

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 06.02.2020

Delivered on 05.3.2020

Criminal Appeal No.358 of 2011

1. Raj Dewangan @ Raju, S/o. Chhotelal Dewangan, aged about 24 years,
2. Chhotelal Dewangan, S/o. Raruha Prasad Dewangan, aged about 65 years,
3. Pinki Dewangan, D/o. Chhotelal Dewangan, aged about 19 years,

All are R/o. Telipara, RK Boot House, Gali No.3, House of Khoblal Sahu, Police Station Kotwali, District Bilaspur (CG)

---- Appellants

Versus

State of Chhattisgarh, through the Arakshi Kendra City Kotwali, District Bilaspur (CG)

---Respondent

For the appellants : Ku. Sharmila Singhai and Shri
Kawaljeet Singh, Advocates

For the respondent/State : Shri Afroj Khan, Panel Lawyer

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

1. This appeal has been preferred against judgment dated 21.4.2011 passed by First Additional Sessions Judge, Bilaspur (CG) in Session Trial No.189/2010 wherein the said Court convicted the appellants for commission of offence under Section 304B of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for 07 years.

2. In the present case, name of the deceased is Smt. Santoshi Bai. As per the version of the prosecution, marriage of Santoshi Bai was solemnized with appellant No.1 Raj Dewangan @ Raju on 23.01.2002. After marriage, she was residing with the appellants at Telipara, Bilaspur. It is alleged that after the marriage, the deceased being subjected to cruelty by the appellants in connection with demand of dowry. On 19.7.2010 the deceased sustained burn injuries and she died on 20.7.2010. Father of the deceased namely Janak Ram (PW-7) lodged FIR on 19.7.2010. The matter was investigated and the appellants were charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits as under:

(i) As per the version of Janak Ram (PW-7), who is the father of the deceased, (para 6), the deceased did not make dying declaration before Tahsildar, therefore, dying declaration recorded in the present case is doubtful.

(ii) As per the version of Vishnu Prasad (PW-9), the deceased was unconscious when they reached to the hospital which also indicates that no dying declaration was recorded.

(iii) Sister of appellant No.1 Raju is married to Vishnu Prasad and she was not examined who also reached to the hospital after getting information of burning of the deceased.

(iv) The doctor who gave certificate regarding fitness of the victim is not examined before the trial Court.

(v) Dying declaration is not signed by the victim and there was no thumb impression of the victim.

(vi) Appellant Raju has two sisters, but in the dying declaration it is not clear against whom the deceased made dying declaration, therefore, it cannot be said that appellant Pinki involved in commission of crime.

(vii) The trial Court has overlooked the material aspects of the matter, 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 judgment impugned and the record.

6. Janak Ram (PW-7) is father of the deceased. As per the version of this witness, after the marriage, the deceased informed him that the appellants demanded Rs.1 lakh in cash and motor cycle and the deceased asked him to satisfy their demands, otherwise they will harass her. Version of this witness is

supported by version of Vishnu Prasad (PW-9). There is nothing on record to show that these witnesses have falsely deposed against the appellants. Their version is unrebutted, therefore, it is a case of demand of dowry.

7. Dr. AS Khan (PW-12) conducted autopsy of the deceased on 20.7.2010 at District Hospital, Bilaspur and noticed following injuries:-

- (i) Contusion in reddish pink colour present in the left elbow of 3 ½" x 2"
- (ii) Contusion in reddish colour present in the left shoulder of 2" x 2"

As per the version of this witness, both injuries were caused by hard and blunt object and duration is within 12 hours of the examination. This witness opined that cause of death of the deceased is 90% - 95% burn resulted to shock. Time of the death was within 12-24 hours of the examination.

8. In the present case appellant No.1 Raju is the husband of the deceased and she was in custody of the deceased. He did not offer any explanation. One dying declaration was recorded in the present case by Executive Magistrate GR Mahilange (PW-14) and as per the dying declaration (Ex-P/14), appellant Chhotelal Dewangan, who is father-in-law of the deceased, is also involved in harassing the deceased. Therefore, it shall be presumed that both have harassed the deceased and they caused dowry death

as per presumption of dowry death under Section 113B of the Indian Evidence Act, 1872.

9. So far as appellant Pinki is concerned, the deceased in her dying declaration (Ex-P/14) did not name her, but mentioned only sister-in-law (nanand). Janak Ram (PW-7) is resident of village Takhatpur and Vishnu Prasad (PW-9) is also the resident of village Takhatpur while the incident took place at Telipara, Bilaspur, therefore, these witnesses have no occasion to see what really happened in the house of the appellants and whether appellant Pink had any role in harassing the deceased.

10. Taking into consideration the totality of the facts, it is not safe to record conviction against appellant Pinki, therefore, her conviction is not liable to be sustained. Accordingly, her conviction and sentence is hereby set aside. She is acquitted of the charge under Section 304B of IPC. As per the report, she is on bail. Her bail bonds shall continue for further period of six months from today as per section 437(A) of CrPC.

11. Considering the totality of the case, conviction of appellants Raj Dewangan and Chhotelal Dewangan is hereby affirmed. The trial Court awarded sentence of 07 years which is minimum prescribed for the said offence. Less than minimum cannot be awarded. Therefore, sentence part is not liable to be interfered with. Accordingly, the appeal filed on their behalf is liable to be

and is hereby dismissed. As per the report of the jail authorities, both these appellants have been set free from jail on 16.3.2016 and 27.02.2016 respectively after full term getting the benefit of remission, therefore, no further order for their arrest etc. is required.

12. With these modifications, the appeal is allowed in part.

Sd/-

(Ram Prasanna Sharma)

JUDGE