

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.412 OF 2018
IN
CRIMINAL APPEAL NO.247 OF 2018**

Samadhan Krishna @ Kisanrao Shinde
Age : 30 years, Occ.: Laundry Business,
R/o : Gaudwadi, Taluka Sangola,
District Solapur
(At present in Yerwada Central Prison,
Pune)
Vs.

.... Applicant/
Ori. Accused no.1

The State of Maharashtra

.... Respondent

Mr. B.A. Lawate for the Applicant.

Mr. Y.M. Nakhwa, APP for State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 7th January 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 of Code of Criminal Procedure. The applicant herein is convicted by the learned Assistant Sessions Judge, Pandharpur vide judgment and order dated

26th February 2018, for the offences punishable under Sections 498A and 306 of the Indian Penal Code. For the offence punishable under Section 498-A of Indian Penal Code, he is sentenced to suffer rigorous imprisonment of one year and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for one month and for the offence punishable under Section 306 of Indian Penal Code, he is sentenced to suffer rigorous imprisonment of five years and to pay a fine of Rs.10,000/-, in default to suffer simple imprisonment for one month and both the sentences shall run concurrently.

3 The applicant herein happens to be the husband of the deceased Nivedita. The deceased was married to her paternal-cousin i.e. the mother of the applicant happened to be the real paternal aunt of deceased Nivedita. They were married on 10th May 2006. The couple is blessed with two sons.

4 It is the case of the prosecution that Nivedita was being harassed by her husband and mother-in-law on various counts, on not fulfilling the domestic chores efficiently. She used to rush to her

parents' house and informed them about the same, but on every occasion, the parents of Nivedita had a hope that there may be a change in the behaviour of the applicant and his parents. There was a demand of dowry from the applicant. Her husband i.e. the applicant had also sold her Mangalsutra. On 29th June 2012, Shantanu, the son of the applicant had informed his grandfather that his mother Nivedita was assaulted by the applicant on head with an axe. It appears that the applicant was suspecting her chastity and therefore there was an assault on her. It appears that thereafter she had been to her maternal house and refused to return and therefore the applicant was constrained to issue notice for cohabitation.

5 The legal notice was replied by the deceased stating that there was harassment and ill-treatment to her and therefore she could not return. There was a written agreement between both the parties that in future the applicant would not harass her. The said agreement is marked as Article "A" in the records and proceedings.

6 According to the prosecution, the applicant had not mended his behaviour and finally on 6th March 2014 Nivedita had immolated herself. She was admitted in the hospital. Her statement was recorded. She had disclosed that she has sustained burn injury while cooking on a stove and that she did not suspect anyone. She succumbed to the burn injuries on 24th March 2014. The cause of death is “due to septicaemic shock because of burn injuries”.

7 Learned counsel for the applicant has submitted that the father of deceased-Nivedita had lodged F.I.R. after three months. He had stated that he was not in a proper state of mind to lodge the report.

8 Learned APP submits that in fact the deceased had a hope that she would survive the burn injuries and therefore she had disclosed that she has sustained accidental burn injuries. It is also submitted by the learned APP that keeping in mind the relation between the parties, no F.I.R. was lodged. However, these are the

submissions and there is no evidence to that effect except the statement of PW2 that he was not in a proper state of mind to lodge the F.I.R.

9 Learned counsel for the applicant submits that in fact the deceased-Nivedita did not like to stay in her matrimonial home and therefore the applicant was constrained to issue notice of cohabitation.

10 The learned Sessions Judge, Pandharpur, by the judgment and order dated 26th February 2018 has been pleased to convict the applicant for the offences punishable under Sections 306 and 498-A of Indian Penal Code and sentenced him to suffer rigorous imprisonment for five years.

11 The applicant has been in custody since 26th February 2018. He was in custody from 7th June 2014 to 7th July 2014 as an under trial prisoner.

12 Learned counsel for the applicant submits that in fact the Court has placed implicit reliance upon the substantive evidence of PW-2. However, there is no material on record to indicate that the deceased was harassed by the applicant to such an extent that she would be constrained to cause injury to herself. In fact, it was incumbent upon the prosecution to bring on record the dying declaration (Exhibit 63). In paragraph 31 of the judgment, the learned Sessions Judge has disbelieved the dying declaration on the ground that it does not inspire confidence that she had sustained injuries while cooking as she was totally burnt from backside and from neck to chest from front side and therefore according to the learned Sessions Judge, the nature of grave injuries to the tune of 75% burnt injuries would not be possible due to burst of stove.

13 Be that as it may the conviction of the applicant is for the offence punishable under Section 306 of Indian Penal Code. The dying declaration of the victim would falsify that she had committed suicide due to harassment meted out to her by the applicant. In view

of this, the applicant, who is in custody for more than ten months is entitled to be enlarged on bail. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 26th February 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iv) The applicant shall report to the Court of Sessions, Pandharpur once in six months on the date assigned by the Sessions Judge.
- v) Upon failure to attend any two consecutive dates, the Sessions Court, Pandharpur shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(*Smt. Sadhana S. Jadhav, J*)