

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2493 of 1998

Judgment Reserved on : 20.7.2018

Judgment Delivered on : 12.10.2018

- 1. Avadh Raj Singh, S/o Trilok Singh, aged about 54 years, occupation service
- 2. Anil Kumar, S/o Avadh Raj Singh, aged about 29 years, occupation service

Both are residents of Ambedkar Nagar, Village and Post Jaiti, Police Station Jahagirganj, U.P.

---- Appellants

versus

State of Madhya Pradesh (now Chhattisgarh) through the Police Station Dhamtari, District Dhamtari

--- Respondent

For Appellants : Shri Vishnu Koshta and Shri Shobhit Koshta, Advocates
For Respondent/State : Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 15.10.1998 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No.346 of 1997 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation

- 2. Case of the prosecution, in brief, is that Appellant No.2, Anil Kumar is husband of Anamika (the deceased). Appellant No.1, Avadh Raj

Singh is father-in-law of the deceased. Marriage between Anamika and Appellant No.1, Anil Kumar took place on 3.3.1995. On 22.4.1996, Anamika committed suicide by consuming poison at her paternal house at Rudri, Dhamtari. Morgue intimation (Ex.P18) was recorded on the basis of memo received from the hospital. Inquest (Ex.P16) was prepared. Post mortem examination on the dead body of Anamika was conducted by Dr. Y.K. Singh (PW4). His report is Ex.P17 in which he opined that the cause of death was asphyxia. On 7.5.1996, i.e., after 15 days of the death, a written report (Ex.P1) was lodged by Jai Narayan Singh (PW1), father of the deceased wherein it is stated that at the time of marriage, demand for dowry for a motorcycle was made which was not fulfilled due to which after the marriage, the husband/Appellant No.2 and his family members were harassing the deceased. On 2.9.1995, one letter of the deceased was received by Jai Narayan Singh (PW1). Therefore, Jai Narayan Singh (PW1) visited the house of the in-laws of the deceased and brought her back along with him from there. Thereafter, Jai Narayan Singh (PW1) tried to sort out the matter, but no positive response was received. Therefore, on 22.2.1996, a report under Section 498A of the Indian Penal Code was lodged in Police Station Dhamtari. Thereafter, in March, 1996, *Chacha Sasur* Nand Kumar and 7-8 other persons came to Rudri. Since both the Appellants had not come, therefore, no compromise took place. On 15.4.1996, Appellant No.2, Anil again came to Rudri along with 6-7 persons. At that time, Jai Narayan Singh (PW1) and his wife Rama Singh (PW5) were not present at the house. They insulted Anamika (the deceased) seriously and threatened her to come with them. When the parents of Anamika returned home, they saw that Anamika was

under serious fear. On this, they asked Appellant Anil and Nand Kumar to come later on, therefore, they returned. Thereafter, on 22.4.1996, Anamika received a letter written by Appellant Anil. After reading the said letter, Anamika kept on weeping for the whole day and thereafter she committed suicide in the night. On the basis of the said written complaint (Ex.P1), First Information Report (Ex.P2) was registered. During the course of investigation, some letters dated 2.9.1995 (Ex.P5), 5.9.1995 (Ex.P6) and dated 17.4.1996 (Ex.P8) were seized from Jai Narayan Singh vide Ex.P7. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the present Appellants and other accused persons Surendra Singh, Nand Kumar and Madhuri Singh for offence punishable under Sections 498A, 304B, 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Charge was framed against them under Section 306 of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 10 witnesses. Statement of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.
4. After trial, the Trial Court acquitted Surendra Singh, Nand Kumar and Madhuri Singh of all the charges framed against them. The Trial Court also acquitted both the present Appellants of the charge framed against them under Section 306 of the Indian Penal Code,

but convicted them for the offence punishable under Section 498A of the Indian Penal Code and imposed sentence upon them as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants argued that there is no evidence on record that both the Appellants had subjected Anamika to cruelty. Without any evidence on record, the Trial Court has convicted and sentenced the Appellants. The Trial Court has completely failed to see the evidence of Dr. Hanuman Prasad Singh (PW8). He has specifically stated in oral evidence that the father of the deceased wanted that Appellant No.2/husband of the deceased should live with them along with the deceased at Dhamtari and on account of that he was also trying for a job for Appellant No.2, but Appellant No.2 refused to live at Dhamtari. Hence, the Complainant lodged false report against the Appellants before committing suicide by the deceased. The Trial Court has also completely failed to see that the deceased had returned to her parents' house before 6 months of the incident. Therefore, no question arises for subjecting the deceased to cruelty for demand of dowry. The alleged incident took place on 22.4.1996. The FIR was lodged on 7.5.1996, i.e., after 15 days of the incident, but the delay in lodging the FIR has not been properly explained. Therefore, it seems that due to death of the deceased, report was made as an after-thought. Statements of witnesses under Section 161 of the Code of Criminal Procedure have also been recorded much belatedly. Therefore, it seems that it was an after-thought. From the evidence adduced by the prosecution, no offence under Section 498A of the Indian Penal Code is made out. Therefore, the

Appellants are entitled to get acquittal.

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. There is no dispute that the marriage took place on 3.3.1995 and the incident took place on 22.4.1996. The written report was lodged on 7.5.1996. With regard to the offence under Section 498A of the Indian Penal Code, the case of the prosecution is based on the statement of Jai Narayan Singh (PW1), father of the deceased, Rama Singh (PW5), mother of the deceased, Namdeo (PW2), Vinay Jain (PW7) and Sangita Jain (PW9). Namdeo (PW2), Vinay Jain (PW7) and Sangita Jain (PW9) were residents of Rudri.
9. Jai Narayan Singh (PW1) is father of the deceased. In his Court statement, he has stated that the marriage was solemnised on 3.3.1995 and thereafter she went to the house of her in-laws. 2 months thereafter, the deceased and her husband came to Rudri. The husband/Appellant No.2 returned. 1½ months thereafter, the husband took the deceased back. He has further deposed that at that time, when the deceased was at Rudri, she had told that her in-laws were demanding a motorcycle. He has further deposed that on 2.9.1995, letter (Ex.P5) of the deceased was received in which it was written that she was being harassed seriously and her

mental status was getting poor. Then, this witness went to Raibareli where he saw the deceased in decrepit condition. Along with this witness also, behaviour of the family members of the matrimonial house of the deceased was not good. Then he took his daughter (the deceased) to Pratapgarh where the deceased told him that her *Chachi Saas* makes her wake up by kicking her and gives her the food for her eating which is left by other members of the family after eating. She also told that a joint photograph of the deceased and her husband/Appellant No.2 was torn and crushed under feet by Appellant No.2 and he used to threat the deceased that he will perform a second marriage. He has further deposed that he took the deceased to the parents of Appellant No.2 at Allahabad. At that time, Appellant No.1 told him that if Appellant No.2 performs a second marriage, the deceased will get relief. This witness has further deposed that thereafter he took the deceased to Rudri and tried to settled the dispute. Thereafter, on 22.2.1996, he lodged a complaint under Section 498A of the Indian Penal Code at Dhamtari. He has further stated that on 15.4.1996, Appellant No.2 and Nand Kumar came and they began to insist to take the deceased with them. At that time, they were not accepting their mistake and they were alleging that all the mistakes were of the deceased and, therefore, this witness did not send the deceased back with them. Thereafter, the deceased remained under fear and on 22.4.1996, she consumed sulfas and committed suicide. Thereafter, post mortem examination on the dead body of the deceased was conducted. This witness remained busy in last rituals of the deceased and thereafter on 2.5.1996 he returned from Allahabad and on 7.5.1996, he lodged a report. During cross-examination, he has admitted the fact that a talk had

taken place between him and Appellant No.1. At that time, Appellant No.1 had told him about the second marriage of Appellant No.2 about which he had not written in his written complaint (Ex.P1).

10. Rama Singh (PW5), mother of the deceased has stated that after the marriage, the deceased stayed at her in-laws' house for about 2–2½ months and thereafter she returned her paternal house. At that time, she did not tell anything about her problems. After 2–2½ months, the deceased returned to her in-laws' house. Few months thereafter, father of the deceased took her back to the deceased to her parental house. At that time, the deceased had told that “*Kis Danav Ke Ghar Me Shaadi Kar Diye Ho, Ve Log Use Bahut Sata Rahe Hain, Main Bahut Bimaar Rahati Hun*”. This witness has further stated that she was a heart patient and, therefore, the deceased did not tell her any more. The deceased was telling about these things to the neighbours. She has further stated that thereafter a report was lodged by her husband Jai Narayan Singh (PW1) against the Appellants. Thereafter, the Appellants had come for compromising the matter. At that time, they tried to take the deceased back with them. This witness has further stated that her husband Jai Narayan Singh (PW1) was also ready to send the deceased back to her in-laws' house, but the deceased did not agree to return to her in-laws' house. The deceased was worried that she will be burnt there. In that night itself, the deceased committed suicide. In her cross-examination, in paragraph 5, she has stated that in her statement recorded under Section 161 of the Code of Criminal Procedure she had stated that the deceased was under suspicion that she will be burnt at her in-laws' house, but this

fact is not mentioned in her case diary statement.

11. Vinay Jain (PW7) is a neighbour of Jai Narayan Singh (PW1). He has stated that on 15.4.1996, at about 1:30 p.m., he was taking lunch. At that time, he heard loud voices from outside. He sent his wife Sangita Jain (PW9) outside and after taking lunch, he himself went outside. At that time, Appellant No.2, Anil and one other person were standing outside. The deceased was standing at the door of her house and Appellant No.2 was scolding the deceased telling her that she was not having any manner of talking. He was telling about motorcycle and money. This witness has further stated that in the night, his wife told him that the deceased was under mental stress because her *Chacha Sasur* and *Chachi Saas* were harassing her.
12. Sangita Jain (PW9) is wife of Vinay Jain (PW7). She has also stated that in April, 1996, Appellant No.2 and his *Chacha* (uncle) had come in a jeep. At that time, Appellant No.2 told the deceased that her father had not sent a motorcycle nor had he sent any money and now on her coming, she will not return alive. This witness has further stated that in the evening, the deceased had visited her house. At that time, the deceased had told her that if she returns to her in-laws' house, her in-laws will kill her by subjecting her to harassment.
13. Namdeo (PW2) is also a neighbour of Jai Narayan Singh (PW1). He has also stated that one day in the afternoon, Appellant No.2, Anil and his *Chacha* (uncle) had come and Appellant No.2 had told

the deceased that she was not having any manner of talking and money has not been sent. In his cross-examination, he has admitted that his statement was taken by the police 2½ months after the death of the deceased.

14. A minute examination of the above evidence makes it clear that after the marriage of the deceased in March, 1995, the deceased had gone to the house of her in-laws. Thereafter, when she had first visited her paternal house, at that time, she had not made any complaint. Thereafter, when she again visited her paternal house second time, at that time, as stated by her father Jai Narayan Singh (PW1), she made a complaint that her in-laws were subjecting her to harassment for a motorcycle. Jai Narayan Singh (PW1) has not stated anything about harassment given by the husband/Appellant No.2 for motorcycle. How the in-laws of the deceased were harassing her has not been stated and explained by Jai Narayan Singh (PW1). Jai Narayan Singh has also stated that thereafter he had visited the house of the in-laws of the deceased and there he had seen the deceased in decrepit condition. At that time, the deceased had not made any complaint. The only allegation levelled by Jai Narayan Singh (PW1) is that behaviour of the in-laws of the deceased with him was not proper. As further stated by this witness, the deceased had told him at Pratapgarh only against her *Chachi Saas* that she used to misbehave with her. This witness has also stated that Appellant No.2 had torn a joint photograph and thrown away and he had also threatened her that he will perform a second marriage. Later on, Appellant No.1 had also told that if Appellant No.2 performs second marriage, the deceased will get relief. But, all these facts are not

mentioned in the written report (Ex.P1) made by Jai Narayan Singh (PW1). This witness has admitted the fact that on 15.4.1996, Appellant No.2, Anil and Nand Kumar came to Rudri. At that time, they did not admit their guilt and levelled allegations on the deceased herself and, therefore, this witness did not send the deceased back to her in-laws' house. On that date, any other talk had taken place, this witness has not stated in this regard. In the written report (Ex.P1) made by Jai Narayan Singh, it was mentioned that on 22.4.1996, a letter of Appellant No.2 was received in which he had used derogatory language against the deceased. But, the said letter has not been placed on record. Apart from this, Rama Singh (PW5), mother of the deceased, has also not stated anything specific about cruelty done with the deceased by any of the Appellants. She has admitted the fact that on the first visit by the deceased to her paternal house after her marriage, she had not made any complaint to her. As stated by this witness, on her second visit, the deceased had only told that *"Kis Danav Ke Ghar Me Shaadi Kar Diye Ho, Ve Log Use Bahut Sata Rahe Hain, Main Bahut Bimaar Rahati Hun"*. But, how and by whom the deceased was treated with cruelty or was subjected to harassment has not been stated by this witness in her Court statement. This witness has further stated that when the husband of this witness Jai Narayan Singh (PW1) lodged a report against the Appellants, the Appellants had come to compromise the matter. At that time, they wanted to take the deceased back, but the deceased did not agree to return to her in-laws' house. At that time, the deceased had expressed a worry that if she again returns to her in-laws' house, she will be killed by burning. But, this fact is not mentioned in diary statement of this witness.

15. Namdeo (PW2), Vinay Jain (PW7) and Sangita Jain (PW9), all are neighbours of Jai Narayan Singh (PW1). They have stated that Appellant No.2, Anil along with Nand Kumar had come to the house of Jai Narayan Singh (PW1). At that time, Appellant No.2 had said that the deceased had no manner of talking. Saying so by a husband to his wife does not amount to cruelty. This usually happens between a husband and his wife. Sangita Jain (PW9), who is wife of Vinay Jain (PW7), has further stated that at that time, Appellant No.2, Anil had told that father of the deceased had not sent money nor had he sent a motorcycle, now when she will come to her matrimonial house, she will not return alive. But, Vinay Jain (PW7) and Namdeo (PW2) have not stated anything about this. If this had been said by Appellant No.2, Vinay Jain (PW7) and Namdeo (PW2) would have also stated the same in their Court statements. Sangita Jain (PW9) has further stated that in the evening, the deceased had visited her house and told her that it is better for her to consume poison and die than to return to her in-laws' house. If she returns to her in-laws' house, they will agonise and kill her. But, Vinay Jain (PW7), husband of Sangita Jain (PW9), has not stated in this regard. He has only stated that his wife Sangita Jain had told him that the deceased did not want to return to her in-laws' house because her *Chacha Sasur* and *Chachi Saas* used to harass her. Sangita Jain and Vinay Jain have not stated that in the said night, the deceased had made any complaint against any of the Appellants.
16. There are some letters which were submitted on record by the prosecution. Undated letter (Ex.P3) was written by Nand Kumar Singh (Nanhe Singh) and letter dated 9.1.1995 (Ex.P4) was written

by Dr. Hanuman Prasad Singh (PW8). All the letters were written before performance of marriage of the deceased with Appellant No.2. From perusal of these letters, it seems that at the time of marriage, giving of some cash and motorcycle was settled for which a bank draft was asked to be sent. In letter dated 2.9.1995 (Ex.P5), allegedly written by the deceased, the deceased had only written that in her matrimonial house, her health was getting weaker, her condition had become poor and her mental status was also getting poor. In this letter also, there is no specific allegation against any of the Appellants with regard to any harassment. In letter dated 5.9.1995 also, which was written by Appellant No.2/husband, there is no demand. Only one thing is written in this letter that chain of Appellant No.2/husband should be brought. There is other letter dated 17.4.1996 (Ex.P8) written by the husband/Appellant No.2. In this letter also, no demand has been made by Appellant No.2. Thus, it is also clear that none of the letters contain any specific allegation against any of the Appellants nor these letters contain any demand made by any of the Appellants.

17. From the above discussion, it is clear that at the time of marriage, giving of some cash and motorcycle was settled, but after the marriage, for this, the Appellants subjected the deceased to cruelty or harassment at her matrimonial house is not established. Though some evidence is there on record from which it appears that the deceased was suffering problem at her matrimonial house and, therefore, she was residing at her paternal house at Rudri, at her matrimonial house the deceased was subjected to cruelty or harassment no clinching evidence is available on record to

establish the same. The aforesaid two letters of Appellant No.2 also do not reveal any demand. In the letter (Ex.P5) written by the deceased, there is no mention of any specific demand or allegation against any of the Appellants. Though Namdeo (PW2), Vinay Jain (PW7) and Sangita Jain (PW9), all neighbours of Jai Narayan Singh (PW1), father of the deceased, have stated that one day Appellant No.2/husband along with Nand Kumar had visited the paternal house of the deceased and Appellant No.2 had told the deceased that she had no manner of talking, mere saying this by the husband to his wife (the deceased) does not constitute offence of cruelty or harassment. This usually happens between a husband and his wife. These three witnesses have also stated that in their presence, Appellant No.2 had talked with the deceased about some cash and motorcycle, but he made any specific demand therefor is not stated by any of these three witnesses. Looking to the above evidence adduced by the prosecution, in my considered opinion, the Appellants had subjected the deceased to cruelty or harassment for any demand or otherwise as defined in Section 498A of the Indian Penal Code is not established.

18. In the premises of aforestated, the appeal deserves to be and is hereby allowed. The judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.
19. It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.

- 20.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE