

(2012) 01 CHH CK 0077
In the Chhattisgarh High Court
Case No : Acquittal Appeal No. 22 of 2009

State of Chhattisgarh

APPELLANT

Vs

Shrikishan Agrawal and Others

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 378
Penal Code, 1860 (IPC) — Section 304B, 306, 406, 498A

Citation : (2012) 2 CGBCLJ 103

Hon'ble Judges : I.M. Quddusi, J; Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Rajendra Tripathi, for the Appellant; K.A. Ansari with Mr. Vipin Singh and Mr. Devesh G. Kela, for the Respondent

Final Decision : Dismissed

Judgement

G. Minhajuddin, J.—This appeal has been filed by the State u/s 378 of the Code of Criminal Procedure against the judgment dated 18.9.2003 passed in Sessions Trial No. 250/00 by 9th Additional Sessions Judge (FTC), Raipur, acquitting the respondents of the charges under Sections 304B, 306, 406 and 498A of the Indian Penal Code. Case of the prosecution, in brief, is that deceased Sandhya Agrawal was married to respondent No. 1 Kishan Agrawal on 16.2.1996 at Tilda Nevra as per Hindu customs and ceremonies. After marriage whenever the deceased used to go to her maternal home at Charoda, Bhilai, she used to complain that the respondents are harassing and torturing her in connection with demand of dowry. In addition to her family members, the deceased had also complained in this regard to Gajanand Shrivastava (PW-1), Madanlal Agrawal (PW-10) and others. She had also written letters to her mother in this regard. In the month of November, 1996, respondent No. 3 Rajkumar Agrawal, father-in-law of the deceased, had lodged a report with the police that the deceased is suffering from hormonal deficiency and there are no signs of her becoming mother. When Vishnu Agrawal (PW-4) and Mohanlal Agrawal (PW-17) had gone to enquire about the same from the respondents, the respondents had replied

that the deceased had not been given sufficient dowry, on account of which they have lodged the report leveling allegations against the deceased and either they should give amount in dowry or otherwise they will ask respondent No. 1 Kishan Agrawal to give divorce to the deceased. After this, an amount of Rs. 25,000/- was given by the brother and the uncle of the deceased to the respondents. After some time, respondent No. 1 Kishan Agrawal leveling false charges against the deceased filed a case of divorce at Raipur. On coming to know about this when the brother and the uncle of the deceased approached the respondents, they demanded further amount in dowry, on which again Rs. 25,000/- was paid to the respondents. Thereafter, meetings of the Agrawal community were also convened at Tilda Nevra and Raipur, after which respondent No. 1 had taken the deceased alongwith him back to Tilda Nevra from Charoda, Bhilai. The deceased, in addition to demand of dowry by the respondents, also used to complain that the respondents also used to accuse her that on account of hormonal deficiency, she cannot become mother and give birth to a child.

2. On 24.8.1999 Vishnu Prasad Agrawal (PW-4) had brought her sister i.e. deceased Sandhya Agrawal from Tilda, Nevra to Charoda on the occasion of Rakshabandhan festival. On the day of festival i.e. 26.8.1999, after celebrating the festival, at about 8 pm, the deceased received a telephonic call from her husband (respondent No. 1) and after that she had become very depressed and informed her mother Smt. Usha Bai (PW-9) that her husband (respondent No. 1) is again demanding amount in dowry. After informing this, the deceased went into her room to sleep. At about 11 am, on hearing the screams of the deceased, the family members woke up and on the advice of the family doctor, the deceased was taken to Sector-9 Hospital, Bhilai, where she expired at about 1.45 am in the intervening night of 26-27th August, 1999. The doctors opined that she had consumed some poisonous substance.

3. The dead body of the deceased was taken for cremation and cremation was done at her in-laws' place at Tilda Nevra. After about 20-25 days of the incident, a written report (Ex. P/6) was submitted by Vishnu Prasad Agrawal (PW-4) before the police, whereupon an FIR was registered in respect of the aforesaid offences.

4. During the course of investigation, the letters said to have been written by the deceased were seized by the police. The dead body was sent for postmortem. Statements of the witnesses were recorded u/s 161 of Cr.P.C. After completing usual investigation, charge sheet was filed by the police before the Judicial Magistrate First Class, Raipur, who, in turn, committed the case to the Court of Sessions Judge, Raipur from there the same was received on transfer by Additional Sessions Judge, Raipur for trial.

5. Learned trial Court framed charges under Sections 304B, 306, 406 and 498A of the Indian Penal Code against the accused person, who denied the charges and prayed for trial.

6. During trial, the prosecution examined as many as 19 witnesses in all in order to prove its case. Statements of the accused persons were recorded u/s 313 of the Cr.P.C., in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence. However, the accused persons examined Maniram, Raju, Shiv Prasad Verma and Rang Bahadur Singh Rajput in their defence as DW-1, DW-2, DW-3 and DW-4 respectively.

7. Learned trial Court, after hearing counsel for the respective parties, considering the material available on record, by the impugned judgment acquitted the accused persons/respondents of the charges under Sections 304B, 306, 406 and 498A of the Indian Penal Code.

8. Heard learned counsel for the parties, perused the LCR as also the impugned judgment.

9. It is not in dispute that death of Sandhya Agrawal had occurred under unnatural circumstances within 7 years of her marriage at her maternal home at Charoda, Bhilai. It is also not in dispute that the deceased had gone to her maternal home to celebrate Rakshabandhan festival on 24.8.1999 and died at about 1.45 am in the intervening night of 26-27th August, 1999. It is also not in dispute that a written report Ex. P/6 was submitted on 24.9.1999 by Vishnu Prasad Agrawal (PW-4), who is brother of the deceased, at Police Station - Purani Bhilai-3, on which FIR (Ex. P/8) was registered and subsequently, on the basis of Ex. P/8, FIR (Ex. P/7B) was registered at Police Station - Nevra.

10. Vishnu Prasad Agrawal (PW-4) and Mohan Lal Agrawal (PW-17) have stated that when the deceased had come to celebrate Holy festival in the year 1996, she had told about the harassment and torture by the respondents in connection with demand of dowry. From the statements of Gajanand Shrivastava (PW-1) and Madan Lal Agrawal (PW-10), it is clear that they had come to know about the harassment and torture by the respondents to the deceased in connection with demand of dowry within a short time after her marriage, which was performed in the month of February, 1996. Vishnu Prasad Agrawal (PW-4), brother of the deceased, has admitted that he had given statement Ex. D/3 to the police on 27.8.1999 i.e. the day following the death of the deceased, and in that statement, he had only informed that his sister (deceased) was suffering from some hormonal deficiency, on account of which she was not having menses regularly and because of which she used to remain worried and tensed. In Ex. D/3, Vishnu Prasad Agrawal (PW-4) has also stated that in addition to this, he has no other doubt with regard to commission of suicide by the deceased.

11. Mohan Lal Agrawal (PW-17), uncle of the deceased, has also admitted that he had submitted a request letter Ex. P/3 on 27.8.1999 before the police. In this request letter, he had stated that his niece deceased Sandhya Agrawal had not committed suicide on account of any harassment or torture, but on account of depression and worry due to hormonal deficiency, from which she was suffering, that she had committed suicide and he suspects no other reason for committing

suicide.

12. So far as demand of dowry by the accused persons is concerned, Vishnu Prasad Agrawal (PW-4) and Mohanlal Agrawal (PW-17), who are brother and uncle respectively of the deceased, have stated that on 30.11.1996 accused Raj Kumar Agrawal had lodged a report with the police leveling allegations against the deceased that she was not having menses regularly and she does not show interest in establishing physical relations with her husband. These witnesses have stated that on coming to know about lodging of the report, they had gone to Tilda Nevra and asked about the same from the accused persons, on which they had demanded cash amount in dowry, whereupon Rs. 25,000/- was paid to them. When even after receiving the said amount, the accused persons demanded more money, that a meeting of the Agrawal community was convened at Tilda Nevra as well as at Raipur and on their persuasion, accused Kishan Agrawal had taken back the deceased alongwith him.

13. Vishnu Prasad Agrawal (PW-4) and Mohanlal Agrawal (PW-17) have admitted that in the said meeting, Radheshyam Agrawal and other persons were present. However, none of these persons has been examined by the prosecution. According to Vishnu Prasad Agrawal (PW-4) and Mohanlal Agrawal (PW-17), after about 2 months, the accused persons had informed them that accused Kishan Agrawal has filed a case against the deceased for divorce at Raipur and they had further said that in case, cash amount is paid in dowry, the accused/respondent No. 1 Kishan Agrawal will withdraw the case, on which again Rs. 25,000/- was paid by them to the accused persons. However, on this point also, none of the persons, who were present in the meeting of the Agrawal community convened at Tilda as well as Raipur, has been examined.

14. The fact regarding demand of cash amount twice in dowry and the same being paid to the accused persons, has not been mentioned in the statement (Ex. D/3) of Vishnu Prasad Agrawal (PW-4) recorded on 27.8.1999 as well as in the request letter (Ex. P/3) given by Mohanlal Agrawal (PW-17) on 27.8.1999. This fact has also not been mentioned in the written report (Ex. P/6A) submitted by brother of the deceased Vishnu Prasad Agrawal (PW-4) after about one month of the incident on 24.9.1999. As such, the evidence of the prosecution witnesses on this point is not worthy of credence.

15. The written report (Ex. P/6A) was submitted by Vishnu Prasad Agrawal (PW-4) on 24.9.1999, whereas the incident had occurred in the intervening night of 26/27th August, 1999. From the statements of Gajan and Shrivastava (PW-1), Vishnu Prasad Agrawal (PW-4), Smt. Usha Bai (PW-9) and Mohanlal Agrawal (PW-17), it is clear that they had come to know about the harassment and torture allegedly meted out to the deceased by the respondents in connection with demand of dowry within a couple of months of her marriage, which was solemnized on 16.2.1996. However, despite this, the above fact was not disclosed to the police by any of the witnesses and on the contrary, Vishnu Prasad Agrawal (PW-4) and Mohanlal Agrawal (PW-17) have informed the police

through their statement and request letter respectively that the deceased had committed suicide on account of frustration and depression because she was suffering from hormonal deficiency, not having menses regularly and was not becoming pregnant.

16. Smt. Usha Bai (PW-9), mother of the deceased, has stated that only on coming to know that her daughter deceased Sandhya Agrawal had become unconscious, she (PW-9) had become unconscious and remained in the same state for about a week and after that when she regained consciousness, she had informed her son Vishnu Prasad Agrawal (PW-4) and brother-in-law Mohanlal Agrawal (PW-17) that the deceased used to complain about the harassment and torture by the accused persons in connection with demand of dowry.

17. However, Smt. Usha Bai (PW-9) has been belied by the statements of her son Vishnu Prasad Agrawal (PW-4) and Gajanand Shrivastava (PW-1), who have stated that Smt. Usha Bai had not become unconscious, and had gone to Sector-9 Hospital. In addition to this, Gajanand Shrivastava (PW-1), who had gone to attend the last rites of the deceased at Tilda Nevra, has stated that alongwith other members of the family of the deceased, her mother Smt. Usha Bai (PW-9) had also gone to Tilda and attended the last rites of the deceased. The factum of the respondents/accused persons harassing and torturing the deceased in connection with demand of dowry was not disclosed to the police at the earliest, especially when, according to their own statements, the same was within their knowledge on the earlier occasions also. Smt. Usha Bai (PW-9) has stated that they had not taken the deceased for treatment, but on this point also, she has been belied by her son Vishnu Prasad Agrawal (PW-4) and brother-in-law Mohanlal Agrawal (PW-17), who have stated that Mohanlal Agrawal (PW-17) and Smt. Usha Bai (PW-9) had taken the deceased twice for treatment to Vellure Hospital.

18. A letter (Ex. D/9) is on record, which is said to have been written by the deceased to her husband (respondent No. 1 Kishan Agrawal). Mohanlal Agrawal (PW-17) has admitted in para-13 of his statement that the accused persons had handed him the letter (Ex. D/9), which was seized from him by the police. This witness Mohanlal Agrawal has further admitted that this letter is in the handwriting of her niece deceased Sandhya. From perusal of the said letter, it is clear that the deceased was suffering from hormonal deficiency, not having regular menses and even after undergoing continuous treatment, she was not becoming pregnant and was fed up with the treatment. In this letter, there is not even a whisper about the harassment and torture by the accused persons in connection with demand of dowry.

19. So far as offence u/s 406 of the IPC is concerned, except bald statements of Smt. Usha Bai (PW-9), there is no other evidence to corroborate her statement that dowry was given to the accused persons at the time of marriage and they had committed breach of trust in respect of the same. However, in para-23, she (PW-9) has stated that the accused persons had not demanded dowry at the

time of marriage from her.

20. Thus, on careful consideration of the material available on record, we are of the opinion that the prosecution has utterly failed to establish its case against the accused persons/respondents, and the learned trial Court has rightly acquitted the accused persons/respondents of the charges under Sections 304B, 306, 406 and 498A of the IPC. We find no illegality or infirmity in the impugned judgment and the same deserves to be affirmed. In the result, the appeal fails and is, accordingly, dismissed. The impugned judgment of the trial Court dated 18.9.2003 passed in S.T. No. 250/2000 is hereby affirmed.