

CRIMINAL APPEAL(SJ) NO. 420 OF 2003

Against the judgment of conviction and order of sentence dated 27.01.2003 passed in Sessions Trial No. 121 of 1994/ T.R. 31 of 2002 by learned Additional District and Sessions Judge, 1st Fast Track Court, Giridih

1. Chetlal Das @ Chetu Das, son of Bispat Rabidas
 2. Baldeo Das, son of Bispat Rabidas
 3. Parwatia Devi, wife of Bispat Rabidas, All residents of village- Nagabad, P.S. Dumri, District- Giridih
-Appellants

Vs.

The State of Jharkhand

.....Respondent

For the Appellants : Mr. S.K. Samanto, Advocate
For the Respondent : Mr. Ram Prakash Singh, APP

PRESENT

HON'BLE MR. JUSTICE RATNAKER BHENGRA

C.A.V. ON 05.04.2019

DELIVERED ON 26 /06 /2020

Ratnaker Bhengra,J: The present appeal is directed against the judgment of conviction and order of sentence dated 27.01.2003 passed by the Additional District and Sessions Judge, 1st Fast Track Court, Giridih in Sessions Trial No. 121 of 1994/ T.R. No. 31 of 2002 whereby and whereunder the Appellants have been convicted under section 498-A of the Indian Penal Code and have been sentenced to undergo Rigorous Imprisonment for 2 years.

2. A document dated 26-9-2018 has been forwarded by the officer-in-charge, Dumeri police station, which is in record, stating therein that the appellant no.3 Parwatia Devi wife of Bispat Rabidas has passed away. Hence, this appeal against her stands abated.

3. The prosecution case, in brief, as per the written report dated 27-7-1993 of the informant Mahadev Ravidas P.W.-8 is that informant's niece Pushpa Devi was married with Baldeo Ravidas in the year 1983 and after marriage Pushpa Devi was living in her matrimonial home but she had not begotten any child. Hence, the father-in-law, mother-in-law, husband, *devar* and sister-in-law

(*nanad*) were torturing Pushpa Devi. They used to say that she is not giving birth of child so they will not keep her but if she will bring Rs. 5,000/- from her father then she can stay with them. Further case of the prosecution is that after getting such information the informant had gone to the matrimonial home of Pushpa Devi and returned after pacifying the matter but the accused persons did not listen. On 26.07.1993 at about 5.00 p.m. the informant received a letter from Baldeo Das @ Balo Das in which it was written that condition of Pushpa Devi is not good and to come and see her. When the informant had gone to the house of Baldev Das, he found Pushpa Devi dead. Then the informant sent information to the police station through the *chaukidar*. Further case of the prosecution is that the family members of Baldeo Das were trying to hide the dead body in collusion with Lal Khandi. The informant suspected that Puspa Devi had been administered poison because her tongue and body was swollen and the body had also become black. It was further stated in the written report that the father of Pushpa Devi, Khublal Ravidas works at Calcutta and he was not present in the house.

4. On the basis of the written report of the informant Dumeri P.S. Case No. 47 of 1993 under section 328, 304B/34 of IPC was registered and the investigation was carried on. After investigation, charge sheet was submitted and accordingly cognizance of the offences were taken and the case was committed to the court of Sessions. Charges under section 498A read with 34 IPC and 302 with 34 IPC were framed against the accused persons. Trial was held and after conclusion of the trial the accused persons were convicted and sentenced as aforesaid. Hence, this appeal.

5. Prosecution examined altogether 13 witnesses in support of its case out of whom P.W. 8 Mahadev Ravidas is the uncle of the deceased and informant of this case. P.W. 2 Sitwa Devi is the mother of the deceased. PW-7 is Doctor who conducted postmortem examination on the dead body of the deceased and PW-12 is the investigating officer of the case. PW-11 and PW-13 are hostile witnesses. The remaining witnesses are either uncle or cousin brother

of the deceased Pushpa Devi.

