

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 815 of 2001**

Mangilal son of Ganesh Prasa Agarwal, Resident of Musrakala, PS Dongargarh,
District Rajnandgaon.

---- Appellant

versus

State of Madhya Pradesh (Now Chhattisgarh), Through PS Dongargarh.

---- Respondent

Criminal Revision No. 498 of 2001

Govind Agrawal, aged about 28 years, son of Ganga Sahay Agrawal, R/o Aswani
Nagar, Raipur, Tahsil and District Raipur.

---- Applicant

versus

1. State of Chhattisgarh.
2. Mangilal S/o Ganesh Prasad Agrawal, Aged about 37 years.
3. Keshav Prasad S/o Ganesh Prasad Agrawal, Aged about 32 years.
4. Ganesh Prasad S/o Tijulal Agrawal, Aged about 62 years.

No. 2 to 4 R/o village Dongargarh, District Rajnandgaon, Chhattisgarh.

5. Smt. Anita Agrawal W/o Rajesh Agrawal, aged 32 years.
6. Rajesh S/o Radheshyam Agrawal, aged 49 years.

No. 5 and 6 R/o village Katalvahi, Police Station Dongargarh, District
Rajnandgaon, Chhattisgarh.

---- Respondents

For Appellant/Accused	: Shri Nasimuddin Ansari, Advocate.
For Respondent/State	: Shri Ravindra Agrawal, Panel Lawyer.
For Applicant/Complainant	: Shri Anurag Khatri, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice**Judgment on Board****27/01/2017**

1. Both these cases i.e. Criminal Appeal No. 815 of 2001 and Criminal
Revision No. 498 of 2001 are being disposed of by this common judgment as
they arise out of one judgment.

2. Criminal Appeal No. 815 of 2001 by the Appellant-husband is directed against the judgment dated 25.08.2001 delivered by 1st Additional Sessions Judge, Rajnandgaon, passed in Sessions Trial No. 93 of 2001, whereby he convicted the Appellant-husband for having committed an offence punishable under Section 498-A IPC and sentenced him to undergo three years rigorous imprisonment with fine of Rs. 5000/-. In default of payment of fine, the Appellant was ordered to undergo further rigorous imprisonment for two months.

3. Criminal Revision No. 498 of 2001 has been filed by the Applicant-Govind Agrawal challenging acquittal of the Accused-Mangilal under Section 306, 201 and Section 202 of the IPC and acquittal of other accused namely Keshav Prasad, Ganesh Prasad, Smt. Anita Agrawal and Rajesh Agrawal under Sections 498-A, 306, 201 and Section 202 of the IPC and praying that all the accused be convicted for having committed an offence punishable under Section 306 IPC.

4. Briefly stated facts of the case are that the deceased Manjulata Agrawal, daughter of Ganga Agrawal(PW-2) was married to the Appellant on 01.07.1988. One daughter was born out of this wedlock in the year 1991. Thereafter, the wife filed a petition against her husband and family members in the year 1991 itself under Section 498-A IPC. Manjulata, during this period was staying in her parental house and her daughter was in her in-laws house. This case carried on for more than 2½ years and was finally settled between the parties. The case under Section 498-A IPC filed against the husband and in-laws was dismissed in the year 1993, may be because the witnesses turned hostile. Thereafter, Manjulata started living with her husband and his family. After she went back, a son was born sometimes in the year 1994. On 10.12.1999, the wedding of younger sister of the deceased-Manjulata was fixed. At that time, the deceased was brought to her parental home by her brother Ashok Kumar Agrawal (PW-5). She came to her parental house to attend the wedding. On 16.12.1994, the father of the deceased took her back to her in-laws house. Next day, early in the morning, Manjulata died due to consumption of poison.

5. It is not disputed that she committed suicide. The issue is whether she committed suicide on account of cruelty meted out to her by her husband and family members or for any other reason.

6. The learned Trial Court convicted the Accused-husband and sentenced as aforesaid on various counts. The learned Trial Court relied upon the letters (Exhibit P-1 and P-2) to hold that in these letters, the Accused-husband had asked for dowry from his in-laws.

7. I have carefully gone through these letters. No doubt, these letters were written by accused-Mangilal but at the outset, it may be mentioned that these letters were signed by both accused-Mangilal and the deceased-Manjulata. In these letters, it has been stated that the financial condition of Mangilal was not good and he may be given a loan. He had also promised to repay the loan alongwith interest at the market rate. These letters can in no way termed as letters for demand of dowry. They are letters requesting for loan in which Mangilal had also stated that he will repay the loan with interest at the market rate. In Indian society, if a son-in-law is in need of money, he may ask his in-laws for a loan. Asking for a loan is no crime. Be that as it may, this occurrence is of the year 1989 and cannot be a ground for committing suicide after more than 10 years in the year 1999.

8. The learned Trial Court has also placed heavy reliance on the fact that the deceased had to live separately from her daughter previously when the case under Section 498-A IPC was going on. I am afraid that this finding could not have been arrived at by the learned Trial Court. Earlier, the Court had dismissed the petition under Section 498-A IPC. It is true that it may have been dismissed because of an illegal compromise, but the learned Trial Court cannot sit over the judgment of the earlier Court, which had attained finality in the second round of litigation. Only those acts of cruelty can be taken into consideration which occurred after the previous compromise had taken place. With regard to this, there are only two allegations. One is a general allegation

that after the first compromise had taken place, the accused-Mangilal, father-in-law, Ganesh Prasad and mother-in-law Godavari Bai used to beat the deceased. There are no witness to this beatings. Even Govind Agrawal (PW-1) does not state that his sister told him about this. None of the witnesses state that the deceased had told this. When did these beatings took place has not been mentioned. Where did these beatings took place has not been mentioned. At this stage, one would like to reiterate that this is a case where the wife had earlier filed a petition under Section 498-A IPC. She had contested the matter for 2½ years. No doubt, later the case may have been "settled" but the fact remains that she was aware that she had a remedy available to her. If, after the compromise, she had been beaten up, one would have expected that she would have filed a case again or at least complained to her lawyer or talked to some other member of her community that she has been beaten up. Not an iota of evidence has been led in this regard.

9. The second allegation which is more specific in nature is that on 15.12.1999, when Govind Agrawal (PW-1) brother of the deceased was talking to her, she informed her family members that about 1 1/2 months prior to 15.12.1999, her mother-in-law had given her milk to drink but when she drank the milk, she immediately vomited. She then raised alarm as to what was in the milk upon which her mother-in-law stated that some small poisonous insect may have fallen in the milk.

10. The question is whether we should believe this witnesses - Govind Agrawal (PW-1) brother of the deceased, Ganga Sahay Agrawal (PW-2) father of the deceased, Smt. Kiran Agrawal (PW-4), sister in law of the deceased, Ashok Kumar Agrawal (PW-5), brother of the deceased. In case, the deceased had informed them on 15.12.1999 that her mother-in-law tried to kill her by giving poison, the least that one would have expected was that before sending Manjulata back to her matrimonial home, they would talked to her in-laws. Though, Ganga Sahay Agrawal (PW-2) stepped into the witness box and has stated that on 16.12.1999, he went to drop Manjulata but he does not say a

word about making any grievance in this behalf to the in-laws. It is thus obvious that this story had been concocted later on.

11. The other circumstance relied upon by the prosecution is that the village Doctor was called to treat the deceased and she was not given proper treatment. The accused alongwith the deceased were living in village as living in village Musra which is about 100 KMs away from Raipur. There were only two Doctors in the village who were called for treatment. Obviously, a person would call those people who are available at the nearest and before she could be taken to the hospital as recommended by the Doctor, she unfortunately expired.

12. In view of the above discussion, I am clearly of the view that the prosecution has miserably failed to prove that the deceased-Manjulata committed suicide due to some act of the Appellant/accused which amounted to cruelty within the meaning of Section 498-A IPC forcing her to commit suicide.

13. Accordingly, the impugned judgment dated judgment dated 25.08.2001 delivered by 1st Additional Sessions Judge, Rajnandgaon, in Sessions Trial No. 93 of 2001, is set aside. The Appellant is on bail. The bail bonds submitted by him shall remain in force for six months under Section 437-A CrPC.

14. The appeal (Criminal Appeal No. 815 of 2001) is allowed.

15. In view of the above discussion, there is no merit in the revision (Criminal Revision No. 498 of 2001) which is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE