

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 5027 OF 2015
IN
CRIMINAL APPEAL NO. 862 OF 2015**

**KAMLESH BHIMRAO KATOLE
VERSUS
THE STATE OF MAHARASHTRA**

.....
Advocate for Applicant : Mrs. Rashmi S. Kulkarni (Appointed)
APP for Respondent/State : Miss R. P. Gaur
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 2nd DECEMBER, 2015

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PER COURT :-

1. The present applicant is prosecuted for offences punishable under Sections 302, 498-A and 504 of I.P.C. and is convicted for the said offences. For the offence punishable under Section 302, the applicant is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.3,000/- in default to undergo further imprisonment for three months. For the offence punishable under Section 498-A, the applicant is sentenced to suffer rigorous imprisonment for two (02) years and to pay fine of Rs.1,000/- in default to undergo further imprisonment for two (02) months and for the offence punishable under Section 504, the applicant is sentenced to suffer rigorous imprisonment for one (01) year and to pay fine of Rs. 500/- in default to undergo further imprisonment for one month. All the sentences are to run concurrently.

2. The appeal filed by the applicant is admitted. The present application is seeking suspension of substantive sentence.

3. Mrs. Kulkarni, the learned counsel for the applicant submits that though the case is based on dying declarations, there are inconsistencies on large scale in the written dying declarations Exh.41 and Exh.47. The endorsement regarding time, as appearing in dying declaration Exh.41 shows that the same is recorded at 9.30 p.m. However, the same constable, who has recorded dying declaration Exh.47 had been to the Executive Magistrate giving requisition to the Executive Magistrate for recording dying declaration and he went to the Executive Magistrate at 9.30 p.m. He could not be present at the same time on both the places.

4. The learned counsel submits that apart from these two dying declarations, there are other oral dying declarations, but those are made to the relatives and not to individual persons. The same cannot be relied upon. The dying declarations also state that it is the deceased herself who had poured kerosene on her body and the applicant only threw matchstick. It is the applicant who had doused the fire and sustained burn injuries on his forearm. The conduct of the applicant would also be required to be considered.

5. The learned APP opposes the application.

6. We have considered the submissions. No doubt, the evidence on record will have to be re-appreciated at the time of final hearing of the appeal. Today, prima facie, going through the judgment and the record, it appears that the conviction is based on two written dying declarations Exh.41 and Exh.47, so also, the other oral dying declarations. Considering the dying declarations on record, it would not be possible to accept the prayer made in the present application.

7. In light of the above, the application seeking suspension of the substantive sentence is rejected. However, hearing of the appeal is expedited.

(V.K. JADHAV, J.)

(S V GANGAPURWALA, J.)

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