

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 290 of 2013**

1. Kumari Reenu S/o Motilal Kewat Aged About 24 Years R/o Line Dafai, Khongapaani, Jhagrakhand Distt. Koriya C.G.
2. Sanjay Kewat alias Gudda S/o Motilal Kewat Aged About 22 Years R/o Line Dafai, Khongapaani, Jhagrakhand Distt. Koriya C.G.
3. Smt. Chanda Bai W/o Motilal Kewat Aged About 50 Years R/o Line Dafai, Khongapaani, Jhagrakhand Distt. Koriya C.G.
4. Bablu Kewat @ Prakash S/o Motilal Kewat Aged About 30 Years R/o Line Dafai, Khongapaani, Jhagrakhand Distt. Koriya C.G.
5. Jugnu S/o Motilal Kewat Aged About 31 Years R/o Line Dafai, Khongapaani, Jhagrakhand Distt. Koriya C.G.

---- Appellants**Versus**

State Of Chhattisgarh Through PS Jhagrakhand, Distt. Koriya C.G.

---- Respondent

For appellants	:	Ms. Subha Shrivastava, Adv.
For Respondent/State	:	Mr. Sumit Jhanwar, PL

JUDGMENT ON BOARD**9/1/2017**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 17-1-2013 passed by the 2nd Additional Sessions Judge, Manendragarh, Distt. Koriya (CG) in Sessions Trial No. 93/2011 whereby and whereunder learned trial Court convicted the appellants under Section 304-B read with Section 34 of the Indian Penal Code and sentenced each of them to undergo RI for 10 years and to pay a fine of Rs. 2,000/- with a direction that the period of detention of the appellants shall be set off under the provisions of Section 428 of the Cr.P.C. All the accused appellants have been arrested on 26-5-2011. with this they have served 5 years, 7 months and 15 days till date.
2. Conviction is impugned on the ground that without there being an iota of evidence, learned Court below has convicted and sentenced the appellant as aforementioned and thereby committed illegality.
3. Case of the prosecution is that deceased Reshma was married to appellant No. 4 on 3-5-2009 as per rites and customs. After marriage, appellants were continuously committing cruelty, assault and other act so as to keep her in separation, not allowed

to enter in the kitchen as she had not brought enough dowry specially motorcycle, fridge, golden ring and other ornaments. The deceased used to inform her parents and relatives. She used to refuse to go to her in-laws house but the parents of the deceased used to persuade her and send the deceased to her matrimonial house. On 24-4-2011 on account of cruelty, torture and demand of dowry, the deceased committed suicide by hanging herself. Matter reported to Jhagrakhand police. On 24-4-2011 evening, merg was registered. Inquest was prepared vide Ex. P-4. The body was sent for post mortem. P.W. 2 Dr. Surendra Singh conducted autopsy of the deceased, gave his report Ex. P-2-A in which noticed following symptoms_

“Rigor mortis was present in legs. Foul smell coming from body. Froths were present on nostrils and eyes open. **Pupils** were dilated. There was stricture on upper part of neck extending from mastoid process to upper part of neck in front about half inch broad. Larynx was depressed. No other injury on neck or other parts found.”

As per opinion of the autopsy surgeon, death was due to asphyxia. Nature of the death was suicidal.

4. During investigation, police recorded statement of the witnesses under Section 161 of the Cr.P.C. Spot map was prepared. After inquiry in the said merg, police registered offence under Section 304-B read with Section 34 of the Indian Penal Code as Crime No. 106/2011 against all the appellants. All the accused persons were arrested. Viscera was sent for chemical examination. The FSL not noticed presence of any poison in the said viscera. After completion of investigation, charge sheet has been filed before the Judicial Magistrate First Class, Manendragarh who registered the case as Criminal Case No. 251/2011 and committed the same to the Court of Session on 5-9-2011. Learned Additional Sessions Judge received the case on transfer for trial. All the accused/appellants were charged for offence under Section 304-A/34 of the IPC.
5. In order to prove the guilt of the appellant, prosecution examined 16 witnesses. Statements of the accused persons were also recorded under Section 313 of the Cr.P.C. in which they denied

the circumstances, pleaded innocence and false implication in the crime in question.

6. After hearing the parties, the trial court by the judgment impugned has convicted and sentenced the accused/appellants as abovementioned. Hence present appeal.
7. I have heard learned counsel for the parties and perused the record of the trial Court.
8. Learned counsel for the appellants vehemently argued that after perusal of the entire material she is not contesting instant criminal appeal on the point of conviction. She is confining her argument only on the point of quantum of sentence. It is submitted that the incident is about more than 5 years and 7 months old. All the accused appellants are close relatives and family members. Appellant No. 3 was aged 50 years and other appellants were in the age group of less than 30 years at the time of incident. They have served the sentence of 5 years, 7 months and 15 days till date. Looking to the entire material they may be sentenced appropriately.
9. Per contra, learned counsel for the State opposed the arguments advanced on behalf of the parties and submits that after consideration of the entire material, the Court below sentenced the appellant to undergo RI for 10 years. As a young lady within 7 years of marriage lost her life being subjected to continuous cruelty and torture by the accused appellant, the trial Court has rightly sentenced the appellant which may not be held as excessive hence the appeal may be dismissed on both counts.
10. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.
11. Appellants are not assailing instant criminal appeal on the point of conviction under Section 304-B read with Section 34, IPC. Even otherwise, after perusal of the entire material this Court is of the considered view that the trial Court has not committed any illegality or impropriety in convicting the accused/appellant for the offence. Consequently, conviction part of the appeal is hereby affirmed.
12. So far as quantum of substantive jail sentence is concerned, all the accused/appellants were sentenced for RI for 10 years and to

pay a fine of Rs. 2,000/- each, in default of payment of fine to further undergo additional RI for 4 months. Fine sentence of 2,000/- to each appellants cannot be said to be excessive and it does not require any interference.

13. So far as substantive jail sentence is concerned, appellant No. 1 to 4 were aged 24 years, 22 years, 50 years, 30 years and 31 years respectively at the time of incident, out of them appellant No. 3 is mother and other appellants are brothers and sisters, appellant No. 4 is husband of the deceased. As per arrest memo appellant No. 2 Sanjay Kewat was driver. Appellant No. 4 husband of the deceased was serving in the SECL and other appellants were not doing any job. They are first offender. Before this incident there was no written report against the accused appellant in the matter. As per sub-section (2) of Section 304-B, IPC minimum sentence is 7 years RI. In the present case if the appellants are sentenced for minimum sentence, ends of justice would be served.
14. Consequently, appeal filed by the appellants is allowed in part. Conviction of the appellant under Section 304-B read with Section 34, IPC is hereby affirmed. Fine sentence awarded to appellants is also affirmed. So far as substantive jail sentence is concerned, their sentence of RI for 10 years is reduced and instead, all the appellants are sentenced to undergo RI for 7 years. The accused/appellants are arrested on 26-5-2011, the period of detention be set off under the provisions of Section 428 of the IPC. Also after realization of fine sentence and completion of reduced jail sentence awarded by this Court after remission if any, all the accused persons be released from the jail if not required in any other case. In case the accused/appellants do not deposit the fine sentence, they shall also serve the sentence as per default clause as directed by the trial Court.
15. Appeal partly allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge