

(2018) 06 CHH CK 0169

Chhattisgarh High Court**Case No:** Criminal Appeal (CRA) No. 1002 Of 2001

Chhabi Lal Patel

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 27, 2018**Acts Referred:**

- Indian Penal Code, 1860 - Section 107, 304B, 306, 498A
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: Pritinker Diwaker, J**Bench:** Single Bench**Advocate:** Kishore Bhaduri, Ravindra Agrawal**Final Decision:** Partly Allowed

Judgement

Pritinker Diwaker, J

1. This appeal arises out of the judgment of conviction and order of sentence dated 28.9.2001 passed by the 2nd Additional Sessions Judge, Raigarh in

S.T. No.51/98 convicting the accused/appellant under Sections 306 & 498A of the Indian Penal Code (for short 'the IPC') and sentencing him to

undergo R.I. for 5 years & fine of Rs.2,000/- and R.I. for 3 years & fine of Rs.1,000/-, plus default stipulations, respectively.

2. In the present case name of deceased is Chitkunwar Bai, wife of accused/appellant.

3. Case of the prosecution, in brief, is that marriage of accused and deceased was solemnized in the month of May, 1987 and she died on 21.9.1997 at

about 2 p.m. in her matrimonial home due to poisoning. Merg Intimation (Ex.P-7) was recorded on 21.9.97 at the instance of accused/appellant.

Inquest on the body of deceased was prepared vide Ex.P-2 on 22.9.1997. Body was sent for post-mortem examination which was conducted by Dr.

S.K. Mishra (PW-16). However, no definite opinion regarding the cause of death could be given by the doctor conducting post-mortem examination

and therefore the viscera was preserved and sent for chemical analysis to the FSL. As per viscera report of the deceased, she died by consuming

poisonous substance i.e. aluminium phosphide, which was found in her viscera. After merging enquiry, FIR (Ex.P-8) under Section 306 of IPC was

registered against the appellant and acquitted accused. After completion of investigation, charge sheet was filed against the accused persons. The trial

Court framed the charges under Sections 304B, 306 & 498A of the IPC against the accused persons. The prosecution in order to bring home the

charges levelled against the accused persons examined 18 witnesses in all. Statement of accused persons were also recorded under Section 313

Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

4. After hearing counsel for the parties and considering the material available on record, the trial Judge by the impugned judgment convicted &

sentenced the accused/appellant in the manner described above. He, however, acquitted co-accused Niranjana Lal and Smt. Kaushalya.

5. Learned counsel for accused/appellant submits that; "conviction of appellant is based on the testimonies of PW-1, PW-2 & PW-5, but there are

material contradictions and omissions in their statements, therefore, the same are totally unreliable. " finding recorded by the trial Court in convicting

the appellant for the offence under Section 306 of IPC is against the evidence on record as there appears to be no evidence against the appellant

showing that he instigated or compelled the deceased to commit suicide. " after the death of the deceased, a false allegation has been made by

father, mother & uncle of the deceased that the deceased was subjected to cruelty by the appellant and based on such allegation, accused/appellant

cannot be convicted under Section 498A of IPC. " as on the same set of evidence other accused persons have been acquitted, the present appellant

should also receive the same treatment.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that harassment to the deceased was to such an extent

that she was left with no other option but to end her life. He further submits that the father, mother & uncle of the deceased have categorically stated

as to the manner in which the deceased was subjected to cruelty for demand of dowry. Thus the conviction of accused/appellant is strictly in

accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

7. I have heard counsel for the parties at length. I have gone through the impugned judgment as also trial court record.

8. PW-1 Anujram Patel, PW-2 Boondmati & PW-5 Khemchand have deposed that marriage of deceased was solemnized with accused/ appellant in

the month of May, 1997. After some days of the marriage, the deceased came to her parental home and informed that her in-laws used to scold her

saying that she had not brought sufficient articles in dowry, they are now demanding gold & motorcycle in dowry and she would not go to her

matrimonial home unless the said demand of dowry is fulfilled. On being asked, she told that if the demand of her in-laws is not fulfilled, she will have

to face torture and harassment at their hands. According to these witnesses, the matter was tried to be reconciled through a Panchayat on many

occasions but the accused persons did not pay any heed to their request. Though there are some contradictions in the statements of aforesaid

witnesses but they have consistently deposed that the deceased was subjected to cruelty in connection with demand of dowry.

9. Dhaniram (PW-3), Rohit Kumar (PW-4), Bharat Bhushan (PW-6) & Amritlal (PW-7) have stated that a meeting to resolve the dispute between

the accused and the deceased was called in the village but nothing fruitful could be achieved in the said meeting. According to Rohit Kumar (PW-4),

prior to the panchayat meeting the deceased informed him that her in-laws used to quarrel with her.

10. Balakram (PW-10) & Chamar Singh (PW-11) are the witnesses of inquest Ex.P-2 and spot map panchnama (Ex.P-3) prepared by the Patwari.

Kheer Sai Gavel (PW-12) is the Patwari who prepared the spot map Ex.P-4. Awadhram (PW-13) & Chhatrapati Jolhe (PW-14) are the police

personnel who have assisted in the investigation. Manohar Prasad Choudhary (PW-15) did not support the prosecution case and turned hostile. Dr.

S.K. Mishra (PW-16) is the doctor who conducted post-mortem examination over the body of deceased and advised for viscera examination for

getting definite opinion regarding cause of death of deceased. M.S. Kaushal (PW-17) is the police person who assisted in the initial investigation. H.C.

Gautiya (PW-18) is the investigating officer who has duly supported the prosecution case.

11. As regards the conviction of accused/appellant under Section 306 of IPC, close scrutiny of the evidence makes it clear that there is no material or

evidence to show that the accused/appellant had in any way goaded, provoked, incited or urged or encouraged the deceased to commit the suicide.

Even if looked from any angle, the allegations made against the appellant do not constitute the offence punishable under Section 306 IPC as the

ingredients of abetment defined in Section 107 IPC are completely absent in this case. The trial Court has thus committed an illegality in convicting

and sentencing the accused/appellant under Section 306 IPC though the basic ingredients of abetment provided under Section 107 are quite amiss.

12. As regards the conviction of accused/appellant under Section 498A of IPC, from the statements of Anujram Patel (PW-1), Boondmati (PW-2) &

Khemchand (PW-5), it is clear that whenever the deceased used to come to her parental home she used to complain about her husband treating her

with cruelty and that continuous efforts had been made to bring about reconciliation between the deceased and her husband and efforts had been

made by the panchayat also to make understand husband of the deceased. There is no reason to disbelieve the statement of these witnesses. Thus,

there is evidence regarding ill-treatment and sufferings the deceased had undergone in her matrimonial home and the same is sufficient to constitute

cruelty with married woman as defined under Section 498A of IPC. Accordingly, the findings recorded by the trial Court convicting the appellant

under Section 498A of IPC being in conformity with the evidence on record, do not call for any interference.

13. As regards the sentence, considering the fact that the incident is of the year 1997, by now accused/appellant must be about 50 years of age, he

has already remained in jail for about six months and further considering the fact that no minimum sentence is prescribed under Section 498A IPC, this

Court is of the considered opinion that it would be in the interest of justice if the sentence imposed on him under Section 498A of IPC is reduced to the period already undergone.

14. Accordingly, the appeal is partly allowed. Conviction and sentence of appellant under Section 306 of IPC are hereby set aside and he is acquitted

of that charge. Conviction of accused/appellant under Section 498A of IPC is hereby maintained, however, the sentence imposed on him by the Court

below is reduced to the period already undergone. The appellant is already on bail, therefore, his bail bonds shall continue for a period of six months

from today in view of provisions of Section 437-A of Cr.P.C.