

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 302 of 2012**

- Dhal Singh Sahu @ Raju, S/o Indal Ram Sahu, aged about 21 years, R/o Village Dupchera, P.S. Gurur, Distt.- Durg (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh, Through: Station House Officer, Police Station Balod, Distt. Durg (C.G.).

---- Respondent

For Appellant : Mr. B.P. Singh, Advocate.
For Respondent/State : Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****24/06/2020**

01. Proceedings of the matter have been taken up through video conferencing.
02. This appeal arises out of the judgment of conviction and order of sentence dated 01.03.2012, passed by the Additional Sessions Judge, Balod, District-Durg (C.G.) in Sessions Trial No. 84/2011, convicting the accused/appellant for the offence punishable under Section 323 of Indian Penal Code (henceforth "IPC") and sentencing him to undergo rigorous imprisonment of three months with fine of Rs. 1,000/-, in default of payment of fine to further undergo rigorous imprisonment for

three months.

03. It is relevant to mention here that learned Trial Court has acquitted the accused namely Dhal Singh Sahu of the charges under Sections 498 A & 307 of IPC.

04. Case of the prosecution, in brief, is that marriage of complainant – Kiran Sahu was solemnized with present appellant on 29.4.2011 and immediately after the marriage she was treated with cruelty by her husband (present appellant) in connection with demand of dowry and her husband also suspected on her character, stating that complainant has illicit relation with his younger brother, as a consequence, complainant was several times exploited and beaten by the appellant. On 06.05.2011 when she (complainant) was sleeping at night, the appellant with an intention to cause harm, gagged her mouth by the pillow and on the next day morning also, he again pressed her neck; due to which, she returned to her parental house on 10.05.2011 at Jamaruwa, thereafter, appellant also came at Jamaruwa on 15.05.2011 and tried to kill her at night. As a result thereof, complainant made written complaint (Ex.P-6) on 22.5.2011 and on the basis of written complaint, FIR (Ex. P/7) was lodged against the accused/appellant under Sections 498-A & 307 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. Complainant – Kiran Sahu examined by Dr. S.K. Soni (PW-1) and he found no any injuries on the body of the complainant.

05. After usual investigation, charge-sheet under Sections 498-A & 307 of the Indian Penal Code & Section 4 of the Dowry Prohibition Act was filed against the accused/appellant. After filing of chargesheet, the

trial Judge framed charges against the accused person under Sections 307 & 498-A of IPC. Accused denied the charge levelled against him and prayed for trial.

06. So as to hold the accused/appellant guilty, the prosecution examined as many as 8 witnesses namely- Dr. S. K. Soni (PW-1), Lokesh Kumar (PW-2), Ram Prasad (PW-3), Manoj Kumar Thakur (PW-4), complainant- Kiran Sahu (PW-5), Kundan Lal Sahu (PW-6), Parmeshwar Sahu (PW-7) & S. R. Pathare (PW-8). 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. However, two defence witnesses namely- Tarkeshwari Sahu (DW-1) & Khilanand Sahu (DW-2) were examined on behalf of the accused. The accused/appellant had taken a defence that just after the marriage, complainant denied to take her matrimonial responsibilities and refused to live with him and left her matrimonial house.

07. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in paragraph 2 of the judgment.

08. Learned counsel for the accused/appellant submits that though complainant made allegation against the appellant under Sections 498-A & 307 of IPC for attempting to murder in connection with demand of dowry but after considering the oral and documentary evidence available on record, learned trial Court acquitted the

accused/appellant of the offence under Sections 498-A and 307 of the Indian Penal Code and since the complainant or State did not challenge the said order of acquittal by filing appeal. Therefore, the said order has become final. He also submits that the complainant/wife herself is responsible for leaving the house of the appellant as she did not discharge her matrimonial responsibilities and only after few days of her marriage, she left her matrimonial house. Therefore, it is prayed that the appellant may be acquitted of the charge leveled against him.

09. On the other hand, while supporting the impugned judgment, it has been argued by the State counsel that in the instant case, the conviction of the appellant is based on proper appreciation of the evidence and material available on record and as such, there is no scope for interference in the judgment impugned.

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

11. Complainant (PW-1) has stated in her evidence that her husband (present appellant) was pressing her mouth by pillow and he was trying to beat her but no medical evidence was available on record to that effect. Dr. S.K. Soni (PW-1) has conducted the MLC of complainant on 22.05.2011 and in which, he found no injury on the body of complainant.

12. From perusal of the complaint, It appears that on which date assault was made, by the appellant, was not specifically shown and proved by the complainant; and there is no eyewitness account to the incident. Further, marriage of the complainant was solemnized with the

appellant on 29.4.2011 and thereafter on 10.05.2011 she left her matrimonial house due to the above-stated reasons.

13. Kundanlal Sahu (PW06), who is the father of the complainant, has stated that her daughter/complainant came to her parental home on 10.05.2011 and at that time he was not in the village. On 15.05.2011 when he returned to his home, his daughter/complainant was there and she informed him that the appellant gagged her mouth with an intention to kill her. She further informed him that the appellant is taunted that the articles given in the marriage are of inferior quality and that he was demanded dowry.

14. Parmeshwar Sahu (PW07), uncle of the complainant- Kiran Sahu has admitted in paragraph 7 of his statement that there was no dispute between the appellant and the complainant and that the complainant never informed him about any demand of dowry or assault by the appellant.

15. Lokesh Kumar (PW-2) and Ram Prasad (PW-3) are the witnesses to Panchanama (Ex. P/02). Ram Prasad (PW-3) has admitted in cross-examination in paragraph 3 that no demand of dowry was made at the time of marriage.

16. From careful perusal of the impugned judgment and the statements of the prosecution witnesses, it appears that complainant – Smt. Kiran Sahu made allegation against the appellant under Sections 498-A & 307 of IPC for attempting to murder in connection with demand of dowry but after considering the entire evidence of the prosecution witnesses in particular the evidence of Dr. S. K. Soni (PW-

1), learned trial Court has acquitted the accused/appellant of the charges under Sections 498-A and 307 of IPC and since the complainant did not challenge the acquittal of the accused/appellant of the aforesaid charges by filing appeal, therefore, the same has become final. The trial Court has convicted and sentenced the accused/appellant only for the offence under Section 323 of the IPC for voluntarily causing hurt to the complainant.

17. From perusal of the record it is seen that no injury was found on the body of the complainant nor any injuries was seen by any of the witnesses. Only Kiran Sahu (PW-5), Kundan Lal Sahu (PW-6), Parmeshwar Sahu (PW-7) have stated that the complainant was beaten by the appellant but no such corresponding injuries was noticed on the body of the complainant. In paragraph 7, Parmeshwar Sahu (PW-7) has admitted that no complaint was ever made to him by the complainant regarding demand of dowry by the appellant or commission of *Marpeet* with her. Marriage of the complainant was solemnized with the appellant on 29.04.2011 and she left her matrimonial home after 15 days. On the same set of evidence the trial Court has acquitted the appellant of the charges under Section 498-A and 307 of IPC. Therefore, considering the overall evidence available on record this Court is of the opinion that the prosecution has also failed to prove the offence under Section 323 of the IPC beyond all reasonable doubt.

18. In the result, the appeal is allowed. The conviction of the appellant under Section 323 of IPC is set aside. He is acquitted of the said charge. Appellant- Dhal Singh Sahu @ Raju is reported to be on

bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge

Amita