

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 245 of 2010

Judgment Reserved on 25-9-2018

Judgment delivered on 11-10-2018

1. Prabhu Lal Verma . S/o. Kishan Verma, aged 25 years, r/o. Village Khajari Police Station Ghumka, District Rajnandgoan (CG).
2. Kishan Lal S/o Khemlal Verma R/o Village . Khajari, Police Station Ghumka, District Rajnandgaon (CG).
2. Sumitra Bai W/o Kishan Lal Verma , aged 45 years, village Khajari Police Station Ghumka, District Rajnandgoan

---- Appellants

Versus

- State of Chhattisgarh through the Police Station Ghumka, District Rajnandgaon (CG).

---- Respondent

For Appellants	:	Mr. Hemant Kumar Agrawal, Advocate appears on behalf of Mr. S.C. Verma, Advocate.
For Respondent/State	:	Mr. Suryakant Mishra, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is directed against the judgment of conviction and order of sentence dated 27-3-2010 passed by Additional Sessions Judge (FTC), Rajnandgaon (CG) in Sessions Trial No. 78 of 2009, wherein the said Court convicted the appellants for the commission of offence under Sections 304-B read with Section 34 of the Indian Penal Code and sentenced them to

undergo rigorous imprisonment for ten years and to pay fine of Rs.1000/-; each with default stipulations.

2. In the present case, name of the deceased is Omin Bai who was wife of appellant No.1 Prabhulal Verma. It is alleged that she died by consuming poisonous substance on 6-7-2009 due to demand of dowry and harassment by the appellants. The matter was reported and investigated. After completion of the trial, the trial Court convicted and sentenced the appellants as mentioned above.

3. Learned counsel for the appellants would submit as under:

- i) No report during life time of the deceased was lodged regarding demand of dowry or harassment and the demand of dowry is not proved by evidence adduced by the prosecution.
- ii) The trial Court has wrongly reached to conclusion that there was harassment on account of demand of dowry, but from the evidence it is established that some quarrel took place between appellant Prabhulal Verma and deceased due to illicit relation of Prabhulal Verma with his sister-in-law (Bhabhi).

- lii) The trial Court has not evaluated the evidence in its true perspective and, therefore, the finding of the trial Court is liable to be reversed.

4. On the other hand, learned State counsel supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of evidence which is not liable to be interfered while invoking jurisdiction of the appeal.

5. To substantiate the charge, prosecution examined as many as 15 witnesses. As per version of PW/1 Devraj, the deceased had her own doubts regarding relation between her husband and his sister-in-law namely Lata Bai, that is why one meeting was convened in the village and in that meeting it is cleared that charge levelled by the deceased was not proved. Thereafter, deceased was advised to live with her parents for some time. PW/2 Dinesh deposed on same line. PW./4 Malik Ram Verma is brother of the deceased. As per version of this witness, deceased informed him regarding harassment by the appellants on account of demand of dowry. From the evidence of this witness, it is not clear as to what really happened with the deceased before her meeting with this witness. This witness has made general and bald statement without giving particulars of any specific incident. Babulal (PW/9) has not supported the

version of prosecution. As per version of this witness one meeting was called to enquire about the relation between appellant Prabhulal Verma and his sister-in-law (Bhabhi) but in that meeting deceased did not narrate anything. Other witnesses adduced by the prosecution assisted the prosecution after registration of first information report.

6. For commission of offence under Section 304B of the IPC, it has to be proved that the death of a woman is caused by any bodily injury or occurs otherwise than under normal circumstance 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.

7. 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.”

8. Plain reading of Section 2 of Dowry Prohibition Act., 1961 makes it clear that demand must be made on account of marriage, but there is no evidence as to who really demanded the dowry and from whom and at what time the demand was made. In the present case no one has stated regarding demand of dowry except Malik Ram Verma (PW/4) who is brother of the deceased. This witness is hearsay witness because deceased has not been examined before the trial Court.

9. 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.”

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 appellant. The trial Court has based its conviction on hearsay evidence which is inadmissible in evidence, therefore, conclusion arrived at by the trial Court is not sustainable.

11. Consequently, the appeal is allowed. Judgment of conviction and order of sentence passed by the trial Court is set aside. The appellants are acquitted of the charges under Sections 304-B read with Section 34 of 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 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju