

(2019) 03 CHH CK 0058

In the Chhattisgarh High Court

Case No : Criminal Appeal (CRA) No. 300, 326 Of 2010

Bhuuneshwar Sahus And Ors

APPELLANT

Vs

• State Of Chhattisgarh

RESPONDENT

Date of Decision : 08-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304B

Citation : (2019) 03 CHH CK 0058

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Manoj Mishra, Raghavendra Verma

Final Decision : Dismissed

Judgement

Ram Prasanna Sharma, J

1. As both the appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.

2. Appellant Bhuneshwar Sahu has preferred appeal (CRA No. 300 of 2010) against the judgment dated 16-4-2010 and appellant Rukhmani Bai has preferred appeal (CRA No. 326 of 2010) against the judgment dated 22-4-2010 passed by the Additional Sessions Judge, Sakti, Session Division Janjgir Champa (CG) in Session Trial No. 132 of 2009 wherein the said Court has convicted the appellants for the commission of offence under Section 304- B read with Section 34 of the IPC and sentenced them to undergo RI for seven years and to pay fine of Rs.200/- each with default stipulations.

3. In the present case, name of the deceased is Smt. Sushila Kumari Sahu who was married to Nand Kumar Sahu. Present appellant Bhuneshwar Sahu is younger brother of Nand Kumar Sahu and appellant Rukhmani Bai is mother of said Nand Kumar Sahu i.e., mother-in-law of the deceased. Marriage of Sushila Kumari Sahu and Nand Kumar Sahu took place two years ago from the date of incident i.e., 12-3-2009. It is alleged that both appellants harassed the deceased

physically and mentally for demand of dowry and it is alleged that they set the deceased on fire as result of which she succumbed to the injuries. Dying declaration of the deceased was recorded by the Executive Magistrate/Tahsildar. The matter was reported and investigated. After completion of investigation charge sheet was filed, the appellants did not plead guilty and the trial was conducted. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned. 3 Learned counsel for the appellants would submit as under:

i) The trial Court erred in relying on the statement of the father and mother of the deceased who were interested witnesses.

Ii The trial Court erred in relying upon dying declaration of the deceased. As she sustained 95% burn injuries in that condition, it is not possible for her to give her statement,

iii) Before recording dying declaration no fitness certificate from the concerned doctor has been obtained, therefore, dying declaration itself is doubtful. It is made in such a manner that entire matrimonial family members of the deceased would be involved in a false case.

iv) The trial Court overlooked the version of defence witnesses who deposed that at the time of incident the appellant Rukhmani Bai was at her Biyara (Khailihan) for the purpose of repairing bullock cart and omnibus allegations have been made against her, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent 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 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.. PW/1 Ghanshyam is father of the deceased. Smt. Rath Bai (PW/3) is mother of the deceased. Ramesh Kumar Sahu (PW/19) is brother of the deceased. All the witnesses have deposed that deceased Sushila Kumari Sahu was married to Nand Kumar Sahu since two years of the date of incident i.e.,12-3-2009. From their evidence it is established that both appellants demanded Rs.1,00,000/- and freeze from the deceased and harassed her. All these witnesses have been subjected to searching cross examination, but they are unshaken. Dying declaration of the deceased was recorded by PW/17 NeelamToppo, Tahsildar and Dist. Magistrate. As per version of this witness, first Doctor has examined the deceased before recording her statement and Doctor gave opinion that deceased was fully conscious and she is able to give statement. After assurance of her consciousness he recorded her statement and as per dying declaration both appellants harassed her on account of dowry and they demanded freeze. There is nothing to disbelieve the dying declaration that both the appellants have harassed the deceased on account of dowry even on the date of incident. The

deceased was in four corners of matrimonial house and both appellants were in dominating position and they had to explain as to how the deceased suffered burn injuries to which she succumbed. Dr. Smt. S. Jitpure (PW/15) who conducted autopsy of the deceased opined that deceased died due to cardio respiratory failure on account of 95% burn injuries which were sustained by her within 24 hours of the examination. In absence of any explanation by both the appellants there is nothing to disbelieve the testimonies of prosecution witnesses and dying declaration. There is nothing to say that both have been roped in false charge. There is nothing to say that the version of prosecution witnesses is liable to be disbelieved. Therefore, it is established that deceased died other than in normal circumstance and she has been harassed upto the date of her death by the appellants on account of dowry.

7. Looking to the clinching evidence, argument advanced on behalf of the appellants is not sustainable. This court has no reason to substitute contrary finding. The act of the appellants falls within Section 304-B read with Section 34 of IPC for which the trial Court convicted them. The trial Court awarded minimum sentence which cannot be termed as harsh, disproportionate or unreasonable. Sentence part is also not interfered with.

8. Accordingly, the appeals being devoid of merit are liable to be and are hereby dismissed. The appellants are reported to be in jail, therefore, no further order for their arrest etc., is required.