



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1323 of 2000**

1. Kishore Kumar Verma, son of Itwari Verma, aged 25 years,

2. Itwari Verma, son of Hinchhwaram Verma, aged 56 years.

Both residents of Maldi, police station Bhatapara Gramin, district Raipur,
Madhya Pradesh (now Chhattisgarh)

---- Appellants

Versus

State of Madhya Pradesh (now Chhattisgarh).

---- Respondent

For the Appellants

:

Shri Vishnu Koshta, Advocate.

For the Respondent/ State

:

Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****14.2.2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 8.5.2000 passed by the Second Additional Sessions Judge, Baloda Bazar, District Raipur, Chhattisgarh in Sessions Trial No. 273 of 1999, whereby and whereunder the learned Second Additional Sessions Judge has convicted the appellants under Section 306 of the IPC and sentenced them to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/- each, in default of payment of fine to further undergo SI for six months.

2. The case of the prosecution, in brief, is that the marriage of deceased – Pratima was solemnized with applicant No.1 – Kishore Kumar Verma in

the year 1995. Thereafter, the deceased - Pratima started residing in her matrimonial house at village Maldi, P.S. Bhatapara. On 9.5.1999, at about 12:10 noon, an information was received in P.S. Bhatapara that Pratima was brought dead due to burn injuries in Community Health Centre, Bhatapara vide Ex. P/9 and on the basis of which merg intimation (Ex. P/10) was recorded. Inquest of the dead body of the deceased was conducted vide Ex. P/2 and autopsy of dead body of the deceased was conducted by Dr. Ashish Kumar Soni (PW-10) vide Ex. P/11, in which it was opined that death was due to asphyxia which was caused by 90% of burns on her body. On the basis of merg enquiry, FIR Ex. P/22 was recorded against the appellants on 10.5.1999 and offence was registered against the appellants under Sections 304B and 306 of the IPC.

3. During investigation, one letter (article-A) was seized vide Ex. P/4. The articles preserved in the postmortem examination were seized vide Ex. P/7. Burnt clothes were seized from the spot of the incident vide Ex. P/8. Some papers of village society meeting were seized vide Ex. P/16. Statements of the witnesses were recorded wherein it was stated that the deceased was subjected to torture by the appellants/ accused persons by leveling allegations against her character and for various other reasons. On completion of investigation, the appellants were charge-sheeted.

4. The appellants were charged under Sections 498A, 304B and 306 of the IPC. They denied the charges and demanded for trial. The prosecution examined as many as 24 witnesses and the defence examined three witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the appellants pleaded innocence

and false implication. Three witnesses were examined in defence. Thereafter, the impugned judgment was passed.

5. The grounds in this appeal are that the impugned judgment is erroneous, illegal and contrary to law, facts and circumstances of the case. The case of the prosecution was based on the evidence of Krishna Kumar (PW-3), brother of the deceased, who has turned hostile. There is no evidence on record to show that the deceased committed suicide. There was no evidence or reason for the appellants to abet the deceased to commit suicide. The conviction against the appellants has been recorded without basis of any evidence. On these grounds, it is prayed that the appellants be acquitted.

6. Learned counsel for the appellants submits that the main witnesses Krishna Kumar (PW-3), brother of the deceased, Bhakhlaram (PW-14), father of the deceased and Kamlabai (PW-15), mother of the deceased have not supported the case of the prosecution and they were the only persons, who could have disclosed that the deceased was harassed and tortured by the appellants. No other witness has supported the case of the prosecution. Ramkhilawan Verma (PW-4) has stated that he informed the husband of the deceased/appellant No.1 – Kishore Kumar Verma that the deceased was engaged with somebody else in illicit relationship. On the basis of which, a meeting of the village society was called and for these reasons the deceased felt insulted and depressed. Appellant No.1 – Kishore Kumar Verma had no role in making the said allegation. Development of such circumstances cannot be regarded as abetment to commit suicide. Dr. Ashish Kumar Soni (PW-10) has not given any opinion whether the death of

the deceased was homicidal or suicidal. Hence, it cannot be ruled out that the death of the deceased may have been accidental as well. On the basis of these grounds, the appellants are entitled for benefit of doubt.

7. Learned State counsel has supported the case of the prosecution and opposed the grounds raised in the appeal on behalf of the appellant. It is submitted that the prosecution has successfully proved the guilt of the appellants and there is no scope for interference in the impugned judgment.

8. Considering the material on record and the arguments advanced on behalf of both the sides, the question which arises for consideration in this appeal is, whether the conviction against the appellants is supported by evidence of prosecution beyond all reasonable doubt?

9. It is not disputed that deceased – Pratima died of burn injuries on 9.5.1999. Hence, the evidence of proceedings of inquest vide Ex. P/2 and recording of merg intimation Ex. P/10 are not required to be considered. The evidence of Dr. A.K. Soni (PW-10) has to be considered on this point whether it was a case of suicide or not. Dr. Ashok (PW-10) examined the dead body of the deceased on 9.5.1999 and found 90% burns on her body alongwith smell of kerosene. On the basis of postmortem examination, he opined vide Ex. P/11 that the deceased died due to asphyxia, which was caused by 90% burns on her body. In cross-examination, he admitted that he did not find any carbon particles in trachea. He has not stated anything in his statement to rebut his examination-in-chief. He has not given any statement in clear terms whether the death was homicidal, suicidal or accidental, however presence of smell of kerosene on the body of the



deceased is suggestive that she may have committed suicide, but it was to be established by the investigation. The only investigation conducted by the Investigating Officer, Sub-Inspector, Ramkrishna Dubey (PW-20) was seizure of burnt clothes from the spot vide Ex. P/8. In such cases, detailed inspection of the spot is very essential which has not been done in the investigation. Hence, the circumstantial evidence regarding the death of the deceased is found lacking in this case. Now, the prosecution case depends on the statements of the witnesses.

10. Shanta Bai (PW-1) is the witness who arrived on the spot soon after the incident and she found the deceased alive. On her asking, the deceased told her that she set herself on fire and her statement is consistent in her cross-examination. No other witness has stated about talking to the deceased before her death. Hence, the statement of Shanta Bai has its importance, this being the last statement of the deceased, the same can be considered as her dying declaration and according to this statement the deceased self immolated her. Thus, her death was a suicide.

11. For conviction under Section 306 of the IPC, it was the burden of the prosecution to prove that the deceased was subjected to cruelty by the appellants before her death. The concerned witness – Krishna Kumar (PW-3) has stated that one Ramkhilawan Verma (PW-4) made allegation against the deceased that she was engaged with some other person which was an incorrect allegation. He asked appellant No.1 – Kishore Kumar Verma to call a meeting of a village society and thereafter a meeting was called in which it was found that Ramkhilawan Verma (PW-4) has made a false allegation against the deceased. He stated that because of this

allegation on the character of his sister, the deceased was mentally disturbed and she used to say that she does not want to live. He was declared hostile and cross-examined by the prosecutor in which he has not supported the case of the prosecution. Thus, he made no statement that the appellants in any manner subjected the deceased to cruelty before her death.

12. Ramkhilawan Verma (PW-4) has not supported the case of the prosecution. He declared hostile and cross-examined by the prosecutor. Other important witnesses having knowledge of these circumstances had been Bhakhlaram (PW-14) and Kamlabai (PW-15). They have not supported the prosecution case in any manner and declared hostile. Keertibai (PW-17) stated that she has no knowledge about the circumstances of the death of the deceased.

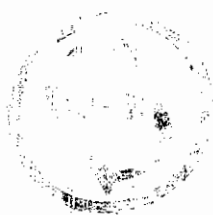
13. The witnesses of the village meeting have also been examined. Khumansingh Verma (PW-12) has stated that appellant No.1 – Kishore Kumar Verma gave an application before the village society alleging that his wife/ deceased is having relationship with a person from other society and prayed for an advice. On examining the allegation, it was found that this allegation was falsely leveled by Ramkhilawan Verma (PW-4). It was decided in the meeting that appellant No.1 and deceased shall stay together and Ramkhilawan Verma (PW-4) was out-casted from the society for six months for leveling false allegation against the deceased. The statement has remained unrebutted in his cross-examination.

14. Harishankar (PW-23) was present in the village society meeting. He

supported the statement of Khumansingh Verma (PW-12). According to the statement of Khumansingh Verma (PW-12), this meeting took place on 22.3.1998, which is more than one year before the date of incident. Thus, the event or incident in which the false allegation was leveled against the deceased was not an event immediately before the incident of death of the deceased. Thus, it cannot be said that the humiliation suffered by the deceased in that village meeting could have been one of the cause for which she may have committed suicide. Apart from that, as per the evidence on record, it is clear that none of the appellants were the author of this allegation. Admittedly, Ramkhilawan Verma (PW-4) was the author of this allegation and this act of making allegation against the deceased cannot be imputed on the appellants. Rest of the witnesses examined by the prosecution related to investigative procedures and their evidence needs no consideration for decision in the appeal.

15. On a close scrutiny of the evidence of the prosecution, it is found that the evidence with regard to fact that the appellants were engaged in causing harassment, giving torture and cruel treatment to the deceased is totally missing. The only question of humiliation of the deceased in the meeting of village society as stated by the witnesses of the prosecution has no direct connection with the suicidal death of the deceased. There had been no other evidence of abetment against the appellants. Hence, this was a case of no evidence against the appellants. Therefore, the conviction recorded by the trial court is found to be without any basis.

16. In view of the above discussion, this appeal is allowed. The impugned judgment of conviction and order of sentence dated 08.05.2000 is set aside and the appellants are acquitted of the charges framed against them. The



appellants are on bail and they need not surrender. The Appellants are on bail. Their bail bonds are not discharged at this stage and shall remain operative for a further period of six months in terms of Section 437-A of the Cr.P.C.

Sd/-
Rajendra Chandra Singh Samant
Judge