



62

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 956 of 2004

- Raju @ Rajendra Kumar Soni, S/o Late Phulchand Soni, aged 35 years, r/o Dayalbandh, Bilaspur, Police Thana Kotwali, District Bilaspur (CG)

---- Appellant

Versus

- State of Chhattisgarh through the District Magistrate, Bilaspur (CG)

---- Respondent

For Appellant : Shri Ajay Ayachi, Advocate

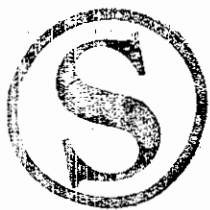
For Respondent/State : Shri Rajendra Tripathi, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Anil Kumar Shukla**

Judgment on Board by Prashant Kumar Mishra, J.

07.11.2016

- 1) The appellant would assail his conviction under Section 304-B of Indian Penal Code and sentence of life imprisonment in ST No.276 of 2002 by the Court of Additional Sessions Judge, Bilaspur.
- 2) The facts of the case, briefly stated are that the appellant was married to deceased- Asha Soni on 01.05.2001. The appellant himself lodged Dehati Merg intimation at about 10.30 am on 03.05.2002 vide Ex.P/5 to the effect that on account of dispute concerning visit to her parental house, a quarrel took place with his wife Asha Soni, after which he slapped his wife, therefore, she did not sleep with him in the night and went to another room. In



83

the morning he found his wife dead in the other room. The Police sent the dead body for autopsy, which was performed by Dr.PK Tiwari (PW-5), who submitted his report vide Ex.P/4 to the effect that the death was caused by asphyxia due to hanging. Injuries found over the body were not fatal though they are anti-mortem in nature and the duration is 12 to 24 hours. Based on the Dehati Merg intimation, the Police registered offence under Section 306 IPC, however, after completion of investigation, filing of charge-sheet, the trial Judge framed charges under Section 304-B IPC and 306 IPC. The appellant was charged with the said offences on the basis of statement of Kallu Soni (PW-7), the father of the deceased.

- 3) The trial Judge has convicted the appellant for the offence punishable under Section 304-B of the IPC.
- 4) Shri Ajay Ayachi, learned counsel for the appellant would submit that there is no independent evidence of demand of dowry or commission of cruelty by the appellant. He would submit that none of the neighbours or any other relatives of the deceased have made any allegation against the appellant. The statement of Kallu Soni (PW-7) is not of such credence which alone would be sufficient to sustain the appellant's conviction.
- 5) Learned State counsel Shri Rajendra Tripathi would support the impugned conviction on submission that the appellant was ill-treating his wife, therefore, the conviction is well founded.



64

- 6) The entire prosecution case rests on the testimony of Kallu Soni (PW-7), father of the deceased. According to this witness, the appellant used to demand Rs.10,000/- in the beginning and thereafter, Rs.20,000/- and one motor cycle. The deceased used to inform him that the appellant used to abuse and assault her after consuming liquor. In para-4 of the examination-in-chief, this witness has made somewhat contradictory statement that when the deceased had come to Banda and the appellant reached to take her back to Bilaspur, he tried to persuade her not to go to Bilaspur, for which, she stated that since she was married to the appellant, she was required to go to Bilaspur. This part of the statement would tend to suggest that the ill-treatment was not of serious nature, otherwise the deceased would not have come back to her own house and might yield to her father's request of not going back to Bilaspur. Similarly, in para- 7 of his statement, Kallu Soni (PW-7) would admit that the appellant is having a jewellery shop and that he would not recollect as to at what point of time the appellant demanded Rs.10,000/- from him or the deceased. Similarly, is the statement with respect to demand of Rs.25,000/- and a motor-cycle. In the later part of his statement he has admitted that the report (Ex.P/9) was prepared by a lawyer, on which he put his signature without reading it. A perusal of the report (Ex.P/9) would reveal that the allegation is with regard to demand of Rs.10,000/-, Rs.25,000/- for his business and a motor-cycle. Contrary to which in his Court statement, he has made allegation of demand of Rs.25,000/-, without



63

mentioning that the said demand was for the business. In the written report, the allegation was made that ill-treatment was on account of non-fulfilling of demand of cash and motor-cycle, however, in the Court statement the allegation of assault and demand of money have not been interlinked and they appear to be separate incidents. In the Court statement, the witness would state that there is no telephone facility in the house of the appellant or in his house at Banda, whereas, in the written report there is a statement that his daughter had telephoned him at Banda that she was subjected to cruelty.

- 7) On a overall analysis of the entire evidence on record, we find that except for the statement of Kallu Soni (PW-7), there is no other evidence to corroborate that the appellant was demanding cash or any article in connection with the marriage. Evidence of Kallu Soni (PW-7) is not inspiring confidence in the backdrop of his admission that the written report Ex.P/9 was prepared by a lawyer and he was not aware as to what was written on it. Moreover, Kallu Soni has not clearly stated as to at what point of time demand of Rs.10,000/- or Rs.25,000/- or motor-cycle was made. Thus, there is absolute lack of evidence that the deceased was subjected to cruelty soon before her death and the said commission of cruelty was in connection with demand of dowry.
- 8) In view of foregoing, we find that the impugned judgment is not sustainable on the basis of evidence available on record.

- 9) In the result, the appeal is allowed. Conviction and sentence of the appellant under Section 304-B of the IPC is hereby set aside. He is acquitted of the charge framed against him.
- 10) 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/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Anil Kumar Shukla

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