

A

MOTI LAL

v.

STATE OF M.P. (NOW CHHATTISGARH)

JANUARY 20, 2004

B

[DORAISWAMY RAJU AND S.B. SINHA, JJ.]

*Code of Criminal Procedure, 1973; Section 235(2)/Penal Code, 1860; Section 306 r/w Section 34 and Section 498A/Constitution of India, 1950;*

C

*Article 136:*

*Husband having illicit relationship with his relative and harassing wife for demand of dowry—Wife committed suicide—Trial Court found accused guilty under Sections 498 and 306 r/w Section 34 IPC, and convicted and sentenced him accordingly—Affirmed by the High Court—On appeal, Held: Both the Courts below had independently considered the material on record—Case of the prosecution for demand of dowry and harassment of the deceased thereto fully substantiated—In view of serious nature of the offence, quantum of sentence cannot be said to be on the higher side—No infirmity to warrant interference under Article 136 of the Constitution.*

E

*Code of Criminal Procedure; 1933; Section 235 (2):*

*Sentencing—Non compliance with the provisions—Accused not seeking adjournment/grant of time for making submission on the sentence before the Courts below—Hence, cannot allege non-compliance of the provisions.*

F

According to the prosecution, accused No.1-appellant had been harassing his wife for demand of dowry and was having illicit relationship with his sister-in-law/accused No.2. The ill-treatment and harassment continued unabated despite his in-laws meeting his demands. Ultimately, she consumed pesticide poison and died. Post mortem examination was done and, on completion of investigation by the Police, charge sheet was submitted. Trial Court found accused No.1 guilty of the offences under Section 306 r/w Section 34 IPC and Section 498-A IPC, and convicted and sentenced him accordingly. However, it acquitted accused No.2. High Court affirmed the conviction and sentence. Hence the present appeal.

H

It was contended for the appellant that the material on record was not sufficient to prove the guilt of the appellant; that the deceased consumed poison to commit suicide on her own, owing to suffering from stomach pain; and that the provisions of Section 235(2) Cr.P.C. have not been complied with. A

Dismissing the appeal, the Court B

HELD: 1.1. The grievance sought to be made on the alleged non-compliance with the provisions in Section 235(2) Cr.P.C., does not merit countenance. [858-F]

*Narpal Singh and Ors. v. State of Haryana*, AIR (1977) SC 1066 and *Ramdeo Chauhan alias Rajnath v. State of Assam*, [2001] 5 SCC 714, relied on. C

*Santa Singh v. State of Punjab*, [1976] 4 SCC 190, distinguished.

1.2. The order of the Trial Court would disclose that the verdict of guilt was pronounced and after hearing the accused the order sentencing the appellant was separately passed on the same day. It is not the case of the appellant that he sought for an adjournment or grant of further time for making submission on the sentence and it was refused. No grievance in that behalf by the appellant appears or shown to have been made before the High Court either in the memorandum of appeal or at the time of argument. Hence the appellant cannot make any legitimate grievance at any rate on the alleged non-compliance with Section 235(2) Cr.P.C. D E

[859-E-H]

1.3. Both the Courts below have undertaken an independent consideration of the materials on record in the light of the contentions urged on behalf of the appellant and yet found the prosecution case fully substantiated on the basis of concrete and relevant materials brought on record. The defence plea as to want of sufficient proof for demand of additional dowry and harassment on that account and as to the appellant being in possession of sufficient resources in Bank have been considered elaborately and found rejected for valid and relevant reasons supported by concrete materials produced. The ample materials on record overwhelmingly support the factual findings concurrently recorded by both the Courts below and they are not shown to be vitiated for any infirmity whatsoever to call for or justify the interference of this Court F G H

**A** in the appeal filed under Article 136 of the Constitution of India. Keeping in view the serious nature of the offences, the quantum of sentence also cannot be said to be on the higher side, for showing any further leniency. [860-A-E]

**B** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 455 of 2003.

From the Judgment and Order dated 30.1.2003 of the Chattishgarh High Court at Bilaspur in Crl. A. No. 931 of 1989.

Shiv Sagar Tiwari for the Appellant.

**C** Rudreshwar Singh and Prakash Shrivastava for the Respondent.

The Judgment of the Court was delivered by

**D** **D. RAJU, J.** The above appeal has been filed against the judgment of a learned Single Judge of the Chhattisgarh High Court dated 30.1.2003 in Criminal Appeal No.931 of 1989 wherein the learned Judge, while affirming the conviction and sentence imposed on the appellant, dismissed his appeal.

**E** The appellant, accused No.1 in Sessions Trial No.228 of 1985 on the file of the Additional Sessions Judge, Raipur, then part of the Madhya Pradesh State, is the husband of one Shakuntla Bai @ Amrika Bai having been married to each other during the year 1976-1977. The second accused Surja Bai is the wife of Rajaram, the elder brother of the appellant. Rajaram, the elder brother, was said to be residing away from the Village being a Government Servant, leaving his wife to live in the joint family house in the village where the appellant was said to have also been living with his wife. The case of the **F** prosecution was that the appellant used to harass his wife from the beginning on the ground that she had not brought sufficient dowry and often used to pester her to bring more gold and money from her father. Whenever she used to remind the appellant that the status and economic position of her father did not permit further dowry being given as demanded, the deceased used to be **G** not only taunted and harassed but also threatened and beaten and at times even driven out of the house. In the month of December, 1984, the appellant appears to have called Suryamani, the elder brother of the deceased, and demanded payment of Rs. 3,000 saying that if he really was interested in the welfare of his sister he must immediately pay the amount. The father of the deceased appears to have arranged for the money from his brother-in-law and **H** through his son paid the sum to the appellant. About 3 or 4 months prior to

the occurrence resulting in the death of Shakuntla Bai, the servant of the appellant appears to have, at the behest of the appellant, called the father of the deceased and when he went to the house of the appellant he told him that he did not want to keep his daughter any longer in the house and he may take her with him. On that, with great difficulties he was able to persuade the appellant and leave the deceased with her husband, in the house. Immediately thereafter during March-April when once the father of the deceased was in the house of his brother-in-law, the deceased was said to have come accompanied by a servant from the village where she was living, with broken utensils in a bag to her Uncle's house at Mahasamund, telling her father that her husband has broken all utensils saying that the brass utensils given by her father, instead of giving modern age steel utensils, have become old and, therefore, get them substituted with new stainless steel utensils. Her father, finding the pitiable condition of his daughter, has purchased new utensils from the shop at Mahasamund and sent her back with new utensils.

While matters stood thus, the ill-treatment and harassment by the appellant of his wife continued unabated also for further reason that she found out on many occasions the appellant having illicit relations with his Bhabhi Surja Bai. In the background of such events and strained relations, it appears that on 18.6.1985 in the marital home at the Village Deori the deceased consumed poison pesticide and died on the same day as a result thereof, in the house of the appellant. The vomiting made before her death, which the Police seems to have seized under a seizure memo Ex.P-7 and got tested also proved to contain pesticide. On coming to know of the occurrence at about 10.00 p.m. in the night, the father of the deceased filed the next day a written complaint to the Police on the basis of which an FIR was said to have been recorded and crime registered and investigation commenced. After completing the formalities of the investigation including the spot inspection, the seizure of the vomiting material and sending the same for laboratory test and arranging for the post mortem examination of the body, the prosecution laid charge against the appellant under Section 498-A and both the appellant and Surja Bai under Section 306 read with Section 34, IPC. PWs. 1 to 9 seem to have been examined besides marking documents and material objects for the prosecution and for the defence also witness was examined and document marked. The defence side also seems to have attempted to show that there was enough money available and no need for demanding money at any time from the complainant side existed. On consideration of the materials placed on record and the stand taken for defence, the learned Trial Judge came to the conclusion that the prosecution was able to substantiate the charges against

A the appellant under Section 498A as well as under Section 306 read with Section 34 and sentenced him to 3 years R.I. for the offence under Section 498A, IPC, and 7 years R.I. under Section 306, IPC, both of which to run concurrently. So far as the other accused Surja Bai, A-2, is concerned, in the absence of concrete material and the very statement of PW-1 the father of the deceased that she did not harass his deceased daughter, the learned Trial Judge acquitted her of the charge against her.

B Aggrieved, the appellant alone pursued the matter, as noticed earlier, unsuccessfully before the High Court and thereafter filed this appeal. The learned counsel for the appellant strenuously contended that the materials on record are not sufficient to prove the necessary ingredients to constitute the offences for which the appellant has been charged with, and held proved. According to the plea on behalf of the appellant, there was no proper or concrete proof of the further demand for dowry as alleged or as to the payment of such amounts and that the deceased Shakuntla Bai consumed poisonous substance to commit suicide on her own, due to apparently the stomach pain with which she was said to be suffering for the past one year prior to her death. It was pointed out that once in the year 1982 also the deceased consumed rat killing pesticide though she was saved at that time and consequently the conviction of the appellant, though concurrent, was not based on acceptable evidence and consequently is liable to be set aside. The learned counsel also made a grievance about non-compliance with the provisions of Section 235(2), Cr.P.C. and relied upon the decision reported in *Santa Singh v. State of Punjab*, [1976] 4 SCC 190. *Per contra*, the learned counsel appearing for the respondent-State contended that the concurrent findings recorded by the courts below are well merited and borne out on the materials placed on record and they do not suffer from any infirmity whatsoever to call for interference in an appeal filed under Article 136 of the Constitution of India. The learned counsel on either side invited our attention extensively to the relevant portions of the judgment of the courts below to substantiate their respective standpoint.

We have carefully considered the submissions of the learned counsel appearing on either side. The grievance sought to be made on the alleged non-compliance with the provisions in Section 235(2), Cr.P.C., does not merit countenance and the decision relied upon, as noticed above, does not help to support the claim as well. The decision in *Santa Singh's* case (*supra*) was one where the sentence imposed was of death the maximum and in such circumstances this Court thought fit to set aside the sentence alone and remand the same to give a hearing on the same. It was indicated even therein in the

concurring judgment of S. Murtaza Fazl Ali, J. that no grievance can be made where minimum sentence under the provisions of law has been awarded. As a matter of fact, the same Bench while dealing with the case reported in *Narpal Singh and Ors. v. State of Haryana*, AIR (1977) SC 1066 remitted for consideration afresh of the Sessions Judge the question of sentence after giving opportunity only in respect of the accused on whom death sentence was imposed and straight away disposed of and dismissed the appeal in respect of those accused who were sentenced to life imprisonment only on being convicted of an offence of murder under Section 302, IPC. In *Ramdeo Chauhan alias Rajnath v. State of Assam*, [2001] 5 SCC 714 a Bench of three learned Judges had an occasion to consider the question in the light of the amendment made by introducing third proviso to Sub-section (2) of Section 309, Cr.P.C., and observed that the plea made as to the sentence and conviction being recorded on the same day resulting in contravention of Section 235(2), Cr.P.C., cannot be accepted and that though the normal rule be that after pronouncing the verdict of guilt the hearing should be made on the same day and sentence also should be pronounced that day itself, in cases where the Judge feels or if the accused demands more time for hearing on the question of sentence especially when the Judge proposes to impose death penalty, the third proviso to Section 309, Cr.P.C., would be no bar for affording such time and if for any reason the Court was inclined to adjourn the case after pronouncing the verdict of guilt in grave offences, the person convicted should be committed to jail till the verdict on the sentence is pronounced.

So far as the case on hand is concerned, the order of the Trial Court would disclose that the verdict of guilt was pronounced on 4.10.1989 and on that day itself after hearing perhaps the learned counsel for the accused the order sentencing the appellant was separately passed. So far as the conviction under Section 498A, IPC, is concerned, as against the permissible sentence of life imprisonment or imprisonment which may extend to ten years and fine, a sentence of three years R.I. and for conviction under Section 306, IPC, as against the permissible sentence of imprisonment up to ten years and fine, seven years R.I. have been found imposed. It is not the case of the appellant that he sought for an adjournment or grant of further time for making submission on the sentence but the same was refused. Even no grievance in that behalf by the appellant appears or shown to have been made before the High Court either in the memorandum of appeal or at the time of argument. In the light of the above, the appellant cannot make any legitimate grievance at any rate on the alleged non-compliance with Section 235(2), Cr.P.C. The contention in this regard shall stand rejected.

A So far as the challenge sought to be made on merits as to the conviction of the appellant is concerned, we find that both the courts below have undertaken an independent consideration of the materials on record in the light of the contentions urged on behalf of the appellant and yet found the prosecution case fully substantiated on the basis of concrete and relevant materials brought on record. The defence plea as to want of sufficient proof for demand of additional dowry and harassment on that account and as to the appellant being possession of sufficient resources in Bank have been considered elaborately and found rejected for valid and relevant reasons supported by concrete materials produced. The ample materials on record overwhelmingly support the factual findings concurrently recorded by both the courts below and they are not shown to be vitiated for any infirmity whatsoever to call for or justify the interference of this Court in the appeal filed under Article 136 of the Constitution of India. The evidence on record, to which our attention has also been drawn by the learned counsel, sufficiently makes out the case of persistent and unabated harassment and acts of cruelty meted out to the deceased by not only pestering her and her relatives to give more and more by way of additional dowry from time to time, but that she has been ill-treated physically and consequently the challenge made to the concurrent findings is not only bereft of substance but does not merit countenance in our hands. The quantum of sentence, keeping in view the serious nature of the offences, also cannot be said to be on the higher side, for showing any further leniency.

E

The appeal, consequently, fails and shall stand dismissed.

S.K.S.

Appeal dismissed.