

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19-12-2019
 Delivered on 30-01-2020

CRA No. 90 of 2001

- Jeevan Dash s/o. Jamuldash Satnami, aged 24 years, resident of Telibandha, Raipur, Police Station Civil Line, Raipur, Dist. Raipur (CG).

---- Appellant

Versus

- The State of Chhattisgarh.

---- Respondent

 For Appellant : Mrs. Savita Tiwari, Advocate
 For respondent/State : Mr. Ishwar Jaiswal, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 10-01-2001 passed by the Sessions Judge, Raipur (CG) in Sessions Trial No. 146 of 1998 wherein the said Court has convicted the appellant for commission of offence under Section 304 Part B of IPC 1860 (dowry death) and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.500/- with default stipulations.

2. As per version of the prosecution, name of the deceased is Hemabai who was wife of the appellant. It is alleged that the appellant demanded Rs.10,000/- as dowry from the

victim/deceased Hemabai and due to non-fulfillment of demand, he harassed her. The deceased died due to burn injuries other than in normal circumstances. The matter was reported and investigated. After completion of trial, the appellant was charge-sheeted and convicted as aforementioned.

3. Learned counsel for the appellant would submit as under:

- i) The trial court has overlooked the fact that the appellant spent Rs.10,000/- when deceased was admitted in hospital which shows that she was beloved lady for the family of the appellant.
- ii The trial court committed error in holding that the appellant had beaten the deceased which shows harassment on the part of the appellant.
- lii) Finding of the trial court is beyond the fact and legal aspect of the matter, therefore, same is liable to be set aside.
- iv) The trial Court has not evaluated the evidence properly, 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 marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The first question for consideration of this court is whether the appellant demanded dowry from the deceased as defined in Section 2 of the Dowry Prohibition Act, 1961.

7. PW/1 Mungilal deposed before the trial court that the appellant was demanding Rs.10,000/- from the family of the deceased which was spent by him during delivery of the deceased. If the evidence on record is entirely accepted as it is, such demand of money which is spent by appellant in treatment of the deceased is not dowry as defined in Dowry Prohibition Act, 1961. Dowry is related to consideration of marriage. Any other expense is not equivalent to dowry, therefore, the only thing which is established against the appellant is that he demanded money unlawfully. The deceased was wife of the appellant, therefore, appellant was under obligation to spend money for her treatment. This money cannot be demanded from some other persons because after marriage the husband is duty bound to maintain wife and spend money for her treatment. In view of the above, it is

recorded that demand made by the appellant was unlawful demand.

8. From the statement of Chandan Singh Netam (PW/6), it is established that the appellant assaulted deceased at one point of time at his home and fled away. Version of this witness is supported by version of Subhulal (PW/10). As per version of Subhulal (PW/10) deceased informed him regarding harassment by the appellant. PW/11 Preet Kumar is neighbour of the deceased who deposed that there was quarrel between the appellant and the victim for demand of amount of treatment to the tune of Rs.10,000/-. PW/13 Patelal Jangde deposed on the same line.

9. From the entire evidence, though it is not proved that deceased was harassed for non-fulfillment of demand of dowry but from the entire evidence, it is clear that the appellant made unlawful demand and harassed her. The act of the appellant falls within mischief of Section 498-A of the IPC 1860 and it does not falls within mischief of Section 304 Part B of the IPC.

10. In view of the above, conviction of the appellant is altered to Section 498-A of IPC instead of Section 304 Part B of the IPC. He is convicted under Section 498-A of IPC. From the records, it is clear that the appellant suffered jail term from 22-3-1998 to 28-1-1999 and thereafter from 10-1-2001 to 24-1-2002. He suffered jail term one year and ten months. In view of this court, no useful

purpose would be served if the appellant is again sent to jail. Conviction of the appellant is reduced to the period already undergone by him for the offence under Section 498-A of IPC. The fine amount imposed by the trial court shall remain intact as fine of offence under Section 498-A of IPC.

11. With the aforesaid modification, the appeal is partly allowed. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju