

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 01.12.2018

Judgment Delivered on : 07/01/2019

CR.A. No. 359 of 2013

1. Ramprem Yadav, S/o. Mangru Yadav, Aged About 22 Years
 2. Mangru Yadav, S/o. Sukhdeo Yadav, Aged About 45 Years
 3. Basmati Devi, W/o. Mangru Yadav, Aged About 40 Years,
 4. Sunaina, W/o. Sanjay Yadav, Aged About 22 Years
 5. Sanjay Yadav, S/o. Mangru Yadav, Aged About 25 Years,
- All R/o Village Pachawal (Siliyapara), P.S. Sanawal, Distt. Balrampur -
Ramanujganj (C.G.)

---- Appellants

Versus

State Of Chhattisgarh, Through – Station House Officer, P.S. Sanawal, District
- Balrampur - Ramanujganj (C.G.)

-----Respondent

For Appellants	: Mr. Shakti Raj Sinha, Advocate
For Respondent/State	: Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

07/01/2019

1. This appeal has been preferred against the judgment of conviction and order of sentence, passed by the learned Additional Sessions Judge Ramanujganj, District – Balrampur – Ramanujganj (C.G.), in

Sessions Trial 38/2010 on 07.03.2013, convicting the appellants for the offence under Section 304-B of the Indian Penal Code and sentencing them to under go R.I. for 10 years and fine of Rs.500/- and for the offence under Section 201/34 of the Indian Penal Code and sentencing them to under go R.I. for 3 years and fine of Rs.500/- with default stipulations.

2. The case of the prosecution is this that the marriage of the deceased Sarita Devi was performed on 26.04.2007 with the appellant No.1. About after one year, the appellants started making demand of fridge, cooler and cash of Rs.20,000/- from the deceased and on non fulfillment of the same, they treated the deceased with cruelty. Father of the deceased came to her matrimonial home and then he agreed to give a television to the appellants during Dussehra festival and then deceased went to her parental home on 07.07.2009. The appellant No.1 came to fetch the deceased in her parental home and took her with him. Only after two days i.e. on 09.09.2009, the deceased committed suicide by consuming some poisonous substance. Morgue intimation Ex.P-7 was recorded on the same day in the police station and inquest on the body of the deceased was conducted vide Ex.P-2. In the postmortem examination conducted on the body of the deceased vide Ex.P-8, it was reported that cause of death was asphyxia due to strangulation and the nature of the death of the deceased was reported to be homicidal. After completion of investigation, charge-sheet was filed before the concerned Court.

3. Appellant No.1 – Ramprem Yadav was separately charged for offence under Section 302 of I.P.C. and in alternative for the offence under Section 304-B/34, 201/34, 498-A/34 of the Indian Penal Code and rest of the appellants were charged with offence under Section 304-B/34, 201/34, 498-A/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 of Cr.P.C., they denied all the incriminating evidence against them and pleaded innocence and false implication. It was stated by the appellants that the deceased was insisting for going to her parental home and when she was refused, it was for this reason, she consumed poisonous substance and committed suicide. No witness was examined in defence. On completion of trial, judgment has been delivered, in which the appellants stand convicted and sentenced as mentioned aforesaid, whereas co-accused Ramnath Yadav was acquitted of all the charges against him and the appellant No.1- Ramprem Yadav was acquitted of the charge under Section 302 of the Indian Penal Code.
4. It is submitted by the learned counsel appearing on behalf of the appellants that the appellants have been erroneously convicted without there being the basis of evidence of prosecution beyond reasonable doubt. Although the marriage was performed on 26.04.2007, but the deceased went to live in her matrimonial home after one and half year. All the witness, who have stated against the appellants are related and interested witness, whereas, the neighbour had stated that the deceased and appellants had very

good relation between them. The death of the deceased had been a suicide for which none of the appellants can be held responsible, therefore, it is prayed that appeal be allowed and the appellants be acquitted of the charges against them

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. There is clear statement of Mukhdev Prasad Yadav (P.W.-7) and Sukhadi Yadav (P.W.-9) that the deceased was subjected to torture and cruel treatment for demand of dowry, therefore, the death of the deceased is dowry death for which the appellants are responsible. Hence there is no room for interference in the impugned judgment, 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 appellant on the basis of the evidence beyond reasonable doubt?
8. It is not disputed that the deceased has died within seven years of marriage and her death had been suspicious and the evidence in this regard needs no consideration. The only point to be considered is whether there had been any demand of dowry made by the appellants soon before her death, so as to make out an offence under Section 304-B of the Indian Penal Code.

9. Vishwanath Yadav (P.W.-1) has stated that the deceased Sarita Yadav committed suicide by consuming some medicine. He has not supported the prosecution case for which he has been declared hostile and he has made statement in his cross-examination that the deceased was treated fairly by her husband and in-laws and he had never heard about any quarrel or dispute. Banwari (P.W.-2) is also hostile witness, who has not supported the prosecution case and on the contrary, he has made statement in cross-examination that he never heard about quarrel or dispute between the appellants and the deceased neither heard about torture or cruel treatment given to the deceased. Vishwanath (P.W.-4) is acquaintance of the appellants, who has stated that the deceased committed suicide by consuming poison and has not made any other statement. Smt. Kaushilaya (P.W.-5) is neighbour of the appellants, who has not made any statement against the appellants.
10. Mukhdev Prasad Yadav (P.W.-7) is the uncle of the deceased. He has stated that the deceased lived in her matrimonial home for about one year comfortably but on 07.06.2009, he was informed and called by the deceased on mobile phone to her place and when the witness went to the residence in the next day, it was told by the deceased that the appellants and others were making demand of television, fan, cooler, and cash of Rs.20,000/- and threatened that if the demand is not fulfilled, they will drive her away from their house. This witness then talked to the appellant No.2 asking why he is making such demand, then he said that as they have facility of electricity, therefore, they have asked for such things. This witness

then informed about this demand to his brother Sukhadi Yadav (P.W.-9) and then he was informed that the deceased has expired on 09.09.2009. In cross-examination, he has though stated that the deceased made statement of demand in his presence and then he talked to the appellant for the first time. In his previous statement Ex.D-3, he has clearly stated that the appellant No.2 had made the demand of articles and cash as he is having electrical facility, therefore, the demand has to be fulfilled. Hence, it can not be said that he has made any improvement in the statement made before the Court, his statement has remained intact compared to his previous statement Ex.D-3, therefore, this part of statement given by him is totally reliable, which is sufficient to hold that just two days before the incident of suspicious death of the deceased, the appellants had made demand of articles and cash in dowry.

11. Sukhadi Yadav (P.W.-9) is the father of the deceased. He has stated that after about one year from the date of marriage, the appellant started making demand of fan, television, fridge and cash of Rs.20,000/- in dowry. His daughter informed about this demand to her uncle Mukhdev Prasad Yadav (P.W.-7), who in turn informed this witness about the demand of dowry. He has stated that then he met with the father-in-law of the deceased and asked her why he is making such demand and then he was told that now in the village has electricity, therefore, he has to give all the articles. Thereafter, having some talks, he agreed to give C.D. and television during Dussehra festival and brought his daughter to parental home. While the deceased stayed in parental home for about one month, the

appellant No.1 came to fetch the deceased and gave assurance that the deceased shall be kept comfortably, thereafter, he heard the news of death of the deceased. In cross-examination, he has admitted that there had been no dispute during the marriage of the deceased with the appellant No.1 and also admitted that before the demand was made, the deceased was living happily in her matrimonial home. He has denied all the adverse suggestion given in the cross-examination.

12. Mohlatiya Devi (P.W.-10) has stated that her daughter Sarita used to have quarrel with her sister-in-law in the matter of cooking, she has made clear statement that the appellants were not at fault anywhere. As she has not supported the prosecution case, she was declared hostile by the prosecution and was cross-examined in which she has denied about any demand of dowry made by the appellants.
13. The evidence of those witnesses have been scrutinized, who are reliable for consideration as to whether there was any demand of dowry soon before the death of the deceased and whether that demand could have been the reason of suspicious death of the deceased. On making analysis of the evidence, it appears that, if the statement of Mukhdev (P.W.7) is to be taken as it is, it can be held that there was some demand three months prior to the date of incident. But according to the evidence some events have happened, in which the appellant No.1 came to the parental home of the deceased to fetch her and he took her after giving assurance

for keeping her safely. Such statement is being made only by the father, Sukhadi Yadav (P.W.-9) and uncle Mukhadev Prasad Yadav (P.W.-7) of the deceased, whereas, the mother of the deceased being the member of the same family and who is supposed to know about the incident of demand soon before the death of the deceased has clearly not supported the prosecution case. Rest of the witnesses, who are neighbors and acquaintance have also said that they have never heard any quarrel or dispute between the appellants and the deceased.

14. Another things that gives surprise, is this that for almost up to one year after the marriage, there was no demand and all of a sudden, it is alleged that the appellants started making demand of dowry, which does not appear to be convincing statement, therefore, after over all consideration on the evidence on the point of demand of dowry from the deceased, it appears that evidence brought by the prosecution does not inspire confidence of this Court. Hence, on the basis of these findings, it is held that the conviction under Section 304B of the I.P.C. is not made out.
15. Similarly conviction of the appellants under Section 201 of the Indian Penal Code also appears to be without any basis, as the charge had been that the deceased was murdered and this fact was suppressed and it was shown that the deceased had committed suicide by consuming some poisonous substance. This finding given in the impugned judgment appears to be baseless for the reason that the appellant No.1, who was charged with Section 302

of the Indian Penal Code has been acquitted of the charge. Hence, on this basis, it can not be held that the deceased was murdered therefore, charge under Section 201 of the Indian Penal Court regarding causing disappearance of evidence of murder also stands not proved. Therefore, the conviction of the appellants under Section 201 of the Indian Penal Code is bad-in-law.

16. After due consideration on all the grounds raised in this appeal and the evidence present on record of the trial Court, I am of this opinion that the prosecution has failed to prove its case against the appellants, therefore, the appellants are entitled for acquittal. Hence, the appeal is allowed and all the appellants are acquitted of the charges framed against them. The appellants No.3, 4 and 5 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. The appellants No.1 & 2 are reported to be in jail, therefore, they be set at liberty forthwith, if not required in any other case.

Sd/-
(Rajendra Chandra Singh Samant)
Judge