

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 1158 OF 2015

State of Chhattisgarh, through the Station House Officer, Police Station
Telibandha, District Raipur (C.G.)

... Petitioner

Versus

1. Rakesh Sen @ Rakesh, S/o Banshilal Sen, age 26 years, R/o
Mahaveer Nagar, Near Sai Temple, Police Station Telibandha, District
Raipur (C.G.)

2. Smt. Radha Bai Sen, W/o Banshilal Sen, age 53 years, R/o
Mahaveer Nagar, Near Sai Temple, Police Station Telibandha, District
Raipur (C.G.)

... Respondents

For Petitioner : Ms. Smita Ghai, Panel Lawyer.

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

Order on Board

Per NAVIN SINHA, C.J.

18/01/2016

1. The present application has been filed for leave to appeal against
acquittal of the Respondents dated 30.4.2015 of the charge under
Section 304B/34 IPC by the 6th Additional Sessions Judge, Raipur, in
Sessions Trial No. 269 of 2013.

2. Learned Counsel for the Petitioner submits that death had
occurred within three years of the marriage. It was unnatural by 90-95%
burns. PW-5, Rukmani, the mother of the deceased, had deposed that
there was a dowry demand for a motorcycle for which a sum of Rs.
20,000/- was given. There is a dying declaration of the deceased
recorded by the Tehsildar Yamini Pandey (PW-14) stating that the
deceased was abused and harassed by her mother-in-law exclusively.
Her thumb impression could not be taken as both her hands were
bandaged due to burn injuries. Merely because the dying declaration

was not initialed by the deceased or did not bear her thumb impression it does not become suspect. The law presumes that a person at the last stages of life would not be stating falsehood. If death took place within three years of the marriage in unnatural circumstances, presumption arises that it was a dowry death especially when there is evidence for demands of dowry. The onus was on the defence to rebut the same. Acquittal was therefore not justified in absence of appropriate evidence for rebuttal.

3. We have considered the submissions.

4. The deceased was married to Respondent No.1 approximately three years ago. The post-mortem report, Exhibit P-14, conducted by Doctor S.K. Bagh (PW-11) opines that the burn injuries originated from a flame describing them as dry burns. The defence of the Respondents was that the deceased accidentally got burnt while warming milk in the night at about 10 o'clock. Respondent No.1, the husband, doused the fire and took the deceased to the hospital after her clothes were changed and her parents were informed. Merely because death was unnatural due to burn injuries cannot raise any presumption that it was compulsorily a case of dowry death. To attract the presumption under Section 304B IPC, it was necessary for the prosecution to prima facie establish not only that the death took place within seven years of marriage, that it was unnatural but also there must be evidence that the deceased soon before death was subjected to cruelty or harassment for dowry. According to PW-5, Rukmani, the mother of the deceased the demand for a motorcycle was made a year ago. It was therefore not in proximity to death. The prosecution witnesses have stated that the deceased had never complained of any ill-treatment. Evidence of harassment for purposes of dowry is therefore completely wanting.

5. PW-1, Bhupesh Sen, the brother of the deceased, acknowledged that he was informed that the deceased sustained burn injuries due to bursting of the cylinder. That the deceased had never complained to him of ill-treatment. In his cross-examination, he acknowledged that his sister had told him that she had suffered the burns while warming milk on the gas stove, but made self-contradictory statements in his examination-in-chief that the deceased had told him that she was being harassed by her in-laws without any evidence in support of the same.

6. PW-6, Om Prakash, uncle of the deceased, also stated of a dowry demand for the motorcycle a year and half back which again is not in proximity to the death. There is no specific instance of harassment or cruelty cited by any of the prosecution witnesses. It has also come in the evidence that there was no demand for dowry made at the time of marriage and that in the community to which the parties belonged there was no prevalent practice of dowry demand.

7. That leaves the dying declaration of the deceased. A dying declaration under Section 32 of the Evidence Act is certainly important evidence as the law presumes that a person approaching the maker will not state falsely at that point of life. Yet a dying declaration is not to be taken as a gospel truth if there are surrounding circumstances rendering it doubtful. The Court will therefore examine all surrounding circumstances to satisfy itself with regard to the genuineness of the dying declaration. This is more important because the person making the statement is no more available for cross-examination. If the dying declaration is convincing and reliable, conviction can be based on it alone but not otherwise. The dying declaration was recorded by the Tehsildar Yamini Pandey (PW-14). The witness was unable to state in cross-examination which ward the deceased was admitted in and who

all were present with her. The witness further acknowledges that she had not met the Doctor and that the dying declaration did not bear the signature of the deceased as her hands were bandaged. The signature of the Doctor was also not obtained on the dying declaration.

8. We find no reason to differ with the conclusion of the Trial Judge that the dying declaration in the circumstances cannot be considered convincing and reliable.

9. In the entirety of the discussion, we find no reason to interfere with the conclusion of the Trial Judge that the prosecution had not been able to establish a prima facie case meeting the requirements of Section 304B IPC to invoke the presumption under Section 113B of the Evidence Act.

10. We therefore find no reason to grant leave to appeal.

11. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge