

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1306 of 2000****Judgment Reserved on 05/11/2019****Judgment delivered on 04/02/2020**

Murarilal Tamrakar S/o Manoharlal Tamrakar, aged about 50 years R/o Takhatpur, Distt. Bilaspur (C.G.).

--- Appellant**Versus**

State of Madhya Pradesh through S.H.O, P.S. Purani Basti, Raipur (Now Chhattisgarh)

---- Respondent

For Appellant	:	Mr. Manoj Kumar, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel

CAV Judgment

1. This appeal is directed against the judgment dated 05/05/2000 passed in Sessions Trial No. 168/1999 by the Additional Sessions Judge, Special Judge, NDPS Act, Raipur, whereby the Appellant has been convicted under Section 498-A of the IPC and sentenced to undergo RI for 2 years with fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that the Appellant is husband of Deceased Premlata. (henceforth 'the Deceased'). Their marriage was solemnized prior to 11-12 years before lodging the FIR i.e. on 31/05/1998. Earlier they were residing at Takhatpur and thereafter at Raipur in the house of father of the Deceased. It is alleged that the Appellant had been doubting character of

his wife for last two years. He also used to abuse her on this matter and committed Marpeet with her. He used to torture her physically and mentally. When Narayan Tamrakar (PW3) came to see his sister, the Deceased complained to him about this. On 30/05/1998, the Appellant quarreled with the Deceased in front of Narayan Tamrakar (PW3) then Narayan (PW3) tried to pacified the matter. On 31/05/1998, the Deceased committed suicide in a pond. After getting the intimation, Narayan Tamrakar (PW3) came to Raipur and thereafter he made a written report vide Ex.P-5. The police registered the case. After investigation, a charge-sheet was filed. Trial Court framed the charges under Section 306 and 498-A of the IPC. To prove the guilt of the Appellant, the prosecution has examined as many as 12 witnesses. Later on, Narayan was examined as Court witness No. 1. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted the Appellant from the charge framed under Section 306 of the IPC, however, he has been convicted and sentenced as mentioned in the first paragraph of this judgment. Hence, this appeal.
4. Learned counsel appearing on behalf of the Appellant has submitted that the Appellant has been wrongly convicted without there being any sufficient evidence available on record. There are material contradictions and omissions occurred in the statement of the prosecution witnesses. The Trial Court has failed to see that the dispute between the Appellant and Deceased was of normal dispute, which prevails between husband and

wife. The Court below also failed to appreciate that no report was made prior to the incident. From the evidence available on record, it is clear that the Appellant was not having cordial relation with his tenants, therefore, the statement of tenants should have been scrutinized carefully. He further submits that the Court below has failed to see that the Deceased was under mental pressure for not having any issue. Thus, the conviction is not sustainable.

5. Learned counsel appearing on behalf of the State opposes the same and supported the judgment of conviction passed by the trial Court.
6. I have heard learned counsel for the parties and perused the record minutely.
7. With regard to alleged torture with the Deceased, the case of the prosecution is based on the statement of Narayan Tamrakar (PW3), brother of the Deceased, Shiv Kumar (PW4) father of the Deceased, Parvati Bai (PW5) mother of the Deceased, Hattwar Singh (PW6) and Ganesh Prasad (PW7), therefore, to consider the case of the prosecution, their statements are crucial to consider the present case.
8. Narayan Tamrakar (PW3), brother of the Deceased in his court statement has deposed that the Deceased and the Appellant were residing at Raipur. They used to quarrel for last two years. The Appellant used to doubt the character of the Deceased and beat her on this account. The Appellant also used to torture and harass the Deceased. He further deposed that he used to visit every week to Raipur, there the Deceased told him about the incident. The Deceased also told him that once the Appellant abused to

Ganesh when he came to Raipur. This witness has further deposed that on 30/05/1998 when he last time met with the Deceased, the Appellant and the Deceased were quarreling. The Appellant was making allegation on her character. He also beaten her. He further deposed that before the incident when the Deceased used to come her maternal home then she always made complaint about this. This witness has remained firm during his cross-examination. Shivkumar Verma (PW4) and Parvati Verma (PW5), tenants of the Appellant have also deposed that since the Appellant and the Deceased were residing in their house, they were not having not cordial relation and the Appellant always used to quarrel and beaten the Deceased. Just before the death of the Deceased, both had quarreled in their house and the Appellant had beaten her. They also tried to convince the Deceased. In para 4, Shivkumar (PW4) further deposed that the Appellant used to doubt the character of the Deceased and on these points, he used to quarrel with her. Both the witnesses were remained firm during their cross-examination. There is nothing in their statements, which shows that they were having previous enmity with the Appellant. Hattwar Singh (PW6) also deposed that when the Deceased used to come to him, she always told him that the Appellant abuses her and quarrel with her. According to this witness, last time when he met with the Deceased in her house at Raipur, at that time also a quarrel was going on between them. Ganesh Prasad (PW7) also supported the case of the prosecution and stated that the Deceased used to call him as uncle. Whenever, he came to Raipur, he used to visit the house of the Deceased. He also used to bring Ration (Grains, rice etc.). Some times, the Appellant used to present there and some time he does not present in the house. He further deposed that

the Deceased used to tell him not to come in her house because the Appellant doubts his character due to him. According to this witness, on 30/05/1998 also, when he visited the house of the Deceased, at that time the Appellant was quarrellings and beating the Deceased.

9. On minute examination of above evidence, it is clear that all the above witnesses have categorically stated that the Appellant had been quarreling with the Deceased for last two years on account of doubting her character. He also used to beat her on this account. He was torturing the Deceased physically and mentally. Shivkumar (PW4) and Parvati Verma (PW5) are tenants of the Appellant, they were residing in the same house and there is nothing in their statements which shows that they were having any previous enmity with the Appellant. Therefore, their statement is duly reliable. Moreover, other witnesses Hattwar Singh (PW6) and Ganesh Prasad (PW7) also deposed in the same manner and supports the case of the prosecution. Apart from this, there is a diary and pages written by the Deceased as articles- A, B, C, E, F & G. In these articles, the Deceased has mentioned these things against the Appellant. Therefore, from the evidence and material available on record, offence under Section 498-A of the IPC is duly proved against the Appellant and the Trial Court has rightly convicted the Appellant.
10. With regard to the sentence, the trial Court has sentenced the Appellant to undergo RI for 2 years under Section 498-A of the IPC. Since, the Appellant has already undergone about 99 days, he is facing the *lis* since 1998, he is aged about 70 years, Narayan (PW3), brother of the Deceased and the Appellant had filed a joint compromise application which shows

that a settlement has been taken place between them, looking to that no fruitful purpose would be served to again sent the Appellant in jail after 22 years, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him and the fine sentence imposed upon him under Section 498-A of the IPC is enhanced to Rs. 30,000/-. Ordered accordingly. The fine amount shall be payable within 4 weeks from the date of receipt of a copy of this judgment. In default of payment, the Appellant shall be liable to undergo RI for 1 month. If any amount towards fine has already been deposited, the same shall be adjusted in the amount of fine enhanced/imposed today.

11. Accordingly, the appeal is partly allowed to the extent indicated above.
12. It is reported that the Appellant is on bail. His bail bond is not discharges at this stage and the same shall remain operative for a further period of six months in view of the provisions contained in Section 437-A of the Cr.P.C.
13. Records of the court below along with the copy of this judgment be sent back forthwith for necessary compliance and action.

Sd/-
(Arvind Singh Chandel)
Judge