

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 457 of 2012**

Chandrakant Suryavanshi S/o Bhagatram Suryavanshi, R/o Shanti Nagar, Janjir, P.S. Janjgir, Distt.-Janjgir-Champa, C.G.

---- Appellant**Versus**

State Of Chhattisgarh Through P.S. Janjgir, Distt.-Janjgir-Champa, C.G.

---- Respondent

For Appellant	:	Shri F.S. Khare, Advocate.
For Respondent/ State	:	Shri Anant Bajpai, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****06/12/2018**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 30.4.2012 passed by Learned Additional Sessions Judge, Janjgir, District Janjgir-Champa, Chhattisgarh in Sessions Trial No. 18 of 2012 whereby and whereunder the learned Additional Sessions Judge after holding the appellant guilty for the offences under Section 304B of the Indian Penal Code, sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo additional simple imprisonment for 5 months.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, the marriage of the appellant with deceased – Harkunwar was performed about 6 months prior to the date of incident. Deceased – Harkunwar committed suicide on 22.8.2011 allegedly by consumption of some poisonous substance. Merg Ex. P/2 was recorded in the police station Janjgir-Champa on the information received from Dr. P.S. Kurre (PW-11). After completion of the merg enquiry, FIR Ex.P/20 was lodged against the appellant and the co-accused persons. The autopsy has been done by Dr. M.D. Tenduve (PW-7), who has opined that the cause of death was suspected poisoning. After recording all the statements of the witnesses, it was revealed that the deceased was subjected to cruel treatment because the demand of dowry was not fulfilled by her or her parents. As it was an unnatural death within 7 years of marriage, the offences were registered against the appellant and the co-accused persons.

(4) Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The investigation was carried out and on completion of the same, the charge-sheet was filed before the concerned Court.

(5) The appellant and the acquitted co-accused persons were charged under Section 304B/ 34 of the IPC and in alternative, Section 302/ 34 of the IPC. The appellant and the co-accused persons denied the charges and prayed for trial.

(6) In order to prove the guilt of the appellant, the prosecution examined 13 witnesses. Statement of the appellant was recorded under Section 313 of the Cr.P.C. in which he denied all the incriminating evidence against him, pleaded innocence and false implication in the crime in question. No witness was examined in defense.

(7) After affording opportunity of hearing to both the parties, learned trial Judge acquitted the co-accused persons from all the charges whereas, the appellant stands convicted and sentenced as aforementioned and acquitted from the charge under Section 302 of the IPC.

(8) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(9) Learned counsel appearing on behalf of the appellant submits that the conviction against the appellant is without the support of evidence beyond reasonable doubt, hence, it is bad in law. The witnesses being interested and related to the deceased have deposed against the appellant out of animosity which should not have been made the basis of conviction and in the alternative, it is submitted that if this Court is not inclined to allow this appeal, then at least the sentence of imprisonment may be reduced to the period of imprisonment already undergone by him in jail.

(10) Per contra, learned counsel for the respondent/ State opposed the prayer and submission. He further submitted that the prosecution has proved its case beyond reasonable doubt. Hence, there is no scope for interference in the impugned judgment.

(11) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(12) It is not disputed that deceased – Harkunwar died on 22.8.2011 and according to postmortem report vide Ex. P/8, the cause of death is suspected poisoning. However, the death of the deceased is unnatural and within 7 years of marriage. Hence, the only question which needs consideration is whether the prosecution has succeeded to prove its case that there had been demand of dowry and cruel treatment with the deceased with respect to this demand soon before her death.

(13) Anandbai (PW-3), the mother of the deceased has stated that her daughter was continuously suffering since the date of her marriage till 4 months prior to the date of incident. She has stated that when her daughter came to visit her she told that the appellant and in-laws were making a demand of motorcycle because of which, she is being tortured. The appellant came to take back the deceased and at that time, he thrashed the deceased in presence of this witness for demand of motorcycle in dowry in which, this witness has to intervene and subsequent to that, the deceased has committed suicide. In cross-examination, she has remained firm on the statement given by her in

examination-in-chief. She has admitted that the incident regarding threatening of the deceased in her presence, has not been narrated to anyone and the same can be considered that as it is a matter of within household. There is no such statement in cross-examination as to hold that statement in chief was contradicted.

(14) Arjunlal (PW-4) has stated that he was informed by Uma (PW-6) that the appellant and other accused persons were quarreling for the reason that they have not got motorcycle in dowry and for the same reason, the deceased was being tortured. In cross-examination, his statement has remained unrebutted.

(15) Uma @ Umendra Bai (PW-6), sister of the deceased has stated that she was informed by the deceased about the demand of motorcycle and the torture given to her before she died an unnatural death on the date of incident, which was remained unrebutted in her cross-examination.

(16) Similarly, Bharatlal (PW-10) has given a statement that he was also informed by the deceased about the demand of dowry and torture given to her and his statement has also remained unrebutted in his cross-examination.

(17) After scrutinizing the evidence of the main witnesses present on record of the trial Court, this Court has come to this conclusion that the deceased has died an unnatural death within a period of 7 years of

marriage and there is evidence that she was being tortured by the appellant who was demanding motorcycle from the parents of the deceased and that she was subjected to torture and cruel treatment, which appears to be direct cause of unnatural death of the deceased. Hence, after due consideration of the evidence on record, it appears that the trial Court has committed no error in holding the appellant guilty under Section 304B of the IPC and it needs no interference.

(18) Considered the alternative prayer made by the appellant for reduction of the sentence of imprisonment imposed upon him. After overall consideration of the facts and circumstances of the case and considering that it is a common scenario in the society which is now termed as offence under the present law and also considering the fact that the appellant has already undergone more than 7 years in jail since the date of his arrest and detention, which is required minimum sentence to be imposed in case of conviction under Section 304B of the IPC, therefore, I inclined to allow this prayer.

(19) Hence, after due consideration, I am of the opinion that the period of sentence the appellant has already undergone is sufficient punishment and serves the purpose. The appeal is allowed in part, the conviction of sentence under Section 304B of the IPC is upheld whereas, the sentence part is modified and it is ordered that the appellant be sentenced with a period of imprisonment already undergone by him in jail.

(20) Accordingly, the appeal is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nimmi