

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2469 of 1998**

1. Vishnu Ram S/o Gaind Dhobi, aged about 30 years, resident of Village Satnawan, Thana Nawera, District Raipur (M.P.) now (C.G.).

---- Appellant**Versus**

1. State of Madhya Pradesh Now Chhattisgarh, through District Magistrate Raipur.

---- Respondent

For Appellant	:	Shri Rakesh Kashyap, Advocate.
For Respondent	:	Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Justice Shri Gautam Chourdiya**16/07/2019****ORDER**

No one appeared on behalf of the appellant, when the matter is called. In these circumstances, this Court is left with no other option but to appoint the counsel through the High Court Legal Services Committee.

Shri Rakesh Kashyap, Advocate, present in the Court, empaneled Lawyer of High Court Legal Services Committee, on being asked by this Court, he is ready to argue the matter. Therefore, this Court has appointed Shri Rakesh Kashyap, Advocate to argue the matter on behalf of the appellant. Registry is directed to inform High Court Legal Services Committee in this regard for doing the needful.

Judgment On Board

- 1) This appeal is filed under section 374 of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 13/10/1998 passed by Seventh Additional Sessions Judge, Raipur in Session Trial No. 274/98.

- 2) By this judgment impugned appellant Vishnu Ram stands convicted and sentenced as under:-

Conviction	Sentences
U/s. 498-A of Indian Penal Code	R.I. for 2 years & fine of Rs. 500/- in default of fine additional S.I. for three months.
U/s. 306 of Indian Penal Code	R.I. for 5 years & fine of Rs. 1,000/- in default of fine additional S.I. for three months.
(Both sentences to run concurrently)	

- 3) Case of the prosecution in brief is that on the date of incident i.e. on 16/05/1998 deceased Kunjwati wife of appellant Vishnu Ram committed suicide by pouring kerosene on herself. Merg intimation Ex. P-17 lodged on 17/05/1998 by husband of deceased Vishnu Ram Dhobi to the effect that his wife sustained burn injury and while being shifted to the Raipur Hospital she died on the way. After Merg inquiry Crime No. 69/98 registered by P.S. Nevra under section 498A and 306 of Indian Penal Code, 1860 (in short "I.P.C.") against husband and mother-in-law of deceased. During the course of investigation, statements of father Chunuram (PW-01), brother Narad (PW-02) and other witnesses were recorded wherein they stated that both accused Vishnu Ram (husband) and Bhagaiya Bai (mother-in-law) used to quarrel with the deceased and also beat her. On the date of incident accused Vishnu Ram also assaulted deceased as she wanted to go to her parents house to attend death ceremony (Dasgatra) of her elder father. After due investigation, charge sheet has been filed against Vishnu Ram and Bhagaiya Bai under section 498A, 306 of I.P.C. After considering the evidence accused Bhagaiya Bai mother-in-law of deceased was acquitted of the charges under section 498A and 306 of I.P.C. as the prosecution failed to prove its case beyond reasonable doubt against Bhagaiya Bai. However, the accused/appellant is convicted and sentenced as above mentioned.
- 4) Learned counsel for the appellant submitted that it is not disputed by the appellant that deceased was married to him 2

years prior to her death. No any specific allegation is made against the appellant regarding any demand of money. Within 2 years of marriage no any complaint regarding any cruelty caused by the appellant was reported to Police or any social meeting was convened in this regard. Accused/appellant and deceased were living together happily. Only general allegations are made by both father and brother of the deceased that Bhagaiya Bai and the appellant were harassing the deceased but no any specific date of incident has been mentioned. Learned Trial Court wrongly convicted appellant in same.

- 5) He submits that in matrimonial life some family disputes do occur between husband and wife, it cannot be treated as cruelty. Prior to date of incident deceased wanted to go to her matrimonial house to attend Dasgatra ceremony of her elder father, no any injury was found on the body of the deceased, no any serious allegation made against the appellant regarding cruelty, no any abetment was made by the appellant and not any intention to abet the deceased to commit suicide. Therefore, looking to the evidence, only 1 or 2 incidences in the entire 2 years of married life, no specific allegation made, no any cruelty made by the appellant, learned Session Judge wrongly convicted appellant under section 498A and 306 of I.P.C. Ingredients of both the offences are not proved by the prosecution beyond reasonable doubt.
- 6) Lastly he submits that on the same set of evidence, accused mother of the appellant Bhagaiya Bai was acquitted by the Session Judge, therefore, the same law is applicable in favour of appellant and he also deserves to be acquitted as the prosecution has failed to prove its case beyond reasonable doubt against the appellant as well.
- 7) On the other hand learned counsel for the respondent State supports the impugned judgment of the Trial Court. She further submits that it is true and not disputed by the appellant that the deceased is her wife, she died within 7 years of marriage by

