

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 59 of 2004**

- Ekta Ashudani, W/o Shri Jitendra @ Jeetu, aged about 26 years, R/o Nandai Raod, Rajnandgaon, District Rajnandgaon (C.G.)

---- Applicant

Versus

1. Jitendra @ Jeetu, S/o Shri Hariram Ashudhani, aged about 30 years, R/o Kali Mandir Chowk, Mahanti Para, Bargarh, P.S. Bargarh, Orissa.
2. Hariram, S/o Tikam Das Ashudani aged about 56 years, R/o Kali Mandir Chowk, Mahanti Para, Bargarh, P.S. Bargarh, Orissa.
3. State of Chhattisgarh through District Magistrate Rajnandgaon (C.G.)

---- Respondents

With**ACQA No. 233 of 2009**

- State of Chhattisgarh.

---- Applicant

Versus

1. Jitendra @ Jeetu, S/o Shri Hariram Ashudhani, aged about 30 years, R/o Kali Mandir Chowk, Mahanti Para, Bargarh, P.S. Bargarh, Orissa.
2. Hariram, S/o Tikam Das Ashudani aged about 56 years, R/o Kali Mandir Chowk, Mahanti Para, Bargarh, P.S. Bargarh, Orissa.

---- Respondents

For Applicant	:	None (in CRR 59/2004)
For Accused/Respondent	:	Ms. Pragya Pandey on behalf of Mr. Prateek Sharma, Adv.
For State	:	Mr. Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order on Board****26.08.2019**

1. This Acquittal Appeal (233/2009) and Criminal Revision

(59/2004) arise out of the common judgment dated 26.12.2003 passed by learned Sessions Judge, Rajnandgaon (C.G.) in Criminal Appeal No. 91/2003, whereby the Court below has acquitted the accused/respondents of the offence punishable under Section 498-A of IPC as awarded by the Judicial Magistrate First Class, Rajnandgaon, in Criminal Case No. 1/2002 sentencing them to undergo R.I. for six months and to pay fine of Rs. 2,000/- each, with default stipulation.

2. Brief facts of the case are that, respondent No. 1 Jitendra @ Jeetu is husband of complainant Ekta Ashudani and respondent No. 2 namely Hariram is father-in-law of complainant. Their marriage was solemnized on 10.07.1997 and just after marriage of Ekta, her husband, father-in-law and mother-in-law started harassing her to bring Rs. 50,000/- as dowry. Respondent No.1/accused threatened complainant Ekta that if she comes Bargarh without taking money, she would be killed. Complainant lodged FIR against accused/respondents and after completion of investigation charge-sheet has been filed and charges were framed against the accused/applicants under Section 498-A of IPC by trial Court.

3. Prosecution has examined 9 witnesses in support of its case. Statement of the accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded false implication in the case.

4. After hearing the parties, the trial Court, vide its judgment dated 18.07.2003 has convicted the accused/respondents under Section 498-A of IPC and sentenced them to undergo R.I. for six months and to pay fine of Rs. 2,000/- each, with default stipulation. This order was appealed by the respondent and in the appeal, learned Appellate Court acquitted them of the charge under Section 498-A of IPC. Hence, this revision filed by the complainant/applicant and appeal filed by the State.

5. learned counsel for the applicant in CRR No. 59/2004 submits that the impugned judgment dated 26.12.2003 is contrary to law and

evidence available on record. There is material evidence available on record to convict the accused of the offence under Section 498-A of IPC. He further submits that learned Sessions Judge committed gross error by setting aside the judgment of conviction, passed by the learned trial Court, as the complainant and her family members had witnessed the cruelty committed by the accused/respondents. He next submits that learned Appellate Court erred in relying on the evidence of DW-1 Karunakar Panda, who is an interested witness. Thus, the judgment of acquittal passed by the learned Appellate Court deserves to be set-aside.

6. Learned State counsel in acquittal appeal No. 223/2009 submits that the judgment of acquittal is bad in law and thus, liable to be set-aside. Respondents/accused deserve to be convicted and sentenced to the full term provided. Learned trial Court, after scrutinizing the evidence, has rightly convicted respondents in which no interference was required but learned Appellate Court has committed serious error to convert the order of learned trial Court. Thus, the impugned order passed by the learned Appellate Court deserves to be set aside.

7. On the other hand, learned counsel appearing on behalf of accused/respondents supported the impugned order of the Court below.

8. Heard learned counsel for the parties and perused the material on record including the impugned order.

9. So far as Section 498-A of IPC is concerned, it is reproduced herein below:-

“....498A. Husband or relatives of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- 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. Before trial Court complainant Ekta (PW-2), her father Kanhaiyalal Panjwani (PW-3) and her brother Naresh Panjwani (PW-1) have stated about the torture and demand of dowry made by the accused/respondents. Learned Appellate Court, in para 14-22, appreciating the oral and documentary evidence of prosecution witnesses, found that accused/respondent No.-1 had filed divorce petition on 14.10.1999 and complainant lodged FIR on 01.04.2000, and prior to lodging FIR, she did not complain about torture or demand of dowry to anybody and when she started residing in her parental house since 28.07.1999, she even did not complaint about demand of dowry to anyone. The aforesaid conduct of the complainant raises serious doubt whether she was subjected to cruelty by the accused or not on account of dowry. The learned Appellate Court, after considering the material aspect of the matter, arrived at the finding of acquittal, which, in my opinion, does not call for any interference by this Court.

11. In the result, the Criminal Revision and acquittal appeal being without any substance and liable to be dismissed and are dismissed as such.

**Sd/-
(Rajani Dubey)
JUDGE**