

HIGH COURT OF MADHYA PRADESH JABALPUR**Criminal Appeal No.2317/2007*****Vinod @ Bunti Yadav******Vs.******State of Madhya Pradesh***

Present : Hon'ble Shri Justice N.K. Gupta.

Name of counsel for the parties:*Smt. Ashalata Shukla, Advocate for the appellant.**Shri P.C. Jain, Panel Lawyer for the respondent/State.*

JUDGMENT
(Delivered on the 15 day of December, 2010)

The appellant has preferred this appeal against the judgment dated 1.10.2007 passed by the 9th Additional Sessions Judge, Bhopal in S.T. No.337/06 by which he was convicted for the offence punishable under Sections 498-A, 307 and 506 (II) of IPC and sentenced for R.I. of three years with fine of Rs.1,000/-, R.I. for seven years with fine of Rs.10,000/- and R.I. for three years with fine of Rs.1,000/-. In each count of default of payment of fine Rs.1,000/- he was to undergo for additional sentence of three months R.I. and in default of payment of fine Rs.10,000/- six months additional R.I.

2. The prosecution's story in short is that the complainant Basanti Bai was wife of the appellant. In the midnight of 15-16 September 2006, the appellant poured

some petrol on the complainant Basanti Bai and set on fire by burning match stick, then he himself poured water on the complainant. Geeta Bai sister-in-law of Basanti Bai took her to the Hamidiya Hospital, Bhopal for treatment. Intimation was given to the Police Station, Piplani about that incident and Basanti Bai was admitted in burn ward in the hospital. On 17.9.2006 Basanti Bai was shifted by her mother to Hardeo Hospital. Thereafter, Basanti Bai lodged an FIR against the appellant regarding the incident. She had also stated in the FIR that the appellant used to harass her for demand of dowry. After due investigation, the police Piplani had filed a challan before the committal Court, Bhopal for the offence punishable under Sections 498-A, 307 & 506 (II) of IPC.

3. The appellant abjured his guilt. He did not take any specific defence in the case and, therefore, no defence evidence was adduced.

4. The 9th Additional Sessions Judge, Bhopal after considering the evidence adduced by the prosecution convicted the appellant for the offence punishable under Sections 498-A, 307 and 506 (II) of IPC and inflicted the aforesaid sentence.

5. Heard the learned counsel for both the parties.

6. Learned counsel for the appellant submits that the appellant remained in the custody since 18.9.2006 till

today and, therefore, his custody period is more than four years. Looking to his guilt, he has suffered for more than sufficient period in the jail. He is a poor person, who was given legal aid. He could not deposit the fine amount before the trial Court, therefore, his jail sentence may be reduced and imposition of fine amount may be quashed.

7. Learned counsel for the appellant relied on the judgment passed by the Hon'ble Apex Court in case of **“Chimanbhai Jagabhai Patel Vs. State of Gujarat and another” [(2009) 11 SCC 273]**, in which it is observed that one accused alleged to have caught hold of the complainant, while another accused poured poisonous insecticides into her mouth. The Hon'ble Apex Court reduced the jail sentence of the appellants to the period of 40 months, which they have already undergone. In the present case, situation is similar and the appellant has undergone in the custody for more than 48 months, therefore, in the light of judgment in case of Chimanbhai (Supra), it would be proper to reduce the sentence of the appellant to that period, which he has already undergone in the custody. Fine amount imposed on the appellant seems to be at higher side and poor person like the appellant, who received the legal aid in this Court cannot deposit the same and, therefore, in default he has to undergo for additional period of one year in the custody. Looking to the custody period of the appellant,

it would be impracticable to direct him to go further in the custody due to default of payment of fine. The appellant was 24 years a young youth at the time of incident, who has no criminal past. He did an extreme cruelty with his wife but looking to his custody period and his overt act, he should not suffer more in the custody. Looking to the facts and circumstances of the case, it would be proper to reduce the jail sentence of the appellant to the period, which he has already undergone in the custody, whereas fine imposed on the appellant may be removed.

8. In the result, the appeal of the appellant is partly allowed. The conviction directed by the trial Court for the offence punishable under Sections 498-A, 307 and 506 (II) of IPC is hereby maintained, but the jail sentence is reduced to the period for which he has already remained in the custody. Fine imposed on the appellant for all above offences is hereby quashed.

9. At present, the appellant is in custody and, therefore, an appropriate warrant be issued against him so that he may be released forthwith.

**(N.K. GUPTA)
JUDGE
15.12.2010**