

SUPREME COURT OF INDIA

Tarabai

Vs.

State of Maharashtra

Crl.A.No.552 of 2012

(Fakkir Mohamed Ibrahim Kalifulla and Abhay Manohar Sapre JJ.)

20.01.2015

JUDGMENT

ABHAY MANOHAR SAPRE, J.

1. This appeal is filed by accused No.1 against the final judgment and order dated 30.11.2010 passed by the High Court of Judicature at Mumbai in Criminal Appeal No. 145 of 1991 which arose from the judgment and order dated 26.02.1991 passed by the 5th Additional Sessions Judge at Kolhapur in Sessions Case No. 106 of 1990 convicting accused Nos. 1 & 2 for the offences punishable under Section 498A and Section 304-B read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and sentenced them to suffer simple imprisonment for one year and to pay a fine of Rs.1000/- under Section 498-A read with Section 34 IPC with default clause and to undergo simple imprisonment for 7 years under Section 304- B/34 IPC. By impugned judgment, the High Court dismissed the appeal in respect of the present appellant-accused No.1 and allowed the appeal in respect of accused No.2 by acquitting her of the charges.

2. Facts of the case need mention in brief to appreciate the issue involved in this appeal.

3. Krishnabai (deceased) was the daughter of Malu (PW-1) and Bhagwan Dhavele. She was married to one Hanmant Taralkar on 12.05.1989. After marriage, Krishnabai was living with her husband and parents-in-law at Ichalkaranji, a nearby village. The present appellant (accused no. 1) is the mother-in-law of Krishnabai (deceased) whereas (accused no. 2)-Balabai aged around 18 years is her sister-in-law.

4. It is the case of prosecution that the appellant (accused no. 1) and Balabai (accused no. 2) used to constantly treat Krishnabai with cruelty by beating or/and ill-treating her because she had not brought any gold, cash, new clothes etc. with her in marriage and also pressurized her to bring gold, cash, new clothes etc. from her parents. On coming to know of this, Malu (PW-1)-mother of Krishnabai had gone to meet Krishnabai thrice and requested the appellant-accused no.1 to permit Krishnabai to go along with her for few days but she did not allow her to go.

5. However, on 26.2.1990, Gangadhar, father-in-law, took Krishnabai (deceased) to her parents house. On reaching there, Krishnabai started weeping and told her mother (PW-1) about the ill-treatment meted out to her by the appellant-accused No.1 and her sister- in-law (accused No.2) because she did not bring any cash, gold and new clothes in marriage. She also complained that her husband never paid any attention to such behavior of his mother-the appellant and sister towards her. On 03.03.1990, Malu (PW- 1) and the neighbour-Amirbi (PW-2) took Krishnabai to her husband's place. On reaching there, the appellant herein started quarreling with them and began to beat Krishnabai with 'chappal'. On seeing this, Gangadhar-the appellant's husband intervened and asked her not to beat krishnabai. The appellant did not like the interference made by her husband and pushed him aside. Amirbi also tried to persuade the appellant not to do such things but the appellant did not listen to her. Malu and Amirbai, PWs 1 & 2 respectively, then returned to their village leaving Krishnabai there.

6. On 23.03.1990 after 9.00 p.m., one unknown person came to Malu's house and informed her that Krishnabai is serious. On hearing this news, Malu and some other people immediately left to see Krishnabai. On their reaching there, they found that many people had gathered in front of Krishnabai's house. The door of the room was closed from outside. Sharda- the daughter of accused No.1, opened the door and PW-1- the mother of the deceased went inside the room and saw that Krishnabai was lying dead with burn injuries on her body.

7. Report of the said incident was lodged by Mhalaba, uncle of Krishnabai (deceased) and son-in-law of accused No.1, who too had accompanied Malu that Krishnabai had committed suicide by immolating herself. Thereafter the dead body of the deceased was taken to nearby Hospital where post-mortem examination was conducted. The autopsy surgeon reported that Krishnabai died due to shock because of 100% burn injuries. Malu (PW-1), the mother of the deceased, then lodged another report at the police station on 25.03.1990 about the incident. The police accordingly registered Crime No. 40/1990 for the offences punishable under Sections 498- A, 304-B read with Section 34 of the Indian Penal Code, 1860

(hereinafter referred to as "IPC"). The police investigated the case and prepared spot Panchnama (Ex-P-11). The statements of witnesses were recorded. The appellant and her daughter Balabai were prima facie found responsible for the death of Krishnabai and hence both were apprehended. The charge-sheet was then filed against both of them for their prosecution. The case was committed to the Court of Session.

8. Both the accused abjured the guilt and claimed trial. The prosecution examined five witnesses and filed documents, which were admitted by the accused during trial.

9. The Session Judge, by judgment and order dated 26.02.1991, in Sessions Case No. 106 of 1990 held both the accused guilty of offence punishable under Sections 498-A and 304-B read with Section 34 of IPC. So far as the offence under Section 498-A/34 IPC was concerned, both the accused were sentenced to suffer one year's simple imprisonment and to pay a fine amount of Rs.1000/- and in default of payment of the fine amount, to suffer 3 months further simple imprisonment whereas the offence under Section 304-B/34 IPC was concerned, the appellants were sentenced to undergo 7 years simple imprisonment. Both the sentences were directed to run concurrently. Felt aggrieved by the order of conviction and sentence, both the accused filed appeal before the High Court.

10. The High Court, by impugned judgment, allowed the appeal in so far as accused no. 2, namely, Belabai, is concerned and acquitted her of both the charges. So far as the present appellant (accused no.1) is concerned, the High Court dismissed her appeal and upheld her conviction. Challenging the said judgment, accused No.1 has filed this appeal by way of special leave.

