

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.360 of 2010**

State Of Chhattisgarh Through Station House Officer, Police
Station City Kotwali Rajnandgaon, District Rajnandgaon (CG)

---- Appellant

Versus

1. Sanjay Kumar Soni, S/o Suresh Kumar Soni, aged about 25 years,
2. Smt. Gauri Bai Soni W/o Suresh Kumar Soni, aged about 45 years,

Both are residents of Sonaarpara, Rajnandgaon, Police Station
City Kotwali, District Rajnandgaon (CG)

---- Respondents

For Appellant/State	: Shri Wasim Miyam, Panel Lawyer
For respondents	: Shri Anup Majumdar, Advocate

**DB: Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Ram Prasanna Sharma**

Judgment On Board**Per Ram Prasanna Sharma, J.****06.03.2018**

1. This Acquittal Appeal is directed against the judgment dated 28th February, 2008, passed by the Sessions Judge, Rajnandgaon, Sessions Division Rajnandgaon (CG)(for short 'the trial Court') in Sessions Trial No.47/2007, wherein the trial Court acquitted both the respondents of the charges under Sections 3 and 4 of the Dowry Prohibition Act, 1961 and Sections 498-A, 304-B in the alternate 302, 302/34 and 306 of the Indian Penal Code.

2. In the present case name of the deceased is Kalpana @ Babli Soni, who was married to respondent No.1- Sanjay Kumar

Soni on 5th July, 2006. The deceased died of burn injuries on 17.1.2007 at Sonaarpara, Rajnandgaon. It is alleged that both the respondents demanded dowry from the deceased and for that they harassed and subjected the deceased to cruelty, abetted her to commit suicide and in alternate they caused burn injuries to the deceased. The matter was reported to Police Station City Kotwali, Rajnandgaon and was investigated by the said Police. After investigation, charge sheet was filed and after completion of trial, the trial Court acquitted the respondents of the charges as mentioned above.

3. Learned counsel for the State submits as under:

(i) Demand of dowry is proved by the evidence of Pankaj Soni (PW3), Govind Lal Soni (PW6), Kumud Soni (PW7), Dinesh Soni (PW8) and Tupendra Kumar Soni (PW10), but the trial Court has overlooked their version and reached to a wrong conclusion.

(ii) Harassment and cruelty is also proved by the evidence adduced by the prosecution, but the trial Court has rejected the same on the basis of minor discrepancies which is not in the fitness of legal aspect and factual matrix of the case.

(iii) The trial Court ought not to have passed its judgment that *falsus in uno falsus in omnibus*.

(iv) The trial Court failed in his duty in separating the grain from the chaff.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshalling of the evidence and the same is not liable to be disturbed invoking jurisdiction of appeal.

5. We have heard learned counsel for the parties and perused the record.

6. Pankaj Soni (PW3), is brother and Govind Lal Soni (PW6) is father of the deceased. Kumud Soni (PW7) is cousin of the deceased. Dinesh Soni (PW8) and Tupendra Kumar Soni (PW10) are the persons who were in contact with the deceased. All the witnesses have deposed before the trial Court that the deceased informed them that she was subjected to harassment by both the respondents but, their version is based on the information given to them by the deceased. No one had stated before the trial Court that any of the respondent had demanded dowry from them.

7. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 reads as under:

“2. Definition of 'dowry'. - In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II – The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

8. Since no demand was made and no harassment is proved before the trial Court as there is no evidence that any report was made against any of the respondent during lifetime of the deceased. It is also not a case that they have convened any meeting regarding harassment to the deceased before the members of their community, therefore, there is no evidence of harassment during lifetime of the deceased by any of the respondent. When any of the witness has not deposed about demand of dowry by any of the respondent, their evidence is hearsay evidence. Hearsay evidence is not received as relevant evidence. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

9. When second hand evidence is inadmissible then it is difficult for us to hold that any demand of dowry was made and harassment or cruelty was done by any of the respondent against the deceased.

10. True it is that marriage between respondent No.1- Sanjay Kumar Soni and deceased Kalpana @ Babli Soni took place on 5th July, 2006 and the deceased died on 17.1.2007 i.e. within 7 years of marriage, but unless harassment is proved soon before her death, presumption under Section 113-B of the Indian Evidence Act, 1872 cannot be invoked in the facts and circumstances of the present case.

11. Section 113-B of the Indian Evidence Act, 1872 reads as under:

“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 had 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.”

For applying this Section, it is essential that the woman is harassed soon before her death or subjected to cruelty. For establishing offence under Section 304-B of IPC, the prosecution is under obligation to pass proximity test. It has to be proved that there exist a proximity and live link between cruelty and death, however, that is not the case here. Offence under Section 498-A of the IPC is also based on cruelty, but from the evidence adduced by the prosecution, there is no foundational evidence of taunting, misbehaving or any direct or active act on the part of the respondents against the deceased. It is not a case that any act of the respondents has disturbed the mental equilibrium of the deceased, therefore, even after re-appreciation of the evidence,

we are of the view that the finding arrived at by the trial Court is based on the settled principles of law and warrant no interference.

12. For commission of offence under Section 306 IPC, ingredients of Section 107 IPC i.e. abetment are to be established.

Ingredients of Section 107 of the IPC are that instigating a person to do a thing and “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act. The word “instigate” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation. Intentionally adding a person also includes in abetment. Intentionally aiding a person to do a thing also includes in abetment, but in the present case, there is no suicidal note and even from the report of the Doctor, it is not established that the death of the deceased is suicidal. The Doctor has not opined regarding cause of death. In this way, cause of death may be accidental or suicidal. But when there is no substantial evidence to establish that it is a case of suicide, question of abetment of suicide does not arise.

13. The respondents have also been charged alternatively for the offence under Section 302 IPC. From the postmortem report, it is not established that the cause of death is homicidal. Homicidal death is *sine quo non* for establishing offence under Section 302 IPC. Again from the oral evidence before the trial

Court it is not established that any criminal act is done at the time of incident by any of the respondent to cause her death intentionally.

14. Taking into consideration the cumulative facts of the evidence, demand of dowry, cruelty and harassment and abetment for commission of murder is not established and the finding arrived at by the trial Court is not liable to be reversed.

15. In the result, the appeal is liable to be and is hereby dismissed.

**Sd/
Judge**

(Prashant Kumar Mishra)

**Sd/
Judge**

(Ram Prasanna Sharma)

