

Brij Prakash and Anr Vs. State

Brij Prakash and Anr Vs. State

SooperKanoon Citation : sooperkanoon.com/67465

Court : Rajasthan Jodhpur

Decided On : Dec-18-2015

Appellant : Brij Prakash and Anr

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

D.B.CRIMINAL APPEAL No.739/2008 (Brij Prakash & Anr.

versus State) CRIMINAL APPEAL UNDER SECTION374ii) CR.P.C AGAINST
THE

JUDGMENT

DATED0809.2008 PASSED BY LEARNED ADDL.

SESSIONS JUDGE (F.T) NO.2, HANUMANGARH-NOHAR, IN SESSIONS CASE
No.51/2007 (01/2006).Date of Judgment : : 18th December, 2015 PRESENT
HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE VIJAY
BISHNOI Mr.Suresh Kumbhat, for the appellants.

Mr.JPS Choudhary, Public Prosecutor.

Mr.Sunil Beniwal, for the complainant.

BY THE COURT (PER HON'BLE VYAS, J.) Instant criminal appeal has been filed by the appellants Brij Prakash and Kalu Ram under Section 374(ii) Cr.P.C. against the judgment dated 08.09.2008 passed by Addl.

District and Sessions Judge (FT) No.2, Hanumangarh- Nohar in Sessions Case No.51/2007 by which two accused Brij Prakash and Kalu Ram were convicted but during pendency of this appeal, accused Kalu Ram died on 14.08.2012, therefore, his appeal was abated vide order dated 14.11.2015.

The appellant Brij Prakash was convicted for offence under Section 302/120B IPC and 2 following sentence was passed against the appellant which reads as under :-

S.No.	Accused	Offence	Sentence
1	Brij Prakash	302/120B	Life imprisonment
2	IPC	alongwith fine of Rs.50,000/-	in default of payment of fine to undergo 2 years RI
3	498	3 years RI	alongwith 10,000/- fine in default of payment of fine to undergo 4 months RI
201	IPC	7 years RI	alongwith Rs.15,000/- fine in default of fine, to undergo 1 years RI

As per brief facts of the case, a written report Ex.P/10 was submitted by the appellant Brij Prakash before the Police Station Nohar on 22.10.2005 at 11 PM in which it is stated that in an accident occurred on 22.10.2005 at 8 PM in between the way from Nohar to village Deidas, his wife was hit by unknown vehicle and due that hit, his wife died.

Upon that report, FIR No.428 Ex.P/11 was registered under Section 279 & 304 A IPC against unknown person on 22.10.2005 which reads as under :- , ...

, - , " # () . # ,) * # () . 8 # ((R.J.31 3674 4 6 3 6 # 8 , -2) ,) ; # 8 ((C (((C ; 6 6 8 ; 6 ; 6 Pik-up # ((, () J (; L ; (N #) . (; L A L B A L (B J L S/o C 27 , , After registration of above FIR No.428 on 22.10.2005, another written report Ex.P/4 was submitted by PW/1 Bajrang lal at P.S.Nohar and made allegation of criminal conspiracy for murder of her daughter Smt.

Anita wife of accused appellant.

Following written report was filed which reads as under :- " # , (, - - (.) :- FIR 4 , , () . (; 36 6 U1996# .

(L (((; L ((; , , (; , ,). (, (, (, , C (; ; # (, 2000 ; # (8 (, 6 (6-7 (8 6; N (, # # (, ; ((;
(; C ; , , ; N (# (, (((, (; , # 6 (# 2005 (- # `8 # C (, ; ; 2005 # C) L N *) ; N (, (:
(,) * (5 21.10.05 10 (6 # 8-10 - N (6 (, , 22.10.05 6 ; " (C (() ,) #)) 8)) 6; -2 C "
(# ((` ( ; 6 ` ((C 6; (C (; , (:). (# , 23/10/05 A , (B C (D J , (g C .

15 C ()).

The SHO P.S.Nohar commenced investigation and after investigation, filed challan against five persons including appellant Brij Prakash, Kalu Ram , Lekhram, Mani Ram and Smt.

Saraswati for offence under Section 302/120B, 498A IPC but out of five persons, Lekhram, Mani Ram and Smt.

Saraswati were acquitted from the charges leveled against them after trial by the Addl.

District and Sessions Judge (FT) No.2, Hanumangarh but accused appellants Brij Prakash (present appellant) was convicted for offence under Section 302/120B, 498A, 201 IPC and accused Kalu Ram was convicted for offence under Section 302/120B IPC.

