

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 898 of 2002

Daulal

---- Appellant

Versus

State of Chhattisgarh

---- Respondent

Post for pronouncement of judgment on 10/10/2018

JUDGE
10/10/2018

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 13.07.2018****Judgment Delivered on : 10.10.2018****CRA No. 898 of 2002**

- Daulal, S/o. Khorbehara, Aged about 45 yers, R/o. Village Chachedi, P.S. Lormi, District Bilaspur (CG)

---- Appellant**Versus**

- The State Of C.G. through police station Lormi, District Bilaspur (CG)

---- Respondent

For Appellant	:	Shri R.N.Jha, Advocate
For Respondent/State	:	Shri Lav Sharma, PL

Hon'ble Smt. Justice Rajani Dubey**C A V Judgment****10/10/2018**

This appeal has been preferred against the judgment and order dated 14.08.2002 passed by the Additional Sessions Judge, Mungeli, distt. Bilaspur in Sessions Trial No. 44/2002 convicting the accused/appellant for the offence punishable under Sections 498-A IPC and sentencing him to undergo rigorous imprisonment for one year and to pay fine of Rs. 2,000/- with default stipulation.

2. In the present case, name of the deceased is Sunita Bai, daughter-in-law of the accused/appellant. Marriage of the deceased and son of the appellant was solemnized three-four years prior to her death and she died on 27.09.2001 after pouring kerosene oil and setting herself ablaze. Immediately after the incident, merg intimation

Ex.P-11 was recorded. Inquest Ex.P-12 on the body of deceased was prepared and body was sent for postmortem examination which was conducted by Dr. N.S.Chandel (PW-8) vide Ex.P-13 and according to him cause of death was due to shock by extensive burn (99%). On the basis of merg, FIR Ex.P-6 was lodged against the appellant under Section 306 IPC on 26.05.98. After filing of the charge sheet, trial judge framed charge against the accused/appellant under Sections 498-A and 306 IPC.

3. So as to prove the guilt of the appellant/accused, the prosecution has examined as many as 10 witnesses. Statement of the accused was also recorded under Section 313 Cr.P.C. in which he denied the charge levelled against him and pleaded his innocence. This apart one defence witness has also been examined by the appellant/accused.

4. After hearing counsel for the parties, the trial Court has acquitted Panch kumari of the charges levelled against her and has also acquitted the present appellant of the charges under Section 306 IPC but has convicted and sentenced him as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Learned counsel for the appellant/accused submits that the offence under Section 498-A against the appellant is not sustainable. He submits that the deceased had never complained that she was harassed by her in-laws or her husband. He also submits that even the eyewitness Janaki Bai (PW-3) has not fully supported the prosecution case.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in

accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the material available on record.

8. Uttara Bai (PW-1) is the mother of the deceased. She has stated that her daughter died in her matrimonial house after setting herself ablaze. She has stated that she was informed by one of the villager that her daughter is burnt. She has stated that on two-three occasions when she went to her daughter's village, she was informed by her daughter that her in-laws and husband used to beat the deceased but she made her understand. Surendra Kumar (PW-2) is the father of the deceased who has stated that his daughter has never made any complaint about her in-laws but she told about it to her mother (PW-1). On the date of incident, at about 7.00 p.m. uncle of Sanjay and one boy came to his house and informed that his daughter is burnt. Janaki Bai (PW-3) grandmother of deceased has stated that on being asked by the parents of the deceased, she went to the matrimonial house of her granddaughter for bringing her but her husband, mother-in-law and father-in-law did not allow her and took away her children. She has further stated that father-in-law of Sunita Bai has asked her as she often use to go to her parents house, pour kerosene oil on her and set on fire. She has stated that thereafter she came back and informed to her daughter Uttara Bai, mother of the deceased about the same and on the next day evening, they came to know that Sunita Bai has suffered burn injuries. Chandra Bai (PW-4) and Pushpa Bai (PW-5) are the maternal aunts of the deceased have not stated anything specific against the appellant. Dr.C.S.Patel (PW-6) is the doctor who has examined the deceased after she was brought to the hospital. Surendra

Kumar Dubey (PW-7) is the Investigating Officer who has done the investigation. Dr.N.S.Chandel (PW-8) has conducted postmortem examination on the body of deceased Sunita Bai and according to him, the cause of death was due to shock on account of excessive burn (99%). L.S. Kashyap (PW-10) is the Constable who assisted in the investigation.

9. As the parents and relatives of the deceased have accepted that neither deceased Sunita Bai nor they had ever lodged any complaint with the police against the accused person for the ill-treatment meted out to her. The learned trial judge considered the entire evidence at length and recorded the conclusion that the necessary ingredients to attract the provisions of Section 306 I.P.C. have not been established. The deceased tried to commit suicide after sprinkling kerosene oil on her body on the day of occurrence which resulted in her death and the prosecution has totally failed to attract the ingredients of Section 306 I.P.C. inasmuch as there is not an iota of evidence to establish the case of instigation or abetment on the part of the accused person to commit suicide. In view of the order of acquittal passed by the learned trial judge in my opinion there is hardly any justification for interference with the same.

10. Close scrutiny of the evidence makes it clear that in the present case, in order to justify a conviction there must be some material and cogent evidence available on record. The evidence of the mother and grandmother of deceased wherein the mother has stated that on two-three occasions, Sunita Bai had told her that she was subjected to cruelty but her grandmother Janki Bai (PW-3) has stated that in front of her, father-in-law of the deceased has asked to pour kerosene oil on

her and set on fire but in cross-examination she has not supported her version. Except the version of the mother of the deceased, there is nothing on evidence to prove that it is the accused/appellant who had committed the murder of the deceased. It is thus difficult to maintain the conviction on the oral testimony of the mother of the deceased.

11. Considering the facts and circumstances of the case, after examining the entire material on record, this Court has come to the conclusion that there is no iota of material on the basis of which the cruelty which is the necessary ingredient for bringing home the charge under Section 498-A IPC can be said to have been established and accordingly he is liable to be acquitted of the charge levelled against him.

12. The trial court has convicted the appellant on the basis of conjectures and implications which could not have been done as there was neither any proof of dowry demand nor harassment of deceased by the appellant or her husband of any such dowry demand. The prosecution has failed to prove either any dowry demand by the appellant or the deceased being harassed by the appellant or her husband in connection with any such dowry demand so as to prove that it was the case of dowry death. In view of the above discussion, the appeal succeeds. Appellant is acquitted of the charge levelled against him. Accused/appellant is reported to be on bail and therefore no further order is required. His bail bonds stand discharged.

13. In the result, appeal is allowed.

Sd/-
(Rajani Dubey)
Judge