

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2703 OF 2014

Rama @ Ramhari Narayan Kadam

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Abhijit A. Joshi for Applicant

Mr. J. H. Ramugade APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 19, 2015

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 25/04/2014 in crime no. 2 of 2014 registered at Barshi Police Station, District Solapur for offence punishable under section 302 of Indian Penal Code on 04/01/2014. Investigation is completed and charge-sheet is filed on 17/07/2014.

2) It is the case of prosecution that on 01/01/2014, one Smt. Mangala Kadam was initially admitted in Jagdalemama Hospital with history of burn injuries and thereafter referred to Civil Hospital, Osmanabad. On 01/01/2014, her statement was recorded by the Special Executive Magistrate, after

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obtaining opinion of the Medical Officer. She disclosed to the Special Executive Magistrate that her husband had abandoned her 15 years ago. Since 4 years, prior to the incident, she was residing with the present applicant. There was no customary marriage between applicant and the injured. As far as incident is concerned, she disclosed to the Special Executive Magistrate that on 01/01/2014, she wanted to go to Vadval along with her friends Kanchan Gholave and Manish Ghalve. They had come to her house. Applicant was not willing to send her along with her friends. There was an altercation between applicant and injured and in a fit of rage, he poured kerosene on her person from the stove and set her ablaze. He had then fled on his motorcycle. Her friends had extinguished flames and had taken her to Jagdalemama Hospital. From there she was taken to Civil Hospital Osmanabad. Injured succumbed to burn injuries on 03/01/2014.

3) In the course of investigation, investigating officer had recorded the statements of the friends of the deceased who had extinguished the flames and taken her to the hospital. The witnesses i.e. friends of the deceased had only seen that the deceased had met the applicant, soon before the incident and

after the incident, they had seen him leaving the house, where she sustained burn injuries.

4) According to one of the witness, on the day of incident, applicant had come to the house on his motorcycle. He had called the deceased indoors. Soon thereafter, they had heard that there was an altercation between the applicant and deceased. He came out of the house, after the witnesses had seen the flames emanating from the house. He had requested one of the friends to save her.

5) Learned counsel appearing for the applicant submits that the evidence in the present case is in the nature of dying declaration. According to the learned counsel, in the eventuality that applicant wanted to eliminate the injured, he would not have requested her friends to save her.

6) Learned APP, as against this, submits that in the eventuality that the applicant wanted to save her, he would have himself extinguished the flames and taken her to the hospital.

7) Be that as it may, as on today, the evidence is in the form of dying declaration. The said dying declaration “prima facie” appears to be voluntary and truthful, hence inspires confidence. An offence under section 302 of Indian Penal Code is prima facie clearly made out. Hence, application deserves to be rejected.

8) The sessions Court, at the time of trial shall not be influenced by the observations made herein above.

ORDER

(i) Application, being sans merits, is rejected.

(SMT. SADHANA S. JADHAV, J.)