

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 561 OF 2015

The State of Chhattisgarh, through District Magistrate, Jashpur (C.G.)

... Appellant

Versus

1. Mohd. Barik, S/o Mohd. Mojahir, aged about 50 years
2. Shahnaj Khatun, W/o Mohd. Barik, aged about 40 years
3. Mohd. Shahbaj Khan @ Chhotu, S/o Mohd. Barik, aged about 21 years, by caste Musalman

All resident of Laxmi Nagar, Jashpur, District Jashpur (C.G.)

4. Shahjadi Khatun, W/o Mohd. Liyakat Hussain, aged about 35 years, resident of Kunkuri Bajardand, District Jashpur (C.G)

... Respondents

For Appellant	:	Mr. Vinod Deshmukh, Dy. Govt. Advocate.
For Respondents	:	Mr. J.K. Saxena, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

26/10/2015

1. The present application has been filed for leave to appeal against acquittal dated 20.2.2015 by the Additional Sessions Judge, Jashpur in Sessions Trial No. 104 of 2013 from the charges under Section 304-B/34 IPC and alternatively under Sections 302/34 and 498-A/34 IPC.
2. Learned Counsel for the State submits that death was unnatural by burn injuries in the house of the husband within 5-6 months of the marriage. PW-5 Khushbu Khatun, sister of the deceased and PW-6 Hasina Begum, mother of the deceased had deposed that there was a dowry demand for Rs.50,000/-. In the circumstances, there was a presumption that unnatural death had taken place because of dowry demand making it a dowry death. The onus was on the Respondents to

disprove the charge. The Trial Judge has reversed the principles of criminal jurisprudence of Section 304-B IPC to grant acquittal without proper consideration of the facts and the evidence led before him.

3. Learned Counsel for the Respondents opposing the application submitted that the presumption will arise only after the prosecution has established a prima facie case. Merely because death may have taken place within 7 years of the marriage by burn injuries, it would not automatically lead to a presumption for a dowry death. Independent eye-witnesses have deposed that the deceased had died of burn injuries while cooking. There was no demand for dowry as the deceased had only stated that she desired her family to give Rs.50,000/- to facilitate her husband to set up a source of income for himself. No such allegations had been made at the initial stage by the family of the deceased which had participated in the last rites.

4. We have considered the submissions on behalf of the parties.

5. Merely because death may have taken place within 7 years of marriage, and the manner of death may have been unnatural, does not raise an irrebuttable presumption of a dowry death. Before the presumption under Section 304-B IPC can be invoked, it is not sufficient to establish only that death took place within 7 years of the marriage and that it was unnatural. The prosecution has to establish a prima facie case that the unnatural death was occasioned by a dowry demand in proximity to the death and from all surrounding and attending circumstances, a prima facie case must arise that it was a dowry death only after which the burden of proof shifts to the defence. Merely because a case may have been instituted under Section 304-B IPC, the onus does not straightaway shift to the defence. Even after the onus shifts, the presumption raised in the law is rebuttable by proper evidence, if available.

6. Therefore to establish the charge under Section 304-B IPC it is essential to prove that death was within 7 years of marriage, death took place in an unnatural manner, there were demands for dowry in proximity to the time of death culminating in an unnatural death for that reason. Keeping the aforesaid principles, we shall now examine the order under appeal as to whether the acquittal was justified or not.

7. The Respondents are the father-in-law, mother-in-law, husband and married sister-in-law. The deceased was married to Respondent No.3 in April, 2013 and died on 18.9.2013, clearly within 7 years of marriage. Death was unnatural due to burn injuries. The deceased was taken to the hospital for treatment immediately while she was conscious with burns on her face, neck, hands, chest and stomach to the extent of 45%. The post-mortem was conducted on 19.9.2013 at 2:00 p.m. by PW-10 Dr. (Smt.) Manju Minj who found inter-alia that the lungs were clear, the face was burnt 4.5%, both hands in front and back suffered from 18% burns, front back of the chest and stomach and both thighs above the knee had suffered 18% burns. It is therefore apparent that the entire body was not burnt but that the burn injuries were selective in nature. It is not the case of the prosecution that the deceased had been set on fire by the Respondents. Had it been so, the deceased who was fully conscious would certainly have made some disclosure how she suffered the burn injuries to PW-12 Dr. Purushottam Kumar Singh, when she was first brought to District Hospital, Jashpur, who conducted the MLC, Exhibit P-8.

8. PW-5 Khushbu Khatun, sister of the deceased, deposed generally for the first time in Court that the deceased had asked for Rs.50,000/- to facilitate her husband in setting up a source of income. There was no specific allegation for it being demand in the form of a dowry along with any nature of harassment for the purpose. In the Merg

lodged on 18.9.2013 at 20:30hrs, Exhibit P-9, no allegation has been made with regard to any dowry demand against the deceased. The family of the deceased having been informed, they had come to the hospital and the inquest report was also prepared in their presence. Their police statements were recorded the next day but the FIR, Exhibit P-17, was not lodged by any of the family members but by the Sub Inspector of Police. The Trial Judge found serious omissions between police statements and court depositions of the father, mother and sister of the deceased. PW-6 Hasina Begum, mother of the deceased, also acknowledged that at no point of time they had lodged any complaint or informed any other of any harassment meted out to the deceased for dowry.

9. PW-13 Mohd. Arshad, father of the deceased, tried to embellish the allegation in his court statement by alleging that his daughter had been throttled when there was no such evidence in the post-mortem report or in his police statement.

10. In the aforesaid facts and circumstances, the evidence of PW-20 Mohd. Shabbu, the land-lord, where the deceased lived with her in-laws and husband who has deposed that the deceased had died of burn injuries while cooking becomes relevant. Likewise, PW-7 Kunti Devi, the neighbor, had also deposed to the same effect. Respondent No.4 was the married sister of Respondent No.3. There is no specific allegation that she did not reside in the house of her own in-laws and was residing with her parental family, which clearly suggests that the allegations have been couched in a manner to rope in the entire family only because the death had taken place within 7 years of marriage. The allegation with regard to demand for dowry for Rs. 50,000/- appears to be single in nature for the first time in Court and that too was stated by the deceased to facilitate her husband to set up a business for his own

livelihood, which in our opinion has rightly not been considered as a dowry demand by the Trial Judge.

11. In the entirety of the facts and circumstances including the evidence as discussed by the Trial Judge, we find no reason to interfere with the order of acquittal.

12. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

/Sharad/*