



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

CRI. APPLN. (APPA) NO. 649 OF 2024

Smt.Vimal Pandurang Rathod -Vs.- State of Maharashtra

IN

CRI. APPEAL NO. 255 OF 2024

Sanjay Pandurang Rathod and another -Vs.- State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr.R. M. Daga, Adv. for the appellants/applicants.
Mr.N.H.Nikhil, APP for the respondent-State.

**CORAM: SMT. VIBHA KANKANWADI &
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 12TH JULY, 2024

Per : Smt.Vibha Kankanwadi, J.

The present application has been filed by the original accused No.3/appellant No.2 for suspension of sentence. She faced prosecution along with two other accused in Sessions Trial No.21 of 2012 before the learned Additional Sessions Judge, Darwaha, District Yavatmal. By judgment and order dated 02/04/2024, she has been convicted for the offence punishable under section 302 read with section 34 of the Indian Penal Code and has been sentenced to suffer imprisonment for life. Her appeal has been admitted in which present application has been filed.

2. Heard Mr.Daga, learned Advocate for the applicant/appellant No.2 and Mr.Joshi, learned APP for the respondent-State.

3. The learned Advocate for the applicant/appellant No.2 relies on the decision of in **Chandrakant Vishwanath Solas v. The State of Maharashtra; 2024 ALL MR (Cri) 852** to which one of us is a Member, wherein it has been held that conviction cannot be based on untrustworthy written dying declaration and oral dying declaration, thereby the learned Advocate for the applicant/appellant No.2 submits that the dying declaration recorded in the present matter at Exh.18 is not trustworthy, as it is not having a proper endorsement by the Medical Officer on the same page and further there is contradiction in testimony of PW-1-Bhaskar, who had allegedly recorded the said dying declaration and the Medical Officer, who had given endorsement on Exh.17, but not on Exh.18. Even if the endorsement on Exh.17 is considered, the Medical Officer clearly admits that he was on the first floor when the endorsement was given and the patient was on the second floor, that means just prior to the endorsement, he had not examined the deceased and had not ensured as to whether deceased was in a fit state of mind to give dying declaration. In the said dying declaration itself if it is to be considered that the so called disputes between the original accused No.1 and herself were resolved in Diwali of 2010 and she had gone for cohabitation, the incident took place on 13/09/2011. Therefore, the question ought to have been established between the incident and the cause. The accused persons are accepting that deceased Priyanka died due to burn injuries sustained by her, but the prosecution had failed to prove that it was not an accidental injury. The applicant/appellant No.2 has a good case on merits and therefore, the sentence needs to be suspended.

4. *Per contra*, the learned APP strongly opposed the application and supported the reasons given by the learned Trial Judge while convicting the applicant/appellant No.2. In the dying declaration at Exh.18, which has been proved by the person, who scribe it and the Medical Officer states that the accused No.1 had caught hold of her hands and legs and the present applicant/accused No.3 had set her on fire.

5. At the outset, we would like to say that it appears that the applicant was on bail throughout the trial, which has almost taken 12 years to decide. As regards the facts of the case are concerned, it is emerging that the marriage between deceased Priyanka with accused No.1 took place on 12/05/2009. Accused No.1 is the husband, accused No.2 was the father-in-law and accused No.3, i.e. the present applicant is the mother-in-law. The prosecution case is based upon circumstantial evidence. All of them stood prosecuted for committing offence punishable under sections 498-A and 302 read with section 34 of the Indian Penal Code. The FIR was in fact the dying declaration Exh.18. At that time, offence was under section 307 of the IPC and after Priyanka's death, section 302 came to be added. PW-2 Nilesh is the brother of deceased Priyanka, however, except the fact that there were disputes between Priyanka and accused No.1 and therefore, she had come to his house and then after counselling by the Police, she went to cohabit with husband is the fact stated by him. Thereafter, he says that directly on 13/09/2011 accused No.1 had called him and informed about sustaining of burns by Priyanka and admitting her to Government Hospital, Yavatmal. He says about the oral dying declaration also. Now as regards the oral

dying declaration is concerned, it has been considered to be a weak type of evidence. The prosecution strongly relies on the written dying declaration Exh.18. As regards Exh.18 is concerned, questions have been raised regarding its manner of recording. The contradiction between the statement of PW-1 Bhaskar and the Medical Officer have been pointed out. Therefore, certainly the point is required to be answered as to whether the prosecution had properly proved that Priyanka was in a fit state of mind to give dying declaration. Another fact that is required to be considered is, even if we accept Exh.18 as it is, then it states that after the dispute when she had gone to her parents' house, she had given complaint with Police and then there was settlement between herself and husband at Darwaha Court. She started cohabitation with accused No.1 from Diwali, 2010 then directly she says that on 13/09/2011, she was assaulted by husband and mother-in-law on the count that she had requested the husband to send her to her parents' house. Then she says that the husband caught hold of her hands and legs, mother-in-law poured kerosene on her person and set her ablaze. From this, it is required to be seen as to whether there was *mens rea* to commit murder. If we keep the dying declaration Exh.18 aside, then it appears even at this stage that there was nothing on record to rule out the possibility of accidental burns resulting in death.

6. Since the case is solely based on dying declaration of which the evidentiary value is required to be tested once again, in view of the fact that the appeal has been admitted, the present applicant deserves to be released on bail by suspending the sentence. Hence, the following order.

ORDER

- (i) The present application stands allowed and disposed of.
- (ii) The substantive sentence awarded against the applicant/appellant No.2 in Sessions Trial No.21 of 2012 by the learned Additional Sessions Judge, Darwha, District Yavatmal on 02/04/2024 stands suspended till the final hearing and disposal of the Criminal Appeal No.255 of 2024.
- (iii) Applicant/appellant No.2-Vimal Pandurang Rathod be released on PR bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- (iv) The applicant/appellant No.2 shall not commit any criminal activity.
- (v) The applicant/appellant No.2 shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant/appellant No.2 to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant/appellant No.2.
- (vii) Bail to be furnished before the Trial Court.

(MRS.VRUSHALI V. JOSHI, J) (SMT.VIBHA KANKANWADI, J)