The trial court after recording statement of 15 prosecution witnesses, recorded the statement of accused appellants under Section 313 Cr.P.C.and in defence statement of two witnesses namely DW/1 Ranveer and DW/2 Aidan were recorded and 42 documents were exhibited from prosecution side and 15 documents were exhibited from defence side.

After recording evidence of both the sides, the learned trial court heard final arguments of the case and vide judgment dated 08.09.2008 acquitted the accused Lekh Ram, Mani Ram and Smt.

Saraswari from the charges leveled against them but convicted accused appellant Brij Prakash and Kalu Ram for offence mentioned above.

Learned counsel for the appellants submits that entire prosecution case is based on circumstantial evidence so also extra judicial confession and allegation for

demand of dowry by the accused appellant and his parents and other two persons but learned trial court discredited the evidence 7 of extra judicial confession and on the basis of statement of sole eye witness Vijaylaxmi @ Timtim PW/6 daughter of accused appellant and deceased held the accused appellant guilty for offence under Section 302/120B IPC.

The learned counsel for the appellant submitted that the finding given by the trial court for conviction under Section 302, 120B IPC and 498A IPC against the appellant Brij Prakash is not sustainable in law because the witness PW/6 Vijaylaxmi @ Timtim is tutored witness because she was only seven years of age on the date of accident, so also there is no other evidence on record against accused Brij Prakash nor any allegation for inflicting any injury by him to the deceased is leveled, therefore, there was no question to convict the accused appellant for the offence under Section 302/120 B IPC but the learned trial court convicted the accused appellant only on presumption on the basis of statement of PW/6 Vijay Laxmi @ Tim tim.

With regard to finding of extra judicial confession, it is submitted that trial court disbelieved the evidence of extra judicial confession and acquitted three other accused Lekhram, Mani Ram and Smt.

Saraswati who were charge- sheeted alongwith accused appellants.

It is also brought to the notice of this Court that against the acquittal of three accused persons Lekh Ram, Mani Ram and Smt.

Saraswati, the State Government preferred D.B.Criminal Leave to Appeal No.222/2009 and complainant Bajrang Lal filed D.B.Criminal Revision Petition No.1191/2008 but both the 8 petitions were dismissed by the Division Bench of this Court vide order dated 10.08.09 and the judgment of trial court was affirmed.

Further the above order dated 10.08.09 passed by this Court was challenged before the Honble Supreme Court but the Honble Supreme Court dismissed the special appeal against the said judgment, therefore, the finding of trial court with regard to extra judicial confession became final.

In view of above fact, it is argued that the statement of PW/6 Vijaylaxmi has erroneously relied upon by the trial court so as to convict the accused appellants for alleged offence under Section 302/120B IPC, therefore, the impugned judgment may kindly be quashed.

Learned counsel for the appellants submits that there is no evidence on record to prove the allegation of involvement of appellants in the crime, more so, it is a case of accident on the way from Nohar to Deidas when appellant Brijkishore was going on scooter alongwith deceased and his two children and the wife of accused appellant was hit by a jeep and due to said accident, she died and FIR No.428/05 was filed by the petitioner himself.

Upon that, FIR No.429 was registered for offence under Section 279 and 304A IPC.

Learned counsel for the appellants submits that it is a case in which the prosecution has concocted a false story and created evidence of PW/6 Vijaylaxmi @ Timtim, daughter of accused Brijkishore and deceased and only on the basis of 9 said statement, the finding is given by the trial court to held the accused appellant guilty for alleged offence.

As per appellant, there is no corroboration for the allegation made by the witness PW/6 Vijaylaxmi, therefore, the judgment impugned deserves to be quashed.

Learned counsel for the appellant submits that challan was filed on the basis of circumstantial evidence but the chain of circumstances is not so complete in all aspects to held the appellant guilty for offence of murder because there is only suspicion of commission of offence against the appellant upon plain reading of the statements of independent witnesses, therefore, it is a case in which prosecution has miserably failed to prove the charge against the accused appellant beyond reasonable doubt.

Learned counsel for the appellant argued that whole conviction is based upon the statement of PW/6 vijay Laxmi @ Timtim but the said witness is tutored witness, for the reason that she has completely improved from her statement recorded

under Section 161 Cr.P.C.Ex.D/7 & D/9 and the learned trial court disbelieved the said witness on material particular.

The prosecution has suppressed material evidence and has not come with true story before the Court, therefore, the entire approach of the trial court in appreciating evidence is wholly erroneous and unsustainable in law.

Learned counsel for the appellant submits that prosecution has fabricated the story which is evident from 10 the fact that written report Ex.P/4 was filed by the complainant Bajrang Lal PW/1 on the basis of incident reported by Vijay Laxmi @ Tintim PW/6, the grand daughter but upon perusal of Ex.P/4, it will reveal that it is nowhere stated by PW/1 Bajrang Lal pareek that on spot Vijay Laxmi @ Tintim PW/6 who was seven years of age on the date of occurrence saw the accused Kalu Ram driving the jeep by which the deceased Anita was hit on the way.

The written complaint Ex.P/4 is totally based upon presumption that due to planned conspiracy while hitting his daughter Anita, death was caused.

In the written report name of driver, number of jeep or any other incident with regard to conspiracy has not been disclosed by PW/1 Bajrang lal pareek but subsequently in the statement of Vijay Laxmi @ Tintim, fabricated story of planned conspiracy disclosed by witness PW/6 Vijay Laxmi @ Tintim who was seven years of age when incident took place, therefore, the whole prosecution case is totally unfounded.

More so, it is a case in which the appellant Brij Prakash, the husband of deceased Anita has been falsely implicated by the complainant party only for the reason that relations of deceased Anita and appellant Brij Prakash were not healthy.

Learned counsel for the appellant submits that even perusal of the written report Ex.P/4 and statement of PW/6 Vijay Laxmi @ Tintim recorded under Section 161 Cr.P.C.Ex D/7 & D/9, there is no allegation of inflicting 11 any injury, upon a plain reading of allegation, it will reveal that it is a case of accident none else.

Further the story of conspiracy by the accused appellant Brij Prakash, Lekh Ram and Kalu Ram is not proved nor the witness PW/6 Vijay Laxmi @ Tintim made

specific allegation with regard to conspiracy to kill Anita her mother and wife of accused appellant, therefore, in absence of any material and trustworthy evidence of conspiracy by the accused appellant, the finding of trial court to hold the accused appellant guilty for offence under Section 302 IPC and 120B IPC deserves to be quashed.

It is worthwhile to observe that the story of extra judicial confession has been disbelieved by the trial court so also the prosecution has failed to prove the case against Lekh Ram, Mani Ram and Smt.

Saraswati.

The allegation of demand of dowry has also been discredited by the trial court, the accused Lekh Ram, Mani Ram and Smt.

Saraswati were acquitted from the charges levelled against them, so also against that acquittal, D.B.Criminal Revision Petition No.1191/2008 was filed by the complainant Bajrang Lal and D.B.Criminal Leave to Appeal No.229/2009 filed by the State of Rajasthan were dismissed by this Court, against the said order special leave to appeal was also filed before the Hon'ble Supreme Court that too has been dismissed, therefore, the finding of trial court for not accepting the evidence of extra judicial confession and demand of dowry already attained finality.

In view of above, the allegation of 12 conspiracy by the accused appellant to kill his own wife Anita in an accident deserves to be rejected on the ground that whole prosecution case is based upon testimony of PW/6 Vijay Laxmi @ Tintim who was present at the time when deceased Anita was hit by the jeep at about 8 PM in the night.

The trial court has committed grave error of law in accepting the testimony of PW/6 Vijay Laxmi @ Tintim because Vijay laxmi was only seven years of age and in the statements recorded by the investigating officer twice there are major contradiction with regard to the incident.

According to appellant, it is a case in which the complainant has created the evidence of PW/6 Vijay Laxmi @ Tintim daughter of accused appellant and

deceased so as to convict the accused appellant for offence of murder, therefore, the whole prosecution is doubtful.

Learned counsel for the appellant invited attention of this Court towards the fact that intention of the accused appellant can be gathered from the fact that soon after the occurrence, he reported the incident to the police vide Ex.P/10 at Police Station Nohar at 11 PM and admittedly, as per statement of PW/6 Vijay Laxmi @ Timtim, the occurrence took place at 8 PM.

The appellant who was on scooter with his two children and wife received injuries in the accident take them to the village Deidas because his family members were residing in village Deidas and he was alone where accident took place, therefore, it cannot be said that there was any conspiracy of appellant for murder 13 of his own wife.

It is a case in which FIR was filed by the accused appellant himself immediately to the police station, upon that FIR No.428 dated 22.10.2005 was registered, therefore, it is a case in which the finding of learned trial court only on the basis of statement of PW/6 Vijay Laxmi @ Timtim is totally erroneous because story narrated by the witness of PW/6 Vijay Laxmi @ Timtim is concocted one, at the behest of the in-laws of accused appellant, therefore, the judgment impugned may kindly be quashed.

Per contra, learned Public Prosecutor and counsel for the complainant vehemently argued that after calculated conspiracy, the accused appellant killed his own wife which is evident from the testimony of PW/6 Vijay Laxmi @ Timtim, therefore, her statement cannot be discarded because she was present at the time of incident and testimony of child witness cannot be doubted so as to ascertain correctness of the fact, in this case, admittedly, PW/6 Vijay Laxmi @ Timtim daughter of accused appellant has categorically narrated occurrence and leveled allegation against her father that cannot be ignored to held the accused appellant guilty for offence of murder.

Learned Public Prosecutor further submits that appellant himself is not disputing the fact that occurrence took place when he was going on scooter to the village

Deidas from Nohar in the evening at about 8 PM, at that time, his scooter was stopped due to defect occurred suddenly.

As per 14 arguments, the appellant and his children sit on scooter and asked wife Anita to push the scooter and after pushing by Anita, the scooter was start but accused appellant left his wife and tried to go but both the children started crying, therefore, he came back but all of sudden, a jeep hit deceased Anita, due to hit, Anita received so many injuries upon her body.

The PW/6 Vijay Laxmi @ Tintim categorically stated in her statement that at the time of incident, I asked my father Brij Prakash to note the number of jeep and immediately take the mother to the hospital for treatment but instead of taking her to hospital, she was taken to the house in village Deidas where her condition became serious because no treatment was made available to her.

The witness PW/6 Vijay Laxmi @ Tintim stated that she repeatedly asked her father (appellant), grand father and grand mother to take her mother to hospital immediately but they did not take care of her mother for treatment due to conspiracy made by them to kill Anita in the garb of accident with the support of Jeep driver accused Kalu Ram, therefore, upon statement given by none else, daughter of accused appellant PW/6 Vijay Laxmi @ Tintim it is obvious that no error has been committed by the trial court to rely upon the statement of PW/6 Vijay Laxmi @ Tintim the sole eye witness of the incident to hold accused appellant guilty.

Learned Public Prosecutor and learned counsel for the complainant submits that it is a case in which the accused 15 killed her wife by conspiracy with the help of Kalu Ram driver and Lekhram as per the allegation of PW/6 Vijay Laxmi @ Tintim.

As per evidence on record, Kalu Ram and Lekhram used to visit their house and on the date of occurrence also, they were in the house and talking with her father, when she went in the room, they stopped talking and asked her to go out from the room, meaning thereby, as per evidence on record, it is a case in which the accused appellant framed a plan so as to kill his wife in the garb of an accident

which is evident from the statement of PW/6 Vijay Laxmi @ Timtim.

It is argued that no error has been committed by the trial court in convicting the accused appellant for offence under Section 302 read with Section 120B and Section 498A IPC because there is ample trustworthy evidence on record to prove that behaviour of accused appellant with deceased Anita was quarrelsome and there was allegation for demand of dowry time and again.

It is further submitted that although the allegation of demand of dowry has not been accepted by the trial court but trial court gave finding that if accused committed cruelty with his wife then also he can be held guilty for offence under Section 498A IPC, therefore conviction of accused appellant for offence under Section 302 as well as Section 498A IPC vide impugned judgment dated 08.09.2008 is perfectly consonance with law.

Lastly it is argued that upon appreciating entire evidence and upon the fact that prosecution has led 16 trustworthy evidence of eye witness PW/6 Vijay Laxmi @ Timtim and for other circumstantial evidence then no error has been committed by the trial court so as to convict the accused appellant for offence under Section 302 read with Section 120B and 498A IPC, therefore, the appeal may be dismissed.

After hearing learned counsel for the parties, we have considered the arguments advanced by both the parties in the light of evidence on record.

Admittedly, there is only one eye-witness of the incident which is PW/6 Vijay Laxmi @ Timtim, daughter of accused appellant and deceased Anita.

It is also not disputed by the accused appellant and complainant party that deceased Anita died due to hit by the jeep and there is no allegation for inflicting any injury by the accused appellant to the deceased.

It is also not in dispute that at 11 PM, accused himself filed FIR for the incident of accident in the Police Station, Nohar in which it was mentioned that his wife received injuries due to hit by jeep in between way from Nohar to village Deidas.

We have perused the FIR Ex.P/10 filed by the accused appellant himself.

The accused appellant stated in that report that on 22.10.2005 at 8 PM, when he was going to village Deidas alongwith his wife Anita and two children on scooter RJ-31- 3174, on the way, some defect arose in the scooter, therefore, all the four persons went on foot to some distance but after some time the accused appellant asked children to sit on scooter and appellant also sit on scooter 17 and asked wife Anita to push the scooter to start.

The deceased Anita pushed the scooter and due to pushing, the scooter was start and run to some distance.

At that time when wife was standing on the way, one Commander jeep came there and the driver was driving jeep negligently and hit Anita.

Due to said hitting, the wife of appellant received injuries and fell down on road, the driver of the jeep ran away from the place of accident.

At that time one pick up came there in which the accused appellant, children and his injured wife reached the village Deidas from where the accused appellant took his wife to the hospital for treatment but in the hospital during treatment she died therefore, it was informed by the appellant that her body is lying in the Government hospital.

The aforesaid narration was given to the police station, Nohar by the accused appellant himself at 11 PM on 21.10.2005 and admittedly, the occurrence took place at 8 PM in the way from Nohar to Deidas.

In view of above facts, it cannot be said that conduct of the accused appellant is doubtful because after the occurrence, the accused appellant took his wife and children to village Deidas which is not disputed and from there he took his wife to the hospital at Nohar but during treatment she died.

Thereafter, immediately he gave information to the Police Station, Nohar at 11 PM.

Upon consideration of the incident, it can be said that conduct of accused to give report of incident to the police and taken his wife to 18 hospital for treatment is not questionable.

We have examined written report (Ex.P/4) submitted by the complainant PW/1 Bajrang Lal Pareek, father of deceased PW/1.

The father of deceased PW/1 Bajrang Lal stated in his statement that relationship of accused appellant and his daughter Anita were not healthy and appellant demanded dowry and for that some quarrel took place.

It is further stated by the complainant that his daughter Anita was lecturer and she was posted at Khetari and regularly giving her earning to the husband and inlaws but inspite of the fact that all earning was given by her, the accused appellant was regularly asking the deceased to get more money from her father.

Some more allegations are levelled by PW/1 Bajrang Pareek with regard to conduct and incident of quarrel in between accused appellant and deceased but the witness PW/1 Bajrang Lal Pareek, father of deceased that till postmortem of body of deceased Anita, there was no talk in between him and grand daughter but after postmortem, his grand daughter informed that on 22.10.2005 in the evening at 5 PM, her father and Kalu Ram friend of my father both were talking secretly in the room and when I entered the room they asked to go out from the room and ask your mother that we are going to village Deidas.

As per PW/1 Bajrang Lal, it was further informed by PW/6 Vijay Laxmi @ Tim tim that my mother said that it is not proper to go in the night but for this reason, appellant made quarrel with deceased and directed 19 her to dress up and proceed for village Deidas on scooter.

According to information given by W/6 Vijay Laxmi @ Timtim to the complainant that deceased and I were sitting on back seat of the scooter and was standing on front side of scooter and her father was driving scooter, near the bridge in the way, the scooter was stopped due to defect and my father asked us to get down and thereafter, my father took scooter in hand and after walking at some distance, while taking scooter in hand, asked Shivam and me to sit on seat and instructed mother Anita to push the scooter so as to start.

It is informed by W/6 Vijay Laxmi @ Timtim that her mother pushed the scooter for some time and due to pushing by her, scooter was start but on running to some distance, they cried because mother left behind the scooter, upon crying, the father turned the scooter but all of sudden one vehicle Jeep came from the middle of road and hit her mother who was going on foot, after hitting my mother, the jeep driver went away.

At that time I asked my father to note the number of jeep and tried to stop the vehicle his father did not give any indulgence to my request.

As per PW/6 Vijay Laxmi, she and and brother shivam tried to ask their mother to stand up but she was not in position to stand due to injuries and my father stopped one vehicle and took us to the village Diedas.

It is stated by PW/6 Vijay Laxmi @ Tim Tim that I asked my father to take my mother fiRs.to hospital but he took her 20 in the vehicle to house in the village.

In the village I again asked my grand father and grandmother to take mother to hospital immediately for treatment but they did not take care promptly, therefore, due to non-availability of treatment, my mother died meaning thereby, the author of FIR submitted a report upon hearsay evidence of PW/6 Vijay Laxmi @ Tim Tim upon which investigation was conducted in the FIR No.428.

In the investigation, statement under Section 161 Cr.P.C.of W/6 Vijay Laxmi @ Timtim were recorded which is Ex.D/7 in which same story was narrated but with regard to place of hitting, it was stated by the witness W/6 Vijay Laxmi @ Timtim in the statement recorded under Section 161 Cr.P.C.Ex.D/7 that (h) (((, ((, " In the investigation again statement of PW/6 Vijay Laxmi @ Timtim were recorded on 30.08.2015 in which same story was narrated by Vijay Laxmi @ Timtim and in the statement recorded on 30.10.2005 Ex.D/4 and statement recorded in the trial as PW/6.

We have perused the statement of Vijay Laxmi @ Timtim under Section 161 Cr.P.C.during investigation on 18.10.2007, 23.10.2005 and 30.10.2005 so also statement recorded in the trial as PW/6.

Upon perusal of all the three statements, we are of the view that even if the allegation made in the statements are accepted as a whole, then also there is no evidence to prove the allegation of conspiracy by the accused appellant with Kalu Ram and Mani Ram.

It is also important to note that co-accused Mani Ram Lekh ram and Saraswati has already been acquitted by the trial court because learned Trial court disbelieved the story of conspiracy.

In the statement of PW/6 Vijay Laxmi @ Tintim and in the written information given by PW/1 Bajrang Lal, no specific allegation to pay consideration by the appellant to Kalu Ram or Lekh Ram for hitting the deceased Anita by the vehicle Jeep, so also there is no corroboration of allegation of conspiracy by any of the witness including PW/6 Vijay Laxmi @ Tintim.

The only assertion is that they were talking secretly in the room, therefore, trial court disbelieved the allegation of prosecution witness PW/6 Vijay Laxmi @ Tintim and PW/1 Bajrang Lal to the extent of involvement of Mani Ram father of accused appellant and mother Sarbati Devi and Lekh Ram, therefore, when trial court has disbelieved the story of extra judicial confession and conspiracy, then how the finding given by the trial court for conviction under Section 302 read with Section 120B IPC is sustainable in law.

As per basic principle of criminal jurisprudence, it is the duty of the prosecution to prove its case beyond reasonable doubt and produce evidence to complete chain of circumstances so as to hold accused guilty for offence 22 under Section 302 or Section 302 read with Section 120B IPC.

But herein this case the whole prosecution case is based on testimony of PW/6 Vijay Laxmi @ Tintim the daughter of deceased and accused appellant, therefore, on the basis of testimony of this witness, conviction of accused appellant is not sustainable in law for offence under Section 302 read with Section 120B IPC.

In view of above, the conviction and punishment imposed against the accused appellant Brij Prakash for offence under Section 302 read with Section 120B IPC

is not sustainable in law.

So far as the finding given by learned trial court for offence under Section 498A IPC is concerned, we have perused the statement of PW/1 Bajrang Lal Pareek, PW/2 Kailash Chand Sharma, PW/3 Shashi Kant Pareek, brother of deceased Anita, PW/5 Kailash chandra Pareek uncle of deceased Anita, PW/6 Vijay Laxmi @ Tim tim.

Upon assessment of the statement of these witnesses, we are of the opinion that finding of trial court for conviction solely on the basis of cruelty does not require any interference because all the witnesses categorically said that behaviour of the accused appellant with deceased Anita was quarrelsome, because so many time, he has committed cruelty for which he was instructed many times, by the family members of deceased Anita.

In view of above, we are not inclined to disturb the finding given by the trial court for commission of offence 23 under Section 498A IPC for the reason that finding for offence under Section 498A IPC is based upon sound appreciation of statement of the prosecution witnesses of inlaws of the appellant, therefore, the finding for conviction under Section 498A does not require any interference.

In view of above, instant criminal appeal is partly allowed.

The conviction of accused appellant for offence under Section 302 read with Section 120B IPC and 201 IPC is hereby quashed and set aside and while maintaining the conviction and sentence for offence under Section 498A IPC, the fine is hereby enhanced from Rs.10,000/- to Rs.50,000/-, in default of payment of fine, the appellant will undergo sentence for six months.

The amount of fine shall be paid to the children of deceased Anita upon depositing by the accused appellant.

[VIJAY BISHNOI],J.

[GOPAL KRISHAN VYAS],J.

bjsh

