

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 754 of 2008

Goverdhan Soni, S/o. Purshottam Soni, aged about 24 years, R/o. Khamhibhath, P.S.- Navagarh, Distt.-Durg (C.G.)

---- Appellant

Versus

State Of Chhattisgarh, Through Station House Officer, Police Station – Navagarh, District : Durg, Chhattisgarh.

-----Respondent

For Appellant	: Mr. Aman Tamboli, Advocate on behalf of Mr. R.S. Marhas, Advocate
For Respondent/State	: Mr. I. Lakra, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/04/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge, Bemetara, District – Durg (C.G.) in Sessions Trial No.18/2008 on 12.08.2018, convicting the appellant for the offence under Section 304-B of the Indian Penal Code and sentencing him to undergo R.I. 7 years and fine of Rs.5,000/- and for the offence under Section 3 of Dowry Prohibition Act and sentencing him to undergo R.I. for 5 years and fine of Rs.15,000/- with default stipulation.

2. Facts of the case in brief is this, that marriage of the appellant with deceased Nilima Soni took place on 15.02.2007. The deceased started residing in her matrimonial home. It is alleged that she was constantly tortured and treated with cruelty by the appellant for demand of dowry. The deceased set herself ablaze on 13.01.2008, she was admitted to hospital treatment for treatment of her burn injuries. She died in the hospital during the course of treatment on 14.01.2008. Morgue intimation Ex.P-14 was recorded by Police Station Maudahapara, Raipur on 14.01.2008, on that basis numbered morgue intimation was recorded by Police Station Nawagarh, District Durg on 23.01.2008. Inquest procedure was conducted. In the later on development, the mother of the deceased Sarita Das (P.W.-1) filed a written complaint on 24.01.2008 at Police Station Nawagarh, District – Durg, on that basis, FIR Ex.P-26 was lodged registering the offence under Section 304-B of the Indian Penal Code against the appellant. The investigation was taken up and after completion of investigation, charge-sheet was filed before the Court concerned.
3. Appellant was charged with offence under Section 304 (B) of the Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act. The appellant denied the charges and prayed for trial. The prosecution examined as many as 11 witnesses on its behalf. On examining the appellant under Section 313, he denied all the incriminating evidence against him and pleaded innocence and

false implication and it was submitted that the deceased was in mental tension and depression for the reason that she had not been able to bear a child so far and also that her mother had illicit relation with her neighbour, which may be a reason for commission of suicide. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellant stands convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel for appellant that the appellant has been erroneously convicted for the offence as aforesaid without there being evidence of prosecution beyond reasonable doubt. Although the appellant has undergone whole sentence of imprisonment imposed upon him, but only for the purpose of restoring his prestige, acquittal is sought in this appeal. It is submitted that prime-witness of this case is Sarita Das (P.W.-1), who has though made statement that the appellant used to torture her daughter the deceased for demand of money and on one occasion in July, 2007, he has demanded Rs.50,000/- directly from this witness, but there is no statement made by her that there had been any immediate demand of money or any item, soon before the death of the deceased. The deceased has not made any dying declaration before her death. Therefore, it shows that there was no immediate demand of dowry or torture given in that respect. In the admission made by her in cross-examination, she has also stated that she had been

to live with her daughter for about five days, before the incident and nothing untoward has been reported to have happened during that time. Therefore, it shows that the relation between the appellant and the deceased was peaceful before her death, which indicates that deceased may have taken this step on account of some other reason, which is not disclosed so far. Another witness Sanjeev Kumar Soni (P.W.-4) has stated only about quarrel between the appellant and his wife, the deceased and has stated that during that quarrel the appellant used to thrash his wife but he has not made any statement about demand of dowry. He further stated that on the basis of some necessity, the appellant had asked mother-in-law Sarita Das for helping him with amount of Rs.50,000/-, which can not be treated as demand of dowry and there is no further proof that such payment was made against the demand made by him. He has also admitted in his cross-examination that the mother of the deceased – Sarita Das had been to visit the deceased and appellant about one week prior to the date of incident. It is also submitted that according to the statement made by this witness, there had been other eye-witnesses present, at the time the appellant used to misbehave, torture and thrash the deceased, but none of them have listed as witness or examined by the prosecution. Therefore, it is not a case of dowry death. The counsel has also relied on the judgment of Hon'ble Supreme Court in case of ***Jagjit Singh Vs. State of Punjab***, reported in ***(2018) 10 SCC***

593, in case of ***Vipin Jaiswal Vs. State of Andhra Pradesh***, reported in **(2013) 3 SCC 684** and in case of ***Rakesh Chand and Anr. Vs. State of Punjab***, reported in **(2010) 15 SCC 89** and it is prayed that the appellant be acquitted of the charges.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. The statement of (P.W.-1) clearly make out that the deceased was misbehaved, tortured and thrashed by the appellant for demand of money by way of dowry and it is supported by one incident, when Sarita Das (P.W.-1) made payment of Rs.50,000/- to the appellant. Hence there is no room for interference in the impugned judgment, therefore, the appeal be dismissed.
6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellant on the basis of the evidence beyond reasonable doubt?
8. Sarita Das (P.W.-1) has stated before the Court that soon after the marriage, she was informed by her daughter Neelima Soni that appellant has tortured her for demand of dowry on numerous occasions. On one occasion, the appellant himself came to house and made demand of Rs.80,000/- to which, she denied but then she agreed and wanted to make payment through cheque,

