

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 26.11.2019

Delivered on 10.01.2020

Criminal Appeal No.1262 of 1999

1. Maniram S/o. Shiv Prasad Satnami, aged about 50 years
(Deleted)
2. Ram Dulari W/o. Maniram, aged about 47 years,
3. Manish Kumar, S/o. Maniram, aged about 17 years,
4. Mahesh, S/o. Maniram Sonwani, aged about 18 years,
5. Suresh Sonwani, S/o. Maniram, aged about 25 years (Deleted)
All cultivators and residents of village Chhotikoni, Police Station
Koni, District Bilaspur (MP) (Now Chhattisgarh)
6. Smt. Surjabai, W/o. Kheekharam, aged about 23 years, R/o.
Village Bhaiso, Police Station Pamgarh, District Bilaspur (MP)
(Now Chhattisgarh)

---- Appellants

Versus

- State Of Madhya Pradesh (Now Chhattisgarh)

---Respondent

For appellants : Shri Sunil Sahu, Advocate
For respondent/State: Shri Aman Kesharwani, Panel Lawyer

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

1. The appeal is directed against judgment dated 19.4.1999 passed by Second Additional Sessions Judge, Bilaspur (MP) (Now Chhattisgarh) in Session Trial No.245/1998 wherein the said Court convicted all the appellants for commission of offence under Section 304B of the Indian Penal Code, 1860 and sentenced them to undergo rigorous imprisonment for seven years.

2. In the present case, name of the deceased/victim is Tulsa Bai who was the wife of Suresh Sonwani. The said deceased was

married to appellant Suresh since 1 ½ years of the incident. It is alleged that the appellants harassed the deceased after marriage for bringing less dowry. The deceased died within seven years of the marriage other than normal circumstances, that is why the case was registered against the appellants and they have been charge sheeted. After completion of the trial, the appellants have been convicted as mentioned above.

3. During the pendency of the appeal, husband of the deceased namely Suresh died and his appeal has finally abated. Appellant Maniram has also died and his appeal is also abated on account of his death. Now the appeal is being heard for appellants Ramdulari, Manish Kumar, Mahesh Kumar and Smt. Surjabai. Ramdulari is mother-in-law of the deceased, Maneesh Kumar and Mahesh Kumar are the younger brothers of the husband of the deceased and Smt. Surja Bai is sister of husband of the deceased.

4. Learned counsel for the appellants submits as under:

(i) The prosecution has not exhibited the dying declaration (Ex-D/4) of the deceased and has also not examined the Executive Magistrate who recorded the dying declaration.

(ii) The statement of the prosecution witnesses are full of contradictions and omissions, therefore, their statements ought to have disbelieved and finding of the trial Court may be set aside.

5. On the other hand, learned counsel for the State while 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.

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

7. Now the question for consideration before this Court is whether the appellants have harassed the deceased for non-fulfillment of demand of dowry soon before her death. Birsingh (PW-4) is father of the deceased. As per the version of this witness, the deceased informed him that the appellants are harassing her for bringing less dowry and also for not giving cow and paddy and they are also harassing her for bringing the articles of low quality. Kavita Krishna (PW-5) also deposed on the basis of information given to her by the deceased. Triloki Chand (PW-7) also deposed on the basis of the information given to him by the deceased. Manharan (PW-8) also deposed on the basis of the information given to him by the deceased. All these witnesses are the relatives of the deceased and they have no occasion to see as to what was really going on in the matrimonial house of the deceased. Their version is rebutted by the dying declaration recorded by Executive Magistrate on 16.02.1998 as per Ex-D/4. In her dying declaration, the deceased declared that there was no quarrel with her in-laws and they have maintained her properly and she herself set ablaze on her own will and her act is independent act.

8. Dying declaration is recorded during the investigation and the same is binding on the prosecution. The dying declaration is

rebutting the facts of any kind of harassment. Therefore, statement of the prosecution witnesses regarding harassment by the appellants cannot be acted upon.

9. After reassessing the entire evidence, it is not proved that the death of the deceased is caused due to harassment on account of dowry, therefore, finding of the trial Court is not sustainable.

10. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellants are acquitted of the charges under Section 304B IPC. The appellants are reported to be on bail. Their 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