

E. Balakrishnama Naidu

Vs

State of A.P.

Criminal Appeals Nos. 748 with 749 of 1991

(S. R. Pandian, Smt. M. S. Fathima Beevi JJ)

19.11.1991

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. Leave granted in both the SLPS.

2. Criminal Appeal No. 748 of 1991 arising out of S.L.P. (Crl.) No. 2448/90 is filed by one E. Balakrishnama Naidu who was arrayed as accused No. 1 before the trial Court canvassing the correctness of the judgment made by the High Court of Andhra Pradesh in Criminal Appeal No. 618 of 1989 whereby the High Court set aside the conviction of the appellant under S. 306, I.P.C. and the sentence imposed therefor and instead convicted him under S. 498A, I.P.C. and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 2,000/- in default to suffer simple imprisonment for a period of six months.

3. Criminal Appeal No. 749 of 1991 arising out of S.L.P. (Crl.) No. 431/91 is preferred by the State of Andhra Pradesh on being aggrieved by the judgment of the High Court in the same Criminal Appeal No. 618 of 1989 setting aside the conviction under S. 306, I. P. C.

4. Both these appeals arise out of a common judgment of the High Court and, therefore, we are rendering a common judgment hereunder.

5. It transpires from the records that the said E. Balakrishnama Naidu along with two others took his trial on the allegations that on 19-3-88 he caused the death of his wife, the victim in this case and that the victim was earlier subjected to harassment and cruelty. On the above allegations, the appellant and others took their trial for offences under Ss. 302, 304B, 306 and 498A, I.P.C.

6. It is seen from the judgment of the trial Court that the Additional Public Prosecutor who appeared on behalf of the prosecution has conceded that the necessary ingredients to constitute the offences except the offence under S. 306, I.P.C. have not been made out. The concession made by the Additional Public Prosecutor before the Trial Court is noted in paragraph 8 of the judgment of the Trial Court which reads as follows:

"The learned Addl. Public Prosecutor submits that evidence on record does not deal with any of the ingredients required to establish the charges referred above and, therefore, the said charges, cannot be sustained against the accused."

7. Be that as it may, the trial Court found that the evidence to convict this appellant and others under

those charges was meagre and insufficient. The relevant portion of the observations of the trial Court reads as follows:

"There is no evidence of any demand for dowry muchless that Bharati was subjected to cruelty and harassment on that account by her husband or by his relatives."

8. Consequent upon the above observation, the trial Court acquitted the appellant and other two accused of the offences under Ss. 302,304B and 498A, I.P.C. However, the learned trial Court found the appellant alone guilty of the offence under S. 306, I.P.C. and convicted him thereunder and sentenced him to undergo imprisonment for a period of 5 years and to pay a fine of Rs. 2,000/- in default to suffer simple imprisonment for six months.

9. On being aggrieved by the judgment of the trial Court, the convicted accused E. Balakrishnama Naidu who is the appellant in his appeal and the respondent in the State appeal, preferred his appeal before the High Court which for the reasons mentioned therein found E. Balakrishnama Naidu not guilty of the offence under S. 306, I.P.C. and set aside that conviction and the sentence imposed therefor but convicted him under S. 498A, I.P.C. and sentenced him as aforementioned. Hence, these two appeals, one by E. Balakrishnama Naidu and another by the State.

10. Mr. A. V. Rangam, learned counsel appearing on behalf of the appellant, Balakrishnama Naidu strenuously contended that the conviction under S. 498A as recorded by the High Court is illegal and cannot be sustained since this appellant was acquitted of the offence under S. 498A, I.P.C. by the trial Court as against which there is no appeal preferred by the State and that the finding given by the trial Court has become final. Learned counsel for the State although has not disputed the legal proposition raised by Mr. A. V. Rangam, yet contended that the High Court was not justified in setting aside the conviction under S. 306, I.P.C. as the conviction on that provision of law made by the trial Court was based on sound reasoning.

11. The High Court for the elaborate discussions made in its judgment has found on the facts of the case that there is no evidence for recording the conviction under S. 306, I.P.C. The conclusion arrived at by the High Court reads as follows:

"Though the appellant harassed the deceased for not begetting the children and caused her mental agony, there is no evidence that just before her death there was harassment by the accused to the deceased. In the absence of such an evidence showing that due to that harassment the deceased committed suicide, it cannot be said that the accused had abetted the death of the deceased. However, in this case, the evidence of P.Ws. 2 and 9 clearly established that the appellant had harassed the deceased for not begetting the children and abused her. Therefore, the accused is found guilty under S. 498A, I. P. C. Therefore, the conviction of A I under S. 306, I.P.C. is set aside."

12. For reaching the above conclusion, the High Court has also relied upon a piece of the medical evidence which is to the effect that no definite cause of death could be found as the body of the deceased was in advanced stage of putrefaction and thlat there is no direct evidence to show that the death was caused by the appellant/ accused.

13. After hearing learned 1 counsel for both the parties, we feel that the judgment of the High Court convicting the appellant, E. Balakrishnama Naidu under S. 498A cannot be sustained both legally as

well as factually and, therefore, the appeal filed by E. BalaKrisnnama Naidu has to be allowed.

14. Coming to the State appeal, we do not find any reason to interfere with the finding of the High Court as the evidence adduced by the prosecution to sustain the conviction under S. 306 is not satisfactory and acceptable. Further, the judgment of the High Court cannot be said to be suffering from any illegality or perversity so far as the acquittal of the offence under S. 306, I.P.C. is concerned. Hence the State appeal also has to be rejected.

15. In the result, the judgment of the High Court appealed against by the appellant E. Balakrishnama Naidu convicting the appellant under S. 498A, I.P.C. and the sentence imposed therefor are set aside for the reasons stated above and the appeal of E. Balakrishnama is allowed and he is acquitted. The State appeal is dismissed.

Order accordingly.

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