

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No. 2193 of 1999**

Dilharan son of Tijauram, aged about 22 years, resident of village Lamer, P.S. Kota, District Bilaspur (C.G) ... **Appellant**

Versus

State of Madhya Pradesh (Now Chhattisgarh) through Station House Officer, Police Station Kota, District Bilaspur (C.G)
... **Respondent**

For the applicant	:	Mr. Rajeev Bharat, Advocate.
For the Respondent	:	Mr. Anil S. Pandey, Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

03.03.2016

1. This appeal is against the judgment of conviction and order of sentence dated 15.07.1999 passed in Sessions Trial No. 43 of 1999 by the VII Additional Sessions Judge, Bilaspur whereby the appellant was convicted u/s 498-A IPC and was sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/-, In default of payment of fine, he was further directed to undergo additional R.I., for six months.

2.1 - The prosecution case, in brief, is that that the appellant Dilharan was married to Gayatri Bai (since deceased) and on 09.11.1997, deceased Gayatri Bai committed suicide by consuming poison. Therefore, on the primary investigation, the appellant Dilharan and his mother Duvasia Bai were made accused and a case u/s 306 & 498-A IPC was registered and subsequently after

investigation, the charge sheet was filed.

2.2 - It was the case of prosecution that prior to the date of incident, Gayatri Bai was married to Dilharan in the month of Baisakh and thereafter, she joined her matrimonial home at village Lamer. During such marriage, all the goods were given to appellant i.e., T.V., Clock, Fan, Utensils etc. After one month of the marriage, Radha Bai, grand-mother took Gayatri back to her house and thereafter, the mother-in-law Duvisia Bai again took her back to her matrimonial home. Subsequently, after two months, the information was given that Gayatri Bai is dead. Thereafter, the said incident was reported to Kotwar. The Postmortem was conducted and merg was registered. After the postmortem it was found that the deceased had committed suicide by consuming poison. During investigation, it was found that appellant Dilharan used to harass the deceased both mentally and physically and the mother-in-law also used to torture the deceased, therefore, she committed suicide. After investigation, charge sheet was filed and further the matter was committed to the Sessions Court for trial.

2.3 - The Court of Sessions after examination of the witnesses convicted the appellant u/s 498 of IPC and acquitted him of the charge u/s 306 IPC whereas the other accused Duvasia Bai was completely acquitted of her charges. Hence, the instant appeal by the husband of deceased.

3. Learned counsel for the appellant would submit that

judgment/order passed by the learned Sessions Court is completely contradictory since the conviction is based on the statement of grand-mother i.e., P.W.4 Radha Bai and at one part, the learned Sessions Judge completely acquitted the accused Duvasia Bai u/s 306 IPC on the statement of grandmother and in other part, convicted the appellant u/s 498-A of IPC. He submits that perusal of statement of P.W.4 do not show that any abetment was caused u/s 306 IPC but at the same time, the conviction has been made u/s 498-A of IPC. Therefore, one statement could not have been used for different dual purpose for basing conviction of the appellant under one section of IPC while acquitting for the other. He further submits that reading of statements of P.W.3 Ganesh Ram, P.W. 4 Radha Bai and P.W.7 Bhagwat Prasad who are grand father, grand mother and uncle of deceased would show that they have not supported the case of prosecution and categorically it is stated that the deceased was hale and hearty in her matrimonial home, thereby in all circumstances it would not fall u/s 498-A(2) to base the conviction. He, therefore, submits that the entire conviction is bad in law and is liable to be set aside.

Per contra, learned State Counsel submits that the judgment of conviction is well merited which is based on uncontroverted evidence of prosecution witnesses, therefore, the judgment do not require any reconsideration.

4. I have heard learned counsel for the parties at length

and have also gone through the records.

5. This fact is not disputed that Gayatri Bai is dead which is evident from Postmortem report (Ex.P-22). The appellant was not convicted u/s 306 IPC. The only conviction is u/s 498-A IPC, therefore, necessarily the evidence is reexamined in the light of the issue as to whether such facts exist for the conviction.
6. The grand father of deceased namely Ganesh Ram is examined as P.W.3. In his examination-in-chief, he has stated that while the marriage was performed, at that time, the father of appellant Dilharan namely Tijan had requested to get Dilharan employed some-where. He further stated that after the marriage, Gayatri Bai, went to her matrimonial home and thereafter, after one month, he sent her wife to bring Gayatri Bai to her maternal home. Thereafter, she stayed in her maternal home for some time and she stated that she was kept well in the matrimonial home. Subsequently to it, Duvasia, mother-in-law of Gayatri Bai took her back to matrimonial home and Gayatri Bai also joined with all consent/compromise and after one month, they received the news of her death. At para 6 of examination-in-chief, he has stated that when his son Bhagwat had gone to village Lamer wherein Gayatri was residing, at that time, it was reported by his son that the appellant had kept Gayatri Bai very well. While this witness was examined he was declared hostile and thereafter certain questions were asked by the Government Advocate wherein also the witness stated

that no demand of dowry was made by the accused. The statement of this witness was also recorded during merger on 09.11.1997. The said statement was marked as Ex.D-1. Reading of such statement would show that a statement was made that during marriage no demand of dowry was made. Further it is also stated that when Gayatri Bai came from her matrimonial home, she had not made any complaint and stated that she was very well placed at her matrimonial home. He also affirmed the fact that when his son went there, he also reaffirmed the fact that Gayatri Bai was kept well in her matrimonial house.

7. Now turning to the statement of Radha Bai (P.W.4), she has also affirmed the same fact that after marriage, Gayatri joined her matrimonial home. In examination-in-chief, the witness has stated that on her asking Gayatri Bai had stated that there are some problems in the matrimonial home except that nothing was stated. This witness further stated that after being consoled and made to understand Gayatri Bai voluntarily went to her matrimonial home along-with her mother-in-law. She further stated at Para 5 that when Gayatri bai came to maternal home, her mother-in-law Duvasia Bai came there to take her back. It was stated that appellant Dilharan used to harass her and it was stated that if her husband comes then only she will go. This witness was also declared hostile and the cross examination was made wherein nothing has come on record. On the contrary, in Ex.P-8 which is statement recorded u/s 161

Cr.P.C., the statement that appellant Dilharan used to harass which was told by the Gayatri is missing. Therefore, an important omission exists in the statement of P.W.4 about harassment. P.W.4 has denied in her court statement that Gayatri Bai has told her that she was being harassed because her husband Dilharan was not getting employed by her uncle. P.W.4 has further denied the fact that she has stated in her statement (Ex.P-8) recorded u/s 161 Cr.P.C., that Gayatri Bai was being harassed because her husband was not getting employed by the relatives of deceased. This witness further stated that after 10-11 months, the statements were recorded and before that no statement was recorded.

8. P.W.7 is uncle of the deceased namely Bhagwat Prasad. He had stated in examination-in-chief that Rs.5000/- for Barat expenses was initially asked at the time of marriage, however, when it was told that no such amount is paid in their Society, it was accepted by the accused and their family members and they relinquished their demand. Para 7 of the statement of this witness would show that it is stated that when the deceased came to the maternal home, she stated that unless her husband Dilharan comes to take her back, she will not go. Except that nothing had happened. The statement of this witness was also recorded during the merger enquiry on 09.11.1997 which is marked as Ex.D-2. The witness further stated that on 09.11.1997, his statement was recorded and subsequent to that no statement was

recorded and even the statement recorded u/s 161 Cr.P.C., which was marked as Ex.P-3 was denied. Reading of statement at Para 9 along-with Ex.D-2 would show that in merg statement it was stated that no demand of dowry was made. He further stated that before 20 days of the incident, he went to the house of accused persons and stayed there and at that time, Gayatri Bai met her and stated that she is hale and hearty in her matrimonial home and she was happily residing.

9. On joint reading of the statements of important witnesses P.W.3, P.W.4 & P.W.7 along-with Documents Ex. D-1 & D-2 which are merg statements, it appears that the witnesses have stated that Gayatri Bai deceased had not complained of any torture. P.W.4 the grand mother had stated at one line that the deceased had told that Dilharan used to harass but such statement is not directly supported by 161 statement and therefore it is a necessary improvement. Further more, only by picking up the word "harassment" at one line, the inference cannot be drawn that the deceased was subjected to cruelty especially when the uncle of deceased P.W.7 had stated that 20 days before the incident when he went to matrimonial home, no complaint was made by the deceased about the harassment. The said statement was further corroborated by merg statement which was recorded on the date of incident i.e., 09.11.1997 marked as Ex.D-1 & D-2. Therefore, taking into consideration the totality of

the facts and circumstances and after evaluating the statements and evidence of witnesses, it appears that the the Sessions Court has itself arrived at a wrong finding since at one part has believed the statement of P.W.4 to acquit the appellant accused u/s 306 IPC, however, believing the same part has convicted the appellant u/s 498-A IPC. Such statement is not proved beyond any reasonable doubt after evaluating the evidence of P.W.3, P.W.4 & P.W.7. Consequently, I am of the opinion that the judgment of conviction passed by the court below cannot be sustained.

10. In the result, the appeal is allowed. The judgment of conviction and order of sentence is set aside. The appellant is acquitted of the charges under Section 498-A IPC.
11. It is stated that the appellant is on bail. If that be the position, he need not surrender. His bail bonds are not discharged at this stage. They shall be operative for the purpose and in terms of Section 437-A of Cr.P.C., as if it was executed in pursuance of the same for the period mentioned therein and thereafter shall stand discharged.

Sd/-
GOUTAM BHADURI
JUDGE