

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 112 of 2012****Reserved on : 25.01.2019****Delivered on : 20.02.2019**

Dhannu Nirmalkar @ Dhanna, S/o Kheman Ram Nirmalkar, Aged about 29 years, R/o Village- Kirwai, Police Station- Rajim, District- Raipur (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through: Station House Officer, Police Station : Rajim, District- Raipur (C.G.)

---- Respondent

 For Appellant : Mr. Y.C. Sharma, Advocate.
 For State/respondent : Mr. Ravish Verma, Govt. Advocate.

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 01.08.2011 passed by Additional Sessions Judge, Gariyaband, District- Raipur (C.G.) in Session Trial No. 38/2010, wherein the said court convicted the appellant for commission of offence under Sections 498A & 304B(2) of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 100/- & R.I. for 10 years and fine of Rs. 100/- respectively with further default stipulations for cruelty against his wife namely Saroj Nirmalkar and causing her dowry death.
2. In the present case, name of the deceased is Saroj Nirmalkar, who died on 10.04.2010 other than in normal circumstances due to burn

injuries sustained by her.

3. As per version of the prosecution, marriage between the appellant and the deceased took place six years ago from the date of incident. It is alleged that after one year of marriage, the appellant demanded money and other article as dowry and harassed her constantly. Some money was paid to him, but he repeatedly harassed the deceased due to which she set her ablaze and died. 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 appellant submits as under:-
 - (i) The trial court has failed to appreciate the contradiction and omission in the statement of Smt. Sohadra Bai (PW-1) regarding demand of money and torture.
 - (ii) The deceased was suffering from major disease that is why she committed suicide, but the trial court failed to appreciate this aspect of the matter and came to wrong conclusion.
 - (iii) The trial court has not evaluated the entire evidence in its true perspective, therefore, 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. Sohadra Bai (PW-1) is mother of the deceased. As per version of this

witness, marriage between the appellant and the deceased took place six years ago and she died on 10.04.2010 by setting her ablaze. As per version of this witness, the appellant demanded money and other article in dowry and when she did not fulfill the demand, the appellant assaulted her. As per version of this witness, the appellant assaulted the deceased in her presence and she felt unconscious. The matter was informed to people of locality namely Punarad, Amrit, Chetan & Khamman, who advised the appellant not to harass the deceased and then they paid Rs. 500/- and provide him rice and pulse. After some time, when the deceased came to her parental house, she found multiple abrasion in her body and there was swelling in her body. She further deposed before the trial court that these injuries was sustained by the deceased due to assault by the appellant for non-fulfillment of demand of dowry.

7. Version of this witness is supported by version of Amrit Kumar (PW-2), who is paternal uncle of the deceased, Chetan (PW-3), who is paternal uncle of the deceased, Pyarelal (PW-4), Punarad (PW-5) & Khamhanlal @ Khamman (PW-6). All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence.
8. Dr. Shivnarayan Manjhi (PW-16) is medical expert, who conducted autopsy of the deceased and opined that the deceased died due to burn injuries and complication of the said injuries. 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 burn injuries

and complication of the said injuries.

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 the fact which are specifically within his knowledge, but no explanation is given by him. Defence witnesses namely Jokhram (DW-1) & Kheman (DW-2) deposed before the trial court only about date of the incident, but they did not depose anything prior to the date of incident, therefore, their version is not rebutting the evidence adduced by the prosecution. 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 & 304B(2) 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 10 years for commission of offence under Section 304BB(2) which cannot be termed as harsh, disproportionate or unreasonable looking to the gravity of offence 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