

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.820 of 2002

Judgment Reserved on : 12.2.2020

Judgment Delivered on : 27.5.2020

Ajay @ Vijay @ Babu Jaiswal, son of Sita Ram Jaiswal, aged about 24 years, resident of Village Kena Bandh, P.S. Ambikapur, District Surguja, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Ambikapur, District Surguja, Chhattisgarh

--- Respondent

For Appellant	:	Shri V.K. Pandey, Advocate
For Respondent	:	Ms. Smriti Shrivastava, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 15.6.2002 passed by 1st Additional Sessions Judge, Ambikapur, District Surguja in Sessions Trial No.427 of 2000, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that marriage between Shakuntala (the deceased) and the Appellant was solemnised 1 year prior to

the incident. At the time of marriage, a sum of Rs.21,000/- was given to the Appellant and some household articles were also given to him. A fixed deposit of Rs.5,000/- was also done in the name of the deceased by her father, whose passbook was with the deceased. The amount and the household articles, which were received by the Appellant at the time of marriage, were spent and used after the marriage. The Appellant was not doing any job. He was also not giving food to the deceased. He used to commit marpeet with the deceased and torture her for bringing money from her maternal house. The amount which was fixed in the name of the deceased at the time of her marriage was also being demanded by the Appellant and he was pressurising her therefor. On 22.4.1998, the deceased hanged herself and committed suicide. Morgue intimation (Ex.P6) was lodged by her father-in-law Sitaram. Post mortem examination was conducted over the dead body of the deceased by Dr. Habib (PW10). Post mortem report is Ex.P5. On the basis of morgue inquiry, First Information Report (Ex.P7) was recorded. During the course of investigation, one hand written letter of the deceased was also seized vide seizure memo (Ex.P3). On completion of the investigation, a charge-sheet was filed against the Appellant. Charges were framed against him under Sections 498A, 304B, 306 of the Indian Penal Code.

3. 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 Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial

Court acquitted the appellant of the charge under Section 304B of the Indian Penal Code, but convicted and sentenced him as mentioned in first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that without there being any clinching evidence on record against the Appellant, the Trial Court has wrongly convicted him. The judgment passed by the Trial Court is contrary to the facts and evidence available on record and, therefore, the same is liable to be set aside. There are material contradictions and omissions in the statements of the prosecution witnesses, which are not considered by the Trial Court. There is no direct evidence regarding cruelty or demand of money. There is also no evidence on record on the basis of which it could be said that the Appellant instigated or abetted the deceased in any manner to commit suicide as defined under Section 107 of the Indian Penal Code. Therefore, the conviction of the Appellant is not sustainable.
6. Learned Counsel appearing for the State opposed the above submission and 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 deceased was wife of the Appellant and just 14 months after her marriage she committed suicide. Case of the prosecution is based upon the statements of Chamru (PW2), father of the deceased, Gauri Devi (PW3), mother of the deceased, Vinod Kumar (PW8), brother of the deceased, Laxmaniya (PW4),

sister of the deceased, Ramnath (PW7), maternal uncle of the deceased and Shakuntala Bai (PW6), landlady of the house where the Appellant and the deceased were residing.

9. From the evidence of the parents of the deceased, it is well established that at the time of marriage, no demand was made on behalf of the Appellant, but they, at their own will, had given a sum of Rs.16,000/- and some household articles to the Appellant. It is also not in dispute that at the time of marriage, Chamru (PW2), father of the deceased had made a fixed deposit of Rs.5,000/- in the joint names of the deceased and the Appellant. From the evidence of Chamru (PW2) and Gauri Devi (PW3), mother of the deceased, it is clear that even after the marriage, the Appellant never made any demand for dowry.
10. In his Court statement, Chamru (PW2), father of the deceased, has further deposed that the deceased had been visiting her maternal house from time to time and on her visits they had been giving her 4-5 Kgs. of rice. According to this witness, as disclosed by the deceased to them, the Appellant had mortgaged the passbook of the fixed deposit of Rs.5,000/- with *jethani* of the deceased and obtained a loan of Rs.2,500/- from her. This witness has further deposed that the deceased had told that the Appellant used to quarrel with her and ask for withdrawing the amount of fixed deposit from the bank. The Appellant did not do any job and was bringing money after mortgaging the household articles. During cross-examination, this witness has categorically admitted in paragraph 9 that the Appellant had also visited along with the deceased at her maternal house and at that time he had told that

there was acute shortage of money for running their livelihood and, therefore, the amount of fixed deposit was needed to be withdrawn.

11. Gauri Devi (PW3), mother of the deceased has deposed that at the time of visit of her maternal house, the deceased did not tell anything about her matrimonial house. This witness has further deposed that when she had visited matrimonial house of the deceased, at that time, the deceased had told her that the Appellant had been taking meals at the house of his parents and he had not been giving her food. This witness has also stated that the Appellant had been frequently asking the deceased to withdraw the amount of fixed deposit. She has admitted the fact that the Appellant and his family were very poor.
12. Laxmaniya (PW4), younger sister of the deceased has deposed that 10 days prior to the incident, she had visited matrimonial house of the deceased. At that time, the Appellant had demanded money from the deceased and had quarreled with her therefor. She has further deposed that while visiting matrimonial house of the deceased, she had taken rice and potato along with her and she and the deceased were cooking food at the matrimonial house of the deceased and were taking meals, but the Appellant was taking meals at the house of his parents.
13. Shakuntala Bai (PW6), landlady of the house where the Appellant and the deceased were residing has deposed that one day the deceased had told her that the Appellant was asking for money and had also scolded her. She has not stated anything more about the incident. However, she has admitted the fact during cross-

examination that the Appellant and the deceased were residing happily, but sometimes quarrels took place between them.

14. Ramnath (PW7), maternal uncle of the deceased has only deposed that before the incident at the time of Shivratri festival, the deceased had come to his house and told that she was in difficulty of livelihood and the Appellant was torturing her for money. This witness has admitted during cross-examination that the Appellant is very poor, there was a difficulty of livelihood in his house and he wanted to withdraw the amount of fixed deposit for running livelihood of his house.
15. Vinod Kumar (PW8), brother of the deceased has told that the Appellant used to come to him and make demand for money from him. According to this witness, the Appellant used to make demand for money from the deceased also and on not being given he used to commit marpeet with her. However, during cross-examination, he has admitted that he had visited matrimonial house of the deceased 3-4 times, but, in his presence, no quarrel took place at any occasion. This witness has further admitted that when the deceased had visited his house, she had told him that she was in difficulty of livelihood. Therefore, he had given her 2-4 kgs. of rice and 1½ – 2 kgs. of potato.
16. On a minute examination of the evidence available on record, it is clear that the Appellant and his family were very poor. The Appellant was living along with the deceased in a rented room. From the evidence on record, it is also established that due to poverty, the Appellant was selling the household articles of the house and was fulfilling the needs of livelihood. From the

evidence, it is also established that though he had been asking the deceased frequently to withdraw the amount of fixed deposit, he had been asking so for fulfilling the needs of livelihood. Quarrels had been taking place between the Appellant and the deceased, but those quarrels were of routine nature of a husband and wife. From the statement of the witnesses, it is also established that the Appellant was very poor and for their livelihood when the deceased had visited her brother's house, she had brought rice and potato from there and when her sister had visited her matrimonial house, she had also brought rice and potato to her. From the evidence, it is also established that the Appellant was not doing any job. The entire evidence on record go to show that the quarrels between the Appellant and the deceased were for livelihood. He had sold household articles for the purpose of running livelihood and for this purpose itself he had been asking the deceased for withdrawing the amount of fixed deposit. I find that the acts of the Appellant do not fall within the purview of instigation or abetment as defined under Section 107 of the Indian Penal Code. Whatever problems arising due to poverty and difficulty of livelihood were not only of the deceased herself but of both of the Appellant and the deceased. Therefore, if the deceased committed suicide under depression, this cannot be held as instigation or abetment by the Appellant to the deceased to commit suicide. Merely because the deceased committed suicide, it cannot be said that the Appellant instigated or abetted her to do so. Considering the entire evidence available on record, I find that the alleged offence is not proved against the Appellant.

17. Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.

18. 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