light of defence put forth by respondent nos. 3 and 4, was possible defence. According to respondent nos. 2 and 3, the victim set herself on fire in a hit of anger by bolting the door from inside and thereafter Mohammad and Babulal broke open the door and extinguished the fire. The trial Court also referred to testimony of sole eye witness P.W. 5 to hold that the dying

declaration is full of suspicion. P.W. 5 declined to support prosecution's case, rather in cross-examination, he admitted that when he reached the victim's house, there was quarrel going on between Raziyabi (victim) and Jaitun Bee (P.W. 4). He further admitted that Raziyabi (victim) went inside the room, bolted the door and set herself on fire. Thereafter he and Babulal went inside the room and extinguished the fire with the help of bedsheet.

9. The argument of defence is that since the appellant and victim, both were annoyed because of quarrel that occurred with respondent nos. 2 and 3, both have falsely implicated these respondents.

10. We have given thoughtful consideration to the material placed before us. In our considered view, the finding of the trial Court is a possible view. The dying declarations will have to be examined on the touchstone of the events that occurred immediately prior thereto. The testimony of prosecution witnesses clearly show that when appellant and victim were sitting together in the courtyard, respondent no. 2 came there suspecting that they were talking about her. Thereafter she called respondent no. 3. He started beating both appellant and victim with kicks and stick. The victim got annoyed and said that she will pack up luggage and go to parents house. Thereafter

appellant went to neighbours, may be for help. When she returned back, she found victim with burn injuries. Evidence indicates that in the meantime, victim in the hit of anger went inside her room, latched door from inside, poured kerosene on her person and set herself on fire. The panchanama supported this theory because the articles by which victim was set on fire were lying the room. The door of the room was broken. In the circumstances, the victim's statement that respondent no. 3 poured kerosene on her person and respondent no. 2 set her on fire in the courtyard itself is not supported by the evidence. The possibility, therefore, that victim being annoyed with respondent nos. 2 and 3 has implicated them cannot be ruled out.

11. The finding of the trial Court is thus well founded. It is well settled that in the case of acquittal, if the view taken by the trial Court is possible, the appellate Court should not interfere only because another view is also possible. As such, in the present case, it is difficult to take another view. However, even if, another view is possible, the interference in the impugned judgment is not called for once the trial Court's view is found to be possible. There is thus no substance in the appeal. The appeal is accordingly dismissed.

(RAJ D. WAKODE, J.)

(Anil L. Pansare, J.)