

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1881 of 1999

1. Panchram, S/o Chamar Ram, aged 63 years.
2. Chetan Kumar, S/o Panchram, aged 30 years.
3. Laxman Singh, S/o Panchram, aged 22 years.
4. Suruj Bai, W/o Panchram, aged 49 years.

All R/o Village- Dakachaka, Police Station- Pathariya, District-
Bilaspur (M.P.) (Now C.G.)

---- Appellants

Versus

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants : Mr. Ajay Kumar Pandey, Advocate.
For State/respondent : Mr. Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

15/11/2019

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 08.07.1999 passed by Additional Sessions Judge, Mungeli, Sessions Division- Bilaspur (M.P.) (Now C.G.) in Session Trial No. 349/1995, wherein the said court convicted all the four appellants for commission of offence under Sections 304-B/34 of IPC, 1860 and sentenced to undergo R.I. for 7 years each.
2. As per case of the prosecution, name of the deceased is Sunita, who married with appellant No. 2- Chetan Kumar in the year 1990. She died on 04.06.1995 within 7 years of marriage. The appellants demanded dowry from Sunita and

father of Sunita namely Vijay Singh sent Rs. 2000/- at one point of time, thereafter, Rs. 500/- at another point of time. It is further case of the prosecution that in the month of May, 1995 when Vijay Singh had gone to fetch his daughter, he was again asked to send Rs. 1000/- which was paid by him. The deceased informed her parents that the appellants are demanding money and they are threatening to kill her. In these circumstances, after death of Sunita, report was lodged, the appellants were charge-sheeted and after completion of trial, the trial court convicted all the four respondents as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) There is no demand for dowry and there is no harassment on part of any of the appellant, therefore, the finding arrived at by the trial court is not sustainable.

(ii) There is no report of chemical analyst that the deceased consumed poisonous substance, therefore, death by poisonous substance is not established.

(iii) The evidence of prosecution witnesses is contradictory in nature, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking jurisdiction of the appeal.

5. First question for consideration before this Court is whether any of the appellant is liable for commission of offence of dowry death. As per report of medical expert Dr. S.P. Dahariya (PW-14), she died due to consumption of poisonous substance. Her death was not natural and she died other than in normal circumstances. Admittedly, from the evidence on record, it is clearly established that deceased Sunita died other than in normal circumstances within 7 years of marriage.
6. Vijay Singh (PW-1) is father of the deceased and as per version of this witness, appellant No. 2- Chetan Kumar demanded dowry and he paid Rs. 2000/- at one point of time, Rs. 500/- at another point of time and again, Rs. 1000/- at another point of time. From his evidence, it is established that the demand was made in the month of May, 1995 and deceased died in the first week of June, 1995. Version of this witness is unrebutted during cross-examination. Version of this witness is supported by version of Kumar (PW-2), Shashi Bai (PW-3), Punni Bai (PW-4), Gulaba Bai (PW-5), Rajeshwar Singh (PW-6) & Sukhi (PW-7) which is unrebutted during cross-examination.
7. From the entire evidence, it is established that money was demanded in dowry and the same was paid by father of the deceased. As per version of Vijay Singh (PW-1), demand was made up to month of May, 1995 and the deceased died in the first week of June, 1995, therefore, it is established that harassment is done against the deceased.

8. Now, second question for consideration before this Court is as to which of the appellant is responsible for harassment. After marriage, wife is in custody of husband, therefore, appellant No. 2- Chetan Kumar who is husband of the victim is under obligation to protect his wife from any kind of harassment, but he himself was involved in harassment. Other appellants were not custodian of the deceased and there is no direct evidence against other appellants regarding harassment because case of the prosecution is based on the information given by the deceased and the amount paid by father of the deceased namely Vijay Singh (PW-1), therefore, it is not safe to record that the other appellants are involved in harassment of the deceased. The only person who was custodian of the deceased was responsible for harassment, therefore, finding of the trial court regarding other appellants is not liable to be sustained.
9. Accordingly, the appeal filed with respect to appellant No. 1- Panchram, appellant No. 3- Laxman Singh & appellant No. 4- Suraj Bai is allowed. The conviction and sentence of these appellants is set aside and they are acquitted of the charges framed against them under Sections 304-B/34 of IPC, 1860.
10. So far appellant No. 2- Chetan Kumar who is husband of the deceased is concerned, looking to his involvement in the crime in question, his appeal *sans* merit and the same is liable to be dismissed. Conviction and sentence passed by the trial court against appellant No. 2- Chetan Kumar is affirmed. The

trial court has awarded minimum sentence and less than minimum cannot be awarded. The whole sentence part is also not liable to be interfered with.

11. As per report of the Jail Superintendent, Central Jail, Bilaspur, appellant No. 2- Chetan Kumar has suffered full jail sentence and has been released from jail on 15.04.2004 after getting benefit of remission, therefore, no further order of arrest etc. is required.
12. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge