

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 444 of 2007**

Bushan Ram Uraon, S/o Shukul Ram Uraon, Aged about 27 years,
Occupation – Agriculturist, R/o Village Maheshpur, P.S. Udaipur, District
Surguja (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, District Surguja (C.G.)

----Non-applicant

For Applicant	:-	Shri Vineet Kumar Pandey, Advocate.
For the State/Respondent	:-	Shri Vivek Singhal, Panel Lawyer

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement on Board

16-03-2017

This revision petition is directed against the judgement dated 14-08-2007 passed by Third Additional Sessions Judge, Ambikapur, Surguja (F.T.C.) in Criminal Appeal No.210 of 2006, by which conviction of the applicant under Section 498-A of the IPC recorded by trial Court was upheld although the sentence was reduced to Rigorous Imprisonment for one year along with fine of Rs.800/- with default stipulation.

2. The prosecution case in brief is that complainant Asha Bai (PW-1) is wife of the applicant. They have two sons out of their wedlock. The applicant used to make allegation against the character of Asha Bai (PW-1) and also used to abuse her often. The applicant had driven out his wife Asha Bai (PW-1) from his house about more than a month before the date of incident. A meeting was called in the village to settle the dispute between the applicant and his wife Asha Bai (PW-1). After the settlement of the dispute between them, Asha Bai (PW-1) again came to her matrimonial home on 28-04-2006,

the applicant again used abusive words towards Asha Bai (PW-1) and assaulted her. Getting frustrated of the behaviour of applicant, Asha Bai (PW-1) administered some poisonous substance to her both the sons and she herself attempted to commit suicide by hanging herself. The children of the applicant and Asha Bai (PW-1) died due to poisoning. A morgue enquiry was conducted over the dead bodies of both the children. On the basis of morgue enquiry, FIR against the applicant was lodged on 02-05-2006 by Police Station Udaipur, Surguja registering under Section 498-A of the IPC. After completion of investigation, the applicant was charge sheeted.

3. Charge under Section 498-A of the IPC was framed against the applicant. He denied the charge and demanded for trial. The prosecution examined as many as 10 witnesses. On examination under Section 313 of the Cr.P.C., the applicant denied the implicating circumstances in evidence against him. Pleaded innocence and false implication. Two witnesses were examined in defence. The impugned judgement was passed by the trial Court on 14-12-2006 by which the applicant was convicted under Section 498-A of the IPC and sentenced with RI for two years. This judgement of conviction and order of sentence was challenged before the Sessions Court, District Ambikapur which was heard and decided by Third Additional Sessions Judge (FTC), Ambikapur by maintaining the conviction and modifying the sentence.

4. The grounds in this revision are that both the Courts below have passed erroneous judgement of conviction against the applicant. None of the witnesses of prosecution have supported the case, therefore, the applicant was entitled for acquittal.

5. It is submitted by learned counsel for the applicant that the evidence of prosecution witnesses has not been trustworthy which could not have been

made the basis of conviction against the applicant. It is also submitted that the applicant has already undergone a period of about 10 months in jail. Looking to the circumstances of this case, if this Court is not inclined to allow this revision for setting aside the conviction, then the sentence awarded by the Court below may be reduced to sentence of imprisonment already undergone by the applicant.

6. Learned State Counsel has opposed the grounds raised in this revision and the arguments submitted in this behalf, it is submitted that the prosecution has proved its case beyond reasonable doubt and the sentence awarded to the applicant is just sentence.

7. It is to be examined in this revision is whether the conviction against the applicant is based on legally admissible evidence or not? The evidence before the trial Court is perused.

8. Asha Bai (PW-1) has stated that the applicant is her husband who always used to abuse on her character and assault her. She has stated that the applicant assaulted her on the date of incident, due to which she went unconscious and then she came to consciousness in the hospital. In cross-examination, she has admitted that she is in jail for being prosecuted under Section 302 of IPC. Her statement in examination-in-chief about her being subjected to cruel treatment remained unrebutted in cross-examination. Jitanram (PW-2) has stated about the dispute between the applicant and Asha Bai (PW-1) was resolved in the village meeting. Thururam (PW-3) has also stated that the applicant himself had illicit relationship with a woman of her village and he used to assault Asha Bai (PW-1) on number of occasions. He also witnessed the meeting in which the dispute between the applicant and Asha Bai (PW-1) was resolved. The applicant gave assurance in the meeting

that he will take care of Asha Bai (PW-1) in future. Sonmatiabai (PW-4) is the mother of Asha Bai (PW-1). Ramdev (PW-5), Mahendra Kumar (PW-6), Radheram (PW-7) have supported the prosecution version that the applicant used to treat Asha Bai (PW-1) with cruelty.

9. Ramanand (PW-10) has supported the prosecution regarding cruel behaviour of the applicant with Asha Bai (PW-1). Seturam (DW-1) has stated that the applicant and Asha Bai (PW-1) used to quarrel some times but otherwise they lived in peace. In cross-examination, he has admitted that Asha Bai (PW-1) was unhappy because of the behaviour of the husband/applicant hence for this reason she tried to commit suicide. Mohan (DW-2) has not given any statement as to the happening on the date of incident. This evidence in defence cannot be considered as sufficient to rebut the statement of prosecution witness.

10. Dr. J.K. Relwani (PW-8) has medically examined Asha Bai (PW-1) finding injuries on her body vide Ex. P-3. D.L. Mishra (PW-9) has investigated the case.

11. On going through the evidence of prosecution and defence, it is found that there had been sufficient evidence to hold conviction under Section 498-A of IPC. Accordingly, the conviction was recorded by trial Court and upheld by the lower appellate Court which needs no interference. The submission in this revision that the applicant may be punished with imprisonment of period of custody already undergone by him in jail needs consideration.

12. The applicant was arrested on 12-05-2006 and released on bail on 23-12-2006. Later on he was taken into custody on 14-08-2007 on the date of judgement of lower appellate Court and was released on bail by order of this Court on 16-10-2007. After verifying from the record, it is clear that applicant

has undergone a period of 9 months and 28 days in jail, during investigation, trial and the prosecution of this revision.

12. Considering the facts and circumstances of this case, the period of custody of applicant appears to be sufficient punishment which can be awarded in this case. Hence, on the basis of these reasons, this revision petition is allowed in part. The conviction under Section 498-A of the IPC is maintained. The sentence of RI for one year awarded by lower appellate Court in the impugned judgement is set aside, in place that the applicant is sentenced with a period of custody already undergone by him in jail during investigation, trial, appeal and this revision. The fine sentence awarded by the lower appellate Court is maintained as it is.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge