2018 INSC 930

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 1597 OF 2009

KANAILAL SARKAR **Appellant(s)**

VERSUS

THE STATE OF WEST BENGAL **Respondent(s)**

J U D G M E N T

BANUMATHI, J.:

(1) This appeal arises out of the conviction of the appellant, father-in-law of the deceased-Laxmi Rani under Section 306 I.P.C. and sentencing him to undergo rigorous imprisonment for five years.

(2) Briefly stated the case of the prosecution is that the victim-Laxmi Rani was married to Dilip Kumar Sarkar son of the appellant at the young age. Further case of the prosecution is that the appellant, father-in-law of the deceased was harassing her and that her husband is not working and she has to bring money from her parents. On 10th October, 1986 at 10.00 a.m.

father-in-law (appellant herein) and mother-in-law of the deceased-Laxmi Rani are said to have quarrelled with the deceased-Laxmi Rani and assaulted her due to which Laxmi Rani was about to return to her parents' house; but at that time the appellant forcibly took her inside the house, poured kerosene on her and set her on fire. Laxmi Rani was admitted to hospital and later on she succumbed to her injuries. An FIR was initially registered under Sections 326, 307 and 498-A I.P.C. which was subsequently altered to Section 302 read with Section 34 I.P.C.

(3) Upon consideration of the evidence and the dying declaration of the deceased-Laxmi Rani and also dying declaration recorded by the Executive Magistrate (PW-9), the Trial Court held that the dying declaration is true and voluntary and accordingly convicted both, the appellant herein and the second accused, namely, mother-in-law of the deceased-Laxmi Rani under Section 302 I.P.C. read with Section 34 I.P.C. However, they were acquitted of the charges under Section 498-A I.P.C.

(4) In appeal, the second accused, mother-in-law of the deceased-Laxmi Rani, was acquitted on the ground that there was no evidence and the prosecution has not proved her guilt. So far as the appellant herein is concerned, the High Court has referred to the evidence of Dilip Kumar Sarkar (PW-4), husband of the deceased-Laxmi Rani, that he admitted her in the

hospital and the High Court held that it was a case of suicide. However, the High Court held that because of torture by the appellant i.e. father-in-law, it must be held that the appellant has abetted the suicide and on those findings the High Court convicted the appellant under Section 306 I.P.C. and sentenced him to undergo imprisonment for five years as aforesaid.

(5) We have heard Mr. Dhirendra Kumar Mishra, learned counsel appearing for the appellant and Mr. Suhaan Mukerji, learned counsel appearing for the respondent-State and also perused the impugned judgment and the evidence/materials on record.

(6) In the dying declaration recorded by the Executive Magistrate (PW-9), the deceased-Laxmi Rani has clearly submitted about the overt act of the appellant pouring kerosene and setting her on fire. Having regard to the evidence of PW-1, father of the deceased-Laxmi Rani and the dying declaration recorded by the Executive Magistrate (PW-9), the offence would fall under Section 302 I.P.C. Since the State has not preferred any appeal against the acquittal of the appellant under Section 302 I.P.C. and since the occurrence was of the year 1986, we do not propose to go into this aspect any further.

(7) Suffice to note that the conviction of the appellant under Section 306 I.P.C. is to be upheld. Since, it is brought in

evidence that the deceased-Laxmi Rani was subjected to harassment at the hands of the appellant, we do not find any reason warranting interference with the conviction of the appellant and the sentence of imprisonment awarded to him.

(8) The appeal is accordingly dismissed.

(9) The appellant shall surrender to custody within a period of four weeks from today to serve the remaining sentence failing which he shall be taken to custody.

(10) A copy of this order be sent to the concerned trial court for necessary action.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

NEW DELHI,
OCTOBER 4, 2018.