

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.865 of 2011

1. Santosh Kumar Yadav, aged about 21 years,

2. Vishnu Yadav, aged about 20 years,

Both S/o Sukhnandan Yadav,

3. Sukhnandan Yadav, aged about 55 years, S/o Late Bodiram Yadav,

All are R/o Vill. Narotikapa, Police Station Kota, District-Bilaspur,
Chhattisgarh

---- Appellants

Versus

- State Of Chhattisgarh, Through : Police Station, Kota, District-Bilaspur,
Chhattisgarh.

---- Respondent

For the Appellants : Shri N. Ansari, Advocate.
For the Respondent/State : Shri Ashok Swarnkar. Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

15/01/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by the Fifth Additional Sessions Judge, Bilaspur in Sessions Trial No. 24/2011 on 01.10.2011, whereby the Additional Sessions Judge has convicted the appellants under Section 304(B) of Indian Penal Code (for short 'IPC') and sentenced each of them to undergo R.I. for 10 years.

2. The case of prosecution, in brief, is this, that marriage of appellant No.1 Santosh Kumar Yadav was performed with deceased Madhuri on 17th May, 2010. On 27.7.2010 i.e. within 2½ months of this marriage, she has died unnatural death due to burn injuries. After the inquest procedure, FIR was registered on 15.8.2010 against the appellants on the basis of allegation that they have tortured and treated the deceased with cruelty for demand of dowry. The case was investigated and charge-sheet was filed.
3. The trial Court framed charge under Section 304-B of IPC and in alternative under Section 302 of IPC. Appellants abjured their guilt and sought for trial. On completion of evidence of prosecution, appellants denied all the incriminating circumstances against them in their examination under Section 313 of CrPC and produced evidence in defence. After completion of trial, the impugned judgment has been passed and the appellants have been convicted and sentenced as aforementioned.
4. It is submitted by learned counsel for the appellants, that the prosecution has failed to prove its case against the appellants and there is no such evidence of prosecution which can be held reliable as to support the conviction of the appellants under Section 304B of IPC. Statement given by the father, mother and sister of the deceased are not consistent and rest of the witnesses examined by the prosecution have not stated anything specific about the demand of dowry. Hence, appellants are entitled to acquittal. In the alternative, it is prayed that if this Court is not inclined to acquit the appellants of the charge under Section 304 B of IPC, in that situation, the appellants are in custody

for the last more than 7 years, therefore, the sentence of imprisonment awarded to the appellants may be reduced to the period of sentence already undergone by them.

5. On the other hand, learned counsel for State submits that it is clearly established from the statement of prosecution witnesses that the appellants had been demanding dowry from the deceased and torturing her on account of non-fulfillment of their demand. No case is made out for acquittal of the appellants and neither there is any ground to reduce the sentence awarded to them. Hence, the appeal be dismissed.
6. It is not disputed that the deceased, wife of appellant No.1, died within 7 years of her marriage, to be more specific within a period of 3 months from the date of her marriage, and that her death was unnatural because of burn injuries. As the provision under Section 304B of IPC speaks, that if there is evidence that the deceased was subjected to torture in connection with and for demand of dowry in that case it shall be presumed that the death of deceased was a dowry death and the concerned shall be held responsible accordingly. Hence, the point for determination in this appeal is this, whether the prosecution has succeeded to prove beyond reasonable doubt that the deceased was subjected to torture and cruel treatment by the appellants for demand of dowry.
7. Perused the evidence on record of the trial Court.
8. Ramcharan Yadav PW-11 has stated in his examination-in-chief, that when his daughter came to visit after a month of her marriage, she informed that the appellants used to torture her for demand of

motorcycle. At that time, he provided Rs.20,000/- to the appellant No.1. Thereafter, he was informed on telephone by Madhuri that she was again being tortured for demand of cooler and motorcycle. Thereafter, the incident took place. In the cross-examination, though there are some admissions, that he did not complained about the demand of dowry at any point by time before making statement before the police, but it does not affect his testimony in the light of version made by him in his examination-in-chief. Further, there is no such statement in his cross-examination to show that he has improved his statement subsequent to development of things. Gaytri PW-12 has also made similar statement to the statement of Ramcharan Yadav PW-11 and this witness also remained unshaken in the cross-examination. Juli Bai PW-9 has also supported the version of these witnesses. Statement of other witnesses examined by the prosecution is also clear in this respect.

9. Raju Yadav DW-1 has stated that he has never heard of any dispute regarding dowry demand in the family of appellants and there was never any social meeting regarding any such dispute. But, this itself is not sufficient evidence to rebut and disbelieve the statement of witnesses who have stated in favor of the prosecution as the grievance of the deceased could not have been published. It is also relevant to mention, that the time gap between the marriage and death of deceased had been so short, that the problem which the deceased was facing inside could not be publicised and the people of the locality could not have known about the disturbance within. Hence, the evidence that has been brought by the prosecution is sufficient and

unrebutted, hence, are reliable and can be admitted as proved. Thus, the essential ingredients as required under Section 304B IPC are fulfilled and being so, the conviction of the appellants under Section 304B of IPC is confirmed.

10. On this basis, the conviction of the appellants under Section 304B of IPC is confirmed.
11. As regards the prayer to reduce the sentence of imprisonment, considering the facts and circumstances of the case, looking to the general scenario in the society and further considering the fact that appellants No.1 and 2 are in jail since 9.11.2010 whereas the appellant No.3 is on bail, I am of this view that the prayer for reduction of sentence made by the appellants should be allowed.
12. In the result, the appeal is allowed in part. While maintaining the conviction of appellants under Section 304B of the IPC, the sentence imposed upon appellants No.1 & 2 is reduced to the period already undergone by them, whereas sentence imposed upon appellant No.3 is reduced from 10 years to 7 years.
13. Since appellants No.1 & 2 are in custody, they be set free forthwith if not required to be detained in connection with any other offence. However, appellant No.3 is reported to be on bail. His bail bonds stand cancelled. He is directed to surrender immediately before the Court below concerned to serve out the remaining jail sentence imposed upon him.

Sd/-
(Rajendra Chandra Singh Samant)
Judge