

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1152 of 2007

1. Hemanand, S/o- Ashok Kumar Naik, Aged about- 23 years,
2. Ashok Kumar Naik, S/o- Namdau Naik, Aged about- 44 years,
3. Smt. Satyabhama, W/o- Ashok Kumar Naik, Aged about- 42 years,

All appellants are R/o Village- Jalpur, P.S.- Saraipali, District- Mahasamund (C.G.)
---- Appellants

Versus

State of Chhattisgarh, through- Station House Officer, Police Station- Saraipali, District- Mahasamund (C.G.)

---- Respondent

For Appellants : Shri Mirza Kaiser Baeg, Advocate,
 Shri Sachin Nidhi, Advocate appears
 on behalf of Shri Y.C. Sharma,
 Advocate & Smt. Sofia Khan, Advocate.

For State/Respondent : Shri Aman Kesharwani, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment on Board

24/02/2020

1. This appeal is preferred against the judgment dated 14th December, 2007 passed by 1st Additional Sessions Judge, Mahasamund (C.G.) in Sessions Trial No. 16/2006 wherein the said Court convicted all the three appellants for commission of offence under Section 304(B) of the Indian Penal Code (for short "the IPC"), 1860 and sentenced them to undergo rigorous imprisonment for ten years each.
2. In the present case, name of the deceased is Smt. Padmini, who was married to appellant No. 1 namely Hamanand on 11th April, 2004 and said Smt. Padmini died on 6th March, 2006 other than in normal circumstances. It is alleged that the

appellants harassed for non-payment of dowry soon before her death that is why F.I.R. was lodged and matter was reported and investigated, the appellants were charge-sheeted and after completion of trial, the trial Court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) There is no connecting piece of evidence against appellant No. 2 Ashok Kumar Naik and as per appellant No. 3 Smt. Satyabhama they were present on the date of incident. Further there is no evidence that these two appellants harassed the deceased on account of any demand of dowry.

(ii) The statement made by father of the deceased namely Jeevan Lal Patel (PW-7) is bald and general in nature. It is not sufficient to connect these two appellants in crime in question. There is no cogent evidence against appellant No. 1 Hemanand, but the trial Court recorded finding on the basis of general statement which is not permissible under the law.

(iii) The trial Court has overlooked the contradictions, omissions and improvements in the statements of the prosecution witnesses, therefore, finding of the trial Court is not liable to be sustained. The trial Court has not evaluated the evidence properly, therefore, finding arrived at by the trial Court is liable to be set aside.

4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of evidence

which is not required to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
6. From the evidence, it is established that the date of marriage of Smt. Padmini and appellant No. 1 Hamanand is 11th April, 2004 and date of death of said Smt. Padmini is 6th March, 2006, she died within 7 years of the marriage. Dr. V.A.K. Koshariya (PW-8) conducted autopsy of the deceased Smt. Padmini on 6th March, 2006 at about 12:45 in the noon and found following injuries:-
 - (i) One burn marks on the back of left elbow 2 x1 cm margins are elevated and reddish colour.
 - (ii) Abrasion on the back of right elbow 1x.5 cm with red clotted blood.
 - (iii) Abrasion right knee 1x5 cm with reddish colour.
 - (iv) Two bruises on right knee 1x1 cm and 1x.5 cm red colour.
 - (v) Abrasion on right anterior surface of ankle joint 1x12 cm red clotted blood present.
7. As per version of this witness, who examined the said deceased, cause of death is asphyxia and time of death was within twenty-four hours of examination. Dr. D.K. Satpathi (PW-10) is medical expert and as per version of this witness, the reason of death may be due to physical violence. From

the evidence of medical expert, it is clear that death of the deceased caused other than the normal circumstances.

8. The next question for consideration of this Court is whether any of the appellant demanded dowry from the deceased and harassed soon before her death.
9. As per version of Nain Singh Patel (PW-2), appellant No. 1 Hamanand harassed the deceased for not bringing documents of motor-cycle. Version of this witness is supported by version of Mani Ram (PW-3) and Jeevan Lal Patel (PW-7) and their evidence is unrebutted, therefore, from their evidence, it is established that appellant No.1 Hemanand demanded documents of motor-cycle and harassed the deceased. The trial Court after evaluating the entire evidence recorded finding that appellant No. 1 Hamanand participated in commission of crime. The deceased was wife of appellant No. 1 Hamanand and she was in custody of said Hamanand after marriage. The incident took place within four corners of the house of the appellant No. 1 Hemanand, therefore, it was for the appellant No. 1 Hemanand to explain as to what really happened within a confined place, but no explanation is given by the said appellant and his defence is only of plain denial which is merit-less.
10. As per Section 113-B of the Indian Evidence Act, 1872, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or

harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

11. In the present case, husband was custodian of the deceased within four corners of the house and he has not explained anything against the evidence brought on record regarding harassment by him to the deceased, therefore, it will be appellant No. 1 Hemanand who has committed dowry death which is punishable under Section 304(B) of IPC, 1860.
12. Taking into consideration the totality of the evidence, argument advanced on behalf of the appellant No. 1 Hemanand is not sustainable and conviction of Hemanand for the said offence is hereby affirmed.
13. So far as appellant No.2 Ashok Kumar Naik and appellant No. 3 Smt. Satyabhama are concerned they are father-in-law and mother-in-law of the deceased. There is no evidence on record that both were custodial of the deceased and they were residing in the house of the said deceased, therefore, bald statement made by Jeevan Lal Patel (PW-7) is not sufficient to hold that these appellants harassed the deceased. Jeevan Lal Patel (PW-7) is resident of village- Parsada while the incident took place at village- Jalpur, therefore, this witness has no occasion to assess what is really going on with the deceased, therefore, harassment on the part of these two appellants is not established. The trial Court recorded finding on the basis of general statement

which is not sustainable, therefore, charge against these two appellants is not established.

14. Accordingly, appeal filed by appellant No. 2 Ashok Kumar Naik and appellant No. 3 Smt. Satyabhama is allowed. Their conviction under Section 304(B) of IPC is set aside and they are acquitted of the said charge. The appellants No. 2 and 3 are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.
15. Considering the facts and circumstances of the case and further considering the act of the appellant No.1 Hemanand, sentence of ten years awarded to him by the trial Court cannot be termed as harsh, disproportionate or unreasonable.
16. Accordingly, the appeal filed by appellant No. 1 Hemanand is liable to be and is hereby dismissed. As per report of jail authorities, appellant No. 1 Hemanand has suffered full jail term and has been released from jail, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
Judge