

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 76 of 2009**

1. Harisagar Kashyap, S/o Radheshyam, aged about 25 years, R/o Village- Parsada, Police Station- Baloda, District- Janjgir-Champa (C.G.)
 2. Brahaspat Lal, S/o Dauram, aged about 42 years, R/o Parsada, Police Station- Baloda, District- Janjgir-Champa (C.G.)
- Appellants**

Versus

State of Chhattisgarh, Through – Police Station- Baloda, District- Janjgir-Champa (C.G.)

---- Respondent

For Appellants : None.

For State/respondent : Mrs. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board**15/11/2018**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 03.01.2009 passed by Second Additional Sessions Judge (FTC), Janjgir-Champa (C.G.) in Session Trial No. 198/2008, wherein the said court convicted the appellant No. 1- Harisagar for commission of offence under Sections 304B & 201 of IPC, 1980 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- and R.I. for 1 year and fine of Rs. 500/- respectively with further default stipulations. The said court also convicted appellant No. 2- Brahaspat Lal for commission of offence under Section 201 of IPC, 1980 and sentenced to undergo R.I. for 1 year and fine of Rs. 500/- with further default stipulations.

2. In the present case, name of the deceased is Laxmin Bai who married with appellant No. 1- Harisagar in the year 2006 and appellant No. 2- Brahaspat Lal is father of the Harisagar and father-in-law of the deceased. It is alleged that the appellants harassed the deceased on account of demand of dowry of motorcycle and fridge. Due to non-fulfillment of the demand, the deceased was subjected to cruelty that is why she died in other than normal circumstances.
3. This appeal is preferred on the ground that the evidence adduced by the prosecution was unreliable and there is no cogent evidence against the appellants for commission of offence even then the trial court convicted them.
4. Learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. For commission of offence under Section 304B of IPC, it has to be proved that the death of a woman is caused by any bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.
6. 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 or 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.”

7. In the present case, Umendram (PW-2) who is father of the deceased, Brihaspti Bai (PW-3) who is mother of the deceased and Rohit Kumar (PW-4) who is maternal uncle of the deceased, have stated before the trial court that as per information given by the deceased, she was harassed by the appellants on account of not giving motorcycle and fridge.
8. Though, it is stated by Brihaspti Bai (PW-3) (Para 2) that the appellants assaulted the deceased and took her ornament, but this version is not stated by her during investigation and this fact is missing in her earlier statement recorded under Section 161 of Cr.P.C., therefore, this part should be excluded for her version because the same is exaggerated version and no explanation is given for not stating the same before the investigating officer.
9. All the witnesses have based their statement on what is informed them by the deceased. No one is resident of village- Parsada where the incident took place. Umendram (PW-2) is

resident of village- Jorha Dabri. Brihaspti Bai (PW-3) is resident of the same village and Rohit Kumar (PW-4) is resident of village- Chhatra Chowki. As these witnesses are not resident of village- Parsada where incident took place, they had no occasion to see as to what was really happening with the deceased on the date of incident or prior to the date of incident, therefore, version of these witnesses is hearsay in nature. In the matter of **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.”

10. When second hand evidence is inadmissible then it is difficult to hold that any demand for dowry was made or any physical or mental harassment was done by the appellants.
11. From the evidence, it is clear that medical expert had no occasion to examine dead body of the deceased because body was cremated on the date of incident. In absence of opinion of any medical expert, it is unsafe to hold that death of

the deceased was occurred otherwise than normal circumstances. In this way, ingredients of offence under Section 304B of IPC is lacking even then the trial court convicted the appellant No. 1- Harisagar for commission of offence under Section 304(B) of IPC which is not sustainable and the same is liable to be and is hereby reversed.

12. So far as offence under Section 201 of IPC is concerned. In the matter of **Sou. Vijaya alias Baby Vs. State of Maharashtra**, reported in **2003 (2) CGLJ 337**, it has been stated as under:-

“6. Section 201 IPC presents a case of accusations after the fact. “An accessory after the fact”: said Lord Hale, “may be, where a person knowing a felony to have been committed, receives, comforts, or assists the felon”. (See 1 Dale 618) Therefore, to make an accessory ex post facto it is in the first place requisite that he should know of the felony committed. In the next place, he must receive, relieve, comfort, or assist him. And, generally any assistance whatever given to a felon to hinder his being apprehended, tried or suffering punishment, makes the assister an accessory. What Section 201 requires is that the accused must have had the intention of screening the offender. To put it differently, the intention to screen the offender, must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient, for Section 201 speaks of intention as distinct from a mere likelihood.

7. Section 201 punishes any person, who knowing that any offence has been committed, destroys the evidence of that offence or gives false information in order to screen the offender from legal punishment. Section 201 is designed to penalize “attempts to frustrate the course of justice”.

8. Section 201 deals with the following two types of offences:

- (1) Where the offender causes the evidence of the commission of the offence to disappear.
- (2) Where the offender gives any information respecting the offence which he knows or believes to be false.

9. The ingredients of offence under Section 201 are:

- (i) that an offence has been committed,
- (ii) that the accused knew or had reason to believe the commission of such an offence,
- (iii) that with such knowledge or belief he-
 - (a) caused any evidence of the commission of that offence to disappear, or
 - (b) gave any information relating to that offence which he then knew or believed to be false,
- (iv) that he did so as aforesaid with the intention of screening that offender from legal punishment”.

13. In the present case, when it is not established that death of the deceased is unnatural and it is not a case of dowry death, it cannot be held that the appellants were aware of the fact that any offence was committed by them and they caused evidence of commission of offence to disappear, therefore, ingredients of Section 201 of IPC is also lacking and finding arrived at by the trial court is not sustainable in the eyes of law.

14. Accordingly, appeal is allowed. The conviction and sentence of the appellant No. 1- Harisagar is set aside and he is acquitted of the charges framed against him under Sections 304B & 201 of IPC. The conviction and sentence of the appellant No. 2- Brahaspat Lal is also set aside and he is acquitted of the charge framed against him under Section 201 of IPC. The appellants are reported to be on bail. Their bail bonds shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge