

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

CRIMINAL APPLICATION NO. 4196 OF 2022
IN
CRIMINAL APPEAL NO. 1165 OF 2019

Laxman Prakash Kshirsagar, ... **Applicant**
Age 32 years, Occu: Nil
R/o Dhaswadi, Tq. Ahmedpur, Dist. Latur

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Kingaon Police Station, Dist. Latur
2. Ganpatrao Dadarao Shinde, ... **Respondents**
Age-Major, Occu: Agri
R/o Pathrud, Ta. Majalgaon Dist. Beed

Mr. Niteen V. Gaware, Advocate for the applicant,
Mr. R. V. Dasalkar, APP for respondent-State
Mr. S. R. Shirsat, Advocate for respondent No.2.

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

DATE : 10.03.2023

ORDER (Per Y. G. Khobragade, J.):

1. The applicant-accused Laxman Prakash Kshirsagar has filed the present application under section 389 of the Criminal Procedure Code for suspension of sentence as well as enlarging him on bail during pendency of the appeal. He has challenged his conviction against the judgment and order dt. 26.09.2019, passed by the learned Additional Sessions Judge, Ahmedpur, Dist. Latur, in Sessions Case No. 16 of 2015. He has been convicted for the offence punishable under section 302 of the Indian Penal Code.

2. Heard Mr. Niteen V. Gaware, the learned counsel for the applicant-accused, Mr. R. V. Dasalkar, learned APP for respondent-State and Mr. S. R. Shirsat, learned counsel for respondent No.2-informant.

3. With the able assistance of the learned counsel appearing for the parties, we have gone through the record. On face of record it appears that, initially when the FIR bearing Crime No. 16 of 2015 was registered against the applicant(accused) with Kingaon Police Station on 29.03.2015, it was for the offences punishable under sections 307, 498-A, 323, 504 read with section 34 of the Indian Penal Code. Subsequently wife of the applicant accused died, therefore, offence under section 302 IPC is added.

4. According to the prosecution, marriage of accused-Laxman and deceased Manisha was solemnized on 13.06.2012. After marriage, deceased Manisha started cohabiting with the applicant at Dhaswadi. Deceased Manisha has a child aged one and half from accused. It is alleged that there was quarrel between deceased Manisha and accused No.1 Laxman at about 7. 30 a.m. on 29.03.2015. Accused No.2 Prakash and absconding accused Ms. Rachna, sister of accused No. 1 were also present at that time. Accused No.1 Laxman and absconding accused Rachna and accused no.2 Prakash abused and assaulted the deceased Manisha. Absconding accused Rachna and accused no.1- husband of deceased allegedly poured kerosene on the person of deceased Manisha and set her on fire, due to which she sustained severe burn injuries.

Neighbours took her to Civil Hospital at Latur and during hospitalization, the police officer recorded statement of deceased, wherein she attributed role to the applicant and other accused. It was treated as First Information Report(Ex.41).

5. The learned counsel appearing for the applicant accused canvassed that the Executive Magistrate/Naib Tahsildar Mr. Saudagar Uttaram Tandale has recorded second statement of the victim Manisha on 29.03.2015. However, the prosecution failed to prove the both statements/ dying declarations Exh.41 and Exh. 48. There are various omissions and contradictions in evidence of the prosecution witnesses. The conviction awarded to the applicant is perverse and not sustainable in the eyes of law. There is every chance of acquittal to the applicant-accused. The applicant accused was apprehended on 30.03.2015 and since then he is in jail. It will take long time to decide his appeal and therefore, the sentence awarded by the learned trial court vide judgment and order dated 26.09.2019 needs to be suspended and the applicant accused is entitled to be released on bail during pendency of the appeal.

6. Per contra, the learned APP strongly opposed the application and submitted that the prosecution proved the dying declarations Exh. 41 and Exh. 48 beyond reasonable doubt. The first statement/dying declaration Exh. 41 of the deceased was recorded by the Police Officer and the second dying declaration Exh. 48 was recorded

by the Naib Tahsildar/Executive Magistrate. Both the dying declarations are in corroboration with each other. While recording both the dying declarations, the deceased has specifically stated that her sister-in-law Rachna, her father-in-law Prakash and her husband Laxman raised quarrel with her on account of domestic reason and they assaulted her. At that time her sister in law Rachna and her husband had poured kerosene on her person. The applicant had ignited matchstick and set her on fire; due to which she sustained burn injuries and her neighbour brought her in Civil Hospital.

7. The learned APP further canvassed that prosecution brought substantial evidence on record and after assessing the evidence, the learned trial court has convicted the applicant-accused No.1 for the offence punishable under section 302 IPC and sentenced him to suffer imprisonment for life. However, accused No.2 Prakash Sopan Kshirsagar is acquitted from all the charges. Rachna is still absconding.

8. On perusal of the record, it reveals that deceased Manisha was admitted in burn ward of Civil Hospital at Latur on 29.03.2015 and the Hospital authority issued intimation about said admission to the concerned police station. Thereafter, PW5- Narayan Bhujangrao Ranzhunzare, ASI, immediately visited the Civil Hospital and recorded statement of the deceased after obtaining opinion from PW-10 Dr. Tushar, Medical Officer. The contents of the said dying declaration have been

narrated earlier, hence not reproduced. Evidence led by the prosecution further reveals that PW-7 Saudagar Uttamrao Tandale Nayab Tahsildar visited the Hospital on the same day and after obtaining opinion from the Medical Officer, recorded dying declaration of deceased Manisha. Broadly the same contents were told before this witness also. The evidence has been adduced to show that the applicant/accused was very much present at the spot at the time of incident. The evidence of prosecution reveals that the deceased Manisha and her minor child Aditya also sustained burn injuries in fire and both of them succumbed to the burn injuries. There appears to be evidence against the applicant/accused.

9. The applicant/accused was not enlarged on bail during the trial. We do not find that the applicant has made out substantial ground to suspend the sentence and release him on bail during the pendency of appeal, as there is evidence against him. Hence, the application stands rejected.

(Y. G. KHOBRADE, J.)

(SMT. VIBHA KANKANWADI, J.)

PChavan