

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.3048 of 1999

- 1. Narendra Kumar Sahu, S/o Kriparam Sahu, aged about 22 years
- 2. Kriparam Sahu, S/o Mangaturam, aged about 61 years, — **Deleted vide order dated 10.10.2014**
- 3. Budhiyarin Bai, W/o Kriparam, aged about 51 years,

All the Appellants are residents of Village Nawagaon (Thuha), P.S. and Tahsil Kurud, District Dhamtari, M.P. (now Chhattisgarh)

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh) through P.S. Kurud, District Dhamtari

--- Respondent

For Appellants	:	Shri Vishnu Koshta, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

13.7.2018

- 1. Appellant No.2, Kriparam Sahu died during pendency of the instant appeal and, therefore, vide order dated 10.10.2014, the appeal, so far as it related to him, has abated.
- 2. The appeal is directed against the judgment dated 25.10.1999 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No.284 of 1999 convicting and sentencing each of the Appellants as under:

<u>Appellants</u>		<u>Conviction</u>	<u>Sentence</u>
Appellant Narendra Sahu	No.1, Kumar	Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine

		of Rs.500/- with default stipulation
Appellant No.2, Kriparam Sahu	Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
Appellant No.3, Budhiyarin Bai	Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

3. Prosecution case, in brief, is that marriage of the prosecutrix (PW1) with Appellant No.1 was solemnised 1 year prior to 28.3.1999. On 28.3.1999, the prosecutrix (PW1) lodged a written report (Ex.P1) in which it was alleged that her husband/Appellant No.1, father-in-law/Appellant No.2 and mother-in-law/Appellant No.3 used to subject her to cruelty. It was further alleged that 13 days prior to 28.3.1999, her husband shut her in a room and a friend of her husband, namely, Yogu alias Yogeshwar (acquitted accused) committed forcible sexual intercourse with her in the said room. On her said written report dated 28.3.1999, First Information Report (Ex.P2) was registered. The prosecutrix (PW1) was examined by Dr. Asha Tripathi (PW6). Statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the Appellants and co-accused Yogu alias Yogeshwar for offence punishable under Sections 498A, 342, 376, 506B, 34 of the Indian Penal Code. Against husband/Appellant No.1, Narendra Kumar Sahu, charges were framed under Sections 498A, 342, 376(1), 34 of the Indian Penal Code, against father-in-law/Appellant No.2, Kriparam Sahu and mother-in-law/Appellant No.3, Budhiyarin Bai, charge was framed under Section 498A of

the Indian Penal Code and against co-accused Yogu alias Yogeshwar, charges were framed under Sections 376(1) and 506B of the Indian Penal Code.

4. To bring home the offence, the prosecution examined as many as 8 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. No witness has been examined in their defence.
5. After trial, the Trial Court acquitted co-accused Yogu alias Yogeshwar of the charges framed against him, but convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for Appellants No.1 and 3 submits that Appellants No.1 and 3 are innocent. They have been falsely implicated in the case. Even if the entire evidence available on record is taken as it is, no case under Section 498A of the Indian Penal Code is made out against Appellants No.1 and 3 because the alleged demand was made for treatment of Appellant No.1 and not as a dowry. The prosecutrix has made general and omnibus allegations regarding harassment. Therefore, Appellants No.1 and 3 cannot be convicted under Section 498A of the Indian Penal Code and they deserve acquittal.
7. On the contrary, Learned Counsel appearing for the State opposes the arguments advanced on behalf of the Appellants and supports the impugned judgment of conviction and sentence. He submits that there is sufficient evidence on record on the basis of which the

Trial Court has rightly convicted Appellants No.1 and 3.

8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. It is not in dispute that marriage between Appellant No.1 and the prosecutrix (PW1) was solemnised 1 year prior to the lodging of the FIR (Ex.P2). It is also not in dispute that the FIR was lodged after 13 days of the alleged offence committed by Yogu alias Yogeshwar (acquitted accused). The case of the prosecution regarding the offence punishable under Section 498A of the Indian Penal Code is based on the statements of the prosecutrix (PW1), her father Goverdhan (PW3) and her brother Yuvraj (PW4).
10. As per the statement of the prosecutrix (PW1), after her marriage, when she came to her in-laws' house, she came to know that both the eyes of her husband/Appellant No.1 were not functioning properly. She has further stated that both her husband/Appellant No.1 and father-in-law/Appellant No.2 used to ask her for bringing Rs.10,000/- so that treatment of eyes of her husband could be done and she was threatened that if she does not bring the amount, they will not keep her with them. She has further stated that she did not tell this fact to her parents nor did to any other person. In paragraph 6 of her cross-examination, she has admitted that at the time of marriage, she was not aware that eyes of her husband were weak. When she became aware of this fact after her marriage, a dispute took place between her and her mother-in-law/Appellant No.3 in this regard. She has further admitted that she herself had told them that she herself did not want to live with them and 4-5 times she had gone out of their

house with her baggage, but the in-laws had stopped her not to go away. In paragraph 13, she has stated that after the incident, which had taken place with Yogeshwar (acquitted accused), a village meeting was called and since no decision was taken in the said meeting, later on she lodged the report. In para 14, she has also admitted that in the village meeting, the panchas had not taken any decision stating that the issue was of domestic nature. In paragraph 20, she has further admitted that she never told about the harassment made to her for the demand to anybody nor did she lodge any report in this regard.

11. Goverdhan (PW3), father of the prosecutrix has stated that after 2 months of the marriage, when his daughter (the prosecutrix) returned to her paternal house, she told that her in-laws used to tell her that she had brought lesser dowry and they used to beat and harass her. At that time, he did not pay attention towards this. In paragraph 3, he has further stated that when the prosecutrix came to his house, she told for the first time that the eyes of her husband/Appellant No.1 were weak and her husband used to ask her for bringing money for treatment of his eyes. In paragraph 12, this witness has admitted that at the time of settling the marriage, no demand was made. He has further admitted that no demand was made from him.
12. Yuvraj (PW4), brother of the prosecutrix has stated that once he had gone to the house of the in-laws of the prosecutrix to take her. At that time, the husband of the prosecutrix, saying that they had given lesser dowry, had asked him to give Rs.10,000/-. He has further stated that the prosecutrix had told him that she was being

beaten and harassed for dowry. He has further stated that when he took the prosecutrix back to the house of her in-laws, the in-laws had told him that they had given lesser dowry and the husband of the prosecutrix had also beaten the prosecutrix.

- 13.** On a minute examination of the statements of the prosecutrix (PW1), her father Goverdhan (PW3) and her brother Yuvraj (PW4), it is clear that as per the statement of the prosecutrix (PW1), after her marriage, she came to know about the weakness of eyes of her husband and as per this witness, Rs.10,000/- was being demanded for treatment of eyes of her husband. Any demand regarding dowry was made is not stated in her statement. In these circumstances, the statements of Goverdhan (PW3), father of the prosecutrix and Yuvraj (PW4), brother of the prosecutrix are not reliable on the point that the prosecutrix was being subjected to harassment and was being beaten for demand of dowry. The prosecutrix has categorically stated that she never told them about any harassment given to her. On account of this also, statement of Goverdhan (PW3) regarding demand of dowry is not reliable. From the statement of the prosecutrix, it is also clear that she never intimated to anyone or to her parents about the demand of dowry or harassment therefor nor did she ever attempt to make a report in police in this regard. From the statement of the prosecutrix, it reveals that if any dispute was in existence, it was of domestic and simple nature. Allegedly, the demand in question was for treatment of eyes of the husband of the prosecutrix, therefore, the demand in question cannot be held to be for dowry. In these circumstances, I am of the considered opinion that no offence under Section 498A of the Indian Penal Code is made out

against Appellants No.1 and 3.

14. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. Appellants No.1 and 3 are acquitted of the charges framed against them.
15. It is reported that Appellants No.1 and 3 are on bail. Their bail bonds shall continue for a further period of six months in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
16. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge