

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 14-10-2019

Delivered on 20-11-2019

CRA No. 1253 of 2003

1. Pramod Kumar Vaishnav s/o Bharatdas Vaishnav, aged about 35 years, occupation Govt. Servant.
2. Bharatdas s/o. Gulabdas Vaishnav, aged about 55 yerars, occupation Govt. servant.

Both are residents of village Gobarsingha, Police Station Sariya, District Raigarh, CG.

---- Petitioner

Versus

- State of Chhattisgarh through Police Station Sariya, District Raigarh (CG).

---- Respondent

For Appellants : Mr. Shashi Bhushan Singh Patel, Advocate

For respondent : Mr. Ishwar Jaiswal, Penal Lawyer
State

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred against the judgment dated 21-11-2003 passed by 2nd Additional Sessions Judge, Raigarh (CG) in Session Trial No. 229 of 2000 wherein the said Court has convicted the appellants for commission of offence under Section 498-A of

IPC and sentenced them to undergo RI for three years and to pay fine of Rs.1000/- each with default stipulations.

2. In the present case, name of the victim is Sheela who married with the appellant No.1 Pramod Kumar Vaishnav since 11 – 12 years ago (in the month of May 1989) from the date of incident. Appellant No.2 Bharatdas is father-in-law of said Sheela. It is alleged that the appellants committed cruelty against the victim that is why she committed suicide. The trial court after evaluating the evidence recorded finding that abetment on the part of the appellants for committing suicide is not established but cruelty on their part is established that is why the trial Court convicted and sentenced the appellants as mentioned above.

3. Learned counsel for the appellants would submit as under:

- i) There is no evidence to substantiate the charge of cruelty as defined under Section 498-A of IPC, therefore, finding of the trial court is not sustainable.
- ii) There is material contradiction and omission in the statement of the prosecution witnesses and cruelty is not established if the entire evidence is taken as it is.
- iii) The trial Court has not evaluated the

evidence in its true perspective, therefore, finding of the trial court is liable to be set aside.

4 On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6.. The question for consideration of this court is whether the appellants committed cruelty as defined under Section 498-A of the IPC. As per Section 498-A of IPC, 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.

7. Kanhaiya Das Dewangan (PW/1) is father of deceased Sheela. He deposed before the trial court what is informed to him by the said

Sheela. As per version of this witness, Sheela informed him that the appellants assaulted her on account of demand of money. Ramlakhan Singh (PW/6) also deposed what is informed to him by the said Sheela. As per version of this witness, Sheela informed to him that the appellant Pramod used to beat her. PW/6 Davamanti Bai who is mother of the deceased also deposed before the trial court what is informed to her by the said Sheela. PW/10 Pithambardas Vaishnav deposed before the trial court that there was dispute between the appellants and deceased Sheela regarding taking of food in the house of one nurse by the appellant.

8. The case of prosecution is based on hearsay evidence. The question for consideration of this court is whether conviction can be based on hearsay evidence. In the matter of **Kalyan Kumar Gogoi 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 circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, 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 others is inadmissible."

9. As per law laid down by Hon'ble the Apex Court, hearsay evidence is inadmissible in evidence and same cannot be acted upon regarding any finding. In the present case, there is no direct evidence of assaulting Sheela by any of the appellants. There is no medical evidence to establish that Sheela really sustained injury on her body. The evidence which is adduced by the prosecution is totally hearsay in nature and on the basis of hearsay evidence it cannot be said that the appellants by any wilful conduct caused grave injury or danger to life to said Sheela or harassed her to meet any unlawful demand, therefore, charge under Section 498-A of IPC is not established against the present appellants. Finding arrived at by the trial court is not sustainable.

10. Accordingly, the appeals is allowed and conviction and sentence passed by the trial Court against the appellants is set aside. They are acquitted of the charges under Section 498-A of IPC. They are

reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju