

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 1542 of 2017

Lalaram Yadav, S/o. Late Faguram Yadav, Aged About 28 Years, R/o. Shankar Gali, Sanjay Maidan, Rambhantha, Raigarh, Police Station- City Kotwali, Raigarh, District Raigarh, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh, Through : The Station House Officer, Police Station City Kotwali, Raigarh, District Raigarh, Chhattisgarh.

-----Respondent

For Appellant : Mr. Anil Tripathi, Advocate

For Respondent/State : Mr. Arun Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

31/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge (F.T.C.), Raigarh, District – Raigarh (C.G.), in Sessions Trial No.162/2011 on 17.12.2013, convicting the appellant for the offence under Section 304-B of the Indian Penal Code and sentencing him to undergo R.I. 10 years and fine of Rs.5000/- with default stipulations.
2. Facts of the case in brief is this that the deceased Durpati got married to the appellant in May, 2010 and she started living in her matrimonial home. The deceased suffered burn injuries on 24.08.2011 and she was admitted in the hospital regarding which one information was immediately dispatched by the said hospital.

No dying declaration could be recorded of the deceased and she has succumbed to the burn injuries and died on 25.08.2011 at about 7.15 AM. Information Ex.P-1 was sent from concerned hospital to the police station City Kotwali, Raigarh. Morgue intimation Ex.P-13 was recorded. Inquest proceeding was made. Autopsy was done on the body of the deceased and it was reported that cause of death of the deceased was shock, which had occurred due to burn injuries, as the deceased was burn to the extent of 95%. On the basis of morgue enquiry, FIR, Ex.P-21 was lodged registering the offence under Section 304-B of the Indian Penal Code against this appellant. In further investigation, the statement of the witnesses were recorded and other investigative procedures were completed. Thereafter, charge-sheet was filed before the concerned Court.

3. Appellant was charged with offence under Section 304-B of the Indian Penal Code. The appellant denied the charges and prayed for trial. The prosecution examined as many as 12 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. 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 appearing on behalf of the appellant that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The deceased had made no dying declaration and she had accidentally caught fire and suffered burn injuries. Nanki Bai Yadav (P.W.-2), the mother of the deceased has though made statement in examination-in-chief that the appellant had complained that he was not given motor cycle in dowry, but there was no statement that the appellant had demanded motor cycle and it is admitted by her in cross-examination, that there was no demand made by the appellant. Sushil Yadav (P.W.-3) has also not made any statement regarding demand of motor cycle in dowry. Therefore, it is not a case, in which there had been any demand of dowry. Therefore, the conviction of the appellant under Section 304-B of the Indian Penal Code is bad in-law. Therefore, it is prayed that the appellant be acquitted of the charge. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellant in that case, at least sentence imposed upon the appellant, which appears to be too harsh may be reduced.
5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the witness Nanki Bai Yadav (P.W.-2), Sushil Yadav (PW.-3), Sitadevi (P.W.-4), Saraswati Yadav (P.W.-5) and Sangeeta Yadav

(P.W.-6) have clearly stated that the deceased was tortured by the appellant for the reasons that motor cycle was not given in dowry, although there is no express statement made that the appellant had made any such demand, but the purpose of torturing the deceased itself shows that the demand was present, therefore, it is clear case of dowry death and the appellant is not entitled either for acquittal or for reduction of sentence of imprisonment. 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. It is undisputed that the deceased Durpati Bai has died unnatural death within a period of 7 years from the date she was married to the appellant. Therefore, there is no need to scrutinize the evidence on this point. The only question i.e. raised for consideration in this appeal is whether there had been demand of dowry from the deceased soon before her death. Perused the evidence present on record of the trial Court in this respect.
9. Nanki Bai Yadav (P.W.-2) has stated that she used to visit her daughter, but she was not allowed to come with her and she was thrashed by her husband. The husband used to thrash the

deceased for the reason that the motor cycle was not given in dowry. She was not present at the time, the deceased suffered burn injuries and died. In cross-examination, she has admitted that she had never called any meeting of the community/society regarding the ill treatment given to the deceased and she has also admitted that there was no demand of motor cycle at the time of marriage neither any harassment was given for any such demand of dowry. In cross-examination, she has also admitted that after her daughter got burnt, she had called her on phone but she did not inform about any demand of dowry and she is also unable to make any statement as in what manner, the deceased suffered burn injuries.

10. Sushil Yadav (P.W.-3) has stated in examination-in-chief that the appellant used to frequently thrash the deceased and he would never send her to her parental house. The prosecution with the permission of the Court has asked leading questions to this witness, in which he has admitted that at the time of marriage, the appellant had not made any demand. In cross-examination by defence, he has again admitted that at the time of marriage there was no demand of dowry. He never called a meeting of elders regarding such demand. He also admitted that his daughter has never narrated him being tortured for any such demand.
11. Sita Devi (P.W.-4) has stated that the appellant never used to send the deceased to her parental house and he frequently used

to quarrel and beat the deceased. The appellant never said anything about demand of dowry but the deceased has said that the appellant used to thrash her for dowry. In cross-examination, she has admitted that she is not aware of any demand of dowry made by the appellant.

12. Saraswati Yadav (P.W.-5) has stated that the appellant used to quarrel with the deceased for demand of motor cycle. Further, in cross-examination, she had admitted that there was no demand of dowry at the time of marriage. Sangeeta Yadav (P.W.-6) has similarly stated that the appellant never used to send the deceased to her parental house and he used to frequently thrash her. But the parents of the deceased had asked the appellant to behave but he did not give any heed to their advise, thus this witness has not made any statement regarding any demand of dowry. In cross-examination also admitted that that there had been no demand of dowry.

13. After closely scrutinizing all the evidence of relevant witnesses, who were related or acquainted with the deceased, it is clearly made out that although it is raised that the appellant used to treat the deceased with cruelty for the reasons that motor cycle was not given in dowry, but there is clear admission made by all the witnesses that appellant personally never made any demand that motor cycle be provided to him by way of dowry. Therefore, some vague statements that have been made by some of the

witnesses with regard to dowry, does not inspire confidence of this Court. On the other hand, it appears that the life of the deceased with this appellant was not peaceful and the appellant was continuously quarreling and beating her, thus making her life miserable, it could be a reason which may have lead her to commit suicide. In this case, there is no such ground raised that the deceased has committed suicide. Therefore, at the most it can be held that the appellant is responsible for treating the deceased with cruelty, which is an offence under Section 498-A of the Indian Penal Code.

14. On the basis of the discussions made hereinabove and the findings arrived at, this appeal is allowed in part. The conviction and sentence of the appellant under Section 304-B of the Indian Penal Code is set-aside, however, the appellant has been found guilty for the offence under Section 498-A of the Indian Penal Code, therefore he is convicted for the same. It is informed that the appellant is in jail since the date of his arrest i.e. 15.09.2011, therefore, he has undergone more than the period of sentence of imprisonment, which can be imposed upon him for this offence. Hence, for this reason, the appellant is sentenced with the period of imprisonment detention he has already undergone in jail.

15. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge