

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

Criminal Application (APL) No.276 of 2021

In

Criminal Appeal No.177 of 2021

Sunil S/o Uttam Barsagade

Versus

State of Maharashtra, through PSO, Police Station Kurkheda,
Tah. Kurkheda, Dist. Gadchiroli

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

Shri A.C. Jaltare, Advocate for Applicant.

Shri S.M. Ghodeswar, Additional Public Prosecutor for
Non-Applicant/ State.

**CORAM : V.M. DESHPANDE &
AMIT B. BORKAR, JJ.**

DATE : 3rd AUGUST, 2021

1. This is an application for suspension of substantive jail sentence and for grant of bail.

2. The applicant was convicted by the learned Additional Sessions Judge, Gadchiroli, on 10-3-2021 in Sessions Case No.74 of 2017. By the said judgment and order, the applicant was punished for having committed an offence under Sections 498A and 302 of the Indian Penal Code (IPC). The applicant was awarded punishment of imprisonment for life for the offence punishable under Section 302 of IPC; however, no separate sentence is passed so far as the offence punishable under

Section 498A of IPC is concerned.

3. Heard Shri A.C. Jaltare, learned counsel for the applicant; and Shri S.M. Ghodeswar, learned Additional Public Prosecutor for the non-applicant/State. Also perused the record and proceedings placed before us for consideration of this application.

4. The name of the deceased is Sarita. Her marriage was performed with the applicant on 19-4-2008. From the wedlock, the couple is having two issues; the first is Soham, aged about 7 years; and the second is Himanshu, aged about 3½ years. The incident in question occurred on 25-7-2017 in the residential house of the applicant and the deceased. On the said date, the deceased received the burn injuries and she succumbed to the injuries after six days.

5. Deceased Sarita was brought to the hospital by PW 6 Roshan Dilip Kumbalwar, a neighbour. After she was brought to the hospital, PW 2 Bharat Tulshiram Dange, ASI, recorded her statement and on the basis of her statement, an offence was registered against the applicant vide C.R. No.164 of 2017 for the offence punishable under Section 307 of IPC. After the death of Sarita, the offence was converted into that punishable under Section 302 of IPC.

6. In the prosecution case, there are two dying declarations; the first one was recorded on 27-7-2017 by PW 2 Bharat Dange,

which is at Exhibit 29; and the another was recorded by PW 10 Sandeep Sarjerao Pundekar, Naib Tahsildar, on the same date, which is at Exhibit 47.

7. Exhibit 29 shows that on 25-7-2017 at about 7.30 p.m., the deceased, applicant and their son Himanshu were taking their meals. At that time, there was a disturbance in the electricity supply. Therefore, the deceased went to the house of her mother-in-law and brought a lamp. At that time, according to the statement (Exhibit 29), the applicant picked up a quarrel with the deceased. Exhibit 29 further recites that the deceased, in a lighter vein, says to her husband that she will not reside with him. Upon that, according to Exhibit 29, the applicant states that she should die and thereafter poured kerosene on her person. Thereafter, the deceased herself also poured kerosene on her person. Exhibit 29 further recites that thereafter the applicant ignited the lamp brought from the house of his mother-in-law and set the deceased ablaze. It is further stated in the said statement that she started shouting and on that, neighbour Roshan Kumbalwar reached the house and poured water on her person.

8. Exhibit 47, the another dying declaration, recorded by the Naib Tahsildar shows that on the day of the incident at 7.30 p.m. while taking dinner, there was a quarrel in between the applicant and the deceased. Upon that, the mother-in-law of the deceased came to their house. However, the applicant drove away his

mother. Thereafter, as per the statement Exhibit 47, the applicant told the deceased that she is not having any courage. Upon that, as per Exhibit 47, the deceased poured kerosene on her person and thereafter the applicant set her ablaze. Exhibit 47 further states that Roshan Kumbalwar came to the spot. It is also stated that at the time of incident, the mother-in-law of the deceased, her brother-in-law, sister-in-law and son were also present. However, she has a complaint only against the present applicant.

9. The important thing to consider at this stage is non-seizure of the clothes of the applicant. This assumes importance inasmuch as it was the submission of the learned counsel for the applicant, based on the statement made by the applicant, when he was examined under Section 313 of the Criminal Procedure Code, that at the relevant time, the applicant was not present in the house. The independent witness Roshan Kumbalwar, who brought the deceased to the hospital, also does not state about the presence of the applicant on the spot. His testimony is important one inasmuch as he immediately reached the spot.

10. From both the dying declarations, *prima facie*, it can be observed that there was no intention on the part of the applicant. In other view, if the entire dying declaration is accepted, it cannot travel beyond knowledge. Therefore, it is quite possible that the offence can be scaled down.

11. The applicant is not having any criminal record. He is in jail from the date of his arrest, i.e. from 1-8-2017.

12. In view of the aforesaid discussion, we are of the view that this is a case wherein the Court should exercise discretion in favour of the applicant. Consequently, we pass the following order.

ORDER

(I) The substantive jail sentence imposed upon the applicant by the learned Additional Sessions Judge, Gadchiroli, dated 10-3-2021, in Sessions Case No.74 of 2017 for the offence punishable under Sections 302 and 498A of IPC shall stand suspended during the pendency of this appeal.

(II) Applicant Sunil S/o Uttam Barsagade be released on bail on he executing PR bond of Rs.10,000/- with one solvent surety in the like amount.

(III) The applicant is directed to mark his presence once in six months at Police Station Kurkheda during the pendency of this appeal.

13. The criminal application is allowed and disposed of.

(AMIT B. BORKAR, J.)

(V.M. DESHPANDE, J.)