

A RAVINDRA TUKARAM HIWALE
v.
STATE OF MAHARASHTRA
(Criminal Appeal Nos. 1419-1420 of 2010)

B AUGUST 2, 2010

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860:

C ss. 306 and 498-A – A married woman causing her death
by burning herself – Husband convicted u/ss 306 and 498-A
and sentenced to four years and one year's RI respectively –
High Court enhancing sentence u/s 306 to six years – HELD:
D In the light of the dying declaration made by the deceased
that she had quarrelled with her husband that very morning,
i.e. the date of occurrence, (which is a common place
happening amongst young married couples), High Court was
not justified in holding that the accused was liable to an
enhancement in the sentence on account of his quarrelsome
E nature – It must also be emphasized that the interference of
the appellate court on the quantum of sentence should be rare
and only in exceptional cases – Section 306 provides for a
sentence which may extend to 10 years and it was the
prerogative of trial court to award a sentence upto 10 years –
F Trial court gave a positive finding that there was no
misbehaviour on the part of the accused over a period of time
and the incident was a spontaneous one arising out of a family
quarrel in the morning – The finding of High Court based on
two letters written about a year before the incident would,
G therefore, have little value in the light of the dying declaration
– The incident happened in February, 1990 and the accused
has undergone about four years of the sentence – The
sentence awarded by High Court is quashed and the judgment
of trial court confirmed – Criminal Law – Interference with

H

quantum of sentence by appellate court – Propriety of – Sentence. A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. : 1419-1420 of 2010.

From the Judgment & Order dated 02.08.2006 of the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Appeal Nos. 53 & 199 of 1991. B

B. Sridhar for the Appellant.

Shankar Chillargee, Asha G. Nair, Ravindra Keshavrao Adsure for the Respondent. C

The following order of the Court was delivered

ORDER

Leave granted. D

The appellant was married with the deceased Alka after the death of his first wife. As per the prosecution story at about 7.00 a.m. on 6th February, 1990 the deceased suffered serious burn injuries in the kitchen of the house and ultimately died of those injuries. It is the prosecution case that at about 8.30 a.m. on the 9th February 1990 she made a dying declaration to PW.10 - a Police Head Constable, in which she stated that she had a quarrel with her husband over the house-hold chores and over the feeding of the children and she had thereafter poured kerosene on herself and then burnt herself. E F

The Trial Court on a consideration of the evidence convicted the appellant for offences punishable under Section 498-A and to a sentence of one year and under Section 306 to a sentence of four years. The appellant thereafter filed an appeal in the High Court of Bombay whereas the State of Maharashtra also filed an appeal pleading for a higher sentence. The appeal filed by the appellant was dismissed. The appeal filed by the State was allowed and the sentence awarded by the Trial Court under Section 306 IPC was H

A enhanced from four to six years. It is in this situation that the matter is before us.

B The learned counsel for the appellant has made only one argument before us. He has submitted that the High Court had observed that the appellant appeared to be of a quarrelsome and aggressive nature and as evidence of his behaviour had placed reliance on two letters which required that a heavy sentence should be imposed. We see, however, that in the light of the dying declaration made by the deceased that she had quarreled with her husband that very morning (which is a common place happening amongst young married couples), the High Court was not justified in holding that the appellant was liable to an enhancement in the sentence on account of his quarrelsome nature. We must also emphasize that the interference of the appellate court on the quantum of sentence should be rare and only in exceptional cases. Section 306 of the IPC provides for a sentence which may extend to 10 years. It was therefore the prerogative of the Trial Court to award a sentence up to 10 years. As already mentioned above the trial court had given a positive finding that there was no misbehaviour on the part of the appellant over a period of time and the incident was a spontaneous one arising out of a family quarrel in the morning. The finding of the High Court based on two letters written about a year before the incident would therefore have little value in the light of the dying declaration of the deceased. We also notice that the incident happened in February, 1990 and we are told by the learned amicus curiae that the appellant has undergone about four years of the sentence.

G We accordingly allow the appeal, quash the sentence awarded by the High Court and confirm the judgment of the Trial Court. In the meantime, we also direct that the appellant who is in custody, shall be released forthwith if not required in connection with any other case.

H R.P.

Appeal allowed.