

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 2092/2008

VIDYA VINOD DHAKATE

Appellant(s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

O R D E R

The appellant is aggrieved by judgment and order dated 6th June, 2008 passed by the Division Bench of the High Court of Judicature at Bombay in Criminal Appeal NO. 723 of 2002.

The case of the prosecution was that the deceased Vinod Haribhau Dhakate aged about 35 years, husband of the appellant was working as a teacher in a school in Mohadi, District Chandrapur (Maharashtra). He was suffering from some mental disorder from the year 1993 onwards and was being treated by a Psychiatrist from Nagpur . It appears that his condition worsened and he started turning violent.

On the advice of some well-wishers, the appellant took her husband to the Ashram of Girdhar Meshram (A3) and Sou. Taibai Girdhar Meshram (A4). It appears that to remove the "evil spirit" in her husband, his hands and legs were tied to a pole from 06th May, 2001 onwards. No food or water was provided to him and he was kept in the open courtyard without any shed over his head. The deceased asked for food and water but that was not provided to him so that the "evil spirit" would leave his body.

It has come on record that PW 13 (Govardhan) stated in his

deposition that on one occasion the appellant sought to provide her husband a glass of water but she was prevented from doing so. Notwithstanding these facts, the trial court convicted the appellant for an offence punishable under Section 302 of Indian Penal Code (IPC).

On appeal, the High Court took the view that the appellant was guilty of an offence punishable under Part II of Section 304 of IPC. Accordingly, the High Court sentenced her to imprisonment for three years.

We have heard learned counsel for the appellant as well as the State and are of the view that the offence punishable under Part II of Section 304 of IPC is not made out.

There is no doubt that the deceased was suffering from mental disorder and perhaps with a view to cure him of that mental disorder, the appellant took him to the Ashram of A3 and A4. The intention of the appellant was to cure her husband and not to cause his death. However, she was ill-advised to keep the hands and feet of her husband tied in the open sun in the summer. This led to the husband asking for food and water but even that was denied to him. However, it has also come on record that the appellant sought to offer water to her husband but was prevented from doing so. It is quite clear from the evidence on record that the appellant acted *bona fide* to cure her husband, though she was ill-advised. Under the circumstances, it can hardly be said that she had the knowledge that her actions would lead to the death of her husband.

However, we are of the view that in the peculiar facts of this case, the appellant has acted in a rash or negligent manner in not

realizing that putting her husband to the agony of remaining in the sun without food and water might result in his death. Accordingly, in our opinion, the appellant has committed the offence punishable under Section 304A of IPC, namely, that she has caused the death of her husband by committing a rash or negligent act not amounting to culpable homicide.

Accordingly, the appellant is convicted for the offence punishable under Section 304A of IPC. We are told that she has undergone actual imprisonment for 13 months and has two minor children to look after.

Taking these facts into consideration, we are of the view that her sentence may be converted to the period already undergone by the appellant.

The appeal is allowed. The conviction of the appellant under Part II of Section 304 of IPC is set aside. However, she is convicted for an offence punishable under Section 304A of IPC and is sentenced to imprisonment for the period already undergone.

The appeal is partly allowed.

.....J.
[Madan B. Lokur]

.....J.
[C. Nagappan]

NEW DELHI
SEPTEMBER 3, 2014

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 S

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(With appln. (s) for permission to file additional documents and office report)

Date : 03/09/2014 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE C. NAGAPPANFor Appellant(s) Dr. J. P. Dhanda, Adv.
Ms. Raj Rani Dhanda, Adv.
Mr. Vineet Dhanda, Adv.
Mr. N.A. Usmani, Adv.

For Respondent(s) Ms. Asha Gopalan Nair, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The criminal appeal is partly allowed in terms of the Signed Order.

(MEENAKSHI KOHLI)
COURT MASTER(SAROJ SAINI)
COURT MASTER

[Signed Order is placed on the file]