6. P.W. 8 Mahadev Ravidas, who is the informant of this case has stated in his evidence that Pushpa Devi was married with Baldeo Ravidas in the year 1983 and after the marriage she was living at her matrimonial home nicely. However, she did not give birth to any child at which her husband, mother-in-law, *devar* and *nanad* began to torture and harass her and asked Pushpa Devi to bring Rs. 5000.- from her parents. P.W.-8 further stated that then they had gone to her matrimonial home and pacified the matter and then they started living satisfactorily. Six months before 1993 Pushpa Devi had come to her parental home and asked for Rs. 5000/-. Informant said how can he give money as Pushpa's father was in Calcutta and hence he soothed her and sent her back and after 6 months, the occurrence took place. In his cross examination, informant stated that since 1983 to 1988 they were living cordially and arguments started in the year 1993 and demand of Rs. 5000/- was also made.

7. P.W.-1 Arjun Ravidas and P.W.-9 Hira Lal Das are the cousin brothers of the deceased. They have stated in their evidence that on 26-7-1993 accused Baldeo Ravidas had sent a letter in which it was written that Pushpa was ill and to come and see her. On this 5-7 persons went to see Pushpa Devi at her matrimonial home. When they reached there they saw, Pushpa laying dead on a cot and her body was swollen and became black. Both these witnesses further stated that family members of in-laws of the deceased had demanded Rs.5000/- and said if Rs.5000/- is not given they will not keep Pushpa. PW-9 has identified the letter written by Baldeo Ravidas which was marked as Ext.-X. PW-9 has also identified the written report signed by his father (PW-8) which was marked as Ext.-3/1.

8. P.W. 2 is Sitwa Devi is the mother of the deceased Pushpa Devi. She has stated in her evidence that her daughter had not given birth to any child after 14 years of marriage and hence in-laws of Pushpa devi said that they will not keep Pushpa Devi and used to say if Rs. 5,000/- is given then they will keep Pushpa Devi. P.W.-2 further stated that she came to know about the said demand four year before

her death. In her cross examination, PW-2 stated that after marriage her daughter lived in her matrimonial home for 14 years and when the accused persons came to know that she is unable to give birth to any child then after two years they began to demand Rs. 5000/-. After two months of making of demand of Rs.-5,000/- her daughter was killed.

9. P.W.-3 Bandhu Ravidas, PW-6 Bishun Ravidas and PW-10 Narayan Ravidas are the uncles of the deceased Pushpa Devi. All these witnesses have stated in their evidence that Pushpa Devi was issueless. The family members at the matrimonial home of the deceased had demanded Rs.5000/- and had said if the demand of Rs. 5000/- is fulfilled then she will be kept in the house.

10. P.W.-12 Adreanus Kerutta is the investigating officer of the case. He has deposed that on 27.07.1993 he was posted as Sub-Inspector of Police at Dumeri police station. On that date, he had received the typed application of the informant Mahadev Ravidas and he was directed to visit the place of occurrence. He reached the place of occurrence and there he met the informant and recorded his statement and he also recorded the statement of other witnesses. Inquest report of the deceased was prepared which was marked as Ext.-1/2. He had inspected the place of occurrence. Investigating officer has proved the endorsement on the written report and the formal FIR which were marked as Ext.-3/2 and Ext.-5 respectively.

ARGUMENTS OF THE APPELLANTS

11. Counsel for the appellants has informed that there were three accused at the stage of the trial and subsequently also in appeal there were three appellants, however, appellant no. 3 Parwathia Devi who is the mother-in-law of the deceased has passed away. Learned counsel further submitted that initially the case was registered under section 328 and 304B of IPC and cognizance was also taken but the charges were framed under section 498A and 302 of the IPC. Counsel, however, says that doctor found no internal or external injuries and cause of the death could not be ascertained. Learned counsel therefore, submitted that this is not a case of murder but only natural death due to illness and therefore conviction was only

under section 498A IPC. However, he also argued that even the conviction under section 498A cannot be made out because harassment, torture and cruelty has not been conclusively proved by the prosecution. He has submitted that there are material contradictions in the evidence of the prosecution witnesses. He has argued that in the evidence it has come that demand for Rs. 5000/- was made but cruelty has not been indicated by any of the witnesses to have been inflicted in front of them or in their presence. Neither is there any record or document to testify about the said cruelty either physical or mental. Hence, the prosecution has failed to prove cruelty. Learned counsel has also argued that neither orally nor by letter such cruelty was said to the family members by the deceased. Counsel has also argued that prior to the incident and her death no complaint/FIR was ever lodged by the deceased or her family regarding any cruelty being meted out to the deceased showing that this is only a post occurrence allegation and therefore, manufactured only because death had occurred.

12. Learned counsel for the appellant has taken us through the evidence of some of the prosecution witnesses and submitted from the evidence of P.W. 2 who is the mother of the deceased and pointed out that she has deposed in her cross-examination that the deceased had lived at her matrimonial home for about 14 years. Counsel, therefore says that this would indicate that the girl was not living under any torture, harassment or cruelty. Counsel then says but on the contrary in para-2 the mother has deposed that due to no issue, Rs. 5000/- was demanded by the in-laws and regarding this she came to know four years before the death of the deceased. Counsel, therefore says that on one hand it is said that for 14 years she had lived at her in-laws place which would be fairly a long time, without any incident. However, on the other hand demand is referred to have been made for Rs. 5000/- four years before death due to the deceased being childless which raises suspicion of this witnesses and makes the entire prosecution case doubtful. Counsel has then referred to evidence of P.W. 3 who is Bandhu Ravidas and pointed out that in para-1 he has

deposed that Baldeo Ravidas had given a letter regarding the illness of the deceased prior to her death. Counsel says this letter is also referred to in the FIR. Counsel then points out that in para 2, this witness has deposed that marriage had taken place in the year 1983 and the couple had lived happily and then after three years the girl had gone to her maternal home and informed about the demand of Rs. 5000/-. Counsel further pointed out that in para-5, P.W. 3 Bandhu Ravidas has deposed that the girl had told her mother about the demand of Rs. 5000 and this was then informed to them by the mother of the deceased and the demand was made after five years. Counsel for the appellants says that this witness is not consistent as to when the demand was made. In his examination-in-chief PW-3 has stated that demand was made after three years, while in his cross-examination it is said that the demand was made after five years. Learned counsel has then referred to the evidence of P.W. 7, who is the doctor and pointed out that doctor has given opinion that there was no evidence of any external or internal injuries of any count. Doctor has also opined that no definite cause of death could be ascertained. Counsel for the appellant therefore says that the evidence of the doctor is conclusive proof that no foul play was there and that there was no physical cruelty or assault meted out to the deceased girl at all. Counsel for the appellant has then referred to the evidence of P.W. 8 Mahadeo Ravidas who is the informant of the case and uncle of the deceased. He has deposed in para-10 that six months before 1993 Pushpa had informed about the demand of Rs. 5000/-. Counsel for the appellant at this juncture points out and reiterates that the timing of the demand of Rs. 5000/- as indicated by this witness and as compared to the timings given by P.W.-2 and P.W.-3 are varied and inconsistent. Counsel says that when there is variation or inconsistency in the reference to the timings of the demand being made then the allegations of cruelty and harassment also comes under cloud and cannot be sustained. Moreover, by the evidence of the informant, it is indicated that demand was made six months before 1993 and thereafter, she had died later on in 1993 itself. Counsel for

the appellants has then referred to the evidence of P.W. 9 Hiralal Das, who is the cousin brother of the deceased. P.W. 9 has deposed that due to not having any children the in-laws started altercation with the deceased and demanded Rs. 5000/-. Counsel for the appellants here says , however that no date has been referred to by this P.W.9 as to when the demand was made. In para 8 of his cross examination, this witness has deposed that when he went to Nagabad, he used to have refreshments at Baldeo's house. Counsel for the appellants has thus argued that this reveals that there was cordial relationship between both the parties. Therefore, there was no question of strained relationship between the parties or harassment and torture being inflicted on the deceased. Counsel has then referred to the evidence of P.W. 12 Adreanus Kerketta, who is the I.O. Of the case and pointed out in para-6 of his deposition he has deposed that Baldeo Das had informed him that he had sent information of his wife illness to her home. Counsel for the appellants points out that this letter is also referred to also in the FIR and it only shows the good bonafide of the husband who informed his in laws or the parents of his wife immediately on her falling ill. Counsel for the appellants further points out that in paragraph-13 of the deposition of investigating officer itself it is indicated that no blood stain or blood stained clothes was found in the room of the deceased which would also indicate that no untoward incident had taken place or any assault made on the deceased by the accused persons or the appellants herein. Counsel for the appellants has also pointed out that defence examined one defence witness D.W. 1 Manjho Singh and he has deposed that Baldeo was married 19 years ago and during all that time he was not aware of any demand being made by Baldeo or his family against the deceased and that the deceased had lived happily in her matrimonial home. Counsel for the appellant also argued that there is no eye witness of the occurrence of torture that only demand seems to be alleged but not established and there is no cruelty. Before death no complaint or FIR was registered regarding any torture, harassment or altercation. Apart from the doctor and investigating officer and those

witnesses declared hostile, the rest of the witnesses are either related or interested witnesses. Lastly, learned counsel submitted that appellants have already spent some period in custody and the case is an old one relating to occurrence of 1993 and much time has passed and also the appellants now are considerably old and faced the rigors and vigors of trial and without admitting guilt or admitting conviction, he prays for the most lenient of sentences, if the court convicts otherwise.

ARGUMENTS OF THE APP

13. Learned counsel for the State, learned APP has argued that 13 prosecution witnesses were examined of which P.W. 11 and P.W. 13 were declared hostile and P.W. 7 is Dr. Bhupendra Prasad Singh and P.W. 12 Adreanus Kerketta, is the I.O. of this case. Learned counsel has further submitted that all the remaining witnesses have consistently deposed that the relationship between the deceased and her in-laws including her husband was not cordial and that there was demand of Rs.5,000. Pointing to the evidence of P.W. 1, counsel for the State said that in para 2, he has deposed that on inquiring from neighbour, he had come to know that the husband, devar and mother-in-law used to always harass the deceased and demanded Rs. 5000/- to keep her. Pushpa had informed about this when she was alive. As per P.W. 2 in para 5 he has deposed that all the accused demanded money and when the money demand was not met then she was subjected to cruelty. In para 7 he has deposed that when the in-laws came to know that the deceased will not have a child then they demanded money. Referring to P.W. 3 Bandhu Ravidas, counsel for the State has submitted that in para 2 he has deposed that for three years, the deceased lived happily with the in-laws after which deceased had come home and informed that Rs. 5000/- was being demanded and only if he fulfills the demand and gives the same then she will be allowed to stay at her matrimonial home. Thereafter the father and uncle of the deceased had gone to meet accused and called for a panchayti to settle the matter. She died six months after the panchayti. Counsel, further submits that P.W.-3 deposed in para-5 that

deceased had informed her mother that Rs. 5000/- was being demanded. With reference to P.W. 4, namely, Bal Kishun Ravidas, learned APP submits that in para-2 he has deposed that after five years of marriage, deceased had come to her parental home and told that there was fights and altercation with the in-laws and demand of Rs. 5000/- was being made. She further informed that her husband Baldev, Devar and mother-in-law used to assault her.

14. Referring to the deposition of P.W. 5, namely, Kamalpat Rabidas, it has been submitted that in para 1 he has deposed that after marriage, the husband, brother-in-law and mother-in-law used to harass and torture the deceased and told her to bring Rs. 5000/- and then only she will be allowed to stay in the matrimonial home. Learned counsel for the State further submitted that likewise P.W.-6 Bishun Rabidas, P.W.-8 Mahadeo Rabidas, P.W. 9 Hira Lal Das and P.W.-10 is Narayan Das have also said about the demand of Rs.5,000/- and torture meted out to the deceased. Learned counsel for the State has then argued that on the basis of the aforesaid evidence of so many prosecution witnesses, it is apparent and clear that though many years had passed since the marriage but since deceased was issueless hence, the husband appellant no.-2, brother in law appellant no.-1 along with their mother had began to harass and torture her and also demanded Rs. 5000/- and threatened to only keep her at home if they get Rs. 5000/-. There may be some inconsistency as to when the demand was made but there is consistency about the demand of Rs. 5000/-. There is also consistency for the reason why it was being made and this is because she did not give birth to child and therefore, the demand of Rs. 5000/- was made which was also accompanied by harassment and torture. Harassment, torture and cruelty is related to the deceased not being able to conceive and bear a child. Therefore as per the aforesaid evidence of so many witnesses, the conviction of the remaining appellants stands fully proved and their sentences need to be sustained.

CONCLUSION

15. Having heard both counsels; having gone through the records of

the case and the evidences, I find that appellants were tried for the charges under sections 302/34 and 498 A/34 of IPC but by the impugned judgment appellants were acquitted of the charges under section 302/34 of IPC but were convicted of the charges under section 498 A/34 of IPC .

16. From the depositions of the prosecution witnesses, I find that almost all the witnesses have made allegation that after 14 years of her marriage, deceased had not given birth to child and hence family members of the matrimonial home of the deceased had demanded Rs.5,000/- and used to say if such amount is not paid she will not be permitted to stay at her matrimonial home. There is however no clear cut describing of any cruelty or harassment, let alone assault made on the deceased during all these years. No precise dates are mentioned regarding demand or harassment by any witness, except for monetary demand of Rs. 5,000 and she will not be allowed to stay. But, after going to the deposition of PW-2, who is the mother of the deceased, I come to the conclusion that her daughter lived in her matrimonial home for 14 years and then she died. At para-2 of her deposition PW-2 stated that she came to know about the demand of Rs.5,000/-, four years before the death of her daughter. It means that initially there was no demand for 10 years of her marriage and her deceased daughter remained alive for four years after the making of demand. But, her said evidence given at para-2 of her deposition is falsified by her own deposition given at para-7 of her cross-examination wherein she deposed that her daughter died after two months of making demand of Rs.5,000/-. PW-2 being the mother of the deceased is expected to be well conversant with the family affairs but her own evidence is contradictory and hence makes the entire prosecution case doubtful. Otherwise also, it does not sound logical that when deceased had lived for 14 years in her matrimonial home uninterrupted then demand of Rs.5,000/- has been made on the ground that deceased did not gave birth to child and she will be permitted to stay at her matrimonial home only after payment of Rs.5,000/- and hence also raises doubt about the credibility in the evidence of prosecution

witnesses . Hence, harassment, torture and cruelty inflicted on the deceased has not been conclusively proved by the prosecution. From the evidence it is also gathered that the marriage was solemnized in 1983, she passed away in 1993. There is also some reference to 14 years of marriage. The mother of the deceased says Rs. 5,000/- was demanded 4 years prior to the death of her daughter, that too over the lack of a child or issue. Apart from this 10 year hiatus there is no evidence of any prior complaint with such person like the Mukhiya, Sharpanch or the local Thana about any monetary demand and accompanying torture or harassment in all these 10 to 14 years.

17. Hence, I find that prosecution has not proved the charges against the appellants, namely Chetlal Das @ Chetu Das and Baldeo Das under section 498 A of IPC. Accordingly, the judgment of conviction and order of sentence dated 27.1.2003 passed in Sessions Trial No. 121 of 1994/ T.R. 31 of 2002 by learned Additional District and Sessions Judge, 1st Fast Track Court, Giridih cannot sustain and is set-aside. The appellants are acquitted of the charges and discharged of the liability of their bail bonds.

18. Accordingly, this appeal is allowed.

(Ratnaker Bhengra,J.)