

(2009) 11 SC CK 0066
In the Supreme Court Of India
Case No : Criminal Appeal No. 230 of 2003

Sau Panchashila Dada Messhram

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 109, 302, 304, 34, 342

Citation : (2010) 1 ACR 252 : (2010) 2 ALD(Cri) 335 : (2010) CriLJ 1919 :
(2009) 14 JT 267 : (2009) 14 SCALE 50 : (2009) 17 SCC 81 : (2011) 1 SCC(Cri)
940 : (2009) 15 SCR 994

Hon'ble Judges : J. M. Panchal, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Anangha A. Desai and Satyajit A. Desai, for the Appellant; R.K. Adsure (NP), for the Respondent

Final Decision : Disposed Of

Judgement

J.M. Panchal, J.—This appeal by special leave is directed against Judgment dated July 15, 2002 rendered by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Appeal No. 414 of 1997 by which the conviction of the appellant u/s 302 read with Section 34 of the Indian Penal Code as well as u/s 342 read with Section 34 and imposition of sentence of R.I. for life and fine of Rs. 500/- in default R.I. for nine months for commission of offence punishable u/s 302 read with Section 34 as well as R.I. for six months and fine of Rs. 500/- in default R.I. for one month for commission of the offence punishable u/s 342 read with Section 34, is altered and the appellant is convicted u/s 304, Part II read with Section 34 of the Indian Penal Code and sentenced to R.I. for six years.

2. The facts emerging from the record of the case are as under:

Dada, son of Shivram Meshram, who was original accused No. 1, is the husband of the present appellant. Daulat, son of Bajirao Dudhpachare, was teacher by profession. However, he left the said job and started performing black magic. He

was also doing sorcery and had large followers. The followers were knowing him as Daulatbaba. The appellant and her husband were ardent followers of Daulatbaba, who was original accused No. 3. The appellant had three children - one son and two daughters. At the time of the incident, the appellant was in advanced stage of her pregnancy. The original accused No. 3, i.e., Daulatbaba used to visit residence of the appellant and on one occasion had performed certain rituals in her house. The original accused No. 3 had told the appellant and her husband that their last child Rani, who was two years old, would bring ill-luck to them and, therefore, it was necessary to perform certain rituals. He had also warned the appellant and her husband to get Rani out of his sight whenever he was to visit their residence. According to the prosecution as a result of the command given by Daulatbaba, the appellant and her husband confined Rani in a bathroom for 14 days. The bathroom was measuring 3.4 x 4.4 feet. Neither the appellant nor her husband gave food or water to the child at all, as a result of which child Rani died of starvation on August 14, 1996. The appellant and her husband were residing in a rented premises belonging to Rajratan Ragari. At 11 a.m. on August 14, 1996 the landlord, i.e., Rajratan came to know about the death of Rani. He went into bathroom and saw the dead body lying there, after which he went to the police station and lodged First Information Report. In view of the contents of the First Information Report, investigation was commenced. On the conclusion of investigation, the appellant and two others, i.e., her husband and Daulatbaba were charge-sheeted for commission of offences punishable under Sections 342 and 302 read with Section 34 of the Indian Penal Code.

3. As the offence punishable u/s 302 is exclusively triable by a Court of Sessions, the case was committed to the Court of the learned Additional Sessions Judge, Bhandara for trial. The learned Judge framed charges against the three accused. The same were read over and explained to them. The appellant and others did not plead guilty to the charge and claimed to be tried. Therefore, several witnesses were examined and documents produced by the prosecution to prove its case against the accused. On completion of recording of evidence of prosecution witnesses, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure, 1973. The case of the accused was that of total denial but none of the accused examined any witness in support of the claim that he/she was innocent.

4. On appreciation of evidence adduced by the prosecution the learned Judge held that it was satisfactorily proved that deceased Rani had died homicidal death. According to the learned Judge it was established by the prosecution that all the three accused had wrongfully confined Rani in bathroom for about 14 days and committed offence punishable u/s 342 read with Section 34 of the Indian Penal Code. The learned Judge further held that it was proved that the appellant and her husband had intentionally or knowingly killed Rani and committed

offence punishable u/s 302 read with Section 34 of the Indian Penal code. The learned Judge also concluded that original accused No. 3, i.e., Daulatbaba had abetted the offence of murder of Rani and committed offence punishable u/s 302 read with Section 109 of Indian Penal Code. Thereafter the learned Counsel for the parties were heard on the question of the sentences to be imposed on the accused. After hearing the learned Counsel for the parties the three accused were sentenced to R.I. for six months and fine of Rs. 500/- in default R.I. for one month for commission of offence punishable u/s 342 read with Section 34 of the Indian Penal Code. The original accused No. 3, i.e., Daulatbaba, was sentenced to suffer R.I. for life and pay fine of Rs. 5,000/- in default R.I. for nine months for commission of offence punishable u/s 302 read with Section 109 of the Indian Penal Code. As far as the appellant and her husband are concerned, each of them was sentenced to suffer R.I. for life and fine of Rs. 500/- and in default R.I. for nine months for commission of the offence punishable u/s 302 read with Section 34 of the Indian Penal Code.

5. Feeling aggrieved by the conviction and imposition of different sentences, all the three accused preferred Criminal Appeal No. 414/97 in the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. The Division Bench held that no reliable evidence was adduced to prove that the original accused No. 3, i.e., Daulatbaba was performing black magic or sorcery and child Rani was confined into bathroom at his instigation as a result of which his conviction u/s 342 read with Section 34, IPC as well as u/s 302 read with Section 109 of the Indian Penal Code was liable to be set aside. The High Court further held that there was no deliberate intention on the part of the present appellant and her husband to kill their daughter, Rani, but they definitely had knowledge that their action would result in injury which was likely to cause death of their child, Rani, and therefore their conviction should be altered from Section 302 read with Section 34 of the Indian Penal Code to one u/s 304, Part II, read with Section 34 of the Indian Penal Code. After convicting the appellant and her husband u/s 304 Part II read with Section 34 of the Indian Penal Code, they were sentenced to undergo R.I. for six years. It may be mentioned that the husband of the appellant was not enlarged on bail during the pendency of the trial and appeal and has served out the sentence imposed by the High Court for commission of the offence punishable u/s 302 read with Section 34 of the Indian Penal Code. Therefore, the appellant alone has approached the Supreme Court challenging her conviction u/s 304 Part II read with Section 34 of the Indian Penal code and imposition of sentence of R.I. for six years by filing the instant appeal.

6. This Court has heard the learned Counsel for the parties and considered the documents forming part of the appeal.

7. The finding that deceased, Rani, who was a child of tender age, died a homicidal death is not challenged before this Court. The finding recorded by the High Court that the appellant and her husband had confined their child, Rani, in the bathroom of rented premises for a period of 14 days is based on the analysis

and appreciation of evidence tendered by prosecution witnesses and more particularly evidence of landlord, Rajratan Ragari, examined as prosecution witness No. 5 and that of his son whose evidence was recorded as PW-7. The fact that deceased died due to starvation is amply proved by the testimony of Medical Officer who performed autopsy on the dead body of the deceased and contents of the post mortem notes. The fact that child, Rani, was found dead in the bathroom is also established by the reliable and trustworthy testimony of PW-6. The appellant has failed to show error in the reasonings or the conclusions of the High court. No perversity, miscarriage of justice, shocking misreading of evidence or gross misapplication of the provisions of Indian Penal Code could be pointed out by the learned Counsel for the appellant. After fully discussing evidence, the High Court has come to the conclusion that the appellant and her husband committed offence punishable u/s 304, Part II, IPC. There are no reasonable grounds for believing that the appellant had not committed the offence in question. The High Court, in effect has confirmed the finding recorded by the trial court that the appellant and her husband had confined their child, Rani, in a bathroom and caused her death by not providing food and water. The finding recorded by the High Court that the appellant and her husband had definite knowledge that their act of confining deceased, Rani, in a bathroom would result into her starvation which was likely to cause her death and, therefore, the appellant has committed offence punishable u/s 304, Part II of the Indian Penal Code is eminently just and well-founded. Therefore, this Court is of the firm opinion that the conviction of the appellant recorded u/s 304, Part II read with Section 34 is not liable to be interfered with in the instant appeal.

8. However, as far as the question of sentence is concerned, this Court finds that at the time of incident, the appellant was in advanced stage of her pregnancy and had given birth to a girl child which had expired soon after the birth. The evidence adduced by the prosecution indicates that the husband of the appellant was coming near the bathroom with a cane so as to prevent the deceased from coming out of the bathroom. Such an act is not attributed to the appellant at all. As on today, the appellant is of more than 67 years of age. The record further indicates that the appellant has also a major daughter, who was aged 10 years at the time of the incident and a son. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if conviction of the appellant u/s 304, Part II, read with Section 34 of the Indian Penal Code is maintained and the sentence is reduced to the period already undergone.

9. For the foregoing reasons, the appeal partly succeeds. The conviction of the appellant recorded by the High court u/s 304, Part II read with Section 34 of the Indian Penal Code is confirmed. However, the sentence is reduced to the period already undergone by her. The appeal is allowed to the extent indicated hereinabove.