2. We have heard counsel for the appellants as well as the respondent-State. We have perused the facts and the circumstances of the case and the ocular evidence tendered by the prosecution. We have scrutinised the reasons which weighed with the learned Single Judge as well as the High Court in convicting the present appellants. We are of the opinion that the view taken by both the courts below on the appreciation of evidence tendered by the prosecution is unassailable.

3. Counsel for the appellants emphasised that the injuries were caused on non-vital parts of the deceased, Balwant Singh. It appears that the deceased Balwant Singh was a lame person. The relations between deceased and Sujan Singh were strained. The appellants were lying amongst the bushes and when the deceased got down from the bus and was proceeding towards his house they assaulted him with deadly weapons like 'jailies', 'lathies' and 'pharsa'. It may be that the blows did not fall on the head or other vital parts of the body but the fact remains that the injuries caused the death of Balwant Singh. Besides, the assault by weapons continued even after the victim fell down. His legs were twisted and broken. In the circumstances we do not think that this is a fit case where the appellants can be let off on sentence already undergone which is approximately one-and-a-half years only.

4. It was next contended that the sentence of seven years' rigorous imprisonment was on the higher side. The conviction being under Section 304 Part II we think it would be appropriate to reduce the sentence to rigorous imprisonment for five years. Except for this modification in the sentence we see no merit in this appeal. The appeal will stand disposed of accordingly. The appellants will surrender to the bail and serve out the remaining part of the sentence.

1992 Supp (3) Supreme Court Cases 70

(BEFORE S. RATNAVEL PANDIAN AND M. FATHIMA BEEVI, JJ.)

Criminal Appeal No. 748 of 1991†

E. BALAKRISHNAMA NAIDU .. Appellant;

Versus

STATE OF ANDHRA PRADESH .. Respondent.

† Arising out of SLP (Crl.) No. 2448 of 1990

With

Criminal Appeal No. 749 of 1991‡

STATE OF ANDHRA PRADESH .. Appellant;

Versus

E. BALAKRISHNAMA NAIDU .. Respondent.

Criminal Appeal Nos. 748 and 749 of 1991, decided on November 19, 1991

Penal Code, 1860 — Ss. 306 and 498-A — Trial court convicting appellant under S. 306 for abetting commission of suicide by his wife but acquitting him from charge under S. 498-A — In appellant's appeal High Court finding that though appellant had harassed the deceased for not begetting children and caused mental agony, there was no evidence that just before her death there was harassment by appellant of the deceased and accordingly setting aside conviction under S. 306 but on the basis of evidence regarding harassment convicting him under S. 498-A — Held, in absence of State appeal against trial court's order of acquittal under S. 498-A, High Court's order of conviction under S. 498-A cannot be sustained — Factually also such conviction not sustainable — High Court's order of acquittal of offence under S. 306 being not illegal or perverse, no interference called for — Hence appellant entitled to be acquitted — CrPC, 1973, Ss. 378 and 386

R-M/A/11420/SR

The Judgment of the Court was delivered by

S. RATNAVEL PANDIAN, J.— Leave granted in both the SLPs.

2. Criminal Appeal No. 748 of 1991 arising out of SLP (Cri) No. 2448 of 1990 is filed by one E. Balakrishnama Naidu who was arrayed as accused 1 before the trial court canvassing the correctness of the judgment made by the High Court of Andhra Pradesh in Criminal Appeal No. 618 of 1989 whereby the High Court set aside the conviction of the appellant under Section 306 IPC and the sentence imposed therefor and instead convicted him under Section 498-A IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs 2000 in default to suffer simple imprisonment for a period of six months.

3. Criminal Appeal No. 749 of 1991 arising out of SLP (Cri) No. 431 of 1991 is preferred by the State of Andhra Pradesh on being aggrieved by the judgment of the High Court in the same Criminal Appeal No. 618 of 1989 setting aside the conviction under Section 306 IPC.

4. Both these appeals arise out of a common judgment of the High Court and, therefore, we are rendering a common judgment hereunder.

5. It transpires from the records that the said E. Balakrishnama Naidu along with two others took his trial on the allegations that on

‡ Arising out of SLP (Crl.) No. 431 of 1990

March 19, 1988 he caused the death of his wife, the victim in this case and that the victim was earlier subject to harassment and cruelty. On the above allegations, the appellant and others took their trial for offences under Sections 302, 304-B, 306 and 498-A IPC.

6. It is seen from the judgment of the trial court that the Additional Public Prosecutor who appeared on behalf of the prosecution has conceded that the necessary ingredients to constitute the offences except the offence under Section 306 IPC have not been made out. The concession made by the Additional Public Prosecutor before the trial court is noted in paragraph 8 of the judgment of the trial court which reads as follows:

> "The learned Additional Public Prosecutor submits that evidence on record does not deal with any of the ingredients required to establish the charges referred above and, therefore, the said charges cannot be sustained against the accused."

7. Be that as it may, the trial court found that the evidence to convict this appellant and others under those charges was meagre and insufficient. The relevant portion of the observations of the trial court reads as follows:

> "There is no evidence of any demand for dowry much less that Bharati was subjected to cruelty and harassment on that account by her husband or by his relatives."

8. Consequent upon the above observation, the trial court acquitted the appellant and other two accused of the offences under Sections 302, 304-B and 498-A IPC. However, the learned trial court found the appellant alone guilty of the offence under Section 306 IPC and convicted him thereunder and sentenced him to undergo imprisonment for a period of 5 years and to pay a fine of Rs 2000 in default to suffer simple imprisonment for six months.

9. On being aggrieved by the judgment of the trial court, the convicted accused E. Balakrishnama Naidu who is the appellant in his appeal and the respondent in the State appeal, preferred his appeal before the High Court which for the reasons mentioned therein found E. Balakrishnama Naidu not guilty of the offence under Section 306 IPC and set aside that conviction and the sentence imposed therefor but convicted him under Section 498-A IPC and sentenced him as aforementioned. Hence, these two appeals, one by E. Balakrishnama Naidu and another by the State.

10. Mr A.V. Rangam, learned counsel appearing on behalf of the appellant, E. Balakrishnama Naidu strenuously contended that the conviction under Section 498-A as recorded by the High Court is illegal and cannot be sustained since this appellant was acquitted of the offence

under Section 498-A IPC by the trial court as against which there is no appeal preferred by the State and that the finding given by the trial court has become final. Learned counsel for the State although has not disputed the legal proposition raised by Mr A.V. Rangam, yet contended that the High Court was not justified in setting aside the conviction under Section 306 IPC as the conviction on that provision of law made by the trial court was based on sound reasoning.

11. The High Court for the elaborate discussions made in its judgment has found on the facts of the case that there is no evidence for recording the conviction under Section 306 IPC. The conclusion arrived at by the High Court reads as follows :

> "Though the appellant harassed the deceased for not begetting the children and caused her mental agony, there is no evidence that just before her death there was harassment by the accused to the deceased. In the absence of such an evidence showing that due to that harassment the deceased committed suicide, it cannot be said that the accused had abetted the death of the deceased. However, in this case, the evidence of PWs 2 and 9 clearly established that the appellant had harassed the deceased for not begetting the children and abused her. Therefore, the accused is found guilty under Section 498-A IPC. Therefore, the conviction of A-1 under Section 306 IPC is set aside."

12. For reaching the above conclusion, the High Court has also relied upon a piece of the medical evidence which is to the effect that no definite cause of death could be found as the body of the deceased was in advanced stage of putrefaction and that there is no direct evidence to show that the death was caused by the appellant/accused.

13. After hearing learned counsel for both the parties, we feel that the judgment of the High Court convicting the appellant, E. Balakrishnama Naidu under Section 498-A cannot be sustained both legally as well as factually and, therefore, the appeal filed by E. Balakrishnama Naidu has to be allowed.

14. Coming to the State appeal, we do not find any reason to interfere with the finding of the High Court as the evidence adduced by the prosecution to sustain the conviction under Section 306 is not satisfactory and acceptable. Further, the judgment of the High Court cannot be said to be suffering from any illegality or perversity so far as the acquittal of the offence under Section 306 IPC is concerned. Hence the State appeal also has to be rejected.

15. In the result, the judgment of the High Court appealed against by the appellant E. Balakrishnama Naidu convicting the appellant under Section 498-A IPC and the sentence imposed therefor are set aside for

the reasons stated above and the appeal of E. Balakrishnama is allowed and he is acquitted. The State appeal is dismissed.

1992 Supp (3) Supreme Court Cases 74

(BEFORE A.M. AHMADI, K. RAMASWAMY AND R.M. SAHAI, JJ.)

ABDUL SATTAR .. Appellant;

Versus

STATE OF GOA .. Respondent.

Criminal Appeal No. 62 of 1992†, decided on January 22, 1992

Constitution of India — Art. 136 — Appeal against conviction — Non-consideration of relevant defence evidence — Remand — Accused's house searched — PW 1, the only independent witness, working as Home Guard — Defence case that PW 1 was not present at the time of the search supported by two letters written by authorities concerned showing that he was on traffic duty elsewhere at the time of the search — High Court refusing to look into the two documents on the ground that PW 1 was thoroughly examined — Held, these documents were relevant and an opportunity should have been allowed to impeach the veracity of PW 1 — Hence matter remitted to High Court for disposal in accordance with law — Evidence Act, 1872, S. 3

R-M/11498/SR

ORDER

1. Special leave granted.

2. In the present case the prosecution examined as many as six witnesses, two of whom were police witnesses, one was the landlady who turned hostile and PW 1 was the only independent witness whose evidence has been acted upon. PW 6 is the Investigating Officer. It appears that the house was searched on March 5, 1986 at about 9.00 a.m. It was suggested in the cross-examination of PW 1 that he was working as a Home Guard and was not present at the time of search. In support of this suggestion, a letter purported to have been written by the Sub-Divisional Police Officer, Mapusa, Goa dated January 23, 1990 was relied upon to show that this witness was actually detailed for traffic duty at Colvale on March 5, 1986 from 8.00 to 12.30 hrs. Another document dated May 10, 1988 was produced to show that PW 1 was enrolled as a Home Guard volunteer on January 27, 1986 and he was on traffic duty at Mapusa on March 5, 1986. These two documents were of vital importance to determine whether PW 1 was telling the truth when he said that he was with the raiding party at 9.00 a.m. on March 5, 1986. We think that the High Court should have recalled the witness and permitted

† Arising out of SLP (C) No. 1696 of 1990