

SUPREME COURT OF INDIA

Tarun Alias Gautam Mukherjee

Vs.

State of W.B.

(G.B. Pattanaik and Doraiswamy Raju JJ.)

04.05.2000

ORDER

G.B. PATTANAİK, J.

1. The Appellant was charged and tried for having committed the offences under Sections 306 and 498A, I.P.C. on the allegation that the harassment and cruelty meted out to his wife forced her to commit suicide. On the basis of the evidence on record, the learned Sessions Judge convicted the Appellant under Sections 306 and 498A I.P.C. His sister who was also tried for both the offences was, however, acquitted. The Appellant carried the matter to the High Court in appeal. The High Court, on scrutiny of the evidence, came to hold that the offence under Section 306 I.P.C. has not been established by the prosecution, but, on the materials on record, came to the conclusion that the offence under Section 498A I.P.C. was established and, therefore, the conviction of Appellant under Section 498A I.P.C. was upheld and reduced the sentence to rigorous imprisonment for two years and a fine of Rs. 2,000/-. It is this conviction and sentenced passed by the High Court which is the subject-matter of challenge in this appeal. The learned Counsel for the Appellant contended before us that the deceased, no doubt, died of burn injury, but the burning itself took place because of bursting of stove, as is deposed to by PW-7, the Medical Officer attached to the hospital where the deceased had been taken first. Doctor (PW-7) in his evidence stated that the patient herself reported about the history of injury of setting fire from the bursting of stove at about 9.30p.m. on 25.7.89. The learned Counsel for the Appellant further contended, if the burning was on account of bursting of stove question of any cruelty or harassment meted out to the wife by the husband which resulted in receiving the burn injury would not arise.

2. Mr. Das, appearing for the State, however, contended that the evidence of PWs. 2, 4 and 5 would indicate the nature of harassment which the husband was giving to the wife and that would ipso facto bring home the charge under Section 498A and, therefore, the High Court was justified in convicting the Appellant under Section 498A I.P.C.

3. To appreciate this contention, we have ourselves scrutinised the evidence of PWs. 2, 4 and 5. The maid servant (PW- 4), who deposed in her evidence in chief about the fact that the accused used to assault the deceased almost daily on the instigation of his sister, but in the cross-examination, it has been elicited that she has not stated so in her statement to the police recorded under Section 161 Cr.P.C. Such material omission would discredit her version in court. If her evidence is taken out from the purview of consideration, then the evidence of PWs. 2 and 5 cannot be held to be of such nature which would establish the cruelty on the part of the husband to bring home the offence under

Section 498A I.P.C. In our view, therefore, the High Court was in error in upholding the conviction under Section 498A I.P.C.

4. We, therefore, set aside the conviction of the Appellant under Section 498A and acquit him of the said charge. The appeal is allowed accordingly. The bail bonds of the Appellant stands discharged.