

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1682 of 1998

1. Sohandas, aged 23 years, S/o Mohandas Panika, R/o Dhana Dabri, P.S. Korba, District Bilaspur, M.P.
2. Panchkuwarbai, aged 39 years, W/o Mohardas Panika, R/o Dhana Dabri, P.S. Korba, District Bilaspur, M.P.

---- Appellants

Versus

- The State of Madhya Pradesh

---- Respondent

For the Appellants : Mr. Arun Kochar, Advocate.

For the State/Respondent : Smt. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment on board

13/04/2017

1. The appeal has been preferred against the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Korba, District-Bilaspur in Sessions Trial No.2/1996 on 11.7.1998 by which the appellants Sohandas and Panchkuwar Bai was convicted under Section 498-A of Indian Penal Code (for the short "IPC") and sentenced to RI for a period of 3 years along with fine of Rs.500/- with default stipulation.
2. The case of prosecution case in brief is this, that marriage of deceased Laxmaniya Bai with appellant No.1 Sohan Das was

solemnized some 5 years before the date of incidence i.e. 9.8.1995. An information was given by Mohan Das father of appellant No.1 and husband of appellant No.2 on 10.8.1999 in PS-Korba, that on 9.8.1995 at about 10:00 p.m., the house caught fire, in which, deceased Laxmaniya Bai was sleeping along with his daughter Phulbatiya Bai which has resulted in death of both of them. Morgue No.76-77/1995 was registered. Inquest on the dead body of the deceased Laxmaniya Bai was conducted vide Ex.P/1 and inquest on the dead body of deceased Phulbatiya aged about 1 year was conducted vide Ex.P/3. Postmortem examination was done by Dr. B.P. Kanwar PW/6 vide Ex.P/7 on the body of deceased Laxmaniya Bai and vide Ex.P/8 on the body of deceased Phulbatiya Bai, it was reported and opined that the cause of death was asphyxia, which resulted due to antemortem burns. On 16.11.1995 FIR Ex.P/10 was recorded on the basis of morgue enquiry report. Registering offence under Section 306/34 against both the appellants. On completion of investigation, appellants were charge-sheeted.

3. Appellants were charged under Sections 306, 304B and 498-A of IPC. They denied the charges. Prosecution examined 10 witnesses. On examination under Section 313 of Cr.P.C. appellant and co-accused person denied all the incriminating evidence against them brought by prosecution, pleaded innocence and false implication. No witness was examined in defence. The impugned judgment was passed by which the appellants were acquitted of the charges under Section 306 and 304B of IPC, but have been convicted and sentenced under Section 498-A of IPC, as mentioned in the

paragraph above.

4. The grounds in this appeal are these, that the trial Court has erroneously passed the judgment of conviction under Section 498-A of IPC. There had been no evidence of prosecution to make out a case against the appellant under Section 498-A of IPC. The statement of witnesses had been full of contradictions, omissions and improvement. According to the facts of the case, this had been clearly a case of accidental death. On these grounds, it is prayed that appellants be acquitted the charges.
5. Learned counsel for the appellant submits, that the incident took place on 9.8.1995 whereas the FIR Ex.P/10 was lodged on 16.11.1995 against the appellants. There is no explanation given by any of the witnesses of prosecution as to the delay caused in registering the offence. The inquest on the dead bodies was conducted on 10.8.1995 and Daya Das PW/2 was present in this proceeding even then he did not make any statement about deceased being subjected to cruelty by the appellants. Further, he has admitted his deposition, that he never approached the Police Officer before recording of this statement under Section 161 of Cr.P.C to inform, that his daughter (the deceased) was tortured for demand of dowry. This delay by itself sufficient to raise doubt in case of prosecution. The only witness who have deposed against the appellants are the father, mother and uncle of the deceased. Hence, for these reasons, appellants had been entitled for acquittal on the basis of benefit of doubt.

6. Learned counsel for the State has opposed the grounds in appeal and the submission made in this behalf by the learned counsel for the appellant, it is submitted that the judgment of trial Court does not suffer from any infirmity, hence, there is no reason for interference in the judgment impugned.
7. Considering the facts that State or any other party have not preferred any appeal against the acquittal from charges under Section 306 and 304B of IPC, the only question for determination in this appeal is, whether the conviction of appellants under Section 498-A of IPC is substantiated with evidence of prosecution and is proved beyond reasonable doubt.
8. The finding given in the impugned judgment is this, that deceased was subjected to cruel treatment by the appellants for not providing her with food and also by beating her, thus, the mental and physical torture given to her is proved beyond reasonable doubt by the evidence of prosecution, which has been made the basis of conviction under Section 498-A of IPC. The evidence of prosecution witnesses is perused to examine the basis of this finding.
9. Daya Das PW/2 is the father of deceased, he has stated that whenever his daughter Laxmaniya Bai used to come, she would narrate that she was not being given sufficient food by her mother-in-law and her husband used to beat her to demand motorcycle. On knowing about this, he along with his brother Tilak Das PW/3, Manik Das and Sona Das had been to the residence of appellants to complain and pacify them on which, they had given assurance that

they would abstain from beating the deceased. No time and date has been mentioned by this witness about this narration made by the deceased to him and about his meeting with the appellants to pacify about the complaint made by the deceased. In cross-examination, he admitted that his daughter used to cook food and provide to her husband and in-laws. Ramayan Bai PW/1 is the mother of deceased, she has stated similarly.

10. Tilak Das PW/3 has stated that on being informed about the treatment given to the deceased he had been to the place of residence of appellants and tried to pacify them to abstain from give such treatment to the deceased. No other witness has been examined by the prosecution having knowledge of the treatment given to the deceased.

11. S.I. C.L. Singh PW/4 has stated that he conducted investigation for getting the postmortem examination done of the deceased Laxmaniya Bai and Phulbatiya Bai. Ramashrya Choubey PW/9 is S.D.O. police, who conducted the inquest of the deceased Laxmaniya Bai and Phulbatiya Bai vide Ex.P/2 and on the basis of the morgue inquiry offence under Section 306/34 was registered against the appellants. Inspector J.S. Bhadouriya PW/10 is the person, who lodged FIR Ex.P/10. In cross-examination, he has admitted that the morgue inquiry continued from 9.8.1995 to 16.8.1995 on the basis of which FIR Ex.P/10 was recorded, but no explanation has been given by him as to the delay caused in registering the offence and recording of the statements of the witnesses under Section 161 of Cr.P.C. In cross-examination, he has

admitted that their statements were recorded on 17.11.1995, more than 3 months after the date of incident. He has also given no explanation, as to why this delay was caused in recording the statement of such important witnesses. Daya Das PW/2 in his cross-examination has stated that he did not lodge any report immediately with the police and admitted that he replied to the queries of police on the date of incident, the police queried him on second day of the incident. Tilak Das PW/3 has stated in his cross-examination that when he arrived on the spot, the police party was present. He was interrogated by the police on the next day of the incident and he gave the same statement on that day as he has given before this Court, but there is no statement of any of the Investigating Officer that any statement of these witnesses were recorded on 11.8.1995.

12. This is a circumstance heavily looming upon the reliability of the prosecution evidence. There is no statement of any of the witnesses on the date of inquest 10.8.1995 in this respect. On the contrary, the contents of the inquest Ex.P/1 and Ex.P/3 disclose that death of deceased was caused due to accidental fire. There is absence of explanation on the part of Investigating Officers, no clear statement has been made by the main witness in this case, as to what was the reason of delay of more than 3 months, which resulted in this development of registering offence against the appellants for abetment to commit suicide and recording of the statement of the witnesses under Section 161 of Cr.P.C. on 17.11.1995. The trial Court has already disbelieved the statement of prosecution regarding torture given to deceased on account of demand of dowry with

respect to the charge of offence abetment to commit suicide.

13. Considering all the evidence in this case, it appears that the evidence of prosecution does not inspire confidence in any manner, so that the conviction of appellants would have been held even under Section 498-A of Cr.P.C. in the result this appeal is allowed.

14. The appellants are on bail. Their bail bond shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the Cr.P.C. They shall appear before the higher Court, as and when directed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha