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Cr1.A.No. 608 OF 2001  
ITEM No.101

Court No. 5

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.608 OF 2001

LAXMAN

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent (s)

(With office report)

Date : 23/10/2002 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s) Mr.Murlidhar, Adv. (A.C.)

For Respondent (s) Mr. V.N. Raghupathy, Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.....R  
.SP2

Heard the counsel for the parties for about half an hour.

The appeal is dismissed in terms of the signed order.  
No costs.

.SP1

(A.S. Bisht)  
Court Master

(Janki Bhatia)  
Court Master

(Signed order is placed on the file)

..L.....T.....T.....T.....T.....T.....T.....T.....T.....J

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.608 OF 2001@@  
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LAXMAN

PETITIONER(S)

:VERSUS:

STATE OF MAHARASHTRA

RESPONDENT(S)

O R D E R@@  
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.SP2

Heard the learned counsel for the parties.

This appeal is filed against the judgment and order dated 13th/14th October, 1999, in Criminal Appeal No.288 of 1994 passed by the High Court of Bombay, Aurangabad Bench. By the impugned judgment and order the High Court confirmed the judgment and order passed by the IInd Addl. Sessions Judge, Nanded, convicting the appellant for the offence punishable under Section 302 of the IPC.

The High Court reappreciated the entire evidence and relying upon the evidence of the Judicial Magistrate, who had recorded the dying declaration confirmed the conviction of the appellant under Section 302 IPC, holding that there was no reason to disbelieve the evidence of the Judicial Magistrate, an independent witness. The court also considered the fact that at the time of recording the dying declaration the doctor was present. There was an endorsement on the dying declaration by the doctor as well as by the Judicial Magistrate.

In our view, the aforesaid finding recorded by the High Court cannot be said to be, in any way, illegal or erroneous, particularly after the decision rendered by the Constitution Bench of this Court on 27th August, 2002, in a reference arising out of this very matter on the question of reliability of the dying declaration, where there is no certification that the patient was in a fit state of mind, even though it contained a certificate that the patient was conscious. After considering the relevant decisions, the Court held thus:-

.....L.....T.....T.....T.....T.....T.....T.....T...J.....R

"...It is indeed a hyper-technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind where-after he recorded the dying declaration. Therefore, the judgment of this Court in Paparamabaka Rosamma & Ors. vs. State of Andhra Pradesh [(1999) 7 SCC 695] must be held to be not correctly decided and we affirm the law laid down by this Court in Koli Chunilal Savji & another vs. State of Gujarat [(1999) 9 SCC 562] case.

In this view of the matter, there is no substance in this appeal and the same is, therefore, dismissed.  
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.....J~  
( M.B. SHAH )@@  
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.....J  
( P. VENKATARAMA REDDI )@@  
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.....J  
( D.M. DHARMADHIKARI )@@  
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New Delhi;

October 23, 2002.