

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO. 1449 OF 2023
IN APEAL/327/2023 WITH APEAL/327/2023

PIRAJI S/O MADHAV KUMBHARGAVE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Upendra Bapurao Bilolikar
APP for Respondent-State : Mr. R. D. Sanap

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 08 JUNE 2023

PER COURT :-

1. The present application has been filed for suspension of substantive sentence imposed on the appellant-applicant [original accused no.1] in Sessions Case No. 28 of 2020 by learned Additional Sessions Judge, Biloli, District Nanded on 27.03.2023. The learned trial Judge has held the accused guilty of committing offence punishable under Section 302 of the Indian Penal Code [IPC] and sentenced him to suffer imprisonment for life. It will not be out of place to mention here that the learned trial Judge has acquitted the present appellant from the offence punishable under Section 498-A and 504 of IPC. Accused nos. 2 and 3 are parents of accused no.1, who had also faced the trial and they have been acquitted of all the offences.

2. Heard learned counsels for both sides. Both of them have taken us through the evidence which was before the trial court.

3. Learned Advocate for the appellant submits that there is no dispute that deceased Komal was the wife of appellant and she had sustained 96% burns on 19.07.2019 and was admitted to the District Government Hospital, Nanded. She died on 23.07.2019 and the cause of death is "septicaemia due to burns". The case of the prosecution is rested on two dying declarations, first of which has been recorded by the Executive Magistrate and the second has been recorded by the police officer. It was the submission that both the dying declarations are not consistent with each other. The first dying declaration did not involve accused nos. 2 and 3 and was not giving the exact time of the incident, however in the second dying declaration, all those details are appearing. Further, the witnesses have turned hostile who were the neighbours and even the mother of deceased i.e. PW5-Anita. PW5-Anita has stated that it was the accident and not the case of murder. Under such circumstance, there are every chances for the appellant to succeed in the appeal and therefore, the substantive sentence needs to be suspended till the hearing and disposal of the appeal.

4. Per contra, learned APP supported the reasons given by the learned trial Judge and submitted that the dying declarations have been proved beyond reasonable doubt and the conviction can be based on those dying declarations. As regards the role of the present appellant is concerned, both the dying declarations are consistent.

5. At the outset, it is to be noted that the present appellant was never released on bail during trial. Secondly, when the cause of death is not disputed, then three possibilities would arise i.e. accidental, suicidal and homicidal. Neither the prosecution nor the accused are coming with a case that it was a suicide. One more aspect which needs to be noted is that marriage between the deceased and the appellant had taken place about one and a half years prior to the death. Since the appellant has been acquitted of the offence punishable under Section 498-A of IPC, he can say that there were no allegations of harassment to the extent that it can be covered under Section 498-A Explanation (a). No doubt in the second dying declaration recorded by the police, the deceased has stated that after some days of marriage, her husband has assaulted her on some trivial matters. That harassment cannot be taken to the extent that it would drive a lady to commit suicide. The fact remains is that what happened on the day of incident. Since we are dealing with the *prima*

facie evidence on record at the stage as regards the role of the present appellant is concerned, it appears to be consistent in both the dying declarations. It has come on record through the testimony of the writers of both the dying declarations that they had ensured about the mental condition of the deceased before they had started to record her dying declaration. Merely because the face was burnt and she had sustained about 96% burns, whether the dying declarations can be doubted will have to be considered at the time of final hearing, but at this stage learned trial Judge has held that those dying declarations have been properly proved. Under such circumstance, when there is evidence against the present appellant, this is not a fit case to release him by suspending the sentence.

6. The application stands rejected.

7. The matter be listed after receipt of record and proceedings with paper-book and as per its turn.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]