

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.322 OF 2018

IN

CRIMINAL APPEAL NO.209 OF 2018

IRFAN JABBAR SHAIKH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Vinod Kashid i/b. Mr.A.P.Waghmare, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th OCTOBER 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. Though the applicant/accused was charged

for offences punishable under Sections 302 and 498A read with 34 of the Indian Penal Code, the learned trial court was pleased to convict him for offences punishable under Sections 304-II and 498A of the Indian Penal Code. The co-accused were acquitted of offences alleged against them.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the deceased has given dying declaration exonerating the applicant/accused on the date of the incident in presence of her brother/First Informant as well as her mother apart from the present applicant/accused. It is further argued that case of the prosecution is based on evidence of PW2 Imran who appears to be 10 years old son of the applicant/accused and deceased Meena. This witness had not disclosed anything to his maternal uncle/First Informant PW1 Halim till filing of the First Information Report (FIR) by PW1 Halim. However, the FIR reveals that the same is based on narration of facts by PW2 Imran to PW1 Halim. The learned counsel further argued that this child witness PW2 Imran

continued to stay with his maternal uncle PW1 Halim after the incident till lodging the FIR on 18th June 2014.

3 The learned APP opposed the application by contending that evidence of child witness PW2 Imran who is son of the deceased and the applicant/accused, is trustworthy and reliable. There is no reason for him to speak a lie against his own father.

4 I have considered the submissions so advanced and perused copies of deposition of prosecution witnesses including the dying declaration of deceased Meena Shaikh.

5 Though the prosecution case is to the effect that in the night intervening 14th June 2014 and 15th June 2014 at about 1.00 a.m., the applicant/accused had doused his wife Meena Shaikh with kerosene and set her ablaze, the dying declaration of Meena Shaikh recorded on 15th June 2014 by PW8 Supriya Bangade, Police Sub-Inspector, goes to show that she sustained accidental

burns because of flaring of stove. Evidence of PW7 Sameer Dhore and PW8 Suprioya Bangade, Police Sub-Inspectors, shows that the dying declaration of deceased Meena Shaikh Exhibit 49 was recorded in presence of her brother PW1 Halim, her mother as well as the applicant/accused.

6 Immediately after recording of dying declaration at Exhibit 49, the spot was inspected by PW7 Sameer Dhore. Perusal of the Spot panchnama goes to show that except the stove and burnt matchstick, nothing incriminating was found on the spot. PW2 Imran has stated that his father poured kerosene on person of his mother Meena and set her ablaze. The Spot panchnama recorded with promptitude does not show that there was kerosene on the floor of one room house of the couple. On the contrary, stove was found on the spot. No kerosene can was found lying on the spot. PW2 Imran has stated that at the time of the incident, his father had thrown two bottles towards his mother Meena. The Spot panchnama is not reflecting this fact as no bottles were found on the spot.

7 During the course of investigation, the burnt pieces of skin of deceased Meena as well as burnt clothes found on the spot were seized and sent for chemical analysis. No residues of kerosene were found on those articles.

8 In this view of the matter, considering the fact that the applicant/accused is sentenced to suffer rigorous imprisonment for 5 years and he has already undergone most of the part of the sentence, his further detention in jail is not warranted. Therefore, the order :

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant/accused is directed to be released on bail on his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.
- iii) The application is disposed off.

(A. M. BADAR, J.)