

**HIGH COURT OF MADHYA PRADESH
PRINCIPAL BENCH AT JABALPUR**

Criminal Appeal No.1936 of 1997

Dinesh Kumar Soni.....Appellant

Versus

The State of Madhya Pradesh.....Respondent

For the appellant : Ms. Priyanka Mishra, *Amicus Curiae*

**For the Respondent : Mr. Piyush Bhatnagar, Panel Lawyer
for the State.**

Present:

JUSTICE ATUL SREEDHARAN

JUDGMENT

(07/01/2020)

The present criminal appeal has been filed by the appellant Dinesh Kumar Soni being aggrieved by the order of conviction and sentence dated 3.9.1997 passed by the learned Additional Sessions Judge, Gadarwara, in Sessions Trial No.108 of 1995 convicting and sentencing the appellant for an offence under section 306 IPC, by rigorous imprisonment for five years and a fine of Rs.1,000/- and in default of payment of fine, rigorous imprisonment for two years.

2. The brief facts of the case, as per the prosecution, is that the marriage between the appellant herein and the deceased was solemnized in June 1986. Thereafter, it is the prosecutions' case that the appellant looked after the deceased well for about two years. But after that, the appellant started demanding Rs.50,000/- towards dowry and as the same was not being paid used to threaten the deceased Mamta with death and dire consequences. It is further the case of the prosecution that on 3.3.1991 the deceased was physically assaulted and she informed her father vide Ex.P3, which is a letter. In the year 1988, the appellant is stated to have gone to the house of the deceased and asked her father Bhagwandas for Rs.50,000/- to buy a jeep and if the same was not paid, he would solemnize another marriage and leave the deceased. However, on account of the financial inability of the father of the deceased, the demand could not be fulfilled.

3. The prosecution has also tried to establish that the deceased had informed her relations at her parental home about the harassment she faced. Further, in the year 1991 the deceased had gone to her parental home and returned to her matrimonial home only after a passage of almost two and a half years in the year 1993. It is also stated by the prosecution that 10 to 15 days before her death, the deceased had gone to see her ailing father along with her brother-in-law. There she is stated to have

informed her sister-in-law (P.W.4) that her mother-in-law and husband used to harass her and not give her food for almost two days at a stretch. They also threatened that the appellant would give her divorce under the “chodchutti” practice prevalent in their village. The deceased is stated to have written a letter to witness Sunita (P.W.4), which has been proved as Ex.P6, about the demand for Rs.50,000/-. On 9.10.1984, in the morning around 8 o’ clock, the appellant went to Police Station Gotetoriya along with the Kotwar and informed the police that on account of Navratri he was sleeping separately with his wife and at night approximately around 1:00 a.m. his younger brother Madan informed him that their house was on fire. When he woke up, he saw that his wife Mamta was lying dead after having suffered burn injuries in the toilet. Thereafter, the present case was instituted against the petitioner. He was charged by the learned trial court for offences under sections 498-A, 304-B, 302 and 306 IPC.

4. The learned trial court has only convicted the appellant under section 306 IPC for having abetted the suicide of the deceased. The learned trial court has acquitted him of an offence under section 498-A IPC not on account of their being inadequate evidence or an appreciation that the evidence did not prove the case of the State beyond reasonable doubt but on the grounds that as the appellant

was being convicted under section 306 IPC there was no requirement to consider the case under section 498-A IPC. The appellant has, thus, been acquitted of the offences under sections 498-A, 304-B and 302 IPC and has been convicted only for an offence under section 306 IPC.

5. Having gone through the evidence on record, there are allegations that the appellant treated the deceased with cruelty and harassed her allegedly, for not bringing adequate dowry. However, as the learned Trial Court has acquitted the appellant for offences under sections 498A, 304B and 302 IPC, the question of cruel treatment of the deceased does not exist as the learned Trial Court did not find any element of cruelty on the part of the appellant. The State has also not filed an appeal against the acquittal of the appellant for the offences under sections 498A, 304B and 302 IPC. The undisputed fact in this case is that the appellant was previously married to another lady with whom litigation in progress. The appellant wanted to give divorce to his first wife. However, she was not willing. It has also come as evidence that the appellant had clandestinely carried out the second marriage with the deceased without having given divorce to his first wife.
6. Learned *Amicus Curiae* has submitted that the offence under section 498-A IPC would not be made out notwithstanding the fact that there may have been allegations of cruelty or harassment meted out to the

deceased by the appellant on account of the fact that the deceased was not the legally wedded wife of the appellant. Learned *Amicus Curiae* has also submitted that as it is undisputed that there was no divorce from the first wife, the status of the deceased cannot be that of wife. In support of her contention, she has drawn the attention of this court to the definition of “wife” as given in the Black’s Law Dictionary wherein it is define as “a married woman; a woman who has a lawful spouse living.” On the basis of the said definition, learned *Amicus Curiae* has submitted that the word “wife” as used in section 498-A IPC is a legal entity who must be a legitimate wife under the law. She has further stated that the penal code being a penal statute and not a social welfare legislation cannot be interpreted in a too broad a manner to include a person who is not legally wedded to the appellant but was cohabiting with the appellant only under the belief that she was the legally wedded wife of the appellant. It is further stated that as far as the issues of maintenance and alimony may be concerned, those clause coming under the ambit and purview of social welfare legislations, a woman in the position of the deceased may be deemed as a wife in order to provide succor. However, as far as section 498-A IPC is concerned, the same being a penal statute, the definition of “wife” cannot be expansive and must mean a wife who under the law is legitimately recognized as the wife of the appellant.

7. The learned counsel for the State, however, has a divergence of view as far as law is concerned as put forth by the learned *Amicus Curiae*. The learned counsel for the respondent/State has placed before this Court the judgment of the Supreme Court passed in *Reema Aggarwal Vs. Anupam and others*, (2004) 3 SCC 199. In that case the appellant Reema had preferred the Special Leave Petition before the Supreme Court against the order of acquittal passed by the learned Trial Court acquitting the respondent before the learned Supreme Court of a charge under section 498A IPC. The High Court had dismissed the leave to appeal filed by the appellant Reema Aggarwal after appreciating the reasons given by the learned Trial Court to the effect that as the respondent Anupam Aggarwal already had a first wife living, his marriage with the appellant before the Supreme Court, Reema Aggarwal, was not a valid marriage and, therefore, the offence under section 498A IPC could not be pressed into service for the purpose of convicting the husband for the said offence. The Honourable Supreme Court applying the *Haydon's* rule of the purpose of interpretation and the mischief rule interpreted the term 'husband' to mean a person living with a woman as husband and wife in the eyes of the society and merely because the woman happened to be the second wife, it would not exempt the husband from being charged for an offence under section 498A for cruelty on the ground that the marriage itself

was not valid and, therefore, a relationship of a husband and a wife did not exist between the husband and the complainant. In view of the judgment of Supreme Court, the issue is not longer resintegra. However, in this case as the appellant has been acquitted of the offences under sections 498A and 304B IPC, there is no finding of guilt against the appellant of having acted with cruelty against the deceased wife. The remaining evidence on record does not reveal or conclusively establish the ingredients of abetment which are required under section 107 IPC. There is no allegations by any of the witnesses that the appellant had either acted by way of assistance, instigation or conspiracy so as to be guilty of having abetted the deceased in committing suicide. The case of the prosecution that the deceased was physically assaulted on 3.3.1991 and that she had informed her father vide Ex.P.3, which is a letter is one singular instance of physical assault that may be considered as proved. The same cannot be interpreted as instance of continuing violence against the deceased that it was of such nature that she had no option but to commit suicide.

7. Under the circumstances, **the appeal succeeds** and the impugned order dated 3.9.1997 passed by the learned Additional Sessions Judge, Gadawara in Sessions Trial No.108/1995 convicting and sentencing the appellant for

an offence under section 306 IPC is set aside. The appellant is acquitted, his bail bonds are discharged.

(ATUL SREEDHARAN)
JUDGE

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