

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

CRIMINAL APPLICATION (APPA) NO.356/2018
IN
CRIMINAL APPEAL NO.246/2018

Gopichand s/o Mangar Kharwade (In Jail)
...Versus...

The State of Maharashtra, through Police Station Officer, Police Station Tumsar,
Tahsil Tumsar, District Bhandara

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

Court's or Judge's orders

Shri R.V. Khaparde, Counsel for applicant/appellant
Shri N.R. Rode, APP for respondent

CORAM : R.K. DESHPANDE AND
ARUN D. UPADHYE, JJ.
DATE : 26/07/2018

The appellant is convicted for the offence punishable under Sections 302 and 498 A of Indian Penal Code and is sentenced to suffer rigorous imprisonment for life. The appellant is also made to suffer rigorous imprisonment for a period of one year for the offence under Section 498 A of Indian Penal Code. The appellant is aged about 41 years and is having two children and his old aged mother. No criminal antecedents of the appellant/accused are brought on record. The conviction is based on two dying declarations at Exhs.29 and 30. The evidence of Doctor shows 99% burn injuries. There is no time recorded on the dying

declaration at Exh.29. *Prima facie*, the evidence of practicing cruelty under Section 498 A of Indian Penal Code is not convincing. The corroborative evidence in support of two dying declarations need to be considered in detail. The accused was on bail during the course of trial.

In view of above, we allow the criminal application for suspension of sentence and release of the accused on bail. Hence, we pass the following order :-

ORDER

- (i) Criminal Application is allowed.
- (ii) The sentence imposed upon the appellant/accused for the offence punishable under Sections 302 and 498 A of Indian Penal Code by the learned Additional Sessions Judge, Bhandara in Sessions Case No.54/2013 is hereby suspended. The appellant/accused be released on bail on the same terms and conditions, which were imposed upon him while releasing him on bail during the course of trial.
- (iii) In addition to the conditions of bail already imposed, the appellant/accused shall once in a month mark his presence in the concerned police station, failing which the consequences of cancellation of bail shall follow.

(Arun D. Upadhye, J.)

(R.K. Deshpande, J.)