

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

Criminal Applicatio (APPA) No. 959/2018

In

Criminal Appeal No. 579/2018.

(Sunil S/o Patruji Fulzale, District Chandrapur Vs. The State of Maharashtra, Thr. PSO, PS
Gondpipri, Dist.Chandrapur.)

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

Court's or Judge's Orders.

Shri R.P.Joshi, Advocate for applicant.

Shri S.A.Ashirgade, Additional Public Prosecutor for non-applicant/State.

CORAM : P.N.DESHMUKH & MRS. PUSHPA V. GANEDIWALA, JJ.

DATE : 06.06.2019.

This application is filed for suspension of sentence and grant of bail by accused no.1, who is involved in Crime No.68/2012, and came to be convicted in Sessions Case No. 37/2013 by the learned Sessions Judge, Chandrapur by its judgment dated 05/09/2018, for the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- and in default, to suffer simple imprisonment for six months, while he is acquitted of the offence punishable under Sections 498-A, and 304-B of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act along with the original accused nos. 2 to 5.

Learned counsel for the applicant submits that the conviction is based on oral as well as written dying declarations. However, neither of these dying declarations are to be relied upon being not consistent to each other on material aspect. It is further submitted that, infact, one of the written dying declaration though is recorded by the Executive Magistrate, said witness could not be

examined, since dead, and as such the said document is exhibited in the evidence of Investigating Officer.

During the course of submission as aforesaid, the learned APP submitted that paragraph nos. 3 and 4 of affidavit-in-reply with regard to examination of Naib-Tahsildar came to be mentioned inadvertently, and thus contended that paragraph nos. 3 and 4 of the affidavit-in-reply be omitted.

The learned counsel for the applicant thereafter by referring to the oral dying declarations alleged to be made to the father of the deceased, her aunt and to one Yenamreddiwar Reddy submitted that the same are inconsistent with each other and thus prays for grant of bail to applicant, pending the appeal.

Perusal of record would reveal that this application is filed by accused no.1 – husband of deceased, who was married on 11/06/2010, while the incident of setting deceased on fire took place on 29/11/2012 after 8.00 a.m. and she succumbed to injuries after about 20 days. As submitted by the learned counsel for the applicant, the conviction of applicant – husband is based on the oral as well as written dying declarations. We, therefore, have considered the case of the prosecution firstly with regard to oral dying declarations and had accordingly perused evidence of PW-3 – Shamrao Munjankar - father, who had stated that when he visited deceased in hospital at Chandrapur on 30/11/2012, he was informed by her that on 28/11/2012, the accused no.1 quarreled with her and asked her to get out of the house due to which she went out of the house upto the bus-stop. The women was brought back by accused nos. 1 and 5 and in the late hours, in the night, the accused no.1 poured kerosene on her person and set her ablaze.

On perusal of the evidence of PW-5 – Vandana Kamble – aunt of deceased an oral dying declaration, it reveals that she was informed by deceased that in late hour of 29/11/2012, the applicant having been instigated by other co-accused, poured kerosene on her person and set her at fire. The fact of instigation to applicant by other co-accused is missing in the oral dying declaration alleged to be made to father of the deceased. Similarly, the aunt has claimed that the deceased further told her that one day prior to incident, applicant asked her to bring Rs.2,00,000/- as dowry, else not to stay in his house and thereafter on 29/11/2012, on the instigation of his family members, applicant set her on fire. Said contents are also silent in the evidence of PW-3 – father.

Further case of prosecution based on oral dying declaration, when considered with the evidence of PW-9 – Dr. Yenamreddiwar Reddy, it would reveal that accused no.1 set her person on fire as there was quarrel between them on account of purchase of clothes, which reason is silent in the evidence of earlier two oral dying declarations.

In that view of the matter, there appears to be vast inconsistencies in the oral dying declarations.

On perusal of other evidence against the applicant stated in the form of written dying declaration, evidence of PW-14 – Ramesh Mukkawar, ASI would reveal a different case altogether, when he deposed that, deceased has stated that on 28/11/2012, when her husband came home in the afternoon from college and she served him meal at about 9.00 p.m., there was a quarrel amongst them on account of concealing his clothes and she left house and her husband followed her and brought her back in the

house which is contrary to the oral dying declarations wherein it is stated that she was brought back by co-accused nos. 1 and 5 and that accused no.1 has poured Kerosene on her person and set her on fire.

Another dying declaration is stated to be recorded of PW-16 – Ramesh Basanwar - Investigating Officer, who deposed that he recorded dying declaration on 02/12/2012 in the hospital at Chandrapur, which, according to him was recorded in the presence of two panch witnesses, who are her relatives namely Shyamrao – father and Prakash, and has further admitted that before recording statement, he did not get her medically examined from the Doctor to satisfy if she was physically and mentally in a state of mind to make her statement and has further admitted that at the time of recording her statement, no Medical Officer was present. He further admits that he has not mentioned time of commencement and conclusion of statement.

From the evidence of Investigating Officer, it has also come on record that there was matrimonial discord between applicant and deceased wife for which there was a complaint made with Tanta Mukti Samiti.

Having considering the evidence of Investigating Officer as aforesaid, his evidence about applicant setting deceased on fire as stated to him, prima-facie, does not appear to be convincing. According to the case of prosecution, though the dying declaration is recorded by Executive Magistrate, admittedly, no such Executive Magistrate could be examined, since dead and since learned APP has already sought leave to delete paragraph nos. 3 and 4 of affidavit-in-reply, fact remains that there is no other evidence in the

form of dying declaration on record, recorded by Executive Magistrate.

Having considered above stated facts and since the oral dying declarations as well as two written dying declarations are prima-facie found to be totally inconsistent with each other, application is liable to be allowed by imposing suitable conditions as per below order.

ORDER

Applicant shall be released on bail on his executing P.R. bond in the sum of Rs.50,000/- with one surety in the like amount.

Applicant shall mark his presence with Police Station, Gondpipri, District Chandrapur once in a month initially for a period of six months, and thereafter quarterly on the first day of each such month pending the appeal.

Criminal Application (APPA) No. 612/2019

By consent of the learned counsel for the parties, application to be considered at the time of final hearing.

Appeal be shown in the caption of final hearing.

JUDGE

JUDGE