State of Maharashtra Vs Guntabai @ Bhagirathaibai and Others

Court: Supreme Court of India

Date of Decision: April 21, 2009

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302, 34, 498A

Citation: (2010) 1 ALT(Cri) 106 : (2009) 7 JT 509 : (2009) 8 SCALE 563 : (2009) 14 SCC 363 : (2009) 9 SCR 44

Hon'ble Judges: Asok Kumar Ganguly, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: R.K. Adsure, for the Appellant; K. Sharda Devi, for the Respondent

Final Decision: Allowed

Judgement

Arijit Pasayat, J.
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 u/s 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 unfloded 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. (1999) 7 SCC, 695 .

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 (2002) 6 SCC, 710 .

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.

6. 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 SLP against them stood dismissed. This order shall operate only in respect of

respondent No. 1

7. The appeal is allowed.