

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 371 of 2002**

1. Lokesh Banjare, S/o Late Khorbahara Banjare, aged about 36 years,
2. Bhukin Bai, widow of Late Khorbahra Ram Banjare, aged about 68 years

(Name of appellant No.2 is deleted as per order of this Court today itself due to her death and as such, appeal in respect of this appellant stands abated)

Both residents of Village Khapri, Police Station Khamariya, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh through Station House Officer, Police Station Khamariya, Distt. Durg (CG)

---- Respondent

For Appellant	:	Shri Vikram Dixit, Advocate.
For Respondent/State	:	Shri Ashish Gupta, P.L.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

27/02/2020

During pendency of this appeal, appellant No.2 Bhukhin Bai, wife of Late Khorbahara Ram Banjare, died on 9th August, 2012. A Memo to this effect is submitted by Additional Sessions Judge, Bemetara on 12.5.2016. Learned counsel for the appellants as also the State counsel submit that appellant No.2 has died on 9th August, 2012.

02. In view of above, the instant appeal in respect of appellant No.2 Bhukhin Bai stands abated and it shall now be consider only in relation

to appellant No.1 Lokesh Banjare. Counsel for the appellants is directed to delete the name of appellant No.2 Bhukhin Bai from the array of appellants today itself in the Court.

03. The appellant is challenging the legality, validity and propriety of the judgment of conviction and order of sentence dated 16.3.2002 passed by III Additional Sessions Judge (FTC), Bemetara, Distt. Durg (CG) in ST No.13/1997 whereby he has been convicted under Section 498A of IPC and sentenced to undergo RI for one year.

04. Brief facts of the case are that deceased Rameshwari Bai was married to appellant Lokesh in May, 1992. On the date of incident i.e. 21st August, 1996 at about 10.30 pm she sustained burn injuries and died on the same day during treatment. On the written complaint (Ex.P/3) being filed by PW-7 Santram, father of the deceased, FIR (Ex.P/4) was registered under Section 306 of IPC against the accused persons. During investigation, one plastic jerry-can, one match, letters written by the deceased and stove were seized vide Ex.P/5. As per Ex.P/6 total 10 letters were also seized from PW-7 Santram. Under Ex.P/7 one diary of the deceased was seized.

05. Spot maps Ex.P/9 & P/11 were prepared. Postmortem on the body of the deceased was conducted by PW-11 Dr. RN Turre on 22.8.1996 who noticed that the body was 95% burnt and in his opinion, the cause of death was shock due to 95% burn. After recording statements of the witnesses and completing investigation, charge sheet was filed against Lokesh (husband of deceased), Khorbahra (father-in-law of deceased), Bhukhin Bai (mother-in-law of deceased)

and Mukesh (brother-in-law of deceased) under Sections 306, 304B read with 34 of IPC. The trial Court framed charges under Section 304B, in the alternative 306 and 498A of IPC against all the accused persons which were denied by them and they prayed for trial.

06. So as to hold the accused persons guilty, the prosecution examined as many as 18 witnesses. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined DW-1 Dr. Gorelal Kannoje, DW-2 Dr. VR Meshram and DW-3 Bhurvaram Kannoje.

07. Since during the course of trial, accused Khorbahra expired, the trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Mukesh @ Chhotu of all the charges, convicted accused Lokesh Banjare and Bhukhin Bai under Section 498A of IPC and sentenced them to undergo RI for one year and SI for one year respectively. As stated in the first paragraph, due to death of accused Bhukhin bai during pendency of this appeal, the present appeal at the instance of Bhukhin Bai has stood abated and it is being considered only in respect of accused/appellant Lokesh Banjare.

08. Learned counsel for the appellant submits as under:

- that in this case as per the prosecution the learned trial Court has recorded a finding that there was no demand of dowry on

the part of the accused persons and hence, acquitted all the accused persons of the charges under Section 304B and 306 of IPC. Accused Mukesh, brother-in-law, has also been acquitted of the charge under Section 498A of IPC.

- that only husband Lokesh and mother-in-law Bhukhin Bai have been convicted on the basis of letters written by the deceased on the ground that she was mentally and physically tortured by them. Looking to the entire facts mentioned by the parents of the deceased, which have not been proved, it is clear that no demand of dowry is proved nor there is any specific allegation against the appellant of causing cruelty to the deceased. Therefore, the trial Court has wrongly convicted the appellant only on the basis of letters written by the deceased.

09. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant, which needs no interference by this Court.

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

11. The trial Court has convicted the appellant-husband on the basis of evidence given by parents of the deceased that he was physically and mentally torturing the deceased and he was addicted to alcohol and due to that ill-treatment the deceased stayed at her parental home on 5-6 times. MP Balbhadri (PW-4) and other witnesses have also supported this fact that accused Lokesh used to maltreat the deceased

and harass her physically and mentally. Trial Court in its judgment from paras 51 to 60 has elaborately discussed the letters seized from the place of occurrence and from PW-7 Santram. The trial Court has discussed letters Ex.P/21, P/23, P/25, P/27, P/28 & P/30 and handwriting expert (PW-18 Tomar) has also proved that the said letters were in the handwriting of the deceased. As per document of Ex.P/20, appellant Lokesh did not use to believe his wife and was not giving her money for household expenses and used to consume liquor. PW-8 Harlal has also stated in para-2 that the deceased reached his home and informed about being mentally and physically harassed and that after treatment she went to her matrimonial home. Looking to the statements of PW-4, PW-8 and parents of the deceased, they supported the facts mentioned in the letters written by the deceased that she was subjected to physical and mental cruelty by her husband- Lokesh Banjare. Therefore, considering the overall facts and circumstances of the case, the oral and documentary evidence on record, this Court is of the opinion that the trial Court has rightly convicted appellant Lokesh under Section 498A of IPC.

12. As regards the sentence, in the totality of the facts and circumstances of the case, considering the fact that the incident occurred on 21st August, 1996 i.e. about 24 years ago, age of the appellant at present i.e. about 57 years, the fact that he has no criminal antecedents, he has remained in jail for about 43 days, keeping in view the judgment of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and others, (2009) 13 SCC 478** wherein considering the fact that fine amount has been deposited and paid to

the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that in the present case also no useful purpose would be served in again sending the appellant back to jail at this stage and ends of justice would be served if he is sentenced to the period already undergone by him and is directed to pay fine of Rs.10,000/- with default sentence of three months' RI.

13. In the result, the appeal is allowed in part. While maintaining conviction of the appellant under Section 498A of IPC, he is sentenced to the period already undergone by him. However, he is directed to pay a fine of Rs.10,000/-, in default of which he shall suffer additional RI for three months. He is reported to be on bail, therefore, his bail bonds shall remain in operation for a period of six months in view of provisions of Section 437A of CrPC.

Sd/
(Gautam Chourdiya)
Judge