

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 CRIMINAL APPLICATION NO. 2894 OF 2021
IN APEAL/616/2021 WITH APEAL/616/2021

PRABHAKAR GANGADHAR LOKHANDE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Deshpande Chaitanya C.
APP for Respondent-State : Mrs. P. V. Diggikar
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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 02nd FEBRUARY, 2022

PER COURT:-

1. Pending Criminal appeal no. 616/2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Vaijapur dated 10.11.2021 in Sessions Case No. 59 of 2017 convicting thereby the applicant-accused for the offence punishable under Section 302 of IPC and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default SI for 6 months and also to suffer RI for 3 years and to pay fine of Rs.2,000/-, in default SI for one month for the offence punishable under Section 498A of IPC, the appellant-accused has preferred this application for suspension of substantive part of the sentence and for bail.

2. The prosecution case in brief is that the applicant-accused has committed murder of his wife by pouring kerosene on her person and setting her on fire with the help of match stick.

3. Learned counsel for the applicant-accused submits that both the sons of the applicant-accused, whose presence on the spot is not disputed, have not supported the prosecution story. According to them, when they went inside the house after hearing hue and cry of their deceased mother, they saw that she was surrounded with flames and thereafter, all of them, including the applicant-accused, poured water on her person to extinguish the fire. Though PW 3 Shubham is declared hostile by the learned APP before the trial court, however PW 1 Rahul (elder son of the applicant-accused) was not declared hostile, nor he was confronted with his statement recorded by the police or even by the Magistrate in terms of the provisions of Section 164 of Cr.P.C.

4. Learned counsel for the applicant-accused submits that the prosecution case thus mainly rests upon two dying declarations, Exhibit 26 recorded by PW 2 ASI Eknath Ware and Exhibit 48 recorded by PW 6 Sk. Munuruddin Sk. Khajamiya, Special Judicial Magistrate. Learned counsel submits that so far as the dying

declaration allegedly recorded by PW 2 ASI Eknath Ware is concerned, the same is not free from doubts. Even before he went to record the statement of the deceased in the hospital, the Special Judicial Magistrate has recorded the statement. However, PW 2 ASI Ware has failed to make it clear as to who has firstly recorded the statement of deceased Sangita. Learned counsel submits that there is confusion as to whether PW 2 ASI Ware has recorded the statement on 17.05.2017 or 18.05.2017. Furthermore, even though PW 2 ASI Ware has allegedly recorded the dying declaration Exhibit 26 of deceased Sangita, however, entry in the station diary was not taken about handing over the said statement to the PSO. Learned counsel submits that the applicant-accused is in jail since 18.05.2017. He was under trial prisoner. It is not certain as to when his appeal will be taken for hearing. Learned counsel for the applicant submits that the applicant may be released on bail by suspending the substantive part of the sentence passed against him.

5. Learned APP submits that both the dying declarations i.e. Exhibit 26 recorded by PW 2 ASI Ware and Exhibit 48 recorded by PW 6 Sk. Munuruddin Sk. Khajamiya, Special Judicial Magistrate, are consistent. Furthermore, deceased Sangita had also given oral dying declarations to her father and brother, PW 5 and PW 8 respectively.

The said oral dying declarations are also consistent with the dying declarations Exhibits 26 and 48. Learned APP submits that so far as the dying declaration Exhibit 26 recorded by PW 2 ASI Ware is concerned, there is no confusion as such and it is free from doubts. Learned APP submits that PW 4 Dr. Sushilkumar Jamdhade has deposed that on 17.05.2017, when PW 2 ASI Ware has given a letter to him for recording statement of deceased Sangita, he has examined the patient and given the endorsement that she is not in a position to give valid statement. PW 4 Dr. Sushilkumar Jamdhade has further deposed that on 18.05.2017, PW ASI Ware again gave a letter to him and accordingly on examination, he found deceased Sunita in fit state of mind to give statement. Accordingly, he gave endorsement to that effect Exhibit 40. PW 2 ASI Ware has thereafter recorded the statement of deceased Sangita and he has also given his endorsement on her statement. PW 6 Sk. Munuruddin Sk. Khajamiya, Special Judicial Magistrate has recorded the dying declaration of deceased Sangita as per Exhibit 48. Learned APP submits that the application seeking bail and suspension of the substantive part of the sentence is liable to be rejected.

6. We have carefully gone through the evidence of PW 2 AIS Ware and PW 6 Sk. Munuruddin Sk. Khajamiya, Special Judicial Magistrate

and PW 4 Dr. Sushilkumar Jamdhade. We have also carefully examined both the dying declarations Exhibits 26 and 48 respectively. Further, we have also gone through the evidence of PW 5 Bajirao Katkar (father of deceased Sangita) and PW 8 Sanjay Katkar, brother of the deceased, whom deceased Sangita had made oral dying declaration. In two written dying declarations Exhibits 26 and 48 and also in two oral dying declarations as detailed above, deceased Sangita had consistently stated that the applicant-accused had dragged her into the house/kitchen, poured kerosene on her person and set her ablaze by match stick. The applicant-accused was not on bail during trial. Thus, considering the evidence as discussed above, we are not inclined to release the applicant-accused on bail by suspending the substantive sentence passed against him. The application is hereby rejected. However, we grant liberty to the applicant-accused to file an application for expeditious hearing of the appeal at the appropriate time.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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