

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 364 of 2011**

1. Abdul Hanif As/o. Abdul Hamid aged 47 years.
2. Abdul Sarfraj S/o Abdul Hanif aged 21 years.
3. Abdul Shahjada S/o Abdul Hanif aged 24 years.
4. Salma Begam W/o Abdul Hanif , aged 42 years.
5. Sakhawat Begam W/o Abdul Hamid, aged 70 years.

All are R/o Village Malahapara Mungeli, P.S. Mungeli,  
Distt.-Bilaspur, C.G.

---- Appellants.

**Versus**

- State of Chhattisgarh through Police Station Mungeli,  
District Raipur (CG).

---- Respondent

-----  
 For Appellants : Mr. Ashutosh Trivedi, Advocate.  
 For respondent : Mr. Lav Sharma, Panel Lawyer.

**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment on Board****12-12-2018**

1. This appeal is preferred against the judgment dated 23-4-2011 passed by the Additional Sessions Judge, Mungeli, District Bilaspur (CG) in Session Trial No. 3 of 2010 wherein the said Court has convicted the appellants for the commission of offence under Sections 304-B and 498-A of IPC and sentenced them to undergo RI for ten years and RI

for one year and to pay fine of Rs.500/-, with default stipulations.

2. During pendency of the appeal, appellant No.5 Sakhawat Begam died which was confirmed by the report of the Police Authorities and no one applied for leave to continue the appeal, therefore, the appeal filed by appellant No.5 Sakhawat Begam stands abated.

3. As per version of prosecution, name of the deceased is Salamoon Baano who married to appellant No.2 Abdul Sarfraj on 21-3-2009. It is alleged that all the appellants harassed her soon before her death for dowry and she died on 27-5-2009 due to complication of burn injuries sustained by her and her death is caused other than in normal circumstance. As the deceased died within two months and one week after her marriage, case of the appellants was registered and investigated. After completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

4 Learned counsel for the appellants would submit as under:

- i) The trial Court has overlooked dying declaration of the deceased (Ex,P/12) recorded by Dr. Amitlal (PW/7) in which he did not state regarding demand of dowry.
- ii The trial Court has presumed against the appellants as per Section 113-B of the Indian Evidence Act, 1872 and from the prosecution evidence rebuttal is available in favour of the appellants.
- iii) The trial Court has overlooked the infirmities in the evidence of prosecution witnesses and one Asst. Sub Inspector namely R.S. Pandey is not examined who recorded the statement of the deceased, therefore, presumption should be drawn against the prosecution and conviction of the appellants is liable to be set aside.

**5** On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. Dr. Sandeep Tiwari (PW/12) conducted autopsy of the deceased Salamoon Baano on 28-5-2009 at District Hospital, Bilaspur and as per opinion of this expert she died due to cardio respiratory failure on account of shock due to burn injuries. From the evidence of PW/1 Gulab Rasool Khan who is father of the deceased and FIR (Ex.P/1) lodged by him, it is established that the marriage of the deceased with appellant No.2 Abdul Sarfaj took place on 21-3-2009. It means, deceased died within three months of her marriage. As per version of Gulab Rasool Khan (PW/1), and FIR lodged by him it is established that appellant Abdul Sarfaj demanded Rs.1,00,000/- as dowry to which he was unable to fulfill his demand. From the evidence of this witness it is clear that demand was directly made to him and from the evidence of this witness, it is established that the deceased was harassed by her in-laws. Dr. Amit Lal (PW/7) has recorded dying declaration of the deceased in which deceased has stated that the appellant Abdul Hanif, Abdul Sarfaj, Salma Begam and Sakhawat Begam have harassed her. Version of PW/1 Gulab Rasool Khan is supported by the evidence of PW/2 Raimun Bi, PW/3 Usman and PW/11 Iqbal Qureshi to whom harassment on the part of the above said appellants is informed.

8. Dowry death is defined in Section 304-B of IPC which may be read as under.

“304-B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances 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 for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

9. Offence of cruelty is defined in Section 498-A of PC which may be read as under:

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be

punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.— For the purpose of this section, “cruelty” means—

(a) any willful 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.”

10. In the present case, it is established that demand of dowry was made to the father of the deceased by appellant No.2 Abdul Sarfraz and deceased was harassed as per her dying declaration. There is presumption as to dowry death as per Section 113- of the Indian Evidence Act, 1872 which may be read as under:

“Section 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 has 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”.

11. In the present case, harassment is caused within four corners of the matrimonial house of the deceased which is house of the appellants. When any harassment is committed in secrecy of four corners of the house, it is difficult to collect direct evidence against the perpetrators of crime because either they are members of family or they assist in harassment, therefore, explanation is sought against presumption from the appellants, but no explanation was given by them and their version is plain denial which is meritless.

12. So far as appellant No.3 Abdul Shahjada is concerned, the deceased has not named him for harassment, therefore, there is no incriminating evidence against this appellant. When evidence against this appellant is lacking, charges are not established against him and he deserves to be acquitted. As there is evidence of harassment and demand of dowry against the appellants Abdul Hanif, Abdul Sarfraj and Salma Begam on account of dowry as per version of father of the

deceased, charges against them for commission of offence under Sections 304-B and 498-A of IPC are established. Finding of the trial Court is based on the evidence adduced before it and same is hereby affirmed for these appellants. Looking to the death of the deceased within three months of her marriage, sentence part cannot be termed as harsh, disproportionate or unreasonable.

13. Accordingly, the appeal filed by appellant No.3 Abdul Shahjada is allowed and his conviction and sentence passed by the trial Court is set aside. He is acquitted of the charges under Sections 304-B and 498-A of IPC. He is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

14. The appeal filed by appellant No.1 Abdul Hanif, appellant No.2 Abdul Sarfraj and appellant No.4 Salma Begam is liable to be and is hereby dismissed. As per report of the jail authorities, they have suffered full jail term, therefore, no further order for their arrest etc., is required.

Sd/-

(Ram Prasanna Sharma)  
Judge

Raju