which was denied by the appellant and thereafter she made payment of Rs.50,000/- in cash to the appellant on 04.07.2007. After passing of few months, she received information that his daughter is ill and is admitted in Ambedkar Hospital, Raipur, when she went there she saw her daughter was burn injuries on the body and she was not in a position to speak and thereafter, she died. She has stated about filing of the written complaint (Ex.P-1). She has further stated that at the time of marriage, the appellant had not made any demand, even then Rs.20,000/- were given for meeting the expenses of conveyance. She has made some exaggerated statement also that can not be taken into consideration as they are not material. In cross-examination, she has denied all the adverse suggestions given in defence, that her daughter has committed suicide because she could not bear a child so far. She has also denied other adverse suggestions which were given in defence. She has though admitted that she has not made any complaint earlier because she believed that the appellant will improve his behaviour, but no question was put to her that she was having any illicit relation with her neighbour.

9. Sanjeev Kumar Soni (P.W.-4) is maternal uncle of the deceased. He has stated that in his presence, the appellant and deceased both engaged in a quarrel and then the appellant locked himself inside the room. Thereafter, the door was opened by the appellant, who then caught hold of the deceased with hairs and dragged her and thrashed her, which was witnessed by his friend,

who were present there. He has also stated that on one occasion, the appellant asked the witness to help him with Rs.50,000/-, which he wanted to invest in his clinic, which was refused by the witness and the mother of the deceased. But later on mother of the deceased had made a payment of Rs.50,000/- in that respect. Then after some time, the appellant again made demand of Rs.50,000/- on the pretext that he has to install an inverter but that demand was refused. This incident of demand had taken place in the month of July, 2007. Thereafter, the appellant send the deceased back to her parental house, however, the appellant and his father both came to pacify the dispute and took the deceased with them by making promises that they will keep her well. It is further stated that thereafter, the deceased was not allowed to come to her parental home and talk to her parents on phone. Later on in the month of January, he received information of the incident. In cross-examination, he has remained firm on his statement given in examination-in-chief. He has denied all the adverse suggestion given to him in defence.

10. Other witness Pratap Sachdev (P.W.10) is a person having knowledge of the affairs of the appellant and the deceased. He has stated about one incident, which happened in Raipur, when he heard the appellant using abusive words for his mother-in-law and his wife the deceased. He has also made other statement regarding erratic behaviour of the appellant and then he came to know about the incident. The statement that he has made in

examination-in-chief has remained un rebutted in cross-examination.

11. These are the only witnesses, who have personal knowledge and who have witnessed the incident of cruelty with the deceased that has taken place. Rest of the witness examined by the prosecution are regarding investigative procedure, therefore, their evidence needs no scrutiny and examination for deciding this appeal.
12. After closely scrutinizing the evidence of relevant witnesses of this case, it has appeared that there had been some demand of money etc. recently after marriage of the appellant with the deceased, which the appellant has demanded for setting up his clinic and for the purpose of his occupation and there is no such statement made by the witness concerned that demand of money was made by way of dowry. That incident has taken place in the month of July, 2017, whereas, the incident of self immolation of the deceased has taken on 13.01.2008 and there is no such statement or allegation that soon before 13.01.2008, the appellant made any demand and was pressing on it. Therefore, the requirement of proof in case of dowry death under Section 304-B of the Indian Penal Code is very specific, that there should be evidence of cruel treatment given to the deceased in connection with demand of dowry, soon before her death. This requirement has not been proved by the prosecution in this case.

Therefore, on that basis it can not be said that the incident of death of the deceased in this case was a case of dowry death, however, Section 113-A of Evidence Act comes to play in this case, as the facts and circumstance exists to that effect. The evidence that the deceased was subjected to torture and she was thrashed continuously and was ill treated and subjected to cruelty by the appellant shows that deceased was treated with cruelty by the appellant. The act of the deceased by setting herself ablaze itself indicates that she took this step on account of being tortured for some reason or other. The reason given in explanation under Section 313 Cr.P.C. needed to be supported by some admissions made by the witnesses of prosecution, who have not made any admission in that respect and on the other hand no question was put to any of the witness of prosecution that mother of the deceased was having any illicit relation with any person, apart from that no witness was examined in defence to prove this statement of appellant in his examination under Section 313 of Cr.P.C.. Therefore, there are circumstances in this respect that presumption can be taken under Section 113A of Evidence Act about commission of suicide of the deceased had been abetment by cruel treatment given by the appellant. Hence for this reason I am of this opinion that the case against the appellant is covered under Section 306 of I.P.C. rather than under Section 304B of I.P.C. Therefore, on the basis of discussion made herein above, the appeal is allowed in part. The conviction of the appellant under

Section 304B is set-aside and instead of that the appellant is convicted for the offence under Section 306 of the I.P.C. The conviction of the appellant for the offence under Section 3 of Dowry Prohibition Act is maintained as it is.

13. The appellant has undergone whole sentence of imprisonment of seven years in jail awarded under Section 304-B of the I.P.C., therefore, he is sentenced for the offence under Section 306 of I.P.C. to the period of imprisonment undergone by him against his conviction recorded by the trial Court
14. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge