

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 608 of 2015**

The State of Chhattisgarh, Through District Magistrate, Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Mohd. Alim S/o Hafeez Khan, Aged about 54 years.
2. Shama Khan W/o Alim Khan, Aged about 42 years.
3. Aasma Khan S/o Alim Khan, Aged about 21years.
4. Aarif Khan S/o Alim Khan, Aged about 30 years.
5. Anish Khan S/o Alim Khan, Aged about 22 years.

All R/o Yadunandan Nagar, Bilaspur, House No. LIG 35 PS Civil Lines District
Bilaspur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Neeraj Mehta, Panel Lawyer.
For Respondents	:	Smt. Indira Tripathi, Advocate.

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

Order on Board**28/10/2015**

1. The present application has been filed for leave to appeal against order of acquittal of the Respondents dated 19.11.2014 in Sessions Trial No. 23 of 2010 ordered by the 6th Additional Sessions Judge, Bilaspur from the charge under Section 304-B/34 IPC. The Respondents are the mother-in-law, the father-in-law, the unmarried sister-in-law, the husband and brother-in-law of the deceased.

2. Learned Counsel for the State submits that the deceased died within one year of the marriage in suspicious circumstances. The death was unnatural by burning. There were demands for dowry. The dying declaration of the deceased had also been recorded. There was no reason why the deceased would set herself on fire if she had very recently given birth to a girl child. The conduct of the husband was highly suspicious as he was absconding after death. The smell of kerosene was coming from the room and

body of the deceased. She was alive before she died at the hospital and had disclosed to Abdul Arif Khan (PW-2), her brother, that the Respondents had set her on fire because of dowry demands. The postmortem report reveals that the deceased had suffered 65% burns on her face, neck, hand, chest, stomach, thighs and back.

3. Opposing the application for grant of leave to appeal, Learned Counsel for the Respondents submitted that every death within seven years of marriage does not automatically lead to a presumption of being a dowry death. Likewise, only because the death was unnatural cannot raise an irrebutable presumption of it being a dowry death. It is for the prosecution to first establish a prima facie case by demonstrating that there were demands for dowry, cruelty of behaviour, that these were in proximity with death followed by death in an unnatural manner. Only after the prosecution establishes a prima facie case, the onus shifts on to the accused. If the accused leads acceptable evidence in rebuttal, the onus stands discharged.

4. There was no dying declaration of the deceased. It was a mere statement purported to be made before the Investigating Officer (PW-15), P.S. Netam. Rather than implicating the Respondents, on the contrary it states that the deceased died of burn injuries caused suddenly while she was boiling milk in the kitchen for the child. None of the prosecution witnesses have supported either allegations for demand of dowry in the trial nor that the deceased was set on fire with all of them deposing that the deceased died due to accident because her clothes suddenly caught fire while she was warming milk for the child.

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

6. Death undoubtedly has taken place within seven years of marriage in unnatural circumstances. According to the prosecution, smell of kerosene was also coming from the room. But these two facts alone are not considered

sufficient by us to raise a presumption of a dowry death shifting the onus to the accused in absence of any cogent evidence with regard to demands for dowry, much less in proximity to death and that the deceased was burnt to death because of the same.

7. On the contrary, the evidence discussed by the learned Trial Judge demonstrates that mother and brother of the deceased themselves did not support the allegations of demand for dowry much less that she was set on fire for that reason. On the contrary, the evidence is that she got burnt in an accidental fire when her clothes caught fire while warming milk for the child. There is no dying declaration of the deceased naming the Respondents. The reference to the statement of PW-2, Abdul Arif Khan, brother of the deceased and the disclosure allegedly made to him by the deceased has been fully discussed by the Trial Judge in the entirety of the evidence as being highly suspicious in nature when the witness himself appears to have made different statements at different times. The fact that the husband may have been absconding may be an incriminating factor in so far as suspicion is concerned, but it cannot be conclusive evidence.

8. We requested Learned State Counsel to examine the original records and assist us if the deceased was warming milk in the kitchen and her clothes caught fire by an accident, what materials did the Investigating Officer find when he visited the place of occurrence. We were of the opinion that if the clothes of the deceased caught fire accidentally, the deceased would not have sat at one place and allowed herself to burn. There would have been evidence of her running helter-skelter and the stove on which the milk was being warmed would have been found overturned, there would have been kerosene on the floor and utensils may be lying around. Unfortunately, the State Counsel informed us after examining the original records that the Investigating Officer does not appear to have visited the place of occurrence even. We consider it indeed very unfortunate for the manner in which the investigation

was done in the matter as serious as unnatural death by burning of a woman within seven years of her marriage opening all myriads possibilities during trial, especially when the statement of the family members appears to have changed substantially with the passage of delay of three years. The police must accept a substantial part of the blame in having been extremely negligent during investigation as visit by the Investigating Officer to the place of occurrence, in our opinion, was an absolute imperative for a proper investigation.

9. In the entirety of the matter and the nature of evidence available, we are unable to accept this application for leave to appeal.

10. The application is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE