

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 869 of 2010**

[Arising out of judgment dated 19.11.2010 passed in ST No.53 of 2010 by the Additional Sessions judge (FTC), Dhamtari District Dhamtari (CG)]

1. Dumain @ Dumendra Sahu S/o Ishwar Sahu, aged about 26 years
2. Ishwar Sahu S/o Meghnath Sahu, aged about 47 years,
3. Smt.Bedbai W/o Ishwar Sahu, aged about 42 years,

All Are R/o Vill. Kukrel, P.S. Arjuni, Distt.-Dhamtari, C.G.

---- Petitioner

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station Arjuni, District Dhamtari (CG)

---- Respondent

For Appellants
For Respondent/State

Mr. YC Sharma, Advocate
Mr. Arvind Dubey, Panel Lawyer

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra, J.

26/6/2018

1. Heard.
2. Appellant No.1 Dumain @ Dumendra Sahu is the husband, whereas, appellant No.2 Ishwar Sahu is the father-in-law and

appellant No.3 Smt.Bedbai is the mother-in-law of deceased – Yamuna. All the appellants have been convicted by the trial Court for committing offence under Section 304B/34 and 498A of IPC and have been awarded sentence of life imprisonment and RI for 3 years with usual default stipulation. The sentence has been awarded after holding the appellants guilty for committing dowry death of deceased Yamuna, wife of appellant No.1, who died otherwise than under normal circumstances at about 5:00-5.30 a.m. on 19.5.2010.

3. The marriage between deceased Yamuna and appellant Dumain @ Dumendra Sahu was solemnized about 3 years back prior to the date of the incident. Dumendra Sahu is a Tractor Driver in the office of Municipal Corporation, Dhamtari. The deceased had lost her father prior to the marriage. Her brother Teekamchand Sahu (PW-1) was a labour at the time of the incident, however, at the time of recording of evidence, he was working as a Guard with the State Bank of India. The deceased's mother Milapabai Sahu (PW-2) is a helper in a grocery shop. Thus, both the families are not well off and were engaged in small time service/vocation for earning livelihood. The marriage intimation – Ex.P/1 was registered on the information supplied by PW-1 Teekamchand Sahu. In this document, there is no allegation of demand of dowry.
4. The FIR was registered on the same date i.e. on 19.5.2010 vide Ex.P/2 alleging commission of cruelty including physical cruelty for demand of dowry and taunting in connection with quality of

gift articles received at the time of marriage and other kinds of ill-treatment. In the postmortem report-Ex.-P/16 handed down by PW-5 DK Bisen, the cause of death was mentioned as asphyxia on account of strangulation (homicidal in nature). However, strangely, neither the chargesheet was filed nor the trial Judge has framed the charge under Section 302 of IPC. After recording the statement of the witnesses under Section 161 of Cr.PC, the charge sheet was filed for the offences under Sections 304B/34 and 498A of IPC.

5. In the course of trial, the prosecution has examined PW-1 Teekamchand Sahu, brother of the deceased, PW-2 Milapabai Sahu, mother of the deceased, PW-3 Dileshwari Sahu, aged 14 years, sister of the deceased, PW-4 Padmani Sahu, aunt of the deceased, PW-5 Dukhram Gond & PW-6 Rekhram Sinha, both resident of the parental village of the deceased, PW-7 Bhujbal Sahu, Uncle of the deceased, PW-8 Nirmala Yadav, friend of the deceased at her parental village, PW-9 Suryakant Bharti, Constable, PW-10 Rupram Sahu, maternal uncle of appellant No.1 Dumendra, PW-11 Vijay Katre, IO, PW-12 Santosh Kumar Jain, SHO, who has recorded the FIR, PW-13 Makhanlal Dhruv, Constable, PW-14 Premlal Sahu, Patwari and PW-15 Dr. DK Bisen, who conducted the postmortem on the deceased.
6. At the end of trial, the trial Court has convicted the appellants with the finding that there is evidence of commission of cruelty in connection with demand of dowry, which has emerged in the statements of the relatives of the deceased, therefore, they are

guilty of committing dowry death.

7. Mr. YC Sharma, learned counsel for the appellants, has vehemently argued that there is no evidence of demand of dowry and the death has taken place for the reason that the deceased was not allowed to attend the marriage of the daughter of her maternal aunt (*Mausi*). He would submit that in the postmortem report, the death was reported to be homicidal in nature but there is no evidence to the said effect, therefore, the sentence has been illegally imposed under Section 304B/34 of IPC. He would read out the entire evidence both oral and documentary.
8. Per contra, Mr. Arvind Dubey, learned Panel Lawyer for the State, would support the conviction on submission that right from the beginning i.e. from the stage of recording of the FIR, statements of the witnesses under Section 161 of Cr.PC till the recording of the evidence, the witnesses have stood firm making allegation of demand of dowry, therefore, the conviction does not suffer from any illegality or perversity. He would read out the evidence in support of the above submission.
9. We shall first deal with the issue as to whether the prosecution has been able to bring home the charge of demand of dowry and that the said demand was made by the appellants immediately prior to the death of the deceased.
10. Teekamchand Sahu (PW-1) has lodged the merged intimation as

well as the FIR. In the merged intimation, there is no allegation of demand of dowry. In the FIR, there is allegation of committing physical cruelty on the ground of bringing less or inferior quality of dowry articles. He would allege in the FIR that he had called the deceased over the telephone in the evening of 18.5.2010 and during conversation, she had informed him that on the above date also, she has been ill-treated by the husband and in-laws in connection with demand of dowry and they are not allowing her to visit the parental house, on which, this witness requested the deceased to connect him with her husband, but he did not come over the mobile phone and in the morning, he received information about the death of the deceased. Contrary to this, in para 7 of the deposition, this witness has stated that he had called the deceased in the evening of 18.5.2010 to enquire as to whether they would be attending the marriage of her maternal aunt's daughter. In further cross-examination, he has stated that the deceased had never told her during conversation over mobile phone on 18.5.2010 that the accused persons have physically tortured her for demand of dowry. The witness would state that there was conversation of the deceased with his uncle (PW-7 Bhujbal Sahu) meaning thereby that the above part of the conversation might have taken place with his uncle. However, his uncle PW-7 Bhujbal Sahu would also not depose that the deceased had informed anything about ill-treatment on account of demand of dowry when he spoke to them on 18.5.2010. As a matter of fact, in para 3 of his statement, Bhujbal Sahu has stated that he had not

talked with deceased Yamuna and that his conversation was only with appellant Dumendra to enquire as to whether they would be visiting the marriage of the daughter of Yamuna's maternal aunt.

11. PW-1 Teekamchand Sahu has stated that after about one year of marriage, her sister Yamuna was physically tortured for demand of motorcycle and cash, but in his case diary statement Ex.D/1, there is no such allegation concerning demand of motorcycle. There are several other omissions in his case diary statement, which have been elicited from him during cross-examination in para 15, 16 & 17.

12. PW-2 Milapabai Sahu being mother of the deceased, is another important witness on the issue as to whether the demand of dowry has been established by the prosecution. However, in her entire statement, there is no whisper of demand of motorcycle or cash. There is allegation of raising quarrel on account of bringing less dowry, but there is no specific allegation of demand of any particular item or cash. In the statement of this witness, there is further allegation of ill-treatment by mother-in-law for not doing daily household chores and involving in altercation. She would also allege that the deceased's mother-in-law always used to say that whenever the deceased comes back from her parental house, she does not bring anything with her. According to this witness, her daughter used to come back to her parental house on account of ill-treatment by the accused persons and on each occasion, appellant Dumendra used to take

her back. In para 3 of the examination-in-chief, she states that the accused persons never used to commit any physical cruelty against the deceased but in the same breath she states that on few occasions, appellant Dumendra used to assault her and appellant Bedbai used to raise quarrel. She would further state that about 15-20 days back, her daughter had come to their house as she was not feeling well and for this reason, she was not willing to go back to her in-laws's house, but appellant Dumendra and his younger maternal uncle took her back and at that time, PW-3 Dileshwari also accompanied the deceased. She also speaks about the phone call on 18.5.2010 to enquire from the deceased as to whether she would be attending the marriage of her maternal aunt's daughter. This means that this witness had also spoke to the deceased in the evening of 18.5.2010 but importantly she would not speak anything about demand of dowry during that conversation with the deceased. During cross-examination, she states that the complaint about demand of dowry was made to PW-1 Teekamchand Sahu during phone conversation but Teekamchand himself is denying this. In para 8 of the cross-examination, she states that PW-1 Teekamchand and PW-7 Bhujbal had spoken to the deceased and that she had not conversed with her.

13. PW-3 Dileshwari Sahu, aged 14 years, being sister of the deceased is another important witness. She was in the house of the deceased at the time of occurrence as when the deceased had gone to her maternal house about 15-20 days back, this witness had accompanied the deceased. Dileshwari speaks

about torture meted to her elder sister for bringing less dowry and not knowing household chores. During her stay in the house of the deceased, in the intervening night of 18 and 19th of May 2010, when the incident took place, there was a quarrel/altercation between the deceased and her mother-in-law, during which, the mother-in-law threatened the deceased that she would twist her hand. In the night, this witness had slept in the courtyard, whereas, the deceased had slept alone in her bedroom. Appellant Dumendra and their son Sandeep had also slept in the courtyard. She also speaks about the phone conversation between PW-7 Bhujbal Sahu and appellant Dumendra and not between any other witness.

14. PW-4 Padmini Sahu also speaks about commission of cruelty in the name of bringing inferior quality of articles in dowry. PW-5 Dukhram Gond & PW-6 Rekhram Sinha does not speak anything about demand of dowry. PW-7 Bhujbal Sahu speaks about the phone conversation on 18.5.2010 and altercation/quarrel between the accused persons and the deceased for bringing inferior quality of articles in dowry. He admits in para 6 of his cross-examination that on 18.5.2010, he had spoken to appellant Dumendra and not with deceased Yamuna. PW-10 Rupram Sahu has not supported the prosecution. This witness is the maternal uncle of appellant Dumendra.

15. The entire evidence of the important prosecution witnesses would unflinchingly point out that there was no demand of

dowry by any of the accused persons from any of the witnesses. Whatever they have spoken was as per the information of the deceased during her lifetime for which there is no complaint or report to the Police or before the Caste Panchayat. The allegation of demand of dowry is ordinary in nature without reference to any particular item or exact amount of cash. Only one witness Teekamchand Sahu (PW-1) has spoken about demand of motorcycle, however, this important aspect of the matter is missing in his case diary statement. Thus, there is absolutely no evidence of demand of dowry of any particular item or cash by the appellants from any of the witnesses.

16. So far as the immediate physical cruelty on just previous date of the incident is concerned, PW-1 Teekamchand Sahu, PW-2 Milapabai Sahu and PW-3 Dileshwari are making contradictory statements. While Milapabai would say that the deceased informed Teekamchand Sahu that she has been ill-treated for demand of dowry, but Teekamchand Sahu himself is not stating that the deceased had made any such conversation with him. He says that the deceased might have spoken in this regard with Bhujbal (PW-7) but Bhujbal in his statement has denied to have even spoken to the deceased during that conversation in the evening on 18.5.2010. Whatever conversation occurred was between this witness and appellant Dumendra for enquiring as to whether they would be attending the marriage of the daughter of deceased's maternal aunt. Thus, it is absolutely doubtful as to whether the deceased was treated with physical cruelty on 18.5.2010. There is no such statement either by PW-3

Dileshwari, who was with the deceased on 18.5.2010. Milapabai Sahu states that the deceased had come to her parental house about 15-20 days prior to the date of occurrence because she was not keeping well, whereas, the other witnesses would say that she came back because of ill-treatment by the accused persons.

17. True it is that the deceased was frequently coming to her parental house but that by itself would not be such evidence to presume that at all point of time, her visit to the parental house was on account of ill-treatment on account of demand of dowry by the accused persons.

18. Since there is allegation that quarrel took place between the mother-in-law and the deceased in connection with doing household chores or bringing inferior quality of articles in the marriage, it cannot be ruled out that the relation between the mother-in-law and the daughter-in-law was not cordial but that does not mean that the said soured relation was for demand of dowry because otherwise there is no evidence of demand of any article or cash.

19. We are, thus, of the considered opinion that the prosecution has failed to establish demand of dowry by the appellants at the time of marriage or as consideration of the marriage or soon before the death of the deceased.

20. We are also compelled to observe one glaring lacuna in the prosecution case i.e. as soon as the postmortem report revealed

that the death was homicidal in nature, the prosecution was under obligation to file charge sheet for the offence under Section 302 of IPC and similarly, it was the duty of the trial Judge to frame charge under Section 302 of IPC with alternative charge under Section 304B of IPC but charge under Section 302 of IPC has not been framed and there is no iota of evidence as to whether the accused persons have committed culpable homicide.

21. In view of the above, the prosecution has failed to prove the ingredients of offence under Section 304B of IPC, therefore, the conviction under Section 304B/34 of IPC deserves to be set aside. In so far as the allegation for commission of cruelty under Section 498A of IPC, there is enough evidence on record that the deceased was treated with cruelty including physical cruelty in the name of bringing inferior quality of articles in the marriage. She was also subjected to taunts with physical cruelty for not doing household chores, which all come within the purview of "cruelty" as defined under Section 498A of IPC, therefore, the conviction of the appellants under Section 498A of IPC deserves to be maintained.

22. For the offence under Section 498A of IPC, the appellants have been sentenced to undergo RI for 3 years. Appellant No.1 Dumain @ Dumendra Sahu is in jail from 19.5.2010 till date, therefore, he has served out the entire sentence under Section 498-A of IPC. Appellant No.2 Ishwar Sahu was in jail since 19.5.2010 to 19.11.2010 during trial and was directed to be

released on bail on 12.6.2012, therefore, he has served out little more than 2 years of jail sentence. Appellant No.3 Smt. Bedbai remained in jail from 19.5.2010 to 19.11.2010 during trial and was directed to be released on bail by this Court on 29.10.2013, therefore, she has served out the entire jail sentence of 3 years for the offence under Section 498A of IPC.

23. In the facts and circumstances of the case, the sentence imposed on appellant No.1 Dumain @ Dumendra Sahu is reduced to the period already undergone by him. So far as appellant No.2 Ishwar Sahu is concerned, he has served out little more than 2 years of jail sentence and as such, the sentence imposed upon him under Section 498A of IPC is reduced to the period already undergone by him. As far as appellant No.3 Smt. Bedbai is concerned, since she has already served out the jail sentence imposed upon her by the trial Court and has been released from jail, no further order is required.

24. In view of the above, the appeal is allowed in part. The conviction imposed upon the appellants under Section 304B/34 of the IPC is set-aside. However, the conviction imposed upon them under Section 498A of IPC is maintained.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Vimla Singh Kapoor)