

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 364 of 1999

Sardharam @ Khublu S/o. Bhagatram Satnami, Aged 25 years,
Resident of village Muchhmulda, Police Station Sarsiva, District
Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Police Station Sarsiva, District
Raipur (C.G.)

---- Respondent

For Appellant : None for the Appellant
For Respondent : Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgement on Board

10.04.2018

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 21.01.1999 passed by the Second Additional Sessions Judge, Balodabazar, Session Division Raipur (C.G.) in Sessions Trial No. 406/1997, wherein the trial Court convicted the accused/appellant under Section 304 B of the IPC and sentenced him to undergo R.I. for 10 years and to pay fine of Rs. 2,000/- with default stipulation.

2. In the present case, name of the deceased Gouri Bai, who was married with the appellant two years prior to the date of incident. Gouri Bai died on 19.06.1997 at about 6.30 PM, the

incident occurs otherwise than under normal circumstance due to burn injury. The matter was investigated by the Police and after investigation, charge sheet was filed, the trial Court framed the charge against the appellant in which the appellant pleaded innocent and thereafter the trial was conducted, after examination of the prosecution witnesses statement of the accused/appellant under section 313 of the Cr.P.C. was recorded. After hearing the parties, the trial Court convicted and sentence the appellant as mentioned above.

3. To substantiate the charge prosecution has examined as many as 25 witnesses in their support.

4. Dr. Narayan Singh (PW-15) conducted the autopsy of the deceased on 20.06.1997 and he opined that the cause of death is burn injury and nature of death appears to be suicidal.

5. Gangabai (PW-1) is the mother of the deceased and Niranjana Banjare (PW-2) is the brother of the deceased. As per version of these witnesses, the appellant demanded Rs. 10,000/- from Gangabai and in alternate he demanded bulls for cultivation.

6. Now the point for consideration is whether asking for money or in alternate asking for Bulls falls within the definition of dowry. Gangabai (PW-1) clearly deposed that she does not know for what purpose the appellant demanded money from her.

7. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 reads as under:

“2. Definition of 'dowry'. - In this Act, “dowry” means 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 parent 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, but does not include) dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II – The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

8. In the present case, Gangabai (PW-1) herself has admitted that she is not aware that for what purpose the appellant demanded money from her. From the statement of Gangabai (PW-1) and Niranjan Banjare (PW-2) it is not established that any amount is demanded in connection with marriage, therefore, it cannot be held that any demand of dowry was made by the appellant.

9. For commission of offence under Section 304B of the IPC, it has to be proved that the death of a woman is caused by any bodily injury or occurs otherwise than under normal circumstance within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

10. Deceased died on 19.06.1997 at village Muchhmalda, Gangabai (PW-1), Niranjan Banjare (PW-2), Malikram (PW-8) and

Rajaram (PW-9) are the witnesses having their resident at village Junvani. They were not able to depose that as to what happened with the deceased at village Muchhmalda. They have not deposed anything related to harassment of the deceased by the appellant.

11. Hariram (PW-5) deposed that the deceased and the appellant were abusing each other but he was not able to depose that as to what was the reason of altercation. In his previous statement recorded under Section 161 of the Cr.P.C.. This witness stated before the Investigation Officer/Sub Divisional Officer (Police) on 24.06.1997 that the deceased and the appellant were arguing but he was not able to properly listen as to what was subject of their argument. From the statement of this witness it is not established that the deceased was harassed by the appellant in connection with any demand of dowry.

12. Shriram (PW-18) is the resident of Village Girsra and he deposed that near a canal of village Khahariya, the appellant slapped twice on the cheek of the deceased. But from the statement of this witness it is not clear that the appellant did anything in connection with any demand of dowry. Rest of the witnesses adduced by the prosecution are either hearsay witnesses or they assisted to the prosecution after registration of the FIR.

13. On overall assessment of the evidence adduced by the prosecution, it is not established that the demand of dowry was made in connection with the marriage and it is also not

established that the deceased was harassed in connection with the demand of dowry.

14. True it is that death of the deceased is caused within seven years of marriage and presumption clause is incorporated in Indian Evidence Act, 1872, as per Section 113-B reads as follows:

“113-B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”

For applying Section 113 B of the Evidence Act, it is essential that the woman is harassed soon before her death or subjected to cruelty. But in the present case, there is no sufficient evidence regarding demand of dowry or harassment in connection with the demand of dowry.

15. For establishing offence under Section 304 (B) of IPC, the prosecution is under obligation to pass proximity test. It has to be proved that there exist a proximity and live link between cruelty and death and that is not the case here.

16. Taking into consideration the facts the findings arrived at by the trial Court is not sustainable under the law, the judgment of conviction and order of sentence passed by the trial Court is set aside.

17. The appellant is acquitted of the charge under Section 304 B of the 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 the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Santosh.