

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.463 of 2014**Judgment Reserved on : 11.2.2020Judgment Delivered on : 5.6.2020

Kaviram Sahu @ Kavi Sahu, son of Rambharosa Sahu, aged about 21 years, resident of Dhodha, Police Station Bhatapara Gramin, District Baloda Bazar, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Station House Officer, Police Station Bhatapara Gramin, District Baloda Bazar, Chhattisgarh

--- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Amit Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 22.4.2014 passed by the Additional Sessions Judge, Bhatapara, District Baloda Bazar in Sessions Trial No.5 of 2012, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 10 years

2. Prosecution case, in brief, is that the Appellant is husband of deceased Kheminbai. Their marriage was solemnised 1½ years before the incident. On 10.10.2011, deceased Kheminbai died due to burn. Morgue (Ex.P1) was lodged by Ibrahim Khan (PW1). Inquest (Ex.P4) was conducted. Post mortem examination over

the dead body of the deceased was conducted by Dr. A.K. Gupta (PW8). Post mortem report is Ex.P5. On the basis of morgue inquiry, First Information Report (Ex.P11) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. It was found that after the marriage the Appellant was harassing the deceased for demand of a motorcycle. Few days before the incident, motorcycle of the Appellant had got damaged due to an accident. He had pressurised the deceased for bringing a sum of Rs.50,000/- from her parents or give her jewellery. On this issue, a quarrel had taken place between the Appellant and the deceased and thereafter she committed suicide by setting her on fire. On completion of the investigation, a charge-sheet was filed against the Appellant. Charge was framed against him.

3. In support of its case, the prosecution examined as many as 14 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant denied the guilt and pleaded innocence. No witness has been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant, referring to the statements of Hirabai (PW2), a close relative of the deceased, Tikaram (PW3), maternal uncle of the deceased, Pinki (PW4), sister of the deceased, Tilakram (PW5), father of the deceased and Dehutibai (PW6), mother of the deceased, submitted that from the entire statements of these witnesses, it is clear that the Appellant

belonged to a wealthy family. He already had a motorcycle and on this motorcycle itself he and his wife (the deceased) had visited maternal house of the deceased many times. There is no clinching evidence on record to show that any demand for dowry was made at the time of marriage or thereafter. According to the statements of the witnesses, few days before the incident, at the time of Dussehra festival, the deceased along with the Appellant had visited her maternal house on the motorcycle of the Appellant and after the Dussehra festival, while their return, they had met with an accident in which the motorcycle of the Appellant had severely got damaged and for repairing of his motorcycle the Appellant had made demand from the deceased for money or her jewellery. On refusal of the deceased, a quarrel had taken place between the Appellant and the deceased. Later on, the motorcycle of the Appellant was got repaired by the father and maternal uncle of the deceased. It was further submitted that even if this evidence is taken as it is, it is clear that the demand of the Appellant was not a demand for dowry. The Appellant had made demand from the deceased only for repairing of his damaged motorcycle and later on his motorcycle was got repaired by the father and maternal uncle of the deceased and both the Appellant and the deceased had returned on that motorcycle itself. It was further submitted that since the motorcycle of the Appellant was got repaired, no demand was in existence. Therefore, the essential ingredient of Section 304B of the Indian Penal Code, i.e., soon before her death the deceased was subjected to cruelty or harassment on account of demand of dowry is completely missing. Hence, it was claimed by Learned Counsel appearing for the Appellant that the conviction of the Appellant is not sustainable.

6. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. It is not in dispute that death of Kheminbai occurred otherwise than under normal circumstances within seven years of her marriage. Her death took place due to burn. Therefore, in view of the argument advanced by Learned Counsel appearing for the Appellant, I shall examine and scrutinise the evidence available on record.
9. Hirabai (PW2), one of the close relatives of the deceased and Tikaram (PW3), maternal uncle, Pinki (PW4), sister, Tilakram (PW5), father and Dehutibai (PW6), mother of the deceased, respectively have stated that on the eve of Dussehra festival, the deceased had come to her maternal house along with her husband/the Appellant on his motorcycle. Both the Appellant and the deceased had also gone out for roaming on the said motorcycle of the Appellant. At that time, they had met with an accident in which motorcycle of the Appellant had got damaged. Tikaram (PW3) and Pinki (PW4) have further deposed that thereafter repairing of the motorcycle was got done by Tikaram (PW3). Tilakram (PW5) has also corroborated the above version of Tikaram (PW3) and Pinki (PW4). According to further statement of Tikaram (PW3) and Pinki (PW4), thereafter, at the maternal house of the deceased itself, a quarrel had taken place between the Appellant and the deceased on the issue of their return.

Thereafter, both returned on the said motorcycle of the Appellant. 2 days thereafter, the incident of burn of the deceased took place. Though Hirabai (PW2) and Dehutibai (PW6) have stated that after getting the motorcycle of the Appellant damaged, he had asked the deceased for bringing a sum of Rs.50,000/- from her parents or for giving a new motorcycle, this fact is not mentioned in their case diary statements. Tilakram (PW5), father of the deceased has not stated anything in this regard in his Court statement. Hirabai (PW2), during her cross-examination, has admitted that marriage of the deceased was performed with the Appellant looking to his wealthy condition. After the marriage, the deceased along with the Appellant had visited her maternal house on his motorcycle for about 15 times. Both lived happily at her maternal house and returned on the said motorcycle. No dispute had taken place between them before the dispute which had taken place between them during Dussehra festival. Tikaram (PW3), maternal uncle of the deceased has also admitted that he had got the motorcycle of the Appellant repaired at his own will. Meaning thereby, the Appellant had not created any pressure over Tikaram (PW3). Though Pinki (PW4), sister of the deceased has further stated that the Appellant had told that he will sell out ornaments of the deceased for repairing of his motorcycle and on refusal of the deceased he had slapped her, this witness has also admitted that the motorcycle of the Appellant had severely got damaged in an accident and, therefore, a talk had taken place for purchase of a new motorcycle for him. This witness has further admitted that thereafter father of the deceased Tilakram (PW5) had told that he will get the motorcycle of the Appellant repaired and he had got the motorcycle repaired. This witness has also categorically admitted

that prior to that the Appellant had not made any demand for motorcycle. Tilakram (PW5) has also admitted that the Appellant already had a motorcycle which was purchased by the Appellant himself. Though this witness has stated that at the time of construction of roof over the house of the Appellant, he had made a demand for money, but this fact is not mentioned in the case diary statement of this witness. Even if any such demand was made, that cannot be said to be a demand for dowry. Rather, that was a request for a financial help. This witness has also categorically admitted that after the marriage, whenever the deceased along with the Appellant visited his house (maternal house of the deceased), they lived there happily and returned. Dehutibai (PW6), mother of the deceased has deposed that after the marriage, when the deceased had visited her maternal house, she had told that the Appellant was harassing her for demand of a sum of Rs.50,000/-, a motorcycle and jewellery. According to this witness, since the marriage of the deceased was solemnised recently, she, thinking that a tension could arise, did not tell this fact to anyone. Her this statement is not acceptable because even if this was the situation she could have disclosed this fact at least to her husband Tilakram (PW5), but she did not do so, which appears to be unnatural. This witness has also admitted that after the marriage, the deceased along with the Appellant had visited maternal house of the deceased 15-20 times and they had lived there happily and returned.

10. On a minute appreciation of the aforestated evidence, it is clear that though the deceased died due to burn within seven years of her marriage, from the evidence it is also clear that at the time of

marriage or thereafter there was no demand for dowry. The Appellant already had a motorcycle which he himself had purchased. On this motorcycle, both the Appellant and the deceased had visited maternal house of the deceased 15-20 times and they had lived there happily and returned. No dispute had taken place between them ever and the deceased had never made any complaint. Though Dehutibai (PW6), mother of the deceased has stated that after the marriage, when the deceased had visited her maternal house, she had told that the Appellant was making demand for a sum of Rs.50,000/-, a motorcycle and jewellery, this fact was not disclosed by her even to her husband Tilakram (PW5). Therefore, as already discussed, her this statement, being unnatural, is not acceptable. The entire evidence of the prosecution shows that few days prior to the incident, at the time of Dussehra festival, both the Appellant and the deceased had visited maternal house of the deceased on the motorcycle of the Appellant. At that time, the motorcycle of the Appellant had met with an accident and it had severely got damaged. For repairing of his motorcycle, the Appellant's demand for money or jewellery was from his wife (the deceased) and on her refusal, a quarrel had taken place between them. Later on, the motorcycle of the Appellant was got repaired by Tikaram (PW3), maternal uncle of the deceased and both the Appellant and the deceased had returned on the said motorcycle. Even if any demand for repairing of his motorcycle was made by the Appellant from his wife (the deceased), this cannot be said to be a demand for dowry. Apart from this, it is also established that thereafter the motorcycle of the Appellant was got repaired by Tikaram (PW3), maternal uncle of the deceased and both the Appellant and the deceased had

returned on the said motorcycle. Thus, thereafter, there was no demand in existence.

11. From the aforesaid appreciation of evidence on record, I find that the material ingredients of Section 304B of the Indian Penal Code, i.e., demand for dowry and soon before her death the deceased was subjected to cruelty or harassment for demand of dowry are missing in the case in hand. Hence, the conviction of the Appellant is not sustainable.
12. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him. He is reported to be in jail. If he is not required in any other case, he be set at liberty forthwith.
13. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge