

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.522 of 2010**

1. Mangaldas Sonwani S/o Daulal Sonwani, aged about 60 years,
 2. Smt. Ramoutin Bai W/o Mangaldas Sonwani, aged about 55 years,
- Both R/o Village Khaira, District Mahasamund (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through The Police Station
Mahasamund (CG)

---- Respondent

For Appellants : Shri M.K.Bhaduri, Advocate

For State/ Respondent : Smt. M. Asha, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****29/11/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 28.6.2010, passed by the First Additional Sessions Judge, Mahasamund (CG) in Sessions Trial No. 05/2010, whereby the appellants have been convicted under Sections 304B/34 and Section 498-A/34 of the Indian Penal Code, 1860 (for short the I.P.C.) and sentenced to undergo R.I. for 7 years and R.I. for 1 year and fine of Rs.100/- with

default stipulations. Both the sentences were directed to run concurrently.

2. In the present case, name of the deceased is Khuliyabai who was daughter-in-law of both the appellants married to their son. She died in matrimonial house setting her ablaze. As per version of medical evidence she died due to complication of burn injuries. It is alleged that after the marriage, the appellants being father-in-law and mother-in-law of the deceased physically and mentally harassed her on account of dowry demand and that is why she sustained death other than normal circumstances. The matter was investigated and the appellants were charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellants as aforementioned.

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

4. Learned counsel for the appellant submits that demand of dowry is not established by the statement of any of the witness and statements of Piliya Bai (PW1) and Raju (PW3) are general in nature and do not establish demand of dowry. Harassment on the part of the appellants is also not established and version of the prosecution witnesses is not credible and trustworthy. The trial Court has overlooked the material contradictions and omissions in the testimonies of the prosecution witnesses, therefore, same is not liable to be sustained.

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

6. To substantiate the charge prosecution has examined as many as 13 witnesses.

7. Dr. Shivnarayan Manjhi (PW6) conducted autopsy of the deceased Khuliya Bai on 25.9.2009 and as per opinion of medical expert, the deceased died due to complication of burn injuries and period of death was 24 hours since examination. From the statement of this witness it is established that the deceased died other than normal circumstances. Case of the prosecution is mainly based on dying declaration of the deceased recorded by the Executive Magistrate, D.D. Mahant (PW2). As per version of Executive Magistrate, he reached to the District Hospital, Mahasamund for recording dying declaration of the deceased where he met with In- charge Medical Officer and the said Medical Officer gave in writing that the deceased is in fit condition to give dying declaration. He further deposed that he had asked question from the deceased and in her reply, she said that she poured kerosene on her body and lit match stick. She further stated that his father-in-law and mother-in-law harassed her on account of dowry and made quarrel with her and due to their harassment she poured kerosene on her body and lit match stick. This witness has been subjected to

cross-examination but remained unshaken. This witness is firm to his statement and there is nothing in his statement to discard the same. Other prosecution witnesses namely Piliya Bai (PW1), who is mother of the deceased and Raju (PW3) who is father of the deceased, Ganeshibai (PW5), Tulsiram(PW11) and Kalabai (PW12) who are residents and neighbours of the deceased, have deposed that they had occasions to hear quarrel of the deceased and her mother-in-law.

8. Looking to the corroborative piece of evidence to the dying declaration, it is established that there was demand of dowry from the deceased and she was harassed continuously till her death. From the evidence it is established that cruelty is caused against her soon before death and therefore, it is established that both the appellants committed dowry death and cruelty against the deceased that is why she ended her life by taking suicidal step.

9. There is no material contradictions in the statement of Executive Magistrate, D.D. Mahant (PW2) and other witnesses regarding harassment and looking to the dying declaration in supportive piece of evidence it cannot be said that any statement is general in nature or there are material contradictions in the statement of Executive Magistrate or supportive evidence going to the root of the case. The arguments advanced on behalf of the appellants is thus, not sustainable. The trial Court has properly marshalled the evidence and recorded finding of conviction. This

Court has no reason to substitute the finding recorded by the trial Court. Dowry death is punishable under Section 304-B IPC and cruelty is offence under Section 498-A r/w Section 34 IPC for which the trial Court has convicted both the appellants and same is hereby affirmed.

10. Heard on the point of sentence:

The trial Court has awarded sentence for R.I. for 7 years for the offence under Section 304-B IPC, which is minimum sentence and less than minimum cannot be awarded. Therefore, sentence part is also not liable to be interfered with.

11. Accordingly, the appeal is liable to be and is hereby dismissed. It is reported by the Jail authorities that both the appellants have suffered full term of jail sentence after getting benefit of remission, therefore, no order for their arrest etc. is required.

Sd/

(Ram Prasanna Sharma)
JUDGE