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**HIGH COURT OF MADHYA PRADESH
JABALPUR**

Cr. Appeal No.2395/2012

Rajesh Singh

Vs.

State of Madhya Pradesh

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For the appellant :- Mr. Suyash Thakur,Advocate.
For the respondent :- Mr. P.K. Singh, Govt. Advocate.

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J U D G E M E N T
29/6/2019

The present appeal has been filed by the sole appellant aggrieved by the judgment of conviction and sentence dated 27/09/12 passed by learned Additional Sessions Judge, Amarpatan, District Satna, in Sessions Trial No. 384/10, thereby convicting and sentencing the appellant under Section 498-A of IPC and sentencing him to suffer 02 years rigorous imprisonment and fine of Rs. 1000/- and in default of payment of fine to suffer simple imprisonment of three months.

- 2.** Learned counsel for the appellant submits that the appellant has already completed his jail sentence and has been released. In paragraph-72 of the trial court order, it is reflected that the appellant was arrested on 03/05/10 and was in judicial custody throughout the period of trial till the passing of this order on 27/09/12. In other words, the appellant had already completed his entire period of sentence on the date on which the order of sentence has

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been passed against him i.e, 27/09/12. Learned counsel for the appellant has also stated that the appellant was working in the Indian Army and on account of his conviction has been dismissed from service.

- 3.** The facts relating to the charge against the appellant is found in paragraph-2 of the trial court judgment. One Raj Kumar Singh, who was examined as PW-7, gave a complaint at Police Station Amarpatan on 03/03/10 to the effect that his aunt Sima Singh had gone to sleep after dinner at around 2:00 AM, her son aged 2 years woke up and started crying. The other inmates of the house woke up and from outside the room shouted to inform Sima (not knowing that she was already dead) that the child was crying. As there was no response from the Sima, they knocked on the door and thereafter, not receiving the reply, unhooked the latch by putting the hand through the ventilator and inside found the deceased hanging from the ceiling. The appellant works in the Indian Army and the complainant says he has no information with regard to the motive of the deceased to commit suicide.
- 4.** Inquest proceedings were carried out and the body was sent for post-mortem. The site map was drawn up and the statements of the witnesses were taken in the inquest proceedings and the police came to the conclusion that the appellant and other co-accused persons being the sister-in-law and father-in-law of the deceased had harassed the

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deceased for demand of dowry and tortured her mentally and physically on account of which she committed suicide.

5. Charges were framed against the appellant and other co-accused persons under Sections 498-A and 304-B of IPC. The co-accused Smt. Usha Singh and Jaganath, being the sister-in-law and father-in-law of the deceased respectively, were acquitted of all the charges at the end of the trial. The appellant was also acquitted of the charge under Section 304-B of IPC and convicted for the offence under Section 498-A of IPC simplicitor. The post-mortem report is Exhibit P/12 which has been proved by the doctor who has performed the post-mortem. He has been examined as PW-10. The cause of death is asphyxia on account of hanging. The report specifically mentions that there are no external injuries seen over the body and also there was no fracture of the hyoid bone of thyroid cartilage. Thus, even as per the prosecution case, the death of the deceased is suicidal in the nature.

6. The deceased and the appellant herein got married on 09/05/03 and she died on 03/03/10. Ashaywat Singh (PW-1) is the real uncle of the deceased. In his examination-in-chief, he says that there was illicit relationship of the appellant with his own sister-in-law and that the two used to trouble the deceased. The nature of the harassment/trouble has not been elaborated or enumerated specifically by this witness. He categorically

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states that there was never any demand of dowry and Rs. 50,000/- was given by the father of the deceased Indramani Singh to the appellant herein to buy a plot. He further says in his examination-in-chief that the deceased has told his wife that the appellant used to trouble the deceased for money. This part of his testimony is hearsay. In fact, this witness does not even say in his examination-in-chief the source of his information relating to the illicit relationship of the appellant with his sister-in-law.

7. Indramani Singh (PW-2), is the father of the deceased. In his examination-in-chief he says that he has given Rs. 2 lacs at the time of marriage during the "Tilak" ceremony. He further says in his examination-in-chief that the deceased never told him anything and that she hardly spoke to him and that she may have revealed the happenings at her matrimonial home to her mother. This witness has been declared hostile and has been cross-examined the prosecution. In paragraph-4 of her cross-examination, he has reiterated his 161 statement upon so being prompted by the prosecution in cross-examination that the appellant used to harass the deceased for money along with his sister-in-law and the entire family. This part of allegations are omnibus and non-specific. He further says that there was demand for money by the appellant. He states in paragraph-4 that it was his daughter, who

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has told him all this, when she came to her parental home. What has been elicited in paragraph-4 by the prosecution, is directly in contradiction to the statement of this witness in his examination-in-chief, wherein this witness says that her daughter never told him anything, she hardly spoke to him and she may have told about the happenings in her matrimonial home to her mother. Therefore, on account of the said contradiction, the reliability with regards to assertion in paragraph-4 of the witness statement is extremely low. In cross-examination by the defence, this witness says that he never gave any report of cruelty or of any demand for dowry to any authority before the registration of the case. In paragraph-12 of his cross-examination, this witness says that the appellant at the time of incident was posted at Jammu and Kashmir and was to be transferred to Gwalior.

- 8.** Rajendra Singh (PW-3), is brother-in-law of the deceased being the husband of the real sister of the deceased. This witness comes in the category of close relations. In his examination-in-chief, he categorically states that there was never any demand for dowry by the appellant and there was never any incidence of assault on the deceased by the accused persons. He has been declared hostile by the prosecution and cross-examined. In cross-examination by the prosecution, this witness has stood by his statement in chief and has not supported the case of the prosecution.

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- 9.** Sabhya Singh (PW-4), is the real sister of the deceased. She also in her examination-in-Chief states categorically that there was never any demand for dowry by the accused persons and there was no instances of any physical violence of harassment meted out to the deceased. She too has been declared hostile by the prosecution and cross-examined. In her cross-examination, she has stood by the statement in her examination-in-chief and has denied the suggestions put forth by the learned prosecutor. In other words, this witness, the sister of the deceased has also not supported the case of the prosecution.
- 10.** Champa Devi (PW-5), is the aunt of the deceased. In her Chief, she does not disclose any demand of dowry or cruelty by the accused persons. She has also been declared hostile and cross-examined. She reiterates her 161 statement in her cross-examination and says that the accused persons demanded money and assaulted the deceased. Upon going through the statement of this witness, it appears that this witness is a hearsay witness and she says that none of the information was directly given to her by the deceased at any point of time and that the same was received from the mother of the deceased.
- 11.** Urmila Singh (PW-8), is the mother of the deceased. In her examination-in-chief, she says that Rs. 2 lacs has been given at the time of marriage on the 'Tilak' ceremony. The deceased is stated to have told her that her husband and

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her Jethani used to trouble her and that they demanded Rs. 2 lacs from the deceased and in the event, she failed to provide the same they would kill her. In her examination-in-Chief, even this witness does not mention of any kind of physical torture being inflicted on the deceased. She is also declared hostile by the prosecution and cross-examined. There is only one question put by the prosecution in cross-examination after declaring her hostile and that is a suggestion that the father-in-law of the deceased also indulged in cruelty against the deceased. This suggestion has been specifically been denied by the witness. As regards to the part of examination -in-chief, where she says that the appellant and his Jethani used to trouble the deceased and also used to demand Rs. 2 lacs and would kill her, if the same was not satisfied, the witness confronted with her 161 statement by the defence counsel says that if the above part is not present in her 161 statement, she does not know the reason why. Thus, it is clear that these allegations were levelled for the first time before the trial court and is conspicuous by its absence in her 161 statement.

- 12.** Looking to the facts and circumstances of the case and the evidence of the witnesses which have come on record, where close relations of the deceased, being the uncle, brother-in-law and the real sister of the deceased having categorically stated that there was never any dowry

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demand and that no acts of cruelty could be attributed to the accused persons including the appellant herein which were allegedly inflicted upon the deceased and the contradictions mentioned in the statement of the father of the deceased between the statement made by him in the examination-in-Chief and paragraph-4 of his cross-examination and also the fact that the mother of the deceased has not alleged any act of cruelty by the appellant on the deceased in her examination-in-Chief and that the same had been elicited by the prosecutor pursuant to the witnesses being declared hostile.

13. In this case, all the allegations against the appellant have been elicited by the prosecution only after declaring the witnesses hostile. Thus, it is clear that nothing incriminating has come out in the examination-in-chief in any of these witnesses and all the aforementioned witnesses have been declared hostile by the prosecution and incriminating statements if any, have been elicited only from PW-2 and PW-6, being the parents of the deceased and that too in the cross-examination by the prosecutor.

14. Under the circumstances, where the sister, brother-in-law and the uncle of the deceased, who were examined as prosecution witnesses have turned hostile and categorically stated that the appellant and the other co-accused persons never demanded dowry or inflicted any

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kind of harassment on the deceased. That part of statements of PW-2 and 6 elicited by the prosecutor after declaring them hostile which are stated hereinabove are in contradiction with the examination-in-chief are grossly inadequate to arrive at the finding that the prosecution has established its case beyond reasonable doubt.

- 15.** Under the circumstances, the appeal is allowed and the impugned order of conviction and sentence passed by the learned trial Court vide order dated 27-09-2012 in ST No. 384/10 is set aside. The appellant is acquitted of all charges. The appeal is **finally disposed of.**

**(Atul Sreedharan)
Judge**

PG/

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