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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 31st March, 2016

+ CRL.A. 435-36/2006

SURENDER KUMAR

..... Appellant

Represented by: Mr. Jitendra Sethi and
Mr. Akash Sharma, Advs.

Versus

STATE

..... Respondent

Represented by: Mr. Amit Ahlawat, APP for
State with SI Subhash Kumar, PS-Shahdra.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of the present appeal filed under Section 374 of Cr.P.C., the appellant has challenged the judgment / order dated 31.05.2006, whereby he was held guilty for the offences punishable under Section 306/498A IPC. Consequently, vide order on sentence dated 01.06.2006, he was sentenced to undergo RI for 7 years with fine of Rs.5,000/- for the offence punishable under Section 306 IPC and in default of payment of fine, he was further sentenced to undergo SI for six months. For the offence punishable under Section 498A IPC, appellant was sentenced to undergo RI for 2 years with fine of Rs.2,000/- and in default of payment of fine, he was further sentenced to undergo SI for three months.

2. It is pertinent to mention here that initially the present appeal had been preferred by the Surender Kumar, appellant herein and his mother Smt. Chanderwati being appellant no.2. However, during the pendency of the appeal appellant no.2 expired on 28.01.2007 as is evident from the order dated 08.02.2007.

3. Ld. Counsel appearing on behalf of the appellant submits that appellant does not dispute the conviction order dated 31.05.2006, however submits that the marriage of the appellant and the deceased Mithilesh took place on 13.12.1994, who committed suicide on 03.06.1996. From the said wedlock one baby girl was born on 05.01.1996. Appellant has been looking after the said child for the last 20 years who is now at the marriageable age and her marriage is fixed on 22.04.2016. Ld. Counsel further submits that appellant has faced the trauma for the last 20 years as the said case was registered in the year 1996 and he has already undergone 3 years and 9 months of his sentence. Thus, he may be released on the period already undergone.

4. To strengthen his arguments, ld. Counsel for the appellant has relied upon a case of *Mohd. Hoshan, A.P. and Anr. v. State of A.P. 2002 4 RCR (Crl.)*, wherein the appellant had already undergone 2 months of his sentence and the Hon'ble Supreme Court modified the sentence of imprisonment for a period of already undergone under Section 306/498A IPC.

5. I have heard ld. Counsel for the parties.

6. In the case cited above the appellant had already undergone 2 months of his sentence, whereas in the present case the appellant has

already undergone 3 years and 9 months of his sentence. The case against the appellant was registered in the year 1996. He has seen the trauma of trial about 20 years.

7. The appellant is about 50 years of age and has been looking after her daughter namely Komal, who is now at the marriageable age of 20 years and her marriage is fixed on 22.04.2016. The justice would be met if he is released on the sentence already undergone.

8. Thus, keeping in view the facts recorded above, while maintaining judgment of conviction dated 31.05.2006, order on sentence dated 01.06.2006 is modified to the extent of period of sentence already undergone.

9. Vide order dated 31.01.2008, the sentence of the appellant was suspended and released on bail. His bail bond and surety bond stand discharged.

10. In view of above, the appeal is partially allowed.

SURESH KAIT, J.

MARCH 31, 2016

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