

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 542 of 2012**

- Smt. Janki Bai W/o Krishna Sahu, Aged about 41 years, R/o Village – Karesara, Police Station & District - Bemetara (C.G.)

**---- Appellant**

**Versus**

- State of Chhattisgarh, Through Police Station – Bemetara, District Bemetara (C.G.)

**---- Respondent**

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For Appellant : Shri Vaibhav A. Goverdhan, Advocate

For Respondent/State : Shri Sameer Sharma, Deputy Government Advocate

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**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment**

**23.09.2020**

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 25.06.2012 passed by the Additional Sessions Judge, Bemetara, Civil District Durg (C.G.) in Sessions Trial No. 27/2011, whereby, the appellant stands convicted and sentenced as under:-

| <b><u>Conviction:</u></b>                                                                               | <b><u>Sentence:</u></b>                                                                                                                     |
|---------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 498A read with Section 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') | Rigorous imprisonment for one year and pay a fine of Rs.500/-, in default of payment to further undergo rigorous imprisonment for one month |

3. In Sessions Trial No. 27/2011, there were three accused persons namely present appellant Smt. Janki Bai (A-3), Krishna Sahu (A-2) and Parmeshwar Sahu (A-1). After completing jail sentence, Krishna Sahu (A-2) and Parmeshwar Sahu (A-1) have been released from the jail, whereas the present appellant Smt. Janki Bai (A-3) has filed this appeal challenging her conviction and sentence awarded by the trial Court.
4. In the present case, name of deceased is Rajeshwari @ Bimleshwari.

Accused/appellant Smt. Janki Bai (A-3) is the mother-in-law of the deceased. Co-accused Krishna Sahu (A-2) and Parmeshwar Sahu (A-1) are the father-in-law and husband of the deceased.

5. Case of the prosecution is that marriage of accused Parmeshwar Sahu (A-1) was solemnized with deceased Rajeshwari @ Bimleshwari according to their social rituals three years prior to her death. After marriage one daughter namely Ku. Lata, aged about two years, was born out of their wedlock. Merg intimation (Ex.-P/14) was lodged by Krishna Sahu (A-2) on 27.02.2011 at about 21:15 hours that her daughter-in-law Rajeshwari Bai (deceased) has died as she consumed poison. On the basis of merg inquiry, F.I.R. (Ex.-P/17) was recorded by Sub-Inspector Gopal Pandey (PW-13) in concerned police station. As per Ex.-P/17, the offence under Section 304B read with Section 34 of IPC was registered against the accused persons namely Parmeshwar Sahu (A-1), Krishna Sahu (A-2) and present appellant Smt. Janki Bai (A-3) herein. It was alleged that after one year of marriage of the deceased and accused Parmeshwar Sahu (A-1), deceased was being subjected to cruelty and harassment by all the accused persons (A-1, A-2 & A-3) on the ground that she did not bring TV, motorcycle, gold as dowry from her parental house and they scolded her using filthy language and also beat her. It was further alleged that during matrimonial life of the appellant and the deceased Bimleshwari, once she was also aborted and became ill on which she came to her parental house and stayed there for 08-10 days. In the absence of parents of the deceased in their house, Parmeshwar Sahu (A-1) came there, forcibly took the deceased and her daughter Ku. Lata to his house. For custody of Ku. Lata, an application was filed before the SDM at Kawardha where on the mutual understanding of the parties, the compromise had taken place and the deceased went to her matrimonial house.
6. It is further case of the prosecution that on 26.02.2011 phone call of the deceased was received by her father and she informed her father that she

was being again subjected to cruelty and harassment by the accused persons (A-1 to A-3). On 27.02.2011 at about 07:30 pm Parmeshwar (A-1) told the father of deceased by phone that his daughter/deceased is ill, therefore, he should come soon to see her. Then, the father of the deceased went to the house of his daughter and saw that the room of his daughter was closed and many people had assembled there. When the father of the deceased asked them, they said that his daughter has died and father-in-law of the deceased has gone to the Police Station to lodge report.

7. After registering the merg intimation (Ex.-P/14), PW-13 Gopal Pande, Assistant Sub-Inspector, reached the place of occurrence, gave notice (Ex.-P/3) to the *Panchas* and prepared inquest (Ex.-P/4) in presence of the witnesses. The dead body of the deceased was sent for postmortem examination to Community Health Centre, Bemetara vide Ex.-P/16 where postmortem was conducted by a team of two Doctors namely Dr. S. Sharma and PW-2 Dr. M. Deodhar and they gave postmortem report Ex.-P/1, wherein Doctors opined that the deceased died on account of poison and mode of death was asphyxia. Duration of death was 20-24 hours from commencement of postmortem examination. Viscera was also preserved for chemical analysis.
8. During investigation, spot map (Ex.-P/15) was prepared by PW-13 Gopal Pande on 28.02.2011 and another spot map (Ex.-P/5) was prepared by Patwari Shyamlal Padmakar 22.03.2011. Three bottles (*Barni*) containing piece of stomach, small intestine, large intestine, lungs, liver, kidney, heart, brain, vicera of deceased taken from hospital by Constable Rajendra Dewangan to the Police Station were seized by N.S. Bains vide seizure memo Ex.-P/2. Seized articles were sent for examination to Forensic Science Laboratory, Raipur vide Ex.-12.
9. After recording the case diary statements of the witnesses, charge-sheet was filed against the present appellant/accused (A-3) and co-accused (A-1 &

A-2) under Section 304B read with Section 34 of IPC. While framing charges, the trial Court framed charges against all the accused persons (A-1 to A-3) under Section 304B read with Section 34 IPC and Section 302 read with Section 34 IPC which were denied by them, they pleaded innocence & prayed for trial.

**10.** So as to hold the accused persons (A-1 to A-3) guilty, the prosecution examined 14 witnesses namely Rajesh Kumar Sahu (PW-1), Dr. M. Deodhar (PW-2), Ramnarayan Patel (PW-3), Saavat Sahu (PW-4), Santosh (PW-5), Aatmaram (PW-6), Ganesh Ram Sahu (PW-7), Bhuneshwar Sahu (PW-8), Smt. Geeta Bai Sahu (PW-9), Rajendra Prasad Dewangan (PW-10), S.R. Diwan (PW-11), N.S. Bains (PW-12), Gopal Pandey (PW-13) and Gained Singh (PW-14). Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined by the accused persons in their support.

**11.** After hearing the counsel for the parties and appreciation of evidence, the trial Court by the impugned judgment acquitted the present appellant (A-3) and co-accused (A-1 & A-2) of the charges under Section 304B read with Section 34 IPC & Section 302 read with Section 34 IPC but convicted & sentenced them as mentioned in para-2 of this judgment.

**12.** Learned counsel for the appellant submits that there is no specific allegation against present appellant- Janki Bai (A-3) regarding harassment, cruelty or any other demand of dowry by her and no any independent witness supported the prosecution case. He further submits that the appellant (A-3) was acquitted by the trial Court of the charges under Section 304B read with Section 34 IPC as the prosecution has failed to prove allegation regarding dowry death or demand of dowry & Section 302 read with Section 34 IPC as the prosecution has failed to prove allegation regarding commission of

murder against her. But on the basis of evidence of parental family members of the deceased that the deceased was subjected to cruelty or harassment or beaten for or in connection with any demand of dowry by the accused persons (A-1 to A-3), on the same set of evidence the present appellant (A-3) was wrongly convicted for the offence under Section 498-A read with Section 34 of IPC. He further submits that in this case, two other co-accused namely Krishna Sahu (A-2), the father-in-law, and Parmeshwar Sahu (A-1), husband, of the deceased have not filed any appeal because they have already completed their one year's jail sentence and are released from jail. Therefore, the present appellant be acquitted from the charge under Section 498-A read with Section 34 of IPC. In support of his contention reliance has been placed on the decisions of the Hon'ble Supreme Court in the matters of **Suresh Damu Mistry Vs. State of Maharashtra, (2005) 11 SCC 585** and **B.T. Jayaram Vs. State of Karnataka (2008) 14 SCC 530**.

13. Lastly, learned counsel for the appellant submits that it is not in dispute that the deceased died due to consumption of poison and if this Court finally comes to conclusion that the present appellant has rightly been convicted by the trial Court for the offence under Section 498-A read with Section 34 of IPC, considering the fact that the appellant is the first offender aged about 41 years at the time of incident, the incident took place around 09-10 years ago, she remained in jail about 30 days and presently is on bail, she may be given the benefit of Probation of Offender Act. In support of his contention reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **George Pon Paul Vs. Kanagalet and Others, (2009) 13 SCC 478**.

14. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State that the impugned judgment has been passed keeping in view the entire evidence adduced by

the prosecution in the light of the provisions of the law and as such there is no illegality or infirmity in it warranting interference by this Court.

15. Heard learned counsel for the respective parties and perused the material on record.
16. It is not disputed by the parties that deceased Rajeshwari @ Bimleshwari died within three years of her marriage with accused Parmeshwar (A-1), the present appellant Janki Bai is mother-in-law of the deceased & mother of A-1 (husband of the deceased) and the deceased died due to consumption of poisonous substance. As per postmortem report (Ex.-P/1) and inquest report (Ex.-P/4), no any physical or bodily injury was found on the body of the deceased. The deceased died in the house of appellant in her room.
17. Definitely, in this case, the trial Court has acquitted the present appellant (A-3) and co-accused persons (A-1 & A-2) of the charges under Section 304B read with Section 34 IPC & Section 302 read with Section 34 IPC and no appeal has been filed by State against their acquittal for the aforesaid charges as stated by learned counsel for the parties.
18. PW-6 Aatmaram, father of the deceased, has stated in his deposition that his daughter (deceased) was happily living with her husband in her matrimonial house. After about two years of the marriage, mother (A-3) of his son-in-law (A-1) started harassing the deceased saying that she (deceased) did not bring cooler, TV, fridge on dowry. PW-6 has further stated in para-6 that one day prior to the incident, her daughter informed him about the ill-treatment given by her mother-in-law, father-in-law and husband. PW-6 is the witness of inquest (Ex.-P/4) and has duly proved the same.
19. PW-1 Rajesh Kumar Sahu, brother of the deceased, has stated in his deposition in para-1 that about one & half years after the marriage of his sister (deceased) was happily living in her matrimonial house. Thereafter, her husband, mother-in-law and father-in-law started quarreling with his sister for not bringing sufficient dowry. Due to this reason, about 2-3 times

she came from her matrimonial house to her parental house at village Dharampura.

- 20.** PW-7 Ganesh Ram Sahu, grand-father of the deceased, has also supported the versions of PW-6 Aatmaram and PW-1 Rajesh Kumar Sahu. PW-7 has also stated that the deceased informed her parental members about the ill-treatment given by her in-laws, as according to her in-laws, she did not bring sufficient dowry.
- 21.** PW-9 Smt. Geeta Bai Sahu, mother of the deceased, has also supported the versions of PW-6 Aatmaram and PW-1 Rajesh Kumar Sahu. PW-9 has stated in her deposition that prior to death of the deceased, compromise was made between the parties before SDM Court, Kawardha vide Ex.-D/2 and the deceased had gone to her matrimonial house. PW-9 is the witness of inquest (Ex.-P/4) and has duly proved the same.
- 22.** PW-2 Dr. M. Deodhar, who conducted the autopsy of deceased with his associate Dr. S.Sharma, has proved autopsy of the deceased vide Ex.-P/1 wherein he opined that the deceased died on account of poison and mode of death was asphyxia and duration of death was 20-24 hours from commencement of postmortem examination.
- 23.** PW-4 Saavat Sahu and PW-5 Santosh are the witnesses of inquest (Ex.-P/4) and spot map (Ex.-P/6) prepared by the Patwari. PW-8 Bhuneshwar Sahu is the witness of seizure Ex.-P/2, but he has not supported the prosecution case and has been declared hostile. PW-10 Rajendra Prasad Dewangan, Constable, on the instruction of Station House Officer, took the dead body of deceased to Government Hospital for postmortem examination, and after postmortem examination, he gave the dead body of deceased on *supurdnama* vide Ex.-P/6 to Parmeshwar Sahu (A-1). PW-11 S.R. Diwan, after inquiry, prepared the inquest (Ex.-P/4) in the presence of witnesses and has duly proved the same. PW-12 N.S. Bains, S.D.O.(P), arrested the accused persons vide Ex.-P/7, Ex.-P/8 & Ex.-P/9 and the

information regarding arrest of the accused persons was given to their relatives. PW-12 has made seizure vide Ex.-P/2 and has duly proved the same. PW-13 Gopal Pandey is the Investigating Officer, who registered the merger intimation (Ex.-14), prepared spot map (Ex.-P/15) and on the basis of merger intimation, registered the F.I.R. (Ex.-P/17) and has duly proved the same. PW- 14 Gaiind Singh, Kotwar, has not supported the prosecution case and has been declared hostile.

**24.** From the un rebutted evidence of PW-1 Rajesh Kumar Sahu, PW-6 Aatmaram, PW-7 Ganesh Ram Sahu and PW-9 Smt. Geeta Bai Sahu, it stands proved that it is present appellant Janki Bai (A-3), continuously taunting and harassing the deceased in connection with demand of dowry. There are no major contradictions or omissions in the court evidence of these witnesses (PW-1, PW-6, PW-7 & PW-9) as compared to their case diary statements vide Ex.-D/1; Ex.-D/6 & Ex.-D/7; Ex.-D/9 & Ex.-D/10 and Ex.-P/11 & Ex.-D/12. Further, it has come in the evidence that one day prior to death of deceased, she made phone call to her father that she was being subjected to cruelty and harassment by her mother-in-law (A-3), father-in-law (A-2) and husband (A-1) and on the next i.e. 27.02.2011, she died by consuming poison. It has also come in the evidence of PW-1, PW-6, PW-7 & PW-9 that once the deceased was aborted by the accused persons. As per FSL report (not exhibited), in the Articles 'A' & 'B' i.e. piece of stomach, small & large intestine, liver, spleen, kidney, lung and heart of the deceased organo-phosphorous was found. Therefore, on the basis of aforesaid discussion, this Court is of the opinion that the prosecution has been successful in proving the guilt of the present appellant (A-3) under Section 498A read with Section 34 of IPC beyond all reasonable doubt. In these circumstances, conviction of the appellant under Section 498A read with Section 34 of IPC awarded by the trial Court deserves to be affirmed.

25. In *Suresh Damu Mistry* case (supra), the appellant was convicted under Section 498A of IPC, High Court reduced the sentence of one year's RI with fine of Rs.200 imposed by the trial to six months' RI with fine of Rs.1000 whereas Supreme Court reduced the sentence further, to period of RI already undergone, of three months.
26. In *B.T. Jayaram* case (supra), the appellant was convicted of the charge under Section 498-A of IPC and sentence of six months' SI imposed against the appellant. Appellant and victim were found to have since remarried and happily living with their families and in the facts and circumstances, sentence was reduced to period of imprisonment already undergone i.e. two months by the Supreme Court. But in the present case, the deceased died by consuming poison on account of subjecting her to cruelty by in-laws. Therefore, I am of the opinion that the above judgment in the matter of *B.T. Jayaram* (supra) being distinguishable on facts is of no help to the present appellant.
27. As regards the quantum of sentence, considering the fact that the incident took place in the year 2011, at that time appellant Smt. Janki Bai was 41 years of age and presently would be above 50 of age, she has already remained in jail for a period of 30 days and during pendency of this appeal she was on bail, keeping in view of the judgment of Hon'ble Supreme Court in the matter of *Suresh Damu Mistry* (supra) as also keeping in view of the judgment of the Hon'ble Supreme Court in the matter of *George Pon Paul* (supra) wherein considering the fact that fine amount has been deposited and paid to the victim as also the long passage of time, the accused was sentenced to the period already undergone, this Court is of the opinion that no useful purpose would be served in sending her back to jail at this stage and the ends of justice would be served, if she is sentenced to the period already undergone by her while enhancing the fine from Rs.500/- to Rs.7,000/- with default stipulation.

**28.** In the result, the appeal is allowed in part. While maintaining the conviction of the appellant awarded by the trial Court under Section 498A read with Section 34 of IPC, she is sentenced to the period already undergone by her. However, the fine amount of Rs.500/- imposed on her by the trial Court is enhanced to Rs.7,000/-. In case of failure to deposit the fine amount, she shall have to suffer additional rigorous imprisonment for three months. Fine amount already deposited shall be adjusted accordingly. The appellant is reported to be on bail, therefore, her bail bonds shall remain in force for a period of six months from today in view of the provisions of Section 437-A of Cr.P.C.

Sd/-  
**(Gautam Chourdiya)**  
Judge