

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29.11.2019

Delivered on 10.01.2020

Criminal Appeal No.1073 of 1999

Kamal Birha, S/o. Chhotelal Birha, aged about 30 years,
Cultivator, R/o. Indra Nagar, Dongargarh, Police Station
Dongargarh, Distt. Rajnandgaon

---- Appellant

Versus

- State Of Madhya Pradesh (Now Chhattisgarh)

---Respondent

For appellants : Shri Atul Kumar Kesharwani, Advocate
For respondent/State: Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 22.3.1999 passed by Second Additional Sessions Judge, Rajnandgaon (MP) (Now Chhattisgarh) in Session Trial No.82/1996 wherein the said Court convicted the appellant for commission of offence under Section 304B of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years.

2. In the present case, name of the deceased/victim is Uma Bai. She was married with the appellant on 03.3.1996 and died on 08.4.1996. The place of incident is Indira Nagar, Ward No.4, Dongargarh. It is alleged that the appellant committed cruelty against the deceased in connection with demand of dowry that is

why report was lodged and the matter was investigated. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Durga Bai (PW-1), mother of the deceased, did not depose before the trial Court regarding harassment by the appellant. Shakun Bai (PW-2) deposed before the trial Court that the deceased did not make any complaint before her. Raju Bhallu Goutam (PW-6), brother of the deceased, deposed before the trial Court (para 10 & 11) that his version is not recorded by the investigating officer. Baban Puran Goutam (PW-7) deposed (Para 7) that the deceased did not state before him regarding demand of golden chain by the appellant. Ashok Dalchand Rahukar (PW-8) deposed (para 10) that he did not state before the investigating officer regarding harassment by the appellant. Charan Rammu Karse (PW-9) deposed that the deceased might have died due to non-fulfillment of demand of dowry, but his version is shaky in nature.

(ii) Raja (PW-10) deposed before the trial Court that at the time of the incident, door of the room was closed from inside and the same was broken by the appellant and he also tried to douse the fire on the deceased. Again the appellant took the deceased to the hospital which shows his innocence.

(iii) Pappu Karse (PW-11) deposed that he also tried to douse the fire on the deceased and there was no quarrel between the deceased and the appellant and relation between them was cordial. Ganga Bai Goutam (PW-13) deposed (para 6-7) that she

did not make statement before the investigating officer. Learned counsel for the appellant submits that from the entire evidence, demand of dowry was not established, 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 marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Durga Bai (PW-1) is the mother of the deceased. She did not depose regarding demand by the appellant. She further deposed (para 7) that her daughter did not inform regarding harassment by in-laws. She further deposed that the deceased did not complaint against the appellant (para 12). Mohan Goutam (PW-5) deposed before the trial Court (para 2) that the deceased informed him regarding demand of one golden chain and Rs.10,000/- by the appellant. But this witness did not depose regarding any account of harassment against the deceased. Raju Goutam (PW-6) deposed before the trial Court regarding information of the deceased regarding demand of golden chain and Rs.10,000/-, but this witness also did not depose regarding the nature of harassment on the part of the appellant. Baban (PW-7) also deposed regarding information of demand given by the deceased but he is not able to tell regarding any harassment.

Ashok (PW-8) deposed that the deceased informed his wife regarding harassment by in-laws. This witness is also not able to state as to what really happened between the deceased and the appellant in the matrimonial house. Charan (PW-9) and Ganga Bai (PW-13) also deposed regarding demand of dowry as informed to them by the deceased, but they are not able to state the nature of harassment on the part of the appellant. Dr. Sanjay Bakshi (PW-15) who conducted the autopsy of the deceased opined that the death is caused due to shock arise out of severe burn injuries.

7. Case of the prosecution is based on presumption that it is a case of suicide. In a dowry death, either the death is homicidal or suicidal. Accidental death would not come under the purview of dowry death. If the death is suicidal and the same is independent act of the deceased, then the appellant is not required to explain such death. For requiring the explanation of the appellant it has to be established that the death is caused due to active act of the appellant and for that *mens rea* has to be proved. Every death within seven years of the marriage is not dowry death. Mere demand of dowry is not dowry death. Mere demand of dowry is not sufficient to term as dowry death. Crucial point is whether the deceased was subjected to cruelty on account of non-fulfillment of demand which lead the death of the deceased. From the entire evidence, it is not clear as to what kind of harassment was done by the appellant. There is no evidence of physical violence on the part of the appellant. There is no proof of active act from the part

of the appellant which may be termed as harassment or cruelty. The harassment has to be with definite object namely to coerce the woman or any person related to her to meet any unlawful demand. Mere demand as stated by the witnesses would by itself is not sufficient to bring home the guilt. Therefore, in absence of evidence of harassment or cruelty, charges of dowry death is not established against the appellant as per the factual position of the present case. The finding should be on the basis of objective assessment, but that is not the case here. Therefore, finding recorded by the trial Court is not sustainable.

8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges under Section 304B IPC. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE