

(2019) 02 CHH CK 0171

**Chhattisgarh High Court****Case No:** Criminal Appeal (CRA) No. 565 Of 2010

Sunil Kumar And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Feb. 13, 2019**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 374(2), 437A
- Indian Penal Code, 1860 - Section 34, 304B, 498A
- Evidence Act, 1872 - Section 113B

**Hon'ble Judges:** Ram Prasanna Sharma, J**Bench:** Single Bench**Advocate:** Manoj Mishra, Pawan Shrivastava, Vijay Bahadur Singh**Final Decision:** Allowed

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**Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 31.07.2010 passed by Third

Additional Sessions Judge (FTC), Manendragarh, District- Korea (C.G.) in Session Trial No. 100/2006, wherein the said court convicted all the

appellants for commission of offence under Sections 498A/34 & 304B/34 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs.

1000/- & R.I. for 10 years and fine of Rs. 2000/- respectively each with further default stipulations.

2. In the present case, name of the deceased is Preeti Gupta who died on 3rd July, 2005 due to shock/ septicaemia after sustaining burn injuries. The

deceased married with appellant No. 1- Sunil Kumar on 5th December, 2002. Appellant No. 2- Shanti Devi is mother of Sunil Kumar and appellant

No. 3- Babulal Gupta is father of Sunil Kumar. As per version of the prosecution, after marriage, the deceased was happy with the appellants for a

period of one year and thereafter, she was subjected to cruelty by way of physical and mental harassment. When the deceased sustained burn injuries

and died, a written report was lodged against the present appellants by father of the deceased on 17 th July, 2005. The appellants were charge-

sheeted and after completion of trial, convicted as mentioned above.

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

(i) On the date of incident i.e. on 29 th June, 2005, the Executive Magistrate/ Nayab Tahsildar namely B.Kujur recorded dying declaration of the

deceased and according to the dying declaration, there was no dispute between the appellants and the deceased and the deceased received burn

injuries of her own.

(ii) Relatives of the deceased deposed before the trial court regarding setting ablaze is afterthought, therefore, there is no evidence to establish that

she has been subjected to harassment by any of the appellant.

(iii) Report itself afterthought because it is delayed by 14 days of the incident and no reason is assigned for delay. The delay is not explained and story

put-forth by the prosecution is not acceptable.

(iv) The trial court recorded finding of conviction on the basis of general statement made by the prosecution witnesses which is not legally admissible

evidence, therefore, case of the prosecution is not established and finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the

same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. In the present case, incident took place at matrimonial house of the deceased situated at Bada Bazar, Chirimiri. Meera Bai (PW-

1) is mother of the deceased who is resident of Village- Changeri. Ramnath Gupta (PW-2) is father of the deceased, he is also resident of Village-

Changeri. Hanuman Prasad (PW-3) is resident of Jhiriyatola. Ashok Kumar Gupta (PW-4) is resident of Village- Kotma. Sushil Kumar Gupta (PW-

16) is resident of Village- Jhiriyatola. Though, these witnesses have deposed before the trial court that the appellant did not provide food for 3- 4 days

of the incident, but the fact remains that oral evidence of these witnesses is rebutted by dying declaration of the deceased itself because in dying

declaration, she has specifically mentioned that there was no dispute with any of the appellant, therefore, version of these witnesses cannot be acted

upon.

6. The witnesses also deposed before the trial court that the deceased informed them that the appellants set her ablaze, but the same is also rebutted

by dying declaration of the deceased because in dying declaration, she stated that she sustained burn injuries of her own. As, all the witnesses are not

resident of the place of incident, these witnesses had no occasion to see as to what was really happening with the deceased on the date of incident or

prior to the date of incident . No neighbor of the place of incident is examined by the prosecution to say that any harassment is done by any of the

appellant on the date of incident or prior to the date of incident.

7. From the entire evidence, it is not established that the deceased was subjected to harassment for non-fulfillment of demand of dowry. As per report

(Ex.P-1A), it is alleged that demand was made after one year of marriage.

8. In the present case, date of marriage is 5 th December, 2002, and demand was made in the year 2003, but no complaint was made against demand

of dowry, therefore, report which is lodged after 17 days of the incident, is under cloud regarding demand of dowry after one year of marriage.

Demand of dowry and harassment for non-fulfillment of demand is an essential ingredient for establishing the charge under Section 304B of IPC, but

that is lacking in the entire evidence adduced by the prosecution.

9. True it is that date of marriage is 5 th December, 2002, date of incident is 29th June, 2005 and date of death of the deceased is 3rd July, 2005 and it

is caused within 7 years of marriage, but the fact remains that it is essential part of the offence harassment and demand. Though, there is presumption

under Section 113B of the Indian Evidence Act, 1872 regarding dowry death, but the presumption can be drawn only when essential evidence is

established i.e. demand and harassment soon before death of the deceased.

10. The prosecution is under obligation to pass proximity test. It has to be proved that there exist a proximity and live link between cruelty and death

and that is not the case here. The matter is reported only when the deceased sustained burn injuries. No other material is placed on record to be

accepted. Burn injury is sustained by the deceased of her own as per her dying declaration, therefore, case of dowry death and cruelty on the part of

the appellants is not established.

11. Taking into consideration the facts, the finding arrived at by the trial court is not sustainable under the law, the judgment of conviction and order of

sentence passed by the trial court is set aside. Accordingly, appeal is allowed. The appellants are acquitted of the charges framed against him under

Section 304B of IPC.

12. The appellants are reported to be on bail. Their bail bonds shall continue for a further period of six months from today in view of Section 437-A of

Cr.P.C.