

Mahendra Singh And Anr., Gayatribai vs State Of M.P. on 7 February, 1995

Equivalent citations: 1996CRILJ894, 1995SUPP(3)SCC731

Bench: M.M. Punchhi, Sujata V. Manohar

ORDER

1. Criminal Appeal No. 743 of 1989 is filed by Mahendra Singh, the husband and his mother Radhabai the mother-in-law of the deceased Khema Bai. The appellant in Criminal Appeal No. 402 of 1989 is Gayatri Bai the sister-in-law of the husband of the deceased Khemabai. These three appellants stand convicted under Section 306 I.P.C. where under they have been sentenced to three years R.I. each. In so far as the appellants in Criminal Appeal No. 743 of 1989 are concerned, they have undergone the sentence imposed on them. Sentence of the appellant in Criminal Appeal No. 402 of 1989 stands suspended under orders of this Court after the appellant has undergone sentence barely of about ten days. The charge under Section 306 I.P.C. is basically based on the dying declaration of the deceased which when translated reads as follows:

My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning.

Learned Counsel for the appellant rightly submitted that but for the statement of the deceased there is no other pointed evidence from which it could be inferred that there was any abetment so as to bring the acts of the appellants within Section 306 I.P.C. under which the appellants have been punished. The dying declaration, per se, could not involve the appellants in offence punishable under Section 306 I.P.C., because it provides for abetment of suicide. Whoever abets the commission of suicide, and if any person commits suicide due to that reason, he shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a thing, or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Neither of the ingredients of abetment are attracted on the statement of the deceased. The conviction of the appellants under Section 306 I.P.C. merely on the allegation of harassment to the deceased is not sustainable. The appellants deserve to be acquitted of the charge.

2. It was, however, brought to our notice by learned Counsel for the State that since the occurrence took place on 14-3-1984, Section 498A I.P.C. had priority on 25-12-1983 been brought on the statute book and that the appellant could well have been charged under the said provision which may now be applied in substitution. That appears to be so. But at this distance of time, we think it would be imprudent to substitute the charge and cull out incidence of cruelty inflicted on the deceased by the husband or relatives of the husband and determine whether any wilful conduct is attributed to the appellants which would likely to drive the deceased to commit suicide or to cause grave injury to her (whether physically or mentally) Prejudice would, in our view, be writ large if we involve the appellants under Section 498-A I.P.C. in substitution. Even otherwise, substantial justice has been done when the husband and his mother, appellants in Criminal Appeal No. 743 of 1989 have undergone the sentence imposed on them. Their appeal would stand disposed of as infructuous. The sister-in-law also has undergone some sentence, though not much. The appeal of the sister-in-law would therefore stand allowed and she is acquitted of the charge. She is on bail. The bail bonds stands cancelled.