

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 930 of 2002**

1. Dilendra Kumar S/o Purushottam Das Vaishnav, aged about 28 years R/o Gaya Nagar, Durg (C.G.).
2. Chowki Bai W/o Purushottam Das Vaishnav, aged about 52 years R/o Rajiv Nagar Durg (C.G.).

----Appellants**Versus**

State of Chhattisgarh, through P.S. Durg (C.G.).

---- Respondent

For Appellants	:	Mr. Vivek Sharma, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****28/01/2020**

1. This appeal has been preferred under Section 374 of Cr.P.C against the judgment dated 21/08/2002 passed in Sessions Trial No. 31/2002 by the Fifth Additional Sessions Judge, Durg whereby the Appellants have been convicted under Section 498-A of the IPC and sentenced to undergo RI for 2 years and to pay fine of Rs. 500/- with default stipulation.
2. Facts of the case are that the marriage of Deceased Nirmala Bai was solemnized on 22/04/2001 with Appellant No. 1 Dilendra. Appellant No. 2 Chowki Bai is mother-in-law of the Deceased. On 27/09/2001, the Deceased committed suicide by hanging herself. Merg intimation was lodged and inquest proceeding was done. On 29/09/2001, Manohar (PW3) father of the Deceased lodged FIR against the Appellants. According to further case of the prosecution, after the marriage, the

Appellants tortured the Deceased on account of dowry. Soon before her death also, the Deceased was subjected to cruelty and torture by the Appellants for demand of dowry, due to this the Deceased committed suicide. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Section 498-A and 304-B of the IPC. As many as 7 prosecution witnesses have been examined. Statement of the Appellants under Section 313 of the Cr.P.C have been recorded, wherein they have pleaded their innocence and false implication in the matter. It was the defence of the Appellants that they had never demanded any dowry from the Deceased and virtually the Deceased was suffering from acute pain in her stomach, due to that she committed suicide. Maternal uncle of the Deceased was examined by the Appellants. After completion of trial, the trial Court has acquitted the Appellants from the charge framed under Section 304-B of the IPC, however, they have been convicted and sentenced as mentioned in paragraph one of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the Appellants submits that the Appellants have been wrongly convicted by the trial Court without there being any reliable evidence available on record. He further submits that it has already established that no dowry was demanded by them at the time of marriage and also after the marriage and on the basis of this ground, the Appellants were already acquitted by the trial Court for the offence punishable under Section 304-B of the IPC, therefore, the conviction of the Appellants under Section 498-A of the IPC is not sustainable. Referring to the judgment passed by this Court in the matter of **Kanhiya Lal Patel & Anr. v. State of Madhya Pradesh, 2011 (2)**

M.Ph.T. 43 (CG) and the judgment passed by the Hon'ble Supreme Court in the matter of **Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619**, he further submits that since the Deceased has died and the statements of Dropati Bai (PW2), mother of the Deceased and Manohar (PW3), father of the Deceased are based upon the facts already disclosed by the Deceased to them earlier from her death, therefore, those are not admissible for the offence punishable under Section 498-A of the IPC. Therefore, the conviction of the Appellants are not sustainable.

4. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
6. There is no dispute on the point that the Deceased committed suicide by hanging herself within 7 years of her marriage. From the statement of Dropati Bai (PW2), mother of the Deceased and Manohar (PW3), it is clear that at the time of marriage, no demand of dowry was made by the Appellants. There is nothing on the record on the basis of which it can be established that after the marriage also, the Appellant demanded any dowry from the Deceased, therefore, on this ground the trial Court has acquitted the Appellant from the offence punishable under Section 304-B of the IPC.
7. In her court statement, Dropati (PW2) has deposed that after the

marriage when the Deceased came to their house first time, she told her that her in-laws members are saying that they have not given any dowry. She further deposed that after the marriage, on the occasion of Raksha Bandhan, the Deceased came along with her husband. Her husband told her that due to some dispute, the Deceased had not taken meal. Manohar (PW3), father of the Deceased has also deposed that at the time of Raksha Bandhan, the Deceased came to their house and told him that her in-laws quarreled with her and demanding dowry. He further deposed that he had gone twice to the house of the Appellant and tried to convince her in-laws members. In para 10 of his cross-examination, he categorically admitted that in front of him, the Appellants had never misbehaved with the Deceased. Real sister of the Deceased namely Meena Bai who was living in Bhilai has categorically stated that the Deceased had never complaint anything about this. Apart from this, there is no evidence available on record against the Appellants.

8. On minute examination of the above evidence, it is clear that statements of Dropati Bai (PW2) and Manohar (PW3) are based on the facts disclosed by the Deceased while she visited in their house and no incident has taken place in front of them. No demand of dowry has been made before them. Therefore, in these circumstances, there is no legal evidence to connect the Appellants with the alleged offence punishable under Section 498-A of the IPC.
9. Accordingly, the appeal is allowed. The judgment of the trial Court is set-aside. The Appellants are acquitted from the charge framed against them. It is reported that the Appellants are on bail. Their bail bonds be

discharged.

10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

Rahul