11. Learned Counsel for the appellant while challenging the conviction has raised five contentions.

(i) Since there was inordinate delay in lodging the FIR, conviction based upon such delayed FIR is not legally sustainable.

(ii) Police authorities, after tearing of the original statement recorded under Section 161, prepared any other statement and hence, this action of the police authorities vitiates the trial because no reliance can be placed on such statement prepared by the police to falsely implicate the appellant.

(iii) No reliance should be placed on the testimony of PW-1 because she was not having cordial relations with her daughter - Krishnabai, who used to live separately with her uncle before marriage.

(iv) There was no evidence to hold that the present appellant-an aged lady in late seventies, at the relevant time, could make demand of dowry or ill- treat the Krishnabai or beat her.

(v) If the other accused was acquitted by giving benefit of doubt then on the same set of evidence, the present appellant is also entitled for acquittal.

12. In contra, learned counsel for the respondent- State contended that no case is made out for any interference in the concurrent conviction recorded by the two Courts below. Learned Counsel urged that none of the aforementioned submissions of the appellant have any substance inasmuch as all the five submissions pressed in service are against the record and settled principle of law laid down by this Court. It was also his submission that the appellant did not adduce any evidence in her defence except to deny the case of prosecution. It was pointed out that the appellant's husband was the best witness to rebut the prosecution story of alleged demand of dowry, ill-treatment and beating meted out to Krishnabai which persuaded her to end her life. Learned Counsel urged that non- examination of this best witness despite he being available should go against the appellant.

13. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in any of the submissions of the appellant.

14. Coming first to the submission relating to the delay in filing the FIR, we find no merit in the same for more than one reason. In the first place, there is no delay in filing FIR. It has come in evidence that in midnight of 23.03.1990 PW-1-Malu along with others reached the house of Krishnabai to find out as to what happened to her. Having seen her condition, naturally they first took Krishnabai to the hospital on 24th, where doctors declared her dead. Since it was a case of 100% burn injuries, doctors performed post-mortem on the same day and declared the cause of death. PW-1, the mother of the deceased accordingly lodged the FIR of the incident the next day,i.e.,25th.

15. In our considered opinion, there was no delay in filing the FIR of the incident and in fact, it was lodged immediately after the incident with specific details mentioning the ill- treatment, beating and demand of dowry made by the appellant and her daughter from the deceased.

16. Coming now to the second submission that the police authorities had torn the original statement of PW-1 recorded under Section 161 and prepared the second one with a view to file a false case against the appellant has also no merit for the reason that firstly, the appellant did not raise this plea before the Courts below and secondly, on perusal of the evidence of PW- 1, it is clear that what was torn off was one unsigned paper in which only few lines were recorded. This could be due to various reasons and no such suggestion was put to witnesses on this issue and lastly, P.W-1 stated that her signed statement was used in trial.

17. We have also perused the recorded statement and the evidence of PW-1 and find no inconsistency or/and any conflicting version in both to reject the testimony of PW-1 or the statement recorded under Section 161.

18. Coming to the third submission that no reliance should be placed on the evidence on PW-1 because her relations with daughter were strained due to which both used to live separately before marriage has no merit for the reason that there is no evidence to prove this fact. That apart, even assuming for the sake of argument that Krishnabai used to live separately from her mother (PW-1) before her marriage could not be made a ground to reject the testimony of PW-1. Indeed the fact of living separately could be due to various reasons and one could be that PW-1's husband was a drunkard and used to create problems in the house due to which Krishnabai at times used to live in her uncle's house which was near to their house.

19. We have perused the entire evidence of PW-1 and find that it is consistent in all respects and commands acceptance for proving complicity of the appellant in commission of the offence. We cannot, therefore, accept the submission of the appellant to disbelieve the sworn testimony of PW-1.

20. Coming to the last submission of the appellant that since benefit of doubt was given to other accused, i.e., Belabai by the High Court, on parity the same benefit should be extended to the appellant by acquitting her has no substance for the reason that there was enough evidence to prove the complicity of the appellant in commission of offence whereas the prosecution failed to adduce any evidence to prove the complicity of Belabai-accused No.2.

21. This is a case where the death of Krishnabai occurred within seven years of her marriage. It was within one year because the marriage was performed on 12.05.1989 whereas she died on 26.02.1990. In view of this admitted position emerging from the case, the basic ingredients of Section 113-A of the Evidence Act, 1872 read with Sections 304-B and 498-A of IPC stood against the accused

persons for their prosecution for the offences punishable under Section 304-B and Section 498-A IPC.

22. It has come in evidence that soon after the marriage, the appellant started making demand of gold, cash and clothes etc. from the deceased coupled with beating and ill-treating her for not satisfying the demands made by her.

23. A young girl in early twenties ending her life with 100 % burns within 8 months of her marriage due to ill treatment, beating and demands made by mother-in-law can not be over-looked to show sympathy towards the appellant. Indeed, it was the appellant who was responsible for her death.

24. As rightly urged by the learned counsel for the respondent, the best person to prove the case of the appellant was the appellant's husband because he was living in the same house. He was in a position to tell as to what used to happen in the house and whether relations between the appellant and the deceased were cordial or strained. On the other hand, it has come in evidence that sometimes husband used to intervene and warned the appellant of her behavior towards the deceased.

25. So far as sentencing part is concerned, the Courts below have awarded seven years' simple imprisonment to the appellant. The appellant should feel fortune to suffer only 7 years because having regard to the nature of commission of the offence and her complicity in the offence, it could have been even more than what has been awarded. We, however, do not wish to say any thing more on this issue except to uphold the conviction and sentence.

26. In the light of foregoing discussion, we have not been able to notice any infirmity in the impugned judgment of the High Court and hence find no merit in this appeal.

27. The appeal thus fails and is hereby dismissed.igh High