

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 183 of 2009

Bina Hira, Wife of Manoj Hira, aged about 28years, R/o. Village Madanpur, P.S. Jainagar, District Surguja, CG.

---- Appellant

Versus

1. State of Chhattisgarh through Officer In-charge, P.S. Jainagar, District Surguja, CG.
2. Manoj Hira, Son of Late Mangal Hira @ Asim Hira, aged about 46 years, Occupation Agriculturist.
3. Smt. Shikha D/o. Late Mangal Hira @ Asim Hira, aged about 31 years, Occupation House wife, R/o. Village Tatapani, P.S. Ramanujganj, District Surguja, CG.
4. Smt. Dipti Rani wife of Mangal Hira @ Asim Hira, aged about 66 years, Occupation House wife.
5. Dilip Son of Mangal Hira @ Asim Hira, aged about 38 years,
No. 2, 4 to 5 are R/o. Village Silfili, P.S. Jainagar, Tahsil Surajpur, District Surguja, CG.
6. Govind Mandal Son of Late Paresh Mandal, aged about 46 years, Occupation Agriculturist, 6 is R/o. Village Ajabnagar, P.S. Jainagar, Tahsil Surajpur, District Surguja, CG.

--- Respondents

For Applicant	: Smt. Meena Shastri, Advocate and Smt. Ranjana Singh Advocate
For State/Respondent	: Shri Himanshu Sharma, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

07/05/2019

The facts leading to the disposal of the revision petition, in brief, are that the marriage of accused/respondent - Manoj with applicant/complainant - Bina Hira was solemnized in village Silfili in the year 1996 and she remained in her matrimonial home till 11.11.1996. It is alleged that just after marriage the respondents/accused who happen to be her husband and in-laws, started making demand of Colour TV, Chain and Scooter and subjected her to harassment and cruelty for the same. It is further alleged that on 11.11.1996 the cruelty on the part of the accused/respondents

towards her reached its climax where they drove out of her matrimonial home. After reaching her maternal house and staying there for sufficient long time she filed the FIR (Ex. P-1) to the police. Thereafter on 12.01.1997 the police recorded the statements of complainant (PW-1), her mother (PW-2), her brother (PW-3) and one Atul Rai (PW-4) and after completion of investigation the *challan* was filed against the respondents/accused under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961.

2. Learned Magistrate vide judgment dated 28.05.2008 convicted the respondents/accused under Section 498-A IPC and Section 4 of Dowry Prohibition Act and sentenced each of them to undergo RI for 6 months with fine of Rs. 100/- for each offence. However in appeal, the findings recorded by the learned Magistrate have been set aside and the respondents/accused have been acquitted of the charge leveled against them vide judgment impugned dated 12.12.2008. Hence this revision by the applicant/complainant.

3. Counsel for the applicant/complainant submits that in spite of sufficient material to show that immediately after marriage the respondents/accused started demanding dowry and subjected her to cruelty, the lower Appellate Court has committed a gross legal error in acquitting all of them of the charge leveled against them and upturned the well reasoned judgment of the trial Court which is based on proper appreciation of the evidence on record.

4. None appears for the privates respondents. State counsel however assist this Court.

5. If the evidence of PW-1 to PW-4 recorded in the Court is compared to the one made by them before the police, it emerges that lot of contradictions and omissions are present therein. Even the allegations contained in the statements recorded before the Court and also the police are wholly inconsistent. While stating before the Court these four witnesses have improved their version bringing-in innumerable exaggerations against the respondents/accused. Secondly, the evidence of complainant (PW-1) is not specific as to when and by whom the demand of dowry was in fact made resulting in her subjection to cruelty. It is relevant to note that she resided in her matrimonial home only from 06.03.1996 to 11.11.1996 and during this period she did not inform the Police about the cruel attitude of the respondents/accused. Even her parents or siblings did not do that. The prosecution did not even examine the Police Officer who recorded the FIR or the Investigating Officer. This lacuna on the part of prosecution deprived the respondents/accused of defending their case properly. Even after reaching her maternal home, the complainant waited for a period of one and half month in lodging the report on 30.12.1996 which is indicative of the fact that the report was made by the complainant after due deliberation in the family.

6. Thus in view of the factual position described above and keeping in mind the fact that number of contradictions and omissions find place in the evidence of the prosecution witnesses which remained un-rebutted for non examination of the Investigating Officer, this Court is of the opinion that the Lower Appellate Court has not committed any illegality in acquitting the respondents/accused. Further, keeping in mind the legal position

existing today that if the evidence on record gives rise to two possible views, the one favouring the accused has to be preferably taken, the judgment impugned is not require to be disturbed.

7. Revision thus fails and dismissed.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi / Pawan