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SAYARABANO @ SULTANABEGUM

v.

STATE OF MAHARASHTRA

FEBRUARY 8, 2007

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[C.K. THAKKER AND LOKESHWAR SINGH PANTA, JJ.]

Penal Code, 1860; ss. 302 and 307:

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Torturing of wife by her husband and mother-in-law—Mother-in-law allegedly burnt her daughter-in-law by throwing burning lamp on her—She suffered from burn injuries—Recording of dying declarations, one under the influence of mother-in-law and another in her absence—Trial Court found accused/mother-in-law guilty of committing the crime punishable u/s. 302 IPC and sentenced her accordingly—Affirmed by High Court—On appeal,

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Held: Courts below, on consideration of both dying declarations, came to hold second dying declaration true and inspiring confidence, having disclosed true facts so far as incident is concerned—Ill-treatment towards deceased clearly established and proved in the light of evidence of parents of the deceased, medical officer and Magistrate—Under such circumstances, it cannot be said that Courts below committed any error.

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According to the prosecution, deceased, daughter of PW 2 was being ill-treated by her mother-in-law and at her instance, also by her husband who used to beat her. When the deceased disclosed the fact about such harassment to her parents, her mother, PW3, took her along with her. However, brother of deceased had brought the deceased back to her husband's place. On the fateful day, mother-in-law of the deceased started a quarrel with her. She allegedly poured kerosene oil from the lamp on her, due to which she caught fire and suffered burn injuries. Her brother-in-law put out the fire by pouring water. In the meantime, her husband had also come and the deceased was taken to a hospital. Hospital record indicated that she was brought to the hospital with burn injuries on her body. Special Judicial Magistrate, PW5, was called by the police and dying declaration of the deceased was recorded by him. According to the dying declaration, she caught fire accidentally when came into contact with the lamp and absolved all the inmates of her husband's family of any wrong-doing. On the next day, however, Special Judicial Magistrate,

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was again called up for the purpose of recording dying declaration of deceased second time. In the said dying declaration, she stated that her mother-in-law had sprinkled kerosene oil on her and set her on fire with the result she suffered burn injuries and also stated about her torturing by her mother-in-law, and at her instance, by her husband. Later, she succumbed to the burn injuries. On the basis of the second dying declaration recorded by the Special Judicial Magistrate, a case was registered against the mother-in-law of the deceased. Initially, the case was registered for an offence punishable under Section 307 IPC but after her death, it was converted into an offence punishable under Section 302 IPC and mother-in-law of the deceased was arrested. The matter was committed to the Court of Sessions and charges were framed against the accused under Section 302 IPC.

The Trial Court observed that it was true that in the first dying declaration the deceased did not involve her mother-in-law, but it was because of the fact that she was asked by her mother-in-law not to implicate any member of the family of her in-laws. The Trial Court noted that after recording of the first dying declaration, the parents and inmates of deceased had reached the hospital. The deceased could get courage to state true facts and again the Special Judicial Magistrate was called and the second dying declaration was recorded in which she disclosed true and correct facts. The Trial Court held the conduct of deceased as natural and the second dying declaration reliable which could be treated as basis for holding the appellant guilty for committing the offence punishable under Section 302 IPC and sentenced her accordingly. Appeal preferred against the order of the Trial Court was dismissed by the High Court. Hence the present appeal.

Accused-appellant contended that both the Courts below have committed an error of law in relying upon the second dying declaration; that the first dying declaration was correct and the deceased had stated true facts in the said declaration; that after parents of the deceased had come to the hospital, they persuaded the deceased to involve and implicate the appellant and that is how the second dying declaration was recorded which could not have been relied upon; and that no motive was established by the prosecution.

Dismissing the appeal, the Court

HELD: 1. The Trial Court as well as the High Court considered both the dying declarations of the deceased and both the Courts held the second dying declaration true and inspiring confidence having disclosed true facts so far as the incident was concerned. Ill-treatment towards the deceased was

A clearly established and completely proved. The evidence of PW2-father as well as PW3-mother of the deceased was clinching on the point. Both the Courts were right in holding that nothing could be elicited from the cross-examination of those witnesses. It, therefore, cannot successfully be contended that the only cause of throwing burning lamp on the deceased by the appellant was getting up late in the morning by the deceased and not performing *Namaz*.

B Even prior to that incident, the appellant used to beat the deceased and on the fateful day, it was an excuse to kill the daughter-in-law by the mother-in-law.

[Para 14] [361-F-H; 362-A]

C 2. Criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. Both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased. In the light of the evidence of parents of the deceased (PW2 and PW3), Doctor (PW6) and Special Judicial Magistrate (PW5), it cannot be said that the Courts below had committed any error and the conviction deserves to be set aside. [Para 16] [362-C-D]

Lella Srinivasa Rao v. State of A.P., [2004] 9 SCC 713, referred to.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 141 of 2006.

From the Final Judgment and Order dated 17.10.2005 of the High Court of Judicature at Bombay, Bench at Aurangabad in CrI. A. No. 348 of 2000.

F S.V. Deshpande for the Appellant.

Sushil Karanjkar and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

G **C.K. THAKKER, J.** 1. This appeal is filed by the appellant who was convicted by the Sessions Judge, Beed in Sessions Case No. 17 of 1999 decided on July 25, 2000 and confirmed by the High Court of Judicature at Bombay (Aurangabad Bench) on October 17, 2005 in Criminal Appeal No. 348 of 2000 for an offence punishable under Section 302 of the Indian Penal Code ('IPC' for short).

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2. The prosecution case against the appellant was that Halimabi, daughter of PW 2-Shaikh Bademiyan, resident of Mandula, Taluka Georai was married to one Shaikh Latif of Beed one year prior to the incident which took place on August 13, 1998. After the marriage, the deceased Halimabi came to reside at her matrimonial home situated at Mominpura of village Beed. She was residing in the said house with her husband Shaikh Latif, the appellant-accused Sayarabano-her mother-in-law, Shaikh Rafiq-her father-in-law, Shaikh Shakil-her younger brother-in-law and his wife Taslim.

3. According to the prosecution case, the deceased Halimabi was being ill-treated by her mother-in-law-appellant herein. At the instance of the appellant, husband of the deceased Halimabi used to beat her. About a month prior to the incident, the accused had beaten the deceased on two occasions, once with a stick and again with a steel instrument. The deceased disclosed the fact about the said beating to her parents as well as her uncle. Resultantly, PW3-Bismillahbi-mother of the deceased Halimabi had come to Beed and had taken deceased to her house at Mandula. About eight days prior to the incident, the brother of deceased Halimabi had again brought the deceased back to her husband's place and had returned to the village.

4. On August 13, 1998, the appellant-accused started a quarrel with the deceased Halimabi and abused her over the fact that she had not got up early in the morning for *Namaz*. At that time, the deceased Halimabi was standing at a place where a burning lamp was hung on the nail in the wall. The husband as well as father-in-law of the deceased had gone to the Masjid for *Namaz*. In the house, apart from the deceased and the appellant-accused, brother-in-law of the deceased-Shaikh Shakil and his wife Taslim were present. During the course of quarrel, the appellant-accused poured kerosene from the lamp on the deceased, due to which, the deceased caught fire and suffered burn injuries on her back, stomach and breast. She started screaming in pain. Her brother-in-law Shaikh Shakil put out the fire by pouring water and removed her clothes. Meanwhile, her husband had come and the deceased was taken to hospital.

5. The record indicates that when Halimabi was brought to the hospital, the history recorded accidental burns. She was taken to the hospital at 10.30 a.m. on August 13, 1998. Between 1.30 and 1.50 p.m. on the same day, Abdul Rashid Special Judicial Magistrate, Beed (PW5) was called by the police and dying declaration of deceased Halimabi was recorded by him. In that dying declaration, deceased Halimabi stated that while opening the door, her hand

A hit the kerosene lamp which was kept on the pillow and fell on her and she sustained injuries. In other words, according to the said dying declaration, the deceased caught fire accidentally when she came into contact with the lamp. She absolved all the inmates of her husband's family of any wrong-doing or connecting with her catching fire. On the next day i.e., on August 14, 1998, at about 1.45 p.m., however, again PW5-Special Judicial Magistrate was called for the purpose of recording dying declaration of deceased Halimabi. In the said dying declaration, she stated that on the previous day i.e. on August 13, 1998, her mother-in-law (appellant) started abusing her for not going for *Namaz* by getting up late. At that time, in the house, kerosene lamp was hung on the wall near which the deceased was standing. Her husband as well as her father-in-law had gone for *Namaz* and in the house, deceased Halimabi, her mother-in-law (appellant), her sister-in-law Taslim and her brother-in-law Shaikh Shakil were present. According to the deceased, her mother-in-law (appellant) threw the kerosene lamp on her, with the result both of her hands, entire back, stomach and both sides of her chest were burnt and she started screaming and crying. Her brother-in-law Shaikh Shakil poured water on her and extinguished fire and removed her clothes. She was then taken to the hospital. She also stated that her marriage took place before 8 to 10 months and had no child. Her husband used to beat after listening to his mother. She was asked to do entire household work. In case she did not do work, her mother-in-law used to abuse her.

