

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G

Criminal Appeal No. 707/1995

Inderpal Appellant

VERSUS

State of M.P. Respondent
(With Office Report)

Date : 06/12/2000 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE R.P. SETHI

For Appellant Mr. Dhruv Mehta, Adv.
Ms. Shobha, Adv.
for Mr. S.K. Mehta, Adv.

For Respondent Ms. Kamakshi S. Mehlwal, Adv.
Mr. Uma Nath Sinhg, Adv.

UPON being mentioned the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J.
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.SP2
Appeal is allowed in terms of the signed order.
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(N.K. GOEL) (H.K. BHATIA) @@
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COURT MASTER COURT MASTER@@
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(Signed order is placed on the file)

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L.....T.....T.....T.....T.....T.....T.....T.....T.....T.....R
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 707 of 1995@@
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VERSUS

State of M.P.

Respondent

O R D E R@@
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.SP2

Appellant was charged and tried for the offence under Section 306 of the Indian Penal Code. The trial court convicted him and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000/- (in default of which he was to undergo imprisonment for 3 months). The High Court while dealing with his appeal found that the offence under Section 306 IPC was not made out as it could not be held that death of the deceased was due to commission of suicide. Nonetheless, the High Court proceeded to consider whether any other offence has been made out and ultimately found that appellant is guilty of the offence under Section 498A of the IPC. He was convicted thereunder and was sentenced to undergo rigorous imprisonment for 3 years. The said judgment of the High Court is now under challenge before us by special leave.

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Facts of the case are as under:

Appellant was the husband of Damyanti. Their marriage was solemnised on 2nd June, 1990. The matrimonial life was short lived as she died of burns on 16th November, 1990. Appellant informed the police on 14th November, 1990 that his wife suffered burn injuries. Subsequently, father of the deceased and other kith and kin of Damyanti complained to the investigating officers that her death could have been under circumstances which could create suspicion against the appellant. Police investigated in that direction and finally police charge-sheeted the appellant for the offence under Section 306 IPC.

Learned counsel adopted a twin contention. One is that there was no evidence, on which a conclusion can be made that appellant subjected Damyanti to cruelty as envisaged under Section 498A IPC. Second is when no charge under Section 498A IPC was framed against the appellant it was not open to the High Court, after holding that the offence under Section 306 IPC was not made out, to change into a different offence like 498A IPC.

We will consider at first the contention as to whether there is any evidence against the appellant which can be used against him for entering upon a finding that he subjected Damyanti to cruelty as contemplated in Section 498A IPC. PW1 - father of the deceased and PW8 - mother of the deceased have stated that Damyanti had complained to them of her plight in

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the house of her husband and particularly about the conduct of appellant. PW-4 - sister of the deceased and PW5 - a relative of the deceased have also spoken more or less in the same line. Exhibit P-7 and Exhibit P-8 are letters said to have

been written by Damyanti. In those two letters reference has been made to her life in the house of her in-laws and in one of the letters she said that her husband had subjected her to beating.

Apart from the statement attributed to the deceased none of the witnesses had spoken to anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8 (letters).

Before deciding that question we have to point out that the High Court came to a conclusion that the allegation that she committed suicide was not substantiated. A dying declaration was recorded by the Executive Magistrate in which deceased had stated that she got burns accidentally from a stove. If that be so, death could not be the result of either any harassment or any cruelty which she was subjected to. In this context we may point out that the State has not challenged the finding of the High Court that death of Damyanti was not due to commission of suicide.

Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be ..4/-

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admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P7 or Exhibit P8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498A IPC disjuncted from the offence under 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned.

As there is no single piece of evidence which can be admitted in law to be used against the appellant we are left with the only alternative to set aside the conviction of the appellant. In this view of the matter it is not necessary for us to consider the second limb of the contention that the offence found against the appellant was not included in the charge framed against him.

In the result we allow this appeal, set aside the conviction and sentence passed on the appellant and acquit him. Appeal is disposed of accordingly.

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.....J.@@

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(K.T. THOMAS)@@

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.....J.@@

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(R.P. SETHI)@@

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NEW DELHI@@

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DECEMBER 6, 2000 @@

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