

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 153 of 2012**

- State Of Chhattisgarh Through The District Magistrate, Distt. Rajnandgaon C.G.

---- Petitioner**Versus**

1. Jasmeet Singh Bhatia @ Sonu Bhatia S/o Amritpal Singh Bhatia Aged About 27 Years R/o Qrt. No. 22, Anupam Nagar, Rajnandgaon C.G.
2. Duli Dewangan D/o Pawan Dewangan Aged About 24 Years R/o House Of Premlal Shrivastava, Heeramoti Line, Rajnandgaon C.G.

---- Respondent

For Appellant/State
For Respondent

Mr. Ramakant Mishra, Dy. AG
None

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mr. Justice Ram Prasanna Sharma****Order On Board By****Ram Prasanna Sharma, J.****7/3/2018**

1. Heard.
2. This acquittal appeal is directed against the judgment dated 8.6.2012 passed by the First Additional Sessions Judge, Rajnandgaon in ST No.24/2011, wherein, the said Court acquitted respondent No.1 Jasmeet Singh Bhatia @ Sonu Bhatia for commission of offence under Sections 304-B and 306 of IPC

and acquitted respondent No.2 Duli Dewangan for commission of the offence under Section 306 of IPC.

3. In the present case, the name of the deceased is Kulvinder Kaur, who was married to respondent No.1 Jasmeet Singh Bhatia @ Sonu Bhatia on 20.06.2004. It is alleged against respondent No.1 that after marriage, he demanded dowry of Rs. 5 lakhs from the parents of the deceased and on failing to fulfill the demand, he harassed the deceased soon before her death. It is further alleged against respondent No.2 Duly Dewangan, who is having illicit relation with respondent No.1 Jasmeet Singh Bhatia, that she instigated the deceased to commit suicide.
4. The matter was reported to the concerned Police Station and after investigation, the charge sheet was filed. After completion of trial, the trial Court acquitted the respondents, as mentioned above.
5. Learned counsel for the State submits as under :
 - (i) Ravinder Kaur (PW-9) and Amarjeet (PW-13), who are mother and father of the deceased respectively, have categorically stated before the trial Court that the deceased was subjected to cruelty and was harassed for non-fulfilling the demand of dowry and therefore, the finding arrived at by the trial Court is not liable to be sustained.
 - (ii) The deceased had stated to her relatives regarding ill-treatment by both the respondents but the trial Court has

overlooked the same and passed the order of acquittal in a very mechanical manner. The other corroborative piece of evidence was also overlooked by the trial Court and therefore, the finding of the trial Court is liable to be set-aside.

6. Ravinder Kaur (PW-9) is the mother of the deceased. As per the version of this witness, after sometime of the marriage, deceased Kulvinder Kaur came to their house and stated that her husband (respondent No.1) is demanding Rs. 5 lakhs and has asked her that she should not return to his house without the aforesaid money. She further deposed that at that time, they gave Rs. 1 lakh to respondent No.1 Jasmeet Singh Bhatia and assured to give rest of the amount later. As per version of this witness, her daughter called her on telephone and told that her husband i.e. respondent No.1 Jasmeet Singh Bhatia has eloped along with respondent No.2 Duly Dewangan. She and her husband tried to convince the deceased that Jasmeet Singh Bhatia will return soon, but on the next day, they received information about the death of their daughter. Amarjeet (PW-13) is the father of the deceased. As per version of this witness, respondent No.1 demanded Rs. 2 lakhs for business purpose.
7. Surendra Singh (PW-2) is the maternal uncle of respondent No.1. He deposed that no demand of dowry was made at the time of the marriage. He further deposed that since there is no custom of 'dowry' prevailing in their community and the financial condition of the family of the deceased was also not

good, they have made arrangements of the marriage and borne all its expenses and thus, prevented the other side to spend money in the said ceremony.

8. From the flow of evidence adduced by the prosecution, it is not established that any demand of dowry was made at the time of marriage.
9. Definition of 'dowry' as defined under Section 2 of the 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."

10. A plain reading of the above definition makes it clear that any amount provided by the parents of a bride to the other party for business purpose is not included under the definition of 'dowry'.
11. From the evidence, it is established that both the respondents

eloped from the house since long back and therefore, there was no case for them to harass the deceased. Further, no complaint was made during the lifetime of the deceased for harassment and no medical report was submitted before the trial Court regarding physical violence on the deceased.

12. The so called 'suicide note' seized in the case reveals that the deceased held responsible both the respondents for her death but it cannot be termed as dying declaration as per Section 32 of the Indian Evidence Act, 1872. Statements made by mother, father of the deceased and other persons are based on what was informed to them by the deceased. Evidence of these witnesses is hearsay evidence. Hearsay evidence is not received as relevant evidence.

13. Since demand of dowry is not proved and harassment to the deceased is also not proved, presumption under Section 113-B of the Indian Evidence Act, 1872 cannot be invoked in the facts and circumstances of the present case. 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.

14. Both the respondents have also been charged under Section 306 of IPC. For commission of offence under Section 306 of IPC, ingredients of Section 107 of IPC i.e. abetment are to be established.

Ingredients of Section 107 of the IPC are that instigating a person to do a thing and "instigate" denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite to commit an act.

15. There should be a clear *mens rea* to commit the offence under Section 306 of IPC and there should be a direct or active act by the accused which lead the deceased to commit suicide. Intentionally aiding a person to do a thing also includes in abetment, but from the record it cannot be inferred that any of the respondents instigated or intentionally aided the deceased to commit suicide. Their very presence in the house is also not established.

16. In view of the above, we are of the view that the arguments advanced by learned Dy. AG for the State, is not sustainable. The finding arrived at by the trial Court is well within its jurisdiction and is based on proper appreciation of the evidence.

17. In the result, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

Sd/-

Judge

(Ram Prasanna Sharma)

