

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1140 of 2002**

1. Narender Kumar S/o Laxmi Prasad Shrivastava, Aged 37 years
2. Laxmi Prasad @ Laxmi Narayan S/o Shankar Shrivastava, Age about 67 years.

Both R/o Village Makri, P.S.Kundra District Kawardha (CG)

---- Appellants**Versus**

State Of Chhattisgarh Through Police Station Kunda, District Kawardha

---- Respondent

For Appellants : Shri S.K. Mishra, Advocate

For State/ Respondent : Shri Vinod Tekam, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****27.01.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 14th September, 2002 passed by the Additional Sessions Judge, Mungeli, Sessions Division Bilaspur (CG) in ST No.411/2001, whereby and whereunder the learned trial Judge after holding the appellants guilty for commission of offence under Section 498-A of the Indian Penal Code convicted and sentenced them to undergo R.I. for 1 year and to pay fine of Rs.2000/-, in default of payment of fine to undergo R.I. for 3 months.

2. The conviction is impugned on the ground that without there being any iota of evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

3. In the present case, name of the deceased is Rukhmani Bai who was wife of appellant No.1 and daughter-in-law of appellant No.2. It is alleged that after 2 years of the marriage, the deceased was being harassed physically and mentally by the appellants and that is why she has committed suicide on 1.3.2001. Father of the deceased lodged a written report and matter was investigated by the police and after completion of investigation charge sheet was filed. The appellants did not plead guilty, therefore, trial was conducted and after completion of the trial, the trial Court has convicted and sentenced the appellants as above.

4. Learned counsel for the appellants submits as under :

I. Om Narayan (PW1) who is father of the deceased has not supported the version of prosecution and there is no independent witness to establish that any physical or mental harassment was done by any of the appellants against the deceased.

II. Versions of prosecution witnesses are full of contradictions and omissions and improvements and no reliance can be placed on it.

III. The witnesses cited by the prosecution are interested witnesses and nothing is established from their version as to what kind of cruelty is done by any of the appellants.

5. On the other hand, learned counsel for the State supported the judgment and submits that the Court below has rightly convicted and sentenced the accused/appellants and the conviction is not liable to be interfered with.

6. In order to appreciate the arguments, I have heard Learned Counsel for the parties, perused the judgment impugned and record of the Court below.

7. To sustain the conviction, prosecution has examined as many as 13 witnesses.

8. Dr. T.S. Shyam (PW8) conducted autopsy on the dead body of the deceased and as per his version deceased died due to septicemic shock on account of burning.

9. Om Narayan (PW1) is father of the deceased. As per version of this witness, his daughter was living peacefully in the house of the appellants. He further deposed that no complaints have been made by her after marriage.

10. Dukhiya Bai (PW3) is mother of deceased- Rukhmani Bai and as per version of this witness, her daughter informed that the appellants were demanding motor vehicle and harassing her. Devendra (PW5), who is brother of the deceased also deposed on

the same line. Versions of Dukhiya Bai (PW3) and Devendra (PW5) are based on information given by Rukhmani Bai and they are not the neighbours of the deceased. They are residents of village Nawagarh and Gangpur while the incident has taken place in village Makri.

11. Now the point for consideration is that whether hearsay evidence of these two witnesses is admissible and can be acted upon. Hearsay evidence is not received as relevant evidence. In

Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011)

2 SCC 532, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

12. But for the hearsay evidence of above two witnesses, there is nothing on record to connect the appellants in the crime. When hearsay evidence is in admissible in evidence and there is no other evidence, it is difficult to come to the conclusion that any of the appellant did any willful conduct of cruelty or harassment. Therefore, the finding arrived at by the trial Court is not sustainable.

13. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellants are set aside and they are acquitted of the charges framed against them.

14. The appellants are reported to be on bail. Their bail bonds stand discharged.

Sd/

(Ram Prasanna Sharma)

JUDGE