

Sidram Narayan Batane Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Jan-10-1993

Reported in : I(1993)DMC204

Judge : S.M. Daud ; and M.F. Saldanha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304B and 498A

Appeal No. : Criminal Appeal No. 685 of 1988

Appellant : Sidram Narayan Batane

Respondent : The State of Maharashtra

Advocate for Def. : S.B. Patil, Public Prosecutor

Advocate for Pet/Ap. : T.E. Mane, Adv.

Judgement :

S.M. Daud, J.

1. This appeal takes exception to the conviction and sentence recorded against the appellant for the commission of offence punishable Under Sections 498A, 304B and 302 all of the Indian Penal Code.

2. Appellant/accused is the husband of the deceased Suvarna. This girl's parents Limba and Kanta are prosecution witnesses Nos. 6 and 8. The two families i.e. the

family of the accused and that of Limba hail from village Sayyad Varvade, Taluka Mohol, District Solapur. Accused was married to Suvarna some 3 years prior to 8-12-1987. On 8-12-1987, Suvarna was taken from village Varvade to the District Hospital at Solapur. She was found to have 70% burns and her condition kept deteriorating. Eventually on 14-12-1987 the girl died. Her death was due to Septicemia due to 70% burns. The contents of the post-mortem notes which are at Exh. 16 are not seriously questioned.

3. The prosecution case was that for some 2 to 2-1/2 years after the marriage, there was no serious discord between the accused and Suvrna. Later however accused started harassing Suvarna inventing one or the other reason as a Justification for so doing. On 4-12-1987, which happened to be a Friday a Satnarayan Pooja had been arranged at the home of Limba, father of Suvarna. Some eatable had to be prepared for distribution as 'prasad' to the persons attending the family home for pooja. Kanta bad her periods and could not participate in the cooking of the prasad. For that reason Suvarna was sent far from her husband's home. Suvarna had been warned by the accused to return early at he did not want her to over-stay at her parent's place. The cooking chore delayed Suvarna and it was late evening by the time the chore was over. Persuaded by her parents, the girl decided to stay overnight at her parental home. The decision was not to the liking of the accused. He came remonstrating and when his protests were sought to be silenced by Kanta and P.W. Ramesh Moholkar, the accused took to violence not only upon the person of his wife, but also that of Kama and Ramesh. This was resented by those beaten up as also Limba. They decided to march the accused to the Police Patil of Varvade. That gentleman was engaged in the evening prayers at a mosque and it was to this place that Limba, Kanta and Ramesh Moholkar went with the accused. After the prayers were over, the Police Pali, P.W. 7 Husaini was informed of what the accused had done. When questioned the accused replied that the accusation was true to the limited extent of his having beaten his wife. Husaini decided that it was late and that the matter would be taken by him on the next day. The party which had came to him was asked to and did disperse. In protest against the doings of the accused, Limba declined to allow Suvarna to go to the marital home. Tempers had cooled down and eventually on the evening of 7-12-1987, Suvarna was taken back to the home

of the accused.

4. On 8-12-1987, the other inmates of the home of the accused left for their different tasks. This left the couple at home. Taking advantage of the situation, the accused shut the door from inside. He then rebuked. Suvarna for not having brought a golden ring-the gold to be of one tola in weight-though her uncle had admonished him about ill-treating her. So saying he poured kerosene on her person and set her on fire. The girl's screams brought the brother of the accused rushing in. The said brother somehow stamped out the fire enveloping his sister-in-laws. Realising the enormity of the deed done by him, the accused went rushing to the home of Limba and there falsely informed that person as also his wife that their daughter had tried to commit suicide by letting fire to herself. Limba and Kanta rushed to the home of the accused when Suvarna told (him that far from her trying to commit suicide, it was per husband who had set her on fire. A Tempo was fetched and in that vehicle Suvarna accompanied by several persons-but not the accused-was taken to the District Hospital at Solapur.

5. On arrival at the Civil Hospital at Solapur, it was found that the condition of Suvarna was poor. Fluids were fed into her body by intra-venous operations and this revived the girl to some extent. A message was flashed to the nearest Police Station in the city, who was informed of Suvarna's condition and how she had reached that stage. The Police Station rushed a Special Judicial Magistrate, P.W. 5 Kundargi to the Civil Hospital. Kundargi was working as a Stenographer in the Labour Court at Solapur and after satisfying himself that Suvarna was in a position to speak, he recorded her dying declaration. The same is at Exh. 25. A little later came H.C. Mujawar and he also recorded Suvarna's statement which is at Exh. 37. The two documents, i.e. Exhibits 25 and 37 were both confirmations of what Suvarna had said to several persons earlier, viz. that she had been set on fire by her husband. The Mohol Police Station took up investigation and PSI Qaikwad was deputed to do the needful. That Officer reached Varvade on the day after i.e. on 9-12-1987. He arrested the accused and recorded statements of various persons. In due course the investigation was completed and accused charge-sheeted. The enquiry over, the accused was committed to stand trial in the Sessions Court.

Date : 13-1-1992

6. To substantiate the charge levelled against the accused, the prosecution examined a number of witnesses including the parents of Suvarna, Police Patil of (be village. Dr. Roy, Kundargi, Mujiwar, and PSI Qaikwad. Documents which came on record included the recorded, dying declarations of Suvarna at Exhibits 25 and 37.

7. Accused pleaded not guilty. His defence as set forth by Mr. Mane in this Court, is that on 4-12-1987 Suvarna bad delayed her return to the marital home and this bad angered him. A heated exchange and possibly violence had ensued and this left Suvarna and her parents full of anger. Though she returned 10 the marital home on 7-12-1977, she was not fully reconciled 10 him. With a view to teach him a lesson and taking advantage of the absence of everyone else from the home, Suvarna had set fore on herself. She did not intend to commit suicide but the flames went beyond her expectations and enveloped a considerable portion of her body. Learning of the mishap, be had gone running to fetch his wife's parents. In his presence Suvarna told them that she had set fire to herself to teach the appellant a lesson, but her attempt turned to be a misfortune. Limba and his wife were not reconciled to the impending death of their daughter. They along with Ramesh Moholkar tutored the girl to falsely implicate the appellant. This she had done in her statements Exhibits 25 and 37. The said statements were not to be relied upon and the witnesses examined were not exactly impartial. For all these reasons he deserved a clear acquittal.

8. The learned Sessions Judge was not impressed with the efforts made by the accused and his Legal Adviser. He found that the prosecution bad fully established the guilt of the accused under all the three sections, viz, 498A, 304B and 302 of the I.P.C. On the first count, the accused was sentenced to suffer 3 years R.I. and a fine of Rs. 1000/- on the second count 7 years R.I and on the 3rd count imprisonment for life and a fine of Rs. 5000/-. Non-payment of fine under the two counts was to entail additional R.I. for six months and 2 years respectively. The substantive sentences were to run concurrently.

9. Having heard Counsel for parties, the points that necessitate a decision are :-

(1) Did the prosecution prove that accused had committed offences punishable Under Sections 498A and 304B IPC ?

(2) Whether the prosecution established the commission of an offence of murder punishable Under Section 302 IPC by the accused ?

(3) What order? Our findings, for reasons given below, are -

(1) No.

(2) Yes.

(3) See order.

10. The conviction recorded Under Sections 304B and 498A IPC appears to be based on nothing more than a confused understanding of the import of these two sections. The prosecution, it was held, had established the cruel behaviour of the accused, with the cruelty shown on 8-12-1987 being the proximate cause of the death of the victim. This sufficed, according to the learned Sessions Judge, for attracting the guilty of the accused Under Sections 304B and 498A IPC. Now the factual position is very clear. The dying declarations made by Suvarna speak of accused having taken it into his head to harass her after the expiry of 2 to 2-1/2 years of their marriage. As the record stands, the first incident of cruel behaviour on the part of the accused is the incident which occurred on 4-12-1987. It is important to bear this in mind, lest one gets carried away by the impression that Suvarna was subjected to a long and unceasing course of cruelty by the accused. This apart, we will now turn to the requirements of Section 498A IPC.

11. The aforesaid section has been newly introduced by an Act of 1983. It reads thus:-

'Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term' which may extend to three years and shall also be liable to fine.

Explanation-For the purposes of this section, 'cruelty' means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; of.

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any properly or valuable security or is on account of failure by her or any person related to her to meet such demand.'

The witness examined by the prosecution do not corroborate the dying declaration version about the accused demanding a golden ring prior to 4-12-1987. In fact the two families from which the couple hailed, were not very well off. Each had a small holding of land and neither was in a position to incur unusual expenditure for the performance of the marriage. Admittedly a sum of Rs. 1100/- or thereabout was given, according to that witnesses, by way of 'dowry'. This does appear to be a correct description of the payment. It is not disputed that the expenses in connection with the ceremony were borne by the father of the accused. Read closely, it would appear that the sum of Rs. 1.100/- represented the reimbursement for the expenses expected to be incurred in the wedding ceremony. Amongst Hindus it is not unnatural for the girl's side on foot the wedding expenses. If, instead of so meeting the expenses himself, Limba made over the amount to the father of the accused, who in turn bore the expenses for the ceremony, it cannot be laid that what was given and/or received represented 'dowry' in the strict sense of the word. Coming to the incident of 4-12-1987, Limba had scheduled a 'Satnarayan Pooja' at his home. Some edible had to be prepared for the distribution as Prasad amongst the participants and visitors to the home of Limba in connection with the 'Satnarayan Pooja'. Unexpectedly Limba's wife had her menses and for that reason could not participate in the cooking chore. Suvarna was the eldest daughter of the couple, the other daughters being far too young to be saddled with the responsibility of cooking something which was to be offered as Prasad to a fairly large number persons visiting the family home. For that purpose Suvarna was sent for and she appears to have left the marital home either without the permission of the accused, or despite his objections. It was this which angered the accused and he went determined to right it out to the house of

his in-laws. Limba, his wife and Ramesh Moholkar are all agreed that beginning with abuses, the accused took recourse to violence. He is said to have beaten Suvarna, Limba's wife and Ramesh Moholkar. However, when marched to the Police Patil, the accused insisted that he had done nothing more than beating his wife. This part of the incident is testified to by the Police Patil also. Assuming everything to be true, the maximum that can be said is that on 4-12-1987 the accused had behaved disgracefully and his behaviour included violence perpetrated upon his wife, mother-in-law, and Ramesh would this constitute 'cruelty' contemplated by the explanation to Section 498A IPC? The explanation speaks of wilful conduct of such a nature as is likely to drive the wife to commit suicide or cause grave injury or danger to her life, limb or health. Accused had created a scene and had set hands upon his wife, mother-in-law and a well-meaning neighbour. This conduct may be of the sort which could cause a grave mental injury to a wife amongst the middle class. But here we are looking into the conduct of villagers and it does not appear that they have the same notions as do the urban middle class of a shower of abuses followed by violence. In fact Limba and his wife did not even make a report of the incident to the Police. True they had gone to the Police Patil, but that was not with the object of lodging a report, so that the accused could be prosecuted. Their object was to bring to the notice of the Police Patil the disgraceful conduct of the accused so that the said official could do what lay in his power to administer a warning to the accused to mend his ways. The intent behind the approach to the Police Patil was not to make use of his power of setting the law in motion, but to make use of his standing in the village to rebuke or admonish a co-villager. Even if the second part of the definition of 'cruelty' is taken into consideration. Section 498A would not be attracted. The conduct of the accused on 4-12-1987 was not actuated by his having been frustrated in the unlawful demand for any property or valuable security etc. etc. Did the happenings of 8-12-1987 constitute cruelty as contemplated by Section 498A? For the purposes of considering this question, we shall assume that the accused did demand a golden ring and when this demand was not met, he sprinkled kerosene on his wife and set her on fire. But the demand for a golden ring was not a demand in reality. Accused was giving vent to his anger at having been admonished by his uncle of Suvarana to behave decorously with his wife. What

accused way saying was that if he was asked to behave properly, the wife's side was under an obligation to give him a golden ring. This was a crude way of giving expression to the resentment for the restraint which was asked to be exercised by him. The violence or cruelty was not actuated by a demand for dowry but anger at what accused continued as officious interference in; a matter which concerned none but him and his wife. Therefore, however considered, the accused cannot be said to be guilty Under Section 498A IPC.

12. More or less the same reasoning applies in relation to Section 304B IPC. That section reads as follows :-

'Dowry death-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation-For the purposes of this sub-section 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.'

Mr. Mane argues that a one time demand for ring and after the marriage performed would not amount to a demand for dowry within the meaning of the Dowry Prohibition Act, 1961. Learned Counsel would have possibly been right, but for the amendment effected in Section 2 of the said Act by amending Act 63 of 1984. Prior to the amendment 'dowry' was defined as any property or valuable security given or agreed to be given either directly or indirectly 'as consideration for the marriage of the parties'. Possibly this would exclude demands for property or valuable security given after the performance of the marriage and not in any way connected with the marriage performance. Consequent to the amendment to Section 2 by virtue of Act 43 of 1983, dowry now means

'Any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after (the marriage in connection with the marriage of (the laid parties.....'

The term 'in connection with the marriage of the laid parties' would take within the, mischief of the definition, a demand for property or valuable security any time after the marriage and because of the marriage or for the continuance of the marriage. Here, what the accused was saying was that he was entitled to a golden ring, the weight of gold being one tola if he was expected to follow the admonition of Suvarna's uncle to behave in a civilized manner towards her. In substance, the same had nothing to do with the marriage or continuance of the said marriage. His demand was actuated by spite and little-more for the application of Section 304B the requisite conditions are-(i) death of a married woman; (ii) such death occurring within 7 years of her marriage; (iii) proof that the said woman was subjected to cruelty or harassment by her husband or relations of the husband-such cruelty or harassment the latter having a nexus with a demand for dowry; and (iv) death being caused by burns or bodily injury or otherwise than under normal circumstances. Where all these conditions exist irrespective of who inflicted burns or bodily injury, the section creates a precept that the person inflicting the cruelty or harassment on (the victim has committed a dowry death. The burns or bodily injury may be self-inflicted for even if the same have been inflicted by the wife upon herself pursuant to the cruelty and harassment and within 7 years of the marriage, the said section creates a fiction rendering the husband or a relation of his liable for the death of his wife. The person guilty of a dowry death would not be the murderer against whom Section 302 IPC is aimed. That section is aimed against a person committing murder and murder is defined in Section 300 of the IPC. Shortly stated, a person is guilty of murder where he or she causes death with the requisite intention or knowledge enumerated in Section 300 of the IPC. Contrasted with

Section 300 read with 302 IPC, Section 304B is constricted' in time and otherwise. Section 302 would not be applicable where the victim kills himself or herself irrespective of the fact that such filicide is occasioned by treatment meted out by another. True, such a suicide could be dealt with Under Section 306 IPC. In some cases burns and bodily injury inflicted upon a woman resulting in death may not amount to murder, but culpable homicide punishable Under Section 304' of the IPC. Even then, if the culpable homicide is in the background contemplated by Section 304B, the said culpable homicide could be a dowry death and the punishment in that case would not be less than 7 years In a different situation a suicide resulting from burns or bodily injury would attract Section 304B if the other ingredients of that section were attracted. In that case, the husband or a relation of his perpetrating cruelty or harassment would not be in a position to disclaim liability for the death. The object of this diversion is to point out that a person found guilty under Station 302 IPC if automatically exonerated from liability Under Section 304B IPC. The learned Sessions Judge was therefore in error in recording a conviction Under Section 304B IPC. What survives now is she conviction recorded against the appellant Under Section 302 of the IPC.

13. We have heard Mr. Mane at great length and his submission is that a close reading of the evidence would exonerate him of being responsible for the death of Suvarna. In this connection he wants us to disregard the near unanimity of the dying declarations of Suvarna, whether enumerated to witnesses or recorded by the special Judicial Magistrate and Mujawar. Learned Counsel contends that Suvarna's account of how accused came to be in a position to sprinkle kerosene on her person and set her on fire, is falsified in one particular (material). The dying declarations speak of accused latching and chaining the door of the cottage from inside before Suvarna was set on fire by the accused. Now as a matter of fact, the door does not appear to have over n a latch or chain. This is borne out by the scene of offence panchanama. Can it therefore be laid that this falsification is of so grave a character as to render the overwhelming evidence unbelievable 7 The door had shutters and the shutters must have been placed together by the accused from inside. This is quite possible This is what Suvarna meant when she spoke of the door being latched and chained from inside by the accused before he turned to the task of sprinkling kerosene on her person and

setting her on fire. What she was trying to say was that the accused created an opportunity within which the foul deed could be done. From this, the inference would not be that she was deliberately lying or that there has been some evidence padding on the issue. Next Mr. Mane submits that had his client been guilty, he would not have run to the home of Suvarna's parents and informed them that he had let herself on fire. Accused did so and we will go further and assume that he did fetch a cart or case or whatever in which Suvarna was taken to Sotipur. This would not mean that the accused was innocent, this would not be the first case where the perpetrator of a crime comes back to his senses and starts behaving in a manner indicative of repentance. After all Suvarna herself says that nearly 24 to 30 months after her marriage, the accused was treating her quite decently. If the accused was the first to inform his in-laws of Suvarna having attempted suicide, we do not know how that can wash away the truthfulness surrounding the two dying declarations on record. If Suvarna had confessed to her parents that she had over-reacted, she would have affirmed the same in her subsequent statements to the Police. Police Patil Ramesh Moholkar, Kundargi and Mujawar. She would not have falsely implicated her husband with whom except for the happening of 4-12-1987, she had no serious differences. What took place on 4-12-1987 was nothing very unusual in the lives of couples. Men lose their temper and act irrationally and brutally and wives harbour anger and rancour because of the brutality of the husband. But these are momentary happenings and do not efface the compulsions or better some which lead to a reconciliation between estranged couples. Here, prior to 4-12-1987 accused had done very little to create lasting bitterness in the minds of his wife or her parents. Despite the boorishness of 4-12-1987, Limba had persuaded himself and his daughter that the incident had to be over-looked and a reconciliation attempted. Suvarna returned to her husband on 7-12-1987 and there is no evidence on record to show that on that day there was any serious quarrel between the couple. It may be argued as to why the accused suddenly took it into his head to misbehave with his wife on 8-12-1987. The dark impulses which actuate human minds do not necessarily require an explanation. Possibly what had taken place on 4-12-1987 may have suddenly crept into the mind of the accused. This possibly may have been triggered by something said or done in the morning. There is evidence that the accused was asked to leave for work, but he

refused to do so and lingered behind. Whatever be the reason, it is not established by the evidence and can only be surmised. But the doings as depicted in Exhibits 25 and 37 cannot be dismissed as a figment of imagination. It will be noticed that there is a substantial conformity between the two dying declarations though there was a difference of more than an hour between the recording of the two, Mr. Mane contends that the medical and the other evidence about Suvarna being in a condition to speak, is unbelievable. We cannot agree. The first recorded declaration in point of time is by Kundargi. This gentleman. was serving as a Stenographer in the Labour Court at Solapur and the pains which he took to satisfy himself about the condition of the girl as to her answers being voluntary, are commendable. To begin with Kundargi questioned the doctor in attendance to find out whether she was in a position to give a statement. Receiving an affirmative answer, Kundargi proceeded to the bed on which the girl was lying. The preliminary questions asked were many. She was asked her name, her husband's name, her surname, her husband's profession, whether the marriage had resulted in any issues, where the marriage was performed, what her husband's full name was, who she resided in the matrimonial home etc. etc. Kundargi says that he had taken care to ensure that no third person was present when the girl was questioned by him after the girl had given details of what constituted the crime, Kundargi further questioned her about the what of the bullock cart, the frequency or otherwise of the quarrels between her and her husband, the reasons for the quarrel, the distance between the marital and parental home etc. etc. He specially asked her if she had any grievance against the husband's mother, brother and sister. Savarna made it clear that the only person harassing her was her husband. Similar was the answer when she was asked if she had complaint against anybody else. Mr. Mane argues that the victim had been brought in a poor condition in the Hospital and it is unbelievable that her condition improved to such an extent that she could give every detail as are to be found in exhibits 37 and 25. The explanation given by the doctor in attendance was that fluids had been fed into Suvarna's body by intravenous. We see no reason to disbelieve this explanation. After all however serious the condition of the patient, doctors attending upon her would not have given up the struggle to save her and make her position as comfortable as they could.

14. Mr. Mane contends that if the accused was guilty of having set his wife on fire, Limba, his wife, and others would have taxed the accused. with the crime. Whether they did it or not, we shall assume that there was no rebuke administered to the accused on this count. Having regard to the serious condition of Suvarna and having regard to the conduct of the accused on 4-12-1987, very little could have been achieved by attending to their test of rebuking accused for the crime committed by him. Mr. Mane says that if there be any truth in what the Police Patil says about the victim telling him of her husband having set her on fire, the Police Patil would have immediately arrested the accused. We do not accept this argument. The law apart, we have not heard of Police Patils effecting what is known in common parlance as the citizen's arrest. It was contended that the journey to Solapur was via Kamti which has a Police outpost and the natural thing for the party to have done would have been to lodge a report at Kamti police outpost. We see no merit in this argument. The important task was not to inform this or that person of the crime committed by the accused, but to rush Suvarna to the Hospital as to have her life. The law had been let in motion in the sense that the Police Patil knew all that had taken place and every one rightly assumed that the needful would be done. Having considered these contentions, we see no reason to differ from the conclusion reached by the learned Sessions Judge. Accused had a motive and did commit the act of burning his wife as a result of which she lost her life. He was therefore guilty of murder and was rightly convicted Under Section 302 IPC. The result of the foregoing discussion is that the appeal succeeds in part. The conviction and sentence recorded against the appellant Under Sections 498A and 304B of the I.P.C. are set aside. His conviction and sentence Under Section 302 IPC is hereby confirmed.