

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.887 of 2000**

State of Madhya Pradesh (now State of Chhattisgarh) through S.H.O.
P.S. Mungeli, District Bilaspur

---- Appellant

versus

1. Ghanshyam, son of Ram Singh, aged about 29 years,
2. Ram Singh, son of Pune Singh, aged about 60 years,
3. Savitri @ Ghuruva, wife of Ram Singh, aged about 58 years,

(All R/o Village Hathnikala, Tahsil and P.S. Mungeli, District Bilaspur
(Madhya Pradesh) (now Chhattisgarh)

---- Respondents

For Appellant/State : Shri Vinod Deshmukh, Deputy Government Advocate
For Respondents : Shri Rakesh Pandey, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

Per Deepak Gupta, Chief Justice

28/6/2016

1. This appeal by the State is directed against the judgment dated 17.9.1999 passed by the Additional Sessions Judge, Mungeli in Sessions Trial No.348 of 1995, whereby the Learned Additional Sessions Judge has acquitted the accused/Respondents herein of the charges under Section 304B read with Section 34 of the Indian Penal Code.

2. The prosecution story briefly stated is that deceased Dhankunwar was married to Ghanshyam, Respondent No.1 herein. Ram Singh and Savitri are the parents of Ghanshyam. It is alleged that husband Ghanshyam and in-laws of the deceased used to make demand of dowry from the deceased. She died an unnatural death on account of the demands of dowry within 7 years of her marriage. Therefore, offences under Section 304B read with Section 34 IPC were made out against the accused/Respondents. The specific allegation is that on 16.5.1995, the deceased was beaten-up by her in-laws because she could not bring

enough dowry and thereafter she died. First Information Report in this regard was lodged on 28.6.1995, i.e., 1 month and 13 days after the occurrence took place and there is no explanation why no FIR was lodged immediately after the occurrence. It is not disputed that the deceased died an unnatural death. Her body was sent for post mortem examination. Dr. R. Bhattacharya, PW-19, who conducted the post mortem, has clearly opined that he could not pin-point the cause of death. It appears that because the cause of death could not be ascertained, no case was lodged against the accused/Respondents. However, later on, the mother of the deceased kept on visiting the police station and thereafter the FIR was lodged.

3. The prosecution examined a number of witnesses, but the only witness of any relevance as far as the prosecution is concerned is PW-2, Nirmala, the mother of the deceased. She states that her daughter Dhankunwar was married to Ghanshyam when both of them were children. In her statement, she states that her daughter was married when she was a small child. According to her, even the *Gauna* (a ceremony when the bride is taken to her matrimonial home), was performed 10 years back. It is, thus, apparent that the marriage was definitely more than 7 years old and this is not a case to draw any presumption against the accused/Respondents. It is also not a case where Section 113 or 113B of the Evidence Act would be applicable.

4. To establish an offence under Section 304B IPC, the prosecution has to prove certain facts; firstly, that the death was caused by burn injury or by bodily injury under circumstances other than normal; secondly, that the death occurred within 7 years of marriage and thirdly, that soon before the death the deceased was subjected to cruelty or harassment by her husband or any of the relatives of the husband in connection with demand of dowry. Assuming for the sake of argument that demand of dowry is

proved, we find that neither unnatural death is proved nor it is proved that the death took place within 7 years of the marriage. Therefore, it cannot be a case falling within the scope and ambit of Section 304B IPC. This was the only charge levelled against the accused/Respondents.

5. We have examined the case on merits also. Even if the statement of the mother is accepted to be the gospel truth, it only indicates that at the time of *Gauna*, which had taken place 11 years earlier to death of the deceased, demand of a bicycle was made from the deceased. The mother also states that thereafter 20 *Tola* of Silver was demanded from the deceased. She further states that these demands made from the deceased were conveyed to her by the deceased. The mother of the deceased is not aware of the cause of death of the deceased. As far as the other witnesses of the prosecution are concerned, they have not supported the case of the prosecution. The Learned Trial Court has rightly held that the prosecution has failed to prove its case. We have no hesitation to hold that the judgment of acquittal does not call for any interference.

6. We find no irregularity in the impugned judgment. The appeal is, therefore, dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE