



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



Criminal Appeal No. 1775 of 1998

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APPELLANTS

1. Udey Ram, S/o Sarwaram, (2) aged about 45 years.
2. Bharat Kumar, S/o Udey Ram, aged about 25 years.
3. Aruna Kumari, W/o Rameshwar @ Bhura, aged about 27 years.
4. Sooraj Kunwar, W/o Udey Ram, aged about 40 years.

Residence of all the above at  
Village Pandariya, Thana : Akalthara  
Teh. Ganjgir, Distt. Ganjgir (M.P.).

Versus

RESPONDENT

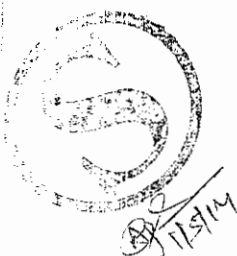
: State of M.P. through S.O.  
Akalthara, Teh. Ganjgir, Distt.  
Ganjgir (M.P.).

APPEAL UNDER SECTION 374 OF CR.P.C.

17326  
Filed on 7-6-98  
by Shri S. M. S. M. Advocate

Rto. A. R.

CLERK  
D/o. Advocate General  
M. P. JABALPUR



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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench:

Hon'ble Shri Justice T.P. Sharma

Criminal Appeal No.1775/98

APPELLANTS

(In jail)

1. Udey Ram
2. Bharat Kumar
3. Aruna Kumari
4. Sooraj Kunwar

Vs

RESPONDENT

State of M.P.

Present:

Mr. Awadh Tripathi, Advocate for the appellants.

Mr. U.K.S. Chandel, Panel Lawyer for the State.

J U D G M E N T

(30.04.2014)

T.P. Sharma, J

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.7.1998 passed by the Additional Sessions Judge, Janjgir in S.T. No.181/97 whereby & whereunder the trial Court while acquitting the appellants under Section 304B of the Indian Penal Code (for short 'IPC') convicted them under Section 498A of the IPC and sentenced to R.I. for 02 years and fine of Rs.500/-, in default to undergo additional S.I. for 03 months.
2. Conviction is impugned on the ground that without there being any iota of evidence the trial Court has convicted & sentenced the appellants as aforementioned and thereby committed illegality.
3. As per case of the prosecution, deceased Kheekbai, wife of appellant Bharat Kumar, was residing with the appellants in their house. The appellants used to commit torture & cruelty upon her also in connection with demand of dowry. Ultimately she committed suicide by pouring kerosene oil over her and setting her ablaze on 27.3.1997 at about 11.00 p.m. The Police Station Masturi sent wireless message to the Police Station Akaltara vide Ex.P-1. Merg was recorded vide Ex.P-11. FIR was lodged vide Ex.P-12. The investigating officer left for scene of occurrence and after summoning the witnesses vide Ex.P-2 prepared inquest over the dead body of deceased vide Ex.P-3. Jeri-cane of kerosene oil, match-box, burnt pieces of clothes were

seized from the spot vide Ex.P-4. Dead body was sent for autopsy to Primary Health Centre, Akaltara where Dr. H. Agrawal (PW-6) conducted autopsy vide Ex.P-6 and found following symptoms and injuries:-

- 100% burn injuries over body of the deceased.
- Body assumes the fencing or pugistic attitude.
- Rigor mortis was present.
- Bleeding from both the nostrils.
- Internal organs congested.
- Carbon particles found in trachea. Lungs swollen.

Cause of death was shock as a result of extensive burn. The Patwari prepared the spot map vide Ex.P-7. The appellants were arrested vide Ex.P-14 to P-17. Statements of witnesses were recorded under Section 161 of Cr.P.C.

4. After completion of investigation, charge sheet against the appellants was filed before the Judicial Magistrate 1<sup>st</sup> Class, Janjgir, who, in turn, committed the case to the Sessions Judge, Bilaspur from where the 4<sup>th</sup> Additional Sessions Judge, Janjgir received the case on transfer for trial. In order to prove guilt of the appellants, the prosecution had examined as many as 12 witnesses. Statements of appellants were recorded under Section 313 of Cr.P.C. where they denied the circumstances appearing against them in the prosecution case and pleaded innocence & false implication. They have also examined defence witnesses Rameshwar & Atmaram and taken the defence of alibi that the appellants were not present in the house and they had gone to the place of worship.
5. The trial Court, after providing opportunity of hearing to the parties while acquitting the appellants of the charge under Section 304B of the IPC, convicted and sentenced the appellants as mentioned in paragraph-1 of this judgment.
6. I have heard learned counsel for the parties, perused the impugned judgment and record of the trial Court.
7. Learned counsel for the appellants vehemently argued that although evidence adduced on behalf of the prosecution is not conclusive in nature but considering the matrimonial dispute, death of the deceased in the house of appellant & evidence of the parents of the deceased, he is not disputing

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conviction of the appellants. He further submits that in the present case as per judgment impugned, appellant Uderam was in custody from 1.4.1997 to 30.7.98 i.e. for more than 16 months; appellant Bharat was in custody from 1.4.1997 till 10.2.1998 i.e. for more than 11 months; appellant Aruna Kumari was in custody from 1.4.1997 to 3.9.1997 i.e. for more than six months and appellant Suraj Kunwar was in custody from 1.4.1997 to 17.7.1997 i.e. for more than six months. They are facing trial since 1997 and therefore considering their period of detention and pendency of trial, again sending them in jail would not serve purpose of the criminal justice and they may be adequately sentenced by enhancing fine amount.

8. On the other hand, learned State counsel opposed the appeal and submitted that the Court below has rightly convicted & sentenced the appellants on the basis of evidence adduced on behalf of prosecution.
9. In order to appreciate arguments advanced on behalf of the parties, I have examined the evidence adduced on behalf of the prosecution.
10. In the light of the evidence of prosecution witnesses, especially Bhuwan Patel (PW-2), Krishna Kumar (PW-3), Laxman Prasad (PW-5), Dr. H. Agrawal (PW-6), Harinarayan (PW-7) & Shanti Bai (PW-8), I do not find any illegality in finding of trial Court convicting the appellant under Section 498A of IPC.
11. As regards the question of sentence, in the light of sentence already suffered by the appellants, I am of the view that again sending them in jail for serving remaining jail sentence would not serve any purpose of criminal justice.
12. Consequently, the appeal is partly allowed. Conviction of the appellants under Section 498A of IPC is hereby maintained, however, instead of R.I. for 02 years and fine of Rs.500/-, each of them is sentenced to the period already undergone by them and fine of Rs.2,000/-, in default to undergo R.I. for six months. Each of the appellant has paid fine of Rs.500/-, now they shall pay remaining fine amount of Rs.1,500/- each within sixty days from today before the Court below.

Sd/-  
T. P. Sharma  
Judge

roshan/-