

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 95 of 1999**

- Ganesh Prasad

**---- Appellant****Versus**

- The State Of Madhya Pradesh

**---- Respondent**


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For appellant : Smt. C.K. Navrang, Advocate.  
For Respondent : Ku. Sangita Mishra, Panel Lawyer.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai****Judgment****10/03/2015**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 9-12-1998 passed by the Additional Sessions Judge, Surajpur, distt. Sarguja (MP now CG) in Sessions Trial No. 399/93 whereby and whereunder learned trial Court after holding the appellant guilty for offence under Section 498-A of the Indian Penal Code (in brevity 'IPC') for committing cruelty to his wife Taravati, sentenced him to undergo RI for three years and to pay a fine of Rs. 3,000/-, in default of payment of fine to further undergo additional RI for six months.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. Prosecution case in brief is that Taravati and the appellant were married one year prior to the date of incident i.e. 9-6-1993 when she committed suicide by hanging herself at about 5.30 pm due to torture for demand of dowry. Co-accused Hargovind informed regarding death of Taravati to Out Post Bhatgaon. Merg was recorded vide Ex. P-8 which was registered by

Pratappur police vide Ex. P-7. Investigation Officer rushed to the spot. After giving inquest notice to witnesses vide Ex. P-3, inquest over the dead body was conducted vide Ex. P-4. Dead body was sent for autopsy to AMO, Pratappur. P.W. 1 Dr. Shivpal Paikra conducted autopsy and noticed ligature mark around neck along with other connecting symptoms. Doctor opined the cause of death as asphyxia due to hanging. Nature of death is suicidal. He gave his report vide Ex. P-1. The IO prepared spot map vide Ex. P-5. After inquiry FIR under Section 304-B of the IPC was registered vide Ex. P-6-A. Appellant and co-accused were arrested vide Ex. P-6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in brevity 'Code'). After completion of investigation, charge sheet was filed before the Judicial Magistrate First Class, Surajpur on 20-7-1993 who in turn committed the case to the Court of Session, Sarguja. Learned Additional Sessions Judge received the case on transfer and conducted trial.

4. During trial, appellant and his father co-accused Hargovind were charged for the offence under Sections 498-A and 304-B of the IPC. Both the accused denied the charges and prayed for trial. In order to prove the guilt of the accused prosecution examined 7 witnesses in all. Statements of accused were recorded under Section 313 of the Code wherein they denied the circumstances appearing against them, pleaded innocence and false implication in the crime in question.
5. Appellant also examined defence witnesses D.W. 1 Rahmat Tulla, D.W. 2 Satpal and D.W. 3 Balbhadra Prasad Gupta. As per defence witnesses, when parents of the deceased came twice or thrice for taking the deceased to her maternal house, then the deceased replied that if they will come again and again, she will commit suicide.
6. After providing opportunity of hearing to the parties, learned trial Court acquitted co-accused the father of the accused appellant for the charges framed against him, also acquitted the appellant for offence under Section 304-B of IPC however convicted and sentenced him for the offence under Section 498-A of IPC and sentenced him as aforementioned.
7. I have heard learned counsel for the parties and perused the record including the impugned judgment.
8. Learned counsel for the appellant submitted that incident is about more than 23 years old. With same set of evidence, co-accused i.e. father-in-law of the deceased has been acquitted of all the charge. The prosecution has failed to prove guilt of the appellant under Section 304-B, IPC. No acquittal appeal

has been preferred against the appellant and co-accused, therefore, acquittal of appellant under Section 304-B, IPC and acquittal of co-accused from all the charges has attained finality for the moment. Appellant was about 25 years old. Evidence which are relied for conviction under Section 498-A, IPC is of not sterling nature. On the basis of evidence adduced it would not be safe to convict the appellant for offence. The trial Court has failed to appreciate the evidence of the defence witnesses as charge of Section 498-A, IPC is not proved beyond doubt. Casual demand or other incident cannot be termed as cruelty. Hence the appeal may be allowed and the appellant be acquitted of the charges. In alternate, learned counsel for the appellant submitted that as per para 17 of the judgment, the appellant remained in jail 26-6-1993 to 14-8-1993. He had also paid fine amount ordered by the trial Court. The incident is about more than 22 years old. The appellant was first offender. During trial and later part also, the appellant was in jail in connection with some other offence. Even presently by the judgment in the criminal appeal 979/99 dated 5-9-2014, he is serving sentence for the offence under Section 304-B of IPC. The appellant is also serving sentence for conviction under Section 302, 325 and 323 of IPC in ST No. 413/1996, the judgment passed by the Additional Sessions Judge, Surajpur. Looking to the facts and circumstances of the case and as the appellant is already in jail in above mentioned two cases, he may be sentenced to the period already undergone.

9. On the other hand, learned counsel for the respondent/State opposed the appeal and submitted that as per communication received by this Court, the appellant is presently serving sentence and in jail for above mentioned two criminal cases. It shows that he is a habitual offender. By the cruelty committed by him, the deceased committed suicide by hanging. Though suicide was not the direct outcome of the cruelty but in the background of such cruelty, suicidal act followed. Looking to the facts and circumstances of the case, the appeal may be dismissed as not maintainable.
10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.
11. Relationship between the appellant and the deceased is admitted. It is also not in dispute that the deceased committed suicide. The trial Court acquitted the appellant for the charges under Section 304-B of IPC against which no appeal is preferred by the State. Further no appeal is preferred by the State against acquittal of co-accused. Therefore the said acquittal attains finality

for the moment.

12. Point for consideration before this Court is as to whether any cruelty is committed by the appellant to the deceased and if yes, to what extent the appellant may be sentenced.
13. For this, evidence adduced by P.W. 2 Ramjatan, P.W. 3 Smt. Rajkumari and P.W. 4 Madan Gopal goes to show that on account of non-payment of remaining agreed money during marriage, family members of the deceased were not allowed to take the deceased with them for visiting for her parents' house. Though there was no other evidence regarding any physical cruelty but the word 'cruelty' defines and applicable for the Section 498-A has a wide term. It includes mental cruelty also. If the deceased was denied for visiting her parents' house on account of outstanding money agreed to be given at the time of marriage, it also comes under Section 498-A, IPC as mental cruelty. This piece of evidence is duly proved and remained very firm despite lengthy cross-examination. Looking to this fact, statement of defence witnesses does not inspire confidence and appears to be afterthought and tutored. In the considered view of this Court, the trial Court has not committed any error by convicting the appellant under Section 498-A of the IPC.
14. Consequently, I do not find any scope for interference in the conviction under Section 498-A of IPC against the appellant.
15. So far as quantum of sentence is concerned, the appellant has already paid the fine amount and also served the part of sentence from 26-6-1993 to 14-8-1993. Even at the time of trial the appellant was in custody in some other case which is apparent from the order sheet of the trial Court and as per communication received by the trial Court, presently the appellant is languishing in jail serving the sentence for the judgment passed in S.T. No. 413/96 under Sections 323, 325 and 302 of IPC passed by the Additional Sessions Judge, Surajpur. The appellant is also serving the sentence arising out of the Cr.A. No. 979/99 judgment dated 5-9-2014 under Section 304-B of IPC. The incident is about 22 years old and presently also the appellant is serving sentence as aforementioned and served from 26-6-1993 to 14-8-1993 and from 15-5-1999 to 25-4-2000, more than one year for this matter. Looking to the entire facts and circumstances of the case, it would be just and proper to sentence the appellant for the period already undergone by him.
16. Consequently the appeal filed by the appellant is partly allowed. His conviction under Section 498-A, IPC is hereby affirmed. Fine sentence is

also affirmed. However instead of sentence of three years, the appellant is sentenced to the period already undergone by him.

JUDGE

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