

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 370 of 2009

Judgement reserved on 25.04.2019

Judgement delivered on 11.12.2019

1. Naveen Kumar S/o. Pukram Satnami, Aged about 21 years,
2. Pukram S/o. Ratiram Satnami, Aged about 48 years,
3. Rajkumari W/o. Pukram Satnami, Aged about 47 years,

---- Appellants

Versus

State of Chhattisgarh through Police Station Basna, District
Mahasamund (C.G.)

---- Respondent

For Appellants : Mr. Manoj Paranjpe, Advocate.
For Respondent : Mr. Himanshu Sharma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Challenge in this appeal is to the judgment of conviction and order of sentence dated 20.04.2009 passed by the Sessions Judge, Mahasamund (C.G.) in Sessions Trial No. 05/2009, wherein the trial Court convicted the accused/appellants under Sections 304-B and 498-A 34 IPC, and sentenced them to undergo R.I. for 7 year and to pay fine of Rs. 2000 each of the appellants under Section 304-B

IPC, RI for 1 year and to pay fine of RS. 500/- each under Section 498-A IPC with default stipulations.

2. The genesis of the prosecution case lies in the information regarding death of Kheerbai (hereinafter referred to as deceased) was made by Bhururam (PW-1) in Police Station Basna and on the basis of which merg number 48 of 2008 was recorded under Ex.P-1. The dead body of deceased was sent for postmortem examination at Community Health Centre, Basna, where she expired. As per postmortem report (Ex.P-8) the death was homicidal in nature and was occurred due to unknown poisonous substance. On completion of the investigation, charge sheet was laid against the appellants together with Naveen Kumar- husband of the deceased, Pukram father-in-law and Rajkumar- mother-in-law of the deceased under Section 498-A and 304-B and read with section 34 IPC. According to the prosecution, the investigation revealed that the appellants had been demanding dowry and in pursuit thereof, had subjected the deceased to harassment and torture for bringing less dowry from her parents. As a result of harassment and cruelty meted out to the deceased by the appellants, therefore, the deceased committed suicide on 28.08.2008 by consuming poisonous substance. Her viscera was preserved and sent for forensic examination. On the basis of merg inquiry Ex.P-1 and postmortem report Ex.P-8, FIR Ex.P-11 was registered against the appellants in police Station Basna.

3. In order to prove its case the prosecution has examined 13 witnesses in support of its case. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. Counsel for the appellant submits that even if the entire case of the prosecution is taken as it is, no case under Sections 304 B and 498-A IPC is made out against the appellants as all the allegations levelled against them are general in nature. He submits that the learned Sessions Judge did not appreciate the evidence in a proper manner. He submits that the findings recorded by the trial Court are perverse on the state of evidence on record and there was no question of any dowry demand from the parents of the deceased and therefore, the appellants could not be convicted either for the offence punishable under Section 304 B and 498-A IPC. He placed the reliance in the matter of **Baijnath and other v. State of Madhya Pradesh 2017 (1) SCC 101**, **Major Singh v. State of Punjab (2015) 5 SCC 201** and **Biswajit Halder @ Babu Halder and others v. State of W.B. (2008) 1 SCC 202**.

5. Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court.

6. Appellant No.1 namely Naveen, appellant No.2 Pukram and appellant No.3 Rajkumar are the husband, father-in-law and

mother-in-law, of the deceased respectively. Bhururam (PW-1) uncle of appellant has stated in his evidence that earlier the engagement of the deceased was fixed with other boy of village Medhipali and she was in love affair with him. He stated in his evidence that the deceased was never intended and was never interested in getting marriage with the appellant No.1.

7. Ramoratre (PW-1) father of the deceased has stated in his evidence that the marriage of the deceased with accused/appellant Naveen was solemnized prior to three -four months of the incident and the deceased died on 24.08.2008. According to this witness, about 8 days before the marriage, her daughter was brought to his house where she had informed him that accused/appellants used to harass her and demanded T.V. and motorcycle as dowry. He has stated that the deceased had complained of ill treatment by the father-in-law and mother-in-law and she was also subjected to cruelty at the hands of his husband appellant No.1. This witness also admits the fact that when the marriage of her daughter was settled and even at the time of marriage no demand of dowry was made by the appellants. According to this witness prior to the marriage of Naveen- the appellant No.1, engagement of her daughter was fixed with a boy of Medhnipali and she was having love affair with the boy of Medhnipali. He has stated that on two-three occasions her son-in-law i.e. appellant No.1 herein had come to her house along with the deceased. She has stated that in Sahu community if any such incident takes place, matter is reported to

the head of the community and ultimately that family is boycotted. However, in the present case, no such complaint was made to the head of the Sahu community. After looking into the allegations made by the parents and witnesses namely PW-4, PW-5 and PW-6 this Court feels it surprising as to why the matter of harassment and cruelty was not reported to the police against the appellants. Dr. B. R. Malik (PW-9) who had conducted the post mortem examination Ex.P-8 of the deceased has stated that he did not find any injury mark on her body. The deceased was admitted in the hospital about 4 days in between the dying declaration was not recorded by the police.

8. Thus considering the entire evidence adduced by the prosecution it is clear that though some allegations have been made by Bhururam (PW-1), Ramoratre (PW-2), Raimoti (PW-3), Shyamkumar (PW-4) and Laxman Kumar (PW-5) against the accused/appellants are general in nature, if their complete statements are taken into consideration, it creates a doubt that the deceased died because of being subjected to cruelty by the accused/appellants. The witnesses have also failed to give any specific date on which the cruelty meted out to her by the accused/appellants. Essential ingredients for dowry death are cruelty or harassment for or in connection with dowry and mere demand of dowry would not be an offence under Section 304 B and 498 -A IPC. While dealing with an identical question in the matter of Amar Singh it has been held by the Apex Court as under:

"23. .Thus, there was evidence in the case of Amar Singh about his exact conduct which caused harassment to the deceased but there was no such evidence in the case of Jagdish and Gordhani. A prosecution witness who merely used the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498-A and 304 B IPC. For this reason, the High Court has taken a view that the charges against Jagdish and Godhani have not been established beyond reasonable doubt and that their case is distinguishable from that of Amar Singh and that Jagdish and Gordhani appear to have been implicated because they were members of Amar Singh's family.

24. In *Kans Raj v. State of Punjab and other* [(2000) 5 SCC 207] : (AIR 2000 SC 2324 : 2000 AIR SCW 2093), this Court cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, this Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

9. Having thus dealt with the facts and circumstances of the case as above, this Court is of the considered opinion that the prosecution has not brought on record any clinching material to substantiate the allegations made against the appellants. Evidence of the parents and friend of the deceased being self contradictory in material particulars is not sufficient to uphold the conviction slapped by the Court below and that being so benefit of doubt should definitely go to the accused persons.

10. Consequently, the appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The Appellants are acquitted of the charge framed against them.

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh