



2026:CGHC:17453

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 438 of 2005

Judgment reserved on 30.03.2026

Judgment delivered on 16.04.2026

Mahesh Sahu S/o. Parru Sahu, Aged about 28 Years, R/o. Village Bhuthiya, Police Station- Saraipali, District Mahasamund (CG)

... **Appellant (s)**

versus

State Of Chhattisgarh Through Police Station – Saraipali, District Mahasamund (CG)

... **Respondent(s)**

For Appellant (s)	:	Mr. Pushpendra Patel, Advocate
For Respondent(s)	:	Ms.Prachi Singh, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 26.04.2004 passed by Second Additional Sessions Judge, Mahasamund, District Mahasamund (C.G.) in Sessions Trial No. 3 of 2005, wherein the said court convicted the appellant for commission of offence under Section 498-A IPC and

sentenced him to undergo R.I. for 3 years and to pay fine of Rs. 1,000/- in default of payment of fine to undergo further R.I. for two months.

2. Case of the prosecution, in brief is that, merg intimation No. 66 of 2004 (Ex.P-8) under Section 174 CrPC was registered by the husband of the deceased at Police Station Saraipali District Mahasamund as the deceased committed suicide by pouring kerosene oil on her body. On the basis of said merg intimation, FIR (Ex.P-9) under Section 304-B of the IPC was registered against the appellant and started investigation in the matter. During investigation, it was informed him by the witnesses that the marriage of the deceased was solemnized with the appellant seven years ago from the date of incident. After marriage, relationship of the appellant and the deceased was not cordial and the victim was subjected to harass physically and mentally by the appellant. The appellant abused and assaulted the victim on and often, therefore, the victim was compelled to commit suicide by the appellant. On 08.11.2004 at about 1. PM, the victim committed suicide by pouring kerosene oil over her body and set her in blaze at her matrimonial house. After the incident, she was admitted to Community Health Centre, Saraipali for treatment. Dying declaration of the victim was recorded (Ex.P-6) by the Nayab Tahsildar (PW-9) and thereafter, victim was referred to Raipur Hospital for further treatment and on the way she died. The dead body of the victim was sent for postmortem (Ex.P-7 A) and doctor who conducted postmortem of the dead body of the deceased has opined that the cause of death was due to Asphyxa by burn (Ex.P-7).

Investigating officer prepared the spot map (Ex.P-5) and started the investigation.

3. After completion of the investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Saraipali for commission of offence under Section 306 IPC, who in turn committed the case to the Court of Second Additional Sessions Judge, Mahasamund, which was registered as Sessions Case No. 03 of 2005. The learned Additional Session Judge has framed the charges under Section 498-A and 306 of the IPC for abetment of suicide.
4. The prosecution in order to prove the guilt of the appellants examined 11 witnesses Satyanand Pradhan (PW-1), Kabiraj (PW-2), Ghasiram (PW-3), Markandya Bhoi (PW-4), Nayan (PW-5), A.R. Thalen (PW-6), Patwari Santosh Kumar (PW-7), K.L. Verma (PW-8), Dr. Shrikant Shukla (PW-9), Hemchand Verma (PW-10), Dr. S. Negi (PW-11) and exhibited the documents from Ex.P-1 to Ex.P-19. Statements of the accused/appellant were recorded under Section 313 CRPC in which he denied the allegation made against him and pleaded his innocence and false implication in the case. The appellant did not examine any witnesses in his support.
5. After hearing the parties, learned Sessions Judge on the basis of material on record and upon considering the statements of the witnesses has passed acquitted the accused for commission of offence under Section 306 of the IPC but convicted the appellant for commission of offence under Section 498-A IPC and the accused has been sentenced R.I. for 3 years with fine of amount of Rs. 1000/-. Being aggrieved with

the judgment of conviction and order of sentence, the appellant preferred this Criminal Appeal. This Court vide order dated 12.05.2005 has released the appellant on bail.

6. Kabiraj (PW-2) in his statement has stated that his daughter was married to accused Mahesh in the year 1998 and after marriage, she lived there well about one year. Subsequently, the appellant and his mother subjected to harass her mentally as well as physically. The appellant and mother in law started her abusing and beating continuously. Then her daughter left the matrimonial house thereafter he along with other members have compromised the dispute between them and again he sent his daughter to her matrimonial house. This witness has stated that after compromise, the appellant told him that he will not harass the victim and kept her well with him and sought apology by touching his feet. This witness has further stated that he sent his daughter with his father-in-law to her matrimonial house and on the same day, it was informed by the appellant that the victim has committed suicide by burn then he went to hospital with his wife. The appellant has informed him that his daughter was completely burnt and she was kept in Saraipali Hospital. He went there and asked his daughter as to how the incident happened and he gave water to drink her where she was struggling and she informed him that her husband and mother-in-law subjected to harass her, abused and beaten her due to which she committed suicide by pouring kerosene oil over her body. The witness was cross examined wherein he has affirmed and he has admitted that the deceased was semi-conscious and since deceased was serious therefore, he advised

to take her Raipur and the appellant was carrying her to Raipur in the mid way she succumbed to death. Ghasiram (PW-3) has stated that the victim was not agreed to go her matrimonial house as her husband and other relatives have assaulted her and abused continuously.

7. Dr. Shrikant Shukla (PW-9) who conducted post-mortem of the dead body of deceased wherein he opined that the deceased died due to Asphyxia caused by burn and nature of death was suicide with 24 hours prior to postmortem (Ex.P-7).
8. Nayab Tahsildar K.L. Verma (PW-8) who has recorded dying declaration and has stated that victim was fit to give her statement and after the permission of doctor he has recorded the statement (Ex.P-6) wherein the victim stated that her husband abused her and was not having love affection for her. She has further stated that he used assault her and due to harassment meted out by the appellant she has committed suicide by pouring kerosene oil over her body.
9. D.S. Negi (PW-11) SDOP Saraipali has registered the FIR (Ex.P-9) on the basis of mere intimation No.66 of 2004 (Ex.P-8) and has supported the contents of FIR. Nayab Tahsildar K.L. Verma (PW-9) recorded dying declaration of the deceased (Ex.P-6).
10. Learned counsel for the appellants would submit that the impugned judgement is bad in law and contrary to the facts and evidence available on record. The evidence led by the prosecution witnesses suffers from serious infirmity. He would further submit that looking to the conduct of the appellant, he immediately after the incident rushed with the deceased to a nearby CHC hospital and after giving primary treatment to

the deceased, the appellant took step to take her Raipur for further treatment but on the way she died, as such it is clear that the appellant is innocent and made every effort to save her life. He would submit that the evidence of cruelty for demand of dowry to attract offence under Section 498-A IPC is not available against the accused in view of statements of prosecution witnesses, therefore, offence under Section 498-A IPC is not made out and finding recorded by the trial Court is liable to be set aside and the appeal deserves to be allowed. He would further submit that the statement of the witnesses does not support the prosecution case and the trial Court has believed the statements of PW-1, PW-2 and PW-3 without any iota of evidence led by them for conviction for offence under Section 498-A IPC. He would further submit that there are material contradictions, omissions and improvement in the version of the prosecution witnesses. He would further submit that the incident pertains to the year 2004 more than 22 years have elapsed and he remained in custody more than 3 months, therefore, he would pray for reducing the sentence already undergone by him.

11. On the other hand, learned counsel for the State supports the impugned judgment of conviction and would submit that the prosecution has brought home the offence against the appellant and has proved its case beyond reasonable doubt, thus the appellant has rightly been convicted and sentenced for the aforesaid offence. He would further submit that there is evidence of cruelty and torture meted out by the appellant to the deceased, as such approach of the trial court in this regard being based on proper appreciation of the evidence are in conformity with law and the

same does not require any interference at this stage either for acquittal to the appellant or modifying his conviction and sentence and would pray for dismissal of this appeal. To substantiate his submission, he would refer to the judgments of Hon'ble Supreme court in the cases of **Surendran vs. State of Kerala reported 2022 (15) SCC 273, Kahkashan Kausar @ Sonam and others vs. State of Bihar reported 2022(6) SCC 599 and Girdhar Shankar Tawade vs State of Maharashtra reported AIR 2002 SC 2078.**

12. I have heard learned counsel for the parties and perused the record and from perusal of impugned order, it is quite vivid that learned Additional Sessions Judge has acquitted the accused for commission of offence under Section 306 IPC but the State has not preferred any appeal against the said acquittal, therefore, this Court is constrained to examine only appeal with regard to the conviction of the appellant for commission of offence under Section 498-A IPC.
13. From the submissions made by the counsel for the parties and from perusal of the record of trial Court, the point emerged for determination by this Court is whether in the present facts and circumstances of the case offence under Section 498-A IPC is attracted or not against the appellant and the finding of conviction recorded by the trial court under Section 498-A IPC is sustainable or not ?
14. To appreciate the submission it is expedient for this Court to attract Sections 498-A IPC which read as under:-

Section 498-A IPC Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the

husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means

(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.

15. It is not in dispute that the marriage of deceased Anjana was solemnized with the appellant 7 years ago before the date of incident and from their wedlock two children were born. The incident took place on 08.11.2004 and she died on 09.11.2004 due to burn injuries.
16. From the evidence of Kaviraj (PW-2), it is clear that the appellant was in habit of assaulting the deceased on and often as such, the victim left the matrimonial house after one year of marriage and started residing in her parents house. On 08.11.2004, the appellant informed him that the victim committed suicide herself by pouring kerosene oil over her body and she was completely burnt. He asked her daughter in the hospital as to how the incident happened, then she informed him that her husband and mother-in-law harassed, abused and beaten her due to which she committed suicide by pouring kerosene oil over her body. He would further stated that her daughter was facing difficulty in her matrimonial house. This evidence remains unrebuttal in the cross-examination by the defense.

17. The deceased in her dying declaration (Ex.P-6) has stated that she has committed suicide due to cruelty and harassment committed by the appellant. In cross- examination nothing has been elicited by the defence from this witness to make his evidence untrustworthy or doubtful. Considering the circumstances and the evidence of PW-8 coupled with the fact that there is no adverse material to doubt the above dying declaration or to suggest that it was not actually or properly recorded or that the deceased was not in a state to make such a statement, there is no reason to disbelieve the dying declaration. Ghasiram (PW-3) has stated that the victim was not agreed to go her matrimonial house as her husband assaulted her and abused continuously.
18. Thus from the above stated evidence led by the prosecution it can safely be held that the victim was subjected to cruelty by her husband as such the finding of learned trial Court that the appellant can be convicted for offence under Section 498-A IPC for committing cruelty with the deceased cannot be held to suffer from perversity or illegality warranting interference by this Court. Accordingly, the submission learned counsel for the appellant that there was no demand of dowry proved by the prosecution which sine qua none for conviction of the accused under Section 498-A IPC deserves to be rejected. Accordingly, it is rejected.
19. The impugned judgment so far as conviction of the appellant under Section 498-A IPC in absence of any demand of dowry is in accordance with the law laid by the Hon'ble Supreme Court in the case of Manju

Ram Kalita vs. State of Assam reported 2009(13) SCC 330 wherein the Hon'ble Supreme Court has held as under:-

14. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :

(i) any `wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any `wilful' conduct which is likely to cause grave injury to the woman; or

(iii) any `wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

15. In S. Hanumantha Rao v. S. Ramani, AIR 1999 SC 1318, this Court considered the meaning of cruelty in the context of the provisions under Section 13 of the Hindu Marriage Act, 1955 and observed that :

"mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party."

16. In V. Bhagat v. Mrs. D. Bhagat, AIR 1994 SC 710, this court, while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act, observed as under :

"16.It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made....."

17.18.....The context and the set up in which the word `cruelty' has been used in the section

seems to us, that intention is not necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty."

17. In *Mohd. Hoshan vs. State of A.P.* (2002) 7 SCC 414, this Court while dealing with the similar issue held that mental or physical torture should be "continuously" practiced by the accused on the wife. The Court further observed as under :

"Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impart of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

18. In *Smt. Raj Rani v. State (Delhi Administration)*; AIR 2000 SC 3559, this Court held that while considering the case of cruelty in the context to the provisions of Section 498-A I.P.C., the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

19. In *Sushil Kumar Sharma vs. Union of India*, AIR 2005 SC 3100, this Court explained the distinction of cruelty as provided under Section 306 and 498-A IPC observing that under Section 498A cruelty committed by the husband or his relation drive woman to commit suicide etc. while under Section 306 IPC, suicide is abated and intended. Therefore, there is a basic difference of the intention in application of the said provisions.

20. In *Girdhar Shankar Tawade vs., State of Maharashtra*, AIR 2002 SC 2078; this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498-A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

21. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A IPC as it may be a different from other statutory provisions. It is to be determined/inferedby considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

20. Again the Hon'ble Supreme court in the case of **Aluri Venkata Ramana vs. Aluri Thirupathi Rao and others in CRA No. /2025 Arising from SLP(Cri.) 9243 of 2024** wherein the Hon'ble Supreme Court has held that absence of a dowry demand does not preclude the application of the section 498-A IPC and held in paragraph-12,13 and 17 as under:-

12. In the judgment of U.Suvetha v. State¹ this Court outlined the necessary ingredients required to establish an offence under Section 498A of the IPC, as follows:

"7. Ingredients of Section 498-A of the Penal Code are: (a)The woman must be married; (b) She must be subjected to cruelty or harassment; and (c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband."

13. From the above ingredients reiterated by this Court, it is clear that an unlawful demand for dowry is not a pre- requisite element to constitute "cruelty" under Section 498A IPC. It suffices that the conduct falls within either of the two broad categories outlined in clauses (a) or (b) of the provision, namely, wilful conduct likely to cause grave injury or mental harm (clause a), or harassment intended to coerce the woman or her family to meet any unlawful demand (clause b). Therefore, either form of cruelty, independent of a dowry demand, is sufficient to attract the provisions of Section 498A IPC and make the offence punishable under the law.

14. Further, in the judgment of Arvind Singh v. State of Bihar, this Court observed that –"25. word 'cruelty' in common English acceptance denotes a state of conduct which is painful and

distressing to another. The legislative intent in Section 498–A is clear enough to indicate that in the event of there being a state of conduct by the husband to the wife or by any relative of the husband which can be attributed to be painful or distressing, the same would be within the meaning of the section.”

21. Further submission of the counsel for the appellant is that the appellant remained in custody about three months from 10.11.2004 to 28.01.2005 and the incident pertains to 2004 and more than 22 years have already been lapsed, as such, the sentence may be reduced to the period already undergone by the appellant is being considered by this Court.
22. Before advertent to the submissions, it is expedient for this Court to examine and consider what are the facts and circumstances, and the gravity of the offence to apply the principle of already undergone is being examined in terms of law laid down by the Hon'ble Supreme Court in the case of **Parameshwari vs. The State of Tamilnadu and others, reported in 2026 INSC 164** wherein the Hon'ble Supreme Court has examined about mitigating factors and held in paragraphs 22 and 34 as under:

“22. The objective of punishment is to create an effective deterrence so that the same crime/actions are prevented and mitigated in future. The consideration to be kept in mind while awarding punishment is to ensure that the punishment should not be too harsh, but at the same time, it should also not be too lenient so as to undermine its deterrent effect.

34. The misplaced understanding of various courts in treating compensation as a substitute of sentence is both a matter of concern and a practice which should be condemned. We have observed a trend amongst various High Courts wherein the sentences awarded to the accused persons by the Trial Court are reduced capriciously and mechanically, without any visible application of judicial mind. Considering the gravity of the situation as thus, we have culled out certain basic factors, which are to be kept in mind by the courts while dealing with imposition of sentence, in

line with the view taken by this Court in the aforementioned cases. The said factors are enunciated as below:

A. Proportionality: Adherence to the principle of "*just deserts*" ought to be the primary duty of the courts. There should be proportionality between the crime committed and the punishment awarded, keeping in consideration the gravity of the offence.

B. Consideration to Facts and Circumstances:

Due consideration must be given to the facts and circumstances of the case, including the allegations, evidence and the findings of the trial court.

C. Impact on Society: While imposing sentences, the courts shall bear in mind that crimes essentially impair the social fabric of the society (of which the victim(s) is/are an indispensable part) and erodes public trust. The sentence should be adequate to maintain the public trust in law and administration, however, caution should also be taken, and the Court shall not be swayed by the outrage or emotions of the public and must decide the question independently.

D. Aggravating and Mitigating Factors: The courts, while deciding the sentence or modifying the sentence, must weigh the circumstances in which the crime was committed, and while doing so, the court must strike a fair balance between the aggravating and the mitigating factors."

23. Looking to the fact that incident pertains to year 2004 and more than 22 years have already been lapsed, and the appellant is not having any past criminal antecedents and he remained in jail about 3 months and he did not misuse the liberty of bail granted to him during the trial and even during pendency of the appeal, therefore, I am of the view that the sentence can be reduced to 06 months instead of 3 years for offence under Section 498-A IPC.
24. Accordingly, the appeal is allowed in part. The appellant is on bail. His bail bonds and surety bonds are cancelled. He is directed to surrender before the trial Court within two months from the date of judgment passed by this Court to serve out the remaining part of jail sentence as

reduced by this Court. The appellant is entitled to get set off, of the period of sentence already undergone as per provision of Section 428 CrPC /468 of BNSS. In case, the appellant fails to surrender within time period as given by this Court, the trial court will proceed against him in accordance with law and send compliance report to this Court.

25. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for compliance.

Sd/-

(Narendra Kumar Vyas)
Judge

santosh