

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-01-2020

Delivered on 05-03-2020

CRA No. 760 of 1999

- Vinod Kumar aged about 30 years, son of Ramayan Das Vaishwar, resident of village Budikhar, Masturi, District Bilaspur MP (Now CG).

---- Appellant.

Versus

- The State of Madhya Pradesh (Now State of CG).

---- Respondent

For Appellant : Ms. Preeti Jha, Advocate appears as
Amicus Curiae

For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 19-2-1999 passed by 6th additional Sessions Judge, Bilaspur, in Sessions Trial No. 206 of 1997 wherein the said Court has convicted the appellant for commission of offence under Section 304-B of the IPC 1860 and sentenced him to undergo rigorous imprisonment for seven years.

2. In the present case, name of the deceased is Pramila @ Guddi who was married to appellant Vinod Kumar in the year 1992. The deceased died on 30-3-1997 due to burn injuries. As per

version of prosecution, appellant demanded Rs.50,000/- as dowry after marriage and harassed the deceased that is why deceased died other than in normal circumstances due to burn injuries. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant submits as under:

- i) Mathura Das (PW/1) deposed (para 3) before the trial court that the appellant demanded Rs.50,000/- for construction of wall and toilet, therefore, it is not a case of demand of dowry but he was just seeking financial assistance from in-laws.
- ii) There is no connecting piece of evidence as to what really happened on the date of incident or prior to the date of incident which was cruelty on the part of the appellant.
- lii) If the evidence of harassment on the part of appellant is lacking, case of the

prosecution is not established.

- iv) The trial court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

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

6 PW/1 Madhura Das is father of the deceased. As per version of this witness appellant demanded Rs.5,000/- for opening shop of stationery items and he gave Rs.5000/- to him. Again he demanded Rs.50,000/- for construction of wall and toilet but this witness informed the appellant that he is unable to provide that much of money. Jhoolbai (PW/2) is mother of the deceased. As per version of this witness, it is not established that demand was made as dowry. For commission of offence under Section 304-B of IPC, it has to be established that any demand of dowry was made which is consideration for solemnizing the

marriage, therefore, version of parents and brother namely Ramnarayan Das (PW/7) regarding demand for construction of wall and toilet cannot be termed as dowry. Gokul Das (PW/8) and Manharan Das (PW/9) deposed different story which is contrary to the story deposed by the family members of the victim. These witnesses are residents of villages Jakola and Chhurighat which are different villages from the place of incident i.e., Budhikhaar, therefore, version of these witnesses is not supportive piece of evidence for commission of crime.

7) PW/1 Madhura Das, PW/2 Jhoola Bai and Ramnarayan (PW/7) are residents of village Dongrigarh, therefore, they have no occasion to see as to what was really going on in the house of the deceased. There is no evidence as to what really happened on the date of incident or prior to the date of incident, therefore, harassment on the part of the appellant is not established. It is settled law that there is long distance between “may be true” and “must be true”. Again, it is settled law that graver the offence, stricter the proof. Commission of offence of dowry death prescribes deterrent punishment, therefore, evidence has to be adduced to satisfy the conscience of the court. On an overall assessment, demand of dowry and harassment on the part of the appellant is not established.

8) Accordingly, the appeal is allowed. Conviction of the appellant under Section 304-B of IPC 1860 is set aside. The appellant is

acquitted of the said charge framed against him. The appellant is reported on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of IPC.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju