

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 30.11.2018

Judgment Delivered on : 07/01/2019

CR.A. No. 668 of 2015

1. Chandrashekhar Sahu, S/o. Budheshwarlal Sahu, Aged About 23 Years
2. Budheshwar Lal Sahu, S/o. Late Shri Ramnath Sahu, Aged About 49 Years
3. Smt. Basanti, W/o. Budheshwar Lal, Aged About 45 Years,
All are R/o Village- Bihajhar, P.S.- Bagbahara, Civil and Revenue District Mahasamund, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh, Through : District Magistrate, Bagbahara, District Mahasamund, Chhattisgarh.

-----Respondent

For Appellants	: Mr. Awadh Tripathi, Advocate
For Respondent/State	: Mrs. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

07/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (Fast Track Court), Mahasamund, District – Mahasamund (C.G.), in Sessions Trial No.06/2014 on 02.06.2015, convicting the appellants for the offence under Section 304-B of the Indian Penal Code and sentencing them to under go R.I. for 7 years.

2. The case of the prosecution is this that the marriage of the deceased Janki Bai with the appellant No.1 was performed on 20.05.2013, when the deceased was living in her matrimonial home, she was tortured by the appellants, who are the husband, and in-laws showing dissatisfaction for the dowry given and treated her with cruelty, consequent to which, the deceased committed suicide on 10.07.2013 by hanging herself. Morgue intimation was recorded. Inquest of the body of the deceased was conducted vide Ex.P-2 and postmortem was also conducted vide Ex.P.-7 in which it was reported that death of the deceased was homicidal in nature. After completion of morgue enquiry, FIR Ex.P-15 was lodged and the offence of dowry death was registered against the appellants. Remaining investigation was completed and thereafter the charge-sheet was filed before the concerned Court.
3. Appellants were charged with offence under Section 304-B and in alternative under Section 302 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many as 12 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid, whereas they have been acquitted of the charges under Section 302 of the Indian Penal Code.

4. It is submitted by the learned counsel appearing on behalf of the appellants that the appellants have been erroneously convicted without there being the basis of evidence of prosecution beyond reasonable doubt. Although there is evidence of witness Ishwari, (P.W.-1) the mother of the deceased, Sahdev (P.W.-2), father of the deceased, Loknath Sahu (P.W.-3), uncle of the deceased, Ku. Hema Sahu (P.W.-4), friend of the deceased, Parasram Sahu (P.W.-7), uncle of the deceased that the appellants were dissatisfied with the dowry given and used to make comments that she has not brought some other items in dowry that does not amount to demand of dowry. Even if, the evidence is taken as it is, then without there being any demand of such statement made by the appellants can not be regarded as any offence. Another witness Sadhna (P.W.-8), who has given such statement of demand is not a reliable witness, therefore, no case is made out by the prosecution that soon before the death of the deceased, there had been any demand of the appellants from the deceased or her parents for any item in dowry. Hence, the conviction against the appellants are bad in law and therefore, it is prayed that the appellants may 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 appellants, and the relatives of the deceased, who have made such statement that the appellants have expressed clearly that they were dis-satisfied with the dowry given in the marriage is clearly is a

statement of demand, which was expected to be fulfilled. The deceased had died unnatural death within seven years of her marriage and there is evidence of demand of dowry, therefore it is a clear case of dowry death. Hence there is no room for interference in the impugned judgment, hence, 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 appellants on the basis of the evidence beyond reasonable doubt?
8. Ishwari (P.W.-1) is the mother of the deceased Janki. She has stated that a week after the marriage, when the deceased visited her, she told that the appellants are harassing her by saying that the gas cylinder, fridge, motor cycle jewellery, etc. have not been given and they are commenting on it again and again. Thereafter, the husband of the deceased came to fetch her back and it was after two days, the deceased committed suicide. In cross-examination, she has admitted that the appellant had never made any demand of dowry either before marriage or after the marriage and she has made no such statement that when the appellant no.1 came to fetch the deceased he made any demand, neither he has put any condition in this respect.
9. Sahdev (P.W.-2) is the father of the deceased. He has stated similarly and has clearly admitted in his cross examination that there had been no demand of dowry from the part of the appellants either

before or after the marriage. Lokanath (P.W.-3) has stated about negotiation made by the deceased when she visited her parental home. He has also not made any statement regarding demand of dowry. Ku. Hema Sahu (P.W.-4) has stated similarly. She was also narrated by the deceased regarding the harassment given to her but she has also not made any statement regarding demand of dowry. Parasram Sahu (P.W.-7) is the uncle of the deceased, who has not made any different statement.

10. Sadhna (P.W.-8) is neighbour of Sahdev (P.W.-2), who has stated that, when she met with the deceased -Janki in her parental home, after the marriage, then she told her that her husband and in-laws tortured her for bringing motor cycle, fridge etc.. Her husband has kept her mobile and was making demand of dowry. In cross-examination, she was confronted with her previous statement Ex.D-2 compared to which she has improved her statement made in examination-in-chief, that the deceased never told about demand of dowry.
11. It is not disputed that the deceased has died unnatural death within seven years of marriage, hence, the only proof is required that there had been any demand of dowry soon before the death of the deceased.
12. After scrutinizing on all the evidence of the relevant witnesses present on record of the trial Court, it is very clearly made out that the appellants were not satisfied with the items given in dowry and used to comment on it before the deceased, because of which, she

felt harassed. As clearly admitted by Ishwari (P.W.-1) and Sahdev (P.W.-2), the parents of the deceased that there was no any demand of dowry made by the appellants either before or after the marriage. Even there is evidence that, when the appellant No.1 came to fetch the deceased, he did not make any demand of dowry of any item, neither he insisted any condition for taking the deceased to her matrimonial home. Therefore, on the basis of the evidence as described above i.e. present in this case, it can not be said that there had been a demand of dowry and in this respect, the prosecution has failed to bring any evidence beyond reasonable doubt.

13. Thus after consideration on all the material present on record of the trial Court I am of this opinion that the conviction of the appellants under Section 304-B/34 of the Indian Penal Code is not made out. Hence, after due consideration on all the evidence present on record, I am of this opinion that this appeal deserves to be allowed and it is hereby allowed. The appellants are acquitted of the charges. The appellants No.2 and 3 are reported to be on bail, their bail bonds shall continue for a period of six months subject to the provisions of Section 437 of Cr.P.C. The appellant No.1 is reported to be in jail, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge