

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 336 of 2010**

- Shiv Prasad S/o Anandi Singh aged 20 years, r/o. Village Saraigahna, Police Station Baikunthpur, District Korea (CG).

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate, District Koriya (CG).

---- Respondent

 For the appellant : None present
 For the respondent/State : Mr. Vivek Sharma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****16-11-2018**

1. This appeal is directed against the judgment of conviction and order of sentence dated 15-4-2010 passed by the Sessions Judge, Baikunthpur, District Koriya (CG) in Sessions Trial No. 46 of 2009 wherein the said Court convicted the appellant for the commission of offence under Section 498-A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.500/- with default stipulations.

2. As per case of prosecution, deceased Santoshi Bai was married to appellant one year back to 7-2-2009 and was residing in her matrimonial place situated at village

Saraigahna. It is alleged that the appellant used to beat and harass the deceased after consuming liquor for not giving motorcycle and TV in dowry by the deceased side and he used to ask the deceased to bring those things from her father. Due to harassment the deceased consumed poison on 8-2-2009 and died in hospital during the course of treatment. The trial Court did not find the guilt of the appellant for commission of offence under Section 304-B of IPC, but convicted him for cruelty under Section 498-A of the IPC as mentioned above.

3. This appeal is preferred on the ground that the finding arrived at by the trial Court is contrary to the evidence available on record. Witnesses adduced by the prosecution were not reliable and there are material contradictions and omissions in their statement, therefore, finding arrived at by the trial Court is not liable to be sustained.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding arrived at by the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have perused the record of the lower court in which impugned judgment has been passed.

6. PW/5 Devnarayan is father of the deceased and his statement is based on information given to him by the deceased. As per version of this witness, deceased informed him that the appellant used to beat her after consuming liquor and he says that no dowry was brought by her. PW/6 Hajarilal is brother of the deceased. He also stated before the trial Court on the basis of information given to him by the deceased. As per version of this witness, his sister informed him that the appellant used to beat her and asked her to bring TV and motorcycle from parents. PW/7 Jagatpurheen is mother of the deceased. She also stated before the trial Court on the basis of information given to her by the deceased. As per version of this witness, her daughter informed her that the appellant used to beat her and demanded motorcycle and TV in dowry. All these three witnesses are hearsay in nature.

7. Now the point for consideration of this Court is whether any finding can be arrived at on the basis of hearsay 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."

8. When second hand evidence is inadmissible then it is difficult to hold that any demand for dowry was made or any physical or mental harassment was done by the appellant.

9. 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 wilful 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."

10. In the present case, evidence adduced by the prosecution is hearsay evidence and the same is not

admissible in evidence, therefore, on the basis of inadmissible evidence it cannot be inferred that any cruelty was made against the deceased. As no harassment or cruelty is established on the part of the appellant, finding arrived at by the trial Court is not sustainable.

11. Consequently, the appeal is allowed. Judgment of conviction and order of sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Section 498-A of IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju