

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.433 of 2016

Judgment Reserved on : 21.11.2019

Judgment Delivered on : 26.2.2020

- 1. Dhirpal Kewat, son of late Firat Ram Kewat, aged about 50 years, resident of Bhiloni, Police Station Masturi, District Bilaspur, Chhattisgarh
- 2. Maikul Bai, wife of Dhirpal Kewat, aged about 45 years, resident of Bhiloni, Police Station Masturi, District Bilaspur, Chhattisgarh
- 3. Viras Kumar Kewat, son of Dhirpal Kewat, aged about 25 years, resident of Bhiloni, Police Station Masturi, District Bilaspur, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through the Station House Officer, Police Station Masturi, District Bilaspur, Chhattisgarh

--- Respondent

For Appellants : Shri Goutam Khetrapal, 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 2.3.2016 passed by the 9th Additional Sessions Judge, Bilaspur in Sessions Trial No.123 of 2015, whereby the present Appellants have been convicted and sentenced as under:

Conviction	Sentence
Under Section 304B/34 of the Indian Penal Code	Rigorous Imprisonment for 10 years
Under Section 498A/34 of the Indian Penal Code	Rigorous Imprisonment for 2 years and fine of Rs.500/- with default stipulation

2. Prosecution case, in brief, is that Appellant No.1 is father-in-law, Appellant No.2 is mother-in-law and Appellant No.3 is husband of deceased Rajmati. Marriage between Appellant No.3 and the deceased was solemnised on 7.12.2013. On 15.8.2015, the deceased committed suicide by hanging herself in her matrimonial house. Morgue intimation (Ex.P20) was lodged by her father-in-law/Appellant No.1 on 16.8.2015. On 16.8.2015 itself, inquest proceeding was conducted vide Ex.P2. Post mortem examination over dead body of the deceased was conducted by Dr. N.R. Kanwar (PW9). Post mortem report given by him is Ex.P22. On 4.9.2015, First Information Report (Ex.P12) was lodged by Mohana Kewat (PW2), father of the deceased. 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 against 4 accused persons.
3. In support of its case, the prosecution examined as many as 17 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt and pleaded innocence. In defence, the accused persons examined 2 witnesses.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted co-accused Rajkumar of all the charges, but convicted and sentenced the present Appellants as mentioned in 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, the Trial Court has wrongly convicted them. There is no evidence on record to show that at the time of marriage any dowry was demanded by the Appellants. There is also nothing on record to establish that the deceased was subjected to cruelty in any manner by the Appellants. There is no evidence on record which establishes that soon before her death the deceased was subjected to cruelty by the Appellants for demand of dowry. Father of the deceased Mohana Kewat (PW2) has not supported the case of the prosecution and turned hostile. The incident occurred on 15.8.2015 and at the time of inquest proceeding mother of the deceased Panchmati (PW14) was present there, but she did not raise any objection or suspicion. After passing of 19 days of the death, the FIR (Ex.P12) was suddenly lodged by the father of the deceased which is an after-thought. Belated lodging of the FIR has not been explained by the father of the deceased. The Trial Court has convicted the Appellants only on the statements of mother of the deceased Panchmati (PW14) and her neighbour Rikhiram (PW11). The statements of both these witnesses are not reliable. Panchmati (PW14) has developed her statement on material points. There are material contradictions and omissions in her statement. Thus, her statement is not reliable. The statement of Rikhiram (PW11) is also not reliable because he is a neighbour of Panchmati (PW14) and it is suspicious that the deceased, instead of telling the incident happening with her to her father, would have told to a neighbour, i.e., Rikhiram (PW11). Therefore, the statement of Rikhiram (PW11) is also suspicious.

arguments advanced on behalf of the Appellants 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 marriage between Rajmati (deceased) and Appellant No.3 Viras Kumar Kewat was solemnised on 7.12.2013. It is also not in dispute that the deceased committed suicide by hanging herself in her matrimonial house on 15.8.2015, i.e., within 7 years of her marriage.
9. According to the case of the prosecution, at the time of marriage, Appellants No.1 and 3 demanded Rs.50,000/- as dowry from the parents of the deceased. The parents of the deceased assured them that they will give the demanded money later. Few days thereafter, Appellant No.3 took the deceased to her maternal house. At that time also, he made demand of Rs.50,000/- and he was given a sum of Rs.20,000/-. It is the further case of the prosecution that 1 month prior to 15.8.2015, the deceased had come to her maternal house. At that time, the Appellants used to commit *marpeet* with her for demand of dowry. At that time, Appellant No.3/husband was called and inculcated and the deceased was sent back to her matrimonial house. Few days thereafter, the deceased committed suicide on 15.8.2015. Before the Trial Court, case of the prosecution was based on the statements of Hetram (PW1), who is neighbour of the Appellants, Mohana Kewat (PW2), father of the deceased, Rikhiram (PW11),

neighbour of Mohana Kewat (PW2) and Panchmati (PW14), mother of the deceased. Both Hetram (PW1) and Mohana Kewat (PW2) have not supported the case of the prosecution and turned hostile. Particularly, Mohana Kewat (PW2), father of the deceased has deposed that the Appellants were maintaining the deceased well and there was no dispute.

10. Rikhiram (PW11), neighbour of the parents of the deceased has deposed that 15-20 days prior to the death of the deceased, she had come to her maternal house. At that time, she had visited his house. On being asked her well being, she had told him that she was being ill-treated and being beaten by the Appellants for demand of dowry. During cross-examination, this witness has further stated that when the deceased had told him these things, at that time, his wife, daughter and 2 sons were also present at his house. In paragraph 4 of his cross-examination, this witness has admitted the fact that Appellant No.3 used to go out along with the deceased to work in a brick-kiln and they used to remain out for long periods. In paragraph 4 itself, this witness has further categorically admitted that before the incident, when the deceased and Appellant No.3 had visited his house, at that time, there was no dispute between Appellant No.3 and the deceased and their relation was cordial.

11. Panchmati (PW14), mother of the deceased has deposed that in the month of Ashadh (June-July), 2015, the Appellants had come to her house and made a demand of Rs.1,00,000/- and when they did not give the money, the Appellants committed *marpeet* with the deceased. Thereafter, at that time itself, they called Appellant

No.3 to their house and gave him a sum of Rs.20,000/- and sent the deceased back to her matrimonial house along with Appellant No.3. This witness has further deposed that since the time of marriage of the deceased with Appellant No.3, the Appellants were ill-treating the deceased and were committing *marpeet* with her. She has not disclosed that for what reasons and in which manner the deceased was being ill-treated and harassed by the Appellants. Whatever has been stated by this witness regarding the incidents of the month of Ashadh (June-July), 2015, nothing has been stated so by her in her case diary statement (Ex.P24). In paragraph 10 of her cross-examination, this witness has further deposed that on the date of incident also, a telephonic talk had taken place between her and the deceased and during that talk the deceased had told her that the Appellants had committed *marpeet* with her on that day. But, this fact is also not mentioned by her in her case diary statement (Ex.P24). In paragraph 7 of her cross-examination, this witness has deposed that Appellant No.3 and the deceased used to go to Lucknow along with them to earn livelihood and the sum of Rs.20,000/- which was given to Appellant No.3 in the month of Ashadh (June-July), 2015 was the money which was earned by Appellant No.3 and the deceased at Lucknow. In paragraph 11, this witness has further contradicted her own statement and has stated that since Appellant No.3 had demanded dowry, he was given the aforesaid sum of Rs.20,000/-. In the month of Ashadh, 2015, any such demand was made by Appellant No.3 and the amount of Rs.20,000/- was given to him as dowry is also not stated by her in her case diary statement (Ex.P24) recorded under Section 161 of the Code of Criminal Procedure. In paragraph 8, this witness has admitted the fact that whatever articles were given

by them at the time of marriage of the deceased were given at their own will. She has also stated in paragraph 6 that at the time of inquest proceeding, she and her husband were present. This witness has further admitted that they never called any social meeting regarding demand of dowry by the Appellants or cruel behaviour being done by them with the deceased.

12. On a minute examination of the evidence available on record, I find that though it is established that within 7 years of the marriage, death of the deceased took place and that was her unnatural death, after the marriage the Appellants ill-treated and harassed her for demand of dowry and soon before her death also she was ill-treated and harassed for demand of dowry is not established because from the evidence on record it is clear that at the time of inquest proceeding both Panchmati (PW14), mother of the deceased and Mohana Kewat (PW2), father of the deceased were present, but they did not raise any objection or suspicion. According to the prosecution, after 19 days of the incident, the FIR (Ex.P12) was lodged by Mohana Kewat (PW2). Why the FIR was lodged so belatedly by Mohana Kewat has not been explained by him. Virtually, he has refused that he lodged the FIR (Ex.P12). 8th column of the FIR (Ex.P12) states about the reason for delay in lodging the FIR to be “मर्ग जाँच बाद”, i.e., after morgue inquiry. But, lodging of the FIR (Ex.P12) by Mohana Kewat (PW2) was not based upon morgue inquiry and this has been admitted by Sub-Inspector Om Shankar Sahu (PW7). According to the case of the prosecution, at the time of marriage, demand of Rs.50,000/- was made and few days thereafter a sum of Rs.20,000/- was given to Appellant No.3 at the maternal house of the deceased. But, in her

Court statement, Panchmati (PW14), mother of the deceased has nowhere stated anything in this regard. Contrary to this, she has deposed that this demand was made in the month of Ashadh (June-July), 2015 and Rs.20,000/- was given to Appellant No.3 in that month at the maternal house of the deceased. But, all these facts are not stated by her in her case diary statement (Ex.P24). Panchmati (PW14) has also deposed that on the date of incident also, a telephonic talk had taken place between her and the deceased in which the deceased had told her about *marpeet* done with her by the Appellants on that day, but this fact is also not mentioned in her case diary statement (Ex.P24). Thus, it is clear that there are material contradictions and omissions in the statement of Panchmati (PW14). She has developed her statement on material points and, therefore, her entire statement does not inspire confidence of the Court. Therefore, I find that the Trial Court has wrongly relied upon her statement. Though Rikhiram (PW11) has also deposed that when the deceased had visited his house, at that time, she had told that she was being ill-treated and harassed by the Appellants for demand of dowry, but the statement of this witness is also not natural. This witness is a neighbour of the parents of the deceased. Along with him, his wife, daughter and 2 sons were also residing. If any difficulty was being faced by the deceased at her matrimonial house, she, being a lady, would disclose these things to her close relatives and if she wanted to disclose these facts to a neighbour she would first disclose to lady members of the family of the neighbour not to a male member. Therefore, the statement of Rikhiram (PW11) is also suspicious. Apart from the statements of Rikhiram (PW11) and Panchmati (PW14), there is no evidence available on record against the

Appellants. Since the statements of Rikhiram (PW11) and Panchmati (PW14) are not reliable, the conviction imposed upon the Appellants is not in accordance with the evidence available on record.

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