

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 319 of 2008**

1. Vimal Kumar Kurmi S/o late Chuku Ram, aged about 43 years,
R/o village Pakaria, Via Pamgarh, District Janjgir Champa, CG

---- Revisioner**Versus**

1. Ramsai @ Ramu, aged about 50 years, S/o Manohar Kashyap
2. Kheekh Ram, aged 35 years, S/o Manohar Kashyap
3. Phulsai, aged 40 years, son of Manohar Kashyap
4. Dalsai, aged 32 years, son of Manohar Kashyap
5. Dulara Bai W/o Manohar Kashyap, aged 70 years
6. Shyam Bai W/o Kheekhrum Kashyap, aged 40 years
7. LaxminBai W/o Dalsai Kashyap, aged 35 years

All Resident of village Khartal, PS Navagarh, District Janjgir
Champa, CG

8. State of Chhattisgarh through Station House Officer, police
Station Navagarh, District Janjgir Champa, CG

---- Respondents

For Petitioner	:	Shri Ramakant Pandey, Advocate
For Respondents 1 to 7 :		Shri Gautam Khetrapal under the authority of Shri Vijay K. Deshmukh, Advocate
For Respondent/State:		Shri Avinash K.Mishra, PL

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Order on Board by Pritinker Diwaker, J****20/06/2018**

This revision petition has been filed by the petitioner/complainant against the judgment and order dated 26.4.2006 passed by Additional Sessions Judge Janjgir in Sessions Trial No. 255/2005 acquitting the

respondents/accused of the charges under Sections 498-A/34, 304-B/34, 302/34 and 201/34 IPC.

2. Name of the deceased in the present case is Navgita alias Sanyogita – wife of respondent/accused Ramsai whose marriage was solemnised four year prior to the incident i.e. intervening night of 7/8.6.2005 when she died after suffering 80% burn injuries. Merg Ex. P-18 was recorded on 8.6.2005 where it is stated that mental condition of the deceased was not good for which she was under treatment also. On 22.6.2005 diary statements of Vimal (applicant herein), Punibai (PW-7) and Saroj (PW-10) were recorded in which they all have stated that the deceased was subjected to cruelty by the respondents/accused for demand of dowry. Based on these statements, investigation was carried out and ultimately the *challan* was filed against the respondents/accused followed by framing of charge under Sections 498-A/34, 304-B/34, 302/34 and 201/34 IPC.

3. In order to prove the complicity of the accused/respondents in the crime in question, the prosecution has examined 16 witnesses. Statements of the accused/respondents under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. This apart, four witnesses have also been examined by the defence in support of its case.

4. After hearing the parties, the Court below has acquitted the respondents/accused of all the charges levelled against them.

5. Counsel for the applicant/revisoner submits that the Court below has erred in law in acquitting the respondents/accused of all the charges levelled against him ignoring the evidence of the witnesses. He submits that there is ample material to show that the deceased was subjected to

cruelty by the respondents/accused for demand dowry but even then the Court below has fallen in legal error in not appreciating the same in its proper perspective while recording a finding of acquittal.

6. Counsel for the respondents/accused however supports the judgment impugned and submits that the acquittal of the respondents/accused of the charges levelled against them is based on due appreciation of the evidence of the witnesses and there is no infirmity in the same. He submits that the important witnesses being PW-1, PW-7 and PW-10 have admitted that the report was lodged against the respondents/accused after due consultation with the villagers and making up their mind to somehow send them to jail. According to the counsel for the respondents/accused, unless the finding recorded by the Court below acquitting the accused persons is perverse, no interference therewith can be made in revision.

7. State counsel has duly assisted the Court.

8. Heard counsel for the parties and perused the material available on record.

9. Vimal Kumar Kurmi (PW-1) has admitted in his Court statement that he was informed by the villagers that the deceased was beaten with club and other weapons and placing reliance on their statements and after consulting the family members it was decided that the respondents/accused should be despatched inside by way of punishment. He has also admitted that prior to the incident, his relations with the respondents/accused were very cordial. He has stated that even with the father of the accused persons his relations were cordial and that he always treated the deceased as his own daughter. According to this witness, the only complaint which the accused Ram Sai used to make

was that the deceased was not handling the household work properly. According to him, at the time of marriage no dowry was settled nor did the respondents/accused made any demand for that. This witness admitted that the financial condition of the respondents/accused was much better than that of his. Punibai (PW-7) - the mother of the deceased has stated that her daughter was kept well by the respondents/accused. She has also lent support to the fact that the deceased was under treatment for mental ailment. According to this witness, she and her family members were desirous of ensuring proper punishment to the respondents/accused and for that they also took the advice from a lawyer. Saroj Kumar (PW-10) - cousin of the deceased has also made certain allegations against the respondents/accused. He too has stated that in order to ensure stringent punishment, a lawyer was engaged by them. Defence witnesses have stated that the deceased was living with her husband separately.

10. From the material available on record it is not established that the deceased was ever subjected to cruelty by the respondents/accused for demand of dowry. Even the important witnesses being PW-1 and PW-7 who are none else but the parents of the deceased have not made any specific allegation as to when and how their daughter was victimised by the respondents/accused. Had there been so, the matter must have been reported to the police by the parents of the deceased but nothing like that is visible from the record. Here the mother and father both have stated in categorical terms that the deceased was treated well in her matrimonial home and her father-in-law always treated her as his own daughter. As is evident from the record, no dowry demand was settled at the time of marriage nor did the respondents make any demand for that as their financial status was already stronger than that of the parents of

the deceased. Record also speaks that on the information gathered from the villagers, parents of the deceased took the accused persons to be the killers of their daughter and then taking advice from a lawyer they decided to see them behind the bars as punishment. Since the deceased is said to be suffering from mental ailment and was under treatment for the same, possibility cannot be ruled out that not being able to bear this trauma, she has decided to leave the earthly abode. This being the position of evidence, Court below has been considerate enough in acquitting the respondents/accused of the charges levelled against them. This Court does not see any flaw in the same. Even otherwise, the legal position prevailing as on date also comes to the rescue of the accused that if two approaches can be drawn from the evidence on record, preference has to be to the one favouring the accused.

11. In the aforesaid view of the matter, the revision preferred by the complainant/petitioner appears to without any substance and therefore it is liable to be dismissed. It is dismissed as such.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge