

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 631 OF 2023
IN
CRIMINAL APPEAL NO. 245 OF 2017**

Kalyan Gopinath Dube

... Applicant

Versus

The State of Maharashtra

... Respondent

....

Mr. M. M. Parghane, Advocate for applicant

Smt. V. S. Chaudhari, APP for respondent - State

....

**CORAM : SMT VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 05.04.2023.

ORDER (PER Y. G. KHOBRAGADE, J.) :-

. By the present application under Section 389 of the Code of Criminal Procedure, the present applicant / accused prayed for suspension of sentence as well as enlarging him on bail during pendency of appeal. He has challenged his conviction against the judgment and order dated 24.11.2016 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.278 of 2014 whereby the applicant/accused has been

convicted for the offence punishable under Section 302 of the Indian Penal Code.

2. Heard Mr. M. M. Parghane, the learned Counsel appearing for the applicant / accused and Smt. V. S. Chaudhari, learned APP for the State at length.

3. With the able assistance of the learned Counsel for the applicant and the learned APP, we have gone through the record.

4. Deceased Babita was admitted in GHATI Hospital on 25.06.2014 after sustaining burn injuries and M.L.C. was sent to the Bidkin Police Station. Accordingly, A.S.I. Shri Bhausahab Madhavrao Pathare (PW-2), attached with Bidkin Police Station visited at GHATI Hospital and recorded statement of patient. Babita Kalyan Dube stated that, her marriage was solemnized with the applicant / accused on 02.05.2012, and after lapse of six months of her marriage, she was ill-treated. Her husband used to abuse and beat her under intoxicant. On 24.06.2014 at about 2.00 p.m. when she was sitting in Wada, at that time, applicant - accused assaulted her without any reason and went away and at about 7.00 p.m., her husband again came to house and beat her. Her father-in-law rescued her from the clutches of the applicant

accused at that time. Thereafter, at about 12.00 to 12.30 midnight, her husband applicant / accused told her that "he will kill her at once" and poured kerosene on her person from Can and ignited with matchstick. She raised hue and cry, but the latch of the door was closed from inside. But thereafter, her husband extinguished fire by pouring water and brought her in GHATI Hospital. On the basis of said statement, Crime No.I-115/2014 was registered with Bindkin Police Station for the offence punishable under Sections 307, 498A read with Section 34 of the Indian Penal Code.

5. The learned Counsel appearing for the applicant / accused canvassed that as per the prosecution story, PW-2 Bhausaheb Pathare, ASI of Bidkin Police Station recorded first dying declaration on 25.06.2014 [Exh.25], wherein deceased Babita had stated that, her husband applicant/accused told her at about 12.00 to 12.30 midnight that he would kill her at once and poured kerosene on her person and ignited with matchstick. However, PW-3, the Executive Magistrate recorded dying declaration at Exh.36 of the victim on 26.06.2014, wherein the deceased Babita stated that in the night of 25.06.2014 at about 12.00 midnight, her husband - accused had beaten her after

doubting her chastity and demanding Sumo vehicle, pressed her neck and poured kerosene on her person and ignited matchstick and set her on fire. Her father-in-law who was present in house, poured kerosene on her person and extinguished fire. Therefore, both the dying declarations Exh.25 and Exh.36 are contradictory, so also there are various omissions and contradictions in evidence of prosecution witnesses. Therefore, the conviction awarded to the applicant is perverse and not sustainable in the eyes of law.

6. It was further canvassed that the applicant has set out substantial ground and there is every chance of his acquittal and the applicant / accused was apprehended on 26.06.2014 and since then he is in jail and it will take long time to decide the appeal, therefore, the sentence awarded by the learned trial Court vide its judgment and order dated 24.11.2016 needs to be suspended and the applicant accused is entitled to be released on bail during pendency of the appeal.

7. Per contra, the learned APP strongly opposed the application and submitted that the prosecution has proved dying declarations Exh.25 and Exh.36 beyond reasonable doubt. The first statement / dying declaration Exh.25 of the deceased was

recorded by PW-2 ASI Shri Pathare and second dying declaration Exh.36 recorded by the Naib Tahsildar / Executive Magistrate and both the dying declarations are in corroboration with each other. In both the dying declarations, specific role is attributed to the present applicant / accused about assault in midnight of 25.06.2014, pouring kerosene on her person and igniting matchstick and setting her on fire, due to which she sustained burn injuries and succumbed on 30.06.2014.

8. The learned APP further canvassed that the prosecution has brought substantial evidence on record and after assessing the evidence, the learned trial Court passed the judgment and order and convicted the applicant / accused for the offence punishable under Section 302 of I.P.C. and sentenced him to suffer rigorous imprisonment for life, however, the applicant/accused acquitted for the offence punishable under Section 498A of I.P.C. The original accused No.2 Latabai Dube, the mother-in-law of deceased acquitted from all charges.

9. On perusal of record, it is not in dispute that, marriage of victim solemnized with the applicant/accused on 02.05.2012 and after marriage, the victim was cohabiting with the applicant.

It further appears that, after her admission in GHATI Hospital, Babita has given statement before PW-2 Bhausahab Pathare, ASI attached with Bidkin Police Station Ex. 25 and PW-3 the Executive Magistrate Shri Mohanlal Harne Exh.36 dying declaration of the deceased Babita Kalyan Dube. Both the dying declarations appear to have been written after obtaining opinion of the Medical Officer Dr. Vishram Pande about the fitness of deceased to give statement. The objections raised in respect of them would be dealt at the time of final hearing.

10. On perusal of both the dying declarations Exh.25 and Exh.36, prima facie there appears to be corroboration in respect of assault and pouring kerosene and setting on fire to the victim by the accused in the midnight. There appears to be evidence against the applicant accused and during pendency of trial, the applicant/accused was not enlarged on bail. Therefore we are of the opinion that this is not a fit case to suspend the sentence, hence, the application stands rejected.

[Y. G. KHOBRAGADE, J.] [SMT. VIBHA KANKANWADI, J.]