

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.177 of 2010**

1. Sonsai Sahu, aged 25 years, S/o Shri Dayalal Sahu,
2. Daya Lal Sahu aged 55 years, S/o Shri Dhelu Lal Sahu,
3. Smt. Nirmala Bai, aged 50 years, w/o Shri Dhelu Lal Sahu,

All the above three are residents of village Potia, P.S. Mahasamund, District Mahasamund (CG)

4. Rohit Sahu, aged 42 years, S/o Shri Jogiram Sahu, R/o village Bemcha, P.S. Mahasamund, District Mahasamund (CG)

---- Appellants

Versus

State of Chhattisgarh, Through the Police Station City Kotwali, Mahasamund, District Mahasamund (CG)

---- Respondent

For Appellants	: Shri J.A. Lohani, Advocate
For Respondent/State	: Shri Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****16.11.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 26.2.2010, passed by Sessions Judge, Mahasamund (CG) in Sessions Trial No.63/2009, wherein the said Court has convicted all the 4 appellants for commission of offence under Sections 304-B and 498-A of the Indian Penal Code, 1860 (for Short the IPC) and sentenced them to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/-; rigorous imprisonment for one year and to pay fine of Rs.500/- respectively with default stipulations.

2. In the present case, name of the deceased is Smt. Shakuntala Sahu, who was married to appellant Sonsai in the year 2007. She died of burn injuries on 25.4.2008 at about 7.00 pm at her matrimonial house. It is alleged that the deceased was subjected to harassment and cruelty on non-fulfillment of demand of dowry of motorcycle, fridge and ornaments. As the death of the prosecutrix was other than normal circumstances, the matter was reported and investigated. After completion of trial, the court has convicted and sentenced the appellants as aforementioned.

3. To substantiate the charges, the prosecution has examined as many as 10 witnesses.

4. Learned counsel for the appellants submits that there is no evidence of harassment and it is a case of accident and no demand of dowry was made to the deceased, therefore, the charges levelled against the appellants are not established. He further submits that as per dying declaration of the deceased, she sustained burn injuries during cooking food and therefore, the finding arrived at by the trial Court is not sustainable.

5. On the other hand, learned counsel for the State supporting the impugned judgment submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

6. Sewaram Sahu (PW1) is father of the deceased. His statement is based on the information given to him by the deceased that her in-laws were demanding motorcycle, fridge and

ornaments. On one hand, statement of this witness is hearsay in nature and on the other hand, the statement is general in nature. Hitesh Kumar Sahu (PW2) is also stating on the basis of information given to him by the deceased. His statement is also general in nature and nothing specific is mentioned by this witness. Digesh Kumar Sahu (PW3) is brother of the deceased and he also deposed before the trial Court on the basis of information given to him by the deceased. His statement is also general in nature. Manrakhanlal Sahu (PW6) is brother of father of the deceased. He also deposed before the trial Court on the basis of information given to him by the deceased. Statements of all these witness are general and hearsay in nature.

7. 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.”

8. Second hand evidence is not admissible in evidence and it cannot be acted upon to record any finding.

9. One dying declaration of the deceased was recorded during investigation in which she stated that she suffered burn injuries during cooking food and same is accidental in nature. If dying declaration is accepted then it is not a case of criminal act but the act is accidental. Looking to the entire evidence on record, it is not established that any demand of dowry was made and any harassment was done by any of the appellant. Again, cruelty on the part of any of the appellant is not established. In view of the above, the finding arrived at by the trial Court is not sustainable.

10. Consequently, the appeal is allowed. Conviction and sentence awarded by the trial Court under Sections 304-B and 498-A of the IPC are set aside. All the 4 appellants are acquitted of both the charges. The appellants are reported to be on bail. Their bail bonds shall remain operative for a further period of six months from today in terms of Section 437-A of CrPC.

Sd/

(Ram Prasanna Sharma)
JUDGE