

(2019) 02 CHH CK 0530

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 760 Of 2010

Mohammed Asif And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 28, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 304B, 498A
- Dowry Prohibition Act, 1961 - Section 2
- Evidence Act, 1872 - Section 113
- Code Of Criminal Procedure, 1973 - Section 437A

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ashutosh Mishra, V.B. Singh

Final Decision: Partly Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against the judgment dated 22-9- 2010 passed by 2nd Additional Sessions Judge, Katghora (CG) in Session Trial No. 107 of

2009 wherein the said Court has convicted the appellants for the commission of offence under Sections 498-A and 304-B read with Section 34 of IPC

and sentenced them to undergo RI for three years and to pay fine of Rs.500/- and RI for seven years and to pay fine of Rs. 1000/-with default

stipulations.

2. In the present case name of the deceased is Rukhsar Begam who married with appellant Mohammed Asif since two years of the incident dated 3-

7-2009 and on that date she died other than normal circumstance (hanging herself). As per version of the prosecution, deceased Rukhsar Begam and

appellant Mohammed Asif were married to each other in the year 2007 and it alleged that the appellant demanded dowry of Rs.2,50,000/- and motor-

cycle and due to non-fulfilment of demand they committed cruelty with her soon before her death that is why the incident took place. The matter was

reported and investigated and 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) No complaint was made during life time of the deceased and after her death the allegation of demand of dowry has been levelled against the

appellants which is not believable.

ii The prosecution witnesses have given contrary statement which is not sufficient to establish the ingredients of offence of cruelty and dowry death.

iii) There is no evidence that cruelty was committed soon before death of the deceased.

iv) The trial Court overlooked the material omission and exaggeration in the statements of the witnesses, 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. The first question for consideration of this court is whether demand of dowry was made by the appellants. PW/8 Abdul Salaam, who is father of

the deceased deposed that his daughter informed him that the appellants demanded Rs.2,50,000/- and one motor-cycle and he had given Rs.50,000/- to

appellant Mohammed Asif. Version of this witness is supported by version of Smt. Nasina Begam (PW/9) who is mother of the deceased. She

deposed on same line that of Abdul Salaam. Again version of these witnesses is supported by version of Abdul Kalaam (PW/10) and he corroborated

that Rs.50,000/- was paid by Abdul Salaam. Version of these witnesses is unshaken during cross examination. Though they have been subjected to

searching cross examination, but nothing could be elicited in favour of the defence that the appellant Mohammed Asif received Rs.50,000/- from

Abdul Salaam.

7. From the evidence of Dr. H.D. Dahre (PW/11) who conducted autopsy of deceased on 3-7-2009 it is established that deceased died due to hanging

and she sustained injuries on her right wrist and throat on her body. From the evidence of this witness, it is established that deceased died unnatural

death other than normal circumstance and her death caused on 3-7- 2009 within seven years of her marriage.

8. Deceased died in her matrimonial house which is occupied by the appellant Mohammed Asif because she was in custody of her husband, therefore,

appellant Mohammed Asif is under obligation to explain as to what happened in the four corners of his house but he did not explain anything before the

trial Court.

9. Dowry death is defined in Section 304-B of IPC which may be read as under.

304B. Dowry death.--

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of

her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for,

or in connection with, any demand for dowry, such death shall be called ""dowry death"", and such husband or relative shall be deemed to have caused

her death. Explanation.--For the purpose of this sub-section, ""dowry"" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961

(28 of 1961).

10. Offence of cruelty is defined in Section 498-A of PC which may be read as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman,

subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purpose of this section, ""cruelty"" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

11. Section 113- of the Indian Evidence Act, 1872 empowers the Court to presume dowry death which may be read as under:

Section -113B. Presumption as to dowry death.--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 has 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"".

12. From the evidence it is clear that the appellant Mohammed Asif received Rs.50,000/- as dowry and it is shown by the evidence that she has been

subjected to cruelty. In absence of any explanation from this appellant, it can be presumed that he caused cruelty till her death. It means, he caused

cruelty soon before her death and the act of this appellant falls within mischief under Section 304-B of IPC which is dowry death and under Section

498-A of IPC which is cruelty. True it is that there are some minor contradictions in the statements of the witnesses as mentioned above, but the

same do not go to the root of the case because witnesses have established basic ingredients of offence against this appellant. Minor contradictions are

insignificant and have no adverse affect on prosecution case. Therefore, argument advanced on behalf of the appellant Mohammed Asif is not liable

to be sustained and his act falls within mischief for which he has been convicted and his conviction is hereby affirmed. The trial Court awarded

sentence of seven years which is minimum for the said offence of Section 304-B of IPC and less than minimum cannot be awarded. Sentence part is

also affirmed.

13. Accordingly, the appeal preferred by appellant Mohammed Asif being devoid of merit is liable to be and is hereby dismissed. As he is reported to be in custody, no further order for his arrest etc., is required.

14. So far as appellant No.2 Madina Begam is concerned, witnesses have made general and bald statements against her. She had not received any amount from any of the witnesses, therefore, it is difficult to conclude that she has demanded dowry because version of the witnesses is based on information given by deceased and the present appellant has not received any sum, therefore, it is not established that she demanded dowry. The deceased was not in her custody but the deceased was in custody of her husband, therefore, she is not under obligation to explain as to what happened with the deceased. On overall assessment of the evidence, charge levelled against the appellant Madina Begam is not established and she deserves to be acquitted. Finding against this appellant is not liable to be sustained.

15. Accordingly, the appeal filed by appellant No.2 Madina Begam is allowed and her conviction and sentence passed by the trial Court is set aside.

She is acquitted of the charges under Sections 498-A and 304-B read with Section 34 of IPC. She is reported to be on bail. Her bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

16. In view of the above, the appeal is partly allowed.