

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 350 of 1999

- Yadho Prasad, S/o Lakhan Lal Chandra, aged about 29 years, Resident of Village Bhothiya, P.S. Jaijaipur, District – Bilaspur (M.P.) (Now C.G.)

---- Appellant

Versus

- State of M.P. through District Magistrate, Bilaspur (M.P.) (Now State of CG).

---- Respondent

For Appellant : Mrs. Indira Tripathi, Advocate
For Respondent : Mr. Mahesh Mishra, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 07-08-2015

- 1) The appellant has preferred this appeal assailing the judgment of conviction and order of sentence dated 27.01.1998 passed by the 1st Additional Sessions Judge, Shakti, Distt. Bilaspur in Sessions Trial No.146/98, whereby & whereunder the trial Court after holding the appellant guilty for causing dowry death, convicted him under Sections 304B of the IPC and sentenced him to undergo R.I. for 10 years and to pay fine of Rs.10,000/-, in default of payment of fine to undergo additional R.I. for 2 years.
- 2) Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

- 3) As per case of prosecution, the marriage of Munni Bai was solemnised with the appellant on 20-4-1996 and soon thereafter she was treated with cruelty in connection with demand of dowry and she died on 26.11.1997 within 7 years from the date of her marriage. After her death, appellant informed about the incident to complainant Budeshwar Singh (PW-1), father of the deceased, who rushed to the house of appellant and saw her daughter's dead body
- 4) Complainant Budeshwar Singh went to Police Station and lodged a merg intimation (Ex.P-4) before Police Station, Jaijaipur. During the merg inquiry, Investigation Officer, after summoning the witnesses vide Ex.P-7 prepared inquest over the dead body of the deceased vide Ex.P-8. Dead body was sent for autopsy to Primary Health Centre, Jaijaipur, where Dr. S.H. Ghosalkar (PW-13) has conducted autopsy on the dead body of deceased vide Ex.P-11 and opined that no any definite opinion could be ascertained from examination as there being no injury detected sufficient to account for death. Thereafter, complainant (PW-1) again made a complaint before the SDO (P) on 27.12.1997 and thereafter FIR (Ex.P-2) was lodged on the same day i.e. on 27.12.1997.
- 5) Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code'). After completion of investigation, charge sheet was filed before

the Court of Judicial Magistrate First Class, Sakti, who in turn committed the case to the Court of Sessions, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

- 6) In order to prove the guilt of the accused/appellant, the prosecution examined as many as twenty five witnesses to support its case. Accused was examined under Section 313 of the Code, in which he denied the circumstances appearing against him and pleaded innocence and false implication in crime in question. Accused also examined two defence witnesses namely Lakhanlal (DW-1) and Thandaram Kashyap (DW-2) to support his case.
- 7) After providing opportunity of hearing to the parties, learned Additional Sessions Judge convicted and sentenced the appellant as aforementioned.
- 8) I have heard learned counsel for both the parties and perused the judgment impugned and record of trial Court.
- 9) Learned counsel appearing for the appellant has not disputed the fact that deceased was died inside of the house and argued in the light of medical evidence that prosecution has totally failed to prove that death of the deceased was unnatural. Prosecution has also failed to prove that any demand of dowry was made by the appellant, there is no cogent and unimpeachable evidence against the appellant for proving the

said charge. Therefore, in absence of cogent and clinching evidence conviction and sentence of the appellant is not sustainable under the law and the appellant deserves to be acquitted from the charges.

- 10) *Per contra*, learned State counsel opposed the appeal and submitted that prosecution has proved its case beyond reasonable doubt.
- 11) In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the prosecution.
- 12) In the present case, death of the deceased has not been substantially proved that it was homicidal in nature or not. The medical evidence of Dr.S.H. Ghosalkar (PW-13) and autopsy report (Ex.P-11) goes to show that cause of death could not be ascertained by the autopsy and no FSL has been presented by the prosecution, therefore, it could not be proved that deceased had consumed any type of poison. So far the prosecution has failed to prove that death of deceased was unnatural. It is only established by the prosecution that death of deceased was within 7 years of her marriage.
- 13) Budheswar (PW-1) and Vimla Bai (PW-2) are parents of the deceased and they have not specifically stated about any demand of dowry made by the appellant prior to death of the deceased. Statements of both the witnesses are of superficial

nature and they are only here-say witnesses. They had heard demand of dowry through deceased, but neither any report was lodged nor any social meeting was conducted by them. Prosecution has produced letters and affidavits (Exs. D-6, D-7, D-8 and D-9) written by the deceased prior to her death, which shows that appellant never demanded dowry, if he had demanded dowry, then it would have been mentioned in the letters.

- 14) After appreciating the evidence available on record, the trial Court has wrongly convicted and sentenced the appellant under Section 304B of the IPC. While convicting and sentencing the appellant under Section 304B of the IPC the Court below has not considered the aforesaid facts and thereby committed illegality.
- 15) Consequently, the appeal is allowed. Conviction and sentence of the appellant under Section 304B of the IPC are hereby set aside. He is acquitted of the charges framed against him.
- 16) It is stated that the appellant is on bail, his bail bond shall continue for a further period of 6 months in view of Section 437A of the Code.

Sd/-
(I.S.Uboweja)
JUDGE