

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 302 OF 2007

1. Shakun Bai W/o Bhairav Prasad, aged about 50 years, R/o village Ahilda, PS Kasdol, District Raipur (CG).
2. Nohar Prasad S/o Bhairav Prasad, Aged about 20 years, R/o Village Ahilda, PS Kasdol, District Raipur (CG).

... Appellants

Versus

State of Chhattisgarh through the Station House Officer, PS Kasdol, Distt. Raipur (CG).

... Respondent

&

CRIMINAL APPEAL NO. 152 OF 2008

Bhairav Prasad S/o Hinchharam, aged about 60 years, R/o Village Ahilda, PS Kasdol, District Raipur (CG).

... Appellant

Versus

State of Chhattisgarh through the Station House Officer, PS Kasdol, Distt. Raipur (CG).

... Respondent

For Appellants	: Shri YC Sharma, Advocate.
For Respondent/State	: Shri Vinod Deshmukh, Deputy Govt. Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

CAV JUDGMENT

Reserved on 31/08/2016

Delivered on 28/09/2016

Per, P. Sam Koshy, J.

1. These two criminal appeals arise out of same incident and crime number and therefore both the appeals are heard together and are being disposed of by this common judgment.

2. Criminal Appeal No.302 of 2007 pertains to conviction of appellants namely Shakun Bai and Nohar Prasad who have been convicted for offence under Section 498-A IPC and sentenced to undergo RI for two years with fine of Rs.500/- each with default stipulation. Likewise, Criminal Appeal No.152 of 2008 has been preferred by the appellant- Bhairav Prasad who has been convicted for the offence under Sections 302 and 498-A IPC and sentenced to undergo RI for life imprisonment with fine of Rs.500/- as also RI for two years with fine of Rs. 500/- for the two Sections with default stipulations vide judgment dated 12.04.2007 passed by the 1st Additional Sessions Judge, Baloda Bazar in Sessions Trial No.213 of 2006.
3. The prosecution case in brief is that, on 25.02.2006 Shobha Das, PW-1 is stated to have lodged a merger intimation at Police Station Kasdol, District Raipur in respect of homicidal death of Shakuntala, daughter in law of appellants Bhairav and Shakun Bai and the wife of appellant- Nohar Prasad. According to prosecution, the family members of the Bhairav Prasad along with deceased all along had gone to the field for the purpose of harvesting Tivra crop (Tuvar). After the work in the field was over, most of the family members have left for home. The appellant Bhairav is stated to have stayed back there and assaulted his daughter in law Shakuntala with Axe and hacked her to death. The body of the deceased was sent for postmortem and the Doctor who conducted the postmortem, found the following injuries over the body of the deceased:

- (1) incised wound $3\frac{1}{2} \times 2 \times 2\frac{1}{2}$ cm at aspect of the palm surface & and to post exit. Obliquely placed through the wound 4th & 5th carpal bone.
- (2) incised wound astero medial aspect of the left hand measuring $4 \times 1\frac{1}{2} \times 4$ cm clotted blood present, cut through the structure of skin depth in palmer surface
- (3) incised wound measuring $9 \times 5 \times 2$ cm to mastoid reason and upper part of the neck obliquely placed, clotted blood present
- (4) incised wound- $5 \times \frac{1}{2} \times 1$ cm transversely placed on right occipital region, head
- (5) incised wound just below the wound No.4 measuring $4\frac{1}{2} \times 1 \times 2\frac{1}{2}$ right occipital region of the head
- (6) incised wound measuring $3\frac{1}{2} \times 3 \times 2\frac{1}{2}$ cm right mid ramus of the mandible and upper neck
- (7) incised wound measuring $5 \times 2 \times \frac{1}{2}$ cm obliquely placed right supra scapular region
- (8) incised wound $6 \times 1\frac{1}{2} \times 1$ cm obliquely right side of the back obliquely placed shoulder region.

The doctor opined that all the injuries have been caused by the sharp edged hard object and cause of death was due to hemorrhage because of the injuries. The time elapsed since death was 36 to 48 hours.

4. During the course of investigation, as the suspicion and doubt stood against the appellant Bhairav, he was interrogated. During interrogation, he is stated to have admitted his guilt and has also stated that he has left the Axe i.e. weapon used for the commission of offence at the place of incident. Later on the said Tangi was infact recovered from the place pointed out by the appellant Bhairav i.e. the same place where the body of deceased was found.

5. The matter was then put to trial and the prosecution is stated to have examined as many as 18 witnesses whereas, the defence did not examine any witness.
6. The court below on the basis of circumstantial evidence which the investigating agency had collected, found the appellant-Bhairav (in Criminal appeal No.152 of 2008) guilty and convicted him for the offence under Sections 302 and 498-A IPC sentencing him to life imprisonment. Whereas, the Appellants-Shakun Bai and Nohar Prasad, in Criminal Appeal No.302 of 2007, the court below found them guilty of only offence under Section 498-A IPC and sentenced them to R.I. for two years and fine amount with default stipulation vide common judgment dated 12.04.2007 in Sessions Trial No. 213 of 2006.
7. Assailing the said judgment of conviction, learned counsel appearing for the appellants submits that the court below has committed an error of law in not appreciating the fact that it is in fact a case of blind murder where there is no substantial evidence adduced by the prosecution to establish its case beyond all reasonable doubts against the appellants herein. It is a case where there is no eyewitness to the incident available. None of the witnesses have not disclosed any material facts to the court below on the basis of which it can be substantially stated that the deceased Shakuntala Bai was hacked to death by the appellants herein or for that matter the appellant Bhairav.

8. Learned Counsel for the appellants submits that the entire case of the prosecution revolves around the circumstantial evidence and chain of events to complete the circumstances in the instant case is not complete so as to hold that the crime could have committed only by the Appellants alone and not by anyone else. It was also argued by the Counsel for the appellants that the prosecution has failed to establish the case so far as the offence under Section 302 IPC is concerned there is no material to establish the offence under Section 302 IPC as none of the witnesses who have been cross-examined on behalf of the prosecution have even remotely connected the role played by the appellant in the commission of offence under Section 302 IPC. So far as F.S.L. report is concerned it has not been properly proved before the Court below, therefore, its contents can not be considered. Further it was also alleged that even otherwise the report only refers to the blood stains being found on the articles A,C,D,E and F, whereas there is no report of the Serologist to establish the fact that the blood stains found on the articles as per the F.S.L were in fact was that of the deceased. Therefore, the report of F.S.L. may not be of much relevance bringing it within the ambit of the incriminating factor for conviction of the Appellant.
9. Learned Counsel for the appellants further argued that the demand of dowry and the ill-treatment, torture which were met upon the deceased at the hands of the appellants stands disapproved from the deposition of the father of the deceased Daulal, PW-3 himself who has stated before the Court that he personally was unaware of any such cruelty,

ill-treatment or harassment met on the deceased by the accused persons. In so far as the allegation in respect of the appellant is concerned the appellant's contention is that the statement of the witnesses particularly that of PW-4, Daulal and PW 17 Rajni Verma there are quite a few omission and contradiction in it and therefore it has not been fully established as regards ill-treatment and harassment or for that matter there was demand of dowry/money from the deceased by the Appellant.

10. In support of his contention learned Counsel for the appellants relied upon the decision of the Hon'ble Supreme Court in case of **Sangili @ Sanganathan v. State of Tamil Nadu**¹ and the case of **Kanhaiya Lal v. State of Rajasthan**². Thus, for all these reasons the appellants prays for the order of conviction to be set aside /quashed and appellants be acquitted from the charges which have been leveled against them.

11. Per contra the State Counsel opposing the Petition submits that the taking into consideration the evidence which have come on record it is clearly established that firstly the marriage of the deceased with the Appellant Nohar Prasad Appellant No.2 in Criminal Appeal No. 302/2007 took place about less than an years' time and it has also been stated by the prosecution witnesses that immediately after the marriage itself the appellants started demanding dowry in the nature of demand of Rs 50,000/- from the family members of the deceased and for which she was also been subjected to ill-treatment and torture. So

1 IV (2014) CCR 5 (SC)

2 II (2014) CCR 22 (SC)

far as regards the offence under Section 302 IPC is concerned the State Counsel submitted that the factual position as is established from the prosecution case is that the Appellant in Criminal Appeal No. 152/2008 Bhairav Prasad was immediately after the incident taken into custody from whom it was found that the clothes he was wearing at relevant point of time had blood stains on it. It was also an established fact of the prosecution that the said appellant Bhairav Prasad and the said Tangia (axe) used for the assault on the deceased was thrown near the place of occurrence itself. It was also contended by the State Counsel that the said Tangia was later on discovered from the place where the appellant Bhairav Prasad had thrown. It was also the contention of the State Counsel that since the deceased was in the company of the appellants and subsequently body of the deceased and Tangia were recovered from the field of the appellant, it can be safely concluded that the offence to have been committed is only by the appellant and not anyone else.

12. It is also the contention of the State Counsel that the appellants have not been able to give any justification as regards who else could have assaulted the deceased or had motive to murder the deceased. Based upon all these the State Counsel submitted all these circumstances when cumulatively assessed reaches to the only conclusion that it is the appellants who are guilty of commission of the said offence.

13. Having considered the rival contentions put forth on either side and a perusal of the record what is clearly reflected is :-

(1) Deceased was married to the Appellant No.2 in Criminal Appeal No. 302/2007.

(2) Date of marriage was just about 7-8 months prior to the date of incident i.e. death of the deceased was within a period of 7 years from the date of marriage.

(3) The deceased had died under other than normal circumstances as the Doctor himself has deposed the death to be homicidal.

(4) That the place of incident is the filed belonging to Bhairav Prasad i.e. the appellant in the Criminal Appeal No. 152/2008.

14. Based on the aforesaid admitted factual position if we look into the deposition which has come on record what clearly comes out is that Manharan Verma, PW-4, first cousin of the deceased had visited the house of the deceased immediately after the marriage where the deceased had informed him of the ill-treatment which was subjected to her due to demand of money of Rs. 50000/- by her-laws i.e. appellants herein. The statement of Manharan, PW-4 stands corroborated from the statement of Rajni Verma, PW-17 who has stated that Manharan, PW-4 had approached her seeking for a loan of Rs. 50,000/- so as to meet the demand of the appellants. Like wise the statement of Tularam, PW-7 also is said to have gone to the house of the deceased to persuade the appellants not to ill-treat and subject the deceased to cruelty. So far as demand of money is concerned Bismati, mother of the deceased PW-2 also is said to have stated in her deposition that the deceased had informed her about the demand of Rs. 50,000/- being made by the appellants who were in-laws of the deceased.

- 15.** Further if we see cross-examination of these witnesses Bismati, PW-2, Manharan PW-4 and Rajni Verma PW17 it would reveal that the appellants have not been able to extract much from the cross-examination to disapprove the contentions of these witnesses so far as the demand of money is concerned and therefore the case of the prosecution in so far as the demand of money of Rs. 50,000/- by the present appellants made from the family members of the deceased and she being subjected to ill-treatment, torture and cruelty stands proved beyond all reasonable doubt.
- 16.** So far as the offence pertaining to Section 302 IPC is concerned if we look into the circumstances and the links attached to the circumstances like the place of incident being the field of the Appellant, the clothes the Appellant Bhairav Prasad was wearing at the time of the incident had blood stains on it. The appellants have also not been able to give any reasonable explanation or suspicion of another person having intention to eliminate the deceased in as much as the appellants have nowhere disclosed any enmity which the deceased had with any other person, nor was the deceased having any other relationship with any other person.
- 17.** So far so the motive is concerned the demand of money and continuous ill-treatment and torture which was being made upon the deceased by the Appellants and which has been established is a strong motive behind for the Appellants to have committed the offence.
- 18.** At this juncture it would be relevant to mention that even under Section 113B of Indian Evidence Act the presumption against the

appellants of having committed the murder of the deceased stands established since before her death she was subjected to cruelty and harassment in connection with the demand of dowry. It would also be pertinent to take note of the fact that the F.S.L. report in the instant case has been proved by the prosecution witness Subhash Das, PW-15 as Article-A also gives a positive report of the blood stains of there being blood stains from the earth recovered from the spot as also from the shirt, Lungi and Gamchha which the appellant Bhairav Prasad was wearing at the relevant point of time. In addition the Tangia which was recovered from the spot also had blood on it. Thus, the prosecution has been able to prove the fact that the clothes that the appellant Bhairav was wearing at the time of incident and the stains which were found on the said clothes that he was wearing were human blood and there is no explanation given by any of the Appellants more particularly appellant Bhairav as how these blood stains came on his clothes therefore this by itself becomes incriminating factor for establishing the fact that the death of the deceased was at the hands of the appellant Bhairav Prasad, father-in-law of the deceased.

19. Thus, from the foregoing circumstances which have been established by the prosecution, the place of incident, the relationship of the appellants with the deceased, the period of death being just about 7-8 months from the marriage, blood stains on the clothes of the appellant Bhairav Prasad who was taken into custody immediately after the occurrence of the incident and thereafter no justification given by the appellant in respect of the said blood stains and the blood stains found

as per the F.S. L. Report to be positive of being human blood. In addition, the deposition of the prosecution witnesses Bismati, PW-2, Manharan PW-4 and Rajni Verma PW17 of the ill-treatment and demand of dowry of money made by the appellants to the deceased if linked together leads us to the only conclusion that the prosecution has been able to establish its case by the circumstantial evidence which have come on record to reach to the conclusion that it is the appellants alone to have committed the offence under Section 498 A as well as Section 302 of IPC and therefore we do not have hesitation in reaching to the conclusion that the Court below was justified in coming to the findings of guilt against the appellants Shakun Bai and Nohar Prasad for the offence under Section 498A IPC and Bhairav Prasad for the offence under Sections 302 and 498A IPC.

20. So far as the judgments cited by the Appellants if we look into the facts of both the judgments it would clearly reflect that the facts of those cases were under entirely different factual matrix when compared with the facts of the instant case. The circumstances which were the basis on which the conviction of the appellants were set aside by the Hon'ble Supreme Court in the two judgments referred above were also entirely different when compared to the circumstances and chain of links which the prosecution has established in the instant case. Thus the findings of the Hon'ble Supreme Court in the two judgments referred to by the Appellants are quite distinguishable.

21. Thus, the judgments of the Court below do not warrant any interference and the appeals being devoid of merits deserve to be and

are accordingly rejected affirming the judgment of conviction passed by the trial court.

22. The appellants are on bail. Their bail bonds are cancelled. They are directed to surrender forthwith and/or be taken into custody for serving out remaining period of their sentences.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P.Sam Koshy)
JUDGE