

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27.11.2019

Delivered on 10.01.2020

Criminal Appeal No.228 of 2015

- Rakesh Adwani S/o Manohar Adwani Aged About 28 Years R/o Kashyap Colony, Bilaspur, Police Station City Kotwali, Civil And Rev. Distt. Bilaspur, Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur, Civil And Rev. Distt. Bilaspur, Chhattisgarh

---Respondent

For appellant : Shri Vinay Dubey, Advocate
 For respondent/State: Smt. Shubha Shrivastava, Panel Lawyer

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

1. The appeal is directed against judgment dated 11.12.2014 passed by Fourth Additional Judge to the Court of First Additional Sessions Judge, Bilaspur (Chhattisgarh) in Session Trial No.173/2013 wherein the said Court convicted the appellant for commission of offence under Section 304B read with 34 of the Indian Penal Code, 1860 and sentenced him to undergo rigorous imprisonment for ten years.

2. In the present case, the appellant was charge sheeted along with other co-accused persons on the ground that he was married to one Soumya Advani and after marriage he committed cruelty against her in connection with demand of dowry as a result of which on 10.6.2013 in the evening at about 4.20 pm she died

under unnatural circumstances by committing suicide. As per the autopsy report, death of the deceased was suicidal in nature. The matter was reported and investigated and after completion of investigation, the appellant and other accused persons were charge sheeted. After completion of the trial, the appellant has been convicted and sentenced as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Case of the prosecution is based on circumstantial evidence and the evidence collected by the prosecution does not form a complete chain to hold that the appellant was guilty for the said offence.

(ii) It is sound rule of law that suspicion cannot take place legal proof and the circumstances so relied must be of conclusive nature.

(iii) At the time of the enquiry of the death of the deceased, the statement of the relatives of the deceased were recorded and they have not stated anything against the appellant that he committed cruelty for demand of dowry.

(iv) The deceased could not conceive, she was medically examined and she was suffering from some severe gynecological problem as a result of which chances of conceiving by her was very least. That is why she went into psychological depression.

(v) The trial Court has not evaluated the evidence in its right perspective, therefore, the 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. Now the question for consideration of this Court is whether any demand of dowry was made by the appellant and whether the deceased was subjected to harassment soon before her death by the appellant. To substantiate the charges, the prosecution has examined as many as 14 witnesses. Radhakishan Wadhwani (PW-4) is the father of the deceased. As per the version of this witness, no demand was made by the appellant's side regarding dowry at the time of the marriage. He further deposed that (para 13 & 14) whatever articles were given at the time of the marriage was given at the mercy of this witness. This witness is not sure about the cause of death of the deceased. He deposed (para 17) that death of the deceased may be caused due to dowry, but this witness himself is not sure as to what is the real cause of the death of the deceased. This witness admitted (para 21) that his daughter was issue-less. Varsha Ramani (PW-6) deposed before the trial Court that no conversation took place regarding dowry and she did not ask as to what the real conversation between both side regarding dowry. This witness further deposed that (para 23) the deceased did not inform her regarding

harassment on account of dowry. As per the version of this witness, no complaint was made regarding dowry. Manoj Kumar Jiwnani (PW-7) deposed before the trial Court that he met with the deceased once at Baikunthpur where she informed that her in-laws and the husband are harassing her for dowry. Version of this witness is general statement and from his version it is not clear as to what really happened with the deceased at the matrimonial house. Satish Wadhwani (PW-8) deposed before the trial Court (para 6) that father of the deceased gave Rs. 01 lakh to the appellant, but he did not hear the conversation between the appellant and his father-in-law. Sonam Nemani (PW-9) deposed before the trial Court that the deceased was engaged in house hold work in her matrimonial house and the deceased informed her that she has been harassed for dowry. But from the statement of this witness, it is not clear as to who really harassed the deceased and what was the nature of harassment. Smt. Asha Wadhwani (PW-11) deposed before the trial Court (para 2 & 4) that the deceased informed her regarding harassment by the appellant and her in-laws regarding dowry.

7. The defence side also examined Dr. Rashmi Budhia (DW-1), Smt. Abha Chawla (DW-2), Prahlad Ahuja (DW-3) and Sunil Lalwani (DW-4). As per the version of Dr. Rashmi Budhia (DW-1), she examined the deceased and found that due to poly cystic ovarian syndrome, there was hormonal imbalance that is why her menstrual period was not regular and such type of patients may go into mental depression. She further deposed that such type of

woman had the tendency of suicide. Smt. Abha Chawla (DW-2) and Sunil Lalwani (DW-4) deposed before the trial Court that due to not conceiving the deceased was under depression and she informed them regarding depression.

8. For establishing the charges under Section 304B IPC, it has to be proved that cruelty or harassment is done in connection with demand of dowry and such cruelty is meted out to the deceased soon before her death. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet any unlawful demand of dowry. Mere demand is not sufficient to establish the charges under Section 304B IPC. In the present case, father of the deceased himself admitted that no complaint was made by the appellant or his relatives regarding dowry after marriage. No one deposed before the trial Court as to what really happened with the deceased on the date of incident or prior to the date of incident. No evidence of physical violence against the deceased is established by the medical evidence. Statement of the witnesses is based on information given by to them by the deceased but the same is not substantive piece of evidence because it is hear-say in nature. No one met the deceased prior to the incident to establish that the steps taken by the deceased was as a result of the constant harassment by the appellant. Version of the defence side is admitted by the prosecution that the deceased did not conceive after marriage and as per the version of Dr. Rashmi Budhia (DW-1), the deceased

was suffering from gynecological problem and was under treatment from the said doctor.

9. Looking to the entire evidence on record, the defence version is also a probable version. Therefore, it cannot be assessed that her depressed mental statement was result of the ill treatment on the part of the appellant. Looking to the factual and legal position of the instance case, death of the deceased cannot be termed as dowry death. The Finding arrived at by the trial Court is not sustainable.

10. 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 in jail. He be released forthwith if not required in any other case.

Sd/-
(Ram Prasanna Sharma)
JUDGE