

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2195 of 1999****Judgment Reserved on 18.07.2018****Judgment Delivered on 08.10. 2018**

1. Ghanshyam, S/o Bhagoliram Verma, aged about 25 years, R/o Village- Parteva, Police Station Rajim, District Raipur, C.G.
2. Gangaram, S/o Bhagoliram Verma, aged about 36 years, R/o Village Parteva, Police Station Rajim, District Raipur, C.G.
3. Bhagoliram, S/o Aalal Verma, aged about 60 years, R/o Village Parteva, Police Station Rajim, District Raipur, C.G.
4. Mankuwar Bai, W/o Bhagoliram, aged about 60 years, R/o Village Parteva, Police Station Rajim, District Raipur, C.G.

---- Appellants**Versus**

- The State Of Madhya Pradesh, through Police Station Rajim, District Raipur, M.P. (Now C.G.)

---- Respondent

For Appellants

Shri Y.C. Sharma, Advocate.

For State/Respondent

Ms. K. Tripti Rao, P.L.

Hon'ble Shri Justice Gautam Chourdiya**C A V Judgment**

1. This appeal arises out of the judgment of conviction and order of sentence dated 12.08.1999 passed by learned 3rd Additional Sessions Judge to the Court of Sessions Judge, Raipur, (C.G.) in Sessions Trial No. 225/98, whereby, the

appellants stand convicted and sentenced as under:-

Conviction	Sentence
Under Section 306 of Indian Penal Code	R.I. for 5 years & fine of Rs.300/-, each in default of fine further R.I. for 3 months.
Under Section 498-A of Indian Penal Code	R.I. for 2 years & fine of Rs.100/-, each in default of fine further R.I. for 1 month.
Both Sentences are directed to run concurrently	

2. The brief facts of the case are that the marriage between deceased Rekha Verma and Accused/appellant No.1 Ghanshayam was solemnized on 30th May 1997. Appellant No.3 Bhagoli Ram, Appellant No.4 Mankuwar Bai and Appellant No.2 Gangaram are the father-in-law, mother-in-law and brother-in-law respectively. At the time of marriage parents of the deceased had given Almirah, Chain, Mangalsutra etc. and cash of Rs.2700/- as dowry. Case of the prosecution is that on 30.05.1997, after marriage the deceased came to her in-laws house. After staying 20-22 days she was went to her parents house. After reaching her parents house, she narrated her parents about the mal-treatment being given to her in her in-laws house. On 12.11.1997, she came back to her in-laws house. On 19.12.1997, when the father of the deceased went to meet the deceased to her in laws house, she again made complaint to her father. On the date of the incident, the accused persons scolded the deceased on some matter. Next

day on 05.01.1998 at 4:00am, the deceased poured kerosene oil on her body and set herself ablaze. When she could not tolerate the pain, she started running towards canal. On this the accused persons followed her to save her. Eventually, she jumped into the canal. The accused persons brought her to the house and got her admitted in the hospital for treatment. During treatment dying declaration of the deceased vide Ex.P-10 was recorded by the PW-6 S.K. Diwan, Naib Tehsildar. In dying declaration the deceased specifically levelled allegation against her mother-in-law by saying that she used to ill-treat her. However, regarding her father-in-law, brother-in-law and husband the deceased stated that they used to make comments off and on. While recording her dying declaration the deceased was in a fit state of mind. In her dying declaration, she narrated the entire scenario. During treatment, the deceased succumbed to the burn injuries Upon receiving the information regarding death of the deceased, P.S. Chandel (PW-9), Assistant Sub-Inspector registered the merg intimation.

3. FIR (Ex.P-18) was registered at the instance of (PW-14) S.L. Salam. Postmortem on the dead body of the deceased was conducted by (PW-5) Dr. V.K. Sao and he gave postmortem report Ex.P-9, wherein he opined that the deceased died on account of septicemic shock due to extensive, infected antemortem deep burn injuries. The total burn area was reported to be 90%. Merg intimation Ex.P-16 was lodged at

the instance of Dr. Uday of BSP Hospital. Inquest Report Ex.P-2 was prepared. During investigation one tumbler, match box & piece of sari, from which smell of kerosene was coming, were seized vide Ex.P-4.

4. After completion of investigation charge-sheet was filed against the accused/appellants under Sections 306 and 498-A of IPC. However, while framing charges the trial Court framed charges against the accused persons under Section 306/34 & 498-A of IPC.
5. So as to hold the accused/appellants guilty, the prosecution examined 14 witnesses. Statement of the accused/ appellants 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. However, the accused persons examined DW-1 Puneet Deshmukh and DW-2 Bhagwan Singh Thakur in their defence.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment, hence this appeal.
7. Learned counsel for the appellants submits that-
 - i) there is no specific allegation against the appellants regarding harassment, cruelty or any other demand of dowry by the appellants.

ii) the trial Court without appreciating the evidence adduced by the prosecution wrongly held the appellants guilty. There is no evidence to prove that the appellants provoked the deceased to commit suicide.

iii) the trial Court wrongly interpreted dying declaration of deceased. In the dying declaration the deceased did not level any allegation regarding demand of dowry. In the absence of vital link intention on the part of the accused to assist the victim to commit suicide, the mere fact that there is finding of harassment would not lead to the conclusion that the accused persons provoked the deceased to commit suicide.

iv) the trial Court did not appreciate the evidence and has wrongly come to the conclusion that the appellants have abetted the deceased to commit suicide. Therefore, impugned judgment passed by the trial Court deserves to be set aside and the appellants may be acquitted of the said charges.

8. Opposing the submission of counsel for the appellants, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.

9. Heard counsel for the respective parties and perused the material on record.

10. PW-1 Niranjana Deshmukh is the father of the deceased. He is

a witness to the inquest prepared by the prosecution. He stated that marriage between the deceased and accused Ghanshayam took place on 30th May, 1997. At the time of marriage, he gave portable T.V., Almirah, chain etc. and cash of Rs.2,700/-. He stated that when his daughter came for the first time after marriage, she disclosed to her mother that the accused persons used to make comments that she did not bring sufficient dowry in the marriage. He also stated that on 19.12.1997 he visited her in laws house and stayed there for two days. During his stay his daughter informed him that the accused persons used to awake her at 4:00 am to do household work and they do not offer food to her. On this he discussed the issue with accused Bhagoliram, who said that it was rainy season and time was good for agriculture activity, therefore, they had to wake up early and after one week everything would be alright. On 05.01.1998 when he was performing his duty in the plant his elder son informed him that the deceased was admitted in Sector-9 hospital and her situation was serious. Hearing this he rushed towards the hospital. In the hospital also the deceased informed her father about the ill-treatment given by her mother-in-law Mankuwar and elder sister-in-law Ramotin Bai. According to the deceased, it was her mother-in-law and elder sister-in-law Ramotin Bai, who used to ill-treat her and other people i.e. husband, brother-in-law and father-in-law used to maintain silence.

11. PW-2 Kunti Bai is the mother of the deceased. She also stated that the deceased informed her about ill-treatment given by her in laws, as according to her in laws she did not bring sufficient dowry. She too stated that in the hospital also the deceased informed her about the ill-treatment given by the in laws because of which she had to set herself ablaze.
12. Prosecution has clearly proved this fact that the deceased was the wife of accused Ghanshayam. She was married on 30th May, 1997 and died on 14.01.1998 within 8 months of marriage. She died on account of septicemic shock due to extensive burn injuries. The injuries were antemortem in nature and the total burn area was 90% and the death of the deceased was suicidal.
13. Prosecution case is based on the evidence of PW-1 Niranjan Deshmukh father of the deceased, PW-2 mother of the deceased and PW-3 Ramni Sahu neighbour of the deceased and also on the document of dying declaration Ex.P-10.
14. PW-1 Niranjan Deshmukh and PW-2 Kunti Bai both have stated in their statement that the deceased informed them about the ill-treatment given by her in laws, as according to her in laws, she did not bring sufficient dowry. Both have also specifically stated that in the hospital also deceased informed her about the ill-treatment given by her Mother-in-law and elder sister-in-law who used to ill-treat her and they do not offer food to her.

15. Quarrel between the deceased and accused persons is also proved by PW-3 Ramni Sahu neighbour of the deceased. She also narrated this fact that on the date of incident, the accused persons scolded the deceased on some matter. Thereafter, the deceased poured kerosene oil on her body and set herself ablaze. When she could not tolerate the pain, she started running towards canal. On this the accused persons followed her to save her. Eventually, she jumped into the canal. The accused persons brought her to the house and got her admitted in the hospital for treatment.
16. As per Ex.P-10 dying declaration given by the deceased was also proved. In dying declaration the deceased specifically levelled allegation against her mother-in-law by saying that she used to ill-treat her. But the family members of the deceased PW-1 Niranjan Deshmukh and PW-2 Kunti Bai mentioned this fact that Ramotin Bai elder sister-in-law, also quarreled with the deceased and did not offer food to her. But deceased herself stated that Ramotin Bai has not committed any cruelty against her. But PW-1 Niranjan Deshmukh and PW-2 Kunti Bai stated in her deposition that Ramotin Bai also used to ill-treat her. However, no specific incident was cited by the PW-1 Niranjan Deshmukh and PW-2 Kunti Bai regarding the cruelty committed by the other accused persons, as it is the need of the case to appreciate the evidence of the family members of the deceased with care and caution.

17. Ex.P-10 dying declaration of deceased has been proved by PW-6 S.K. Diwan, Naib Tehsildar and there is no reason to disbelieve the dying declaration of deceased Ex.P-10. In the dying declaration Ex.P-10 deceased has specifically narrated that her marriage was solemnized on May, 1997. On the date of incident i.e. 04.01.1998, the accused persons scolded the deceased on some matter. Next day at 4:00am, the deceased poured kerosene oil on her body and set herself ablaze. When she could not tolerate the pain, she started running towards canal. On this the accused persons followed her to save her. Eventually, she jumped into the canal. The accused persons brought her to the house and got her admitted in the hospital for treatment. In dying declaration the deceased specifically levelled allegation against her mother-in-law by saying that she used to ill-treat her and for that reason she lost her patience and committed suicide by pouring kerosene on her body and setting herself ablaze.
18. The most important thing to be noticed in dying declaration is that the deceased specifically stated therein that her father-in-law, sister-in-law, brother-in-law and husband used to make comments on her off and on only and it was her mother-in-law who used to ill-treat her and that other members of the family i.e. husband, brother-in-law and father-in-law used to keep mum.
19. Thus, from close scrutiny of the entire evidence available on

record, oral and documentary in particular the dying declaration (Ex.P-10) of the deceased which has been duly proved, it emerges that the prosecution has not been able to prove the commission of cruelty in connection with demand of dowry by the appellants No. 1 Ghanshayam, No.2 Gangaram & No.3 Bhagoliram. Though, the PW-1 Niranjan Deshmukh, PW-2 Kunti Bai and PW-3 Ramni Sahu have stated that there used to be quarrel between these appellants and the deceased and that the deceased used to complain regarding ill-treatment by them but considering the nature of allegations levelled against these appellants which are general and omnibus, this Court finds it difficult to uphold their conviction under Section 498-A of IPC. Likewise, their conviction under Section 306 of IPC is also liable to be set aside because in her dying declaration the deceased has categorically stated that it is her mother-in-law appellant No.4, who used to ill-treat her and these appellants used to comment on her off and on only. Thus, there is no specific allegation against these appellants by the deceased in her dying declaration. In other words, there is complete lack of vital link i.e. intention on the part of these appellants to assist the victim to commit suicide and therefore, the mere fact of harassment by them to the deceased, which was not continuous but occasionally, would not lead to the conclusion that they abetted the commission of suicide by the deceased. Being so, the presumption available under Section 113A of the Evidence Act is not attracted against these

appellants in the facts and circumstances of the present case.

20. For the reasons stated above, this Court is of the opinion that the prosecution has utterly failed to prove the guilt of the appellants No.1 Ghanshayam, No.2 Gangaram & No.3 Bhagoliram in relation to offence under Sections 498-A and 306 of IPC on the basis of evidence adduced by it and therefore, they deserve to be acquitted of these charges.

21. So far as conviction of appellant No.4 Mankuwar under Sections 498-A and 306 of IPC is concerned, there is sufficient evidence, oral and documentary, on record which shows that it is appellant No.4, who was continuously taunting and teasing the deceased in connection with demand of dowry to such an extent that the deceased was left with no other option but to put an end to her life by setting herself ablaze after pouring kerosene on her body. The deceased in her dying declaration (Ex.P-10) has categorically stated about the act of this appellant and the defence has failed to bring on record anything which could lead this Court to take a different view from the learned trial Court that this appellant is guilty of commission of offence under Section 306 of IPC. In the present case, it is not in dispute that the deceased committed suicide by pouring kerosene oil on herself within 8 months from her marriage and as discussed above, it is the cruel treatment of appellant No.4 to the deceased which led her to take such an extreme step. Thus, in respect of appellant No.4 all the

ingredients for applicability of Section 113A of the Evidence Act are fully satisfied.

22. On the basis of aforesaid discussions, this Court is of the opinion that the prosecution has been successful in proving the guilt of appellant No.4 Mankuwar under Sections 498-A and 306 of IPC beyond all reasonable doubt. In these circumstances, conviction of appellant No.4 Mankuwar under these sections deserves to be upheld.

23. As regards the quantum of sentence, considering the fact that the incident took place in the year 1998, at that time appellant No.4 Mankuwar was 60 years of age and presently would be about 80 years of age, she has already remained in jail for a period of about 13 months and during pendency of this appeal she was on bail, this court is of the opinion that no useful purpose would be served in sending her back to jail at this stage and the ends of justice would be served, if she is sentenced to the period already undergone by her. (See : ***Mohd. Hoshan and another v. State of A.P. Reported in AIR 2002 SC 3270 para 8***).

24. In the result, appeal is allowed in part. While acquitting appellants No.1 Ghanshayam, No.2 Gangaram & No.3 Bhagoliram of all the charges, conviction of appellant No.4 Mankuwar under Sections 498-A and 306 of IPC is hereby maintained and the sentence awarded to her by the trial Court under these Sections is reduced to the period already

undergone by her.

25. The appellants are on bail. Surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellants shall appear before this higher Court as and when directed.

Sd/-
Gautam Chourdiya
Judge

Akhilesh