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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.709 of 2009**

1. Kuleshwar Ram S/o. Goverdhan Ram Sahu, aged about 24 years, R/o. Village Khundani
2. Goverdhan Ram S/o. Ghasiram Sahu, aged about 65 years,
Both are R/o. Village Khundani Chowki Kanwar, PS Gurur,
Distt. Durg (CG)

---- Appellants**Versus**

State Of Chhattisgarh, Through Police Station Gurur, Distt.
Durg (CG)

---- Respondent

 For the appellants : Shri BP Singh, Advocate
 For the respondent/State: Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****27.11.2018.**

1. This appeal is directed against the judgment dated 25.9.2009 passed by Additional Sessions Judge (FTC), Balod, Session Division Durg (CG) in Session Trial No.37/2008 wherein the said Court convicted both the appellants for commission of offence under Section 304B of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of Rs.500/- with default stipulation.

2. As per the case of the prosecution, name of the deceased is Menka Bai who was married to appellant Kuleshwar Ram in the year 2005. Appellant No.2 namely Goverdhan Ram is father of appellant No.1 Kuleshwar and thus father-in-law of the deceased. It is alleged

that after marriage the deceased used to live in the village Khundani where both the appellants committed cruelty on her due to non-fulfillment of demand of dowry, that is why she died other than normal circumstances. As per the report of Dr.Rakshit Jogi (PW-17), the deceased died due to consumption of poisonous substance on 13.6.2008. The matter was reported and investigated and after completion of trial, both the appellants have been convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) Statement of the prosecution witnesses is general and omnibus allegation of demand of dowry and no specific allegation of harassment has been made and proved against the appellants, therefore finding of the trial Court is not sustainable.

(ii) Cruelty soon before the death of the deceased is *sine-qua-non* for establishing the evidence under Section 304B IPC but there is no incriminating circumstances against the appellants.

(iii) The trial Court overlooked the material omissions and contradictions in the statement of the prosecution witnesses, therefore, finding of the trial Court is liable to be reversed. He placed reliance in the matter of **Dinesh Sahu Versus State of Chhattisgarh** decided by this Court on 23.11.2016 in **Criminal Appeal No.1059/2012**.

4. On the other hand, learned counsel for the State submits that the finding arrived at by the trial Court is based on the material on record and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

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

6. Bhojram (PW-1) is the father of the deceased. As per the version of this witness, after some time of the marriage appellant Kuleshwar left the deceased in his house saying that she is not working in the matrimonial house. As per the version of this witness, the deceased informed him that the appellants harassed her and assaulted her. From the statement of this witness it appears that he met with the deceased during the festival of Teeja in the year 2007 and his statements are based on the information given to him by the deceased. Kishan Bai (PW-2) deposed that when the deceased came to village Hasda during the festival of Teeja she informed her that the appellants assaulted and she further informed her that the appellants are saying that she is not working in the matrimonial home. Tejpai (PW-3) is the brother of the deceased. He also deposed that he met with the deceased during Teeja festival in the year 2007. He also made statement against the appellants in general terms. Chironjilal Sahu (PW-4) deposed that the deceased informed him that after 5-6 months of the marriage the appellants used to harass the deceased. Human Prasad (PW-5) deposed on the basis of the information given to him by the deceased that the appellants used to assault the deceased. Therefore, she is not willing to go the matrimonial home. This witness met with the deceased during Holi festival. Nirmala (PW-11) is the mother of the deceased. As per the version of this witness, the deceased informed her that on account of not giving the motor cycle as dowry, the appellants and other co-accused assaulted the deceased. Kuldeep

Kumar (PW-12) also deposed on the basis of the information given to him by the deceased. As per the version of this witness, the deceased was not willing to go to her matrimonial home because her in-laws were harassing her.

7. The entire evidence adduced by the prosecution goes to show that there was no direct demand from any of the appellants for dowry. Statements of the witnesses are based on the information given to them by the deceased. In view of this Court, version of these witnesses are hearsay in nature.

8. 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. Evidence adduced by the prosecution is second hand evidence which is inadmissible, therefore, no finding can be recorded on the basis of the hearsay evidence.

10. From the evidence it is clear that no one met with the deceased soon before her death. Some of the witnesses met her during the time of Teeja festival in the year 2007 whereas some witnesses met her during Holi festival. In the present case date of

death of the deceased is 13.6.2008 and the witnesses have not met the deceased prior to the date of incident. They have no occasion to see what was really going on in the matrimonial house of the deceased. Nobody has been examined to establish the harassment on the part of the appellants. One of the ingredients for commission of offence under Section 304-B IPC is that the deceased was subjected to cruelty soon before her death. In the present case, since no one deposed before the trial Court that he/she met with the deceased soon before the incident, it is not established from the evidence that she has been subjected to cruelty soon before her death.

11. On overall assessment of the evidence, it is not established that the deceased was subjected to cruelty by the appellants or harassed her soon before her death in connection with demand of dowry. The evidence adduced by the prosecution is not sufficient to establish the harassment on the part of the appellants in connection with demand of dowry.

12. 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 and that is not the case here.

13. True it is that death of the deceased is caused within seven years of the marriage and presumption clause is incorporated in Indian Evidence Act, 1872 as per Section 113B of the Act, which 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.”

14. In the present case, the evidence is not sufficient to connect objectively that any demand of dowry was made by any of the appellants and again harassment on the part of the appellants is also lacking, therefore, presumption as defined under Section 113B of the Act, 1872 is not available in the present case.

15. Taking into consideration the facts in its totality, the finding arrived at by the trial Court is not sustainable under the law.

16. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charge under Sections 304B IPC. 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 437A of the CrPC.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**