

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.204 OF 2019

IN

CRIMINAL APPEAL NO.203 OF 2019

Sambhaji Shivaji Rokade ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Ritesh Thobde i/b. Mr.Sagar Tambe, Advocate for the Applicant.

Ms.P.N.Dabholkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 28th FEBRUARY 2019.

P.C. :

1 By this application, the applicant/accused is seeking suspension of sentence and his release on bail during pendency of the appeal filed by him. He is convicted of the offences punishable under Sections 304 Part (I), 504 and 506 of the Indian Penal Code. For the offence punishable under Section 304 Part (I) of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.5,000/- and default sentence of rigorous imprisonment for six

months. Different sentences are imposed on other counts. But substantive sentences are directed to run concurrently by the learned trial Court.

2 Heard the learned Counsel appearing for the applicant/accused. He vehemently argued that evidence of P.W.No.7 Dr.Sandip Thoke shows that deceased Bhagyashri has suffered 9 per cent burn on head, neck and face meaning thereby that her head, neck and face were completely burnt. In the light of evidence of P.W.No.5 Bharati, the learned Counsel further argued that deceased Bhagyashri was not in a position to speak and, as such, her dying declaration becomes highly suspicious. It is further argued that the defence has examined the Medical Officer at Rural Hospital, Mohal, who has deposed that when Bhagyashri was taken to that Hospital, she was not in a position to speak. It is further argued that subsequently, her dying declaration came to be recorded by P.W.No.10 Najir Kahan at Civil Hospital, Solapur, where relatives of Bhagyashri have already gathered. In such circumstances, possibility of her tutoring is not ruled out. The learned Counsel further argued that after about four days, Bhagyashri succumbed to death and as such, the prosecution was having enough time to record dying declaration of Bhagyashri by the Executive Magistrate. This was not done. With this, it is argued that the case in hand is fit for release of the applicant/accused on bail.

3 The learned Additional Public Prosecutor opposed the application by contending that with clear, cogent and consistent evidence, the prosecution has proved the offence.

4 Case of the prosecution is based on officially recorded as well as oral dying declaration of deceased Bhagyashri. The applicant is her husband. Her oral dying declaration heard by brother P.W.No.1 Mahadev is to the effect that on 19/05/2017, Bhagyashri has undergone family planning operation and thereafter 05/06/2017, the applicant/accused had insisted for sex with her and when she refused for it, the applicant/accused had poured kerosene on her and set her ablaze. Another oral dying declaration of deceased Bhagyashri is coming on record through evidence of P.W.No.2 Suman, who happens to be her mother. The same is consistent with the oral dying declaration spoken of by P.W.No.1 Mahadev. P.W.No.10 Najir, PSI had recorded dying declaration of Bhagyashri in the form of her complaint on the date of the incident itself. This officially dying declaration is in tune with oral dying declarations coming on record through evidence of P.W.No.1 Mahadev and P.W.No.2 Suman.

5 True it is that deceased Bhagyashri has suffered 100 per cent burn on her head, nose and face, but those burns were superficial to the deep burn as stated by the Autopsy Surgeon. Medical jurisprudence makes it clear that even if such burn

injuries are suffered, patient can speak. In the case in hand, deceased has suffered 76 per cent injuries and there is ocular evidence regarding condition of the deceased to make a declaration. Officially recorded dying declaration is having endorsement to that effect given by the Medical Officer. There is no rule of law that Medical Officer should certify the deceased to be fit, conscious and in well-oriented condition at the beginning as well as at the end of declaration.

6 Considering this nature of evidence no case for grant of bail is made out even though at the initial stage of visiting Rural Hospital, Mohal deceased Bhagyashri had not spoken about reason for sustaining burns to her.

7 The application is therefore, rejected.

(A.MBADAR J.)