

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 14.02.2019

Judgment Delivered on : 08/04/2019

CR.A. No. 939 of 2015

1. Mukesh Kumar, S/o. Mohanlal Sahu, Aged About 30 Years
 2. Mohanlal, S/o. Puniram Sahu, Aged About 62 Years,
 3. Shyama Bai, W/o. Mohan Lal Sahu, Aged About 60 Years,
- All are R/o Village - Bardula, P.S. - Koshir, Civil and Revenue Distt. Raigarh Chhattisgarh.

---- Appellants

Versus

State Of Chhattisgarh, Through : District Magistrate Janjgir, District Janjgir – Champa, Chhattisgarh.

-----Respondent

For Appellants : Mr. Awadh Tripathi, Advocate

For Respondent/State : Mr. Arun Kumar Shukla, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

08/04/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned 1st Additional Sessions Judge, Sakti, District – Janjgir-Champa (C.G.) in Sessions Trial No.39/2014 on 25.07.2015, convicting

the appellants for the offence under Section 304-B of the Indian Penal Code and sentencing them to undergo R.I. 10 years.

2. Facts of the case in brief is this that marriage of the deceased – Aarti Sahu with appellant No.1 took place on 15.06.2012 and thereafter, she was residing in her matrimonial home at village – Bardula. After 2-3 months, the appellants started complaining that less dowry was given in the marriage of the deceased and made demand of Rs.3.00 lakhs to be fulfilled by her parental home, for that deceased was subjected to torture and cruelty. Father of the deceased made payment of Rs.50,000/-, Rs.50,000/-, Rs.1.00 lakhs and Rs.75,000/- and had promised to pay remaining Rs.25,000/-, even then, the deceased was subjected to cruel treatment and the appellants used to misbehave with her. The deceased committed suicide on 30.03.2013 by hanging herself. Morgue intimation (Ex.P-10) recorded in the police station – Dabhara and inquest procedure was performed. In the postmortem, it was confirmed that death was due to hanging. On the basis of the statement by the witnesses, FIR (Ex.P-12) was lodged registering the offence under Section 304-B of the Indian Penal Code. After completion of investigative procedures, charge-sheet was filed before the concerned Court.
3. The trial Court charged the appellants with offence under Section 304(B) or 306/34 and in alternative for the offence under Section 302/34 of the Indian Penal Code. The appellants denied the charges and prayed for trial. The prosecution examined as many

as 14 witnesses on its behalf. On examining the appellants under Section 313, they denied all the incriminating evidence against them and pleaded innocence and false implication. One witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid.

4. It is submitted by the learned counsel appearing on behalf of the appellants, that the trial Court has passed totally erroneous judgment of conviction without there being any basis of reliable and cogent evidence in support of the charge. The appellant No.1 was himself the informer of Ex.P-10, which was recorded on 30.03.2013, whereas, the FIR has been belatedly lodged on 27.04.2013 and the witnesses made statement under Section 161 of Cr.P.C. for the first time on 29.04.2013 and onwards. The deceased was residing with her husband in Dabhra, whereas, the appellants No.2 and 3 had separately residing in village Bardula. All the witnesses of prosecution are hearsay, therefore, their deposition has no relevance. It has been admitted by Narayan Sahu (P.W.-1) in his cross-examination that the appellant No.1 was employed in Jindal Steel Power Limited and was in Dabhra on the date of incident. Similar admission had been made by Bharti Sao (P.W.-2) in her cross-examination. Ramsingh (P.W.-3) and Janki (P.W.-4) are father and mother of the deceased, therefore, they are interested witnesses. It is submitted that no case is made out against the appellant No.2 and No.3 because

they are residing separately. Reliance has been placed on the judgment of Hon'ble Supreme Court in case of ***Voluntary Health Association of Punjab Vs. Union of India & Ors.***, reported in **(2013) 4 SCC 1**, ***Appasaheb and another Vs. State of Maharashtra***, reported in **(2007) AIR SC 763**, ***Pyare Lal Vs. State of Haryana***, reported **(1999) AIR SC 1563**, ***Rohtash Vs. State of Haryana***, reported in **(2012) AIR SC 2297** and in case of ***Bajnath Vs. State of Madhya Pradesh***, reported in **(2016) AIR SC 5313**. In all the cases, the Hon'ble Supreme Court has laid down in what manner the proof of cruel treatment and demand of dowry shall be admitted in such cases. It is prayed that the appellants be acquitted of the charges. It is prayed in the alternative that in case, this Court is not inclined to allow this appeal and acquit the appellants in that case, at least sentence imposed upon the appellants, which appears to be too harsh, may be reduced.

5. Counsel for the State opposes the grounds raised in appeal and the submissions made in this respect. It is submitted that the prosecution has proved its case beyond all reasonable doubts. It is submitted that all the witnesses of prosecution have very clearly stated that the deceased was subjected to torture for demand of dowry, therefore, it is clear case of dowry death and there is no room for interference in the impugned judgment. The appeal has no merit and no case is made out for acquittal or for reduction of the sentences. Hence, the appeal be dismissed.

6. I have heard the learned counsel for the parties and perused the record of the Court below.
7. The point in issue in this appeal is whether the prosecution has proved the charges against the appellants on the basis of the evidence beyond reasonable doubt?
8. There is no dispute in this case that the deceased Aarti Sahu died unnatural death within 7 years of marriage. The requirement of proof to show that it is a dowry death is limited to only this extent that there had been demand of dowry and deceased was subjected to torture and cruel treatment for same demand soon before her death. Therefore, this appeal will be considered on this limited point.
9. Ram Singh (P.W.-3) is the father of the deceased has stated that after 2-3 months of the marriage, the appellants started torturing the deceased saying that she has got less dowry and also demand of Rs.3.00 lakhs was made by way of dowry. He has stated that he made payments of Rs.50,000/- twice in the month of January, 2013. Thereafter, he made payment of Rs.1.00 lakhs in the month of February. Subsequently, the appellant No.1 started residing with the deceased on rented house in Dabhra, where the appellant No.1 was employed. Again on demand made, he made payment of Rs.75,000/- on 30.03.2013 and promised to pay the remainder Rs.25,000/- as soon as possible. He further stated that deceased told him, that she does not want

to reside with parents of the appellant No.1 i.e. appellant No.2 and No.3 because they were harassing her by not allowing her in kitchen and by not providing her with food. The witness then gave some advice and counsel to appellant No.1 and left for his place. Thereafter, on the same day, he received information about commission of suicide by the deceased. He has made general statement that the deceased had died because of torture given by all the appellants. In cross-examination, he has admitted that on 30.03.2013, he had been to village – Dabhara on call from the deceased and appellant No.1 and found both of them present in the house when he reached there. He has denied that he had been to Dabhara to make repayment of borrowed amount to the appellant No.1, otherwise his statement in examination-in-chief has remained un-rebutted in cross-examination.

10. Janki (P.W.-4) has generally stated that the appellants were making demand of Rs.3.00 lakhs and tortured the deceased. She has also stated about payments made by her husband (P.W.-3). She has stated that on further demand made, her husband had been to Dabhara to make payment of Rs.75,000/- to appellant No.1 and thereafter, when he was coming back, thereafter on the same day, she got the news. In cross-examination, she admitted that appellant No.1 and deceased used to reside in Dabhara whereas, the appellant No.2 and 3 resided in village – Bardula. She has admitted that no payment was made in her presence. She had denied that her husband has made repayment of

amount borrowed from appellant No.1. There is no such other statement in her cross-examination so as to hold that her statement made in examination-in-chief has contradictory.

11. Narayan Sahu (P.W.-1) has made general allegation of demand of dowry and torture given to the deceased. In cross-examination, he has admitted that appellant No.1 used to reside in Dabhara. Bharti Sao (P.W.-2) has made similar statement. Hemlal (P.W.-5) has stated that he had been in company with Ramsingh (P.W.-3), when he had been to Dabhara to the house of appellant No.1, where the deceased was also residing. He has also stated that in his presence, Ram Singh made payment of Rs.75,000/- to the appellant No.1 and thereafter, they left the place. In cross-examination, he has denied having knowledge that the payment made by Ramsingh was with respect to the repayment of borrowed money. He has not made any other statement regarding demand of dowry and torture given and also regarding unnatural death of the deceased. However, his statement partly supports the statement of Ram Singh (P.W.-3).
12. Subhash (P.W.-6) visited the place of incident and saw the deceased in hanging. Dolamani (P.W.-7) has made statement regarding demand of dowry by the appellants, their misbehavior and the torture given to the deceased, in general.
13. Jawahir Lal (D.W.-1) has stated before the Court that meeting was called by appellant No.1 in village Karrakot, where appellant

No.1 had alleged that he caught his wife, the deceased having sexual intercourse with brother-in-law of her elder sister and thereafter, the dispute was pacified in the same meeting. It was also discussed that Ram Singh (P.W.-3) had borrowed about Rs.1,25,000/- from appellant No.1 and he was informed by Ram Singh (P.W.-3) about making payment of Rs.75,000/- in this respect to the same borrowed money. In cross-examination, his statement could not be rebutted. This witness has put forth altogether new story. While examining the prosecution witnesses having knowledge of the affairs of the appellant and the deceased, not a single question was put in defence, leveling any allegation on the character of the deceased, neither any such question was put to them that discussion was made in the meeting that Ram Singh (P.W.-3) had borrowed any money from appellant No.1, therefore, this is an after thought statement, made by the defence witness Jawahir Lal (D.W.-1), which is without any relevance and it can not be relied upon. Therefore, this evidence is liable to be rejected.

14. After closely scrutinizing all the evidence of relevant witnesses of prosecution, the facts that seem to have been established are this that it was only appellant No.1, who had made demand of Rs.3.00 lakhs and all the payments that have been made were made to the appellant No.1 only. Ram Singh (P.W.-3) has also stated in his examination-in-chief that appellant No.1 demanded Rs.3.00 lakhs in dowry telling the reason that he has got big job.

No specific statement has been made by him that demand was made by appellant No.2 and No.3.

15. Ram Singh (P.W.-3) is the witness, who was demanded and who had made a partial payment, therefore, his statement has relevance hence on this basis it is clearly held that it is only appellant No.1, who has made demand. Another fact, which is established is this that the deceased was residing with her husband appellant No.1, whereas, the appellant No.2 and 3 were residing in village – Bardula. Incident and the commission of suicide has also taken place in village Dabhara. Therefore, there is no sufficient evidence against the appellant No.2 and 3 to make out a case of dowry death against them. However, such evidence is present and it is also beyond reasonable doubt against the appellant No.1. Therefore, on the basis of these findings, I am of this opinion that no case of acquittal of appellant No.1 is made out, whereas, the conviction of the appellant No.2 and 3 in this case appears to be bad-in-law. Therefore, the appeal is allowed in part.
16. The conviction against the appellant No.1 is upheld and whereas, the conviction and sentence against the appellant No.2 and appellant No.3 is set-aside. The appellants No.2 and 3 are acquitted of the charges. They are reported to be on bail, their bail bonds shall continue for a period of six months subject to the provisions of Section 437 of Cr.P.C.

17. Considered on the alternative prayer made for reduction of sentence against the appellant No.1. After considering all the facts and circumstances of the case the alternative prayer made for reduction of sentence is allowed. The conviction of the appellant No.1 under Section 304 -B of the Indian Penal Code recorded by the trial Court is maintained. Whereas, the sentence of imprisonment imposed by the trial Court is set-aside, instead of that, the appellant is sentenced with rigorous imprisonment of 7 years. The period of custody already undergone by him shall be subject to adjustment under Section 428 of Cr.P.C.
18. Accordingly, the appeal is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge