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IN THE HIGH COURT OF JUDICATURE, MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 103 OF 2000

1. Parameshwar, son of Shhanlal,
aged 26 years.

2. Himmat, son of Sohanlal, aged
24 years.

3. Sohanlal, son of Jeevrakhan,
aged 48 years,

All residents of village Mohara,
Police Station Gurur, District
Durg, M.P.

...APPELLANTS
(In Jail)

VERSUS

The State of Madhya Pradesh

...RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF

CRIMINAL PROCEDURE

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Advocate General
Jabalpur

HIGH COURT OF CHHATTISGARH, BILASPUR

**Division Bench: Hon'ble Shri Navin Sinha, Ag CJ &
Hon'ble Shri Prashant Kumar Mishra, J.**

Criminal Appeal No.1031 of 2000

Parameshwar & others

Vs.

The State of Madhya Pradesh (Now C.G.)

Present:

Smt. Savita Tiwari, counsel for the appellants.
Smt. Smita Ghai, Panel Lawyer for the State.

JUDGMENT

(13.2.2015)

1. The Appellants who are husband of the deceased, his brother and father respectively, stand convicted under Section 304-B IPC to imprisonment for life and to seven years rigorous imprisonment under Section 306 IPC as ordered by the Additional Sessions Judge, Balod, in Sessions Trial No. 280 of 1999, dated 5.4.2000.
2. Merg, Exhibit-P/3, was lodged by PW-2 Chowaram, nephew of Appellant No.3 on 26.12.1998 at about 4:30 pm stating that his sister-in-law, deceased Nargis Bai had committed suicide by hanging the same day at about 10:00 am to 12:00 pm. The father of the deceased, PW-3 Ramjeevan lodged a written report, Exhibit-P/7, on 29.12.1998 before the Superintendent of Police, Durg, that his daughter was married six months ago to Appellant no.1. On 26.12.1998 he was informed at about 8:00pm that she had suffered injuries on her chest consequent to falling down from the terrace. Since he was otherwise busy he did not go to see his daughter. On 27.12.1998 Appellant No.2 and another

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Anandram again informed him that his daughter's condition had further deteriorated and she was under treatment. He then went to her village. The door of her room was locked from outside. On opening the door he found his daughter's body hanging. Formal FIR, Exhibit-P/11 was registered on 2.1.1999. In the meantime, the body had been sent for postmortem on 27.12.1998 conducted by PW-6 Dr. R.S. Bhardwaj, who in his report Exhibit -P/10 opined that death had taken place twenty four to forty eight hours earlier by asphyxia caused by hanging, suicidal in nature. The inquest report was marked Exhibit-P/2 and the spot map marked Exhibit -P/6.

3. Learned Counsel for the Appellants submitted that there was no evidence to sustain the conviction either under Section 304-B IPC or a presumption for abetment to commit suicide by a married woman under Section 113A of the Evidence Act. The deceased was of a weak constitution and committed suicide which can be for many reasons incompatible with the guilt of the Appellants. There is no evidence whatsoever with regard to any cruelty or harassment for dowry at any time much less in proximity to death. Appellant no.2 and 3 did not even live in the matrimonial home as acknowledged in their evidence by PW3, Ramjeevan and PW4, Sukwaro Bai, the father and mother of the deceased. They have been falsely implicated roping in the entire family. The Appellants denied the accusations under Section 313 Cr.P.C claiming false implication. PW-3 and PW-4, parents of the deceased, have also acknowledged in their evidence that there was never any demand for dowry at the time of marriage or thereafter. Not a single instance of harassment or torture for dowry has been mentioned in their evidence. PW-3 Ramjeevan, father of the deceased also participated in the funeral rites without protest and lodged the report Exhibit P/7

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with the police only three days later. His conduct in not having gone to visit his daughter immediately after being informed and going there the next day is not natural. The postmortem report has not found any other injury on the body. The doctor has clearly opined it to be a case of suicidal death by hanging.

4. Learned Counsel for the State submitted that the deceased was married to Appellant No.1 barely six months earlier. There is no discernible reason why she would have committed suicide immediately after marriage unless she was being harassed and subjected to cruelty for dowry. If death took place within seven years of the marriage in other than natural circumstances, the law presumes it to be a case of dowry death under Section 304B IPC and the onus lies on the accused to deny the same contrary to the normal presumption for innocence of the accused till not proved guilty beyond reasonable doubt. Even if death is occasioned by suicide within seven years of the marriage, the presumption is against the accused under Section 113A read with Section 113B of the Evidence Act. PW-3 and PW-4, the parents of the deceased, have deposed that her daughter had told them with regard to demands for dowry being made by way of TV, Scooter and Chair. The judgment under appeal therefore requires no interference.
5. We have considered the submissions on behalf of the parties and perused the materials and evidence on record.
6. PW-1, Sarpanch of the village proved the inquest report Exhibit-P/2. Chowaram, PW-2, nephew of Appellant No.3 and who had also lodged Merg, Exhibit -P/3 proved the inquest report also. He further deposed that the inquest report was prepared in presence of PW-3, father of the deceased, and at that

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time, PW-3 had stated that he did not suspect any foul play in his daughter's death.

7. PW-3, Ramjeevan, father of the deceased, deposed that his daughter had come home during "Teeja". She generally stated of harassment by her husband and father-in-law with no reference to any dowry demand. The witness did not make any statement against Appellant No.2. The witness did not mention any specific nature of harassment or cruelty meted out to the deceased for dowry much less the nature of the same but stated so in very general and omnibus terms. The witness acknowledged having been informed that his daughter was not well, that he had signed the inquest report and Exhibit-P/5, the seizure report of the belongings of the deceased in the room, all on 26.12.1998 itself. The witness further deposed having participated in the last rites at which time also he did not tell anybody that his daughter was being harassed for dowry. The witness offered no proper explanation for the delay in lodging the police report three days later except stating that he did so after consulting his family members and on being told by the police to meet a lawyer. In cross-examination, he stated that he had made no accusation against Appellant. No.2 in his report to the police and that initially he did not suspect any foul play in his daughters death. The witness stated having told his lawyer with regard to the demand made for TV, Scooter and chair but could not say why his lawyer did not incorporate it in the police complaint. He also acknowledged that his daughter had come home but did not inform her parents and other family members of any harassment meted out to her for dowry. The witness further stated that no demands for dowry had been made from him before or after marriage and even during 'Gauna'. A single statement was made that on one night when he had stayed with his daughter,

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she had told him that Appellant complained he had not been given TV, Scooter and Chair. This statement can be a grievance but cannot be equated with a demand for dowry. Even for this statement there is no evidence whatsoever of any harassment or cruelty pursuant thereto as a dowry demand. The witness further acknowledged that he never complained to the Sarpanch of his daughter's village, PW-1, and neither had he told his own relatives of any harassment being caused to his daughter. Significantly, he acknowledged that Appellants 2 and 3 resided in Raipur for their vocation and did not reside in village Mohara where the deceased resided with her husband.

8. PW-4 Sukwaro Bai, mother of the deceased, likewise stated that during "Teeja", the deceased had complained that her in-laws were complaining that no Motorcycle and TV had been given. In cross-examination, she confirmed that they had never discussed the issue with Appellant No.1 when he came to their house. She had never told her husband with regard to complaint made by the deceased and there was no specific reason why she did not inform him. She further acknowledged that it was only Appellant No.1 about whom the deceased had informed as demanding dowry. The witness did not mention of any incident or nature of harassment or cruelty meted out to the deceased for dowry demand.

9. PW-5, the Patwari proved the spot map Exhibit -P/6. Dr. R.S. Bhardwaj, PW-6 proved the postmortem report Exhibit-P/10. The Tehsildar, PW-7 also proved the inquest report Exhibit-P/2. The Assistant Sub Inspector, PW-8, proved the Merg intimation Exhibit-P/3, the police report Exhibit -P/7. The Investigating Officer, PW-12, denied that the police was galvanized into action only after the complaint lodged by PW-3 before the Superintendent of Police.

10. Section 304-B IPC raises a presumption in the law that if a woman dies in unnatural circumstances within seven years of marriage, and it is shown that soon before her death she was subjected to cruelty and harassment for dowry, the law shall presume under Section 113B of the Evidence Act that death was occasioned due to demands for dowry. Likewise under Section 113A of the Evidence Act, if the victim committed suicide within seven years of marriage and it was shown that she was being subjected to harassment or cruelty for dowry, considering all attendant circumstances it would be a case for abetment to commit suicide against the husband and his relatives. The presumption does not arise automatically merely because death may have taken place in unnatural circumstances within seven years of the marriage. The onus remains on the prosecution to prima facie establish that the deceased died within seven years of marriage in unnatural circumstances including suicide. Further that soon before death, the deceased had been subjected to harassment and cruelty pursuant to dowry demand. It is not a bald generalized assertion that will suffice, but there has to be a minimum of evidence by way of incidents including nature of harassment or cruelty done. Once this prima facie material is established by the prosecution, the onus shifts on the accused and the accused can still prove that it was not a dowry death. In (2012) 7 SCC 91 (Rajesh Bhatnagar v. State of Uttarakhand) it was observed as follows :-

“15. Before we examine the merit or otherwise of this contention, it will be useful to state the basic ingredients of Section 304-B IPC. The requirement of Section 304-B is that the death of a woman be caused by burns, bodily injury or otherwise than in normal circumstances, within seven years of her marriage. Further, it should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or her husband's family or relatives and thirdly, that such harassment should be in relation to a demand for dowry. Once these three

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ingredients are satisfied, her death shall be treated as a "dowry death" and once a "dowry death" occurs, such husband or relative shall be presumed to have caused her death. Thus, by fiction of law, the husband or relative would be presumed to have committed the offence of dowry death rendering them liable for punishment unless the presumption is rebutted. It is not only a presumption of law in relation to a death but also a deemed liability fastened upon the husband/relative by operation of law."

11. The principles were again reiterated in (2013) 4 SCC 131(Bakshish Ram v. State of Punjab) as follows :-

"19. As discussed above, a perusal of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sibbo (PW 2), the mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions.

12. The evidence available in the present case does not disclose any demand for dowry, neither is there any evidence with regard to any cruelty or harassment for dowry whatsoever against the Appellants. On the contrary the parents of the deceased acknowledged that no demand for dowry had been made either before marriage or after the marriage. The only evidence available is that the deceased had informed them that the husband was complaining that he had not been given Motor-cycle, TV and Chair cannot be construed as a demand for dowry. There will have to be a difference between a grievance and a demand for

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dowry coupled with harassment and cruelty for the same. A person may be aggrieved but may not pursue it by harassment or cruelty. In (2007) 9 SCC 721 (Appasaheb v. State of Maharashtra) it was observed :-

"11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction, and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See *Union of India v. Garware Nylons Ltd.*¹ and *Chemical and Fibres of India Ltd. v. Union of India*.) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

13. PW-3, the father of the deceased deposed that he did not suspect any foul play in the death of his daughter. If there had been earlier instances for demands of dowry or cruelty and harassment in any manner, the witness would have immediately gone to visit his daughter after hearing that she sustained injuries because of having fallen from the terrace. The fact that he did not consider it necessary to do so is evidence of his being sanguine of his daughter

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being alright in her matrimonial home. He participated in the funeral rites and never complained to anyone even at that time that he suspected any foul play because of earlier dowry demands. No evidence has been led with regard to the door of the room being locked from outside and who opened it. After the funeral he went home. Only three days later when the police told him to see a lawyer, a typed complaint was filed before the police. It does not contain any reference to dowry demand for T.V., Motorcycle and Chair. The witness stated that he had not filed any complaint against Appellant No.2 even though the latter is also named in the police report. The witness states he had read the report before signing it. These are all contradictions which remain unexplained. In his deposition, the witness acknowledged that Appellants 2 and 3 resided at Raipur for their vocation and did not live at village Mohara where his daughter resided with her husband. If the deceased had been subjected to cruelty or harassment and specific demand for dowry had been made, undoubtedly she would have said so to her mother PW-4. ON the contrary the witness states that she was under grief because of her daughters death and therefore lodged the police report.

14. In the nature of the evidence available we find it difficult to hold that the prosecution has been able to establish a prima facie case of dowry death under section 304B IPC to raise the presumption against the Appellants under Section 113B of the Evidence Act or for abetment to suicide under section 113A of the Evidence Act. In absence of the same, the onus did not shift to the Appellants and there was no occasion for them to prove their innocence. Consequently we find it difficult to uphold their conviction and sentence which are set aside.

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15. The appellants are already on bail. Their bail bonds shall remain in operation for a period of six months only from today in view of the provisions contained under Section 437-A of the CrPC.

16. The appeal is allowed.

Sd/-
Acting Chief Justice

Sd/-
Prashant Kumar Mishra
Judge

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