

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 8-2-2019

Delivered on 15-3-2019

CRA No. 278 of 2009

1. Shankar Lal Sagar /o. Darsuram aged about 25 years.

2. Darsuram s/o. Pakluram Sagar aged about 57 years.

Both r/o. CSEB colony Qr.No. ND 74, Out Post Rampur, PS Korba, District Korba (CG).

---- Appellants

Versus

- The State of Chhattisgarh through Police Station Korba, Dist. Korba (CG).

---- Respondent

For Appellants : Mr. Manoj Mishra, Advocate

For respondent : Mrs. Shubha Shrivastava, Panel Lawyer
State

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1) This appeal is preferred against the judgment dated 2-4-2009 passed by 2nd Additional Sessions Judge (FTC), Korba Dist. Korba (CG) in Session Trial No. 78 of 2006 wherein the said Court has convicted the appellants for the commission of offence under Sections 304-B of IPC and sentenced them to undergo RI for seven years and to pay fine of Rs.5000/- each, with default stipulations for causing dowry death of Smt. Shoba Bai who was married to appellant No.1 Shankar Lal Sagar. Appellant No.2 Darsuram is

father of appellant No.1 Shankar Lal and as such he is father-in-law of deceased Smt. Shoba Bai.

2. As per version of prosecution, marriage between appellant No.1 Shankar Lal and deceased Shoba Bai took place two years ago from the date of incident i.e., 11-10-2005. Due to burn injuries she died other than normal circumstances within seven years of her marriage. It is alleged that deceased wanted to go to her parental house at the time of Teeja festival but she was not allowed by the appellants. It is further case of the prosecution that she has been subjected to cruelty for demand of dowry by the appellant No.1 Shankarlal and his other relatives. The matter was reported and investigated. After completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) Prosecution has completely failed to prove the demand of dowry and again failed to prove cruelty on the part of the appellants.
- ii) There are contradictions, omissions and exaggerations in the statement of the prosecution witnesses to which the trial Court ignored.
- iii) No dying declaration is recorded while she

was in hospital which shows that she did not complain against any of the appellants, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Case of the prosecution is based on the statement of PW/1 Chaitram who is father of the deceased, PW/2 Jila Bai, who is mother of the deceased and PW/4 Mankunwar who is relative of the deceased. No demand was made from witness Chaitram (PW/1). In his statement recorded under Section 161 of Cr.P.C., he stated that his wife informed him regarding demand by the appellants. This witness deposed before the trial Court that deceased informed him that the appellants demanded Rs.50,000/-, but from his statement it is clear that no report was lodged by him regarding demand of dowry and version of this witness is based on information given to him by his wife. Statement of this witness is exaggerated because this witness deposed that the appellants have killed the deceased which is not the case of the prosecution. Version of Jila Bai (PW/2) is also based on

information given to him by the deceased. PW/4 Mankunwar also deposed that the deceased informed him that her husband, father-in-law, sister-in-law (Jethani) and sister of appellant Shankarlal and others harassed her. Version of this witness is also based on hearsay evidence and he named all the relatives of the husband, but from her evidence it is not clear as to what was the nature of harassment and when the harassment was caused to the deceased. All the three witnesses had no occasion to see as to what was really going on in the house of the deceased. They have made statement against number of relatives of the appellant Shankarlal, but their statement is not clear as to who really caused harassment and what was the nature of harassment and what was the period of harassment.

7. In the present case, five persons were charge-sheeted. All the witnesses have made general statement against all the relatives of appellant Shankarlal on the basis of hearsay evidence which is second hand in nature. Chaitram (PW/1) deposed (para 16) that while deceased was admitted in hospital she stated regarding her burning by indication, but this version is not stated by him during investigation. No written note was seized in the present case, if any, written by the deceased. It appears that no dying declaration was recorded while she was in hospital. The entire evidence appears to be hearsay and exaggerated, therefore, it would not be safe to conclude that any

demand was made from parents of the deceased and she has been harassed by the appellants soon before her death.

8. For establishing the charge under Section 304 -B of IPC, there should be live link between death of deceased and harassment soon before her death, but looking to the entire evidence, there is nothing to say as to what really happened with the deceased on the date of incident or prior to the date of incident. In absence of cogent evidence, conviction cannot be sustained. It is settled law that there is long mental distance between "may be true and must be true". Again, it is settled law that "graver the offence, stricter the proof". In the present case, no strict proof was given by the prosecution, therefore, finding of the trial Court is not sustainable.

9. Accordingly, the appeal is allowed and conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charges under Section 304-B of IPC. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju