

AFR

HIGH COURT OF CHHATTISGARH, BILASPURACQA No. 94 of 2010

1. The State Of Chhattisgarh

---- Appellant

Versus

1. Santosh Kumar, S/o Chamru Ram Chandrakar, aged about 30 years

2. Chamru Ram Chandrakar (dead)

3. Panchobai W/o Chamruram Cahndrakar, aged about 69 years

All R/o Vill. Dabri, Ps Kunda, Kawardha (CG).

---- Respondent

For Appellant/State

Shri Rajesh Singh, Dy. Govt. Adv.

For Respondents/accused

Shri Akash Pandey, Advocate

Hon'ble Shri Prashant Kumar Mishra, J.Hon'ble Shri Gautam Chourdiya, J.Judgment on BoardByPrashant Kumar Mishra, J.12-7-2019

1. This acquittal appeal is directed against the judgment of acquittal rendered by the Court of Second Additional Sessions Judge (Fast Track Court), Mungeli, in ST No.336/98 acquitting the accused from the charge under Sections 498-A, 304-B read Section 34 and Section 306 read with Section 34 of the Indian Penal Code (henceforth 'the IPC').
2. The allegation against the accused persons was that due to the alleged torture and cruelty for not satisfying the demand of

dowry the deceased was assaulted and eventually she committed suicide by setting herself ablaze between 10.00 am - 11.00 am on 20-6-1998.

3. The trial Court has acquitted the accused of the charges for the reason that there is no proof of the date of marriage, therefore, there is no corresponding proof that the death in an unusual circumstances due to demand of dowry has occasioned within seven years of marriage.
4. We have seen the evidence particularly the evidence of the parents of the deceased namely; Umed Ram (PW-3) and Jhadin Bai (PW-4). Both the witnesses would state that their daughter Saroj Bai (since deceased) was married with accused No.1 Santosh Kumar at the age of 6-7 years and, thereafter, *gauna* ceremony had taken place 4-5 years prior to the date of death.
5. Umed Ram (PW-3) has admitted that at the time of death the deceased was aged about 25 years. On the other hand, Jhadin Bai (PW-4) has stated that *gauna* ceremony of her daughter had taken place after 4-5 years of marriage. Both these witnesses, who are parents of the deceased, are not sure as to the year of marriage or the year of *gauna*. While Umed Ram (PW-3) says that *gauna* had taken place about 3-4 years prior to the date of death, Jhadin Bai (PW-4) would say that the *gauna* had taken place after 4-5 years of marriage. If the deceased was 25 years of age at the time of her death as admitted by Umed Ram (PW-3) and her marriage had taken place at the age of 6-7 years and *gauna* ceremony having taken place after 4-5 years, the said *gauna* ceremony was performed when the deceased was 12-13 years of age. Thus,

at the age of 25 years her marriage as well as *gauna* ceremony had taken place more than 10 years back and, as such, there is no cogent and precise evidence as to the date of marriage. In such a situation the prosecution has failed to discharge its initial burden that the death has taken place within seven years of marriage, which is one of the essential prerequisites for constituting an offence under Section 304-B of the IPC as held by the Supreme Court in ***Baljeet Singh and Another v State of Haryana***¹. In this matter the Supreme Court would observe thus in paragraph 17 :

“17. Having noticed the requirement of law both under Section 304-B IPC as also under Section 113-B of the Evidence Act, we are of the considered opinion that both the courts below erred in drawing an adverse presumption against the accused by shifting the onus on them to prove the date of marriage, which, in our opinion, is not the requirement of law. On the contrary, the law requires the prosecution to establish first by cogent evidence that the death in the case occurred within seven years of the marriage.....”

6. In addition to the above lacuna in the prosecution case it is also to be seen that there is no mention of demand of any particular item/article/definite amount of cash. The allegation is of general nature that the accused persons were demanding dowry and committing cruelty with the deceased. In such a situation it is difficult to reach to a conclusion that commission of suicide was directly connected with cruelty concerning dowry. There is no evidence which may constitute abetment as defined under Section 107 of the IPC.

¹ (2004) 3 SCC 122

7. True it is that if constant cruelty is committed and a woman is tortured to such a situation where she has no other option but to commit suicide, that continuous torture may itself amount to abetment, but such is not the quality of evidence in the present case. The deceased was complaining of torture concerning demand of dowry, but the degree of such torture does not appear to be of such nature that she had no other option in life, but to commit suicide. There being lack of evidence to this effect, we are not inclined to interfere with the impugned judgment of acquittal under Section 306 of the IPC also.
8. As a sequel, the instant acquittal appeal, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri