

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 100 of 2010**

Santosh Kumar Gupta, S/o Krishna Gupta, aged about 30 years, Occupation- Contractor, R/o Village- Bedna, Police Station- Deo, District- Aurangabad (Bihar)

Present R/o - Rudri Road, Near Church, Dhamtari, Police Station- Dhamtari, District- Dhamtari (C.G.) ---- **Appellant**

Versus

State of C.G. through the District Magistrate, Dhamtari, District- Dhamtari (C.G.) ---- **Respondent**

 For Appellant : Mr. Shivendu Pandya, Advocate.
 For State/respondent : Ms. K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****13/09/2018**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 28.01.2010 passed by Special Judge, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Dhamtari (C.G.) in Special Sessions Case No. 07/2009, wherein the said court convicted the appellant for commission of offence under Section 498(A) of IPC and sentenced to R.I. for 1 year and fine of Rs. 10,000/- with further default stipulations.
2. In the present case, name of complainant/victim is Sangeeta Rani Dhruv who married with the appellant on 02.11.2007 at Jagdalpur. After marriage, they were living together and it is alleged that on account of non-fulfillment of dowry demand, the appellant made physical and mental torture to the victim, therefore, matter was reported and investigated. After completion of investigation, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits that though offence under Section 498(A) of IPC is not compoundable as per Section 320 of the Cr.P.C., but one compromise application is filed before the trial court and the trial court rejected the same on the ground that the offence is not compoundable. He submits that the appellant and the victim are now living together and therefore, sending jail to the appellant will adversely affect their relations. He further submits that the trial court committed error in evaluating the evidence adduced by the prosecution and there is no convincing evidence to bring whom the guilt, therefore, finding of the trial court is liable to be reversed.
4. On the other hand, learned State counsel submits that the finding of the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with.
5. It is admitted that the victim is wife of the appellant and she appeared before the trial court as PW-5. As per version of the victim, the appellant assaulted her after one month of marriage for dowry and he directed the victim to bring dowry from her mother. Again, it is stated by the victim that the appellant made filthy abuses to torture her mentally.
6. Version of this witness is unshaken during cross-examination even cross-examination is incisive and in searching. Version of the complainant is supported by version of Birajo Bai Netam (PW-1) & Raj Dhruv (PW-2) and witnesses who assisted the investigation.

7. Harassment of a woman where such harassment is with a view to coercing her or any person related to meet any unlawful demand is cruelty as defined under Section 498(A) of IPC. There is no reason for the victim to implicate the appellant falsely who is her husband, therefore, looking to the evidence in its entirety, the trial court opined, guilt on the part of the appellant is established. This Court has reassessed the evidence and in view of this Court, there is no reason to interfere with the finding recorded by the trial court. Accordingly, finding of the trial court regarding commission of offence by the applicant under Section 498(A) of IPC and his conviction is hereby affirmed.

Heard on the point of sentence:

8. The matter is related to wife and husband. The application for compromise was filed before the trial court and the same was rejected on the ground that the offence is not compoundable. The appellant was in jail from 02.02.2009 to 03.02.2009 i.e. for 2 days and he has paid fine of Rs. 10,000/-. Looking to the familiar dispute, no useful purpose will be served in sending the appellant in jail again. Corporal sentence awarded to the appellant is reduced to the period already undergone by him maintaining the sentence of fine amount.
9. With this modification, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge