

(2018) 04 CHH CK 0213
In the Chhattisgarh High Court
Case No : ACQA No. 186 of 2012

Vijay Mashrani

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 17-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302, 304B, 201
Code of Criminal Procedure, 1973 — Section 174, 161, 313
Dowry Prohibition Act, 1961 — Section 2

Citation : (2018) 04 CHH CK 0213

Hon'ble Judges : RAM PRASANNA SHARMA, J; PRASHANT KUMAR MISHRA, J

Bench : Division Bench

Advocate : Meena Shastri, Rajendra Tripathi, Dharmesh Shrivastava, Vijay Kumar Sahu

Final Decision : Dismissed

Judgement

1. Challenge in this acquittal appeal is to the judgment dated 18-7- 2012 passed by the Third Additional Sessions Judge, Bilaspur (for short â??the trial

Courtâ?) Session Division Bilaspur (CG) in Session Trial No. 48 of 2011 wherein the trial Court has acquitted the respondent No.2 for commission of

offence under Sections 302, 304-B and 201 of IPC for committing murder or in alternate dowry death of his wife namely Manjula Sahu and for

causing disappearance of the evidence to screen him from punishment on 27-10-2010 at about 10.30 pm at village Dourabhata, Police Station Kota,

District Bilaspur (CG).

2. Facts giving rise to the instant appeal is that deceased Manjula Sahu was married to respondent No.2 Chandrashekhar Sahu in the year 2009. It is

alleged that the said respondent demanded dowry and subjected his wife to harassment for non-fulfillment of demand of dowry, therefore, she died

unnatural death within seven years of her marriage. In alternate, said respondent committed strangulation of his wife and thereby committed her murder and also caused disappearance of the evidence of offence. On the basis of the information given by the respondent No.2 inquiry was

conducted under Section 174 of the Cr.P.C and after enquiry first information report was registered and the matter was investigated. During investigation statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') were recorded. After

investigation, charge sheet was filed against the respondent No.2. The respondent No.2 pleaded innocence and thereafter the trial was conducted.

After examination of the witnesses, statement of the respondent no.2 was recorded under Section 313 of the Code. After hearing the parties, the trial

Court acquitted the respondent No.2 as aforementioned.

3. Learned counsel appearing for the appellants would submit as under:

i) Autopsy report of the deceased is suggestive of throttling, but the trial Court did not accept the same and came to a wrong conclusion

ii) From the statement of the witnesses it is established that respondent demanded Rs.2,00,000/- as dowry and harassed her and the death of the

victim is unnatural, therefore, offence under Section 304-B of the IPC is established against respondent No.2/husband.

iii) As per evidence, respondent No.2 informed the parents of the deceased through telephonic message that the deceased consumed poison, but

during investigation, he stated about cause of death as illness of the deceased and it is a case of false defence of the respondent No.2 which is an

additional circumstance against him to link him with the crime.

iv) Respondent No 2/husband was in the company of the deceased/wife, therefore, he is under obligation to explain as to how his wife died, but he did

not explain it, therefore, case of the prosecution is proved.

4. On the other hand, learned counsel for the respondent No.2 would submit that the finding arrived at by the trial Court is based on proper marshaling

of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking the jurisdiction of the appeal.

5. We have heard learned counsel for the parties and perused the record.

6. To substantiate the charge, prosecution has examined as many as 22 witnesses.

7. Dr. Nikita Kanwar (PW/13) performed postmortem of the deceased and as per her report, she noticed the following injuries.

- i) Both legs are extended and parallel to each other.
- ii) Black thread on the left leg.
- iii) Face directed towards right side with scratch.
- iv) Froth was coming from mouth and both nostrils with reddish skin of neck.
- v) Contusion of 3x2 cm on the right side with impression
- vi) Both eyes were closed.
- vii) Fungal infection in vagina.
- viii) No disease in the heart.

The expert did not give any opinion regarding death but reported that nature of death could be ascertained after FSL examination of viscera. As per version of this witness one possibility of death is throttling while other possibility of death is poisoning.

8. Dr. Richa Pandey (PW/12) examined the deceased during her life time on 26-10-2010 at Primary Health Centre, Gariyari. As per version of this witness she treated her for fever and dysentery and provided necessary medicines. PW/8 Dr. Vikram Khetrapal examined the deceased during his life time on 17-3-2010 and noticed a number of small cysts in her ovary.

9. PW/1 Mehatrin is a person in whose house deceased and respondent No.2 were living as tenants. PW/2 Devi Prasad Sahu and PW/3 Geeta

Prasad Sahu are also the persons in whose house the deceased and respondent No.2 were living as tenants. PW/7 Chandram Sahu is father of the

deceased, PW/15 Kanti Devi Sahu is mother of deceased and PW/21 Vinod Kumar Sahu, is brother of the deceased. Father, mother and brother of

the deceased are residents of Balco Nagar. As these witnesses are not the residents of village Dourabhata where the incident took place, they are not

aware of the fact as to what really happened at village Dourabhata. Rest of the witnesses assisted during investigation after registration of FIR.

10. Now the point for consideration is whether charge under Section 302 of IPC is substantiated by the evidence. To substantiate the charge

prosecution is under obligation to prove the death to be homicidal.

11. Dr. Nikita Kanwar (PW/13) who conducted autopsy of the deceased admitted in para 9 of her cross examination that she did not notice any injury

or pressure on wind-pipe or neck of the deceased . She did not notice any disease in left or right lungs of the deceased. She did not find dark fluid blood in right side of heart which is found in case of strangulation as per Modi's Medical Jurisprudence. In case of strangulation, the lungs are usually markedly congested, showing hemorrhagic patches and petechiae and exuding dark fluid blood on section, but in the present case no such symptoms were found in right or left lung. As per Modi's Medical Jurisprudence, in case of strangulation, the brain is also congested and shows petechial haemorrhages, but no such sign was found in the brain of the deceased in the present case. If fingers are used in throttling, marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe and the thumb mark is ordinarily higher and wider on one side of the front of the neck, but such marks were not found in the windpipe. Looking to the autopsy report and opinion of the expert, it was unsafe for the trial Court to come to a conclusion that it is a case of strangulation.

12. True it is that one contusion was found on the right side of the deceased but as per opinion of expert who conducted autopsy, it was not safe to conclude regarding strangulation. In FSL examination, no poison was found in the body of the deceased and, therefore, it is not a case of poisoning and unless the death is proved to be homicidal the charge of murder is not sustainable. The trial Court is right in holding that the offence of murder is not established.

13. To substantiate the charge under Section 304-B of IPC, it has to be established that there was demand of dowry. Definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961 reads as under:

Â â??2 . Definition of 'dowry'. - In this Act, â??dowryâ? 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, at or before (or any time after the marriage) (in connection with the marriage of the said parties, but does not include) dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II â?" The expression â??valuable securityâ?? has the same meaning as in Section 30 of the Indian Penal Code.â??

14. To substantiate the charge, there is evidence of PW/7 Chandram Sahu, PW/15 Kanti Devi Sahu, and PW/21 Vinod Kumar Sahu. No one has stated that at the time of marriage any demand was made. It is also not established from the evidence that the demand was made in relation to marriage of the deceased by the respondent No.2. Though they being father, mother and brother of the deceased, stated that Rs.2,00,000/- or in alternate car was demanded by the respondent, but no such complaint was made during life time of the deceased and no action was taken against the respondent/husband over illegal demand. There is every possibility of manipulation after death of the deceased to cook up a story which was not in existence during life time of the deceased. In order to prove the charge under Section 304-B of the IPC, it has to be established that deceased was subjected to harassment on non-fulfillment of demand of dowry and she was subjected to harassment soon before her death. As all three witnesses are not residents of village Dhourabhata, their evidence is not sufficient to establish anything which happened at village Dhourabhata during life time of the deceased. There is no evidence on record as to what really happened with deceased at the time of incident or prior to death of the incident. There is no live link between harassment by husband and the death of the deceased, therefore, the trial Court is right in holding that the charge of dowry death is not established.

15. Charge under Section 201 of the IPC is leveled against the respondent No.2 because he reported the matter to Police authorities that deceased died natural death due to illness. It is not established by evidence that it is a case of unnatural death. It is also not established that the respondent No.2 committed any offence, therefore, it cannot be concluded that the respondent No.2 caused disappearance of the evidence to screen him from any offence. Charges under Sections 302, 304-B and 201 of the IPC were not established.

16. Taking into consideration the cumulative effect of the evidence, it would not be proper for us to disturb the finding recorded by the trial Court. The respondent No.2 deserved to be acquitted and the trial Court is well within its jurisdiction to deliver the judgment assailed.

17. In the result, the appeal is liable to be and is hereby dismissed.