

CRIMINAL APPLICATION NO.1468 OF 2019
IN
CRIMINAL APPEAL NO.191 OF 2017

Applicant

Respondents

...

imprisonment for 15 days.

2. Pending the substantive Appeal the applicant has filed the present Application for bail and suspension of sentence. According to the applicant, she was married to Vitthal Shankar Yerudkar (Deceased), who was a resident of Village Nivade, Paiki Morewadi, Tal- Panhala, Dist- Kolhapur. Vitthal was married to Bebitai and had a daughter Mangal Santosh Chowgule (PW 2). She was married and residing at Kotoli, Panhala, Dist- Kolhapur alongwith her husband.

3. It is the case of the prosecution that, about 10 to 15 days before the day of incident Vitthal was married to the present applicant Manisha. The reason for the second marriage was that, his first wife Bebitai was not keeping good health, therefore in order to manage the domestic affairs, deceased Vitthal had married Manisha. The applicant was hardly 20 years old at the time of incident and was also a divorcee. She had a son who was about 1 -1/2 to 2 years of age. On 27.06.2011 a neighbors of Vitthal heard commotion from his house at about 04:00 a.m. Bebitai (Deceased No. 2) wife of Vitthal was saying that Manisha had set herself and Vitthal on fire. One Deepak who is the son of brother of Vitthal alongwith others immediately rushed to the house of Vitthal, and on entering the house, found that Vitthal had sustained burns and the bed on which he was sleeping was also burned. His wife Bebitai had also sustained burn injuries. Observing this, Deepak called PW 1 Ganapati Katarak, brother of Bebitai and informed that accused Manisha after pouring kerosene on the

person of Vitthal set him on fire and Bebitai had also sustained burn injuries. They were both taken to CPR Hospital, Kolhapur in a Jeep. While on their way, daughter of deceased PW 2 Mangal was also picked up in the same Jeep. While on their way to the hospital, deceased Vitthal had repeatedly said that “मनीषाने आमचा घात केला”.

4. PW 4 Amit Appaso Umnale, Head Constable, who was then attached to O.P.D. in the CPR Hospital, visited Vitthal and made enquiry with Vitthal and Bebitai about the incident. He recorded statement cum report of Vitthal (Exhibit- 27). According to the statement of Vitthal which is at Exhibit- 27, accused Manisha, Bebitai and Vitthal were sleeping in the house at night on 26.06.2011. Manisha was sleeping in outer room of the house whereas Bebitai and Vitthal were sleeping in the inner room. Annoyed about the sleeping arrangements, the applicant accused set them on fire by pouring kerosene on their person.

PW 4 also recorded statement of Bebitai (Exhibit - 28), which is similar to that of Vitthal. The statement of Vitthal was treated as an FIR. PW 6 Ramesh Shendage, who is a Nayab Tahsildar visited Bebitai and after ascertaining from the Doctor about her mental condition and she is in a fit state to give statement, recorded her statement, in question and answer form. Deceased Vitthal sustained 81% mixed burn injuries and succumbed to the injuries on 27.06.2011. PW 3 Dr. Sachin Shinde conducted postmortem on the dead body of Vitthal. Bebitai succumbed to injuries on 01.07.2011.

The investigation was conducted and the spot

panchanama was prepared. The articles such as the burnt clothes of deceased, quilt, bedding, towel, a small lamp, match box and match stick were seized. Those articles were then sent for chemical analysis. The applicant was arrested and statement of various witnesses have been recorded. After completion of investigation the trial commenced and the applicant was convicted by the Additional Sessions Judge, Kolhapur, vide Judgment and Order dated 07.08.2015.

5. The learned counsel for the applicant has drawn our attention to the statement of Bebitai, which was recorded by the Tahasildar on 27.06.2011 after being examined by the Doctor. In the statement of Bebitai which was recorded in question and answer form, while answering the question about manner in which the incident had taken place, Bebitai has stated that her husband had married Manisha 15 days prior to the incident. According to her, during the night she had some health problem, therefore her husband gave her tablets about 02:00 to 02:30 a.m. After giving her tablets he went to sleep. She further states that after some time she saw that there was something burning in their house, therefore she immediately went to see the reason for the fire. She found that Manisha had set Vitthal on fire. She had a can of kerosene in her hand and she was standing near Vitthal who was burning. Bebitai therefore started shouting and she tried to extinguish the fire, during which she also sustained burn injuries. Thereafter they were taken to the hospital by the neighbors.

In response to the question as to whether she had any grievance about anybody, she has answered that, Manisha had

set her husband and herself on fire. In her Dying Declaration before the Tahasildar it is claimed by deceased Bebitai that, Manisha was standing near Vitthal who was burying, when she reached there.

6. The statements of Vitthal as well as Bebitai was recorded on 27.06.2011 by the Police Head Constable, which are at Exhibits 27 and 28, respectively. In the statement recorded by the Police Head Constable, both Bebitai and Vitthal in unison stated that, at about 04:00 in the morning while both of them were sleeping the accused poured kerosene and set them on fire. However in the subsequent statement of Bebitai which is recorded on 27.06.2011 in the evening at 08:40 by the Special Executive Magistrate, Bebitai, stated that after her husband had given her medicine, she went to sleep, at about 02:00 to 02:30 a.m. she noticed the fire, further noticed that Vitthal was in flames and accused was standing near him with a kerosene can in her hand.

7. We have taken note of the inconsistency in the two statements of deceased Bebitai. In the latter statement she has stated that, Manisha was standing with a kerosene can in her hand while Vitthal was set ablaze. The said statement is not supported by other corroborative evidence though it is claimed that Manisha had poured kerosene, however in the spot panchanama there is no seizure of any kerosene can.

PW 9 Vikas Ingale, the panch witness has also admitted in his cross-examination that, he has inadvertently stated that he saw a plastic can, but in fact he had not seen the can on the spot of incident. Therefore the version in this Dying

Declaration, recorded by the Tahasildar do not find corroboration.

After going through the evidence on record it can be gathered that, though it is claimed that the accused has set Vitthal and Bebitai on fire, however there is no consistency in the statement of Vitthal as well as Bebitai and also the subsequent Dying Declaration of Bebitai is not consistent with the evidence, which would point to the guilt of accused Manisha.

Upon going through the notes of evidence which are placed on record and hearing the respective parties, according to us, this is a *prima facie* case, wherein we are of the opinion that the conviction of the Applicant/Appellant is not likely to be sustained in the present Appeal. There are fair chances of the Appellant/Applicant to succeed in the Appeal and since the Appellant has already undergone considerable period of incarceration and considering the fair chances of her acquittal, in our view the Applicant deserve her release on bail and suspension of the sentence imposed on her by the impugned judgment.

8. In view of the foregoing discussion, the Application is allowed and the sentence of conviction of the applicant under Section 302 of the IPC, in Sessions Case No. 120 of 2011 is hereby suspended and the applicant/accused is enlarged on bail, pending the hearing and final disposal of this Appeal, on the following terms and conditions:-

:ORDER:

i) The sentence imposed upon the applicant vide the impugned Judgment dated 07.08.2015 in Sessions Case No.120 of 2011 is hereby suspended during the pendency of the Appeal.

ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties, of which one being local surety in the like amount;

iii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till her Appeal is finally disposed off;

(iv) The applicant shall keep the trial Court informed of her current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) If there are two consecutive defaults in appearing before the trial Court, the Learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

9. The Application is allowed in the aforesaid terms and is accordingly disposed off.

10. All concerned to act on the authenticated copy of this order.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)