

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1149 of 2012

- Banmali Harpal @ Hariram S/o Sakharam, aged about 45 years, R/o Ward No. - 15, Daihanibhatha Rawanbhatha, P.S. - Bagbahara, District Mahasamund, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh - Through- The P.S. - Bagbahara, District Mahasamund, Chhattisgarh

---- Respondent/State

For Appellant	:	Shri Krishna Kumar Khatri, Advocate
For Respondent/State	:	Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment

01.07.2020

- This appeal is heard through Video Conferencing.
- This appeal arises out of the judgment of conviction and order of sentence dated 08.08.2012 passed by the Sessions Judge, Mahasamund (C.G.) in Sessions Trial No. 07 of 2012, whereby the Appellant stands convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A of Indian Penal Code (for short 'IPC')	R.I. for three years and pay a fine of Rs.10,000/-, in default of payment to further undergo S.I. for six months

- Prosecution case in brief is that accused/appellant Banmali Harpal @ Hariram was married to deceased Sukanti. The appellant was habitual to drink liquor and he was not working and earning and on this, there used to be quarrel between the appellant and his wife. Sukanti was earning from labour work to maintain her family. When Sukanti restrained the appellant from consuming liquor, the appellant used to beat and abuse her. It is alleged that during matrimonial life of the appellant and deceased Sukanti,

she was being subjected to cruelty and harassment by the accused/appellant.

4. Further prosecution case is that Sukanti died on 04.07.2010 and merger intimation (Ex.-P/4) was lodged on 05.07.2010 by the appellant in police station Bagbhara that he and his friend Balla were drinking liquor in his house and he also gave drink to his wife. Thereafter, for eating meal his wife went inside, and she started vomiting. At about 07-07:30 pm, on being called by appellant, Ajit Tandi who was in his shop, went to appellant's house and saw that Sukanti was lying in front of her house in unconscious condition. Then, Ajit Tandi and Balla took Sukanti by his motorcycle for treatment to Bagbhara Hospital, later the appellant came there and Doctor informed them that Sukanti has consumed poison. At that time, member of her parental family and relatives came there. Looking to serious condition of Sukanti, she referred to Raipur. When they were going to Raipur for treatment of Sukanti, she died on the way and they returned back to Bagbhara Hospital.
5. Information was given by PW-11 Arvind Gupta, who gave primary treatment to the deceased, to SHO, P.S. Bagbhara regarding the incident that the deceased consumed poison vide Ex.-P/11. PW-9 Sushil Sharma, Head Constable reached Bagbhara Hospital and gave notice to the *Panchas* vide Ex.-P/9, prepared inquest (Ex.-P/3) at Bagbhara Hospital in presence of witnesses namely PW-4 Rama Rao, PW-6 Bhusketu Sika and PW-16 Pankaj Harpal.
6. Dead body of deceased was sent for postmortem examination to Community Health Center, Bagbhara, where the postmortem was conducted by PW-3 Dr. Vijay Pratap Singh who gave his report Ex.-P/2, wherein he opined that the deceased died on account of cardio-respiratory arrest due to poisoning sulphas and alcohol. The death was suicidal in nature. Duration of death was found to be within 12-14 hours. During postmortem examination,

viscera, lungs, liver, spleen, heart & kidney were preserved and sealed in one box; stomach contents and small & large intestines were preserved & sealed in second box; uterus was preserved & sealed in third box by Doctor and the same were handed over to the police for forensic chemical analysis.

7. Written complaint was submitted by PW-6 Bhusketu Sika (brother of the deceased) to SHO, P.S. Bagbhara vide Ex.-P/6 on 16.06.2011 against the appellant regarding the deceased was being subjected to cruelty and harassment by the appellant and on the date of incident, the appellant mixed the poison in the liquor and forcibly gave the deceased for drinking and she died after drinking poison mixed liquor. On the basis of written complaint (Ex.-P/6), F.I.R. (Ex.-P/7) was registered by PW-15 Vinod Mandavi, SHO, Bagbhara on 16.06.2011 at about 21:10 hours against the appellant under Sections 306 & 498A of IPC. During investigation, spot map (Ex.-P/1) was prepared by PW-13 S.D. Baghel, Inspector in presence of PW-1 Kishan Harpal and PW-7 Ajit Tandi. *Nazrinaksha* (Ex.-P/10) was prepared by Patwari Leeladhar Dadsena (PW-10). Case diary statements of the witnesses were recorded.
8. After investigation, charge-sheet was filed against the accused/appellant for the offence under Sections 306 & 498A of IPC. While framing charges, the Sessions Judge, Mahasamund framed charges against the accused/appellant under Section 498A of IPC and Section 306 of IPC alternatively under Section 302 of IPC.
9. So as to hold the accused/appellant guilty, the prosecution examined 16 witnesses namely Kishan Harpal (PW-1), Laxmi Harpal (PW-2), Dr. Vijay Pratap Singh (PW-3), Rama Rao (PW-4), Kumar Singh Usendi (PW-5), Bhusketu Sika (PW-6), Ajit Tandi (PW-7), Nakul Sika (PW-8), Sushil Sharma (PW-9), Leeladhar Dadsena (PW-10), Dr. Arvind Gupta (PW-11), Hannumaan Jagat (PW-12), S.D. Baghel (PW-13), Shatrughan Dhruw (PW-

14), Vinod Mandavi (PW-15) and Pankaj Harpal (PW-16) in support of its case. Statement of the accused/Appellant 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 defence.

10. After appreciation of the evidence available on record, the Sessions Judge, Mahasamund (C.G.) by the impugned judgment, while acquitting the accused/appellant of the charge under Section 306 of IPC alternatively under Section 302 of IPC, convicted & sentenced him as mentioned in para-2 of this judgment.

11. Learned counsel for the appellant submits that the appellant has already completed his jail sentence awarded by the trial Court and he is not pressing this appeal on merits.

12. On the other hand, learned counsel for the State supporting the impugned judgment and submits that the trial Court has rightly convicted and sentenced the appellant for the above offence which needs no interference by this Court.

13. Looking to the report dated 01.05.2018 received from Office of Superintendent, District Jail Mahasamund (C.G.), the accused/appellant has completed his entire sentence and he has been released from jail on 24.07.2014 after extending benefit of remission provided by the State, but it is the duty of the Court to consider the appeal on merits.

14. Heard counsel for the parties and perused the material available on record.

15. It is not disputed by the parties that the deceased died due to consumption of poisonous substance. Postmortem report (Ex.-P/2) is proved by PW-3 Dr. Vijay Pratap Singh and he opined that cause of death of the deceased was

cardio-respiratory arrest due to poisoning sulphas and alcohol and the death was suicidal in nature. The accused/appellant has stated in his 313 Cr.P.C. statement that there was swelling in the uterus of the deceased and on account of stomach pain, she committed suicide by consuming poisonous substance.

- 16.** Accused/appellant was husband of the deceased and during their matrimonial life, the appellant was habitual to drink liquor and under the influence of liquor, he used to quarrel with his wife and beat her by club. This fact is proved by the evidence of PW-2 Laxmi Harpal (younger sister of the deceased).
- 17.** Prior to the date of incident i.e. 04.07.2010, on 25.06.2010 a report was lodged by deceased Sukanti in the police station Bagbhara regarding her husband (appellant) quarreling and beating her which was recorded by PW-14 Shatrughan Dhruw in *Roznamcha Sanha* vide Ex.-P/16.
- 18.** PW-6 Bhusketu Sika, brother of the deceased, lodged the F.I.R. (Ex.-P/7) and he is the witness of inquest (Ex.-P/3) and has proved the same that the deceased died due to consumption of poison on account of family dispute. He has stated in his deposition that the appellant used to harass her sister (deceased), abuse her filthily and also used to beat her on account of which, a report was lodged by deceased in police station Baghbhara. He also stated that her sister stayed in his home on account of she being subjected to cruelty and harassment by the appellant. He stated that an agreement (Ex.-P/5) was executed by the appellant that he would not beat and harass the deceased, not abuse her filthily and would maintain good relation with her, if this would not be done by him, the deceased may take legal action against him. He has stated that thereafter her sister returned to her home, but the conduct of the appellant did not change and he used to commit cruelty against her sister (deceased).

- 19.** PW-7 Ajit Tandi is the independent witness. He has stated in his deposition that he advised the appellant that he should not drink liquor and not quarrel with his wife. He has further stated that in his case diary statement (Ex.-P/8), he informed the police that the appellant committed *marpit* under the influence of liquor and quarreled with his wife. PW-8 Nakul father of the deceased has proved the same fact stated by PW-7.
- 20.** PW-4 Rama Rao and PW-16 Pankaj Harpal are also the witness of inquest (Ex.-P/3) and proved the same that the deceased died due to consumption of poison on account of family dispute. PW-5 Kumar Singh Usendi has registered the merg intimation (Ex.-P/4) as per information given by the appellant and proved the same as it was lodged by the appellant. PW-1 Kishan Harpal (son of the deceased) and PW-7 Ajit Tandi are the witness of spot map (Ex.-P/1) and they proved the same.
- 21.** Looking to the evidence of PW-6 Bhusketu Sika (brother of the deceased) and PW-7 Ajit Tandi who is resident of same locality where the incident took place, there is sufficient evidence, oral and documentary, on record which shows that it is appellant who was continuously beating and quarreling with the deceased and many times, the deceased went to her parental home and Ex.-P/5 agreement was also executed by the appellant that he would not beat and quarrel with the deceased, but his conduct did not change. The deceased died due to poisoning which was proved by PW-3 Dr. Vijay Pratap Singh who conducted postmortem examination of the deceased and as per his report (Ex.-P/2), cause of death of the deceased was cardio-respiratory arrest due to poisonous sulphas and alcohol and death was suicidal in nature. Therefore, on the basis of aforesaid discussion, this Court is of the opinion that the prosecution has been successful in proving the guilt of appellant Banmali Harpal @ Hariram under Section 498A of IPC beyond all reasonable doubt. Being so, conviction of the appellant under Section 498A

of IPC and sentence awarded by the trial Court appears to be just and proper warranting no interference by this Court.

22. Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

23. In the present case, as per jail report dated 01.05.2018 received from Office of Superintendent, District Jail Mahasamund (C.G.), accused/appellant Banmali Harpal @ Hariram S/O Sakharam has completed his entire sentence and he has been released from jail on 24.07.2014 after extending benefit of remission provided by the State, therefore, there is no requirement for passing any order regarding his arrest, surrender etc. by this Court.

Sd/-

(Gautam Chourdiya)
Judge