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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 741 of 2003

- Phool Chand @ Phullu, S/o Goverdhan Satnami, aged about 25 years, R/o Village- Dharampura, P.S. Jarhagaon, District Bilaspur (C.G.)

---- Appellant

Versus

- State of Chhattisgarh through District Magistrate Bilaspur (C.G.)

---- Respondent

For Appellant : Smt. Indira Tripathi, Advocate

For Respondent/State : Shri Ayaz Naved, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

23.06.2020

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 30.06.2003 passed by the Additional Sessions Judge, Mungeli, Sessions Division, Bilaspur in Sessions Trial No. 47/2003, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 498A of IPC	Rigorous imprisonment for one year and pay a fine of Rs.1,000/-, in default of payment to further undergo rigorous imprisonment for three months

3. Case of the prosecution is that marriage of appellant Phool Chand @ Phullu was solemnized with deceased Iskala @ Meela Bai prior to four years of her death. Merg intimation (Ex.-P/10) was lodged on 05.10.2002 that Meela Bai wife of Phool Chand has died due to burn injury. On the basis of merg inquiry, FIR (Ex.-P/9) was recorded by Head Constable Janak Ram Dahire (PW-15) in concerned police station. As per Ex.-P/9, the offence under Section 304B of IPC was registered against the appellant (husband of the deceased). It was alleged that during matrimonial life between the appellant

and deceased Meela Bai, she was being subjected to cruelty and harassment by the accused/appellant for demand of dowry and the deceased suffered unnatural death by burning within four years of her marriage. During investigation, case diary statements of the witnesses namely PW-1 Mohan Lal (father of the deceased) vide Ex.-D/1, PW-2 Hemin Bai, PW-4 Kachh Ram, PW-5 Shivkanti Bai (mother of the deceased) vide Ex.-D/2, PW-6 Nohar Das and other witnesses were recorded. Deceased Meela Bai was medically examined by PW-8 Dr. (Smt.) Nahrel on 05.10.2002 and she gave her MLC report (Ex.-P/1A). As per MLC report (Ex.-P/1A), Doctor found 100% superficial deep burn injury on the body of Meela Bai. PW-8 has referred the case to District Hospital Bilaspur after primary treatment of Meela Bai.

4. During investigation, one blue coloured plastic cane of 1 litre from which smell of kerosene was emanating; one white coloured empty plastic cane of 1 litre; red coloured burnt saree & its pieces; blue coloured broken bangle 4 in number and match box containing sticks were seized from the place of occurrence vide Ex.-P/2. Dying declaration of the deceased vide Ex.-P/14 was recorded by PW-19 D.K. Singh, Executive Magistrate Takhatpur of 05.10.2002.
5. Postmortem on the dead body of the deceased was conducted by PW-18 Dr. Manoj Jaiswal and he gave postmortem report Ex.-P/13, wherein he opined that the deceased died on account of shock due to antemortem burn. The total burn area was reported to be 95%. During postmortem examination, burnt scalp hairs & skin were preserved & sealed by Doctor and handed over to the concerned police vide Ex.-P/3.
6. After completion of usual investigation, charge-sheet was filed against the accused/appellant under Section 304B of IPC. While framing charges, the trial Court framed charges against the accused/appellant under Section 304B and alternatively under Section 498A IPC. However, the trial Court

acquitted the appellant of the charge under Section 304B of IPC and convicted & sentenced him as mentioned in para-2 of this judgment.

7. So as to hold the accused/appellant guilty, the prosecution examined 19 witnesses. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined by the accused/appellant in his support.
8. Smt. Indira Tripathi, learned counsel appearing on behalf of the appellant, submits that the appellant was acquitted by the trial Court from the charge under Section 304B of IPC as the prosecution has failed to prove allegation regarding demand of dowry against him. But on the basis of evidence of parents (PW-1 and PW-5) of the deceased that the deceased was beaten by the appellant many times, the trial Court has wrongly convicted and sentenced him under Section 498A of IPC. She further submits that as mentioned in Section 498A of IPC, such nature of cruelty has not been done by the appellant. She also submits that in matrimonial life many times dispute arose over petty matters between the husband and wife, it cannot be treated as cruelty. She submits that there is no specific allegation against the appellant regarding harassment, cruelty or any other demand of dowry by him. On the same set of evidence the appellant was already acquitted from the charge under Section 304B of IPC by the trial Court, therefore, the conviction under Section 498A of IPC against the appellant is not sustainable. She also submits that as per dying declaration (Ex.-P/14), the deceased had not blamed against the appellant or his family that they set her ablaze or she set herself ablaze.
9. Lastly, learned counsel for the appellant submits that it is not in dispute that the deceased died due to burn injuries and if this Court finally comes to conclusion that the appellant has rightly been convicted by the trial Court for the offence under Section 498A of IPC, considering the fact that the

appellant is the first offender aged about 25 years at the time of incident, the incident took place around 18 years ago, he may be given the benefit of Probation of Offender Act. In support of above contention, reliance has been placed on the decision of Bombay High Court in the matter of ***Prakash*** vs. ***The State of Maharashtra***, reported in ***(2012) 2 AIR Bom R 428***.

10. Shri Ayaz Naved, learned Government Advocate appearing on behalf of the State, submits that the appellant and the deceased are husband and wife, the deceased died due to burn injury within four years of her marriage and it is proved by postmortem report Ex.-P/13 that the deceased sustained total 95% burn injury on her body. He further submits that as per evidence of parents (PW-1 & PW-5) of the deceased, the appellant was suspecting character of his wife and used to beat her. Therefore, the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.

11. Heard learned counsel for the respective parties and perused the material on record.

12. As per dying declaration (Ex.-P/14) which recorded by PW-19 D.K. Singh, Executive Magistrate Takhatpur on 05.10.2002, it was mentioned that on 05.10.2002 at 12:00 noon, the deceased was in her house and was setting fire for smoke in the shed (*khotha*) of buffalo for repelling the mosquitoes, then her *saree* caught fire accidentally. The deceased had not blamed against the appellant or his family that they set her ablaze or she set herself ablaze.

13. It is admitted fact that the deceased was the wife of the appellant and she died due to burning within four years of her marriage in unnatural circumstances. There used to be frequent quarrel between the deceased and the appellant which were proved by PW-1 Mohan Lal & PW-5 Shivkanti (parents of the deceased).

- 14.** PW-1 Mohan Lal, father of the deceased, specifically and categorically stated that her daughter told him that the appellant was suspecting character of the deceased and for this reason, the appellant left her daughter in his (PW-1) house. Thereafter, many times, her daughter returned to her parental home. PW-1 further stated that he had called village panchayat. When the persons of the panchayat directed the appellant to take back the girl (deceased), he refused to take her with him and left the panchayat. PW-1 also stated that the appellant told the deceased to come with money then only he would keep her (deceased) because he wanted to start business. PW-1 stated in para-5 of his deposition that 8 days before the date of incident, the deceased came to her parental home and later on the appellant also came there, beat the deceased and the appellant took her daughter with him. Thereafter, the deceased died due to burning on 05.10.2002
- 15.** Evidence of PW-1 is also supported by PW-5 Shivkanti (wife of PW-1). PW-5 Shivkanti stated in the same manner as stated by PW-1. PW--5 also stated that in her presence, the appellant had beaten his wife Meela Bai (deceased) and prior to that incident, looking to the dispute between the appellant and the deceased, a village panchayat was convened.
- 16.** PW-6 Nohar Das is the nephew of PW-1. PW-6 stated in para-1 of his deposition that there was frequent dispute between the appellant and the deceased, but on which subject dispute arose, he did not know.
- 17.** PW-7 Shobhnath also stated in his deposition that the appellant assaulted upon his wife and ousted her from his home, therefore, a village panchayat was convened. In village panchayat, when village Sarpanch and other elderly people of the village told the appellant to take back his wife, he refused to take her with him.
- 18.** From the evidence it is seen that there was frequent quarrel/dispute between the appellant and his wife as he was suspecting her character or for some other reasons and she was frequently beaten by the appellant. The trial

Court has given a finding the dispute between the appellant and his wife may be for demand of dowry, but the prosecution has not proved its case beyond reasonable doubt and the trial Court has acquitted the appellant of the charge under Section 304B. But, it has come in the evidence of prosecution witnesses that the appellant was frequently beating her wife and many times ousted her from his home for which a village panchayat was convened, therefore, the deceased was subjected to cruelty or harassment by her husband is proved by prosecution.

19. The offence under Section 498A of IPC is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section exposts “cruelty” as:

- (i) any willful 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) or
- (ii) 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.

20. On the basis of aforesaid discussion, this Court is of the opinion that the prosecution has been successful in proving the guilt of the appellant under Section 498A of IPC beyond all reasonable doubt. In these circumstances, conviction of the appellant under Section 498A of IPC awarded by the trial Court deserves to be affirmed.

21. As regards the quantum of sentence, considering the fact that the incident took place in the year 2002, at that time appellant was 25 years of age and presently would be about 43 of age, he has already remained in jail for a period of about 04 months & 14 days and during pendency of this appeal he was on bail, keeping in view the judgment of Bombay High Court in the case of *Prakash* (supra) wherein the accused who was sentenced to undergo R.I. for three years with fine amount, was sentenced to suffer the period already undergone i.e. 120 days, this Court is of the opinion that no useful purpose

would be served in sending him back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him.

22. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant awarded by the trial Court under Section 498A of IPC, he is sentenced to the period already undergone by him. However, the fine amount imposed on him with default sentence by the trial Court shall remain intact. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge