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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.186 of 2002

Judgment Reserved on : 7.2.2020

Judgment Delivered on : 17.6.2020

1. Khagendra Sharma, aged 34 years, son of Sita Ram Sharma, occupation Kirana Shop, Indira Vihar, near Vedic Convent School, Sarkanda, P.S. Sarkanda, Tahsil and District Bilaspur, Chhattisgarh ---
His appeal is abated vide order dated 3.4.2018
2. Dharmendra Sharma, aged 27 years, son of Sita Ram Sharma, occupation Kirana Shop, resident of near Vedic Convent School, Sarkanda, P.S. Sarkanda, Tahsil and District Bilaspur, Chhattisgarh
3. Parvati Bai, aged 70 years, wife of Sita Ram Sharma, housewife, resident of near Vedic Convent School, Sarkanda, P.S. Sarkanda, Tahsil and District Bilaspur, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Station House Officer, Sarkanda, District Bilaspur, Chhattisgarh

--- Respondent

For Appellants	:	Shri A.K. Prasad, Advocate
For Respondent	:	Shri Amit Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. During pendency of this appeal, Appellant No.1, Khagendra Sharma died and his appeal has been abated vide order dated 3.4.2018.
2. The appeal has been preferred against the judgment dated 4.2.2002 passed by 4th Additional Sessions Judge, Bilaspur in Sessions Trial No.83 of 2001, whereby the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 10 years
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 3 years

3. Prosecution case, in brief, is that Appellant No.2 is *dever* (brother-in-law) of deceased Rina Sharma and Appellant No.3 is her mother-in-law. Marriage between deceased Rina Sharma and Appellant No.1, Khagendra Sharma (dead) was solemnised on 2.6.1996. Allegedly, after the marriage, whenever the deceased visited her maternal house, she told that she was being tortured by her mother-in-law/Appellant No.3 and brother-in-law/Appellant No.2 saying by them that she had brought lesser dowry and they were making demand of a sum of Rs.50,000/- and a chain made of gold. Her husband/Appellant No.1 (dead) was also supporting his brother and mother (Appellants No.2 and 3). Her father Narmada Prasad (PW1) went to her matrimonial house and inculcated her father-in-law Sita Ram Sharma. Her father-in-law assured her father that the same will not be repeated with her. Few days thereafter, on 21.10.2000, her father-in-law went to her father's house and informed that she was admitted in the hospital. Her maternal family members visited her in the hospital and a talk also took place with her. Thereafter, her father made a written complaint (Ex.P9). Thereafter, her dying declaration (Ex.P10) was recorded by Naib-Tahsildar S.S. Dubey (PW8). During the course of treatment, on 28.10.2000, she died in the hospital. Inquest proceeding (Ex.P3) was conducted. Post mortem examination over her dead body was conducted by Dr. A.K. Shukla (PW9). Post mortem report is Ex.P11. On the basis of morgue inquiry,

First Information Report (Ex.P13) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants. Charges were framed against them.

4. In support of its case, the prosecution examined as many as 12 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. 1 witness has been examined in defence.
5. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellants as mentioned in second paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants, referring to the statement of Narmada Prasad (PW1), who is father of the deceased, submitted that demand of dowry has not been established in any manner. From the evidence adduced by the prosecution, it is established that at the time of *faldan* only, demand for dowry was made, but there is no evidence on record to show that any demand for dowry was made after the marriage. There is also no evidence on record to establish that soon before her death the deceased was subjected to cruelty or harassment on account of demand for dowry. Therefore, conviction of the Appellants under Section 304B of the Indian Penal Code is not sustainable. It was further submitted that there is no evidence on record against Appellant No.2/brother-in-law with regard to any cruelty. Despite that, the Trial Court has wrongly convicted him. As regards Appellant No.3/mother-in-law, it was submitted that

even if the contents of dying declaration (Ex.P10) of the deceased and the statements of witnesses are considered to be as they are, the only offence under Section 498A of the Indian Penal Code is made out against her. It was further submitted that if the offence under Section 498A of the Indian Penal Code is proved against her, she has already suffered jail sentence of about 8-9 months and her present age is about 90 years and, therefore, she be sentenced with the period already undergone by her.

7. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. I have gone through the entire statements of Narmada Prasad (PW1), Seema (PW2) and Padmavati (PW3), father, sister and mother of the deceased, respectively.
10. From the Court statement of Narmada Prasad (PW1), it reveals that before the marriage, at the time of *faldan*, a sum of Rs.50,000/- and a chain made of gold were demanded, but that demand was made by father-in-law of the deceased only. This witness has not stated anything about any demand made by the Appellants or father-in-law of the deceased after the marriage. This witness has further deposed that 1 – 1½ years after the marriage, *marpeet* started taking place with the deceased. After committing *marpeet* with the deceased, she was expelled out from her matrimonial house. Therefore, she came back to her maternal

house. Later on, this witness along with his relatives went to the matrimonial house of the deceased. There, father-in-law of the deceased apologised. Thereafter, this witness sent the deceased to her matrimonial house. He has further deposed that few days thereafter, the deceased and her husband took a separate house on rent and started living there. Thereafter, her husband got a job at Korba and, therefore, the deceased and her husband started living at Korba and they lived at Korba for about 7-8 months. Thereafter, the job of the husband of the deceased got terminated and, therefore, both they returned to Bilaspur at the house of father-in-law of the deceased. According to this witness, thereafter, on the occasions of festivals, the deceased had been visiting her maternal house and had been telling that she was being tortured saying that she had brought lesser dowry. This witness has further deposed that 4 years after the marriage, the deceased had got pregnant for the first time. Thereafter, on 21.10.2000, father-in-law of the deceased came to this witness and informed that the deceased was admitted in the hospital. According to this witness, when he went to the hospital and met with the deceased there for the first time, the deceased did not tell him anything. On 24.10.2000, again when he visited the deceased in the hospital, she told him that her mother-in-law had been torturing her for the last 3-4 days and she had not been giving her food. She had been giving her many clothes to wash. She had not taken food for the last 3-4 days and whenever she had been going to take rest her mother-in-law switched off the fan. According to this witness, the deceased also told him that when her husband returned home, she told him about the tortures being given to her by her mother-in-law, but her husband told him that he did not want to hear anything

against his mother and he also told her that she could hang herself on fan or she could pour kerosene on her and set her on fire and, therefore, she set her on fire.

11. Seema (PW2), sister of the deceased has deposed that last time the deceased had visited her maternal house at the time of *tija* festival. At that time, she had told that her mother-in-law had not been allowing her to take rest and she had been taking work from her frequently. This witness has further deposed that in the hospital when she had met with the deceased, she had told her that on making complaint to the husband against her mother-in-law, he did not hear her and told her that she could hang herself on fan or pour kerosene on her and set her on fire. Padmavati (PW3), mother of the deceased has also corroborate the above facts in her statement.
12. During the course of treatment of the deceased, Naib-Tahsildar S.S. Dubey (PW8) recorded her dying declaration (Ex.P10) on 24.10.2000 at 3:10 p.m. I have gone through her dying declaration (Ex.P10) in which she has stated the incident of her burn to be accidental. She has levelled only allegation of torture against her mother-in-law. When was she being tortured and in what manner, nothing has been stated by her in this regard in her dying declaration (Ex.P10).
13. On a minute examination of the above evidence, it is clear that there is evidence of demand for dowry made at the time of *faldan* only. There is no evidence on record to show that any demand for dowry was made after the marriage. Rather, the evidence on record shows that for sometime the deceased lived with her

husband at Bilaspur in a separate house on rent. Thereafter, she lived at Korba with her husband for about 7-8 months. When job of her husband running at Korba got terminated, she and her husband left Korba and they again started living at Bilaspur at the house of her father-in-law. It cannot be said that any cruelty or harassment was done with her for demand of dowry even after passing of a long time after the marriage and that too when she lived with her husband in a separate house for a long time. The prosecution has totally failed to prove that demand for dowry was made from the deceased and soon before her death also she was subjected to cruelty on account of demand for dowry. Though there is evidence on record which establishes that mother-in-law of the deceased tortured the deceased, i.e., she was not giving her food properly, she was taking work from her frequently and was also not allowing her to take rest, her (mother-in-law's) act falls within the ambit of Section 498A of the Indian Penal Code only.

14. As regards Appellant No.2/brother-in-law of the deceased, I find that there is no evidence on record to prove any of the offence alleged against him and, therefore, he deserves acquittal.
15. Therefore, Appellant No.2/brother-in-law of the deceased is acquitted of both the charges framed under Sections 498A and 304B of the Indian Penal Code. Appellant No.3/mother-in-law of the deceased is acquitted of the charge framed under Section 304B of the Indian Penal Code, but her conviction under Section 498A of the Indian Penal Code is affirmed. So far as sentence part is concerned, she has already suffered jail sentence of about 8-9 months and her present age is about 90 years. Therefore,

against her conviction under Section 498A of the Indian Penal Code, I restrict her sentence to the period already undergone by her.

16. Consequently, the appeal is allowed in part to the extent indicated above.
17. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE