

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2624 of 1999

1. Chhote Lal (dead) (name deleted as per Court order dated 17-03-2015).
2. Rajkumar (dead) (name deleted as per Court order dated 17-03-2015).
3. Kirti, wife of Santosh Kumar, aged 28 years, At – Naysarkanda, Mohalla – Jabdapara, Santosh Kumar General Store, Bilaspur.
4. Karuna, wife of Ranjan Kumar, aged 31 years, At – Yadavnagar, Flat No.231, Nagpur, (Maharashtra).

---- Appellants

Versus

1. The State Of Madhya Pradesh (now State of Chhattisgarh), through Police Station Rajnandgaon, District Rajnandgaon, M.P. (now C.G.)

---- Respondent

For Appellants – Shri Ghanshyam Patel, Advocate.

For Respondent – Shri Akhilesh Mishra, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

17/03/2015

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 23-9-1999 passed by the First Additional Sessions Judge, Rajnandgaon (M.P.) (now C.G.) in Sessions Trial No.177/95 whereby and whereunder the First Additional Sessions Judge convicted both the appellants under Section 498-A of the Indian Penal Code (in short 'the IPC') for committing cruelty to deceased Sangeeta died in further incident and sentenced them rigorous imprisonment for 3 years and fine Rs.2000/-, in

default of payment of fine, to undergo additional rigorous imprisonment for 6 months.

2. Conviction is impugned on the ground that without there being any iota of evidence, the trial court has convicted the sentenced the appellants as aforementioned and thereby committed illegality.

3. The other co-appellants Chhote Lal and Rajkumar were convicted for offence under Section 304B, 498A of the IPC and they were also sentenced accordingly. Both these co-appellants namely Chhote Lal and Rajkumar died during pendency of this appeal. Co-appellant Chhotelal died on 18-02-2010 and co-appellant Rajkumar died on 30-04-2009 and by order dated 17-03-2015 the appeal filed on behalf of these co-appellants namely Chhotelal and Rajkumar stands abated under Section 394 of the Code of Criminal Procedure, 1973 (in short 'the Code').

4. As per the case of the prosecution, on 25-07-95 at about 8.30 p.m. Sangeeta wife of Rajkumar admitted in the hospital in burnt condition. The matter was informed to Rajnandgaon police. Junior Sub-Inspector G.C.Pati reached to the hospital and dying declaration of Sangeeta was duly recorded. After initial enquiry the Investigating Officer wrote the First Information Report (Ex.-P/22) against the present appellants and other co-accused. During the treatment, Sangeeta was died on 26-07-95 at about 8.30 a.m. Her death was informed to police vide Ex.-P/23. The Investigating Officer reached to the hospital and after giving inquest notice Ex.-P/3, inquest Ex.-P/2 was made and the body was sent for autopsy to District Hospital Rajnandgaon. Dr.A.K.Gupta (PW-13) conducted the autopsy and noticed 100% burn over the body. The injuries were antemortem with smell of kerosene oil. As per his opinion cause of death was due to shock caused by extensive burn. Duration of death to PM done is about within 12 hours. Viscera, hair and other substance were preserved and handed over the concerned police Constable. G.C.Pati (PW-18)

after entire investigation recorded the statements of the witnesses under Section 161 of the Code. Viscera and seized articles were sent to Forensic Science Laboratory and opinion of State Examiner of Questioned Documents was also sought for. The charge sheet was filed before the Chief Judicial Magistrate, Rajnandgaon, who, in turn, committed the case to the Court of Sessions, the learned First Additional Sessions Judge received the case on transfer. The appellant and other co-accused were charged for the offence under Sections 304B, 306 and 498A of the IPC and all the accused denied the charges and prayed for trial.

5. Prosecution examined 19 witnesses to prove the guilt of the accused. The statements of the accused were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them and pleaded innocence and false implication in crime in question. The accused persons also examined Kishore Kumar (DW-1), Rupa Kasar (DW-2), Natthulal (DW-3), Suraj Lal (DW-4) and Shyam Kumar (DW-5). As per statements of all these defence witnesses, the accused persons are not responsible for the death of Sangeeta. She herself committed suicide for which accused are not responsible and the accused persons had not committed any cruelty to Sangeeta.

6. After providing opportunity of hearing to the parties, the learned First Additional Sessions Judge convicted and sentenced the present appellants as aforementioned and also convicted and sentenced the co-accused/co-appellants against whom the appeal stands abated on account of their death as aforementioned.

7. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

8. Learned counsel appearing on behalf of the appellants submitted that he is not contesting the present appeal for conviction of the appellants under section 498A of the IPC. He is only submitting submission for the quantum of

sentence awarded to the present appellants. As submitted, the incident is about 20 years old, both the appellants were not residing with the deceased, both were married at the time of incident living separately Kirti at Bilaspur and Karuna at Nagpur; they were not in day to day contact with the deceased, they were living with their family and husband; they are woman. The main accused Chhotelal and Rajkumar convicted for the substantive offence under Sections 304B and 498A of the IPC; the father-in-law and the husband are died and the appeal stands abated for them. The present appellants also served a part of sentence from 26-07-95 to 04-08-95 i.e. for about 10 days; they have deposited the entire fine amount. After this incident, they have not involved themselves in any of the crime. Looking to the fact that the main accused have died and the present appellants/ Kirti and Karuna were not in day to day contact living at remotest cities, they may be given an opportunity to not to commit any offence in future.

9. Per contra, learned counsel appearing for the State/respondent opposed the argument advanced on behalf of the appellants and submitted that though they were not directly connected but Sangeeta was treated with cruelty by the appellants by mental cruelty, the deceased was ill treated and in subsequent incident for which the other co-accused were responsible Sangeeta succumb to death. Looking to the entire facts and circumstances, the trial Court has rightly convicted and sentenced the appellants. Hence, the appeal may be dismissed as not maintainable.

10. In order to appreciate the arguments advanced by the parties, I have perused the evidence adduced by the parties.

11. From close scrutiny of the evidence, it appears that both these appellants not involved in any physical cruelty but to some extent they had involved for the mental cruelty. Though they are not at all responsible for the death other than the normal circumstances of Sangeeta, wife of Rajkumar and

daughter-in-law of Chhote Lal, but cruelty is a wide term and it also includes element of harassment and torture. Conviction under Section 498A of the IPC is not being assailed on behalf of the appellants, even as per the entire evidence, in view of this Court, the trial Court has not committed any illegality or infirmity in convicting the appellant for the offence under Section 498A of the IPC. Hence, the judgment of conviction does not require interference.

12. So far as the quantum of sentence is concerned, both the appellants remained in custody as a part of sentence from 26-07-95 to 04-08-95 (10 days), they are also sentenced with fine and as stated they have deposited the entire fine amount; the incident is about 20 years old, after this incident the appellants had not involved themselves in any of the criminal activities; as submitted there is no minimum sentence prescribed for the offence under Section 498A of the IPC; both the appellants were residing far away from the place of incident, thus looking to the entire facts and circumstances, in view of this Court, it would be appropriate and would meet the ends of justice that substantive jail sentence awarded to both these appellants be reduced to the period already undergone by them while maintaining the fine sentence awarded to them by the trial Court.

13. Consequently, the appeal filed by both appellants namely Kirti and Karuna are partly allowed. Conviction of both these appellants under Section 498A of the IPC is hereby affirmed. The fine sentence awarded by the trial Court is also hereby maintained. However, instead of jail sentence of rigorous imprisonment for 3 years, these appellants are sentenced for the period already undergone by them. It is stated that the appellants are on bail. They be set at liberty forthwith. Their bail bond shall continue for a further period of 6 months from today as per requirement of Section 437-A of the Code.

Sd/-
Chandra Bhushan Bajpai
Judge