

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 618 of 2021**

- Santosh Nishad, S/o Bhagatram Nishad, Aged About 36 Years, R/o Udela, Police Station Simga, District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Appellant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Simga, District Baloda Bazar-Bhatapara, Chhattisgarh.

---- Respondent

For Appellant	:	Smt. Anubhuti Marhas, Advocate.
For State/Respondent	:	Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****13/08/2021**

1. This appeal has been preferred against the impugned judgment dated 05/03/2021 passed in S.T. No.H-30/2015 by the Additional Sessions Judge, Bhatapara, District – Balodabazaar, (C.G.) wherein appellant has been convicted and sentenced as under :

<u>Conviction</u>	<u>Sentence</u>
U/s 498-A of the I.P.C.	R.I. for 3 years and fine of Rs.1,000/- with default stipulations.

2. According to case of the prosecution, deceased namely Santoshi Nishad was the wife of the appellant. Their marriage was solemnized prior to 13 years of the alleged incident. On 21/5/2015 deceased Santoshi died by consuming some poisonous substance. It is alleged that after her marriage, appellant used to commit marpit with his wife (deceased). Prior to one month of the alleged incident, appellant had also poured kerosene oil on her and tried to ablaze her. Thereafter, a social meeting took place where appellant was fined to the tune of Rs.10,000/-. Allegedly, he demanded this amount from deceased and on her inability, he asked her to bring from her parents. Due to continuous incidents of cruelty, harassment and physical assaults, deceased committed suicide. Report was made by Santosh Kumar Nishad (PW-3) i.e. brother of the deceased. Statement of the witnesses were recorded under Section 161 of Cr.P.C. After completion of the investigation, a charge-sheet was filed. Trial Court framed charges under Section 306 and 498-A of the I.P.C. against appellant. To prove the guilt of the accused/appellant, prosecution has examined as many as 15 witnesses. No defence witness has been examined. Statement of appellant under Section 313 of the Cr.P.C. was recorded, wherein accused/appellant has pleaded his innocence and false implication in the matter.
3. After completion of trial, the trial Court has acquitted the appellant from charges under Section 306 of the I.P.C., however, convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits that

appellant is innocent and is falsely implicated in the present case. She further submits that trial Court has wrongly convicted the appellant without there being sufficient and clinching evidence against him. There is no evidence available on record on the basis of which it can be established that appellant had demanded any dowry from his wife (deceased). From the evidence adduced by the prosecution, it appears that only domestic dispute used to take place between appellant and deceased and the said does not fall within the ambit of Section 498-A of the I.P.C. Therefore, conviction of the appellant is not sustainable.

5. Per contra, learned Counsel appearing for the State supports the impugned judgment and submits that sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing for the parties, perused the statement of witnesses and other annexed documents on available on record minutely.
7. There is no dispute on the point that deceased was the wife of the appellant. Santosh Nishad (PW-3) in his Court statement has categorically deposed that prior to one month of the alleged incident, appellant had poured kerosene oil on the deceased and due to this reason, people of his society have scolded him and thereafter, appellant used to commit quarrel with the deceased. Anand Nishad (PW-4), Chetan Nishad (PW-5), Ramesh Kumar Nishad (PW-7) have also deposed that appellant tried to kill his wife (deceased) by pouring kerosene oil on her, due to which a social meeting took place. Statements of above witnesses have not duly been rebutted during their cross-examination on this particular point. Mother of the

deceased namely, Birjha Bai (PW-8) has also deposed that when she met with her daughter (deceased) in hospital, at that time she (deceased) had told her that appellant used to abuse her and commit marpit with her. Statement of this witness is also not duly rebutted. Son of appellant namely Tikeshwar (PW-9) has also supported the case of the prosecution and has deposed that appellant used to misbehave and commit marpit with the deceased. Looking to the entire evidence adduced by the prosecution, in my considered view, the trial Court has rightly convicted the appellant. Thus, conviction is affirmed.

8. With regard to the sentence of the appellant, considering the facts that appellant has three children, out of total jail sentence of 3 years, he has undergone about 1 year in jail, he is facing the *lis* since 2015 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.
9. Consequently, the appeal is partly allowed. The conviction of the appellant under the aforementioned Section is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
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