committing suicide. It is also true that no any specific date regarding the dispute between deceased and appellant is proved by the prosecution but prior to date of incident, dispute arose between the deceased and appellant, deceased wanted to go to her parental house for attending Dasgatra ceremony and the appellant assaulted the deceased. Therefore, learned Session Judge rightly convicted appellant looking to the presumptive value of evidence under the Evidence Act.

- 8) Heard counsel for the parties and perused the material available on record.
- 9) It is not in dispute that the appellant married the deceased through Chudi custom and within 2 years of her marriage she committed suicide by pouring kerosene on herself.
- 10) So far as offence under section 306 of I.P.C. against appellant is concerned this Court is required to see whether the appellant is acted in such a manner which led or abetted the deceased to commit suicide. Section 107 of I.P.C. which defined abetment reads as under :-

"107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing"

- 11) From the statement of PW-01 Chunuram, PW-02 Narad, PW-04 Pyare Lal, PW-05 Baliram, PW-06 Sanat Kumar & PW-10 Pyare Lal Verma, it is seen that they are used to quarrel between the deceased and the appellant on trivial issue only. They have stated that prior to the date of incident there was dispute the appellant and the deceased as the deceased wanted to go to her parental house for attending Dasgatra ceremony of her elder

father which was refused by the appellant and he also beat the deceased. As per postmortem report, no grievous injury was found on the person of the deceased. Further there is no evidence that the accused/appellant was demanding dowry from the deceased. During their married life of 2 years, no F.I.R. was lodged against the appellant by the deceased or her family members in connection with cruelty or demand of dowry. Thus considering the overall facts and circumstances of the case, the nature of allegation leveled against the appellant, the oral and documentary evidence on record, the definition of abetment as provided under section 107 of I.P.C., it cannot be said that the appellant acted in such a manner which abetted the deceased to commit suicide. Being so, all the basic ingredients of offence under section 306 of I.P.C. are not proved by the prosecution beyond reasonable doubt against the appellant and therefore, the appellant is entitled to acquitted of the said charge by giving him benefit of doubt.

- 12) Looking to the statement of PW-01 Chunuram, father of deceased and PW-02 Narad, brother of deceased, it is clear that both have stated that after marriage accused Vishnu Ram (husband of deceased) was harassing deceased and asking for bringing some money from father of deceased. Both have stated in their statements that in family disputes accused/appellant had beaten to deceased within 2 years of marriage by hand, fist and club. It has also come in the evidence of witnesses that at the time of incident when the deceased expressed her willingness to go to her parental house for attending the Dasgatra ceremony of her elder father, the appellant refused and also beat her. Thus, from the statements of PW-01 Chunuram, PW-02 Narad, PW-04 Pyare Lal, PW-05 Baliram, PW-06 Sanat Kumar and PW-10 Pyare Lal Verma its tends proved beyond the reasonable doubt that after marriage and prior of the death of the deceased, the appellant used to harass the deceased over trivial issues and also beat her. Therefore, considering the facts and circumstances of the case, the nature and quality of evidence adduced by the prosecution, cruelty on the part of the appellant

against the deceased has been duly proved by the prosecution. As such conviction of the appellant under section 498A of I.P.C. awarded by the Trial Court appears to be based on just and proper appreciation evidence available on record and deserves of affirmation by this Court. .

- 13) So far as sentence under section 498A of I.P.C. is concerned, considering the facts and circumstances of the case the fact that the incident is of the year 1998, the appellant has already remained in jail for more than 7 months, in the considered of this Court interest of justice would be served if the appellant is awarded sentence under the aforesaid section for the period already undergone by him.
- 14) In the result the appeal is allowed in part. While acquitting the appellant of the charge under section 306 of I.P.C., he is held guilty under Section 498A of I.P.C. and is sentenced to the period already undergone by him. The impugned judgment stands modified to the above extent.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant