

SUPREME COURT OF INDIA

Sow.Chhaya

Vs.

The State of Maharashtra

Crl.A.No.963/2018

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

03.08.2018

JUDGMENT

Mohan M.Shantanagoudar,J.,

SLP(Crl.)No.9142/2016

1. Leave granted.

2. This appeal is presented by the convicted accused questioning the Judgment and Order dated 13.6.2016 passed in Criminal Appeal No. 165 of 2014 by the High Court of Judicature at Bombay (Aurangabad Bench). By the impugned judgment, the High Court confirmed the judgment and order of conviction passed by the Trial Court for the offences punishable under Section 302 read with Section 34 and Section 498A read with Section 34 of the Indian Penal Code.

3. The case of the prosecution in brief is that Kavita (the victim) sustained 100% burn injuries at about 7.00 a.m. on 11.2.2013 while she was in her matrimonial house at village Javla Bazar, Tq. Basmath. Immediately thereafter, she was brought to the Civil Hospital, Parbhani wherein she succumbed to her injuries at 5.50 p.m. During the course of treatment, her Dying Declaration was recorded at 3.10 p.m. in the hospital in which she implicated both the accused. As mentioned supra, the Trial Court as well as the High Court convicted both the accused.

4. This Court, on 21.11.2016, while issuing notice of the appeal in so far as Accused No.2, Smt. Chhaya (sister-in-law of victim's husband) was concerned, dismissed the appeal filed by Accused No. 1 namely Gangadhar @ Baburao Nagorao Ambhore (victim's husband). Thus, the judgment and order of conviction passed against Accused No.1 namely Gangadhar @ Baburao Nagorao Ambhore has attained finality. Accused No.2, Smt. Chhaya, is the only appellent before this Court at present.

5. We have heard the learned counsel for the appellant and the learned counsel for the State of Maharashtra. During the course of hearing, learned counsel for the respondent drew the attention of the Court to the Medical Certificate issued by the Medical Superintendent, Rural Hospital, Partur, indicating therein that the appellant underwent surgery on 30.1.2013. Learned counsel for the appellant, by relying on the said certificate argued in support of her plea of alibi. This Court on 10.2.2018 granted time to the learned counsel for the State to verify the same and to have his say on the reliability/genuineness or otherwise of the certificate. During the course of hearing, Shri Nishant Ramakantrao Katneshwarkar, learned counsel appearing on behalf of the State, on instructions, submitted that the certificate issued by the Medical Superintendent, Rural Hospital, Partur, indicating that the appellant, Smt. Chhaya underwent surgery on 30.1.2013, is genuine inasmuch as she had undergone surgery on 30.1.2013.

6. It is the specific case of the appellant herein that she had to take bed rest for more than 15 days after the operation, which pertained to family planning, inasmuch as she was unable to move out of the house. This plea is substantiated by the Medical Certificate on record. There is no reason for us to ignore such medical certificate, particularly when the same is not disputed by the State. Moreover, the appellant had a minor daughter to be looked after during the relevant period of time. Except the bald allegations against the appellant, no case is made out against her so as to bring home guilt against her.

7. Though ample material was found against Accused No.1 (Gangadhar), the only material against the appellant (Accused No.2) is that her name is also found in the Dying Declaration. Undisputedly, the incident has taken place inside the house of Accused No.1 and that too early in the morning. It is not disputed that the appellant is the wife of the brother of Accused No.1. The appellant was living with her husband (the brother of Accused No.1) separately in a different house. In other words, the appellant was not living with the deceased and Accused No.1. The same has also been observed by the High Court in its judgment. However, the Courts proceeded to convict the appellant also, based on the Dying Declaration of the deceased, by observing that there was no reason as to why the appellant was to be falsely implicated. However, having regard to the Medical Certificate issued by the Medical Superintendent, Rural Hospital, Partur, showing that the appellant was admitted to the hospital and underwent surgery on 30.1.2013, the plea of alibi taken by the appellant deserves to be accepted.

8. A perusal of the oral evidence of the parents of the deceased would indicate that only minor allegations are made against the appellant. Vague and cryptic allegations are found against her with no specific allegation in respect of demand for dowry or harassment in any manner. In the absence of definite evidence against the appellant, the Sessions Court and the High Court are not justified in convicting her even for the offence punishable under Section 498A of the IPC.

9. In view of the same, the appeal filed by the appellant is allowed by giving her the benefit of doubt, and the impugned order is set aside so far as it relates to Accused no.2 - Smt.

Chhaya, appellant herein. Needless to say that the appellant be released forthwith if not required in any other case.