

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 291 of 2010**

- State of Chhattisgarh through the District Magistrate, Bilaspur (CG).

---- Appellant

Versus

1. Ramesh Rao, aged about 36 years S/o Garib Ram Morkar.
2. Garib Ram aged about 73 years, s/o. Late Shri Namaraao Morkar.
3. Duteshwar aged about 28 years, S/o Garib Ram Morkar.

All R/o Masanganj, Bilaspur, Police Station Civil Line, Tehsil and District Bilaspur (CG).

---- Respondents

For Appellant/State

Mr. Wasim Miyan Panel Lawyer

For respondent

None.

DB: Hon'ble Shri Prashant Kumar Mishra,
Hon'ble Shri Ram Prasanna Sharma, JJ

Judgment on Board**Per Ram Prasanna Sharma, J****13-3-2018**

1. This acquittal appeal is preferred against the judgment dated 6-11-2007 passed by the Special Judge, Bilaspur (under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989), District Bilaspur (CG) in Sessions Trial No. 63 of 2007 wherein the said court acquitted all the three respondents for the charges under Section 304-B read with Section 34 of the IPC for committing dowry death of Smt. Pratima Ramteke.

2. In the present case, name of the deceased is Pratima Ramteke, who was married to respondent No.2 Ramesh Rao on 19-5-2002. She died of hanging on 25-10-2006. It is alleged that respondent Ramesh Rao being husband of the deceased, respondent No.2 Garib Ram, being father-in-law of the deceased and respondent No.3 Duteshwar, being brother-in-law (younger brother of husband/respondent No.1 Ramesh Rao) harassed the deceased soon before her death on account of non-fulfilling of demand of dowry of Rs.50,000/-. The matter was investigated and the respondents were charge-sheeted and acquitted by the trial Court as mentioned above.

3. Learned counsel for the State submits as under:

- i) The trial Court was not justified in discarding the evidence of Sukhram Ramteke (PW/7) who is the father of the deceased and whose statement established that harassment was caused to the deceased by the respondents.
- ii) The trial Court was not justified in giving too much weightage to the minor omissions and contradictions appeared in the prosecution evidence.
- iii) Re-appreciation of the evidence goes to show that the finding of the acquittal recorded by the trial Court is not justified and perverse and therefore, the accused be convicted properly.

4. We have heard learned counsel for appellant/State at length and perused material available on record.

5. To substantiate the charge, prosecution has examined as many as 11 witnesses.

6. Dr. Mahesh Rawat Rai (PW/9) conducted autopsy of the deceased and noticed the following injuries on her body.

- i) Face congested, eyes coma lazy, nasal bleeding and nail congested.
- ii) PM lividity that on lower back, upper neck region posterior side, both lateral side of thigh on both lateral aspect of upper arm.
- iii) Rigor marks is not in all forms extremely, is in passing off phase.
- iv) Ligature mark- it is incomplete area spared is occipital region, ligature mark is very faint. It is on the middle of the thyroid cartilage . Mark is dark upto the thyroid cartilage of clot of the mark upto posterior triangle of neck is very faint.
- v) Neck circumference is 282.5 cm, breadth of ligature mark is 3 cm, ligature material is not found on the body. Thyroid bone is not fractured.

7. He opined that cause of death is asphyxia as a result of ante-mortem hanging and death is caused since 12 – 24 hours of the examination. Version of this witness is unshaken during cross examination and there is no other expert's opinion contrary to the report of this expert. He conducted autopsy on 26-10-2006 and as per opinion of this expert, deceased died unnaturally.

8. PW/6 Smt. Laxmi Gondane, is aunt of the deceased. She deposed that while talking on mobile phone, deceased told her that respondents are harassing her on account of demand of Rs.50,000/-. PW/7 Sukhram Ramteke is father of the deceased. He deposed on same line that his daughter informed him about harassment by the

respondents. He further deposed that the amount was demanded from his daughter for improving their shop. PW/8 Shalini Ramteke is mother of the deceased. She deposed on same line. PW/11 Mahesh Ramteke is brother of the deceased and he also deposed on same line.

9. Deceased was resident of Masanganj, Bilaspur whereas PW/6 Laxmi Gondane is a resident of Police Line, Rajnandgaon and PW/7 Sukhram Ramteke, PW/8 Shalin Ramteke (PW/8) and Manish Ramtake (PW/11) are residents of Jharsguda. No witness of the locality of the deceased is examined as to what happened to the deceased on the date of incident or prior to the date of incident. As per version of all these witnesses, no demand was made at the time of marriage or thereafter as dowry.
10. 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.

11. From the statements of these witnesses, demand was made to deceased for improving their shop and not as dowry as defined above. All these witnesses are hearsay witnesses because it is not their case that demand was made with any of the witnesses. Statement of all these witnesses is hearsay evidence.

12. 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.”

As hearsay evidence of this witness is inadmissible, the same is not to be used against the respondent.

13. When second hand evidence is inadmissible, then it cannot be held on the basis of hearsay evidence that any dowry was demanded by any of the respondents. No complaint was made to any one during life time of the deceased regarding demand of dowry or physical or mental harassment of the deceased and no medical report is submitted before the trial Court which shows that any physical violence was committed by any of the respondents during life time of the deceased. As per version of these witnesses, marriage between deceased and the respondent No.1 was solemnized on 19-5-2002 and she died on 25-10-2006.
14. True it is that death of the deceased is caused within seven years of marriage. Section 113-B of the Indian Evidence Act, 1872 reads as follows:

“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.”

For applying Section 113 B of the Evidence Act, it is essential that the woman is harassed soon before her death or subjected to cruelty. But

in the present case, there is no sufficient evidence that any demand of dowry was made or she was harassed for the same.

15. 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 but that is not the case here. There is no foundational evidence of taunting, misbehaving or any direct or active act on the part of the respondent against the deceased. It is not a case that any act of the respondent has disturbed the mental equilibrium of the deceased and therefore, after re-appreciation of the evidence, we are of the view that the finding arrived at by the trial Court is based on the settled principles of law and warrant no interference.
16. Taking into consideration the cumulative facts of the evidence, we are not in a position to reverse the finding of the trial Court. The respondents deserved to be acquitted and the trial Court is well within its jurisdiction to deliver the judgment assailed.
17. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju