**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No.1695 of 2000**

1. Soukhi, son of Shri Ram Lochan Baretha, aged about 22 years, resident of Mote, Thana Takhatpur, District Bilaspur
2. Ram Lochan, son of Shri Jeevan Lal Baretha, aged about 45 years, resident of Mote, Thana Takhatpur, District Bilaspur,
3. Smt. Shantibai, wife of Shri Ramlochan Baretha, aged about 40 years, resident of Gram Mote, Thana Takhatpur, District Bilaspur
4. Smt. Nakchhedin Bai, widow of late Shri Jeevanlal Baretha, aged about 80 years, resident of Gram Mothe, Thana Takhatpur, District Bilaspur ----- **Deleted**

**---- Appellants**

**versus**

State of Madhya Pradesh (now Chhattisgarh) through Station House Officer, Police Station Takhatpur, District Bilaspur

**--- Respondent**

| | | |
|---|---|---|
| For Appellants | : | Shri Malay Shrivastava, Advocate |
| For Respondent | : | Shri Alok Nigam, Government Advocate |

**Hon'ble Shri Justice Arvind Singh Chandel**

**Judgment on Board**

**6.1.2020**

**1.** The instant appeal has been preferred against the judgment dated 30.6.2000 passed by 5th Additional Sessions Judge, Bilaspur in Sessions Trial No.355 of 1999, whereby each of the Appellants has been convicted and sentenced as under:

| **Conviction** | **Sentence** |
|---|---|
| Under Section 498A of the Indian Penal Code | Rigorous Imprisonment for 2 years |
| Under Section 306 of the Indian Penal Code | Rigorous Imprisonment for 5 years |

**2.** During pendency of this appeal, Appellant No.4 died and, therefore, the appeal, so far as it relates to her, stands abated.

**3.** Prosecution case, in brief, is that 3 years prior to the date of incident, Gayatribai (deceased) was married with Appellant No.1. On 5.4.1999 at about 12:00 noon, she consumed poisonous substance. She was taken to hospital at Takhatpur. From there, she was shifted to Government Hospital, Bilaspur. During treatment, she died on 6.4.1999. Morgue (Ex.P4) was lodged. On the basis of morgue inquiry, First Information Report (Ex.P19) was recorded on 29.6.1999. 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 accused persons. Charges were framed against them.

**4.** In support of its case, the prosecution examined as many as 14 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt and pleaded false implication. No 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 the first paragraph of this judgment. Hence, this appeal.

**6.** Learned Counsel appearing for the Appellants submits that without there being sufficient evidence on record, the Trial Court has wrongly convicted the Appellants. Ingredients of Section 107 of the Indian Penal Code are missing. There is nothing on record on the basis of which it could be said that the deceased was subjected to cruelty for demand of dowry or otherwise by the Appellants and for that reason she committed suicide. From the statements of witnesses, it is established that after the delivery, she was

continuously suffering from severe pain in stomach and, therefore, the possibility that for this reason she would have committed suicide cannot be ruled out.

**7.** Learned Counsel appearing for the State supports 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.** Conviction of the Appellants is mainly based upon the statements of Birijbai (PW1), mother of the deceased and Kusum (PW2), sister of the deceased. All other remaining prosecution witnesses have not supported the case of the prosecution and, therefore, the statements of Birijbai (PW1) and Kusum (PW2) only are to be considered.

**10.** It is not in dispute that the marriage of the deceased was performed 3 years prior to the incident and out of the wedlock a girl child took birth. Birijbai (PW1), mother of the deceased, in her Court statement, has deposed that after the marriage, when the deceased used to visit her maternal house, she used to tell her that the Appellants used to harass her. This witness has further deposed that at the time of delivery of the deceased, she had visited her matrimonial house. At that time, the deceased had told her that she was being beaten and was also being harassed. It has been further deposed by this witness that on that date in front of her also, Appellants No.2 and 3 and Appellant No.4 (dead) had abused the deceased. During her cross-examination, she has admitted that at the time of inquest, she had not stated anything

against the Appellants. In paragraph 20 of her cross-examination, this witness has further admitted that she had told that the Appellants had not done anything with the deceased and how the deceased died she was not aware. In paragraph 21, she has further admitted that after the delivery, the deceased had been suffering from severe pain in her stomach and due to that she committed suicide by consuming poisonous substance.

**11.** Kusum (PW2), aged about 13 years, sister of the deceased has only deposed that when, at the time of delivery of the deceased, she had gone to her matrimonial house, her in-laws were abusing her, but why was she being abused, this witness is not aware. This witness has also admitted that after the delivery, the deceased was suffering from severe pain in her stomach and, therefore, she used to agonise.

**12.** On a minute examination of the statements of both Birijbai (PW1) and Kusum (PW2), the only fact is established that at the time of delivery, both these witnesses had visited matrimonial house of the deceased and at that time in-laws of the deceased had abused the deceased in their presence. But, on what matter, the deceased was abused at that time, these witnesses have stated that they are not aware in that regard. They have not stated anything in this regard. Kusum (PW2) has not stated anything except about the incident of abusing. Though Birijbai (PW1) has stated that when the deceased used to visit her maternal house, she used to tell her that she was being harassed at her maternal house. But, why and how the deceased was being harassed at her matrimonial house, has not been stated by this witness nor according to this witness

she was told about this by the deceased. Thus, apart from that single incident of abusing, there is no other material available on record on the basis of which it could be established that the Appellants subjected the deceased to cruelty as defined under Section 498A of the Indian Penal Code. The said alleged single incident of abusing also does not establish the offence as defined under Section 498A of the Indian Penal Code. Therefore, a presumption under Section 113A of the Indian Evidence Act also does not attract to the instant case. Hence, the finding of the Trial Court in this regard is not sustainable. From the admissions made by Birijbai (PW1) and Kusum (PW2), it cannot be ruled out that after the delivery the deceased was suffering from severe pain and used to agonise and for this reason she would have committed suicide.

**13.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.

**14.** 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**

Gopal