

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No.351 of 2007

1. Malkhu Ram, S/o Ram Bharosa Sahu, Aged about 46 years,
 2. Parmanand, S/o Malkhu Sahu, Aged about 22 years,
- Both resident of Village – Belargondi, Police Station Gendatola, District – Rajnandgaon, Chhattisgarh

---- Appellants

Versus

- State of Chhattisgarh, Through Police Station Gendatola, District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellants	:	Shri Basant Dewangan, Advocate
For Respondent	:	Shri Rakesh Sahu, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

02.11.2020

An information Ex-P/1 was personally given in the police station by Deblu Ram (PW-1) to the effect that some unidentified woman in the age group of 20-21 years was hanging from a nearby mango tree. Having received that information, the Chowki In-charge (PW-14) reached the spot, summoned the witnesses by giving notice Ex-P/2, prepared an inquest Ex-P/3, took down the body and after conducting the merged inquiry it was revealed that on account of demand of Rs.50,000/- and a Hero Honda Splendor motorcycle as dowry made by the accused persons, the deceased was forced to end her life by committing suicide. After merged inquiry, FIR was registered by L.P. Jaiswal (PW-15) for the offence under

Section 304 B IPC. After post mortem examination being performed on the dead body and completion of other investigation related formalities *Challan* was filed under the said Section followed by framing of charge accordingly.

2. Learned Court below vide judgment impugned dated 21.03.2007 passed in Sessions Trial No.81/2006 acquitted the co-accused namely Smt. Basan Bai – mother-in-law of the victim. Learned Court below also acquitted the present accused-appellants of the charge under Section 304 B IPC but convicted them under Section 498 A IPC in its place and imposed the sentence of R.I. for three years with fine of Rs.1000/- plus default stipulations. Hence this appeal.

3. Counsel for the accused/appellants submits that though the documents Ex-P/12 and Ex-P/13 i.e. the stamp paper was not at all signed by the accused-appellants yet the trial Court has committed a grave legal error in relying thereupon while passing the judgment impugned. He submits that as the accused-appellants have been acquitted under Section 304 B IPC, there was no occasion for the Court below to hold them guilty under Section 498 A IPC for the reason that the acquittal was also granted on the basis of same set of evidence.

4. State counsel however supports the judgment impugned and submits that the victim was subjected to mental cruelty to such an extent that she did not even think once before ending her precious life by hanging herself to a tree. He thus submits that no illegality or

infirmity is attributable to the judgment impugned warranting any interference by this Court.

5. Heard counsel for the parties and perused the judgment impugned and record of the Courts below.

6. Since one of the basic ingredients required for conviction under Section 304 B IPC i.e. the cruelty soon before death has not been established by the prosecution, the acquittal of the accused-appellants under Section 304 B IPC has rightly been awarded, but it does not mean that the appellants have to be given similar treatment for the offence under Section 498 A IPC as well. If a glimpse is given to the testimony of eye-witnesses Alal Ram (PW-3), Tukaram (PW-4), Ramchand (PW-6), Madanlal (PW-9) and Sitaram (PW-10) it becomes apparent that the accused-appellants were persistently demanding Rs.50,000/- and a Splendor motorcycle as dowry from the father of the victim. Their evidence further discloses that the said demand was even taken down in a stamp paper which was duly signed by number of witnesses including the father of the victim. The stamp papers were marked as Ex-P/12 and Ex-P/13 also go to show that these stamp papers were executed for pressurizing the father of the victim for extracting money and motorcycle, branding her to be a woman of easy virtue and thus putting her under mental trauma. In the cases of identical nature, it has been held by Hon'ble the Apex Court time and again that making such flimsy imputations regarding character of a woman also falls within the category of cruelty. Furthermore, the evidence of Dr. Kumari Manisha Kesar (PW-12) also shows an

ante mortem ligature mark which was used by the victim for hanging herself in order to end her life. It is relevant to note that Alal Ram (PW-3) and Tukaram (PW-4) are the witnesses of the same village and that too related to the family of the accused-appellants and therefore, there was no occasion for them to speak lie against the accused-appellants. The stand of the accused-appellants in getting the stamp papers executed bearing the contents against the chastity of the victim appear to be highly unnatural because no girl in an Indian society would go and get the stamp paper and write the things thereon maligning her own character. This appears to be nothing but an ugly gesture on the part of the accused-appellants to somehow get their demand fulfilled.

7. In view of the aforesaid detailed analysis of the evidence of the witnesses, this Court does not see any legal error in the judgment impugned calling for an interference in this appeal as far as conviction part is concerned. It is accordingly upheld.

9. As regards sentence, considering the various factors such as the incident being quite old and that the accused/appellants have already remained in jail for more than a year, this Court thinks it just and proper to reduced their sentence to the period already undergone by them. Ordered accordingly.

10. The appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge