

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 512 of 2010

1. Santosh Marar S/o Netram Marar, Aged about 30 years,
2. Netram Marar S/o Daduram Marar, aged about 50 years
3. Smt. Mangali Bai W/o Netram Marar, aged about 47 years

---- Appellants

Versus

1. State Of Chhattisgarh through Police Station Sankara, District Mahasamund, CG

---- Respondent

For Appellants	-	Shri Vaibhav Goverdhan, Advocate
For Respondent	-	Shri Adil Minhaj PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

18/04/2016

This appeal is directed against the judgment and order dated 08.06.2010 passed by Sessions Judge Mahasamund, in Sessions Trial No. 79/2009 convicting the accused/appellants under Section 304-B IPC and sentencing them to undergo rigorous imprisonment for ten years with fine of Rs. 10,000/- each, plus default stipulations.

2. Marriage of accused Santosh Marar with deceased Gita was solemnized four months prior to the date of incident i.e. 3.10.2009. On 3.10.2009 deceased consumed some poisonous substance; was taken to Community Health Centre Basna where she was declared brought dead. Un-numbered *merg* Ex. P-13 was recorded at police

station Basna on the basis of hospital memo followed by numbered *merg* Ex. P-6 which was recorded on 15.10.2009 at police station Sankra, District Mahasamund. In the meantime, inquest was conducted on 4.10.2009 vide Ex. P-11 and body was sent for postmortem examination which was conducted by Dr. Bhupat Ram Malik (PW-5) who gave his report Ex. P-2. After *merg* inquiry, FIR Ex. P-5 was registered against the accused/appellants on 5.11.2009 under Section 306/34 IPC. After investigation, charge sheet was filed against them under Sections 306/34 and 304-B/34 IPC and then charges were also framed accordingly.

3. So as to hold the accused/appellants guilty, prosecution has examined 09 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case. This apart, one Savitri Bai (DW-1) has also been examined by the defence in support of its case.

4. After hearing the parties, the trial Court acquitted the accused/appellants of the charge u/s 306/34 IPC but has convicted and sentenced them as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits that the allegations made against the accused/appellants are general in nature and their conviction under section 304-B IPC cannot be based on that. According to him, the basic ingredients contained in

Section 304-B IPC are not attracted to the case in hand and further that looking to the material contradictions and omissions in the statements of Ram Bai (PW-1), Bharat (PW-2) and Phulan Bai (PW-4), the same cannot be said to be reliable to ensure conviction. He further submits that the appellants are in jail for more than 6 years and 5 months; that the minimum jail sentence for the offence under Section 304-B IPC is seven years, and therefore if this Court is not inclined to interfere with their conviction, their jail sentence may be reduced to the minimum one of seven years.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting and sentencing the accused/appellants as has been mentioned above are strictly in accordance with law and there is no infirmity in the same. He submits that had the deceased not been subjected to harassment or torture, question of her committing suicide by consuming poisonous substance just within four months after marriage does not arise. According to the State counsel, sentence imposed on the accused/appellants is also appropriate and is not required to be disturbed in this appeal.

7. Heard counsel for the parties and perused the evidence on record.

8. Ram Bai (PW-1) – the mother of the deceased has stated that 15 days after the marriage of her daughter (deceased) she had gone to the house of the accused/appellants and stayed there for 2-3 days and during that period accused Netram and Mangli Bai

said to her that the dowry was not given in the marriage of the deceased to which she had told them that they had given what their capacity permitted for. Thereafter, the deceased is also said to have informed her weeping that accused/appellants used to hurl abuses at her and also subjected her to beating. She has stated that at the time when accused Netram and Mangli Bai were talking of dowry, accused Santosh was also standing there and had reacted by saying that if they could not give dowry, why did they produce female child. According to this witness, when the deceased came to her house with her husband, it was disclosed by her that accused Netram and Mangli Bai were harassing her for dowry. In cross-examination she has admitted that she had the knowledge about accused Santosh being already married and having one daughter also through his first wife and the same was told to the deceased as well. She however has expressed her ignorance that the deceased had any problem on account of taking care of the said child. Bharat (PW-2) – the uncle of the father of the deceased has stated that when the deceased had come to him, she informed to have been subjected to cruelty for demand of dowry by the accused/appellants. He however has denied the calling of Panchayat meeting or lodging of report for that. Shatrughan (PW-3) is the witness to inquest. Phulan Bai (PW-4) is the grand-mother of the deceased and she has made similar statement as by Bharat (PW-2). According to her, after marriage when the deceased visited her maternal home, she had informed her about being harassed by accused Mangli Bai for demand of dowry. Dr. Bhupat Ram Malik (PW-5) is the witness who conducted

postmortem examination on the body of the deceased and gave his report Ex. P-2 stating that mode of death was asphyxia due to acute poisoning and its duration was between 24 and 36 hours there-from. Jeet Ram (PW-6) – the witness to seizure made under Ex. P-3 has not supported the case of the prosecution and has been declared hostile. Vijay Shankar Urmalia (PW-7) is the investigating officer who has duly supported the case of the prosecution. S.K. Jaiswal (PW-8) is the Naib Tehsildar who conducted inquest vide Ex. P-11. Sajan Ram Thakur (PW-9) is the Assistant Sub Inspector who did part of the investigation. Savitri Bai (DW-1) – the neighbour of the accused/appellants has stated that the deceased was happy with the accused/appellants and she never heard about demand of dowry by anyone.

9. Facts involved in the case if seen in the light of the evidence of the witnesses reveal that the deceased died on 3.10.2009 by consuming some poisonous substance and that her marriage with accused Santosh had taken place just 2-3 months prior thereto. In other words it can be said that the deceased died just 2-3 months after her marriage. Ram Bai (PW-1), Bharat (PW-2) and Phulan Bai (PW-4) have stated in their court statement that after marriage whenever the deceased visited their house, she used to inform about the harassment meted out by the accused/appellants for demand of dowry. Ram Bai (PW-1) has stated that 15 days after marriage of the deceased she visited the house of the accused/appellants where accused Netram and Mangli Bai had asked her as to why the sufficient dowry was not given in the marriage of the deceased. At that time, accused Santosh was

also standing there and he too had asked her as to why the female child was produced when the dowry could not be arranged by them. Thus there is sufficient evidence on record to show that within seven years of marriage the deceased was harassed by the accused/appellants to such an extent for demand of dowry that she was left with no other option but to finish herself by consuming poisonous substance. Of course, evidence of PW-1, PW-2 and PW-4 reflects exaggeration at certain places but as regards harassment for demand of dowry, all three appeared consistent. Nothing is more precious than life to anyone in particular to the bride who takes an entry in her matrimonial house with new hopes and dreams and if she chooses to put an end to it of her own, it means that life became a boredom and burdensome for her and no hope is in the eye to pull on any further. Here in this case also the same thing appears to have happened where just within 2-3 months the deceased could not bear the bruises of dowry demand and resultant harassment at the hands of husband and in-laws. Being so, their conviction under Section 304-B/34 IPC appears to be just and proper. The trial Court has made appreciation of the evidence of the witnesses in proper perspective while writing the judgment impugned and nothing has been brought out by the defence which could make this Court to strike a contrary note. This Court approves the well reasoned findings of the Court below as regards conviction part of the judgment impugned. Since the accused/appellants have already remained in jail for more than 6 years and 5 months and the minimum sentence provided under the law is imprisonment for seven years, this Court thinks it proper

to accept the submission of the counsel for the appellants to reduce the same to the minimum one.

10. In the result, the appeal is allowed in part. Conviction of the accused/appellants under Section 304-B IPC is maintained but the sentence is reduced to imprisonment for seven years. Sentence of fine imposed by the Court below will remain as it is.

Sd/-
(Pritinker Diwaker)
Judge