

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 245 of 2010

- The State Of Chhattisgarh

---- Petitioner

Versus

1. Mohammad Naeem Khan, Aged about 24 years, S/o Najmuddin Mussalman
2. Sakkur Bi, Aged about 65 years, W/o Ajmuddin Mussalman
3. Sarfuddin, Aged about 70 years, S/o Seikh Mabuddin Mussalman
4. Katun Bi, Aged about 55 years, W/o Najmuddin

All resident of Village Majholi, Outpost Panda Tarai, Police Staton Kunda, District Kawardha at present Kabirdham

---- Respondent

For Appellant/State
For Respondents

Mr. Bhaskar Pyasi, Panel Lawyer
Mr. MK Bhaduri, Advocate

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

Hon'ble Mrs. Justice Vimla Singh Kapoor

Order On Board By

Prashant Kumar Mishra, J.

19/6/2018

1. Heard.
2. The trial Court has acquitted the respondents of the charges under Section 302 read with Sections 34 and 498-A of IPC. The charges were levelled against them on account of alleged murder of deceased Tasimunnisa at about 3 p.m. on 25.10.2002.
3. The present acquittal appeal preferred by the State has been admitted only against respondent No.1 Mohammed Naeem Khan, husband of the deceased and respondent No.4 Katun Bai, mother-in-law of the deceased.
4. The marriage between Mohammed Naeem Khan and the deceased had taken place about 4 years prior to the date of the incident. On 25.10.2002, the deceased was taken to the hospital as she was found serious for consuming some poisonous substance. She died after 3 hours in the hospital on the date of the incident itself. The merg intimation was recorded vide Ex.P/22 on the information of Constable Sukhlal. However, the *Dehatinalisi* was registered after 8 days of the incident i.e. on 1.11.2002 vide Ex.P/23. This *Dehatinalisi* was recorded pursuant to the evidence which had surfaced during merg enquiry. The case diary statement of the witnesses were recorded and the suspected poisonous substance as well as the viscera were sent for chemical examination for which the reports were in positive. There being allegations of demand of

dowry, the charge sheet was filed under Section 302 read with Sections 34 and 498-A of IPC.

5. The prosecution examined as many as 16 witnesses to bring home the charge while the defence has examined 3 witnesses to substantiate the defence of false implication.
6. After elaborate discussion of the material available on record, the trial Court has acquitted the accused persons of both the charges on the reasoning which has been summed up in para 13 of the impugned judgment.
7. Mr. Bhaskar Pyasi, learned Panel Lawyer for the State, would argue that there being clinching evidence to prove demand of dowry by the husband and mother-in-law of the deceased coupled with the statement of eye-witnesses PW-1 Rahim Khan, PW-3 Tasim and PW-10 Suleman, it is a clear cut case found proved beyond reasonable doubt yet the trial Court has acquitted the accused persons on flimsy reasons.
8. Per contra, Mr. MK Bhaduri, learned counsel for the respondents, would submit that the finding recorded by the trial Court does not suffer from any perversity and the entire evidence has been discussed in its true perspective, therefore, the appeal deserves to be dismissed.
9. There being no dispute of the fact that the deceased died on account of consumption of suspected poisonous substance i.e. insecticide methylene, we are not discussing the said part of the evidence and our discussion of the evidence on record would

confine to the evidence of demand of dowry and commission of culpable homicide.

10. To establish that the respondents have committed murder of the deceased by forcefully administering poison, the prosecution has produced PW-1 Rahim Khan as an eye-witness to the incident. This witness is not a resident of the same house. Although the witness is the maternal nephew (*Bhanja*) of respondent Mohammed Naeem Khan, he used to reside separate in the same village. As per his version, at about 3 pm, on 25.10.2002, he went to the house of the deceased and saw from some distance that the accused persons were administering poison to Tasimunnisa. However, despite seeing the incident, he did not rush back to his house to inform his parents or relatives but went to the house of one Rohit Satnami for watching TV. When he was returning from the house of Rohit Satnami at about 6 p.m., he saw that the accused persons were taking Tasimunnisa to Pandariya on a motorcycle. Thereafter, he met PW-3 Tasim on the road and informed him about the incident.

11. The trial Court has refused to act upon the evidence of this witness on the ground that he being a child witness, his evidence should be examined with circumspection, therefore, on close scrutiny of and for the discrepancy in his evidence, he does not appear to be of such sterling character that conviction can rest on his sole testimony.

12. We have examined the entire statements of PW-1 Rahim Khan,

PW-3 Tasim and PW-10 Suleman. PW-1 Rahim Khan is aged about 12 years. In his case diary statement Ex.D/1, he had stated that immediately after the incident, he had gone to the house of PW-3 Tasim at about 3.30 p.m. but nobody was present in the house, therefore, he went to the house of Rohit Satnami. In his Court statement, he says that he had gone to the house of his aunt Jamila but did not speak anything about going to the house of PW-3 Tasim. In both the statements, he has not stated as to why he did not return to his own house to inform his parents about the incident. It is not his case that he was threatened by the accused persons of dire consequences if the incident is revealed to anybody, therefore, the conclusion by the trial Court that he does not appear to be a reliable witness does not suffer from any perversity.

13. Even if the past conduct of an eye-witness would not always dent his credibility, as conduct defers from person to person, but in a case like this, when the eye-witness is a child witness and despite seeing the incident, he goes to some other house for watching TV rather than disclosing the incident to his own parents, his conduct cannot be ignored lightly.

14. PW-3 Tasim has not seen the incident, but has received information about the incident from PW-1 Rahim Khan, therefore, he is a hearsay witness and once the source of information i.e. PW-1 himself is found to be a doubtful witness, the statement of PW-3 Tasim loses significance. PW-10 Suleman is the brother of the deceased. He speaks about demand of

dowry made about 2 years back. Although PW-2 Sakaruddin, father of the deceased, has stated that after an initial demand of Rs.20,000/- and one colour TV set made 2 years back, the accused persons kept on insisting about fulfillment of the said demand on each occasion when he went to the house of the deceased yet there being no previous report or any effort by the complainant side to sort out the issue in their *Jamat*, the trial Court has rightly found that the allegation of demand of dowry appears to be an afterthought.

15. The trial Court has also referred to the political enmity and a murder case, in which, the respondents were arrayed as accused but later on acquitted, as one possible reason for continued acrimony between the parties.

16. We do not think this aspect of the evidence supporting the accused persons, because, despite the above, if the complainant side has married their daughter to one of the accused from the opposite side, possibly, the previous acrimony no longer subsisted after the marriage and also there is no subsequent event, which has revived their old animosity.

17. Be that as it may, PW-1 Rahim Khan, a child witness, having been disbelieved for placing reliance as an eye-witness, there is no other material against the accused persons and more so, when the trial Court has not framed charge against the accused persons for the offence under Section 304(B) of IPC.

18. For all the above stated reasons, we do not find any substance

to allow the present acquittal appeal preferred by respondents
1 &4.

19. The acquittal appeal deserves to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Vimla Singh Kapoor)

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