

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2485 of 1998

Judgment Reserved on : 10.1.2020

Judgment Delivered on : 19.5.2020

- 1. Rajesh Soni, aged 29 years,
- 2. Ramesh Kumar Soni, aged 21 years,
Both sons of Noharlal Soni,
- 3. Bundabai, aged 50 years, wife of Noharlal Soni,
All residents of Hatband Kala, P.S. Nevra, at present at Hathni Para,
Bhatapara, District Raipur, M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants : Shri Rahil Arun Kochar, Advocate
For Respondent : Shri Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 16.10.1998 passed by the Sessions Judge, Raipur in Sessions Trial No.13 of 1998, whereby each of the Appellants has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 5 years
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year

2. Prosecution case, in brief, is that Gitabai committed suicide by pouring kerosene on her on 2.11.1997. Her marriage was performed with Appellant No.1, Rajesh 8-9 years prior to the

incident. Out of their wedlock, 2 children took birth. Appellant No.2, Ramesh is *dever* (brother-in-law) of the deceased and Appellant No.3, Bundabai is her mother-in-law. After the marriage, the Appellants used to quarrel with the deceased and torture her. Having been harassed, the deceased used to go to her maternal house frequently. On the date of incident also, i.e., 2.11.1997, which was the day of festival of *bhaiduj*, her brothers Somraj (PW17) and Shriram (not examined) had come to her matrimonial house. In the presence of her both the brothers, the Appellants quarreled with her and also committed marpeet with her. Due to that, she poured kerosene on her and set her on fire. She was taken to hospital. During the course of treatment, her dying declaration (Ex.P9) was recorded by Tahsildar Siddharth Das (PW6). She died on 6.11.1997 during the course of treatment. Morgue was recorded. After morgue inquiry, offence 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. Charges were framed.

3. In support of its case, the prosecution examined as many as 22 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, the Trial Court, vide the impugned judgment, convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants submitted that without there being sufficient evidence on record against the Appellants, they have wrongly been convicted by the Trial Court. It

was further submitted that Yogendra (PW1), son of the deceased has not supported the case of the prosecution and turned hostile. The case of the prosecution is based only on the statements of Shantibai (PW16), mother of the deceased and Somraj (PW17), brother of the deceased. Other witnesses have not supported the case of the prosecution. It was further submitted that mother of the deceased has categorically admitted the fact that the deceased was educated in a city and she did not want to get married with a person living in Village Hathband. She has further admitted that the deceased never remained happy from her husband. There is nothing on record on the basis of which it could be said that the Appellants ever instigated or abetted the deceased to commit suicide as defined under Section 107 of the Indian Penal Code. Mother of the deceased has further categorically admitted that the deceased had told her in the hospital that she was not allowed to go along with her brothers to Durg and she was kept in the kitchen and was not allowed to come out from there. Thus, it is clear that on getting annoyed for this reason, the deceased committed suicide. Therefore, the Appellants are entitled to get acquittal.

6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that the marriage of the deceased and Appellant Rajesh was solemnised in the year 1989, i.e., about 9 years prior to the incident. Yogendra (PW1), son of the deceased has not supported the case of the prosecution and turned hostile. Other neighbours of the Appellants, namely, Pawan Kumar Verma (PW2)

and Rambishal (PW3) have also not supported the case of the prosecution and turned hostile. Tahsildar Siddharth Das (PW6) is the witness who recorded the dying declaration (Ex.P9) of the deceased. As contained in Ex.P9, the deceased committed suicide because the Appellants quarreled with her. Siddharth Das (PW6) has admitted that the deceased had not told him that when the quarrel had taken place. He has also admitted that the deceased had not made any complaint regarding demand of dowry.

