

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 274 of 2010**

- State of Chhattisgarh through Station House Officer, Police Station Balod, District Durg (CG).

---- Appellant.

Versus

- Jitendra Kumar S/o Goverdhan Uike r/o. Village Parras, police Station & Tahsil Balod, District Durg (CG).

---- Respondent

For Appellant/State : Shri P.K. Bhaduri, Govt. Advocate
For respondent : Ms. Pragya Pandey, Advocate.

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****Per Ram Prasanna Sharma, J.****12-03-2018.**

1. Challenge in this acquittal appeal is to the judgment dated 15-9-2004 passed by the Additional Sessions Judge, Balod (for short 'the trial Court') Session Division Durg, (CG) in Session Trial No. 74 of 2004 wherein the trial Court acquitted the respondent from the charges under Sections 307, 498-A of the Indian Penal Code, 1860.

2. In the present case, victim is Savita Uike who was married to respondent on 6-5-2001. It is alleged that the respondent demanded money from his wife and harassed her for non-fulfillment of the demand. It is further case of the prosecution that the respondent pushed his wife Savita

Uike into well situated at his house and thereby committed attempt to murder. The matter was investigated and during investigation, statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') were recorded. After investigation, charge sheet was filed against the respondent. The respondent pleaded innocence and thereafter the trial was conducted. After examination of the witnesses, statement of the respondent was recorded under Section 313 of the Code. After hearing the parties, the trial Court acquitted the respondent as aforementioned.

3. Learned counsel for the appellant/State submits as under:

- (i) It is established from the statement of PW/5 Savita Uike, PW/6 Kumari Sudha Sukhdeve, PW/7 Posuram Sukhdeve and PW/8 Anuj Kumar Khapande that the respondent demanded money from his wife and she was subjected to harassment for non-fulfillment of demand, but the trial Court did not appreciate the statement in its right perspective.
- (ii) The date of incident is 18-5-2003 and the complaint was made to Police Station Jagdalpur on 25-5-2003 but no action was taken, therefore, written complaint was again sent to Station House Officer, Police Station Jagdalpur on 28-6-2003, therefore, in such a situation it cannot be said that there is delay in lodging the first information report.
- (iii) Conclusion of the trial Court is erroneous being based on conjectures and surmises.

4. On the other hand, learned counsel for the respondent submits that the finding is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.

5. We have heard learned counsel for the parties and perused the material available on record.

6. To substantiate the charge, prosecution has examined as many as sixteen witnesses.

7) The incident took place at village Parras where Savita Uike and respondent were living together as wife and husband in the house. PW/6 Kumari Sudha Sukhdev is sister of Savita Uike who is a resident of some other village namely Gadiraas. PW/7 Posuram Sukhdev is father of Savita Uike resident of village Gadiraas, PW/14 Manglu Ram is also resident of village Gaadhiras. As per version of Savita Uike (PW/5), respondent was an educated person, but unemployed at the time of marriage. She deposed that the respondent demanded Rs.50,000/- from her for opening of a shop but she has expressed her inability as her father is unable to pay this much of amount. Though it is stated by this witness that the respondent had beaten her and thereby committed physical violence on her, but statement of this witness is bald statement. There is no medical evidence in support of her version that any injury was found on her body by any of the medical expert. No instance is shown by this witness regarding taunting/misbehaving or some other way adopted by the respondent for inflicting mental harassment.

8. For commission of offence under Section 498-A, it has to be established that husband or relative of the husband subjected such a woman to cruelty.

For the purpose of this Section , “cruelty” means -

“ (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

9. From the evidence of PW/5 Savita Uike no such conduct is established which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment on the part of the respondent is also not established. Witnesses cited by the prosecution have stated what is told to them by this witness and they are hearsay witnesses in view of Section 60 of the Indian Evidence Act, 1872.

10. Hearsay evidence is not received as relevant evidence. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his

testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible."

Second hand evidence is inadmissible and version of Savita Uike is shaky, therefore, it is difficult for us to hold that any illegal demand was made by the respondent.

11. Looking to the evidence adduced by the prosecution in its entirety, criminality on the part of the respondent is not established and the trial Court is well within its jurisdiction in giving negative finding against the prosecution.

12. Charge under Section 307 of the IPC is levelled on the ground that respondent pushed his wife Savita into well situated at his house. As per version of PW/5 Savita Uike she was pushed into well on 18-5-2003, but the matter was not reported to Police Station till 28-6-2003. As per version of DW/1 Uttam who is cited as prosecution witness and not examined by the prosecution, he is neighbour of Savita and Jitender. On the date of incident he was sleeping in his courtyard and woke up at about 6.00 a.m., and saw that Savita who is wife of the respondent has jumped into the well. He further deposed that the respondent was sleeping at that time and on his call he woke up. On hearing the noise, people of the locality gathered there

and then the respondent entered into the well with the help of the people and took out his wife from inside the well. Savita also admitted that she was brought out from inside the well by her husband and the trial Court opined that looking to the conduct of the respondent in saving life of his wife, it would not be safe to conclude that it is the respondent who pushed his wife into well. There is no ground to discard the testimony of DW/1 Uttam, who is a neighbour of Savita and respondent. The other witnesses of the prosecution are hearsay witnesses who assisted the investigation after registration of first information report. Medical evidence regarding injury on the body of Savita is corroborative piece of evidence and it is but natural that she sustained injuries while falling into the well.

13. On overall assessment of DW/1 Uttam, who rebutted the version of Savita (PW/5), it would not be proper for us to record a finding of guilt of the respondent. The doubt created by the defence side is reasonable doubt. Commission of offence under Section 307 of the IPC leveled against respondent is not established and the respondent deserved to be acquitted and the trial Court is well within its jurisdiction to deliver the judgment assailed.

14. In the result, the appeal is liable to be and is hereby dismissed.

Sd/-

Judge
(Prashant Kumar Mishra)

Sd/-

Judge
(Ram Prasanna Sharma)