

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 529 of 2011****Reserved on : 04.02.2019****Delivered on : 28.03.2019**

1. Virendra Kumar, S/o Late Sitaram Dewangan, Aged about 34 years.
2. Ravishankar, S/o Late Sitaram Dewangan, Aged about 42 years.

Both R/o Village-Mutpuri, Thana- Nandghat, District- Durg (C.G.)

---- Appellants**Versus**

State of Chhattisgarh, through: the Police Station, P.S. Nandghat, District- Durg (C.G.)

---- Respondent

For Appellants : Mr. Vivek Sharma, Advocate.

For State/respondent : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 14.07.2011 passed by Additional Sessions Judge, Bemetara, District- Durg (C.G.) in Session Trial No. 30/2009, wherein the said court convicted both the appellants for commission of offence under Sections 304B/34 & 498A/34 of IPC, 1860 and sentenced to undergo R.I. for 7 years and fine of Rs. 500/- & R.I. for 1 year and fine of Rs. 200/- respectively each with further default stipulations.
2. In the present case, name of the deceased is Bindu Bai @ Babita Dewangan, who married with appellant No. 1- Virendra Kumar on

02.05.2001 at Village-Mutpuri. It is alleged that both the appellants demanded dowry and harassed her due to non-fulfillment of demand that is why she died due to excessive burning. The matter was reported, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

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

(i) Regarding demand of dowry whatever allegations put forth by the prosecution are the demand of Rs.40,000/- to 50,000/- for employing the deceased as Shiksha Karmi and for purchase of tractor to improve their status which do not come into definition of dowry.

(ii) There is no evidence that the deceased was subjected to harassment soon before her death.

(iii) Demand of dowry was made in the year 2003-04 and the incident took place in the year 2008. There is no demand between the period 2004 to 2008 and there is no evidence that what had really happened on the date of incident or prior to the date of incident. Again, there is no evidence that harassment is caused by any of the appellants regarding demand of dowry.

(iv) At the time of inquest, father and mother of the deceased were present, but the report was lodged after six months of the incident.

(v) Sister of the deceased namely Smt. Archana Dewangan (PW-19) is residing in the village of the incident, but she did not depose anything regarding harassment to the deceased by any of the appellant.

(vi) Independent witnesses Kamal Madale (PW-16), Ballu Ram Yadu (PW-20) and Kotwar Patangu Das (PW-22) are resident of the village of the incident, but they have not supported version of the prosecution and there is no evidence regarding harassment.

(vii) Investigating Officer - K.P. Banjare (PW-12) deposed that father and mother of the deceased have not stated regarding harassment to the deceased after marriage and from statement of other witnesses, he did not find the factum of harassment on the part of any of the appellant.

(viii) As per statement of Ramlal (PW-8)(Para 2), he met appellant No.1- Virendra Kumar and he invited him for *Shradh* of his father which was organized on 13.02.2008 and he accepted the invitation without any complaint regarding harassment, therefore, finding arrived at by the trial court is liable to be reversed.

4. On the other hand, learned State counsel submits as under:-

(i) As per version of Narendra Singh Bais, SDO (Police) (PW-21), the demand made by the appellants' comes within purview of dowry.

(ii) From evidence of Siyaram Dewangan (PW-18), it can be inferred that the demand is made in connection with marriage and from his statement harassment is also established.

(iii) Sushila Bai (PW-7) and Ramlal (PW-8) who are mother and father of the deceased have also deposed against the appellants regarding demand of dowry and harassment.

(iv) As the incident happened within seven years of marriage which indicates that the deceased was not happy in the house of her in-laws,

therefore, finding arrived at by the trial Court is not liable to be interfered with invoking jurisdiction of the appeal.

4. As per version of Dr. Hriday Narayan Gupta (PW-10) and Dr. T.N. Mahingleshwar (PW-5) who conducted autopsy of the deceased and found that she died due to excessive burning. Death of the deceased occurred on 14.02.2008 at about 10:00 a.m. As per version of Ramlal (PW-8) who is father of the deceased, Sushila Bai (PW-7) who is mother of the deceased and Smt. Archana Dewangan (PW-19) who is elder sister of the deceased, the marriage took place between appellant No. 1- Virendra Kumar and the deceased in the year 2001. From invitation card (Ex.P/27) of the marriage which is produced before the trial court, it is established that marriage was solemnized on 02.05.2001. From oral and documentary evidence, it is established that she died within seven years of her marriage.
5. From evidence of Ramlal (PW-8), Sushila Bai (PW-7) & Smt. Archana Dewangan (PW-19), it is established that they paid Rs. 40,000/- to the appellants on their demand after one year of marriage i.e. in the year 2002 and again, they paid Rs. 50,000/- for demand of their daughter namely deceased Bindu Bai @ Babita for her employment. All the witnesses have not deposed anything that appellant No. 1- Virendra Kumar harassed the deceased from the marriage upto the incident. From the evidence, it is clear that the amount was provided as loan or for employment of the deceased, therefore, it cannot be said that these amount come within definition of dowry.
6. Definition of dowry as defined in Section 2 of Dowry Prohibition Act,

1961 reads as under:-

“2. Definition of ‘dowry’.- In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or mahr or the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II - The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

7. From the evidence, it cannot be held that the appellant No. 1- Virendra Kumar harassed the deceased on account of dowry. The only question for consideration before this Court remains whether appellant No. 2-Ravishankar harassed the deceased on account of dowry. From evidence of Ramlal (PW-8) who is father of the deceased, it is established that appellant No. 2- Ravishankar came to his house and demanded Rs. 3-4 lac. and when he denied to provide the money, Ravishankar threatened father of the deceased by dire consequences.
8. In the present case, date of incident is 14.02.2008 and demand by appellant No. 2- Ravishankar is made in the same month i.e. February, 2008 from father of the deceased. Appellant No. 2- Ravishankar had no authority to demand money from father of the deceased and this demand was only made because of marital tie between the deceased and his brother Virendra Kumar, therefore, it can be inferred that it was demand of dowry by appellant No. 2-

Ravishankar. This appellant has threatened father of the deceased soon before her death for dire consequences, therefore, appellant No. 2- Ravishankar was under obligation to explain as to what was really happened when demand was not fulfilled in the house of deceased.

9. Looking to the threat given by appellant No. 2- Ravishankar, it can be inferred in absence of explanation that deceased was harassed for non-fulfillment of demand soon before her death, it is established from the evidence that the deceased died other than in normal circumstances, therefore, act of appellant No. 2- Ravishankar falls within mischief of Section 304B and to drag the deceased to commit suicide by cruelty is an offence punishable under Section 498A of IPC, 1860 for which the trial court convicted appellant No. 2- Ravishankar and the same is hereby affirmed.
10. On overall assessment, it is established beyond shadow of doubt that the appellant No. 1- Virendra Kumar has not participated in commission of crime, therefore, finding arrived at by the trial court against appellant No. 1- Virendra Kumar is not sustainable. While looking to the involvement of appellant No. 2- Ravishankar, his appeal *sans* merit and the same is liable to be dismissed.
11. Accordingly, appeal filed with respect to appellant No. 1- Virendra Kumar is allowed. The conviction and sentence passed by the trial court against appellant No. 1- Virendra Kumar is set aside and he is acquitted of the charges framed against him under Sections 304B & 498A of IPC. He is reported to be on bail. His bail bonds shall continue for a further period of six months from today in view of Section 437-A

of Cr.P.C.

12. Further, conviction and sentence passed by the trial court against appellant No. 2- Ravishankar is affirmed. As the trial court has awarded sentence of 7 years, it cannot be termed as harsh, disproportionate or unreasonable looking to the gravity offence and the same is not liable to be interfered with. The whole sentence part is also not liable to be interfered with.
13. Accordingly, the appeal filed with respect to appellant No. 2- Ravishankar is dismissed. It is reported that appellant No. 2- Ravishankar has suffered full jail sentence and has been released from jail on 12.07.2016, therefore, no further order of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge