

(2002) 03 KAR CK 0072

In the Karnataka High Court

Case No : Criminal Appeal No's. 1107 of 1996 and 269 of 1997

State of Karnataka

APPELLANT

Vs

Shankar Laxman Honna Katti and Another

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Evidence Act, 1872 — Section 113 A
Penal Code, 1860 (IPC) — Section 302, 34, 498A

Citation : (2002) 4 KCCR 2267

Hon'ble Judges : N.K. Patil, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : Mohan Shantangoudar, State Public Prosecutor in Criminal Appeal No. 269 of 1997 and R.B. Deshpande, in Criminal Appeal No. 1107 of 1996, for the Appellant; R.B. Deshpande in Criminal Appeal No. 269 of 1997 and Mohan Shantangoudar, State Public Prosecutor in Criminal Appeal No. 1107 of 1996, for the Respondent

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—These two appeals assail the correctness of the judgment and order dated 28.11.1996 in Sessions Case No. 194 of 1994 on the file of the First Additional Sessions Judge, Bijapur. The two accused Shankar and Kallavva were charged with having committed offences punishable under Sections 498(A) and 302 read with 34 Indian Penal Code. The allegation was that the accused No. 1 who was the husband and accused No. 2 who was his mother had been ill-treating Surekha, the wife of accused No. 1 and daughter-in-law of accused No. 2. Briefly stated, the prosecution alleged that the accused persons were demanding that she should procure from her parents an additional sum of Rs. 5,000/- and two tolas of gold and what was started initially as pressures gradually increased into harassment and torture both physical and mental. According to the prosecution, at about 2.30 PM on the afternoon of 24.7.1994 the two accused in furtherance of their common intention doused the nylon saree which Surekha was wearing with kerosene and set fire to it as a result of which

she sustained very serious burns which were to the extent of 100%. She was taken to the hospital where her dying declaration was recorded and she died shortly thereafter. The two accused were arrested and charge sheeted and the learned trial Judge at the conclusion of the trial held that there was no worthwhile evidence on the basis of which accused No. 2 could be convicted and consequently acquitted her. As far as accused No. 1 was concerned, he was convicted of the offence punishable u/s 498(A) Indian Penal Code and awarded a sentence of one year rigorous imprisonment and fine of Rs. 250/- in default, simple imprisonment for one month. The Court also found that accused No. 1 was liable to be convicted for the offence punishable u/s 306 Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 250/- in default, simple imprisonment for one month. The accused No. 1 has preferred Criminal Appeal 1107 of 1996 assailing the correctness of the convictions and sentences and the State has filed Criminal Appeal 269 of 1997 assailing the acquittal of accused No. 1 u/s 302 Indian Penal Code as also for enhancement of the sentence u/s 498(A) Indian Penal Code. We have heard both the appeals together and propose to dispose of them through a common order.

2. As far as the State appeal is concerned, the learned State Public Prosecutor has taken us through the evidence on record and he submits that there is no manner of doubt from the finding of the trial Court whereby it has been recorded that the accused No. 1-husband was consistently ill-treating and torturing both physically and mentally deceased Surekha has been established beyond all doubt. Apart from the oral evidence to which he drew our attention, he has also relied on four letters of Surekha which are spread over a period of time. What the learned Counsel points out is that these letters conclusively establish that accused No. 1 apart from his habit of getting drunk and physically assaulting his wife was consistently torturing her and threatening her with dire consequences so much so that Surekha was materially afraid of her life and as is indicated in the letters she was virtually pleading with her parents to rescue her from this situation. The learned Counsel brings it to our notice that during the entire period of their marriage that Surekha had hardly spent something like two to three months in all at the husband's house and the rest of the time was spent with her own parents. He also points out that due to family and social pressures Surekha was made to return to the matrimonial home and that it was very clear from the sequence of events and the evidence on record that it was the persistent torture from the accused which was of a very high degree that resulted in her death. While the trial Court has held that this is not a case of homicide and that it is quite obvious that Surekha decided to commit suicide, it has been vehemently argued by the learned Counsel that the dying declaration very clearly implicated accused Nos. 1 and 2 in pouring kerosene on Surekha and setting fire to her and that consequently the offence of murder u/s 302 Indian Penal Code is clearly made out. He has assailed the correctness of the conviction u/s 306 Indian Penal Code and furthermore his submission is that the sentence awarded for the

offence u/s 498(A) Indian Penal Code is inadequate.

3. On the other hand, Sri R.B Deshpande, learned Counsel who represents the accused pointed out something of interest to us namely that there was widespread disparity both intellectually as also in economic terms between husband and wife. Surekha was an educated girl whereas her husband was virtually an illiterate milk vendor. Even as far as the economic status was concerned, the marriage was a big come-down for her. The learned Counsel points out that from the fact that she hardly resided with her husband right through the period of marriage, that it is very evident that Surekha had not only no interest in the marriage but that she was totally averse to it. His submission is that there is no worthwhile evidence, apart from the passing statements in the letters, to conclusively establish the alleged acts of cruelty and torture. He submits that it is very clear that Surekha was not only disappointed with the marriage, that she was down right against it, that she tried her best to get out of it by refusing to stay with the in-laws and finally when she was forced to go back she committed suicide purely out of self-desperation. His submission is that the charge u/s 302 Indian Penal Code is misconceived also because the dying declaration has not been fully accepted or relied upon by the trial Court since it does not pass the absolute test of scrutiny. Effectively, the learned Counsel submits that wherever a death of a young wife takes place, it has become routine to foist the offence on the husband and the in-laws with serious allegations including those of murder and that this case is no exception. He contends that the findings of the trial Court are erroneous, that the reliance on the letters is unfair to the accused because the accused has no means of refuting whatever is written therein and that on the state of the present record itself, the conviction is bad.

4. On a very careful reappraisal of the record, we find that the evidence under the first charge i.e. u/s 498(A) Indian Penal Code is absolutely conclusive. While much may be said about the oral evidence, this is a case in which we have a base of documentary evidence which leaves no manner of doubt in the mind of the Court that right through from the very beginning, consistently and upto the point when Surekha decided to put an end to her life, that it was very clear that this was because of the intense and acute harassment and torture at the hands of accused No. 1. Under these circumstances, we see no ground on which either the conviction or the sentence awarded u/s 498(A) Indian Penal Code can be interfered with.

5. As far as the conviction u/s 306 Indian Penal Code is concerned, despite elaborate submissions canvassed by Mr. R.B. Deshpande both on facts and in law, once an adverse verdict is recorded u/s 498(A) Indian Penal Code, a conviction is almost automatic where a death has occurred, u/s 306 or Section 304(B) Indian Penal Code. In the present instance, the learned trial Judge is right in his conclusion that it is clearly a case of suicide and not of homicide. It is also clear that the ingredients of Section 113A of the Evidence Act would become

applicable in a case of the present type because this is a case in which it is very clear to us that Surekha was driven to suicide because of the virtual inhuman level of torture to which she was subjected. We do concede that the situation must have got aggravated by the factors which Mr. R.B. Deshpande has pointed out but we are of the view that even if Surekha was unhappy with the marriage and averse to it, that this situation was not grave enough to ever make her decide to put an end to her life. What actually worked on her mind and forced her to a point of suicide was the intense level of cruelty to which the accused No. 1 had subjected her. Under these circumstances, the conviction u/s 306 Indian Penal Code is fully justified and again, we see no ground on which we can interfere with the quantum of sentence. Mr. R.B. Deshpande did advance a very vehement plea that the Court should review the sentences awarded on a variety of grounds but having regard to the gravity of the case and having regard to the fact that the life of a young woman has been lost under horrifying circumstances, we see no ground on which the discretion exercised by the trial Court can be interfered with.

6. Having regard to the aforesaid position, both the appeals fail and stand dismissed. We direct the trial Court to take the Appellant-accused into custody and to ensure that he serves the remainder of his sentence. The Appellant-accused shall be however entitled to set off for the period undergone by him.