

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Guntabai @ Bhagirathibai

(Arijit Pasayat and Asok Kumar Ganguly JJ.)

21.04.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Bombay High Court dismissing the appeal filed by the State of Maharashtra questioning the correctness of the judgment of acquittal passed by the learned Addl. Sessions Judge, Nasik in Sessions Case No. 87/87. Three persons including the present respondent No. 1 faced trial for alleged commission of offence punishable under Section 302 of the *Indian Penal Code, 1860* (for short 'IPC') so far as present respondent No. 1 is concerned, and Sections 498A read with Section 34 IPC so far as all the three accused persons are concerned.

2. The prosecution version as unfolded during trial is as follows:- On 21.9.1986 around 10.30 a.m. accused No. 1 put on fire her daughter-in-law Minabai (hereinafter referred to as the deceased). The motive for doing was alleged non-fulfillment of dowry demands. Hearing the cries of the deceased, the father-in-law came there and took her to the hospital. In the hospital, her statement was recorded in which she put the blame on the present respondent No. 1 and alleged that her husband accused No. 3 Uttam helped respondent No. 1 in doing so. After completion of the investigation, chargesheet was filed. As the accused persons pleaded innocence, trial was held. The Trial Court discarded the dying declaration primarily on the ground that the dying declaration must have a certificate of the doctor stating in clear terms that the victim was not only conscious but was in a position to get the statement recorded. Reliance for this purpose was placed on a decision of this Court in the case of *Paparambaka Rosamma and Ors. Vs. State of A.P.*¹. Questioning the acquittal of the accused persons, the State filed an appeal before the High Court which affirmed the view of the Trial Court relying on the decision referred to by the Trial Court.

3. In the present appeal, learned counsel for the State submitted that the view taken by the Trial Court as affirmed by the High Court is clearly contrary to the view expressed by a Constitution Bench of this Court in the case of *Laxman Vs. State of Maharashtra*².

4. Learned counsel for respondent No. 1 on the other hand submitted that the Trial Court as well as the High Court not only relied on the deficiency in the dying declaration, but also

several other factors. It is true, as contended by learned counsel for the State, that the position regarding the acceptability of the dying declaration has been laid down by the Constitution Bench of this Court in the case of Laxman (supra). But, the other factors which were considered by the Trial Court were not considered by the High Court as it primarily concurred with the view of the Trial Court rendered with the reference to the judgment of this Court in the case of Paparambaka Rosamma and Ors. (supra).

5. It would be therefore appropriate to set aside the impugned judgment and remit the matter to the High Court to consider the matter afresh. We order accordingly. Needless to say that the High Court shall consider the evidence on record and the applicable legal principle while deciding the matter afresh. It is to be noted that by order dated 24.11.2003 leave was granted qua respondent No. 1-Guntabai @ Bhagirathibai only and not in respect of other respondents, namely respondent Nos. 2 and 3, as the special leave petition against them stood dismissed. This order shall operate only in respect of respondent No. 1 The appeal is allowed.

¹(1999) 7 SCC 695

²(2002) 6 SCC 710