

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 25-1-2019

Delivered on 14-02-2019

CRA No. 931 of 2010

- Pratap Kumar s/o. Itwari Dinkar, Caste Satnami aged about 25 years, resident of village Tulsi, PS Nawagarh, District Janjgir-Champa (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Nawagarh, District Janjgir Champa (CG).

---- Respondent

For Appellant : Mr. T.K. Tiwari, Advocate appeared as
Amicus Curiae

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

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 27-10-2010 passed by the Sessions Judge, Janjgir-Champa (CG) in Session Trial No. 231 of 2009 wherein the said Court has convicted the appellant for the commission of offence under Sections 304-B, 306 and 498-A of IPC and sentenced him to undergo RI for seven years, RI for five years and to pay fine of Rs. 1000/- and RI for one year and to pay fine of Rs.500/- with default stipulations. All the sentence are directed to run concurrently.

2) In the present case, name of the deceased is Sukruta Bai who was wife of the appellant. Marriage between the appellant and deceased was solemnized on 20-4-2007. It is alleged that the appellant demanded motorcycle, Fridge and other articles as dowry from the family of the deceased and due to non-fulfilment of demand he harassed the deceased physically and mentally that is why she committed suicide by consuming poisonous substance and her death is other than normal circumstance within seven years of the marriage and again there is cruelty on the part of the appellant. The matter was reported and investigated and after completion of investigation charge sheet was filed, the appellant did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellant as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) At the time of lodging the report, father of the deceased namely (PW/3) Thakur Ram did not allege anything against the appellant, but later on he improved his version which is not reliable.
- ii There is no evidence that soon before death of the deceased any harassment was caused by the appellant, therefore, essential ingredients for the offence of dowry death is lacking.

- iii) From the statement of (PW/3) Thakur Ram, it is clear that he did not disclose to his relative regarding demand of dowry or the cruelty, therefore, his version before the trial Court is after-thought which is not reliable.
- iv) PW/5 Budhram has not supported the version of prosecution although he is relative of the deceased.
- v) The trial Court has not marshalled the evidence in its true perspective, therefore, the finding of the trial court is liable to be reversed.

5 On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

7. From the evidence it is established that the marriage between the appellant and deceased was solemnized on 20-4-2007 and deceased died on 19-3-2009 by consuming poisonous substance. From the evidence it is clear that deceased died within seven years of

her marriage which is other than normal circumstance. PW/3 Thakur Ram and PW/4 Ramkhilawan Banjare deposed before the trial Court that appellant demanded motorcycle and Fridge from parents of the deceased. From the evidence of Ram Khilawan (PW/4), it is established that at the time of marriage of one Ramkhilawan, appellant and deceased attended the programme where the appellant assaulted the deceased. From his evidence it is clear that there was demand of dowry by the appellant and he assaulted the deceased openly in a function where number of people of society were present. From the autopsy report, it is clear that recent sign of injuries on the body of the deceased was found. Injury was found on her head and swelling was found on her lip. Looking to the entire evidence it is clear that the appellant used to beat deceased that is why recent sign of injuries was present at the time of autopsy of the deceased.

8. Dowry death is defined in Section 304-B of IPC which may be read as under.

“304B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand

for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this subsection, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

9. Offence of abetment is defined in Section 107 of the IPC which may be read as under:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—

A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing

10. Offence of cruelty is defined in Section 498-A of PC which may be read as under:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

11. After going through the entire record, it is clear that it is a case of constant harassment to the deceased by the appellant, therefore, it can be inferred that he harassed the deceased soon before her death. In the present case, it is established that demand of dowry was made to the parents of the deceased by appellant and deceased was harassed as per version of PW/3 Thakur Ram and PW/4 Ramkhilawan. There is

presumption as to dowry death as per Section 113- of the Indian Evidence Act, 1872 which may be read as under:

“Section 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”.

12. Again there is presumption as abetment of suicide by a married woman as per Section 113-A of The Indian Evidence Act, 1872 which may be read 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.” Explanation.—For the purposes of

this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code”.

13. In the present case, harassment is caused within four corners of the matrimonial house of the deceased which is house of the appellant. When any harassment is committed in secrecy of four corners of the house, it is difficult to collect direct evidence against the perpetrators of crime because either they are members of family or they assist in harassment, therefore, explanation is sought against presumption from the appellant, but no explanation was given by him and his version is plain denial which is merit-less.

14. From the evidence it is clear that the appellant subjected the deceased cruelty and therefore, it can be presumed that he abetted her to commit suicide. Again presumption of dowry death is available against the appellant and it can be presumed that he caused dowry death. Looking to the entire evidence, it is clear that the appellant committed all the three offences for which the trial Court convicted the appellant. After reassessing the evidence, this court has no reason to substitute the contrary finding. Conviction of the appellant is hereby affirmed. Looking to the death of the deceased within two years of her marriage, sentence part cannot be termed as harsh,

disproportionate or unreasonable. Sentence part is also not liable to be interfered.

15. Accordingly, the appeal being devoid of merit 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.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju