

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 752 of 2008****Reserved on : 07.12.2018****Delivered on : 12.12.2018**

1. Kishorilal, S/o Kejuram, aged about 28 years, R/o Tamasiwani, Thana-Aarang, Tehsil & District- Raipur (C.G.)
2. Kejuram, S/o Suklal Sen, aged about 75 years, R/o Tamasiwani, District- Raipur (C.G.)
3. Rajmat Bai, W/o Kejuram Sen, aged about 75 years, R/o Tamasiwani, District- Raipur (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, Through:- Police Station- Aarang, Tehsil & District- Raipur (C.G.)

---- Respondent

 For Appellants : Ms. Sharmila Singhai, Advocate.
 For State/respondent : Mr. Vinod Kumar Tekam, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 29.07.2008 passed by 11th Additional Sessions Judge, Raipur (C.G.) in Session Trial No. 51/2008, wherein the said court convicted all the three appellants for commission of offence under Sections 304(B)/34 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 5000/- each with further default stipulations.
2. In the present case, name of the deceased is Sangeeta, who died on

27.07.2007 and as per version of medical expert, her death is suicidal in nature. She died other than normal circumstances. It is alleged that the deceased married with appellant No. 1- Kishorilal in the year 2005. Appellant No. 2- Kejuram is father of Kishorilal and father-in-law of the deceased and appellant No. 3- Rajmat Bai is mother of Kishorilal and mother-in-law of the deceased. It is alleged that all the appellants demanded dowry from the deceased and soon before her death, she was subjected to cruelty or harassment by all the three appellants being husband and relative of the husband in connection with demand of dowry, therefore, it is a case of dowry death. Again, offence of cruelty is also committed by them. Matter was reported and investigated. The appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

- (i) In written complaint lodged by father of the deceased, there is no demand of dowry is mentioned and inquest report, no demand of dowry is mentioned, therefore, it is not a case of demand of dowry. Statement of witnesses by the investigating officer was recorded after three months and as per version of the witnesses, report is lodged after consultation, therefore, it is made-up story and the same is not reliable.
- (ii) No complaint was lodged during lifetime of the deceased and there is some quarrel for petty matters which cannot be termed as harassment.
- (iii) There is no direct evidence of torture for demand of dowry

against the present appellants. Case of the prosecution is based on statement of interested witnesses which is not reliable.

(iv) The motive or intention of the appellants to commit the offence is not established. It is not clear from the statement of father of the deceased, what articles were demanded, therefore, evidence on this count is vague and not acceptable.

(v) Memorandum and seizure did not help the prosecution story and as deceased did not like her husband because he is not educated well and marriage was solemnized with the consent of the deceased, therefore, it is not a case of dowry death. Finding of the trial court is liable to be set aside.

4. Learned counsel for the appellants cited case laws in the matter of **Yavnesh Kumar Sahu & others Vs. State of Chhattisgarh** reported in **2011 (1) CGL.R.W. 390** and **Durga Prasad & another Vs. State of Madhya Pradesh** reported in **(2010) 9 SCC 73**.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
6. In the present case, date of incident is 27.07.2007. From evidence of Shiv Kumar Sen (PW-1), it is established that he visited the matrimonial house of the deceased at village- Tamasiwani and the deceased informed him that all the three appellants harassed her for dowry. He further deposed that he requested the appellants to send the deceased to her parental home for a week, but they differed the

matter of sending the deceased to her parental home and thereafter, he returned to his house at village- Rajim at about 2:00 p.m. After three hours, he received information that her daughter is calling him. When he reached to the matrimonial house of the deceased at 5:00 p.m. in the evening, he found that deceased died. Version of this witness is supported by version of Laxmi Bai (PW-2), Durga Sen (PW-3) & Nileshwar Singh (PW-4). All these witnesses have deposed in one voice that on the date of incident, the deceased was harassed by all the three appellants on count of dowry and that is why she suffered death other than normal circumstances.

7. In FIR (Ex. P/1), it is clearly mentioned that deceased was subjected to harassment for bringing less dowry. Harassing to deceased for bringing less dowry is equivalent to demand of dowry and harassment in relation with dowry. Inquest report is made only to know cause of death. It is not encyclopedia of the entire case.
8. From statement of Shiv Kumar Sen (PW-1) (Para 12), it is clear that the deceased has been harassed for bringing less material like utensils etc. Version of Shiv Kumar Sen (PW-1) is supported by version of other witnesses. After marriage of daughter, parents do not want to indulge in marriage life of daughter, therefore, non-complaining during lifetime of deceased has no bearing with crime in question. When the offence is committed within four corners of the house of the appellants, it is difficult to collect the direct evidence of harassment. It cannot be said that story of harassment is made-up, because the appellants have to adduced some evidence to rebut the

presumption as embodied in Section 113B of the Indian Evidence Act, 1872, which reads as under:-

“113B. 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 has 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.”

9. Unless presumption is rebutted, harassment on the part of the appellants who are husband, father-in-law & mother-in-law of the deceased is not rebutted, therefore, arguments advanced on behalf of the appellants is not sustainable. The case laws cited by learned counsel for the appellants are distinguishable in the facts and circumstances of the present case.
10. The death is caused in the house of the appellants, but no one explained as to how the incident took place. It is also not explained that as to why they did not allow the deceased to go to her parental home when it was advised on the same date by father of the deceased. The defence version is only of denial which is meritless.
11. Looking to the entire evidence on record which is supported by direct and documentary evidence of FIR, the trial court opined that the deceased was subjected to harass soon before her death on account of dowry and this Court has no reason to record contrary finding. From the entire evidence, cruelty on the part of the appellants is also established. Arguments on behalf of the appellants are not sustainable.

12. The dowry death is an offence punishable under Section 304 of IPC and cruelty is offence punishable under Section 498-A for which the trial court convicted the appellants and the same is not liable to be interfered with and conviction of the appellants is hereby affirmed.

Heard on the point of sentence.

13. The trial court awarded R.I. for 7 years which is minimum prescribed sentence and less than minimum cannot be awarded and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
14. It is reported that the appellants have suffered full jail sentence and have been released from jail after getting benefit of remission, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge