

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2871 of 1999

Judgement reserved on 10.08.2019

Judgement delivered on 05.12.2019

1. Padumlal S/o. Late Tikaram Kalar, Aged about 40 years, R/o. Dharsiwa, P.S. Kasdol, District Raipur (M.P.) (**Died**)
2. Thangarilal S/o. Padumlal, Aged about 24 years, R/o. Dharsiwa, P.S. Kasdol, District Raipur (M.P.)
3. Mallinbai W/o. Padumlal Kalar, Aged about 48 years, R/o. Dharsiwa, P.S. Kasdol, District Raipur (M.P.)
4. Bansilal Kalar S/o. Motilal, Aged about 38 years, R/o. Lavan, P.S. Kasdol, District Raipur (M.P.) (**Died**)

---- **Appellants**

Versus

State of Madhya Pradesh through Police Station Kasdol, District Raipur (M.P.)

---- **Respondent**

For Appellants : Mr. Samir Singh, 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 12.10.1999 passed by the Additional Sessions Judge, Baloda Bazar District Raipu (C.G.) in Sessions Trial No. 438/1997, wherein the appellate Court convicted the accused/appellants under Sections 498- A and 306/34 IPC, and

sentenced them to undergo R.I. for 3 year and to pay fine of Rs. 500 each of the appellants under Section 498-A IPC, RI for 10 years and to pay fine of RS. 1000/- each under Section 306/34 IPC with default stipulations.

2. According to prosecution, deceased Sukwara Bai (hereinafter referred to as 'deceased') was married to Maniram in the year 1977-78. Appellant No.1 and other co-accused persons, namely, Padumlal, Thagarilal, Mallinbai and Bansilal Kalar, being father-in-law, brother-in-law, mother-in-law and uncle-in-law of the deceased, used to harass her for bringing less dowry from her parents. Appellants subjected the deceased to 'marpeet' and cruelty in order to fulfill their demand of dowry. As a result of harassment and cruelty meted out to the deceased by the appellants, deceased Sukwara Bai committed suicide on 31.08.1997 by consuming pesticide. The deceased was brought to Government Hospital Lavan where she expired. The intimation of death of the deceased was given to the Police by the Doctor Banjare and Dr. Y.K. Sharma (PW-12), on the basis of which merged intimation Ex.P-8 was recorded. The dead body of deceased was sent for postmortem examination. As per postmortem report, death of deceased Sukwara Bai occurred due to poisoning. Her viscera was preserved and sent for forensic examination. On the basis of merged inquiry and postmortem report Ex.P-9, FIR Ex.P-10 was registered against the appellants for the offence under Sections 306 and 498-A IPC. After due investigation, appellant and

other co-accused persons were prosecuted under Sections 306 and 498-A IPC and were put to trial.

3. In order to prove its case the prosecution has examined 20 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 306 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 Additional Sessions Judge did not appreciate the evidence in a proper manner. Marriage of the deceased took place in the year 1977-78 and she was residing separately with her husband and the deceased was mentally imbalanced. 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 306 and 498-A IPC.

5. On the other hand counsel for the respondent/State supports the judgment impugned and submits that after about one year of marriage, the deceased was subjected to cruelty to such an extent that she was left with no other option but to end her life by consuming poison and in these circumstances the judgment impugned convicting and sentencing her as mentioned above, is

just and proper and no interference with the same is called for in this appeal.

6. Having heard counsel for the parties and perused the material available on record including the evidence of witnesses PW-1 the husband of the deceased who was not made accused in this case and PW-2 Laharam- the other villagers, it has been stated that the behaviour of deceased Sukwara Bai was not mentally abnormal. This Court has seen the evidence of all the witnesses in particular that of parents and brother of the deceased being PW-13, PW-14, PW-15, PW-16 and PW-18 who all have stated unequivocally that after marriage of the deceased, the accused/appellants used to demand the money and also subjected her to mental and physical cruelty when the demand could not be fulfilled. After looking into the allegations made by the parents, this Court feels it surprising as to why the matter was not reported till 15 years after marriage and why her parents waited for this long period after her death to open their mouth against the accused/appellants. If the deceased was being really subjected to cruelty for demand of dowry, the report must have been lodged against the accused persons at the first instance itself and they should not have waited for her tragic and untimely end. Not even a single instance has been proved by the prosecution which could have established the abetment on the part of the accused/appellants instigating the deceased to put an end to her life as contained in Section 107 IPC. What exactly drove the

deceased to end her precious life must have been within her exclusive knowledge but for that the family members cannot be roped in simply because the incident took place in her matrimonial house. Therefore, in the instant case, when Sukwara Bai, after leaving her matrimonial house, was residing separately with her husband about 6-7 years before her death, the prosecution had to prove other circumstances which abetted for commission of suicide by Sukwara Bai. The prosecution has failed to prove such circumstances. Therefore, offence under Section 306 IPC is not made out against the Appellants. Since no dowry demand and resultant cruelty has been proved by the prosecution, as to how, when and in what manner she subjected the deceased to cruelty or instigated her to end her life, therefore, the conviction under Section 498-A IPC cannot be established by the prosecution. Under such circumstances, the learned Additional Sessions Judge had erred in convicting the appellants for commission of offence punishable under Sections 306 and 498-A IPC.

7. 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