

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1753/2019

SHAIK MUKTHAR & ANR.

APPELLANT(S)

VERSUS

THE STATE OF ANDHRA PRADESH
NOW STATE OF TELANGANA

RESPONDENT(S)

ORDER

This appeal is filed questioning the judgment dated 20.03.2019 passed by the High Court of the State of Telangana at Hyderabad in Criminal Appeal No. 1140 of 2013 confirming the conviction of the appellants for the offence under Section 498A of the Indian Penal Code, 1860 ("IPC") and sentencing the appellants to undergo imprisonment for two years. The Trial Court had sentenced to undergo imprisonment for three years.

We find from the judgment of the High Court that the appellants were not heard in the High Court. The appellants advocate remained absent on the date of

hearing. The appellants should not have been penalized for the same.

It is by now well settled by a catena of judgments such as the decision of this Court in *Rakesh & Anr V. State of Madhya Pradesh*, 2011(12) SCC 512, that it is in the interest of justice to appoint an amicus curiae to assist the court where the accused is unrepresented. The Court may also refer the matter to the Legal Services Committee, which may appoint an advocate to represent the accused. The High Court, unfortunately, has not chosen to either appoint an Amicus curiae or to refer the matter to the Legal Services Committee requesting it to appoint an advocate. Hence, the matter is fit to be remitted to the High Court.

However, we have chosen to appreciate the evidence placed on record having regard to the fact that the incident occurred in the year 2011 and that the accused have been in custody for about 8 months.

It is relevant to note that Accused No. 1, the husband of the deceased, was charged separately under Section 302 of the IPC, and was convicted by the Trial Court as well as the High Court. He has not questioned the judgment of conviction and consequently is undergoing

sentence of life imprisonment.

The prosecution mainly relies upon the evidence of PW-1 to PW-5 to prove that the appellants have committed the offence punishable under Section 498A of the IPC. We have carefully perused the evidence of PW-1 to PW-5 in detail. Though in his examination-in-chief, PW-1 has deposed against these appellants, in the cross-examination, he admits that Accused No. 2, Appellant No. 1 herein, was married much prior to the marriage of the deceased with Accused No. 1 and was residing separately. He has two houses at Chandoor. The mother of Accused No. 2 also resides in an old house situated near the house of Accused No. 1. Accused No. 3, the sister of Accused No. 1, Appellant No. 2 herein, was also married. PW-2, PW-3 and PW-4 have not deposed anything as against the appellants herein. Thus, virtually, the evidence of PW-1 to PW-4 does not support the case of the prosecution so far as the appellants herein are concerned. However, PW-5, the minor son of the deceased and Accused No. 1 has specifically deposed that the Appellants herein also used to harass and beat the deceased. He also admits that Accused No. 2 (Appellant No. 1 herein) is residing in his house independently in the old locality of Chandoor. We

are conscious of the well settled proposition that the evidence of a minor, particularly when he is the sole witness, has to be scrutinized by the Court very carefully.

Be that as it may, since PW-5 had deposed certain facts against the appellants and has withstood the test of cross-examination, in our considered opinion, the High Court was justified in maintaining the conviction as against the appellants for the offence punishable under Section 498A of the IPC. However, having regard to the entire material on record as well as under the facts and circumstances of this case, we are of the considered view that the interest of justice will be met in case the sentence imposed upon these appellants is reduced to the period already undergone. We have taken into consideration the fact that Accused No. 2 (Appellant No. 1 herein) was living in a separate house in a different area along with his aged mother. Accused No. 3 (Appellant No. 2 herein) was also a married sister.

The appeal is, therefore, allowed in part. The conviction of the appellants for the offence punishable under Section 498A of the IPC is maintained. However, the sentence is reduced to the period already undergone.

Since the appellants are in custody, they shall be released forthwith if not required in any other case.

.....J.
[MOHAN M. SHANTANAGODAR]

.....J.
[R. SUBHASH REDDY]

NEW DELHI;
FEBRUARY 04, 2020.



ITEM NO.101

COURT NO.13

SECTION II

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

Criminal Appeal No(s). 1753/2019

SHAIK MUKTHAR & ANR.

Appellant(s)

VERSUS

THE STATE OF ANDHRA PRADESH
NOW STATE OF TELANGANA

Respondent(s)

IA No. 170640/2019 - GRANT OF BAIL)

Date : 04-02-2020 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE R. SUBHASH REDDYFor Appellant(s) Mr. P. Prabhakar, Adv.
Mr. P. Srinivas Reddy, Adv.
Mr. Manoj C. Mishra, AORFor Respondent(s) Ms. Bina Madhavan, Adv
Mr. S.. Udaya Kumar Sagar, AOR
Ms. Swati Bhardwaj, Adv.

A L L A B O U T L A W

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

The appeal is allowed in part in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.(ASHWANI THAKUR)
COURT MASTER (SH)(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)