

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 02.12.2019****Delivered on 30.01.2020****Criminal Appeal No.1110 of 1999**

1. Sudhuram Sahu, Son of Pyari Sahu, aged about 50 years, **(Dead and deleted)**
2. Bhikham Sahu, Son of Sudhuram Sahu, aged about 35 years,
3. Sukhmati Sahu, Wife of Sudhuram Sahu, aged about 45 years,

All R/o. Village Amera, Police Station Palari, District Raipur M.P. (Now Chhattisgarh)

---- Appellants**Versus**

State Of Madhya Pradesh (Now Chhattisgarh)

---Respondent

For appellants : Shri Rahil Kochar, 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 08.4.1999 passed by Second Additional Sessions Judge, Baloda Bazar, Distt. Raipur (MP) (Now Chhattisgarh) in Session Trial No.163/1998 wherein the said Court convicted 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 and to pay fine of Rs.1000/- each with default stipulations.

2. In the present case, name of the deceased/victim is Yogita Bai Sahu who died on 20.02.1998 at 9.30 am at village Amera by consuming poisonous substance. It is alleged that the appellants harassed her on account of dowry that is why she committed suicide by consuming poison. Her death occurred other than normal circumstances. The matter was reported and investigated and the appellants were charge sheeted and convicted as mentioned above.

3. During the pendency of this appeal, appellant No.1 - Sudharam died and appeal filed by him finally stands abated as per order of this Court dated 29.6.2016.

4. Learned counsel for the appellants submits as under:

(i) Marriage between the deceased and Bhikham Sahu took place since 08 years of the incident, therefore, it is not a case under Section 304B IPC.

(ii) Though Narayan Prasad Sahu (PW-9) deposed before the trial Court (para 1) that the deceased informed him regarding demand of Rs.10,000/- by mother-in-law of the deceased, but this version is not stated by him before the investigating officer while recording his statement under Section 161 CrPC which is exhibited as D/2. Therefore, his version regarding demand of dowry is not acceptable.

(iii) From the evidence of Kanhaiyya (PW-1) and Narayan Prasad Sahu (PW-9) it is not established that any harassment was done by any of the appellants soon before her death and therefore, charge under Section 304 B IPC is not established.

(iv) The trial Court has not recorded finding regarding demand of dowry and harassment on non-fulfillment of demand, therefore, finding of the trial Court is not liable to be sustained.

5. 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.

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

7. First question for consideration before this Court is whether any demand of dowry was made by the appellants as defined under Section 2 of the Dowry Prohibition Act, 1961. To substantiate the charges, the prosecution has examined as many as 11 witnesses. The only witness who deposed regarding demand is Narayan Prasad Sahu (PW-9). As per the version of this witness, he met with the deceased at the time of festival Pola where the deceased informed him that her mother-in-law demanded Rs.10,000/-, but version of this witness is contradictory to his earlier statement (Ex-D/2) which is recorded under Section 161 CrPC., in which facts of such demand is not mentioned. It is the quality of the evidence which has to be weighed. When a witness is stating different version in different occasion, his statement is not dependable because it is settled law that greater the offence heavier the burden to prove. There is long mental distance between 'may be true' and 'must be true'.

The evidence should be categorically must be true. When this witness, who is the father of the deceased, did not state demand at the time of investigation, his improved version is acted upon only when any proper explanation is given for the same. But no explanation was given by this witness, therefore, his version regarding demand of dowry is not acceptable.

8. The second question for consideration is whether any of the appellants harassed the deceased soon before her death on non-fulfillment of demand of dowry. In the present case, place of incident is village Amera. Kanhaiyya (PW-1) is the resident of village Amera and as per the version of this witness, the deceased informed him that the appellants have not harassed her, but she was harassed by some other persons. Narayan Prasad Sahu (PW-9), who is the father of the deceased, is the resident of village Bhatbera and had no occasion to assess as to what was going on in the matrimonial house of the deceased. By the statement of this witness, harassment by any of the appellants is not established. This witness has stated during investigation (Ex-D/2) that on his asking, the deceased once replied to him that the appellants have not harassed her.

9. Looking to the entire evidence, harassment by any of the appellants to the deceased is not established, therefore, 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 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

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