

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.89 of 2016**

State Of Chhattisgarh Through the Incharge, Police Station Lalbag,
District Rajnandgaon (CG)

---- Appellant

Versus

1. Leeladhar Sahu s/o Nammu Ram Aged 22 years,

2. Parvati Sahu W/o Nammu Ram Aged 55 years,

Both are R/o village Mokhli, Police Station Lalbag, District
Rajnandgaon (CG)

---- Respondents

For Appellant/State	: Shri Rajendra Tripathi, Panel Lawyer
For respondents	: Shri H.S. Ahluwalia, Advocate

DB: Hon'ble Shri Justice Prashant Kumar Mishra &

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

Per Ram Prasanna Sharma, J.

21.02.2018

1. This Acquittal Appeal is directed against the judgment dated 2nd March, 2016, passed by Sessions Judge, Rajnandgaon, Sessions Division Rajnandgaon (CG)(for short 'the trial Court') in Sessions Trial No.04/2015, wherein the trial Court acquitted the respondents of the charges under Sections 304B, 498-A in alternate Section 302/34 of the Indian Penal Code for commission of dowry death and cruelty in alternate murder of Gomti Sahu.

2. In the present case name of the deceased is Gomti Sahu, who was wife of respondent No.1- Leeladhar Sahu. Leeladhar Sahu is son of respondent No.2- Parvati Sahu. It is alleged that

the marriage between Gomti Sahu and Leeladhar Sahu was solemnized on 18th April, 2014. After marriage, Gomti Sahu shifted to village Mokhali in the house of the respondents. Both the respondents harassed the deceased for not bringing articles in marriage and passed certain remarks that even a Tiffin Box was not given in the marriage. Respondent No.1-Leeladhar Sahu used to beat her and on the date of incident i.e. on 21.11.2014 also Leeladhar Sahu beaten the deceased. The deceased was found having suffered burn injuries in the house of the respondents and was shifted to District Hospital, Rajnandgaon for treatment, where she succumbed to the injuries. The matter was reported to Police Station Lalbagh and after investigation charge sheet was filed. The respondents pleaded innocence and thereafter the trial was conducted. After examination of the witnesses, statements of the respondents were recorded under Section 313 of the Cr.P.C. After hearing the parties, the trial Court has acquitted the respondents of the charges as aforementioned.

3. Learned counsel for the State submits as under:

- (i) The trial Court has not appreciated the evidence of Lilabai (PW2) (mother of the deceased) and Budhram (PW3) (father of the deceased) who have stated about the torture committed by the respondents upon the deceased for the illegal demand of dowry.
- (ii) The trial Court has overlooked the evidence of Naib Tehsildar/Executive Magistrate, Shri N.K. Khande (PW4),

who has proved the dying declaration recorded by him, in which, the deceased had declared that respondent No.2- Parvati Sahu poured kerosene oil on her body and lit fire by the matchstick.

(iii) The trial Court has passed the judgment mechanically which is not liable to be sustained.

4. On the other hand, learned counsel for the respondents submits that the finding recorded by the trial Court is based on factual matrix and legal aspect of the matter and 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. Lilabai (PW2) is mother of the deceased. She has deposed (para 8) that at the time of marriage no demand of dowry was made by the respondents and even after the marriage, no demand was made by any of the respondent though she deposed (para 1) that respondent No.1- Leeladhar Sahu used to assault her daughter but, her statement is general because she is not witness of any such incident and from her statement it is clear that she is stating before the Court what is told to her by her daughter/deceased. Budhram(PW3) is father of the deceased. He deposed on the same line as is deposed by Lilabai (PW2). Version of this witness is also based on the facts informed to him by his daughter/deceased. Versions of Shriram Sahu (PW8) and Nema Sahu (PW7) are also based on the information given to

them by the deceased. No report was made during lifetime of the deceased regarding assault by any of the respondent and no medical report has been produced regarding injury on the body of the deceased during her lifetime. The witnesses are deposing on the basis of information given to them by the deceased, but that cannot be corroborated because the deceased is not available for evidence. Evidence of these witnesses 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.”

7. From the evidence of Lilabai (PW2) and Budhram (PW3), it is not established that any of the respondent had ever demanded dowry before or after marriage. For establishing offence under Section 304-B, it has to be proved that any harassment is made on failure to fulfill the demand of dowry.

8. 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.”

9. Since no demand was made and no harassment is proved soon before the death of the deceased, an offence under Section 304-B IPC is not made out. Section 113-B of the Indian Evidence Act, 1872 has also no application because when demand of dowry and harassment is not established, the foundation for applying legal presumption is not operational.

“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 Section 113 B of the Evidence Act, it is essential that the woman is harassed soon before her death or subjected to cruelty. But in the present case, there is lack of sufficient evidence of any demand of dowry or that she was harassed for the same.

10. 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 and therefore, 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.

11. It is contended on behalf of learned counsel for the State/appellant that dying declaration recorded by the Executive Magistrate is sufficient to bring home the guilt of the accused/respondents.

12. Now, the point for consideration is whether the deceased was in a position to speak after sustaining burn injuries. Statements of Lilabai (PW2), Budhram (PW3) and Nema Sahu (PW7) were recorded under Section 161 Cr.P.C. and in their previous statements, they have stated that the deceased was not in a position to speak. Nema Sahu (PW7) deposed (para 4) that the deceased was completely burnt and the words spoken by her was not understandable.

13. Police Inspector, R.N. Pandey (PW14) deposed (para 10) that the deceased was not in a position to speak and it was

informed to him by Lilabai (PW2). Dr. Ekta Danial(PW17) also deposed (para 2) that when the deceased was brought at District Hospital, Rajnandgaon, she was not in a position to speak.

14. Looking to the whole evidence, it was difficult for the trial Court to hold that the deceased was in a position to speak after sustaining burn injuries which was estimated up to 90% as per version of Dr. Ekta Danial (PW 17). Version of Naib Tehsildar, N.K. Khande (PW 4) is rebutted by the version of oral and medical evidence and it was not safe for the trial Court to act on a declaration recorded by the Naib Tehsildar that respondent No.2 Parvati Bai poured kerosene on the body of the deceased and lit fire by the matchstick. It ought to have been proved beyond the shadow of doubt that the deceased was in a fit condition to understand the question put to her and give reasonable answer. But, there are two contradictory versions on record. One says that she was in a position to speak while the other says that she was not in a position to speak. In this contradictory situation, the trial Court extended benefit of doubt to the respondents and same is not liable to be disturbed invoking jurisdiction of appeal.

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

**Sd/
Judge**
(Prashant Kumar Mishra)

**Sd/
Judge**
(Ram Prasanna Sharma)

