Mohd. Hoshan, A.P. & Anr vs State Of A.P on 16 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3270, 2002 (7) SCC 414, 2002 AIR SCW 3795, 2002 (6) SCALE 488, (2002) 3 JCR 224 (SC), (2002) 7 JT 238 (SC), 2002 SCC(CRI) 1765, 2002 (9) SRJ 158, 2003 ALL MR(CRI) 387, 2002 (5) SLT 390, (2003) 1 PAT LJR 168, (2002) 3 CHANDCRIC 227, (2003) SC CR R 218, (2002) 2 DMC 594, (2002) 4 RECCRIR 155, (2003) 1 EASTCRIC 83, (2003) 2 MADLW(CRI) 855, (2003) 1 MARRILJ 112, (2003) MATLR 172, (2003) 1 RAJ CRI C 49, (2002) 6 SUPREME 562, (2003) 1 ALLCRIR 199, (2002) 6 SCALE 488, (2003) 1 UC 444, (2003) 1 JLJR 168, (2003) 1 BLJ 621, 2003 (1) ANDHLT(CRI) 228 SC, 2002 (2) ALD(CRL) 753

Author: Shivaraj V. Patil

Bench: Shivaraj V. Patil

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           CASE NO.:
Appeal (crl.) 871 of 1996
PETITIONER:
Mohd. Hoshan, A.P. & Anr.
        Vs.

RESPONDENT:
State of A.P.
DATE OF JUDGMENT:       16, 201902BENCH:
U.C. BANNERJEE &SHIVARAJ V. PATIL.
JUDGMENT:
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J U D G M E N T Shivaraj V. Patil J.

It is yet another unfortunate case of a young girl of 18 years whose all hopes and aspirations to live a happy married life were burnt and destroyed by the burn injuries caused by herself to end her life when the appellants subjected her to cruelty and abated the commission of suicide by her within 11 months after marriage.

The appellants were tried for offences under Sections 304-B, 306 and 498-A of the Indian Penal Code. The learned Sessions Judge, after trial acquitted them of all the charges giving benefit of doubt. On appeal, the High Court while confirming the order of acquittal under Section 304-B of the IPC, set aside the order of acquittal recorded under Sections 306 and 498-A and convicted and sentenced them for two years' rigorous imprisonment each for the said offences making the sentences to run concurrently. Thus, aggrieved by this judgment and order of the High Court, the appellants have filed this appeal before this Court. The State has not filed any appeal against the

order of the High Court confirming the order acquitting the appellants for the offence under Section 304-B IPC.

The prosecution case as projected during the trial is that the appellant No.1 is the son of the appellant No. 2. The deceased Razwana Parveen was married to the appellant No. 1 on 26.4.1987. Mohammed Allauddin Asir Mansoori (PW-3), Allauddin Mansoori (PW.4), and Rahman Bee (PW.5) are the brother, father and the mother of the deceased respectively. On 9.3.1988 at about 9.30 P.M., the deceased sustained burn injuries in the house of the appellants where she was living. She was shifted to Osmania General Hospital at Hyderabad. She died at 11.00 A.M. on 12.3.1988 due to burn injuries. It was alleged by the prosecution that the deceased committed suicide because of cruel treatment of the appellants after her marriage and that the appellants were demanding dowry from her.

There is no direct evidence to establish the case of the prosecution. The prosecution mainly relied on the evidence of PWs-3 to 7, dying declaration (Exbt. P2) recorded by the Magistrate V.Surender Rao (PW-1) and Exbt. P-12, report made to Head Constable.

The learned Sessions Judge, finding some minor contradictions in Exbt. P-2 and P-12, and that Exbt. P- 2 was not recorded in the language in which the dying declaration was made, rejected it stating that much weight could not be given to it. He also doubted whether the deceased was in a fit condition to make such a dying declaration. The learned trial judge did not accept the case of the prosecution that scolding and taunting of the deceased by the appellants for not preparing proper food or that she was not good looking was not such a cruelty so as to push her to commit suicide. For no good reasons, the trial court did not accept the evidence of PW-3 to 7. The High Court, on reappreciation of the evidence objectively and on dislodging the reasons given by the trial court for acquittal, convicted and sentenced the appellants. The High Court held that the trial court was wrong in rejecting Exbt. P-2, the dying declaration recorded by PW-1, the Magistrate, particularly when it was attested by the doctor on duty, PW-11. The High Court has noticed that Surender Rao, PW-1, the Magistrate has testified that on 10.3.1988 he recorded dying declaration between 2.46 A.M. to 3.15 A.M. He has certified that he had signed it and had taken the endorsement of the doctor on duty that the deceased was in a fit state of mind to make a statement; the deceased had made the dying declaration in question- answer form in Urdu and he had translated the version and recorded the declaration in English. After recording her statement, he explained the statement in Hindi to the deceased who admitted its correctness. Thereafter, he took the thumb impression of the deceased on her declaration (Exbt.P-2). In cross- examination, he has stated that he could read and speak in Hindi; the deceased had made statement in Urdu which he could understand as Urdu and Hindi languages are almost similar and in Hyderabad, Urdu and Hindi languages are spoken in the same way, there being no much difference. PW-11, Dr. Vidya Sagar, corroborated the statement of PW-1, to the effect that the deceased was in a fit mental condition to make statement and that he was present when the statement was recorded by the Magistrate. The High Court also did not agree with the reasoning of the trial court that the comment or taunting for not preparing good food was not a serious thing so as to say that the appellants treated the deceased with cruelty which made her to commit suicide. The High Court observed that based on evidence that continuous taunting and teasing led the deceased to such a situation where she had been disgusted and went to the extent of

pouring kerosene on herself and burning. The High Court observed that continuous mental cruelty practised on the deceased was a grave and serious provocation for an ordinary Indian women to do what the deceased had done in burning herself.

Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not. The High Court in the present case, having regard to the facts found and circumstances stated, rightly concluded that the continuous taunting or teasing the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. As found by the learned Sessions Judge, out of 11 months of married life, the deceased was forced to live in her parents house and could live with her husband for a period of two months in different spells. The High Court also took note of the fact that the appellants did not try to save the deceased although they were present when burn injuries were caused to her.

We are not impressed by the submissions made by the learned counsel for the appellants that the High Court committed an error in reversing the order of acquittal made by the trial court merely because the High Court could take a different view and that the reasons given by the Sessions Court for recording acquittal of the appellants were proper. On the other hand, the learned counsel for the State made submissions supporting the impugned judgment and order.

Having regard to the evidence brought on record and looking to the reasons recorded by the High Court as indicated in the foregoing paragraphs, we are of the view that the trial court committed manifest error in disbelieving the dying declaration (Exbt P/2) and the evidence of PWs 3 to 7. We have no hesitation in holding that the view taken by the trial court in acquitting the appellants was not a reasonable and justifiable view which could have been taken looking to the evidence keeping in view the well-settled principles. The High Court, in our opinion, was right and justified in reversing the order of acquittal and convicting and sentencing the appellants for the offences under Section 306 and 498-A IPC. We find no good reason to interfere with the same. However, we think it just and appropriate to modify the sentence of imprisonment for the period already undergone and order accordingly having regard to the fact that both the appellants were in imprisonment for about two months; the incident took place on 9.3.1988; the appellant No. 2 is the mother of the appellant No. 1 and she is aged 60 years; both the appellants are on bail and it may not be appropriate to send them to jail again. The appeal stands disposed of in the above terms. The bail bonds stand cancelled.