

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 2541 of 1999

Order reserved on 10.07.2019

Order pronounced on 19.12.2019

Ram Kumar @ Nanki, son of Chamru Prasad Gupta, aged about 43 years, R/o Village and Police Station Masturi, District Bilaspur (CG)

--- Appellant

Versus

State of M.P. (Now CG)

--- Respondent

For Appellant : Mr. Anand Kumar Gupta, Mrs. Mirja
Kaisar Baig, Advocates

For State/Respondent : Mr. Ishan Verma, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

It is not in dispute that the first husband of the deceased namely Jivrakhan had expired about 22 years prior to the date of incident and after that she started living in her maternal home. It is also not in dispute that after the accused/appellant expressed his desire of marrying again to one Ved Prakash Mishra (PW-12), he contacted her brother Santosh Kumar (PW-1) in this regard and eventually she was got married to him through the prevailing custom in their community (commonly known as "*Choodi Pratha*") about a year and a half prior to the date of incident. It is alleged that in a short span of 14-15 months after her marriage with the accused/appellant she was subjected to cruelty by him for demand of Rs.5000 which remained unpaid at the time of marriage on account of financial crunch. The story put-forth by the prosecution also goes to show that before marriage, the accused/appellant had asked for Rs.10,000 from the brother of the deceased and out of which Rs.5000 were given to him at that very time and remaining Rs.5000 were left to be paid after the rainy season was over and it is that amount which was being persistently demanded by the accused/appellant and the failure in payment thereof made him put the deceased to cruelty coupled with beating. It is also

alleged that on account of this cruel treatment from the accused/appellant, on 02.10.1998 at 11 PM she poured kerosene on her body and set herself on fire which resulted in 100% burns to her. The information to the effect that his wife suffered burn injuries by setting herself afire in the toilet and was admitted in the Government Hospital Masturi, was given to the police by the accused/appellant himself. The same was entered in the Roznamcha Sanha No.62/1998 on the same day and thereafter the Police Sub Inspector (PW-13) went to the said hospital, got the injured medically examined vide report Ex.P-16 by Dr. MK Rai (PW-16) who opined that she had suffered 100% burns. The doctor (PW-16), looking to the serious condition of the injured, referred her to District Hospital, Bilaspur and her dying declaration (Ex.P-1) was recorded by him. During treatment in the District Hospital Bilaspur the injured however succumbed to the burn injuries on 02.10.1998 at 2:35 PM. Intimation regarding the death of the deceased was sent to the concerned police station vide Ex.P-12 on the basis of which Merg (Ex.P-13) was recorded. After conducting inquest vide Ex.P-15 the dead body was sent for postmortem examination which was performed by Dr. Smt. Ila Chandel (PW-9) vide report Ex.P-4. After Merg enquiry, FIR (Ex.P-10) came to be recorded and an offence under Section 304-B IPC registered against the accused/appellant. After investigation, *challan* was laid under the said section but the Court below framed the charge against the accused/appellant under Sections 304-B and 498-A IPC.

2. Learned Court below by judgment under challenge in this appeal dated 31.08.1999 passed in Sessions Trial No.116/1999 convicted the accused/appellant under Sections 304-B and 498-A IPC and sentenced him to undergo RI for 10 years under Section 304-B and RI for two years under Section 498-A IPC. Hence this appeal.

3. Counsel for the accused/appellant submit that as according to the case of the prosecution itself the incident took place on account of the

family dispute, the Court below was not justified in convicting the accused/appellant under Sections 304-B and 498-A IPC. Calling in question the marriage of the deceased and the accused/appellant being not as per the Hindu rites and custom, according to the counsel for the appellant, his conviction under the said sections cannot be made sustainable in the eye of law. They further submit that even if the entire material collected by the prosecution is taken into consideration, the accused/appellant cannot be convicted under Sections 498-A and 304-B IPC and thus the judgment impugned is liable to be set aside.

4. State counsel on the other hand supports the judgment impugned and submits that the findings recorded by the Court below are strictly in accordance with law and there is no illegality or infirmity in the same.

5. Heard counsel for the parties and perused the material on record.

6. Perusal of the record makes one thing clear that at the time of marriage of the accused with the deceased a demand of Rs.10,000 was made and out of the said amount Rs.5000 were given in the marriage and the rest of the amount was promised to be paid by the brother of the deceased after the rainy season was over. Record also goes to show that the deceased died just within six months after marriage. If a composite reading of the evidence of Rajkumar (PW-1), Ramakant (PW-2), Purshottam (PW-3), Champa Bai (PW-6) and Ved Prakash Mishra (PW-12) is made, it is culled out that after marriage, the accused/appellant was harassing the deceased for demand of Rs.5000 which could not be paid by her brother at the time of marriage. Even if the dying declaration of the deceased in which she disclosed the reason for her committing suicide to be the family dispute is taken to be doubtful for a while, the fact remains that the accused/appellant used to demand Rs.5000 and started beating her for that as is evident from the statement of aforementioned witnesses. From the evidence of PW-12 through whom the marriage of the deceased

with the accused/appellant was settled has also stated that whenever he met the deceased, she used to disclose her sufferings at the hands of accused/appellant who was hell bent in making the deceased get Rs.5000 from her maternal home. Though the defence witness namely Gopal Prasad Gupta has stated that the deceased being his step mother was not taking care him properly and whenever his father (the accused/appellant) used to made her understand the situation and provide him food and clothing, she took it offending and committed suicide, it is not worth digesting when PW-1, PW-2, PW-3, PW-6 and PW-12 specifically stated that whenever the deceased met them, a disclosure was made by her about the cruel-some attitude of the accused/appellant for demand of Rs.5000. The FIR recorded by B.C. Singh (PW-13) on the basis of information provided to him by the deceased during her lifetime, on the date of incident as also a day prior thereto the accused/appellant had beaten her for demand of Rs.5000 which compelled her to take the drastic step of ending her life by way of setting herself ablaze after pouring kerosene on her body. From the evidence of Dr. MK Rai (PW-16) who recorded dying declaration in the presence of police and other witnesses, has stated that she had suffered 100% burns and smell of kerosene was emanating from her body. He has also stated that at the time of recording of her dying declaration she was fully conscious and as she was not able to put her signature on account of her hand being burned, she was asked to put her thumb impression. Dr. Ila Chandel (PW-9) who conducted the postmortem examination has stated that the cause of death of the deceased was shock on account of burn injuries and that the burns suffered by her were ante-mortem in nature. Purshottam Soni (PW-3) has also stated that whenever the deceased visited her maternal home at Ratanpur she used to inform him that the accused/appellant was subjecting her to cruelty for demand of Rs.5000 which could not be paid by her brother at the time of marriage. This witness is stated to have

consoled the deceased asking her to keep patience and the situation would become normal with the passage of time. PW-2 namely Ramakant Gupta has also supported the case of the prosecution stating that whenever the deceased met him she used to inform that the accused/appellant and his relatives did not provide her food and were subjecting her to cruelty for demand of money. Even during Teeja festival when she last met him had informed about the cruel treatment of the accused/appellant for demand of Rs.5000. Pramod Kumar (PW-5) and Mitthulal Yadav (PW-7) – the witnesses to seizure of burnt skin, saari, broken bangles, plastic container made under Ex.P-2 have also supported the case of the prosecution.

7. From the factual discussion made above in the light of the evidence of the witnesses, it is clear that the deceased died on account of suffering burns within 7 years of marriage and there is evidence that on the date of incident also and a day prior thereto the deceased was beaten by the accused/appellant. Though the dying declaration suffers from some technical errors yet it cannot be ignored that while giving the dying declaration the deceased was fully conscious and has attributed the domestic dispute to be the reason for ending her life. In this case the marriage of the deceased was performed nearly one year and a half before the occurrence. It is shown and prove that she was subjected to harassment before her death by her husband and his relatives for and in connection with the demand of dowry. There was 100% burns on her body, and thus it can be said that her death occurred otherwise than under the normal circumstances and being so it is, no doubt, a dowry death.

8. The necessary ingredients of Section 304-B IPC are as under:

“(1) The death of the woman was caused due to burns, bodily injuries or due to unnatural circumstances.

(2) The death should be within seven years of marriage.

(3) It is shown that soon before death victim was subjected to cruelty or harassment by her husband or any relative of the husband.

(4) The cruelty or harassment was for or in connection with any demand of dowry.”

9. The evidence in this case collected by the prosecution fully establishes that there was persistent demand of dowry by the appellant and his relatives, that on the date of incident and a day prior thereto also the deceased was subjected to harassment at the hands of accused, that the marriage of the deceased and the accused was solemnized within one year and a half prior to the date of occurrence and that the deceased died in the circumstances other than the normal ones on account of the tortuous act of the accused which forced the deceased to leave the worldly existence by setting herself on fire after pouring kerosene on her body. All the ingredients of Section 304-B are fully satisfied as the evidence on record does not speak of any other view being possible but to hold him guilty for committing the dowry death.

10. In view of what has been stated above, the Court below does not appear to have committed any legal error in convicting the accused/appellant under Sections 498-A and 304-B IPC and the findings so recorded are duly based on the correct appreciation of the evidence on record. This Court does not wish to interfere with the self eloquent judgment replete with pragmatic findings recorded by the trial Court and being so, it is hereby affirmed and the appeal being absolutely merit-less is hereby dismissed.

11. Since the accused/appellant is on bail, his bail bonds stand canceled and he is directed to be sent to jail forth-with to complete the sentence imposed on him.

Sd/-

(Vimla Singh Kapoor)

Judge