

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

CRIMINAL APPLICATION (APPA) NO.46 OF 2019
IN CRIMINAL APPEAL NO. 20 OF 2019
(Shrikrushna Vitthalrao Rathod vs. The State of Maharashtra)

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

Shri R.M. Daga, Advocate for applicant.
Smt. M. Deshmukh, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH AND
 PUSHPA V. GANEDIWALA, JJ.

DATED : JUNE 17, 2019

This application is filed by original accused no.1, who came to be convicted by the learned trial Court vide judgment dated 7/12/2018 in Sessions Trial No. 158/2017 for the offence punishable under Section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- and in default, to suffer rigorous imprisonment for one month. However, he is acquitted for the offence punishable under Section 498-A of Indian Penal Code. Original accused nos.2 and 3, parents of applicant, are acquitted for all the offences, for which they were charged.

Shri Daga, learned Counsel for applicant, submits that the case of prosecution is based on dying declaration recorded by P.W.7 Sonawane, Head Constable. However, contents thereof are falsified by the evidence of independent witnesses, who are examined as

P.W.4 Darasingh and P.W.5 Suryaprakash. It is further submitted that though prosecution apart from written dying declaration, has also relied upon oral dying declarations given by deceased to her brother P.W.1 Ankush and her mother P.W.2 Gumfabai, same are not convincing and as such, not to be acted upon as though in the oral dying declarations, original accused nos.2 and 3 are also implicated, they are acquitted by the learned trial Court. It is, therefore, prayed that in the light of above doubtful evidence, applicant be released on bail by suspending his sentence.

Perusal of evidence on record prima facie substantiates submissions advanced as aforesaid as on considering evidence of P.W.7 Sonawane, Head Constable, it is revealed that in her statement, deceased has stated that applicant harassed her and on the day of incident, poured kerosene on her person in the bathroom and set her ablaze. However, contents of the said dying declaration do not inspire confidence since falsified by evidence of P.W.4 Darasingh, neighbour, who in clear terms has deposed that on hearing noise, when he reached the house of accused, he saw smoke coming out of window of bathroom where people had gathered. He has further stated that bathroom was closed from inside and, therefore, he broke open the door by kicking it, due to which inner bolt fell down and deceased was found lying in bathroom in a burnt condition. From the evidence of P.W.4 Darasingh, it is, therefore, established that incident took place inside the bathroom and the case of applicant of deceased committing suicide is thus

substantiated, more particularly as bathroom was closed from inside.

Evidence of P.W.4 Darasingh is corroborated by P.W.5 Suryaprakash, panch, who has admitted that at the time of drawing of spot panchanama, bolt of bathroom was found lying inside the bathroom as well as one burnt matchstick was seized from the bathroom.

In view of evidence of above witnesses, contents of written dying declaration, therefore, are prima facie falsified and it is further found that deceased by closing bathroom door from inside set her person on fire. As regards oral dying declarations, no weightage to this piece of evidence can otherwise be given in view of acquittal of accused nos.2 and 3 by the learned trial Court.

Having considered the nature of evidence against applicant, application is allowed by suspending sentence as per order below :

The applicant shall be released on bail on his executing P.R. bond of Rs.50,000/- with one surety in the like amount. While on bail, applicant shall mark his presence with Police Station, Kurha, Taluq Tiwasa, District Amravati on the first day of every quarter pending appeal.

JUDGE

JUDGE