

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 108 of 2011**

- Umesh Gupta, S/o Nepal Gupta, aged about 26 years, Occupation Business, R/o Village Tangarbahri, Tahsil Kansabel, District Jashpur, C.G.

----Appellant

Versus

- State of Chhattisgarh, Through Station House Officer Thana Kansabel, District Jashpur, C.G.

---- Respondent

For Appellant	Shri Harish Khuntiya, Advocate.
For Respondent/State	Shri Vikas Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

16/01/2020

1. The appellant would call in question the legality, validity and propriety of the judgment of conviction and order of sentence dated 04.12.2010 passed by Sessions Judge, Sessions Division, Jashpur, C.G. in Sessions Trial No.92/2009, whereby the appellant stands convicted for the offence under Section 4 of Dowry Prohibition Act, 1961 and sentenced to undergo R.I. for one year and fine of Rs.1,000/-, in default of payment of fine to undergo additional R.I. for two months.
2. Case of the prosecution in brief is that deceased Santoshi Gupta was married with Umesh Gupta on 17.04.2009. After marriage, the accused/appellant demanded Rs.2 lakhs from deceased's

father Durga Prasad Gupta by saying that if the demand of Rs.2 lakhs is not met, he would leave Santoshi and marry another woman. On 19.06.2009, Santoshi died due to burn injuries in her matrimonial home. Written complaint Ex.P-1 was lodged by father of the deceased on 23.06.2009 and thereafter, FIR Ex.P-8 was lodged by Sub-Inspector Prahlad Rathore in police outpost Dokhra, Jashpur, which was registered at 0/09. Spot Map Ex.P-2 was prepared by IO. As per Ex. P-3, burnt clothes of deceased, one plastic container having 100 gm petrol, matchstick etc. were seized from the house of Umesh Gupta. As per Ex.P-7, dying declaration of deceased was recorded by DW-1 R.N. Pandey, Tehsildar. PM report Ex.P-10 was prepared by PW-5 Dr. S.Toppo where he found the cause of death as Neurogenic shock due to about 95% dermo-epidermal burns and nature of death is uncertain. Viscera of deceased was preserved as per Ex.P-11. After due investigation, charge sheet was filed against the accused persons namely Umesh, Birju and Seema under Section 304B read with 34 of IPC. The trial Court framed the charges under Sections 304B alternatively 306 and 498A of IPC against the accused persons which were denied by them and they prayed for trial.

3. So as to hold the accused persons guilty, the prosecution examined as many as 9 witnesses i.e. PW-1 Durga Prasad Gupta, PW-2 Dr. Smt. Usha Lakda, PW-3 Prahlad Rathore, PW-4 Hiramani Sidar, PW-5 Dr. S. Toppo, PW-6 Narayan Prasad Gupta, PW-7 Panduram Bhagat, PW-8 Ku. Neha Pandey and

PW-9 Jivendra Lakda. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined only one witness i.e. DW-1 R.N. Pandey.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment while acquitting the other accused including appellant of the charges under Sections 304B alternatively 306 and 498A of IPC.
5. Learned counsel for the appellants submits that in this case there is no charge framed against the accused appellant for the offence under Section 4 of Dowry Prohibition Act, 1961 for demand of dowry. Therefore, without any specific charge, accused/appellant has wrongly been convicted by the trial Court. He also submits that as per the judgment of the trial Court, all the accused persons including appellant were acquitted of the charge levelled against them under Sections 498A and 304B alternatively 306 of IPC, therefore, prosecution has absolutely failed to prove that the deceased was subjected to cruelty in connection with demand of dowry by the husband or any of his relatives. He further submits that without any specific charge regarding demand of dowry or any evidence adduced by the prosecution in this regard, the accused/appellant was convicted for the offence under Section 4 of Dowry Prohibition Act, 1961 which is unsustainable in law. He

also submits that looking to the statements of PW-1 Durga Prasad Gupta and PW-6 Narayan Prasad Gupta, it cannot be said that appellant demanded dowry, which amounts to abetment which compelled the deceased to commit suicide. Therefore, the appellant deserves to be acquitted of the charge under Section 4 of Dowry Prohibition Act.

6. Learned counsel for the State supports the impugned judgment and submits that though no appeal was filed by the State or by the complainant party against the acquittal order passed by the trial Court under Sections 304B, 306 and 498A of IPC but the demand of dowry is specifically proved by PW-1 Durga Prasad Gupta and PW-6 Narayan Prasad Gupta. Since offence under Section 4 of the Dowry Prohibition Act is lesser than offence under Section 304-B, therefore, if no specific charge is framed against him, it is open for the Court to convict the appellant for the lesser offence.
7. Heard learned counsel for the parties and perused the material available on record.
8. The first question which arises for consideration of this Court is whether without charge being framed against the appellant under Section 4 of the Dowry Prohibition Act, 1961, he can be convicted for the said offence on the basis of material available on record. In the matter of ***K. Prema S. Rao and another vs. Yadla Srinivasa Rao and others*** reported in ***(2003) 1 SCC 217***, the Hon'ble Supreme Court while dealing with the identical issue observed as under:-

"25. As provided in Section 215 CrPC omission to frame charge under Section 306 IPC has not resulted in any failure of justice. We find no necessity to remit the matter to the trial Court from framing charge under Section 306 IPC and direct a retrial for that charge. The accused cannot legitimately complain of any want of opportunity to defend the charge under Section 306 IPC and a consequent failure of justice. The same facts found in the evidence, which justify conviction of the appellant under Section 498A for cruel treatment of his wife, make out a case against him under Section 306 IPC of having abetted commission of suicide by the wife. The appellant was charged for an offence of higher degree causing "dowry death" under Section 304-B which is punishable with minimum sentence of seven years' rigorous imprisonment and maximum for life. Presumption under Section 113-A of the Evidence Act could also be raised against him on same facts constituting offence of cruelty under Section 498-A IPC. No further opportunity of defence is required to be granted to the appellant when he had ample opportunity to meet the charge under Section 498-A IPC.

26. It may be mentioned that against confirmation of his conviction by the High Court under Section 498-A IPC, Accused 1 has not preferred any special leave to appeal to this Court. The facts found proved for his conviction and sentence under Section 498-A IPC, cannot now be questioned by the accused. Our conclusion, therefore, is that same facts and evidence on which Accused 1 was charged under Section 498-A and Section 304-B, the accused can be convicted and sentenced under Section 306 IPC. We find no legal or procedural impediment in doing so."

9. It is a well settled principle of law laid down by the Hon'ble Supreme Court that if charges are framed under Section 304B of IPC and the material/evidence available on record proves the offence under Section 4 of Dowry Prohibition Act, 1961, the accused can be convicted under Section 4 of Dowry Prohibition Act, 1961 even in absence of framing of charge under the said Section. Therefore, the argument advanced by learned counsel for the appellant in this regard being without any substance is rejected.
10. It is true that no specific charge is framed regarding demand of dowry under Section 4 of Dowry Prohibition Act, 1961 but for resting conviction under Section 304B of IPC, the demand of

dowry is must, thereafter, the cruelty is the subsequent ingredients of that offence, therefore, demand of dowry is covered under Section 304B. Hence, offence under Section 4 of the Dowry Prohibition Act is a lesser offence than offence under Section 304-B.

11. First, this Court shall consider the evidence available on record regarding demand of dowry. Section 2 of Dowry Prohibition Act reads as under:-

“ Section-2 Definition of ‘dowry’. —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person.”

12. Now this Court has to decide whether any demand of dowry was made by the appellant or not from the father of the deceased.

13. As per (Ex.P-7) dying declaration, there is no allegation made by the deceased regarding demand of dowry by the accused from her father. She stated in her dying declaration that while cooking, she caught fire accidentally. No doubt or suspicion was raised against the appellant or his parents. The said dying declaration was recorded by R.N. Pandey (DW-1), Tehsildar and in the Court he has duly proved the same. Therefore, learned trial Court acquitted the accused of the charges under Sections 304B, 306 and 498A of IPC.

14. Looking to the entire statements of PW-1 Durga Prasad Gupta

and PW-6 Narayan Prasad Gupta, they are making contradictory statements as compared to their case diary statements and FIR Ex.P-8. In the FIR lodged by PW-1 Durga Prasad Gupta, he has specifically stated that after 15 days of marriage of accused with the deceased which was solemnized on 17.04.2009, the appellant came to his house with the deceased and demanded Rs.2 lakhs for purchase of Maruti Car. In his deposition also he states that 15 days after marriage the appellant came to his house with the deceased and on the next day they went to village Tangabehri. In para 3 he states that after 15 days of marriage, the accused persons including the appellant demanded Rs.2 lakhs over telephone for purchase of Maruti Car on which he expressed his inability. According to this witness, the appellant was repeatedly demanding Rs.2 lakhs from him. However, PW-6 Narayan Prasad Gupta in para 20 of his deposition has stated that the above fact of demand of Rs.2 lakhs by the appellant after 15 days of the marriage was not mentioned by him in his diary statement Ex.D-3. From careful scrutiny of the evidence of PW-1 Durga Prasad Gupta and PW-6 Narayan Prasad Gupta, it is seen that they are making contradictory statements on the issue of demand of dowry by the appellant. In para 16 PW-1 Durga Prasad Gupta admits that 15 days after marriage when the appellant came to her house along with the deceased, no demand of money was raised by the appellant and if it is mentioned in the report Ex.P-1 that the appellant demanded money after 15 days of the marriage, the same is incorrect. There are many omissions and contradictions in

the statement of PW-1 Durga Prasad Gupta as compared to his diary statement, FIR and written report Ex.P-1. Thus, looking to the nature and quality of evidence adduced by the prosecution, it has failed to prove the necessary ingredients of the offence under Section 4 of the Dowry Prohibition Act. On the same set of evidence, the trial Court keeping in view the fact that the main ingredients of the offence under Sections 304B alternatively 306 and 498A of IPC are not proved has acquitted the appellant of the said charges. In these circumstances, the trial Court was not justified in holding the appellant guilty under Section 4 of the Dowry Prohibition Act.

15. In the result, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellant of the charge under Section 4 of Dowry Prohibition Act. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge