

Shivcharan Lal Verma And Anr. vs State Of Madhya Pradesh on 19 February, 2002

Equivalent citations: I(2007)DMC120SC, JT2002(2)SC641, AIRONLINE 2002 SC 715

Bench: S.N. Phukan, S.N. Variava

ORDER

1. This appeal is by the two appellants who have been convicted under Sections 306 and 498A of the IPC by the learned sessions judge and have been sentenced to imprisonment for seven years for conviction under Section 306 and three years for conviction under Section 498A. The prosecution alleged that during the lifetime of the first wife-Kalindi, Shiv Charan married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result of which she ultimately committed suicide by burning herself. The incident occurred inside the house of Shiv Charan while Kaiindi and Shiv Charan were in one room and Mohini was in some other room. The learned sessions judge on appreciation of evidence of PWs 1, 2 and 3 came to the conclusion that prosecution has been able to prove both the charges against both Kalindi and Shiv Charan beyond reasonable doubt and convicted both as already said. On appeal, the High Court re-appreciated the evidence and affirmed the conviction and sentence and hence, the present appeal by way of grant of special leave.

2. This matter had not been taken up for hearing for this length of time as the judgment of this Court holding Section 306 of the IPC to be unconstitutional, was under re-consideration by the constitution bench. The constitution bench finally disposed of the matter in criminal case No. 274 of 1984 and batch and set aside the earlier judgment of this Court and held that Section 306 is constitutionally valid. In view of the aforesaid constitution bench decision, two questions arise for consideration in this appeal. One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi.

There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC. But so far as the conviction under Section 306 is concerned, the evidence of the three witnesses already referred to, make it absolutely clear that it is on account of torture by both Kalindi and Shiv Charan that Mohini committed suicide inside the house of Shiv Charan in another room. The learned sessions judge as well as the High Court have appreciated the evidence of the aforesaid three witnesses and on going through the evidence of these three witnesses, we do not find any error committed by the courts below either in

the matter of appreciation or in their approach relating to the evidence in question. We, therefore, do not find any infirmity with the conviction of the appellants under Section 306 of the IPC. So far as the sentence is concerned, they have been sentenced to undergo rigorous imprisonment for seven years but having regard to the facts and circumstances of this case, we reduce the sentence to five years. This appeal is accordingly disposed of. Bail bonds of the appellants would stand cancelled and they must surrender to undergo the remaining period of sentence.