

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1222 of 2002**

Ram Kumar, aged about 23 years, S/o. Rameshar, R/o. Village Borgahan, PS Ranchirai, Distt. Durg (CG)

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, PS Ranchirai, Distt. Durg (CG)

---Respondent

For Appellant	: None present
For respondent/State	: Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****04.5.2018**

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 25.11.2002 passed by Sixth Additional Sessions Judge, Durg, Session Division Durg (CG) in Session Case 10/2001 wherein the trial Court convicted the accused/appellant for the commission of offence under Sections 304 B and 498 A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and rigorous imprisonment for one year and to pay fine of Rs.500/- respectively with default stipulations for committing dowry death and cruelty to his wife Teejan Bai on 12.10.2000 at village Borgahan.

2. As per the prosecution case, marriage between the appellant and Teejan Bai was solemnized in the year 2000. It is alleged that the appellant demanded dowry from the deceased and upon non fulfilling of the said demand, the appellant harassed

her and committed cruelty against her compelling her to commit suicide by consuming poison.

3. To substantiate the charges, the prosecution has examined as many as 12 witnesses. To nullify the charges, the defence has examined three witnesses.

4. Janki Bai (PW-1) is mother of the deceased. As per the version of this witness, the deceased came to her parental house after 8-10 days of the marriage and she stated to her that the appellant had beaten her on account of dowry. Narhar (PW-4) is father of the deceased and deposed on the same line with that of Janki Bai (PW-1). Daniram (PW-5), who is the maternal uncle of the deceased deposed on the same line regarding information given by the deceased that the appellant had beaten her. Ashok Kumar (PW-6) is brother of the deceased and he also deposed on the same line that the deceased informed him regarding the assault by the appellant. Chameli Bai (PW-9) is sister of the deceased and she deposed on the same line that the deceased informed her about the assault by the appellant.

5. All these witnesses are not the residents of village Borgahan where the deceased was residing with her husband. They have not seen any incident of cruelty towards the deceased by the appellant but deposed before the trial Court what is stated to them by the deceased during her lifetime. Statement made by all these witnesses are hearsay evidence and hearsay evidence

is the second hand evidence as per Section 60 of the Evidence Act and the said evidence cannot form basis for any conviction.

6. Now, the point for consideration is whether hearsay evidence is admissible evidence and whether the findings can be recorded on the basis of hearsay evidence. In matter of **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri** reported in **(2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:-

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstances, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying” I do not know, but so and so told me”.

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying “someone told me that.....”. It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

7. When second hand evidence is inadmissible, it is difficult for this Court to hold that any assault was made by the appellant. It is also not established by the evidence of any of the witnesses that any demand of dowry was made during the lifetime to the deceased.

8. For establishing the offence under Section 304 (B) of the IPC, it is compulsory for the prosecution to establish that harassment or cruelty is done soon before the incident on account of demand of dowry.

9. 'Dowry' has been defined in Section 2 of Dowry Prohibition Act, 1961; as 'any property or valuable security given or agreed to be given either directly or indirectly'

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties.

10. A plain reading of the definition makes it clear that the demand should be made with relation of marriage but this is not a case here. From the evidence it is not established that any demand of dowry was made and the deceased was subjected to harassment on account of dowry. Hence, offence under Section 304 B IPC is not established.

11. For commission of offence under Section 498-A, it has to be established that husband or relative of the husband subjected such a woman to cruelty.

For the purpose of this Section , "cruelty" means -

" (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

12. Case of the prosecution is based on hearsay evidence and from inadmissible evidence it cannot be inferred that the appellant

did any willful conduct against the deceased or harassed her as defined under cruelty.

13. For invoking Section 113 of the Indian Evidence Act, 1872 the prosecution is under obligation to prove that harassment was done before the death. There should be a live link between the harassment and the death of the deceased.

14. In the present case, no evidence has been adduced by the prosecution to establish as to what really happened on the date of incident or prior to the incident.

15. In totality of facts, charges under Sections 304B and 498A are not established against the appellant as the evidence for any of the offence is lacking. Finding arrived at by the trial Court is not sustainable.

16. Consequently, the appeal is allowed. Judgment of conviction and order of sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Sections 304B and 498A IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.

Sd/-

(Ram Prasanna Sharma)

JUDGE