
(1992) 11 BOM CK 0015
In the Bombay High Court
Case No : Criminal A. No. 30 of 1986

Salubai Bhagwan Choudhari and Another	APPELLANT
Vs	
State of Maharashtra	RESPONDENT

Date of Decision : 19-11-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (1993) 1 DMC 616

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Suresh Kumbhar and Mr. Kumar Deshpande, for the Appellant; Y.B. Patil, Assistant Public Prosecutor, for the Respondent

Judgement

M.F. Saldanha, J.—The two appellants who are the mother-in-law and the husband of the deceased wife Lata stand convicted for offences u/s 306 read with Section 34 I.P.C. and Section 498-A read with Section 34 I.P.C. in respect of which they were awarded rigorous imprisonment for three months and to pay a fine of Rs. 1000/- in default rigorous imprisonment for one month under the first head and rigorous imprisonment for three months and to pay a fine of Rs. 1000/- in default rigorous imprisonment for one month under the second head of charge. The prosecution alleged that the deceased Lata on 5-4-1984 at about 2.00 p.m. set fire to her clothes and she had sustained extensive burn injuries. Her dying declaration was recorded on that night in which she stated that it was because of the harassment from the mother-in-law that she had committed suicide. The Police arrested the husband and both the parents and charge-sheeted them but the Learned Trial Judge acquitted the father on the ground that there was no evidence against him. The two appellants challenge the validity of their conviction through the present appeal,

2. Mr. Kumbhar, the Learned Counsel appearing on behalf of the appellants has pointed out to me that the conviction u/s 306 read with Section 34 I.P.C, is misconceived as there is no material on record to sustain this charge. He has

taken me through the deposition of all the witnesses as also a scrutiny of the dying declaration and the communications that the prosecution brought on record and after examination of the totality of the evidence Mr. Kumbhar submits that there is virtually nothing on record to indicate that either of the accused could have abetted the suicide. He submits that even if the death has taken place within seven years of the marriage that the prosecution would still have to show that the accused had in some way been instrumental in the act of suicide and in the absence of any such nexus being established, in law, this conviction would have to be set aside.

3. The learned A.P.P. has pointed out to me references in the record to the effect that the mother-in-law was ill treating the girl which she has said in her dying declaration and there is the evidence of her father, her brother and of a neighbour which suggest that this position was true. It appears from this evidence also that the husband was from time to time not treating the wife well and that he was subjecting her to cruelty. While this evidence may be good enough to sustain a conviction u/s 498-A I.P.C. to my mind, the material is too weak and too disjointed and too far in point of time to sustain the conviction u/s 306 read with Section 34 I.P.C. To this extent Mr. Kumbhar's submission is liable to be upheld and the conviction and sentences awarded u/s 306 I.P.C- are accordingly set aside.

4. As regards the conviction u/s 498-A I.P.C. is concerned Mr. Kumbhar has pointed out to me that the references are not specific and that there are only general suggestions that the girl was not being treated well. The cumulative effect of the material placed before the Court would indicate that undoubtedly even though the cruelty can be said to have been established that it would not be good enough to serve the purpose of bringing out any aggregating circumstances and to this extent therefore while the conviction u/s 498-A I.P.C. requires to be confirmed. A substantial modification in the sentence will be required. At the highest it can be said that some minor forms of cruelty have been established and to that extent only, to my mind, a fine in the sum of Rs. 500/- each would be adequate.

5. The appeal is partially allowed. The conviction and sentences u/s 306 read with Section 34 I.P.C. are set aside. The conviction u/s 498-A read with Section 34 I.P.C. stands confirmed. The sentence of the Trial Court namely rigorous imprisonment for three months and fine of Rs. 1000/- in default rigorous imprisonment for one month is set aside and in its place for the offence u/s 498-A I.P.C., the two appellants are directed to pay a fine in the sum of Rs. 500/- in default rigorous imprisonment for one month. The appellants are granted time of eight weeks to deposit the fine in the Trial Court, after which period the bail bonds to stand cancelled.