E 6. In the light of the fact that in the previous dying declaration, the deceased had not involved her mother-in-law and had described the incident as 'accidental', the Special Judicial Magistrate asked the deceased that when he recorded her dying declaration on August 13, 1998, in the said statement, the deceased had stated that she was hit by the kerosene lamp which fell on her and she was burnt. The Special Judicial Magistrate, therefore, asked her as to why she was changing her statement. The deceased replied that her mother-in-law (appellant) told her not to give any statement against the family members of her in-laws and that was the reason why she had given the earlier statement. But in fact, it was her mother-in-law who threw kerosene lamp on her and thus she was burnt. She also stated that her mother-in-law was harassing her.

H 7. Ultimately, Halimabi died on August 20, 1998 at about 7.00 p.m. On the basis of the second dying declaration recorded by the Special Judicial Magistrate, a case was registered by PW7PSI Sampat Shinde under C.R. No.60 of 1998 at Peth-Beed Police Station. Initially, the case was registered

for an offence punishable under Section 307 IPC but after the death of Halimabi it was converted into an offence punishable under Section 302 IPC. The appellant was arrested on August 15, 1998. The matter was committed to the Court of Session and a charge was framed against the accused under Section 302 IPC. A

8. To establish the case against the appellant, the prosecution *inter alia* examined PW1-Kisan Masruti Golhar, Medical Officer, Civil Hospital, Beed, PW2 -Bademiyafather of the deceased, PW3-Bismillabi-mother of the deceased, PW5-Abdul Rashid, Special Judicial Magistrate, Beed, PW6-Dr. Kirshore Sirpurkar, PW7-PSI Sampat Shinde. The case of the appellant was of total denial. B C

9. The Trial Court, on the basis of medical evidence held that death of Halimabi was homicidal. As to the culpability of the accused for an offence under Section 302, the Court held that in the light of the evidence of father and mother of deceased Halimabi, it was clearly established that the appellant-mother-in-law of the deceased was harassing Halimabi. The Trial Court also observed that it was true that in the first dying declaration, on August 13, 1998, the deceased did not involve her mother-in-law but it was because of the fact that she was asked by her mother-in-law not to implicate any member of the family of the appellant. The Trial Court noted that after the first dying declaration was recorded, the parents and inmates of deceased Halimabi had reached the hospital. The deceased could get courage to state true facts and again the Special Judicial Magistrate was called and the second dying declaration was recorded on August 14, 1998 in which she disclosed true and correct facts. The Trial Court also noted that the Special Judicial Magistrate was conscious of the fact that in the first dying declaration, she had not involved any family members of her in-laws. A specific question was, therefore, put by him as to the reason why she had done so and the deceased had replied that it was because of her mother-in-law who asked the deceased to do so. The Trial Court, therefore, held the conduct of deceased Halimabi as natural and the second dying declaration reliable which could be treated as basis for holding the appellant guilty. The Trial Court also observed that from the evidence of PW2-father of the deceased and PW3-mother of the deceased, it was proved that Halimabi was ill-treated by her in-laws, and particularly the appellant-mother-in-law. The Court also observed that PW5-Abdul Rashid (Special Judicial Magistrate) had no axe to grind against the appellant. PW5 stated that on being questioned, Halimabi stated on August 14, 1998 that she was burnt by her mother-in-law (appellant) by throwing burning kerosene D E F G H

A lamp on her but she had not stated so in the previous dying declaration because of the insistence of her mother-in-law. On the basis of evidence of parents of deceased Halimabi and the second dying declaration, the Trial Court convicted the appellant.

B 10. The appellant preferred an appeal and the High Court confirmed the decision of the Trial Court observing that on August 13, 1998, Halimabi could not name her mother-in-law (appellant) as the deceased Halimabi was brought to hospital by her in-laws; viz. the accused-mother-in-law and her sons. But, on the next day, she was in a position to state correct fact and on being satisfied about her physical condition as stated by PW6-Dr. Kishore, PW5- Abdul Rashid (Special Judicial Magistrate) again recorded the dying declaration which inspired confidence. Accordingly, the High Court dismissed the appeal filed by the appellant. The appellant has come to this Court against the said order.

C 11. We have heard the learned counsel for the parties.

D 12. The learned counsel for the appellant contended that both the Courts have committed an error of law in relying upon the second dying declaration. It was contended that the first dying declaration was correct and the deceased had stated true facts in the said declaration. It was also stated that after parents of the deceased had come to the hospital, they had persuaded the deceased to involve and implicate the appellant and that is how the second dying declaration was recorded which could not have been relied upon. It was also submitted that no motive was established by the prosecution inasmuch as only thing stated by the deceased in her dying declaration was that she had got up late in the morning and could not go for *Namaz*. For such a trivial matter, no person would kill another person. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the Trial Court and confirmed by the High Court.

E F 13. The Public Prosecutor for the State, on the other hand, supported the order of conviction and sentence passed by the Trial Court and confirmed by the High Court. He submitted that the conduct of the deceased Halimabi was natural. She was believed by both the Courts. It was obvious that on August 13, 1998, she was pressurised by her mother-in-law for not giving name of her assailant. Moreover, she was surrounded by her in-laws and nobody from her parental family was present. It was only after her family members had come that she got courage to narrate true facts and that is how on August 14, 1998, second dying declaration was given by her which

inspired confidence and both the Courts believed it. It was also submitted that from the evidence of parents of the deceased, it was clearly proved that she was ill-treated and was frequently beaten by the appellant. Instances were also cited which went to show that the appellant was cruel to the deceased. The counsel also stated that both the Courts were right in observing that Special Judicial Magistrate was an independent witness and when on the basis of his evidence, a finding of guilt of the appellant was recorded, no interference is called for. He, therefore, submitted that the appeal be dismissed.

14. Having heard the learned counsel for the parties, in our opinion, the Courts below were right in convicting the appellant. From the evidence, it is proved that on August 13, 1998, after the incident took place, the family members of the appellant took the deceased to the hospital. The record revealed that before few days of the incident, the deceased had been brought to her marital home. Before that, she was beaten by the appellant. She left marital home and went to parental home. It is also in the evidence that the deceased was beaten by her mother-in-law and two instances had been cited. Obviously, therefore, on August 13, 1998, when the deceased was taken to hospital by her mother-in-law-appellant, who insisted not to give the name of any of the family members of the appellant, the deceased had no courage to name her. In the circumstances, she stated that it was merely an accident. But, after her parents came, she could state true facts, the Special Judicial Magistrate was called again and the second dying declaration was recorded. From the evidence of PW1-Dr. Kishan-Medical Officer, it was clear that total burns were about 57%. It is also in evidence of PW6-Dr. Kishore that the deceased was "in a position to make statement". He, therefore, accompanied Special Judicial Magistrate to the ward of Halimabi and her dying declaration was recorded. He also stated that he was present throughout till the statement of Halimabi was recorded by the Special Judicial Magistrate and when it was over, he put endorsement on the paper given by Special Judicial Magistrate. The Trial Court as well as the High Court considered both the dying declarations of the deceased Halimabi and both the Courts held the second dying declaration true and inspiring confidence having disclosed true facts so far as the incident was concerned. Ill-treatment towards the deceased was clearly established and completely proved. The evidence of PW2-father as well as PW3-mother of the deceased was clinching on the point. Both the Courts were right in holding that nothing could be elicited from the cross-examination of those witnesses. It, therefore, cannot successfully be contended that the only cause of throwing burning lamp on the deceased by the appellant was getting up late in the morning by the deceased and not performing *Namaz*. Even prior

A to that incident, the appellant used to beat the deceased and on the fateful day, it was an excuse to kill the daughter-in-law by the mother-in-law.

B 15. The learned counsel for the appellant strongly relied upon a decision of this Court in *Lella Srinivasa Rao v. State of A.P.*, [2004] 9 SCC 713. In that case, the sole basis for recording the conviction was dying declarations. Two dying declarations were recorded which were inconsistent. In absence of any other evidence, this Court held that it was not safe to act only on inconsistent dying declarations and convict the accused.

C 16. In our opinion, criminal cases are decided on facts and on evidence rather than on case law and precedents. In the case on hand, there is ample evidence to show that even prior to the incident in question, the appellant used to beat the deceased and ill-treat her. It is in the light of the said fact that other evidence requires to be considered. In our view, both the Courts were right in relying upon the second dying declaration of the deceased treating it as true disclosure of facts by the deceased Halimabi. In the light D of the evidence of parents of the deceased (PW2 and PW3), Dr. Kishore (PW6) and Special Judicial Magistrate (PW5), it cannot be said that the Courts below had committed any error and the conviction deserves to be set aside.

E 17. For the foregoing reasons, in our opinion, the appeal deserves to be dismissed and is accordingly dismissed.

S.K.S.

Appeal dismissed.