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HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 472 of 2006

- Baldau Prasad Kashyap S/o Dashrath Prasad Kashyap, Occupation – Agriculturist aged about 52 years, R/o Nigarband Tah Takhatpur Dist. Bilaspur (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh Through : P.S. Ratanpur, Distt. Bilaspur.
2. Uttam Kumar S/o Shyamlal Gahawai, aged about 28 years.
3. Ved Prasad S/o Shyamlal Gahawai, aged about 37 years.
4. Dhruv Kumar S/o Shyamlal Gahawai, aged about 45 years.
5. Shyam Lal S/o Ghutakharam Gahawai, aged about 65 years.
6. Smt. Meena Bai W/o Ved Prasad Gahawai, aged about 25 years.
7. Smt. Ratna W/o Dhruv Kumar Gahawai, aged about 23 years.

All R/o village – Ranigaon P.S. Ratanpur, District Bilaspur.

---- Respondents

For Applicant	:	Smt. Renu Kochar, Advocate.
For Respondent No.1	:	Shri Neeraj Kumar Mehta, P.L.
For Respondents 2 to 7	:	Shri Ravindra Agrawal, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice R.C.S. Samant

Order On Board

By Pritinker Diwaker, J.

04/11/2016

The present Revision Petition has been filed by the complainant assailing the judgment and order dated 08.05.2006 passed by the Additional Sessions Judge, Bilaspur in Sessions Trial No.379/2005 acquitting respondents 2 to 7 of the charges under Sections 498-A and 304-B IPC.

02. In the present case name of the deceased is Shitlesh – wife of accused/respondent No.2 – Uttam. Their marriage was solemnized on 21.05.2004 and she died on 30.07.2005 in her matrimonial house after suffering 96% burn injuries. Merg intimation (Ex.P/6) was recorded on



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30.07.2005 at the instance of accused/respondent No.2- Uttam, husband of deceased. Inquest on the body of deceased was prepared on same day vide Ex.P/2 and body of deceased was sent for postmortem examination to Primary Health Center, Ratanpur vide Ex.P/7 where Dr. Stela Indu (PW/15) conducted postmortem vide Ex.P/24 and found following injuries/symptoms:-

- (i) Smell of kerosene present over head and whole body, eyes closed and tongue protruded.
- (ii) Extensive burn III degree all over body. Hair of scalp smudge because of fire and eyebrows were also burnt.
- (iii) Tissues of right arm were cut 4 inch in length.
- (iv) Abdomen distended, rigor mortis present. The burn wounds congested, pinkish red in colour.
- (v) Extensive burn all over body.

The Doctor has opined that the deceased died due to shock as a result of extensive burn (more than 96%). The death was suicidal in nature.

03. After merg inquiry, FIR (Ex.P/25) was registered on 20.08.2005 against accused/respondents 2 to 7 under Sections 498-A and 304-B/34 IPC. Charge sheet was filed against the accused persons under Section 304-B/34 IPC, however, while framing the charge the trial Court has framed the charges under Section 498-A and 304-B IPC against them.

04. So as to hold the accused/respondents 2 to 7 guilty, the prosecution examined as many as 16 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties



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and considering the material available on record has acquitted the accused/respondents 2 to 7 as mentioned in para-1 of this judgment. Hence, this revision by the applicant/complainant.

06. Counsel for the applicant/complainant submits as under :-

- that the trial Court has erred in law in acquitting respondents 2 to 7 ignoring the evidence of Godawari Bai (PW/1) and Baldau Prasad (PW/2);
- that during investigation two letters of the deceased Article-'A' and 'B' were seized and from those letters it is apparent that deceased was subjected to cruelty for demand of dowry by the accused persons.

07. On the other hand, supporting the impugned judgment it has been argued on behalf of respondents 2 to 7 as under:

- that Godawari Bai (PW/1) and Baldau Prasad (PW/2) have improved while deposing in the Court where for the first time they have disclosed certain facts and, therefore, the Court below was justified in not believing the statements of these two witnesses.
- that alleged letters Article-'A' and 'B' of the deceased have not been proved by the prosecution and even it is not clear that these letters have been written by the deceased.
- that after marriage deceased had not written any letter (Article-'A' and 'B'), which has been allegedly received soon after the death and the same creates doubt. He also submits that these letters are concocted letters.
- that basic ingredients of Section 304-B IPC are completely missing and there is no evidence that soon before the death deceased



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was subjected to cruelty by the accused persons.

- that in revision against acquittal the scope of interference is very limited and unless the Court comes to the conclusion that the finding recorded by the Court below is perverse, interference therewith cannot be made.

08. State counsel has duly assisted the Court.

09. We have heard learned counsel for the parties and perused the material available on record.

10. Godawari Bai (PW/1) - mother of the deceased has stated that marriage of her daughter deceased was solemnized with accused/respondent No.2-Uttam Kumar. After two months of the marriage, they brought the deceased to her house for Holi festival. At that time deceased was looking weak and lean. On being asked, deceased informed that she was being subjected to cruelty for demand of dowry by the accused persons, however, she admits that she did not lodge any report earlier. This witness has also stated that accused/respondent No.2 i.e. husband of the deceased used to visit her house and also used to stay there. This witness also went on to state that she never disclosed to the police about Article-'A' and 'B' i.e. two letters written by the deceased. According to her, for the first time she is disclosing about those letters in the Court.

11. Baldau Prasad (PW/2) - father of deceased has almost made similar statement as has been made by Godawari Bai (PW/1). Both these witnesses have stated that the day on which deceased got married with accused/respondent No.2 Uttar Kumar, accused/respondent No.7-Ratna, sister-in-law (जेठानी) of deceased also got married with Dhruv



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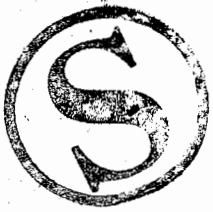
Kumar. These two witnesses have also stated that accused/respondent No.2 used to consume liquor.

12. Indira Kashyap (PW/3) - relative of deceased has stated that when deceased had come to her parents' house, she informed her that accused persons were demanding Rs.20,000/- for bringing something.

Kanha Ram Kashyap (PW/4) - uncle of deceased has stated that when deceased had come to her parents' house, she informed that accused/respondent No.2 used to beat her for demand of motorcycle and money. There are material contradictions in the Court statement of this witness from that of his diary statement.

13. Sewaram (PW/5) has stated that prior to the incident he, Balaram and Takaram were called by Kanha Ram and informed that deceased was being subjected to cruelty by her husband accused/respondent No.2-Uttam Kumar and he asked us to make respondent No.2 understand and not to consume liquor or ganja and behave in proper manner with deceased. This witness has also stated that they had asked accused/respondent No.2 not to behave in inhuman manner.

14. Deepchand (PW/6) is a formal witness. Jagannath Dewangan - Sarpanch of village has not stated anything specific against accused/persons. Bhagwat Prasad (PW/8) and Purushottam (PW/10) are witnesses to seizure (Ex.P/4). Vidyanand (PW/9) is a witness to inquest made under Ex.P/5. R.P. Singh Parihar (PW/11) - Investigating Officer has duly supported the prosecution case. Nitu Kashyap (PW/12) - friend of deceased, in examination-in-chief, has made allegations against accused persons for demand of dowry, however, in cross-examination, she admits that whatever she has stated in examination-in-



chief was not informed to the police at the time of recording her statement under Section 161 Cr.P.C.

15. L.P. Bharat (PW/13) is Patwari who prepared spot map vide Ex.P/16. Ramdhun (PW/14) is a witness to arrest memo made under Ex.P/17, P/18, P/19, P/20, P/21, P/22 and P/23. Dr. Stela Idu (PW/15) is autopsy surgeon and gave her report Ex.P/4 opining the cause of death to be shock as a result of extensive burn (more than 96%). The death was suicidal in nature. I.H. Khan (PW/16) – S.D.O.P has filed challan after investigation was being carried out by R.P. Singh Parihar (PW/11).

16. During the course of investigation, letters (Article -'A' and 'B') allegedly written by the deceased have been seized by the prosecution, however, it failed to prove that those letters have been written by the deceased as no hand writing expert has been examined in the case.

17. Close scrutiny of the evidence makes it clear that though certain allegations have been made by mother, father and uncle of the deceased regarding cruelty meted out by the accused persons to the deceased for demand of dowry but there is no conclusive evidence to show that soon before death any such thing was done to her. If contents of cross-examination of these witnesses are seen, their statements become doubtful and create suspicion. Godawari Bai (PW/1) has stated in her cross-examination that when deceased came to her house on the eve of Holi, between that period no letter was written by deceased and except deceased no one had ever talked about demand of dowry. In para 9 of cross-examination, this witness has stated that it is true that she had never disclosed about letters (Article-'A' and 'B') to



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police while recording her 161 Cr.P.C. statement. Baldau Prasad (PW/2), in para 15 of his cross-examination, has stated that he had received alleged letters (Article-'A' and 'B') after two days of death of deceased and police had sized these letters after 1 ½ months from him. He has further stated that he is not having any documents, copy or letter written by the deceased. This witness has also admitted the fact that he has not disclosed to the police about Article-'A' and 'B' i.e. letters written by the deceased while recording his 161 Cr.P.C. statements. There are material contradictions in the evidence of these witnesses from that of their diary statements. That apart, there is no concrete evidence on record showing the demand of dowry by the accused persons or that soon before the death of the deceased she was subjected to cruelty by the accused persons, therefore, considering all the aspects of the case, the trial Court has come to the conclusion that the prosecution has utterly failed to prove its case beyond shadow of doubt. After due appreciation of the evidence available on record, the trial Court has acquitted accused/respondents 2 to 7 and the view taken by the trial Court is possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the court should not disturb the finding of acquittal recorded by the trial Court, also comes to the rescue of the respondents 2 to 7/accused bolstering the presumption that they are innocent.



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18. Accordingly, the revision preferred by the applicant/complainant is bereft of any substance, the same is liable to be and is hereby dismissed.

Sd/-
Pritinker Diwaker
Judge

Sd/-
R.C.S. Samant
Judge

Vijay