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SANJAY
v
STATE OF MAHARASHTRA

MARCH 8, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860:

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Ss. 498-A/34 and 306/34—Married woman setting herself ablaze—Death caused by burn injuries—Three dying declarations made by victim—In first one she did not implicate her husband—In the second and the third dying declarations she stated that she poured kerosene on herself as she was angry with her husband—Held, in view of different dying declarations it would not be safe to uphold conviction of husband and it cannot be said that prosecution has proved his guilt u/s 306 beyond reasonable doubt—Husband-appellant acquitted giving him benefit of doubt—Evidence—Different dying declarations—Evidentiary value of.

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Appellant, along with his parents was prosecuted under sections 498-A/34 and 306/34 IPC. The prosecution case was that in the night between 28.12.1994 and 29.12.1994 the appellant-husband returned home at midnight in a drunken state. There was a quarrel between the couple and the wife poured kerosene on her and set herself afire. She was rushed to the hospital. In the hospital three dying declarations were made by her. The first one was recorded by the Doctor, thereafter another dying declaration was recoded by the Executed Magistrate on the same day and the third one was recorded by PW-14 on the following day. Ultimately, the injured succumbed to the burn injuries. The trial court acquitted appellant's parents but convicted him of the offences charged. The appeal of the husband having been dismissed by the High Court, he filed the present appeal.

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The State contested the appeal on the grounds that the second and the third dying declarations made by the deceased alleging that she committed suicide because there used to be quarrels between the couple, were corroborated by two letters dated 24.1.1999 and 26.7.1994 written by the deceased to her parents; and that the evidence of the parents of the deceased

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corroborated the unhappiness faced by her.

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Allowing the appeal, the Court

HELD: In the instant case, the only evidence against the appellant are the three alleged dying declarations of the deceased. In the first dying declaration she stated that while she was pumping the stove it suddenly burst and her saree caught fire; that she shouted loudly and her husband rushed towards her and extinguished the fire by pouring water on her. Nothing has been alleged against the appellant in it. Rather it shows that the appellant tried to save his wife. In the subsequent dying declarations she is said to have stated that she poured kerosene on her and set herself ablaze because she was angry with her husband. In view of the different dying declarations it would not be safe to uphold the conviction of the appellant and he has to be given the benefit of doubt. It cannot be said in this case that the prosecution has proved the appellant's guilt under Section 306 IPC of abetting the suicide beyond reasonable doubt. [Paras 12, 15 and 16] [647-B-C, H; 648-A]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 292 of 2007.

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From the Final Judgment and Order dated 17.8.2006 of the High Court of Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 135/1996.

A.K. Sanghi for the Appellant.

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Ravindra Keshavrao Adsure for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

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2. This appeal has been filed against the impugned judgment of the Bombay High Court (Nagpur Bench) dated 17.8.2006 in Criminal Appeal No.135 of 1996.

3. Heard learned counsel for the parties and perused the record.

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4. The facts of the case are that the father of the appellant and the father of Seema were serving in Forest Department. They were also related. The appellant and Seema fell in love with each other. However, since they were within the prohibited degrees of relationship, the parents of both the appellant

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A as well as Seema were against their marriage. Hence the appellant and Seema eloped from their parental houses and got married at Katol on 9.4.1991. After marriage they came back to Mouda. For some time, they resided separate from the appellant's parents, but after intervention of some relatives, they went to reside with the parents of the appellant. However, they could not pull on there for long and they again started residing separately in a rented house owned by one Sunil Anandrao Nimje.

B 5. The appellant has a shop of electronic goods and he is also doing the work of repairing T.V. and giving cable connections. His shop is just in front of the rented premises.

C 6. On 21.2.1992 the appellant and Seema were blessed with a son namely Mandar. However, it is alleged that the relations between the appellant and Seema did not remain cordial. It was noticed by Seema that the appellant returned late at night and that too in a drunken state. The appellant also neglected his business. He started neglecting his wife Seema and son Mandar. D Seema complained to her parents by sending them letters.

E 7. On the fateful night intervening between 28.12.1994 and 29.12.1994, it is alleged that the appellant returned home in the midnight in a drunken state. There was a quarrel between him and Seema with the result that Seema poured kerosene on her person and set herself ablaze. She was immediately taken to the hospital of Dr. Chandak in Nagpur and thereafter to Government Medical College and Hospital, Nagpur.

F 8. On 29.12.1994 in the noon, H.C. Pimpalkar (PW-6) recorded the dying declaration of Seema (Ex.51). On the same day in the afternoon, Shri Manekar, Executive Magistrate (PW-9) recorded her dying declaration (Ex.61). On the next day i.e. on 30.12.1994, H.C. Nirgulkar (PW-4) recorded her statement (Ex.40). On 5.1.1995, Seema succumbed to the burn injuries. The post mortem examination revealed that the burns were 79% and the cause of death was septicemia as a result of infected burns.

G 9. Initially offences under Section 498-A read with Section 34 of I.P.C. were registered at P.S. Mouda and subsequently offence under Sections 306/34 of I.P.C. was added.

H 10. The trial court after considering the evidence held that the offences have been proved against the appellant but acquitted the appellant's father and mother.

11. Against the said judgment the appellant filed an appeal which has been dismissed by the High Court and hence this appeal by special leave. A

12. In our opinion this appeal deserves to be allowed by giving the benefit of doubt to the appellant. The only evidence against the appellant are the three alleged dying declarations of the appellant's wife Seema. In the first dying declaration Seema stated that while she was pumping the stove it suddenly burst and her saree caught fire. She shouted loudly and then her husband rushed towards her and extinguished the fire by pouring water on her. This is the first dying declaration and nothing has been alleged against the appellant in it. Rather it shows that the appellant tried to save his wife Seema. In the subsequent dying declaration Seema is said to have stated that she poured kerosene on her in person and set herself ablaze because she was angry with her husband. B C

13. The prosecution version is that the subsequent dying declarations made by Seema alleging that she committed suicide because there used to be quarrels between her and her husband (the appellant) are corroborated by two letters alleged to have been written by Seema to her parents. The first letter (Ex.28) appears to be dated 24.1.1994. It shows that her husband (the appellant) does not behave properly with her, he daily returns home late at night in a drunken state and because of it there used to be quarrels between her and the appellant. She also expressed in the said letter that the appellant was also willing to give her divorce. Seema expressed that she felt repentful as she married the appellant of her own will. She further expressed that she felt no charm in leading such life. D E

14. Another letter (Ex.29) is dated 26.7.1994 i.e. about five months before the incident of suicide. The said letter reiterates the same state of affairs mentioned in the earlier letter (Ex.28). The evidence of PW-1 Vimal (the mother of Seema) and PW-2 Wamanrao (the father of Seema) corroborates the unhappiness faced by Seema. Hence it is alleged that the so called first written dying declaration (Ex.51) would not render the voluminous evidence untrustworthy. F

15. The trial court, as well as High Court, were of the view that the evidence on record shows there was cruelty on the part of the appellant which drove his wife to suicide. G

16. In our opinion in view of the different dying declarations it would H

A not be safe to uphold the conviction of the appellant and we have to give him the benefit of doubt. It cannot be said in this case that the prosecution has proved the appellant's guilt under Section 306 I.P.C. of abetting the suicide beyond reasonable doubt.

B 17. For the reasons given above the appeal is allowed. The judgments of the High Court and trial court are quashed. The appellant is directed to be released forthwith if not wanted in connection with any other case.

R.P.

Appeal allowed.