

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 15-02-2019

Delivered on 15-03-2019

Criminal Appeal No. 251 of 2010

1. Laxminarayan s/o. Kesdal Kashyap, aged 30 years.
 2. Darasmati @ Barasmati w/o. Late Kedal Kashyap, aged 70 years.
- Both r/o. Karra, PS Navagarh, District Janjgir Champa (CG)

---- Appellant

Versus

The State of Chhattisgarh Through Dist. Magistrate Dist. Janjgir Champa (CG).

---- Respondent

For the appellants	: Shri Manoj Mishra, Advocate
For the respondent/State	: Shri Vijay Bahadur Singh, PL

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 12-3-2010 passed by the Sessions Judge, Janjgir-Champa (CG) in Sessions Trial No. 190 of 2009 wherein the said Court convicted the appellants for the commission of offence under Section 498-A, 306 and 304 B of IPC and sentenced them to undergo rigorous imprisonment for two years and to pay fine of

Rs.500/-, RI for five years and to pay fine of Rs.500/- and RI for seven years and to pay fine of Rs.500/- , with default stipulations.

2. In the present case, name of the deceased is Kavita Bai who was wife of the appellant No.1 Laxminarayan and appellant No.2 Darasmati @ Barasmati is mother of the appellant No.1 and as such she is mother-in-law of the deceased. As per version of the prosecution, deceased was married to appellant No.1 Laxminarayan on 2-5-2007. She died on 11-6-2009 due to burn injuries other than normal circumstances. It is alleged that the appellant demanded motor-cycle, colour TV in dowry and they harassed her due to which she committed suicide by setting herself ablaze. The matter was reported to the Police and after completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants submits as under:

- I) Statement of prosecution witnesses were recorded about one month of the incident and no explanation was given for the same.
- II) No complaint was made regarding demand of dowry by the relatives of the deceased, therefore, it is not a case related to dowry.

- lii) The condition of the deceased was critical, therefore, dying declaration alleged to be recorded on 11-6-2009 cannot be believed.
- iv) The trial Court committed error in not believing the first dying declaration given by the deceased to the treating doctor and other witnesses.
- v) The finding of the trial Court is based on presumption and inadmissible evidence which is liable to be set aside.

4. On the other hand, learned counsel for the State submits that the finding recorded by the trial Court is based on proper marshaling of evidence and the same is not required to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the material available in the record.

6. PW/1 Dandaram Kurmi is father of the deceased. PW/2 Kavitrām is brother of the deceased. Uma Shankar is a person in whose house the deceased visited many times. These witnesses have deposed that deceased informed them regarding demand by the appellant Laxmniarayan regarding motor-cycle and colourTV and regarding her

harassment. PW/9 G.R. Bahlani, Additional Tahsildar and Executive Magistrate deposed that he recorded dying declaration of the deceased. As per dying declaration Ex.P/19, the deceased made declaration that she poured kerosene on her body and lit the match stick as a result of which she sustained burn injury which is supported by version of PW/14 Dr. Krishna Mittal who conducted autopsy of the deceased on 12-6-2009. As per opinion of this medical expert, deceased died due to respiratory failure because of excessive burning and shock. Looking to the evidence of this expert and dying declaration of the deceased, it is clear that deceased died due to suicide by burning. Though the deceased stated in her dying declaration that her husband namely Laxminarayan and her mother-in-law harassed her, but from her evidence, it is not clear as to when she met with her mother-in-law namely appellant Darasmati @ Barasmati.

7. For establishing charge under Section 304-B of the IPC, it has to be established that deceased was subjected to harassment soon before her death, but statement of the deceased regarding harassment by the mother-in-law is bald and general and it is not clear as to when she last met with her mother-in-law. Appellant Laxminarayan being husband is responsible for explanation as to what really happened in the four corners of the his house, but he did not explain.

8. Looking to the dying declaration, it is established that the appellant Laxminarayan harassed her on account of demand of dowry soon before her death and again he instigated her to commit suicide and the act of the appellant Laxminarayan falls within mischief of cruelty because he dragged his wife to end her life. Looking to the entire evidence on record, it is established against the appellant Laxminarayan that he committed dowry death/abetment of suicide and cruelty against the deceased. The act of the appellant Laxminarayan falls within mischief for which the trial Court convicted him and same is hereby affirmed. The trial court awarded minimum sentence for the aforesaid offence and less than minimum cannot be awarded. Sentence part is also not interfered with.

9. Accordingly, the appeal filed by Appellant No.1 Laxminarayan is liable to be and is hereby dismissed. The appellant is reported to be in jail therefore, no further order for his arrest etc., is required.

10. So far as appeal filed by appellant No.2 Darasmati @ Barasmati is concerned, evidence against her is not clinching in nature and general statement made by deceased is not sufficient to hold that she was in constant company of the deceased. Again, from the statement of deceased, it is not clear as to what was the nature of harassment of her mother-in-law and what was the time of harassment. Therefore, it would not be safe to conclude that mother-in-law harassed her soon

before her death or abetted her to commit suicide or committed cruelty against her. Finding of the trial Court against the appellant No.2 Darasmati @ Barasmati is not sustainable.

11. Accordingly, the appeal filed by appellant No.2 Darasmati @ Barasmati is allowed. Conviction and sentence passed by the trial court is set aside. She is acquitted of the charges levelled against her. She is reported to be on bail. Her bail bonds shall continue for further period of six weeks in view of Section 437-A of Cr.P.C.

12. In view of the above the appeal is party allowed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju