
(2018) 06 CHH CK 0164

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 625 Of 2001

Ramlochan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 27, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 107, 306, 498
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Pritinker Diwaker, J

Bench: Single Bench

Advocate: Rishi Mahobia, Ravindra Agrawal

Final Decision: Allowed

Judgement

Pritinker Diwaker, J

1. This appeal is directed against the judgment of conviction and order of sentence dated 4.7.2001 passed by Additional Sessions Judge Surajpur,

District Sarguja in Sessions Trial No. 147/2000 convicting the accused/appellant under Sections 498-A and 306 IPC and sentencing him to undergo

rigorous imprisonment for two years with fine of Rs. 200/- u/s 498-A and rigorous imprisonment for seven years with fine of Rs. 500/- u/s 306 IPC,

plus default stipulations.

2. As per the case of prosecution, marriage of deceased Kusum Kumari was solemnized with the accused/appellant herein about a year prior to the

date of incident i.e. 17.1.2000 when she died after consuming pesticide. On 17.1.2000 itself merger intimation Ex. P-8 was recorded at the instance of

acquitted accused Mohar Sai - the father of the accused/appellant herein. After drawing inquest Ex. P- 4 the dead-body was sent for postmortem

examination which was conducted by Dr. P.L. Verma (PW-5) accompanied by Dr. J. Ekka, vide report Ex. P-2. Un-numbered FIR Ex. P-8-A

followed by numbered one being Ex. P-8-B was registered against the two accused persons for the offences punishable under Sections 498-A and

306/34 IPC. After completion of investigation, charge sheet was filed by the police for the offences as mentioned in the FIR followed by framing of

charge by the Court under sections 306 and 498-A IPC.

3. So as to hold the accused/appellant guilty, prosecution has examined 11 witnesses in support of its case. Statements of the accused persons were

also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence

and false implication in the case.

4. After hearing the parties, the trial Court acquitted co-accused Mohar Sai of the charges levelled against him but has convicted and sentenced the

accused/appellant herein as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits that the accused/appellant has been convicted on the statement of Bojhai (PW-1) - the grandfather of

the deceased which is not reliable. He submits that even if the entire case of the prosecution is taken as it is, the accused/appellant cannot be

convicted under Section 306 IPC as the ingredients of abetment contained in Section 107 are not attracted to the case in hand. As regards conviction

under Section 498-A counsel for the accused/appellant submits that as the accused/appellant has already remained in jail for about six and a half

months whereas the maximum sentence for the offence is rigorous imprisonment for two years, it would be in the interest of justice if the sentence

imposed on the accused/appellant under this Section is reduced to the period already undergone.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below

convicting and sentencing the accused/appellant as mentioned above are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Bojhail (PW-1) - grandfather of the deceased has stated that after marriage the deceased had visited his house 2-3 times and that the accused/appellant used to ask her to get money from her parents. He also used to say that Rs. 6000/- given in the marriage was a negligible amount and asked her to get Rs. 5000/- more. This witness also states that the deceased used to tell that the accused/appellant was harassing her demanding motorcycle, radio and watch. Ramkishun (PW-2) - father of the deceased has also stated almost the same thing like PW-1. According to him, during the first 2-3 visits to his house, his daughter had not made any complaint but thereafter she started complaining that her in-laws harassed her demanding money saying that the amount given in the marriage was not sufficient. He has further stated that whenever the deceased left his house for her matrimonial home, he used to give Rs. 20-25 according to their capacity but her in-laws grabbed that amount. Dr. P.L. Verma (PW-5) is the witness who conducted postmortem on the body of the deceased and gave his report Ex. P-2 stating that he noticed one abrasion on the left clavicle in the size of 1 x .1 cm and cause of death was opined as suspected poisoning. Bade Vikramijit (PW-6) is the witness to inquest Ex. P-4. Adaltibai (PW-7) and Sursati (PW-8) have not supported the case of the prosecution and have been declared hostile. Rajender (PW-9) and Motilal (PW-10) are the witnesses to seizure of a bottle emanating poison like smell, made from the bedroom. Mukhtaleshwar Singh Chandel (PW-11) is the investigating officer who has duly supported the case of the prosecution.

9. On hearing the counsel for the parties and perusing the material available on record this Court is of the considered opinion that the prosecution has utterly failed to prove its case under Section 306 IPC against the accused/appellant. Not even a single evidence is there to show that the accused/appellant had ever goaded, provoked, incited, urged or instigated the deceased to such an extent where she was left with no other option but to commit suicide. From whichever angle the evidence collected by the prosecution is viewed, the allegations made against the accused/appellant do not constitute the offence punishable under Section 306 IPC as the ingredients of abetment contained in Section 107 IPC are completely missing. The

trial Court has thus committed an illegality in convicting and sentencing the accused/appellant under Section 306 IPC and for that such finding is liable

to be set aside. It is done so. Accused/appellant is acquitted of the charge u/s 306 IPC.

10. However, looking to the evidence of the witnesses where it has come that the accused/appellant demanded some cash and household items and

for that harassed the deceased, his conviction under Section 498-A IPC is hereby maintained as the Court below has recorded a well-reasoned finding

to this effect. However, considering the fact that the incident had taken place about 18 years back, that the accused/appellant has already remained in

jail for about six and a half months and that the maximum sentence provided under this Section is RI for two years, this Court deems it just and proper

not to send the accused/appellant to jail again after such a long lapse of time and therefore, the sentence imposed on him under Section 498-A IPC is

reduced to the period already undergone.

11. Appeal allowed in part.