

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

CRIMINAL APPLICATION (APPA) NO. 308 OF 2016
IN
CRIMINAL APPEAL NO. 158 OF 2016

(Yadav Atmaram Rathod (in Jail) vs. The State of Maharashtra thr. PSO, PS Parwa, Tahsil
Ghatanji, District - Yavatmal)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.
AUGUST 26, 2016.**

Heard Shri A.S. Manohar, learned counsel for the applicant/ appellant and Shri M.J. Khan, learned APP for the respondent.

The appellant – accused was on bail during trial. The conviction is on the strength of two dying declarations. Apart from difference in motive, the mode and manner in which the applicant – appellant set ablaze the deceased wife, also varies.

In oral dying declaration given to her mother, the deceased has pointed out the request made to the appellant – husband, not to eat Modak (prasad prepared for offering to God) and then his bringing can of kerosene, pouring it over her person and setting her on fire by kindled fire wood from hearth. In the second dying declaration, the motive is about her character and burning by lighting match stick.

In both these dying declarations, after setting her

on fire, he went out of the room and closed the door from outside.

This position of door is not apparent in panchnama. She has deposed that from back door, neighbour Sulochana came and extinguished fire. Sulochana has not been examined.

According to the learned counsel for the appellant, Sulochana in her statement under Section 161 Criminal Procedure Code, has pointed out that the deceased had become unconscious. To suppress this fact, she was deliberately not examined. The effort is to demonstrate the inconsistencies in the time of dying declarations recorded. Our attention is also invited to the fact that before the second dying declaration in writing recorded at Sewagram hospital, her statement was also recorded by the Police Authorities at Yavatmal hospital but that statement has not come on record.

Shri Ganpat Jadhao, cited as Prosecution witness was given up and he has been examined as defence witness. He has pointed out that at the relevant time, the accused was working on his farm and intimation about the incident was given to him there.

In this situation, we allow the present application. The applicant – appellant shall be released on bail on same terms and conditions, on which he enjoyed bail during the pendency of trial. There shall be additional condition that he shall report on first working Monday of the month once in every two months in the trial Court for

recording his attendance. Failure to report for attendance shall be treated as breach of bail condition and shall result in automatic cancellation of bail.

Criminal Application is accordingly allowed and disposed of.

JUDGE

JUDGE

*GS.

C E R T I F I C A T E

“I certify that this Order uploaded is a true and correct copy of original signed Order.”

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