

HIGH COURT OF JUDICATURE AT JABALPUR
(M.P.)

Criminal Appeal No. 1687/1995

PRESENT :

HON'BLE SHRI JUSTICE **G.S. Solanki**

Banti @ Durga Prasad
Versus

State of Madhya Pradesh

Shri Sunil Mishra, Advocate for the appellant.
Shri Santosh Yadav, PL for the State.

J U D G M E N T
(26/07/2011)

Second Additional Sessions Judge, Chhindwara has passed the impugned judgment dated 3.11.1995 in ST No. 95/95 whereby appellant has been convicted under Section 498-A of IPC and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 500/-. In default of payment of fine, the appellant shall further undergo rigorous imprisonment for six months. Being aggrieved of the impugned judgment, the appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure.

2. The prosecution case, in short, was that on 16.1.1995 appellant Buntty himself recorded a Marg intimation at the police station Harrai that he went to the hotel to work early in the morning at about 6.00 a.m. In the afternoon his brother Santosh informed him that Tijabai, wife of appellant, set herself ablaze. He rushed to his house and found that his wife Tijabai is in burnt condition. During Marg inquiry dead body

of Tijabai was sent for postmortem examination. Dr.M.P. Koshta (PW1) performed the autopsy on the body of Tijabai and opined that death was due to shock as a result of extensive burn.

3. During inquiry it was found that appellant maltreated his wife. Due to harassment and cruelty committed by the appellant, Tijabai committed suicide.

4. Appellant was arrested and charge-sheet was framed by the Judicial Magistrate First Class, Amarwada. Learned Judicial Magistrate First Class, Amarwada committed the case to the Court of Session. Second Additional Sessions Judge, Chhindwara framed the charges under Section 306 and 498A of IPC against the appellant.

5. Appellant abjured the guilt and pleaded false implication. Brejlal (DW1) and Shyam (DW2) were examined as defence witnesses.

6. On appraisal of evidence on record, though learned Additional Sessions Judge acquitted the appellant to the charge under Section 306 of IPC. However, the appellant has been convicted under Section 498-A of IPC and sentenced as mentioned hereinabove. Hence this appeal.

7. Learned counsel for the appellant submitted that trial Court committed illegality in not appreciating the evidence on record in its proper

perspective. He further submitted that no specific date or time was mentioned by the witness in regard to alleged cruelty or harassment, therefore, trial Court committed illegality in recording the finding on the basis of only omnibus statement of the Jhinibai (PW8), mother of the deceased, therefore, he prays for setting aside the conviction and sentence recorded by the trial Court and also prays for acquittal of the appellant.

8. On the other hand, learned counsel appearing on behalf of the State supported and justified the impugned judgment and conviction and sentence recorded by the trial Court.

9. I have heard learned counsel for the parties at length and perused the impugned judgment and other material on record.

10. Jhinibai (PW8), mother of the deceased Tijabai deposed that Tijabai told her that appellant used to quarrel and beat her after drinking the wine.

11. Kanchhedi (PW7), brother of the deceased Tijabai also deposed the omnibus statement regarding harassment. Both witnesses were unable to specify the date and time on which appellant assaulted Tijabai.

12. On careful examination of the aforesaid evidence on record, it reveals that Kanchhedi (PW7) himself admitted that he has not stated anything to

police officer on the date of incident regarding cruelty or harassment committed by the appellant.

13. Urmilabai (PW4), cousin of deceased Tijabai stated that house of Tijabai is adjoining to her matrimonial house. She deposed that behavior of appellant was very good toward Tijabai. Trial Court has not considered this statement of witness Urmilabai as well as facts in regard to quarrel on petty matters brought in cross-examination of Jhinibai (PW8), mother of the deceased.

14. On careful scanning of aforesaid evidence on record, I am of the view that story of assault and cruelty appears to be an after thought. No specific date or time was deposed by the mother and brother of deceased Tijabai and the conviction cannot be recorded on the basis of omnibus statements of the witnesses. In these circumstances, in my opinion, trial Court committed illegality in placing reliance of omnibus statement of the aforesaid witnesses, therefore, conviction and sentence recorded by the trial Court are liable to be set aside.

15. In the result, the appeal is allowed and conviction and sentence recorded by the trial Court is hereby set aside. The appellant is acquitted to the charges levelled against him. Appellant is on bail. His bail bond and surety bond stand discharged.

(G.S. Solanki)
JUDGE

