

REVISED

ITEM NO.103

COURT NO.8

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 707/2010

MACCHINDRA S/O SHANKAR WANI

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With office report)

Date : 28/09/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Mr. Shivam Singh, Adv. [A.C.]

For Respondent(s) Mr. Nishant Ramakantrao Katneshwarkar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Appeal is dismissed in terms of the Signed Order.

Pending application(s), if any, stands disposed of.

(RASHI GUPTA)
SR. P. A.

(MALA KUMARI SHARMA)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

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[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 707 OF 2010

MACCHINDRA S/O SHANKAR WANI

APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA

RESPONDENT(S)

O R D E R

The concurrent finding of the fact recorded by the High Court of Judicature at Bombay in its judgment dated 23.07.2007 affirming the Judgment and order of the Trial Court dated 28.04.2005 on the charge under Section 498A and 302 of the IPC against the appellant herein, his conviction under Section 498A and 302 of IPC and sentence for life imprisonment are under challenge in this appeal by urging various legal contentions.

The learned counsel for the appellant has pointed out that there are two dying declarations, one recorded by PW-2 Executive Magistrate - Naib Tahsildar Dyandeo Aher as per Extract 20 on 16.01.2004 and another before the PW-5 Head Constable Levin Kamble as per Extract 33 on 16.01.2004. There is a contradiction between two dying declarations, therefore, placing reliance on the record of conviction under Section 302, is erroneous in law and further placing reliance on the evidence of the minor son of the deceased appellant herein, whose age is about eleven years, is one more factor which renders the finding erroneous in law.

Our attention was drawn to the finding and reasons recorded by the Trial Court in paragraphs 17 and 18 to bring home the point that the finding recorded on the charge by both the Trial Court as well as the High Court, is erroneous and requires interference of the exercise of its appellate jurisdiction.

We have gone through the matter and also perused the impugned judgment of the High Court. In the facts and circumstances of the case, in our considered view, the finding recorded by the High Court on placing reliance upon the dying declarations as per Exhibits 20 and 33 in the absence of inconsistency in the dying declarations with regard to the role of the accused-appellant causing the death of his wife, we do not find any good reason, whatsoever, to interfere with the order of conviction and sentence.

Having affirmed the impugned judgment and therefore since the accused has got three children, it would be just and proper for this Court to give liberty to the appellant that he can make an application through Jurisdictional Legal Services Committee, Shrirampur District/Ahmadnagar District to file a proper application under the relevant rules to the State Government for remission of sentence. If such an application is filed, the State Government shall consider the same and pass appropriate order, within reasonable time, not exceeding six months, keeping in mind that he has got three children to be taken care of.

Registry is directed to send a copy of this order to State Legal Secretary/State Legal Authority of Maharashtra for complying

with the directions.

With the aforesaid liberty to the appellant, the appeal is dismissed.

.....J.
(V. GOPALA GOWDA)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI,
SEPTEMBER 28, 2016