

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 565 of 2009****Reserved on : 01.03.2019****Delivered on : 29.03.2019**

Chandrasekhar, S/o Gangana Dehare, Aged about 30 years, R/o Sambalpur, Police Station- Nandghat, District -Durg (C.G.) ---- **Appellant**

Versus

State of Chhattisgarh, through Police Station, Nandghat, District– Durg (C.G.) ---- **Respondent**

For Appellant : Mr. T.K. Tiwari, 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 23.07.2009 passed by Additional Sessions Judge, Bemetara, District- Durg (C.G.) in Session Trial No. 05/2009, wherein the said court convicted the appellant for commission of offence under Section 304B of IPC, 1860 and sentenced to undergo R.I. for 7 years.
2. In the present case, name of the deceased is Niramla Bai, who married with the appellant. The marriage was solemnized two years before the date of incident. On 02.11.2008, the deceased died due to burn injuries other than in normal circumstances. It is alleged that the appellant used to harass the deceased in the name of dowry and being fed up with cruelty meted to her by the appellant, she committed suicide by pouring kerosene and set her ablaze. The matter was reported, the appellant was charge-sheeted and after completion of

trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) In dying declaration (Ex.D/6), the deceased stated that while she was cooking food, received burn injuries and she has not been set ablaze by anyone, but the trial court disbelieved the best piece of evidence which is not sustainable.

(ii) Parents of the deceased were present at the time of autopsy of the deceased, but they did not say anything and the report has been lodged after 15 days of the incident after consulting with family members, therefore, story put-forth by the prosecution is not genuine.

(iii) The prosecution witnesses are interested witnesses, therefore, no reliance can be placed on their testimony. The finding arrived at by the trial court is liable to be set aside.

4. 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.

4. Mohar Bai (PW-5) is mother of the deceased and as per version of this witness, the appellant asked in her presence that if dowry is not presented to him then he can kill the deceased. Version of this witness is supported by version of Gangaram (PW-3) who is father of the deceased and Dewadas (PW-4) who is brother of the deceased. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of the defence and they are firm in their statement what they have stated in their examination-in-chief.

5. From statement adduced by the prosecution witnesses, it is established that the appellant demanded TV, Fan and Cycle in dowry and in non-fulfillment of the demand of dowry, he harassed the deceased constantly. The deceased died within two years of the marriage. Now, the point for consideration before this Court is whether it is a case of dowry death. There is presumption as to dowry death 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.”

6. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 reads as under:-

“2. Definition of ‘dowry’.- In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or mahr or the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

Explanation II - The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code.”

7. The appellant was custodian of her wife and from the evidence, it is established that he harassed her constantly due to non-fulfillment of demand of dowry. He was under obligation to explain as to what was really happened on the date of incident, but his version is plain denial which is meritless. Version of defence witnesses namely Banshilal

Verma (DW-1) and Anand Masih (DW-2) is not supported by any documentary evidence and the same is not sufficient to discard the evidence adduced by the prosecution, therefore, it is presumed that the appellant harassed the deceased soon before her death for non-fulfillment of demand of dowry.

8. The trial court has elaborately discussed the entire evidence and after reassessing the entire evidence, this Court has no reason to record contrary finding. The dowry death is an offence punishable under Section 304B of IPC for which the trial court convicted the appellant and the same is not liable to be interfered with and conviction of the appellant is hereby affirmed.

Heard on the point of sentence.

9. The trial court awarded R.I. for 7 years 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.
10. 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 of arrest etc. is required.

Sd/-
(Ram Prasanna Sharma)
Judge