

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-11-2019

Delivered on 06 -01-2020

CRA No. 425 of 2001

1. Arun Kumar Tiwari S/o Late Shri K. P. Tiwari Aged About 30 Years R/o Village Bhatauti, Dandi, P. S. Meja, District Allahabad U. P. At Present R/o Tethvarpara, Dallirajhara, District Durg (Now Balod) Chhattisgarh,
2. Kanak Tiwari W/o Arun Tiwari Aged About 28 Years R/o Village Bhatauti, Dandi, P. S. Meja, District Allahabad U. P. At Present R/o Tethvarpara, Dallirajhara, District Durg (Now Balod) Chhattisgarh.
3. Mrs. Gulab Munni Devi w/o. Late Shri K.P. Tiwari, aged about 55 years, Police Station Meja, Dist. Alhabad (UP) (died and deleted).

---- Appellants

Versus

- The State of Chhattisgarh Through P. S. Dallirajhara, District Durg (Now Balod) Chhattisgarh.

---- Respondent

For Appellants : Mr. Raj Kumar Pali, Advocate

For respondent/State : Mrs. Smita Jha, Penal Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred against the judgment dated 30-4-2001 passed by the Additional Sessions Judge, Balod, CG, in Session Trial No. 134 of 1998 wherein the said Court has convicted the appellants for the commission of offence under Section 498-A of IPC and sentenced them to undergo RI for one year and to pay fine of Rs. 1000/- to each appellant with default stipulations.

2. During pendency of the appeal, appellant No.3 namely Smt. Gulab Munni Devi died and her appeal is finally abated. This appeal is heard in relation to appellants No. 1 and 2.

3. As per version of prosecution, deceased Neelam Tiwari was married to Rajesh Tiwari five years ago prior to the date of incident. Appellant No.1 Arun Kumar Tiwari is elder brother of Rajesh Tiwari and appellant No.2 Kanak Tiwari is his wife. Deceased appellant No.3 Gulab Munni Devi was mother-in-law of the deceased. It is alleged that demand of motor-cycle was made from the deceased and the appellants harassed her due to non-fulfilment of demand and death of deceased Neelam Tiwari was caused due to burn injuries. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

4 Learned counsel for the appellants would submit as under:

- i) The trial court has ignored the fact that it is a case of fire accident in which apart from

deceased Neelam Tiwari her husband namely Rajesh Tiwari and father-in-law namely K.P. Tiwari had also died.

- ii The trial Court has ignored the fact that in the fire accident appellant No.1 Arun Kumar Tiwari also suffered 80% burn injuries. Looking to the accident, it is not a case of cruelty or any illegal demand by the appellants and it is also not a case of harassment on the part of the appellants.
- iii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

5 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.

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

7. To substantiate the charge prosecution examined as many as 15 witnesses. To nullify the charge, defence side examined DW/1 Kamalakar and DW/2 Amarnath Tiwari. From the documents Ex.P/2 and Ex.P/3, it is clear that father-in-law of the deceased namely K.P.

Tiwari and husband of the deceased namely Rajesh Tiwari sustained severe burn injuries and both died on 28-3-1996 and 29-3-1996. The incident took place at Rajhara township, Quarter No.135-A/N, District Durg whereas deceased, her father-in-law, her mother-in-law, her husband, her brother-in-law – appellant No.1 and her sister-in-law – appellant No.2 were residing. Viswanath Pratap (PW/1), B.M. Pandey (PW/2), Harak Chandra Verma (PW/3), Fire Station Officer, Paritoshkar (PW/4) Maintenance Incharge, B.S.P, and A.N. Choudhary (PW/8) have deposed regarding fire in the said house. From the evidence of PW/1 Viswanath Pratap, it is established that K.P. Tiwari came out of the house with his two sons who were deceased Rajesh and appellant No.1 and he saw that all burnt about 70%. The finding of the trial court is based on the statement of Sanjay Kumar (PW/10) who is brother of the deceased and PW/11 Trivedilal Choubey who is father of the deceased, residents of village Mishrapur while the incident took place at Rajhara, MP now CG.. Both these witnesses have no occasion to see as to what was going on in the matrimonial house of the deceased. Their version is based on information given to them by the deceased that appellants were harassing her for demand of motor-cycle.

8. Statement made by both the witnesses is not clear and the same is hearsay evidence. Hearsay evidence is not received as relevant evidence. In the matter of **Kalyan Kumar Gagoi 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... Offence of cruelty is defined in Section 498-A of PC which may be read as under:

“498A. Husband or relative 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. From the entire evidence the story of defence is more probable that it is a case of accident where husband of the deceased and father-in-law of the deceased died along with deceased and the appellant No.1 also sustained burn injuries. There is nothing on record that any kind of harassment was committed on the date of incident or prior to

the date of incident, therefore, finding arrived at by the trial court on the basis of hearsay evidence is not sustainable.

11. Accordingly, the appeal filed by appellant No.1 and 2 is allowed and their conviction and sentence passed by the trial Court is set aside. They are acquitted of the charge 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