

**Hemraj. Vs. State of Madhya Pradesh.**

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**Court :** Madhya Pradesh Jabalpur

**Decided On :** Jul-06-2010

**Judge :** J. K. Maheshwari, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 498-A, 304-B ;

**Appeal No. :** CRIMINAL APPEAL NO.1505 OF 1995.

**Appellant :** Hemraj.

**Respondent :** State of Madhya Pradesh.

**Advocate for Def. :** Shri Yogesh Dhande, Adv.

**Advocate for Pet/Ap. :** Shri H.S.Dubey ; Shri Abhinav Dubey, Adv.

**Judgement :**

1. This appeal is directed against the judgment dated 1st November, 1995 passed by Additional Sessions Judge, Gadarwara in Sessions Trial No.32/93 convicting the appellant for the offence under Section 498-A, IPC and directing him to undergo rigorous imprisonment of two years with fine of Rs.500/-, in default of payment of fine, additional imprisonment of six months.

2. As per prosecution story, deceased-Munni Bai @ Manorama was married with Hemraj in 1988. After about one and half year of the marriage, Shiv Prasad made a demand of Rs.10,000/- and present appellant-Hemraj of motorcycle while mother-in-law Laxmi Bai demanded Gold to the extent of seven tolas. Deceased

Munni Bai said to his father Kharagram regarding such demand of dowry to which he shown his inability. While the deceased was with her parents, Hemraj came there to take her and demanded motorcycle. On some suggestions, he had become agreed to go with deceased. After about one month deceased wrote a letter to her father Kharagram for satisfying the demand and to come at her in-laws home. When a child was born, Kharagram paid Rs.1100/- in cash and sent some clothes of Rs.700/-. At that time, cash amount was returned with an insistence to pay Rs.10,000/- and a motorcycle. Brother of the deceased namely Shiv Kumar went to the house of in-laws of the deceased on 6/4/1992, at that time, deceased was badly beaten by means of lathi. Such incidents have been repeated from time to time. About 15 days prior to the date of incident, Hemraj went to parental house of the deceased and demanded motorcycle and said that otherwise they could not see the face of the deceased and on 5/6/1992 deceased after pouring kerosene on her body put into the fire.

3. On receiving information, Marg was registered by Police Station, Tendukheda and during investigation while recording the statement of Kharagram (PW-4), father of the deceased, offence under Sections 304-B and 498-A, IPC was registered against accused Hemraj, Shiv Prasad and Laxmi Bai.

4. Laxmi Bai was acquitted by the trial Court while Hemraj and Shiv Prasad were convicted for the offence under Section 498-A, IPC and acquitted them for the charge under Section 304-B, IPC. During pendency of this appeal, Shiv Prasad died and the appeal stood abated against him. Now this appeal is on behalf of appellant-Hemraj, husband of the deceased, against the conviction and sentence for the charge under Section 498-A, IPC as aforementioned.

5. Learned counsel appearing on behalf of the appellant has strenuously urged that the conviction is solely relying upon the testimony of Kharagram (PW-4) while the incidents of harassment, cruelty and demand of dowry as narrated by him, is on the basis of the statement of his sons namely Shiv Kumar and Rammu @ Ramkumar. The prosecution has not examined Shiv Kumar and Rammu @ Ramkumar and has not called those witnesses in the witness box, however, the allegation of demand of dowry, cruelty and harassment as alleged by the

prosecution could not be established by the cogent evidence. Therefore, the finding recorded by the trial Court convicting the appellant for the charge under Section 498-A, IPC is liable to be set aside and the appeal deserves to be allowed.

6. Shri Yogesh Dhande, learned Panel Lawyer for the respondent/State, has drawn my attention to the statement of Kharagram (PW-4) and submitted that in his statement, he himself stated several incidents of harassment, cruelty and demand of dowry which were conveyed to him by the deceased. It is submitted by him that except one or two incidents which were reported by Shiv Kumar and Rammu @ Ramkumar, brother of the deceased, all other incidents regarding harassment, cruelty and demand of dowry were reported directly by the deceased against Hemraj, Shiv Prasad and Laxmi Bai to Kharagram (PW-4) which were specifically stated by him before the Court. In cross- examination, testimony of Kharagram (PW-4) remained vivid, 4 Cr.A No.1505/1995

however, the conviction has rightly been based by the trial Court on the sole testimony of Kharagram (PW-4) which is not liable to be interfered with by this Court. In view of the said submissions, it is urged that the conviction and sentence of appellant be maintained.

7. At this stage, Shri Dubey, learned counsel for the appellant, submits that in an alternative if this Court is of the opinion that the conviction for the charge under Section 498-A, IPC is found established, then the sentence as awarded by the trial Court may be reduced to the period already undergone by the appellant by increasing some amount of fine. The attention of this Court has been drawn by him that the incident had taken place on 5/6/1992 and the period of 18 years has already been passed away. The appellant was taken into custody on 15/7/1992 and released on bail as per order dated 12/1/1993, however, remained in custody for about four months. Thus, by increasing some amount of fine, sentence already undergone may be treated as sufficient.

8. After having heard learned counsel appearing for the parties, I have gone through the record and perused the allegations as alleged by the prosecution which is based on the testimony of Kharagram (PW-4), father of the deceased. The said testimony found worthy of credence by the trial Court and relying upon

the same trial Court recorded the finding of conviction for the charge under Section 498-A, IPC. Learned counsel for the appellant/accused is not in a position to demonstrate that such finding is perverse and the argument of learned Panel Lawyer found support from the record. Thus, in the opinion of this court, the finding as recorded by the trial Court convicting the appellant under Section 498-A, IPC is liable to be upheld.

9. In view of the aforesaid, the alternate prayer of learned counsel for the appellant is of some substance. On perusal of the record, the incident had taken place on 5/6/1992 and the impugned judgment has been passed on 1st November, 1995. The appellant has remained into custody about four months. The appeal is pending since last more than 15 years, however, at this stage, the opinion of this Court to send back the appellant into custody may not be appropriate. Thus, looking to the date of incident and the period of pendency of this appeal and the fact that the appellant has already undergone the sentence for about four months and deposited a fine of Rs.500/-, as directed by the trial Court, however, by increasing the amount of fine of Rs.7,000/- more making total such amount of fine to Rs.7,500/-, the sentence of two years as awarded by the trial Court deserves to be reduced and such amount of fine be deposited by the appellant within two months from today. It is made clear that in default of depositing such amount, the appellant shall undergo sentence as awarded by the trial Court.

10. In view of foregoing, this appeal is allowed in part. The conviction of appellant for the charge under Section 498-A, IPC is hereby maintained but the sentence of two year is reduced to the extent of sentence already undergone by the appellant subject to enhancing the amount of fine of Rs.7,000/- which is liable to be deposited within a period of two months from today. In default, the sentence as awarded by the trial Court, shall be restored, and the concerned Chief Judicial Magistrate is at liberty to issue warrant of arrest against the appellant to send him jail to serve out the remaining part of the sentence.