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RAVINDRA TRIMBAK PATIL

v.

STATE OF MAHARASHTRA
(Criminal Appeal No. 1963 of 2011)

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APRIL 25, 2014

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

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PENAL CODE, 1860: ss.306 and 498A r/w s.34 – Suicidal death – Harassment and ill treatment on account of demand of dowry – Abetment to suicide – Conviction u/ss.306 and 498A r/w s.34 based on dying declaration – Held: Statement of victim-deceased recorded before Executive Magistrate when she was conscious and in a fit state of mind which finally became a dying declaration after her death –

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Prosecution case fully supported by dying declaration which did not suffer from any blemish or infirmity and was supported by medical evidence and evidence of other witnesses corroborating the prosecution case – Deceased having died within seven years of her marriage, there is a clear

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presumption that the charge against the appellant-husband u/s.306 stood fully established – No interference with the conviction order – Crime against women.

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The prosecution case was that the appellant-husband harassed his wife on account of demand of dowry and due to continuous ill treatment, she poured kerosene oil on her person and set herself on fire and the next day she succumbed to burn injuries. A statement of the victim was recorded by police before the Executive Magistrate. The trial court convicted the appellant and his

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mother under section 306 and 498A r/w section 34 IPC on the basis of the dying declaration. The High Court maintained the conviction. Hence the instant appeal.

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Dismissing the appeal, the court

HELD: The judgment and order of the trial court as also the High Court are well-reasoned on all aspects and same is not interfered with on the plea that the deceased was suffering from mental illness which had driven her to commit suicide and the dying declaration which was recorded before the Executive Magistrate soon after the occurrence should be ignored. In the wake of dying declaration recorded primarily after the incident and the witnesses who had arrived at the scene of occurrence corroborating the prosecution case, there was no further need to probe the evidence merely to accept the defence case that the reason for the death of the deceased was due to her mental illness ignoring the version given out in the dying declaration when the deceased was conscious and in a fit state of mind to get her statement recorded which finally became a dying declaration after her death. The prosecution case being fully supported by the dying declaration which did not suffer from any blemish or infirmity supported by medical evidence and evidence of other witnesses corroborating the prosecution case, it is not a fit case for interference. Above all, the deceased having died within seven years of her marriage, there is a clear presumption that the charge against the appellant under Section 306 IPC stood fully established apart from the fact that the prosecution was supported even by the dying declaration of the deceased recorded before the executive magistrate. It is thus not a case where further scrutiny of the evidence led by the prosecution was required merely to uphold the findings recorded by the trial court and the High Court. [Para 9] [822-D-H; 823-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1963 of 2011.

From the Judgment & Order dated 18.12.2009 of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Appeal No. 52/1998.

A Anagha S. Desai, Satyajit A Desai, Somnath Padha, Vipul Ganda for the Appellant.

Asha Gopalan Nair for the Respondent.

The Judgment of the Court was delivered by

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GYAN SUDHA MISRA, J. 1. The appellant is in appeal before us against the judgment of the High Court of Bombay, Bench at Aurangabad in Criminal Appeal No. 52 of 1998, whereby the High Court partly allowed the criminal appeal of the appellant herein and his mother (accused No.2) and thereby confirmed his conviction under Sections 306 and 498A read with Section 34 IPC sentencing him to RI for 3 years and 2 years respectively as awarded by Ld. Sessions Judge, Jalgaon. The High Court in the said appeal maintained the conviction of accused No.2 under the above sections, but reduced the sentence to the period of imprisonment which she had already undergone i.e. 6 months.

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2. The case of the prosecution was that the deceased Shobha was wife of the appellant herein. Shobha married the appellant on 06.04.1992 at Chalisgaon. Thereafter, she went to reside with the appellant, at his house. However, eight days after the marriage, there was a quarrel as the mother of Shobha did not give proper respect to the mother of the appellant and as per custom she did not touch the feet of mother of the appellant on her first visit. Therefore, appellant used to harass Shobha. In spite of that, Shobha continued to live with the appellant and her in-laws. Sometime later, appellant gave a telephonic call and told PW3-Shivaji Marathe- father of Shobha that they were coming with Shobha and mediators. At that time, the appellant and his mother said Shobha was not doing household work and they wanted divorce while Shobha complained that the appellant used to beat her and he and his mother would ill-treat her. She was unable to live with the appellant and wanted to reside with her parents. Thereafter, Shobha started residing with her parents. At that time, Shobha

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complained that the appellant and her mother-in-law were demanding golden ring, sewing machine and some other articles and were harassing and beating her for that purpose. Subsequently, Shobha filed maintenance application in the Court. However, there was a compromise which was reduced writing and Shobha then went to the House of the appellant.

3. Further, case of the prosecution is that 2 months later, on 26.07.1993, due to continuous ill-treatment, when Shobha was alone in the house, she poured Kerosene oil on her person and set herself on fire. Due to her shouts, the neighbours came there. The appellant and her family were informed, who rushed home and took Shobha in an injured state to Municipal Hospital at Pachora, where statement of Shobha was recorded. Thereafter, Shobha was taken to Civil Hospital, Jalgaon as she had serious injuries.

4. At Jalgaon, statements of Shobha were recorded by Jalgaon Police before the Executive Magistrate. The next day, i.e. on 27.7.1993 at about 2 p.m., Shobha died of the burn injuries. The first dying declaration of Shobha was treated as an F.I.R. and the case was registered. Thereafter, the appellant and his mother were chargesheeted while brother-in-law was sent to the Juvenile Court.

5. At the trial, prosecution examined 11 witnesses and on behalf of defence, 2 witnesses were examined. After considering the evidence, Ld Sessions Judge passed the order of conviction and sentence as stated above.

6. The High Court vide its judgment and order which is impugned before us, came to the conclusion that Shobha had been subjected to cruelty and harassment since the beginning of her marriage. There was no change in their attitude and treatment in spite of living with her parents for 78 months. It was noted that the death of the deceased had occurred within 7 years of marriage and ordinarily, during such period, unless driven to wall, she would not have committed suicide and her

A dying declarations and her chit addressed to her advocate, speak volume. Hence, High Court found the judgment of the Trial Court well reasoned and hence upheld the same.

B 7. Contention of the Counsel of the appellant was that Shobha suffered from mental illness and was under treatment of Dr. Joshi/DW-1, even before her marriage as admitted by Dr. Joshi in evidence and this aspect was not considered by the Courts below.

C 8. However, the High Court in its impugned judgment and order observed that it did not appear that the alleged mental illness of the deceased had anything to do with the ill-treatment to her so as to force her ultimately to commit suicide.

D 9. We have carefully examined the judgment and order of the trial court as also the High Court which are well-reasoned on all aspects and we do not deem it necessary to enter into the correctness of the same on the plea that the deceased Shobha was suffering from mental ill-ness which had driven her to commit suicide ignoring the dying declaration which was recorded before the Executive Magistrate soon after the occurrence. In case the dying declaration could be disbelieved for any reason, this Court would have thought it just and appropriate to enter into other circumstantial evidence like the defence case that the deceased Shobha committed suicide due to her mental ill-ness. In the wake of dying declaration recorded primarily after the incident and the witnesses who had arrived at the scene of occurrence corroborating the prosecution case, we see no further need to probe the evidence merely to accept the defence case that the reason for the death of Shobha was due to her mental ill-ness ignoring the version given out in the dying declaration when the deceased was conscious and in a fit state of mind to get her statement recorded which finally became a dying declaration after her death. The prosecution case being fully supported by the dying declaration which do not suffer from any blemish or infirmity supported by medical evidence and evidence of other

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witnesses corroborating the prosecution case, we do not consider that it is not a fit case for interference. Above all, the deceased having died within seven years of her marriage, there is a clear presumption that the charge against the appellant under Section 306 IPC stands fully established apart from the fact that the prosecution is supported even by the dying declaration of the deceased recorded before the executive magistrate. It is thus not a case where further scrutiny of the evidence led by the prosecution is required merely to uphold the findings recorded by the trial court and the High Court. We thus find no substance in this appeal and hence the same is dismissed. The appellant therefore shall surrender to serve out the sentence in case he is on bail. Order accordingly.

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Devika Gujral

Appeal dismissed.