

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1549 OF 2017

(Arising out of SLP (Criminal) No. 6623 of 2017)

(Arising out of SLP (Criminal) Diary No. 18934 of 2017)

STATE GOVT. OF NCT OF DELHI ... Appellant

VERSUS

RAMO DEVI ... Respondent

O R D E R

Delay in filing the special leave petition is condoned.

Leave granted.

The High Court, by the impugned order, has allowed the appeal of the respondent herein against the conviction recorded by the Trial Court only on the ground that the charge framed against the respondent was under Section 304B of the Indian Penal Code (IPC) and in the absence of any charge framed under Section 306 IPC, the Trial Court could not convict the respondent under Section 306 IPC.

This view is not correct in law having regard to the pronouncement by this Court in the case of '*K. Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors.*' [2003 (1) SCC 217] wherein it has been held that where the charge is framed under Section 304-B IPC, even in the absence of specific charge framed under Section 306 IPC, the accused can be

convicted under Section 306 IPC.

The relevant portion of the said judgment reads as under:

"22. Mere omission or defect in framing charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The Code of Criminal Procedure has ample provisions to meet a situation like the one before us. From the statement of charge framed under Section 304-B and *in the alternative* Section 498-A IPC (as quoted above) it is clear that all facts and ingredients for framing charge for offence under Section 306 IPC existed in the case. The mere omission on the part of the trial Judge to mention Section 306 IPC with Section 498-A IPC does not preclude the court from convicting the accused for the said offence when found proved. In the alternate charge framed under Section 498-A IPC, it has been clearly mentioned that the accused subjected the deceased to such cruelty and harassment as to drive her to commit suicide. The provisions of Section 221 CrPC take care of such a situation and safeguard the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence. Section 221 CrPC needs reproduction:

"221. *Where it is doubtful what offence has been committed.*- (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

23. The provision of sub-section (2) of Section 221 read with sub-section (1) of the said section can be

taken aid of in convicting and sentencing Accused 1 of offence of abetment of suicide under Section 306 IPC along with or instead of Section 498-A IPC."

In view thereof, this appeal is allowed and the impugned judgment of the High Court is set aside. The matter is remitted back to the High Court to decide Criminal Appeal No. 827 of 2015 filed in the High Court on merits.

However, the respondent shall not be arrested till the next date before the High Court.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
August 25, 2017.

ITEM NO.50

COURT NO.6

SECTION II-C

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

Diary No. 18934/2017

(Arising out of impugned final judgment and order dated 02-06-2016 in CRLA No. 827/2015 passed by the High Court of Delhi at New Delhi)

STATE GOVT. OF NCT OF DELHI

Petitioner(s)

VERSUS

RAMO DEVI

Respondent(s)

(With IA 56325/2017 - FOR CONDONATION OF DELAY IN FILING)

Date : 25-08-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Ms. V. Mohana, Sr. Adv.
Mr. Rajesh Singh Chauhan, Adv.
Mr. Anmol Chandan, Adv.
Ms. Sushma Manchanda, Adv.
Mr. G. S. Makker, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s)

Ms. Nidhi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MADHU NARULA)
COURT MASTER

[Signed order is placed on the file.]