
(2018) 04 CHH CK 0259
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 617 of 2001

Tikeshwar Mahkul

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 498A, 323
Code of Criminal Procedure, 1973 — Section 437A

Citation : (2018) 04 CHH CK 0259

Hon'ble Judges : RAM PRASANNA SHARMA, J

Bench : Single Bench

Advocate : Bhaskar Payashi

Final Decision : Allowed

Judgement

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.06.2001 passed by the Sessions Judge, Session Division

Durg (C.G.) in Sessions Trial No. 83/2001, wherein the said Court convicted the accused/appellant under Sections 498-A and 323 of the IPC, 1860

and sentenced him to undergo R.I. for 1 year and to pay fine of Rs. 500/- and to pay fine of Rs. 500/- with default stipulation.

2. In the present case, name of deceased is Amrika Bai, who was wife of the appellant. She died on 17-09-2000 at village Dadar and cause of death

is due to consumption of organo indo salfon; which is poisonous substance.

3. For commission of offence under Section 498-A, it has to be established that husband or relative of the husband subjected such a woman to cruelty.

For the purpose of this Section, â?? Crueltyâ?? means-

â??(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health(whether mental or physical) of the woman;or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

4. The case of the prosecution is based on the statement of Latturam (PW-1), Motimbai (PW-3), Investigating Officer Assistant Sub Inspector M.L.

Shukla (PW-5) and Inspector B.B. S. Rajput (PW-6). As per version of Latturam (PW-1) marriage of the deceased and the appellant took place 10

years ago. He further deposed that Amrikabai came on her parental house at the time of festival of Tija and stated that the appellant doubted on her

chastity and beaten her. Motimbai (PW-3) is the mother of the deceased and she deposed on the same line. The incident took place in village Dadar

but these two witnesses are the resident of village Bhatgaon and no one examined of Village Dadar as to really what happened with Amrika bai.

5. Statement made by both the witnesses is not clear and the same is hearsay evidence. Hearsay evidence is not received as relevant evidence. In

Kalyan Kumar Gagoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532, Hon'ble the Supreme Court has held as under:

(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every

witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is

concerned, he has a line of escape by saying "I do not know, but so and so told me.

(b) truth is diluted and diminished with each repetition and

(c) If permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour

flying from one foul lip to another. Thus, statement of witnesses based on information received from other is inadmissible.

6. When the evidence of these two witnesses is inadmissible and they are not the resident of village Dadar, it is not established by any legal evidence

that the appellant committed cruelty against deceased Amrika Bai. No one is examined to state that the appellant assaulted Amrika Bai in his

presence. It is not clear from the evidence as to when the appellant assaulted

her and on which part of her body was effected due to assault. There is no direct evidence on this point.

7. In absence of evidence it can not be held that the appellant caused injury on the body of Amrika Bai voluntarily. Factum of assault is not established, therefore, commission of offence under Sections 498-A and 323 of the IPC is not based on legally admissible evidence, finding arrived at by the trial Court is not sustainable in the eye of law.

8. For the foregoing reason judgment of conviction and order of sentence passed by the trial Court is set aside. The appeal is allowed. The appellant is acquitted of the charge under Sections 498-A and 323 of the IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of the Cr.P.C.