

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 160 of 2007****Order Reserved on 11.11.2016****Order Delivered on 15.12.2016**

Chhedi Lal Sahu aged about 51 years, S/o Late Ram Gulam Sahu,
R/o village Karainara, post office Karainara, Tahsil-Kartala, Police
Chowki Urga, District-Korba, Chhattisgarh.

---- Applicant/ Complainant**Versus**

1. State Of Chhattisgarh through Station House Officer, Police station Akaltara, District Janjgir Champa, Chhattisgarh.
2. Ishwar Prasad S/o Late Raj Kumar, aged about 27 years,
3. Aghan Bai W/o Late Raj Kumar, aged about 55 years. Both respondents No.2 and 3 are resident of village Taraud, police station Akaltara, District-Janjgir-Champa, Chhattisgarh.
4. Smt. Manju Sahu W/o Ravindra Sao, aged about 35 years, R/o village Mulmula, police station Pamgarh, District-Janjgir-Champa, Chhattisgarh.
5. Smt. Savitri Sahu W/o Sitaram Sahu, aged about 40 years, R/o village Hathnewra, police station Champa, District-Janjgir-Champa,
6. Smt. Bhagwati Bai W/o Ashok Sahu, aged about 33 years, R/o Chandaniyapara, Janjgir, police station Janjgir, District-Janjgir-Champa, Chhattisgarh.

---- Respondents

For the Applicant : Shri Ashok Swarnakar, Advocate.
For Respondent No.1/ State: Shri Arvind Dubey, Panel Lawyer.
For Respondents No.2 to 6 : Shri Sumit Singh, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER****Per R.C.S. Samant, J.**

1. The applicant has brought this revision against the judgment dated 27.12.2006 passed in Sessions Trial No. 82 of 2006 by the Learned Additional Sessions Judge, Janjgir, Sessions Division Janjgir-Champa,

Chhattisgarh, whereby Respondents No.2 to 6 were acquitted of the charges framed under Sections 302 and 304B of the Indian Penal Code (for short 'the IPC').

2. The case of the prosecution, in brief, is that on 25.4.2002, marriage was solemnized between deceased Sarita Sahu and Respondent No.2 – Ishwar Prasad, after which she started living in her matrimonial house at Village Taraud. On the date of incident, i.e., 18.5.2005, at about 6:30 pm, deceased – Sarita Bai was found dead in the toilet of her matrimonial house. Her body was found in burnt condition by her brother-in-law Subhash Sahu (PW-5), who gave this information to Police Station Akaltara. On the basis of which, Merg Intimation (Ex. P/9) was recorded. Inquest was conducted vide Ex. P/3 by Executive Magistrate N.S. Bhagat (PW-19). At the place of occurrence, it was found that the whole body of the deceased was in burnt condition and her mouth was gagged with a cloth. Postmortem of the deceased was conducted by a team of Doctors, comprising of Dr. Radheshyam Soni (PW-1), Dr. C.P. Singh (PW-6) and Dr. S.K. Gupta, (who has not been examined). In the postmortem report (Ex. P/1), no definite opinion has been given. After recording statements of the witnesses, it was revealed that the deceased was tortured and treated with cruelty by her husband and in-laws with respect to demand of dowry. The case was registered under Sections 302 and 304B read with Section 34 of the IPC against Respondents No.2 and 3. During the investigation, seizure of articles were made from the spot vide Ex. P/4, i.e., jerry-can containing diesel about 250ml and other articles were seized from Respondent No.2 – Ishwar Prasad vide Ex. P/5. Spot map (Ex. P/7) was prepared. One invitation card of the marriage of deceased and Respondent No.2 was

seized vide Ex.P/8. Query was made regarding the mode of death, signs of strangulation/ threatening or smothering etc. from the doctors, who conducted the autopsy and the report was obtained. The articles preserved by doctor conducting autopsy were seized vide Ex. P/8 and sent for chemical analysis. On completion of the investigation, charge-sheet was filed. Respondents No.2 to 6 were charged for offences punishable under Sections 302 and 304B of the IPC. They pleaded innocence and denied the charges. After recording evidence of the prosecution witnesses, the defence raised by the respondents/ accused in general was, that the deceased was short-tempered, quarrelsome and irritable in nature. On the date of incident, Respondent No.2 gave gift of clothes to one of his sister and her husband, due to which the deceased was annoyed and irritated. At the time of incident, no one was present from the respondents' side on the spot and it was claimed that the deceased has committed suicide. The trial Court, after affording due opportunity of hearing and leading evidence to the prosecution and the defence, passed the impugned judgment in which the respondents/ accused persons were acquitted of the charges.

3. The grounds in this revision are, that the impugned judgment is contrary to law, the evidence of Dr. C.P. Singh (PW-6) and complainant Chhedilal (PW-2) have not been appreciated in true sense. The death of the deceased occurred in unnatural and abnormal circumstances within seven years of her marriage. There are statements of the prosecution witnesses regarding cruel treatment with respect to demand of dowry. Hence, their evidence is sufficient to hold the respondents/ accused guilty under Section 304B of the IPC. However, the opinion of the doctors that postmortem burn injuries were found on the body of the deceased shows, that the deceased

was put to death at first and later on her body was burnt. There is evidence on record to show that the sister-in-laws of the deceased were present on the date and time of incident and this evidence has been discarded by the trial Court, which is contrary to law. Hence, it is prayed that the judgment of acquittal be set aside and fresh trial be ordered.

4. It is submitted by counsel for the applicant, that there is evidence on record to show that all the respondents/ accused persons were present at the time of incident. Secondly, the witnesses have stated that the deceased was subjected to cruelty for demand of dowry and her death occurred within seven years of her marriage which was an unnatural death. The burden of the prosecution was discharged sufficiently. Although, there is no direct evidence of the incident of death of the deceased, yet the circumstances that her mouth was found gagged, the diesel was poured on the body of the deceased and the body was 100% burnt; the body was found inside the toilet of her matrimonial home, clearly indicate that it was the burden of the respondents/ accused persons to explain that if they were not culprits, how this incident took place. For these reasons, the revision deserves to be allowed.

5. Respondent No.1/ State has opposed this revision and the arguments submitted on behalf of the applicant.

6. On behalf of Respondents No.2 to 6, it has been argued that the finding of the trial Court in the impugned judgment is unassailable, the prosecution has utterly failed to establish its case beyond reasonable doubt and the charges against the respondents/ accused persons. The reliance has been placed on Modi's Jurisprudence, that the skull of the deceased

was intact and her body was found in pugilistic posture, which is suggestive of suicide, gagging of mouth could be done by the deceased herself to stifle the cry out of pain and it is a fact that the hands and fist of the deceased were found to be free. This kind of possibility has been explained by Jaising P. Modi in Text book of Medical Jurisprudence and Toxicology. Further, there has been evidence by the witnesses that the door of the toilet was closed from inside, which was forcibly opened and the deceased was found dead in burnt condition. During investigation, a separate panchnama was also prepared to find out the possibility, whether the door could be bolted inside by standing outside and the result was in negative. The story about the demand of dowry is cooked up after occurrence of the incident, which is clear from the admissions made by the prosecution witnesses. For these reasons, the findings in the impugned judgment do not suffer from any infirmity and there is no ground to interfere with the impugned judgment.

7. On the basis of grounds raised in this revision petition, the question, which arises for determination, is whether the evidence of the prosecution before the trial Court was sufficient to establish the guilt of the respondents/ accused persons. The evidence of the prosecution is perused.

8. First of all, the question is whether the death of the deceased was homicidal or suicidal. In the impugned judgment, the evidence of doctors was discussed at length and their evidence denied the theory of the prosecution that the death of the deceased was homicidal. On the contrary, the finding given by the Trial Court was that the death was suicidal.

9. Dr. Radheshyam Soni (PW-1) was in the team of Doctors conducting autopsy of the deceased. Dr. C.P. Singh (PW-6) has narrated in detail, that

on examination it was found that the body of the deceased was in pugilistic posture which was 100% burnt. The skull was intact and the finding in the autopsy report by the team of doctors is, that the cause of death cannot be ascertained. Although, it was reported that on the basis of findings, it appeared that the body of the deceased was burnt after her death. Later on, in query by the investigating officer, this witness has admitted that he had not considered opining that the mode of death was self inflicted or inflicted by others, vide Ex. P/10. On another query, this witness vide Ex. P/11 stated that no carbon particles was present in trachea, no signs of strangulation, throttling or smothering were present except that one cloth was gagged into the mouth of the deceased. Mode of death could not be ascertained because the body of the deceased was burnt excessively.

10. Dr. C.P. Singh (PW-6), in his cross-examination, has stated that he follows the Modi's Medical Jurisprudence and Toxicology and also stated that the said jurisprudence is authentic and is recognized by the medical science. He has admitted that a person of weak heart may die of shock before spreading of fire. He has also admitted that even if a living body is exposed to heat for a long period then the symptoms of such body may have the appearance of postmortem appearance. He has, however, admitted that if a person has determined to commit suicide then there is a possibility to stifle his voice of pain and cry he can gag his mouth before self immolating.

11. It is argued on behalf of the applicant that in this case the doctors who conducted autopsy have failed to come to a conclusion, is not a compulsion to the court to accept the postmortem report and statement of the doctor as it is. Because it is just an opinion and there are sufficient material on the

basis of which the Court itself can arrive at a finding.

12. The text book of Medical Jurisprudence and Toxicology authored by Jaising P. Modi has been regarded as an authority in the matter of Forensic Evidence. An immediate cause of death due to burn injuries, as explained in this text book (24th Edition, 2011), which is possible in this case are firstly shock and secondly suffocation which is detailed as under:

'Causes of Death

(i) Immediate Causes of Death

(a) Shock.— Severe pain and marked protein rich fluid loss from extensive burns which result in increased capillary permeability, cause shock and produce a feeble pulse, pale and cold skin, and hypotension resulting in death instantaneously or within 24 to 48 hours. In children, it may lead to stupor and insensibility deepening into coma and death due to primary shock within 48 hours.

Shock may also occur from fright before the individual is affected by burns, if his heart is weak or diseased.

If death does not occur from shock, it may subsequently occur from toxæmia due to the absorption of toxic products from the injured tissues in the burned area. In this condition, the temperature rises perhaps to 104°F, the pulse rate increases in frequency, restlessness supervenes and passes into unconsciousness and death, due to delayed shock.

(b) Suffocation.— Persons removed from houses destroyed by fire are often found dead from suffocation due to the inhalation of smoke, carbon monoxide and other irrespirable gases, which are the products of combustion. In such a case, burns found on the body are usually postmortem. Toxic inhalation of combustion products of synthetic material may aggravate the anoxic effect produced by carboxyhaemoglobin (COHb). Where there is burning of plastic and other synthetic material, liberation of

poisonous gases like cyanide, oxides of nitrogen may contribute to death. According to Dutra, burning of nitrogen containing substances, for example, nitrocellulose film and artificial leatherette, may liberate dangerous quantities of nitrogen oxide and nitrogen tetraoxide. Ammonia, hydrogen cyanide, hydrogen sulphide and oxides of sulphur are liberated from burning of wool or silk. Polyvinyl chloride on combustion produces carbon monoxide and other dangerous substances, while fats or glycerine liberate acrolein, a highly irritating compound.

(c) Accident or injuries.— Death may result from an accident occurring in an attempt to escape from a burning house or from injuries inflicted by walls and timbers falling on the body.

The two main sources of fire and explosion in coal mines are fire damp (methane) and fine coal dust. Every variety of coal contains methane. A mixture of 5%-15% methane with air is potentially a most violent explosive. A dust-air mixture is less explosive than fire damp and requires a more vigorous ignition. Injuries and deaths in colliery fires and explosion follow the same pathological pattern as do burning or blast injuries in other non-mining accidents.'

13. Suicidal, homicidal and accidental burns have been explained is as under:

'(i) Suicidal, Homicidal and Accidental Burns.— Occasionally, people commit suicide by soaking their clothes first with kerosene oil and then setting fire to them. Sometimes, they may keep a cloth in their mouth or wrap several turns of wire or fabric around the neck— with a view to stifle a cry. In such cases, whether the mouth was stuffed firmly or not, or whether the wire around neck is tightly wound or not—must be established postmortem. The pernicious custom of dowry sometimes leads young

women to commit suicide in this manner. Some murders by husbands and 'in-laws' of married women have been reported, when the demand of dowry was not met.'

It is under the authority of this Text book Dr. C.P. Singh (PW-6) has made admissions in his cross-examination.

14. For the aforesaid reasons, the finding given by the trial court that the death of deceased Sarita Sahu was suicidal, does not suffer from any infirmity. The finding of the trial Court cannot be interfered with on the ground raised in this revision that the death of the deceased could have been homicidal as has been explained on the basis of the medical jurisprudence.

15. There is no dispute that death of Sarita Sahu took place within seven years of marriage and her death on account of burn injuries was unnatural. It was alleged by the prosecution, that the deceased was subjected to cruelty for demand of dowry. The evidence led by the prosecution on this point has been disbelieved by the trial court, which has resulted in acquittal of respondents No. 2 to 6. It is submitted on behalf of the applicant that the finding of the trial court on this point is erroneous and there is sufficient evidence to establish that the deceased was subjected to cruelty for demand of dowry.

16. Chhedilal (PW-2), father of the deceased, has stated that at the time of marriage of his daughter, he had given dowry according to his capability. Later on, he came to know that the respondents/ accused persons were harassing the deceased for motorcycle and refrigerator which were not given

in the dowry. This witness has not stated anything in this respect that the said demand was formally communicated to him, to be fulfilled by him. There is no statement that soon before the death of the deceased, there had been any demand of dowry or any information about the harassment to the deceased in this respect. In cross-examination, he admitted that the respondents/ accused persons are financially sound and he never made any complaint with the society or with police regarding the alleged behavior of cruelty with the deceased.

17. Statement of Ramlal Sahu (PW-4), cousin brother of the deceased, is similar and no statement has been given by him that any demand was made on behalf of the respondents/ accused persons to the father of the deceased for the purpose of being fulfilled. In cross-examination, he admitted that in his community there is no custom of dowry and at the time of negotiation, no demand of dowry was made from the respondent side. He also admitted that father of the deceased had given gifts in dowry to his daughter on his own free will. In his examination-in-chief, he has stated that he came to know about the harassment to the deceased for demand of dowry 15 days prior to her death. In cross-examination, he was confronted by his previous statement Ex. D/3 which shows that his statement before the court is an improved statement, which is not worth consideration.

18. Another witness Smt. S. Raj (PW-9) has stated that when she met the deceased and asked her about the welfare then the deceased told her that her in-laws were harassing her for demand of refrigerator and motorcycle. In cross-examination, she has remained consistent with this statement. She is an independent witness and is not related with the deceased or the

respondents/ accused persons she has not said so that she met with deceased just before her death. Dhan Kunwar (PW-10), mother of the deceased, has stated that the respondents/ accused persons used to harass the deceased for demand of motorcycle and refrigerator. This witness further stated that when she met the deceased just after one year of her marriage, she was told by her daughter that her in-laws were harassing, upon which she advised her daughter to stay calm. No statement has been given by her that a formal demand of dowry was made by the accused persons to her or any other person from her family, neither has stated of any demand soon before the death of the deceased.

19. The statements given by Terath Bai (PW-12), Rakesh Kumar Sahu (PW-13) and Shanti Bai (PW-19) are similar and they have not supported the prosecution case and declared hostile. These are the witnesses who have been examined by the prosecution to establish this fact, that the deceased was subjected to cruelty for demand of dowry. According to the statement given by them, it is very clear that though at a point of time the respondents/ accused persons or in-laws may have said that motorcycle and refrigerator have not been given in dowry but no demand was made by the respondents/ accused persons themselves or communicated through the deceased to her parents to fulfill the demand made by them. Apart from that, there is no statement of any of the witnesses in clear terms, that the deceased was tortured or subjected to cruelty for the purpose of demand of dowry soon before her death. Hence for these reasons, the conclusion arrived at by the trial court is a correct conclusion and does not require any interference.

20. After considering the evidence on record and the arguments submitted on behalf of the applicant and respondents, it is found that there is no scope for interference in the impugned judgment. Hence, this revision petition is dismissed.

Sd/-

(Pritinker Diwaker)

Judge

Sd/-

(R.C.S. Samant)

Judge