

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

**Cr.R. No.293/2016**

**Kailash & Others**

**Vs.**

**State of Madhya Pradesh**

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Shri Bhaskar Agrawal, learned counsel for the applicants.

Shri Sudhanshu Vyas, learned counsel for respondent/State.

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**ORDER**

**(Passed on ....09/2016)**

This revision is filed under Section 397(1) r/w Section 401 Cr.P.C., is directed against the order dated 21.01.2016 passed by Learned Ist Additional Sessions Judge in Session Trial No.16/2016, whereby the Learned Additional Sessions Judge framed charges against the accused Sanjay S/o Kailash, Ramilabai wife of Kailash and Shyam S/o Kailash under Section 498A, 306, 304B and in alternative 302, 511, r/w Section 34 IPC and against Kailash S/o Bao under Sections 498A, 306/304B and in alternative 302, 511 r/w section 376(2)(f) IPC.

2. The relevant facts as per prosecution story are that

the deceased Sonu, wife of accused Sanjay was married to him in the year 2012. After marriage the present applicant alongwith other family members started harassing her. According to them the deceased was not doing household work properly. Her husband also used to beat her. It was also alleged that when, on one occasion husband of the deceased went to water their fields, her father-in-law Kailash tried to commit rape on her. The co-accused Shyam who is brother-in-law of the deceased also used to harass her and tried to molest her. Suspicion was raised by father of the deceased, that the accused persons administered some poisonous substance due to which the deceased died.

**3.** This revision is filed mainly against the charges framed by the Learned Additional Sessions Judge under Section 302 r/w section 511 r/w section 34 IPC and under Section 376(2)(f) against the accused Kailash. According to him these sections were framed only on the basis of suspicion expressed by father and other relatives of the deceased. This part of their statements came under the definition of hearsay evidence are not admissible. This part of statements of prosecution witnesses, cannot be termed as oral dying declaration under Section 32 of Evidence Act

because to qualify as dying declaration, the statement should be, by the deceased in respect of cause of her death. In this case the incident was narrated by the deceased to her parents in respect of attempt of rape by father-in-law and brother-in-law and therefore, they cannot form basis for framing charges under Sections 302 and 511 r/w section 34 and section 376(2)(f) IPC.

4. Learned counsel for the State support the charges framed by learned Additional Sessions Judge and prayed that this revision be dismissed.

5. I have gone through the copies of statements of prosecution witnesses filed by the applicant. I find that substance in the arguments raised by learned counsel for the applicant. The portion on which the charges are framed are heresay evidence which is not admissible in evidence, even if the prosecution witnesses state the same facts before the trial Court, no conviction can be based on this part of statement, which are not admissible in evidence.

6. Accordingly this revision is allowed. The charges framed under Section 302 and 511 r/w section 34 IPC against the accused Sanjay, Ramabai and Shyam are set

aside. These accused are discharged from charges framed against them under aforementioned Sections. Similarly, charges under Section 302 and 511 r/w section 34 and 370(2)(B) against the accused Kailash are set aside and accused Kailash is discharged from charges under Sections 302 and 511 r/w section 34 and section 376(2)(f) IPC. The accused shall face trial for remaining charges.

With such observations, this revision stands disposed of.

**( ALOK VERMA )**  
**JUDGE**

**Ravi**