

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 551 of 2012****Reserved on : 25.01.2019****Delivered on : 20.02.2019**

Ajay Kumar Kashyap, S/o Sukhsagar Kashyap, aged about 21 years, R/o Village- Bhavntara, P.S. Sheorinarayan, District- Janjgir-Champa (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through- Police Station- Sheorinarayan, District- Janjgir-Champa (C.G.)

---- Respondent

 For Appellant : Mr. Gurudev I. Sharan, Advocate.
 For State/respondent : Mr. Raghvendra Verma, G.A.

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 28.06.2012 passed by Sessions Judge, Janjgir-Champa (C.G.) in Session Trial No. 01/2012, wherein the said court convicted the appellant for commission of offence under Sections 304B, 306 & 498A of IPC, 1860 and sentenced to undergo R.I. for 7 years, R.I. for 4 years and fine of Rs. 500/- & R.I. for 1 year and fine of Rs. 500/- respectively with further default stipulations for cruelty against his wife namely Terasbai causing her dowry death.
2. In the present case, name of the deceased is Terasbai, who married with the appellant on 08.05.2011 and died on 30.10.2011 other than in

normal circumstances due to consumption of poisonous substance within seven years of marriage.

3. As per version of the prosecution, after the marriage, the deceased was residing with the appellant and he started demanding motor cycle & fridge and on non-fulfillment of the demand, assaulted the deceased repeatedly that is why she committed suicide and died other than in normal circumstances. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted as mentioned above.
4. Learned counsel for the appellants submits as under:-
 - (i) The ingredients of offences are not established, but the trial court overlooked this aspect of the matter and came to wrong conclusion.
 - (ii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding arrived at by the trial court is not sustainable.
 - (iii) The trial court has not evaluated the evidence of all the witnesses while passing the judgment, therefore, the finding arrived at by the trial court is liable to be reversed.
5. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on relevant material placed on record and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
6. Gendram Kashyap (PW-13) deposed before the trial court that when

the appellant demanded motor cycle & fridge, he reached to the appellant and asked him that family of the deceased is not able to provide him motor cycle & fridge and he should not harass the deceased, but from the evidence, it is established that the appellant harassed the deceased that is why she died after five months of the marriage.

7. Version of this witness is supported by version of Bhagwati Bai Kashyap (PW-17), who is mother of the deceased, Ramadhar Kashyap (PW-18), who is father of the deceased and Shiv Kumar Kashyap (PW-19), who is brother of the deceased. All these witnesses have deposed before the trial court in one voice that the appellant harassed the deceased on account of dowry that is why she committed suicide and died other than in normal circumstances. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. Dr. Sushma Mahajan (PW-6) is medical expert, who conducted autopsy of the deceased and opined that the deceased died due to consumption of poisonous substance. Version of this medical expert is unshaken during cross-examination. There is no other medical expert opinion contrary to the opinion of this medical expert, therefore, it is established that the deceased died due to consumption of poisonous substance.
9. There is presumption as to dowry death as per Section 113B of the Indian Evidence Act, 1872 which reads as under:

“113B. Presumption as to dowry death- 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."

10. Again, there is presumption as abetment of suicide by a married woman as per Section 113A of the Indian Evidence Act, 1872 which reads as under:-

"113A. Presumption as to abetment of suicide by a married woman- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

11. In the present case, looking to the entire evidence, it is clear that harassment was constantly made to the deceased that is why she committed suicide, therefore, presumption under Section 113A for abetment of suicide is available against him. Again, he demanded dowry and harassed the deceased soon before her death within seven years of marriage, therefore, presumption under Section 113B for dowry death is also available against him. The act of the appellant to drag the deceased to commit suicide by cruelty is an offence punishable under Section 498A of IPC.

12. As, the offence is committed in secrecy within four corners of matrimonial house, the appellant was under obligation to explain the fact which are specifically within his knowledge, but no explanation is given by him, therefore, it is presumed that the appellant harassed the deceased soon before her death on account of demand of dowry and abetted her to commit suicide due to cruelty against her. There is nothing to say that they have roped the appellant with false charge and they are stating against the appellant for any grudge.
13. The act of the appellant falls within mischief of Sections 304B, 306 & 498A of IPC, 1860 for which the trial court convicted the appellant and the same is hereby affirmed.

Heard on the point of sentence.

14. The trial court awarded R.I. for 7 years for commission of offence under Section 304B of IPC which is minimum prescribed sentence and less than minimum cannot be awarded and the same is not liable to be interfered with. The sentence part is also not liable to be interfered with. Accordingly, the appeal is liable to be and is hereby dismissed.
15. It is reported that the appellant has suffered full jail sentence and has been released from jail after getting benefit of remission, therefore, no further order etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge