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HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 61 of 2014**

Motiram Sahu S/o Shri Bikaram Sahu, aged about 48 years, Occupation Agriculturist, R/o village Khaliyapali, Post Sulsuliya, Police Station Bhathali, Civil and Revenue District Bargadh (Orissa).

---- Appellant**Versus**

1. State of Chhattisgarh, through: the Police Station Sariya, District Raigarh Chhattisgarh.
2. Sudama Saha S/o Achyut Saha, aged about 25 years.
3. Ashok Saha S/o Gurucharan Saha, aged about 38 years.
4. Kuntala Saha W/o Ashok Saha, aged about 36 years.

Respondent No. 2 to 4 are R/o village Surajgadh, Post and Police Station Sariya, Civil and Revenue District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Roop Naik, Advocate.
For Respondents No. 1/State	:	Shri Ravindra Agrawal, Panel Lawyer.
For Respondents No. 2 to 4	:	Shri S.N.Nande, Advocate.

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

Judgment on Board**Per Navin Sinha, Chief Justice****08/07/2015**

1. The present appeal under Section 372 of the Code of Criminal Procedure, 1973 by the father of the deceased questions acquittal of Respondent No. 2, the husband of the deceased, Respondents 3 and 4, the uncle and aunt of Respondent No.2 respectively, of the charge under Section 304-B/34 and 201/34 IPC, ordered by the Additional Sessions Judge, Sarangarh, District Raigarh in Sessions Trial No. 35 of 2013 dated 17.12.2013.

2. Learned Counsel for the Appellant submits that his daughter died within seven years of marriage. He suspected that she was killed for inadequate dowry given during marriage. Proper intimation of death was not given to the Appellant. He was wrongly informed that she is unwell and was being taken for treatment. No postmortem was conducted. Froth was coming out from the nose and mouth of the deceased. The Respondents hurriedly disposed the dead body without waiting for the Appellant to arrive at the cremation ground. Reliance was placed on (2014) 2 SCC 106 (Bhupendra v. State of Madhya Pradesh) and (2005) 5 SCC 207 (Kans Raj v. State of Punjab) in support of the submission that the acquittal was not justified as the law raised a presumption that death had occurred because of dowry demand.

3. Learned Counsel for Respondents No. 2, 3 and 4 submitted that the judgment under appeal is well considered and the acquittal calls for no interference. The allegations were based on suspicion only. No cogent evidence was led in support of any demands for dowry. The medical evidence of the Doctor was that the deceased was pregnant and died due to severe anemia. The brother and uncle of the deceased had attended the cremation also. Prosecution witnesses and the Appellant himself had deposed that relations between the deceased and Respondent No.2 were happy and cordial whenever they came to the parental home of the deceased. There is not an iota of evidence regarding any demand for dowry at any time much less any harassment or details of the same.

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

5. An order of acquittal is not to be lightly interfered with unless there has been grave miscarriage of justice, complete erroneous appreciation of evidence leading to perverse findings or if relevant evidence has been ignored. In the present case, we do not find any of these circumstances existing to warrant interference with the acquittal. Though judicial precedents abound on

the issue, we consider it appropriate to quote one such precedent 1980 Supp SCC 641 (State of J&K v. Hazara Singh) putting the law succinctly as follows :-

“10. It is well settled that in an appeal by special leave under Article 136 of the Constitution, against an order of acquittal passed by the High Court, this Court does not normally interfere with a finding of fact based on appreciation of evidence, unless the approach of the High Court is clearly erroneous, perverse or improper or there has been a grave miscarriage of justice.....”

6. The Appellant's daughter was married to respondent No. 2 on 24.4.2012. She was deceased on 25.2.2013. The F.I.R was lodged on 17.3.2013 alleging that she had been killed for dowry and that froth was coming out from her nose and mouth. No explanation was given for the delay of nineteen days in filing of the F.I.R. The Appellant acknowledges that he was informed on the date of occurrence itself and came to the hospital with his wife. His son PW-1, Raneshwar Sahu, brother of the deceased and the Appellant's brother PW-2, Sudama Pradhan had also attended the cremation. In cross-examination he first stated that he had lodged the police report two days after the occurrence and then stated that he had become mentally disturbed. It is therefore apparent that the F.I.R was lodged much belatedly with enough time to ponder, consider and then lodge a police report with pre-conceived thinking. If the Appellant was sanguine of a dowry death because of past conduct of the Respondents, natural human conduct would have been to lodge a police report the same day or the next day and not nineteen days later. This fact alone raises serious doubts about the allegations sought to be made by the Appellant.

7. The Appellant, his wife PW-13, Sarnishta Sahu and his son PW-1, Raneshwar Sahu have stated that relations between the deceased and her husband was cordial and they were a happy couple. The Appellant acknowledged that he never complained to anybody or lodged any report with regard to any instance of harassment for dowry that the deceased may have

told him. No specific date or nature of harassment has been mentioned by the three prosecution witnesses except a bald statement that the deceased had informed of harassment. No incident of harassment in proximity to death was mentioned. There were no signs of any external injury on the body of the deceased. There is no specific incident of or allegation of harassment cited against Respondents 3 and 4. They appear to have been implicated merely because of their relationship to Appellant No.2.

8. The Respondents, in their defence under Section 313 CrPC took the stand that the deceased died due to severe anemia during pregnancy.

9. PW-3, Prafull Pradhan, an independent witness deposed bringing the deceased to the clinic of PW-7, Dr. S.K.Acharya who deposed that the deceased was pregnant and suffered from anemia.

10. The Trial Court on appreciation of the evidence came to the conclusion that the prosecution had failed to prove any demands for dowry and that the deceased was killed for that reason. The Trial Court also noticed from the evidence of the related prosecution witnesses that the deceased was being treated since prior to marriage at the Sarojini Maharana Hospital.

11. Section 304-B IPC raises a presumption with the aid of Section 113 B of the Evidence Act that if death took place in an unnatural manner within seven years of marriage and if it is shown that soon before death the deceased was subjected to harassment for dowry it shall be presumed to be a dowry death. This is contrary to the normal rule of criminal jurisprudence that it is for the prosecution to prove the charge beyond reasonable doubt. But it does not mean that every death within seven years of marriage would amount to a dowry death. The presumption would arise only if the prosecution establishes that soon before death the deceased had been subjected to harassment for dowry. The onus is therefore first on the prosecution to prove that not only was the deceased married within seven years of her death but also that the death

was unnatural and that soon before death the deceased had been subjected to harassment for dowry. Once this initial onus is discharged by the prosecution the onus shifts on the accused.

12. It is apparent in the facts of the case that the prosecution has failed to discharge the initial onus. The burden therefore never shifted to the accused. In (2015) 3 SCC 724 (Sher Singh v. State of Haryana) this initial onus to be discharged by the prosecution was considered as follows :-

“16..... In other words, it is for the prosecution to prove that a “dowry death” has occurred, namely,

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) within seven years of her marriage,

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry, and

(v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.”

13. Kans Raj (supra) relied upon by the Appellant is distinguishable on its own facts. Death had occurred in a completely unnatural manner due to asphyxia. There was evidence with regard to harassment for purposes of dowry including in proximity to the death. Immediately after the marriage, the Appellant therein had started harassing the deceased for dowry and would taunt the deceased in presence of other witnesses for not giving money and colour TV. It was further held that other family members of the husband however could not be convicted on basis of conjectures and surmises only.

14. In Bhupendra (supra) also relied upon by the Appellant, the deceased was suspected to have died of food poisoning. There were external injury marks on the body also caused by hard and blunt object. In view of other evidence available with regard to conduct of harassment for dowry also, it was held that mere absence of Viscera would not make such a difference as to result in acquittal if the death was unnatural. In these circumstances, the Court

came to the conclusion that the death having occurred in unnatural and suspicious circumstances, presumption under Section 304-B IPC and 113B of the Evidence Act was attracted. The case is again distinguishable on its own facts.

15. We find no reason to interfere with the judgment of acquittal. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE