

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 870 of 2001

1. Fulleshwari Bai, Widow of Jethooram, Aged about 52 years.
2. Full Bail, Widow of Jethooram, Aged about 62 years.
3. Dileshwar S/o. Shri Jethooram, Aged about 27 years.

All resident of village, Bhirai, Police Station Gurur, Chauki
Kawar, District Durg (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Police Station Gurur, District
Durg (C.G.)

---- Respondent

For Appellant : Mr. N.K. Malviya, Advocate
For Respondent : Mr. Bhaskar Payashi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

04.05.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 16.08.20014 passed by the Additional Sessions Judge, Balod, Session Division Durg (C.G.) in Sessions Trial No. 251/2000, wherein the said Court convicted the accused/appellants under Section 498-A of the IPC, 1860 and sentenced him to undergo R.I. for 3 years and to pay fine of Rs. 1000/- with default stipulation for committing cruelty against deceased Deepak Bai. Dileshwar is her husband and others being relative of the husband.

2. In the present case, name of deceased is Deepak Bai, who was wife of the appellant. The appellants harassed the deceased by willful conduct against her to danger her life that is whey she died of burn injury.

3. Counsel for the appellants submits that there is no legally admissible evidence against the appellants for commission of offence and the finding arrived at by the trial Court is based on conjuncture and surmises. He further submits that the witnesses examined by the prosecution are hearsay witnesses and their version cannot be acted upon.

4. Per contra, learned State counsel supporting the impugned judgement has submitted that the judgement of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

5. I have heard counsel for the parties and perused the material on record.

6. To substantiate the charge prosecution has examined 10 witnesses.

7. As per version of Dr. S.R. Bhardwaj (PW-4), who conducted the autopsy of the deceased on 25-05-2000, he opined that the deceased died due to burn injury.

8. Amarsingh (PW-1) is father of the deceased, he deposed that on one point of time the deceased visited to her house and informed him that quarrel took place between the in-laws and herself. She also informed that appellant Dileshwar assaulted him. Parvati Bai (PW-2) is mother of the deceased, she deposed that on

one point of time her daughter informed her that her mother-in-law is demanded one neck-lace from her. Kishanlal (PW-3) is brother of the deceased and as per his version he visited to marital home of the deceased where appellants Fulleshwari Bai and Full Bail told him that they will re-marry appellant Dileshwar. But from the evidence of all three witnesses it is not clear as to what happened on the date or prior to the date of incident. The prosecution is under obligation to establish that the conduct of the appellants was so grave to cause danger to life of the deceased but the witnesses have stated only what is informed to them by others.

9. The statement made by them is hearsay evidence and is not received as relevant evidence. In **Kalyan Kumar Gagoi 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 circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is concerned, 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 other is inadmissible.

10. Apart from hearsay evidence there is nothing incriminating against any of the appellants. In absence of direct and circumstantial evidence it is not established that any of the appellants committed cruelty against the deceased, therefore,

commission of offence under Sections 498-A of the IPC is not based on legally admissible evidence, finding arrived at by the trial Court is not sustainable in the eye of law.

11. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appeal is allowed. The appellants are acquitted of the charge under Sections 498-A of the IPC. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Santosh