

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 532 of 2010****Reserved on : 25.01.2019****Delivered on : 20.02.2019**

Shyam Kumar, S/o Amrit Lal Yadav, aged about 25 years, R/o Hadha Singhul, Police Station- Shivrinarayan, District- Janjgir-Champa (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through: District Magistrate, Janjgir-Champa (C.G.)

---- Respondent

For Appellant : Mr. Manoj Kumar Mishra, Advocate.

For State/respondent : Mr. Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. Mr. Varunendra Mishra, Advocate has been engaged for arguing the case on behalf of the appellant. Despite repeated calls, he has not appeared when the case is called for final hearing, therefore, Mr. Manoj Kumar Mishra, Advocate, who is present in the Court has been appointed as *Amicus Curiae* to argue the case on behalf of the appellant.
2. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 05.07.2010 passed by Sessions Judge, Janjgir-Champa (C.G.) in Session Trial No. 214/2009, wherein the said court convicted the appellant for commission of offence under Sections 498A, 306 & 304(B) of IPC, 1860 and sentenced to undergo R.I. for 2 years and fine of Rs. 500/-,

R.I. for 5 years and fine of Rs. 1000/- & R.I. for 7 years and fine of Rs. 1000/- respectively with further default stipulations for cruelty against his wife namely Mamta @ Gudiya, abetment of suicide and dowry death.

3. In the present case, name of the deceased is Mamta @ Gudiya, who married with the appellant on 27.04.2008 and died on other than in normal circumstances due to consumption of poisonous substance and her death occurred within seven years of marriage. It is alleged that the appellant started treating the deceased with cruelty for demand of dowry of Rs. 1,00,000/-. Rs. 10,000/- was paid to him even then he continued to treat the deceased with cruelty in the name of dowry. Due to act of the appellant, she consumed poisonous substance and died on 20.05.2009. 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 trial court not considered the delay in lodging the FIR which is not explained.
 - (ii) On the date of incident, the deceased wished to go to her parental house because of the said reason, when dispute arose, the wife committed suicide which is not cruelty or abetment on the part of the appellant.
 - (iii) There is no evidence account to the incident and there is material contradiction and omission in the statement of the witnesses, but the trial court did not appreciate the same.

(iv) Case of dowry death is not established beyond shadow of doubt, but the trial court did not evaluate the evidence in its true perspective and came to wrong conclusion, 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. Bhuneshwar Yadav (PW-2) is brother of the deceased. As per version of this witness, the appellant demanded Rs. 1,00,000/- and when they advised him that they spent a lot of sum in the marriage and they are not able to pay Rs. 1,00,000/- then the appellant left the deceased on her parental house thereafter, they called the appellant and gave him Rs. 10,000/-. Version of this witness is supported by version of Shiv Kumar Yadav (PW-1), who is brother of the deceased, Sahartin Bai Yadav (PW-3), who is mother of the deceased, Sunny Goyal (PW-4) and Smt. Shiv Kumari Yadav (PW-5), who is sister of the deceased.
7. From evidence of these five witnesses, it is established that the appellant demanded Rs. 1,00,000/- as dowry and Rs. 10,000/- was paid even then he harassed the deceased that is why she committed suicide after consuming poisonous substance within one year of marriage. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. Dr. Anita Dhruw (PW-7) is medical expert, who conducted autopsy of

the deceased and as per report of this medical expert, the deceased died due to consumption of poisonous substance. Version of this witness was subjected to searching cross-examination, but she remained unshaken. 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, 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 as to what was really happened, 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, therefore, argument advanced on behalf of the appellant is not sustainable.
13. The act of the appellant falls within mischief of Sections 498A, 306 & 304B 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 for dowry death 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

Arun