

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 438 of 2009

Judgement reserved on 30.04.2019

Judgement delivered on 04.12.2019

Sanjay Sao S/o. Late Banwari Lal Sao, Aged about 36 years, R/o. Sanjay Tent House, Near Baikunth Dham Chowk, Camp-2, Chhaoni, District Durg (C.G.)

---- **Appellant**

Versus

State of Chhattisgarh through the District Magistrate Durg
District Durg (C.G.)

---- **Respondent**

For Appellant : Mrs. Indira Tripathi, Advocate.

For Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Challenge in this appeal is to the judgment of conviction and order of sentence dated 05.06.2008 passed by the Additional Sessions Judge, (FTC) Durg (C.G.) in Sessions Trial No. 06.2009, wherein the appellate Court convicted the accused/appellant under Sections 498- A IPC, and sentenced him to undergo R.I. for 2 year and to pay fine of Rs. 1000 with default stipulations.

2. In the present case, name of deceased is Saraswati Devi Sao, who was wife of the appellant. The marriage was solemnized between them 18 years back to the date of incident. After marriage, Saraswati Devi was living with her husband in her matrimonial house at Baikunthdham, Bhilai. Out of their wedlock four children were born. The appellant's attitude towards Saraswati Devi was very bad and he did not pay her any care or attention, harassing and ill-treating the deceased on account of demand of dowry. It is alleged that the appellant was having illicit relationship with other lady and whenever it was objected by Saraswathi the appellant abused, assaulted her and stated to go back from his house. Saraswati informed the incident to her parents but the family member after giving due advise and send back her to his matrimonial house. It is further case of the prosecution that the deceased could not bear the torture of her husband and on 12.12.2008 she committed suicide by hanging herself in her matrimonial house and died. Information to this effect was given to the Police. Thereafter, inquest on the dead-body was conducted vide Ex. P-11 followed by postmortem examination carried out by Dr. V.S. Baghel (PW-15) vide report Ex. P-12. After merg inquiry and receiving the postmortem report, FIR Ex. P-8 was registered on 14.12.2008 against accused/appellant under Section 306 IPC.

3. After completion of investigation challan was filed on 14.12.2008 under Section 306 IPC. However, the charge was framed by the trial Court under Sections 306 and 498-A IPC.

4. In order to prove its case the prosecution has examined 16 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

5. Counsel for the appellant submits that even if the entire case of the prosecution is taken as it is, no case under Section 498-A IPC is made out against the appellant as all the allegations levelled against her are general in nature and that on account of false implication, the appellant has already remained in jail for more than one month and looking to the role attributed to his, this punishment is quite enough.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that after about one year of marriage, the deceased was subjected to cruelty to such an extent that she was left with no other option but to end her life by consuming poison and in these circumstances the judgment impugned convicting and sentencing her as mentioned above, is just and proper and no interference with the same is called for in this appeal.

7. Having heard counsel for the parties and perused the material available on record including the evidence of PW-2, the

mother of the deceased, it has been stated that the appellant used to torture her daughter and also caused assault and abused her and demand money. She has made such report of assault and abuse. It was properly explained by the mother giving a reason that she waited for the things to improve and it is quite natural that immediately no one goes for filing a report in matrimonial cases as there are chances for improvement of relations between the husband and wife. So the explanation given by the mother is very plausible. Further from the evidence of PW-3 Sidheshwar Sao, uncle of the deceased stated whenever the deceased visited to her parents, she used to tell that the accused/appellant was harassing her for demand of dowry and he also had given more than one lakh to the appellant but he did not return to him. This witness has stated that due to cruel act of the appellant the deceased jumped in Shivnath river and she was saved by the labourers. This witness has also stated that deceased had disclosed that the appellant used to assault and abuse her on account of illicit relation with other woman. Jaiprakash Sao (PW-5) has stated many other instances as to in what manner the deceased was subjected to cruelty by her husband Sanjay Sao. In cross examination, this witness remained firm to what he has stated in the examination-in-chief. Kamla Devi (PW-2) - the mother of the deceased has stated almost the same thing as has been stated by her son PW-1 and PW-5 stating as to in what manner the deceased was subjected to cruelty by

the accused/appellant. In the statement of Ashok PW-1, it has been stated that his sister was being abused and assaulted by the appellant and in the statement, he also stated that with respect to torture and the same was disclosed to other relative of village and one Biththal Devi Gupta. Vijay Sao (PW-7) and Jawahar Lal (PW-11) have contended that before the death, the deceased has come to village and she has disclosed that her husband an illicit relation with other woman and whenever it was objected by her then her husband used to beat and abuse her. This witness further stated that after hearing the same, the parents of the deceased had a dialogue with the appellant Sanjay Sao and advised him not to treat the deceased with cruelty. The said statement remained unrebutted in cross examination. From the reading of section 498-A, it shows that the cruelty includes a willful conduct and the allegations of cruelty have been attributed to the present appellant. No plausible explanation has been given by the appellant. Being so, this Court of the opinion that trial Court has been quite justified in holding the accused/applicant guilty under Section 498-A IPC and therefore, the same is hereby maintained.

8. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 11 years ago and that the appellant has already remained in jail for more than 1 month, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his jail

sentence is reduced to the period already undergone. With the above, the appeal stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh