

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2680 of 1998

Judgment Reserved on 23/07/2018

Judgment delivered on 11/10/2018

Chattar Pal S/o Hub Lal, aged about 32 years R/o Village- Suhagpur, P.S.- Jainagar, Distt. Sarguja (M.P.) (Now C.G.).

--- Appellant

Versus

State of Madhya Pradesh through P.S.- Jainagar, Distt. Sarguja (Now Chhattisgarh).

---- Respondent

For Appellant	:	Shri A.K. Prasad, Advocate
For Respondent	:	Shri Arvind Shukla, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 02/11/1998 passed in S.T. No. 38/1995 by the Additional Sessions Judge, Surajpur, Distt. Sarguja, whereby the appellant has been convicted under Section 498-A of the IPC and sentenced to undergo RI for 3 years and to pay fine of Rs. 1,000/- with default stipulation.
2. Facts of the case, in brief, are that in the year 1982-83, the marriage of deceased- Shyampati was solemnized with the present appellant. Out of their wedlock, two children were born. Thereafter, deceased- Shyampati used to go her matrimonial house and always makes complaint that her husband and father-in-law quarrels with her and also beat her. On

03/07/1994, when she was cooking food inside her house, her children broken the tree of Eucalyptus then the appellant inquired the same from her and when she told that she did not know, the appellant beaten her. She informed the above incident to his father through Sinister (PW2). Nanhi Ram (PW1), father of the deceased came to the house of the appellant and saw that deceased- Shyampati was not present there and had gone to her uncle's house. He verified the incident from the villagers and deceased as well. Since, the appellant and his father ensured Nanhi Ram that they will take care of deceased, he returned to his house. After, 6-7 days Hublal, father of the appellant came to the house of Nanhi Ram and informed that deceased- Shyampati is missing since last night. Later on, dead bodies of deceased- Shyampati and her daughter Tembai were found in a hut situated at the field of Triveni Ram.

3. Merg Intimation (Ex.P-3) was lodged by Hublal. Inquest proceedings were done by Head Constable, Pushpram (PW7). Postmortem of the dead bodies of the deceased persons was conducted by Dr. Ashutosh Gupta (PW5) and Dr. K.K. Tamrakar. They opined that the death has been caused by consuming poison. After merg inquiry, FIR has been registered on 06/08/1994.
4. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After investigation, a charge-sheet under Section 498-A and 306 of the IPC have been submitted against the appellant and his father, Hublal. Charges were framed.
5. To prove the guilt of the appellant, total 8 witnesses have been examined by the prosecution. Statement of the appellant under Section 313 of the

Cr.P.C was recorded, wherein he pleaded his innocence and false implication in the present case. In support of the appellant, two defence witnesses were also examined. After trial, the trial Court has acquitted accused- Hublal from all the charges leveled against him and convicted and sentenced the appellant as mentioned in the first paragraph of this judgment. Hence, this appeal.

6. Learned counsel appearing on behalf of the appellant has submitted that there is no evidence on record on the basis of which any offence under Section 498-A of the IPC can be made against the appellant. He further submitted that on the same set of evidence, father of the appellant has been acquitted and then on the same set of evidence, it is not possible to convict the appellant when nothing incriminating is on record against him. The learned Court below ought to have considered that the prosecution has failed to prove that the appellant has treated the deceased with cruelty at any stage of life.
7. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
8. I have heard learned counsel for the parties and perused the record minutely.
9. There is no dispute on the point that deceased- Shyampati was the wife of the appellant and their marriage was solemnized in the year 1982-83. There is also no dispute that out of their wedlock, two children was born, in which one is deceased- Tembai.
10. Nanhi Ram (PW1) is father of deceased- Shyampati. He deposed that

after marriage, when the deceased used to come his house, she always made complaint that the appellant, in drunken condition, quarrels with her. He further stated that Minister (PW2) came to his house once and informed that deceased- Shyampati has been beaten and asked him to see her. Then he went to the house of the appellant and came to know that deceased- Shyampati has gone to her maternal uncle. When he called the deceased, she was weeping and told him that on the matter of broke down Eucalyptus tree by her children, the appellant had beaten her. Then, Nanhiram after inculcating the deceased came back to his house. After 6-7 days, her daughter committed suicide. In para 5 also, he stated that when his daughter and appellant used to come to his house, her daughter always made complaint against the appellant. Then, Nanhi Ram always inculcated the appellant.

11. Minister (PW2) has stated that once deceased- Shyampati told him that her husband quarreled with him. And on her insist, he went to tell the incident to her father, Nanhi Ram and returned to his house.
12. Sukhmat Bai (PW3) is the Bhabhi of deceased. She has stated that after marriage, deceased- Shyampati used to come her house and told her that her husband and father abuse her and also beat her. This witness also stated that Minister (PW2) came to her house and informed that deceased- Shyampati has been beaten, then her father-in-law went to see deceased. This witness also remained firm during her cross-examination.
13. Rajsan (PW4) is brother of deceased- Shyampati. He also stated that when he used to met with the deceased, the deceased used to tell him that her husband in drunker condition beats her.

14. Narayan (PW6) is also one of brother of deceased. He has also stated that the appellant used to beat the deceased.
15. Pahupram (PW7) Head Constable and Ramnarayan Sharma (PW8) Inspector are the witnesses who investigated the matter.
16. Both the defence witnesses Triveni (DW1) and Ramchandrar (PW2) have deposed that the deceased never made complaint to them.
17. On minute examination of above evidence, it makes clear that deceased-Shyampati got married with the appellant in the year 1982-83 and as stated by Nanhi Ram, father of the deceased, after marriage, the appellant in drunken condition used to quarrel with the deceased and the deceased always made a complaint in this regard to this father. On being informed by Sinister (PW2), Nanhi Ram (PW1) went to the house of the appellant, where the deceased also made a complaint to him. Sumatbai (PW3) also stated that when the deceased used to meet her, she always told her that the appellant had beaten her. Rajsan (PW4) and Narayan (PW6), brothers of deceased also corroborated the statement of above witnesses and they also stated the deceased always made a complaint of beating from her husband. All the above witness remained firm during their cross-examination. From the evidence adduced by the prosecution, it is clear that after marriage, the appellant used to drink and beat the deceased frequently. He also used to torture. Therefore, he has been rightly convicted by the trial Court under Section 498-A of the IPC.
18. With regard to sentence, the learned trial Court has sentenced the appellant to undergo RI for 3 years with default stipulation under Section

498-A of the IPC. The appellant has undergone about 16 days during trial and 21 days during pendency of this appeal. He is facing the *lis* since 1994, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him is reduced to the period already undergone by him.

19. Consequently, the appeal is partly allowed. The conviction of the appellant is upheld and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
20. It is reported that the appellant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of Section 437-A of the Cr.P.C.
21. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge