

(2018) 06 CHH CK 0141

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 869 Of 2010

Dumain @ Dumendra Sahu And
Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: June 26, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 302, 304B, 498A
- Code Of Criminal Procedure, 1973 - Section 161

Hon'ble Judges: Prashant Kumar Mishra, J; Vimla Singh Kapoor, J

Bench: Division Bench

Advocate: YC Sharma, Arvind Dubey

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. Heard.

2. Appellant No.1 Dumain @ Dumendra Sahu is the husband, whereas, appellant No.2 Ishwar Sahu is the father-in-law and appellant No.3

Smt.Bedbai is the mother-in-law of deceased - Yamuna. All the appellants have been convicted by the trial Court for committing offence under

Section 304B/34 and 498A of IPC and have been awarded sentence of life imprisonment and RI for 3 years with usual default stipulation. The

sentence has been awarded after holding the appellants guilty for committing dowry death of deceased Yamuna, wife of appellant No.1, who died

otherwise than under normal circumstances at about 5:00-5.30 a.m. on 19.5.2010.

3. The marriage between deceased Yamuna and appellant Dumain @ Dumendra Sahu was solemnized about 3 years back prior to the date of the incident. Dumendra Sahu is a Tractor Driver in the office of Municipal Corporation, Dhamtari. The deceased had lost her father prior to the marriage.

Her brother Teekamchand Sahu (PW-1) was a labour at the time of the incident, however, at the time of recording of evidence, he was working as a

Guard with the State Bank of India. The deceased's mother Milapabai Sahu (PW-2) is a helper in a grocery shop. Thus, both the families are not well

off and were engaged in small time service/vocation for earning livelihood. The marriage - Ex.P/1 was registered on the information supplied by

PW-1 Teekamchand Sahu. In this document, there is no allegation of demand of dowry.

4. The FIR was registered on the same date i.e. on 19.5.2010 vide Ex.P/2 alleging commission of cruelty including physical cruelty for demand of

dowry and taunting in connection with quality of gift articles received at the time of marriage and other kinds of ill-treatment. In the postmortem

report-Ex.-P/16 handed down by PW-5 DK Bisen, the cause of death was mentioned as asphyxia on account of strangulation (homicidal in nature).

However, strangely, neither the chargesheet was filed nor the trial Judge has framed the charge under Section 302 of IPC. After recording the

statement of the witnesses under Section 161 of Cr.PC, the charge sheet was filed for the offences under Sections 304B/34 and 498A of IPC.

5. In the course of trial, the prosecution has examined PW-1 Teekamchand Sahu, brother of the deceased, PW-2 Milapabai Sahu, mother of the

deceased, PW-3 Dileshwari Sahu, aged 14 years, sister of the deceased, PW-4 Padmani Sahu, aunt of the deceased, PW-5 Dukhram Gond & PW-6

Rekhram Sinha, both resident of the parental village of the deceased, PW-7 Bhujbal Sahu, Uncle of the deceased, PW-8 Nirmala Yadav, friend of the

deceased at her parental village, PW-9 Suryakant Bharti, Constable, PW-10 Rupram Sahu, maternal uncle of appellant No.1 Dumendra, PW-11 Vijay

Katre, IO, PW-12 Santosh Kumar Jain, SHO, who has recorded the FIR, PW-13 Makhanlal Dhruv, Constable, PW-14 Premlal Sahu, Patwari and

PW-15 Dr. DK Bisen, who conducted the postmortem on the deceased.

6. At the end of trial, the trial Court has convicted the appellants with the finding that there is evidence of commission of cruelty in connection with

demand of dowry, which has emerged in the statements of the relatives of the deceased, therefore, they are guilty of committing dowry death.

7. Mr. YC Sharma, learned counsel for the appellants, has vehemently argued that there is no evidence of demand of dowry and the death has taken

place for the reason that the deceased was not allowed to attend the marriage of the daughter of her maternal aunt (Mausi). He would submit that in

the postmortem report, the death was reported to be homicidal in nature but there is no evidence to the said effect, therefore, the sentence has been

illegally imposed under Section 304B/34 of IPC. He would read out the entire evidence both oral and documentary.

8. Per contra, Mr. Arvind Dubey, learned Panel Lawyer for the State, would support the conviction on submission that right from the beginning i.e.

from the stage of recording of the FIR, statements of the witnesses under Section 161 of Cr.PC till the recording of the evidence, the witnesses have

stood firm making allegation of demand of dowry, therefore, the conviction does not suffer from any illegality or perversity. He would read out the

evidence in support of the above submission.

9. We shall first deal with the issue as to whether the prosecution has been able to bring home the charge of demand of dowry and that the said

demand was made by the appellants immediately prior to the death of the deceased.

10. Teekamchand Sahu (PW-1) has lodged the merg intimation as well as the FIR. In the merg intimation, there is no allegation of demand of dowry.

In the FIR, there is allegation of committing physical cruelty on the ground of bringing less or inferior quality of dowry articles. He would allege in the

FIR that he had called the deceased over the telephone in the evening of 18.5.2010 and during conversation, she had informed him that on the above

date also, she has been ill-treated by the husband and in-laws in connection with demand of dowry and they are not allowing her to visit the parental

house, on which, this witness requested the deceased to connect him with her husband, but he did not come over the mobile phone and in the morning,

he received information about the death of the deceased. Contrary to this, in para 7 of the deposition, this witness has stated that he had called the deceased in the evening of 18.5.2010 to enquire as to whether they would be attending the marriage of her maternal aunt's daughter. In further cross-examination, he has stated that the deceased had never told her during conversation over mobile phone on 18.5.2010 that the accused persons have physically tortured her for demand of dowry. The witness would state that there was conversation of the deceased with his uncle (PW-7 Bhujbal Sahu) meaning thereby that the above part of the conversation might have taken place with his uncle. However, his uncle PW-7 Bhujbal Sahu would also not depose that the deceased had informed anything about ill-treatment on account of demand of dowry when he spoke to them on 18.5.2010. As a matter of fact, in para 3 of his statement, Bhujbal Sahu has stated that he had not talked with deceased Yamuna and that his conversation was only with appellant Dumendra to enquire as to whether they would be visiting the marriage of the daughter of Yamuna's maternal aunt.

11. PW-1 Teekamchand Sahu has stated that after about one year of marriage, her sister Yamuna was physically tortured for demand of motorcycle and cash, but in his case diary statement Ex.D/1, there is no such allegation concerning demand of motorcycle. There are several other omissions in his case diary statement, which have been elicited from him during cross-examination in para 15, 16 & 17.

12. PW-2 Milapabai Sahu being mother of the deceased, is another important witness on the issue as to whether the demand of dowry has been established by the prosecution. However, in her entire statement, there is no whisper of demand of motorcycle or cash. There is allegation of raising quarrel on account of bringing less dowry, but there is no specific allegation of demand of any particular item or cash. In the statement of this witness, there is further allegation of ill-treatment by mother-in-law for not doing daily household chores and involving in altercation. She would also allege that the deceased's mother-in-law always used to say that whenever the deceased comes back from her parental house, she does not bring anything with her. According to this witness, her daughter used to come back to her parental house on account of ill-treatment by the accused persons and on each

occasion, appellant Dumendra used to take her back. In para 3 of the examination-in-chief, she states that the accused persons never used to commit any physical cruelty against the deceased but in the same breath she states that on few occasions, appellant Dumendra used to assault her and appellant Bedbai used to raise quarrel. She would further state that about 15-20 days back, her daughter had come to their house as she was not feeling well and for this reason, she was not willing to go back to her in-laws's house, but appellant Dumendra and his younger maternal uncle took her back and at that time, PW-3 Dileshwari also accompanied the deceased. She also speaks about the phone call on 18.5.2010 to enquire from the deceased as to whether she would be attending the marriage of her maternal aunt's daughter. This means that this witness had also spoke to the deceased in the evening of 18.5.2010 but importantly she would not speak anything about demand of dowry during that conversation with the deceased. During cross-examination, she states that the complaint about demand of dowry was made to PW-1 Teekamchand Sahu during phone conversation but Teekamchand himself is denying this. In para 8 of the cross-examination, she states that PW-1 Teekamchand and PW-7 Bhujbal had spoken to the deceased and that she had not conversed with her.

13. PW-3 Dileshwari Sahu, aged 14 years, being sister of the deceased is another important witness. She was in the house of the deceased at the time of occurrence as when the deceased had gone to her maternal house about 15-20 days back, this witness had accompanied the deceased. Dileshwari speaks about torture meted to her elder sister for bringing less dowry and not knowing household chores. During her stay in the house of the deceased, in the intervening night of 18 and 19 th of May 2010, when the incident took place, there was a quarrel/altercation between the deceased and her mother-in- law, during which, the mother-in-law threatened the deceased that she would twist her hand. In the night, this witness had slept in the courtyard, whereas, the deceased had slept alone in her bedroom. Appellant Dumendra and their son Sandeep had also slept in the courtyard. She also speaks about the phone conversation between PW-7 Bhujbal Sahu and appellant Dumendra and not between any other witness.

14. PW-4 Padmini Sahu also speaks about commission of cruelty in the name of bringing inferior quality of articles in dowry. PW-5 Dukhram Gond

& PW-6 Rekham Sinha does not speak anything about demand of dowry. PW-7 Bhujbal Sahu speaks about the phone conversation on 18.5.2010 and

altercation/quarrel between the accused persons and the deceased for bringing inferior quality of articles in dowry. He admits in para 6 of his cross-

examination that on 18.5.2010, he had spoken to appellant Dumendra and not with deceased Yamuna. PW-10 Rupram Sahu has not supported the

prosecution. This witness is the maternal uncle of appellant Dumendra.

15. The entire evidence of the important prosecution witnesses would unflinchingly point out that there was no demand of dowry by any of the

accused persons from any of the witnesses. Whatever they have spoken was as per the information of the deceased during her lifetime for which

there is no complaint or report to the Police or before the Caste Panchayat. The allegation of demand of dowry is ordinary in nature without reference

to any particular item or exact amount of cash. Only one witness Teekamchand Sahu (PW-1) has spoken about demand of motorcycle, however, this

important aspect of the matter is missing in his case diary statement. Thus, there is absolutely no evidence of demand of dowry of any particular item

or cash by the appellants from any of the witnesses.

16. So far as the immediate physical cruelty on just previous date of the incident is concerned, PW-1 Teekamchand Sahu, PW-2 Milapabai Sahu and

PW-3 Dileshwari are making contradictory statements. While Milapabai would say that the deceased informed Teekamchand Sahu that she has been

ill-treated for demand of dowry, but Teekamchand Sahu himself is not stating that the deceased had made any such conversation with him. He says

that the deceased might have spoken in this regard with Bhujbal (PW-7) but Bhujbal in his statement has denied to have even spoken to the deceased

during that conversation in the evening on 18.5.2010. Whatever conversation occurred was between this witness and appellant Dumendra for

enquiring as to whether they would be attending the marriage of the daughter of deceased's maternal aunt. Thus, it is absolutely doubtful as to whether

the deceased was treated with physical cruelty on 18.5.2010. There is no such statement either by PW-3 Dileshwari, who was with the deceased on

18.5.2010. Milapabai Sahu states that the deceased had come to her parental house about 15-20 days prior to the date of occurrence because she was not keeping well, whereas, the other witnesses would say that she came back because of ill-treatment by the accused persons.

17. True it is that the deceased was frequently coming to her parental house but that by itself would not be such evidence to presume that at all point of time, her visit to the parental house was on account of ill-treatment on account of demand of dowry by the accused persons.

18. Since there is allegation that quarrel took place between the mother-in-law and the deceased in connection with doing household chores or bringing inferior quality of articles in the marriage, it cannot be ruled out that the relation between the mother-in-law and the daughter-in-law was not cordial but that does not mean that the said soured relation was for demand of dowry because otherwise there is no evidence of demand of any article or cash.

19. We are, thus, of the considered opinion that the prosecution has failed to establish demand of dowry by the appellants at the time of marriage or as consideration of the marriage or soon before the death of the deceased.

20. We are also compelled to observe one glaring lacuna in the prosecution case i.e. as soon as the postmortem report revealed that the death was homicidal in nature, the prosecution was under obligation to file charge sheet for the offence under Section 302 of IPC and similarly, it was the duty of the trial Judge to frame charge under Section 302 of IPC with alternative charge under Section 304B of IPC but charge under Section 302 of IPC has not been framed and there is no iota of evidence as to whether the accused persons have committed culpable homicide.

21. In view of the above, the prosecution has failed to prove the ingredients of offence under Section 304B of IPC, therefore, the conviction under Section 304B/34 of IPC deserves to be set- aside. In so far as the allegation for commission of cruelty under Section 498A of IPC, there is enough evidence on record that the deceased was treated with cruelty including physical cruelty in the name of bringing inferior quality of articles in the marriage. She was also subjected to taunts with physical cruelty for not doing household chores, which all come within the purview of "cruelty" as

defined under Section 498A of IPC, therefore, the conviction of the appellants under Section 498A of IPC deserves to be maintained.

22. For the offence under Section 498A of IPC, the appellants have been sentenced to undergo RI for 3 years. Appellant No.1 Dumain @ Dumendra

Sahu is in jail from 19.5.2010 till date, therefore, he has served out the entire sentence under Section 498-A of IPC. Appellant No.2 Ishwar Sahu was

in jail since 19.5.2010 to 19.11.2010 during trial and was directed to be released on bail on 12.6.2012, therefore, he has served out little more than 2

years of jail sentence. Appellant No.3 Smt. Bedbai remained in jail from 19.5.2010 to 19.11.2010 during trial and was directed to be released on bail

by this Court on 29.10.2013, therefore, she has served out the entire jail sentence of 3 years for the offence under Section 498A of IPC.

23. In the facts and circumstances of the case, the sentence imposed on appellant No.1 Dumain @ Dumendra Sahu is reduced to the period already

undergone by him. So far as appellant No.2 Ishwar Sahu is concerned, he has served out little more than 2 years of jail sentence and as such, the

sentence imposed upon him under Section 498A of IPC is reduced to the period already undergone by him. As far as appellant No.3 Smt. Bedbai is

concerned, since she has already served out the jail sentence imposed upon her by the trial Court and has been released from jail, no further order is

required.

24. In view of the above, the appeal is allowed in part. The conviction imposed upon the appellants under Section 304B/34 of the IPC is set-aside.

However, the conviction imposed upon them under Section 498A of IPC is maintained.