9. Shantibai (PW16), mother of the deceased has deposed that after the marriage, whenever the deceased visited her maternal house she told her that the Appellants used to make demand for dowry and they used to torture her and commit marpeet with her therefor. According to this witness, due to this, the deceased used to come to her maternal house and after 5-6 months of her stay, her husband used to come and after inculcating her he used to take her back. This witness has further deposed that 2-3 years before also, Appellant Rajesh had committed marpeet with the deceased and for this he had also undergone jail sentence. This witness has further deposed that on the date of incident also, her son Somraj (PW17) and cousin of Somraj, namely, Shriram (not examined) had gone to the matrimonial house of the deceased. There, after taking meals, the Appellants had committed marpeet with the deceased and they had dragged her to the kitchen. 10 minutes thereafter, the deceased came out from the kitchen in burning condition screaming *bachao bachao*. According to this witness, after the incident, when she visited the hospital, at that time, the deceased told her that she was not allowed to come to her maternal house along with her brothers and after taking in the

kitchen she was not allowed to come out of there and after pouring kerosene on her by the Appellants she was set on fire. But, this fact is not mentioned in case diary statement of this witness. During cross-examination, this witness has admitted in paragraph 9 that the deceased was living in Durg and was educated there and she did not want to marry with a person living in Village Hathband. This witness has further admitted that after the marriage, the deceased never remained happy from her husband. She used to come to her maternal house frequently and thereafter her husband used to come to take her back.

10. Somraj (PW17), brother of the deceased has deposed that on the date of incident, after taking meals, the Appellants committing marpeet with the deceased, took her to the kitchen and 5 minutes thereafter the deceased came out of the kitchen in burning condition. But, this fact is not mentioned in his case diary statement (Ex.D2). This witness has admitted that he did not see that the Appellants poured kerosene on the deceased or the deceased herself poured kerosene on her.
11. According to the statement of Assistant Sub-Inspector Ram Narayan Sahu (PW19) and entries of Rojnamcha Sanha (Ex.P19), on 18.4.1995, the deceased had made a complaint in police station against her husband and mother-in-law that they were pressurising her to develop illicit relationship with some other person. According to this witness, this incident had taken place 3 months prior to 18.4.1995. What inquiry was done or what inquiry report was submitted on this complaint, there is nothing on record in this regard.
12. On a minute examination of the evidence available on record, it is

clear that about 9 years prior to the incident, marriage of the deceased was performed with Appellant Rajesh. Out of their wedlock, 2 children took birth. On the date of incident, which was the day of *Bhaiduj* festival, 2 brothers of the deceased had come to her matrimonial house and the incident took place in their presence. Out of them, one brother Shriram has not been examined by the prosecution. Though other brother of the deceased Somraj (PW17) has deposed that the Appellants had taken the deceased to the kitchen beating her and 5 minutes thereafter she had come out of the kitchen in burning condition, this fact is not mentioned in his case diary statement (Ex.D2). Thus, it is clear that this witness has developed his statement on material point. Likewise, Shantibai (PW16), mother of the deceased has also developed her statement and stated that the deceased had told her in the hospital that the Appellants had poured kerosene on her and set her on fire. Had it been so, the deceased would have told this fact while recording of her dying declaration (Ex.P9). Shanhtibai (PW16), has also deposed that the deceased was being tortured and harassed and was also being beaten for demand of dowry, but this fact is also not mentioned in her case diary statement. Thus, on this point, she has developed her statement. Tahsildar Siddharth Das (PW6) has also admitted that while recording of the dying declaration (Ex.P9), the deceased had not made any statement regarding demand of dowry. From the entire evidence available on record and the admissions made by Shantibai (PW16), it seems that on the date of incident, the deceased was not allowed to go to her maternal house along with her brothers and, therefore, getting annoyed, she committed suicide by pouring kerosene on her and setting her on fire. Though

some evidence is available on record which establishes that some cruelty was done to the deceased sometimes and on the date of incident also misbehaviour was done with her and 2–2½ years before this incident also the deceased had made a complaint in police station against her husband and mother-in-law, even if this evidence is taken as it is it does not establish that the deceased was being instigated or abetted to commit suicide as defined under Section 107 of the Indian Penal Code. At the most, offence under Section 498A of the Indian Penal Code establishes, but the offence alleged under Section 306 of the Indian Penal Code is not proved beyond reasonable doubt.

13. In view of the foregoing, the Appellants are acquitted of the charge framed under Section 306 of the Indian Penal Code, but they are convicted under Section 498A of the Indian Penal Code. The incident took place in the year 1997. The Appellants have already undergone jail sentence for a few days. They have no known criminal antecedent. Therefore, it would not be in the interest of justice to send them back to jail after about 23 years. Hence, they are sentenced with the period already undergone by them.
14. Consequently, the appeal is allowed in part to the extent indicated above.
15. 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