

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.904 of 2011**

1. Khilawan @ Teku Chakradhari S/o. Bhisham Chakradhari, aged about 25 years,
2. Bhisham Chakradhari S/o. Khemu Chakradhari, aged about 45 years,
3. Smt. Tehkunwar Chakradhari W/o. Bhisham Chakradhari, aged about 40 years,

All R/o. Vill. Jagdalla, P.S. Pithora, Distt. Mahasamund (C.G.)

---- Appellants**Versus**

- State Of Chhattisgarh through the District Magistrate, Mahasamund, Distt. Mahasamund (CG)

---- Respondent-----
For the appellant : Smt. Mandavi Bharadwaj, AdvocateFor the respondent/State: Shri Raghavendra Verma, Govt.
Advocate
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****21.01.2019.**

1. This appeal is directed against the judgment dated 26.9.2011 passed by Second Additional Sessions Judge, Mahasamund (CG) in Session Trial No.59/2010 wherein the said Court convicted all the three appellants for commission of offence under Section 304B of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for ten years and to pay fine of 1000/- each with default stipulation.

2. In the present case name of the victim is Kamla Bai who was married to appellant Khilawan on 25.02.2007. Appellant Bhisham Chakardhari is the father-in-law of the deceased and appellant Tej Kunwar is the mother-in-law of the deceased. It is

alleged that after some time of the marriage, all the appellants demanded money for purchasing motor cycle and television from the deceased and due to non-fulfillment of the demand, they harassed her physically and mentally. The deceased died on 25.5.2010 at about 11.30 pm other than normal circumstances. The appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) There is no evidence against appellants Bhisham Chakradhari and Smt. Tej Kumwar regarding demand of dowry and harassment, but the trial Court recorded the finding on the basis of surmises and conjectures.

(ii) Evidence against all the appellants is hearsay in nature but the trial Court lost sight on this aspect of the matter and came to a wrong conclusion.

(iii) Case of the prosecution is based on the statement of the brother and relatives of the deceased who are highly interested witnesses and their version is exaggerated in nature.

(iv) Report was lodged after six days of the incident and no explanation was given for the delayed report. Therefore, case of the prosecution is under could.

(v) As the ingredients of offence under Section 304 B is lacking, conviction of the appellants is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment 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 with while invoking the jurisdiction of the appeal.

5. Heard learned counsel for the parties and perused the judgment impugned.

6. Chagan (PW-1) deposed before the trial Court that when he saw deceased Kamla after three to four months of their marriage he found her in a depressed condition. After enquiry she stated that all the appellants harassed her mentally and physically due to non-fulfillment of demand of money and motor cycle. From the evidence of this witness, it is established that when appellant Khilawan came to their house they advised him not to harass the victim because they were not in a position to provide motor cycle and money and at that time appellant Khilawan agreed with the version of this witness and took the deceased with him to her matrimonial house. From the evidence of this witness, it is established that there is demand of money and motor cycle by appellant Khilawan and they were not able to fulfill the demand. Looking to the evidence of this witness, it is clear that appellant Khilawan harassed the deceased on account of demand of dowry that is why he agreed not to harass the deceased in future.

7. Lakhani Lal (PW-2) and Khemuram (PW-8) deposed on the same line. But the fact remains that these witnesses have no occasion to meet any of the appellants. From the evidence of all these witnesses only thing which established is the demand of dowry by appellant Khilawan who was the husband of the deceased. Demand of dowry by two other accused persons is not established because there is nothing on record that they

demanded dowry from anyone. From the evidence it is clear that the deceased died in the matrimonial house and when the offence is committed in secrecy within the four corners of the house it is difficult for the prosecution to collect the exact evidence. Therefore, it is established that till the death of the deceased she was in her matrimonial house and appellant Khilawan is under obligation to explain as to what really happened with the deceased soon before her death.

8. As per Section 113B of the IPC when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. In the present case there is evidence against appellant Khilawan that he demanded dowry and he is not able to explain how the unnatural death of the deceased caused within four corners of his house. Therefore, presumption that appellant Khilawan harassed the deceased soon before her death and his act falls within the mischief of commission of dowry death which is punishable under Section 304B IPC. The finding of the trial Court is based on relevant facts placed on record and the same is not based on extraneous or irrelevant material. The arguments advanced on behalf of the appellant is not sustainable and his conviction for the said offence is hereby affirmed.

9. So far as appellants Bhisham Chakradhari and Smt. Tahkumwar are concerned, no witnesses had any occasion to

meet these appellants. Version of the witnesses is hearsay in nature regarding these two appellants. Therefore, there is no legally admissible evidence against them that they demanded dowry. Again looking to the hearsay nature of evidence, it cannot be safe to presume against these two appellants. Therefore, their conviction under Section 304 B IPC is not sustainable.

10. Accordingly, appeal filed by appellants Bhisham Chakradhari and Smt. Tehkumwar Chakradhari is allowed. Their conviction under Section 304B IPC is hereby set aside and they are acquitted of the said charges.

11. So far as appellant Khilawan is concerned, he has been sentenced to RI for 10 years. Looking to the gravity of the offence sentence awarded to him is not harsh, disproportionate or unreasonable. Therefore, sentence part is not liable to be interfered with.

12. Accordingly, the appeal filed by appellant Khilawan being devoid of merits is liable to be and is hereby dismissed. As per the report, appellant Khilawan has been released from jail after serving the full jail sentence awarded to him and after remission granted to him by the jail authorities. In view of this no further order is required for his arrest.

Sd/-
(Ram Prasanna Sharma)
JUDGE