

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 169 of 2007

- Laxman Chandra S/o Shri Jeet Ram Chandra, aged about 39 years, R/o Chiknidi, P.S.-Bhilaigarh, District-Raipur,

---- Applicant

Versus

- State Of Chhattisgarh Through-P.S. Bhilaigarh, District-Raipur (C.G.)

---- Respondent

For the Applicant : Shri Deepak Jain, Advocate.

For the State/Respondent : Shri Vijay Bahadur, PL for the State.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on Board

20/12/2016

1. This revision is brought against the impugned judgment in Criminal Appeal No.217/2006, passed by 2nd Additional Sessions Judge, Baloda Bazar, District-Raipur, on 03.08.2006, whereby the judgment of conviction and order of sentence under Section 498-A of Indian Penal Code, passed against the applicant by J.M.F.C., Baloda Bazar, in Criminal Case No.294/2006, on 03.08.2006 was upheld.

2. The prosecution case is this, that complainant Devkumari (PW/1) submitted a written application Ex.P/1, in P.S. Bhilaigarh on 09.03.1996, it was stated that her marriage with applicant Laxman was solemnized on 20.05.1994. From the very first day, in her matrimonial home, Laxman Chandra her husband, Mongra Bai (mother-in-law), Jeetram (father-in-law), Raghubeer and Dayaluram (brother-in-law) started tormenting her for the items of dowry and said to bring Rs.40,000/- from her matrimonial home. All of them tortured her in various ways for fulfillment of this demand. Applicant even forced her to write a letter, that her father had been unable to give Rs.40,000/- for this reason, she was dying, for which her father shall be held responsible. Even applicant wrote a letter to her father making a mockery of him for not fulfilling the demand of dowry. In 1995, she went on invitation to attend the marriage of her younger sister, at that time of all her jewelry was taken away by the applicant and her in-laws. Her father who had been there to take her, he was also abused and humiliated for not fulfilling the demand of Rs.40,000/-. She had narrated about the torture for demand of dowry to Vedram Chandra and Makram Chandra. One meeting of their caste society was called on 20.08.1995 in Village-Kachonda, in which, both the sides were present, but applicant fearing that the decision of the Panchayat shall be against him, would not let the

meeting conclude with the help of some unsocial elements. In these circumstances, the persons present in the meeting advised her to approach the police and Court, after which she has filed this application. On the basis of this application, F.I.R. Ex.P/2 was recorded. In the investigation, the statement of witnesses were recorded. Spot map Ex.P/3 was prepared. On completion of investigation, applicant and four others were charge-sheeted.

3. Applicant and other accused persons were charged by the trial Court, under Section 498-A of IPC along with Section 4 of the Dowry Prohibition Act. On completion of trial, judgment was passed by the trial Court on 03.08.2006 whereby applicant was acquitted of the charge under Section 4 of the Dowry Prohibition Act, but convicted under Section 498-A of IPC and sentenced with imprisonment for one year and with fine of Rs.500/-. Rest of the accused persons were acquitted from all the charges. Appeal was preferred before Sessions Judge. Appeal No.217/06 was heard and decided by the Second Additional Sessions Judge, Balodabazar, by which the appeal was dismissed and the conviction and sentenced passed by the trial court was upheld.
4. The grounds raised in this revision are these, that there had been no legally admissible evidence was available to form the basis of conviction against the applicant before the trial Court as well as

lower appellate Court. The omissions and contradictions in the statement of witnesses were not appreciated by both the Courts below, applicant has been convicted only on the basis of conjecture and surmises, prayed that revision be allowed.

5. It is submitted that there had been sufficient reason to disbelieve the statement of witnesses for prosecution. Firstly, the FIR was lodged after inordinate delay of almost 10 months. The evidence for demand of dowry was similar against the applicant and all other accused persons but the same has been rejected for the remaining accused persons whereas without assigning any sufficient reason, this evidence has been accepted against the applicant. The omissions, contradictions and discrepancies in the statement of the witnesses are very evident, which rendered their deposition unreliable. It was admitted by the witnesses for prosecution that complainant Devkumari (PW/1) after leaving her matrimonial home never returned to live with her husband and in-laws, instead she is living in adultery with a man named Navratan. These reasons are quite sufficient which should have been considered by the trial Court for appreciating the prosecution evidence. It is prayed that applicant had been entitled for benefit of doubt.
6. Counsel for the State has argued that the witnesses for prosecution have stated that there had a demand of Rs.40,000/-

in the form of dowry, to be fulfilled by the parents of the complainant and this statement has been consistently made by all the witnesses, which has been made the basis of conviction by the trial Court and accepted by the lower appellate Court. Hence, for these reasons, there is no scope for interference in this revision.

7. Considering the arguments submitted and material on record, the question before this court is whether there had been evidence of prosecution to support the finding of the trial Court that applicant treated the complainant with cruelty for demand of dowry. Evidence before trial court is perused and finding is arrived at.
8. Complainant Devkumari (PW/1) has stated that after her marriage on 20.05.1994, she started living with her husband. From the very first day, applicant started to beat and torture her for demand of dowry, the demand of Rs.40,000/- was made. She has stated about submitting the written report Ex.P/1 and recording of FIR Ex.P/2. In cross-examination, she has admitted that when applicant and in-laws did not take care of her maintenance she has started living with Navratan and after one year, one daughter has born to her. She has also admitted that Navratan has been named as father of her daughter. Further she admits that on 13.05.1995 marriage of her sister was solemnized,

after which she had never been to her matrimonial home. She has admitted that no demand of dowry was made at the time of negotiation of marriage. She has denied that applicant being unemployed and poor she did not want to go and live with him.

9. Jeewanlal (PW/2) has stated that complainant Devkumari is his daughter. After her marriage, he came to know that applicant and his relatives were torturing his daughter for demanding of dowry for demand of Rs.40,000/-. In 1995, he went to the matrimonial home of complainant, to fetch her for the marriage ceremony of his younger daughter. At that time, applicant and others sent complainant with condition, that when she comes back that demand should be fulfilled. In cross-examination, he has stated that he did not lodge a report in police earlier, because he believed that applicant and others may be pacified. He has admitted that in 1995 his daughter Devkumari come to his home and never went back to her matrimonial home. He has also admitted that in the Court of Sub-Divisional Officer, his daughter refused to go with the applicant. He has also admitted that his daughter is presently living with one Navratan and she has a daughter. He has also admitted that one case is being prosecuted by the applicant against him and alleged that it is a false case.

10. Mahaveer Prasad Chandra (PW/3) has stated in support of complainant, he is uncle of the complainant. In cross-examination, he admits that he was present in the meeting of caste society, he has admitted that applicant has filed a case that complainant Devkumari married to some other person and he came to know about the demand on dowry of telling by the complainant herself.
11. Kartikram (PW/4) is another witness of the meeting, but he has not stated in support of the prosecution. Ganga Prasad (PW/5) has stated against the prosecution but he has not been declared hostile. In cross-examination, he admits that father of the complainant refused to send his daughter with applicant saying this that applicant is poor, for this reason, he does not want to send his daughter. He has also admitted that complainant has married another man named Navratan Lal and has a child from this marriage. Rewati Lal (PW/6) has similarly stated in his examination-in-chief that due to poverty of applicant complainant was not sent by her father to her matrimonial home.
12. Biharilal (PW/7) was present in the meeting which was held on 20.08.1995 in village in which it was alleged by complainant that she was being tortured for demand of dowry by her husband. Applicant and others denied this allegation. No resolution could be arrived at this meeting. In cross-examination, he has admitted

that he is relative to father of the complainant, he has no knowledge about any negotiation of dowry with respect to the marriage of complainant Devkumari. He has admitted that in their caste there is no dowry system.

13. Chaitram Chandra (PW/8) was present in the meeting of caste society. He has stated that it was alleged on behalf of complainant that the applicant complained, that the items given in dowry for his marriage were substandard and damaged. Due to which applicant had demanded Rs.40,000/-. In cross examination, he has admitted that in the meeting applicant denied that he had made any demand of Rs.40,000/-. Vedram (PW/9) is also witness of this meeting and stated similarly about the allegation made by complainant Devkumari. In cross-examination, he has admitted that one prosecution was launched by applicant and others, on this ground that Devkumari was married with one Navratan. He has stated on his own, that he has been acquitted of that case. ASI Nirbhay Singh Rajput (PW/10) has deposed about the investigation conducted by him.

14. In the judgment of the trial Court, the statement about demand of dowry was not accepted against the rest of accused persons but it was accepted against the applicant and only on this basis the finding was given that applicant was torturing complainant Devkumari for fulfilling illegal demand of Rs.40,000/- which has

been upheld by the lower appellate court. This being so, after the perusal and analysis of the statement of all the witnesses of prosecution, the circumstances appear to be this, that complainant and applicant did not have a cordial relationship between them. Complainant left her matrimonial home after about one year of her marriage before May, 1995 and thereafter she never went back to her matrimonial home. In the meanwhile, no report was lodged with police. One effort was made for settlement by holding the meeting of caste society, which was held in August, 1995. As per the statement of witnesses present in this meeting, it was alleged by the complainant that applicant had complained about the gifts given in the form of dowry at the time of marriage, stating that they were of substandard quality and damaged and on that behalf he had made a demand of Rs.40,000/-. In the meeting, no admission was made by the applicant. Applicant made this kind of demand is stated by complainant Devkumari (PW/1), her father Jeewan Lal (PW/2), uncle Mahaveer Prasad Chandra (PW/3) who are related to the complainant side.

15. Other witnesses examined by prosecution Kartik Ram (PW/4), Ganga Prasad (PW/5) and Rewali Lal(PW/6) who are resident of village Chiknideeh have not supported the prosecution and stated differently, that complainant was not sent to live in her

matrimonial home by her father. Due to the reason, that applicant was poor and unemployed and thereafter she was married to another person named Navratan Lal. Second marriage or relationship of complainant to a man named Navratan Lal is established on the basis of admission made by Jeevanlal (PW/2), Mahaveer Prasad Chandra(PW/3) and Ganga Prasad (PW/5). There is also admission in cross-examination of Jeewan Lal(PW/2) that complainant refused to go and live with applicant before the Court of Sub-Divisional Magistrate. In these circumstances, it is the statement of complainant and her relatives only that applicant had made a demand of Rs.40,000/- in the form of dowry and subjected complainant to torture for fulfillment of this demand, it is not supported by the independent witnesses neither the witnesses present in the meeting have stated that the allegation made by the complainant was found established on the contrary it was advised in the meeting to take recourse of lawful procedure. This meeting was held in August, 1995, complainant has lodged FIR on 09.03.1996, after about 7 months of this meeting. It is definitely delayed FIR though delayed FIR in such cases of cruelty and demand of dowry are not fatal in all the cases but in the present case the change of circumstances that took place after complainant left her matrimonial home and that she started living in relationship with another man and having a child from him. In these

circumstances, the statement of complainant and the related witnesses cannot be regarded as legally admissible without being corroborated by the statement of independent witnesses. For these reasons, it is found that applicant has been convicted on the basis of evidence which was not legally admissible.

16. In view of the above discussions, this revision is allowed. The conviction and sentence ordered by the trial Court and lower appellate court is hereby set aside and the applicant is acquitted of the charge.

Sd/-

(Rajendra Chandra Singh Samant)
Judge