

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 81 of 2002**

1. Krishna Son of Punitram Dhobi, aged 24 years
2. Punitram son of Bhauram Bareth, aged 40 years
3. Manglibai wife of Punitram Dhobi, aged 38 years

All residents of village Kapisda, Police Station and Tahsil Sarangarh, District Raigarh (Chhattisgarh)

---- Appellants

Versus

State of Chhattisgarh, through Police Station Sarangarh, District Raigarh, Chhattisgarh.

---- Respondent

For Appellants	:	Shri R.K. Tiwari, Advocate.
For Respondent/State	:	Ms. Madhu Nisha Singh, Panel Lawyer

Hon'ble Shri Deepak Gupta, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****C.A.V. Judgment****Per Deepak Gupta, Chief Justice****13 /07/2016.**

1. This appeal by the accused is directed against the judgment dated 24.01.2001 delivered by the Second Additional Sessions Judge, Raigarh in Sessions Trial No. 85 of 1999 whereby he convicted all the three accused for having committed offence punishable under Section 304-B of the Indian Penal Code (for short 'the IPC') and sentenced them to undergo imprisonment for life.
2. Admitted facts are that deceased-Lalitabai was married to accused-Krishna. Accused-Punitram and Manglibai are father and mother

of accused-Krishna. The allegations against the accused are that they used to ill-treat the deceased for not bringing sufficient dowry and due to the cruelty and harassment meted out to her, she died an unnatural death by hanging on 29.10.1998 at about 5:00 pm, i.e., within seven years of her marriage and thus the accused had committed an offence punishable under Section 304-B IPC. The learned trial Court has convicted all the three accused. Hence, this appeal.

3. It is not disputed that the deceased died within seven years of her marriage. The main issues relevant for disposal of this appeal are, whether there was any demand of dowry and whether the deceased was subjected to cruelty and tortured due to non-bringing of dowry and lastly, whether the deceased died an unnatural death. In this case, the deceased died on 29.10.1998, but the report (Exhibit P/9) was lodged with the police after six months on 29.03.1999.

4. PW-1, Shaukilal is the father of the deceased. He states that the deceased was married seven months prior to her death. He also states that accused-Punitram, father of accused-Krishna had made a demand for $\frac{1}{2}$ tola gold, one TV and bed etc. at the time of marriage. When this demand was made, Alag Ram, Natthu, Sonsai, Sagun, Awadhram and Ramadhar were present. He further states that since his father was unwell he could not provide the aforesaid articles but gave other items in the dowry. He also states that he had told accused-Punitram that he works in a company in Delhi and after he gets some money, he may give the remaining dowry items. He also states that whenever his daughter used to come to her parental home, she used to tell that her mother-in-law, father-in-law, husband and other family members were troubling her for not bringing sufficient dowry. He states that after leaving his daughter at her in-laws house, he went to Delhi two-three days later. His mother sent a message through one Labho that his daughter has been killed by her in-

laws. He then came back from Delhi to his village Kapisda. Then he states what was narrated by his mother Ramabai and that part of statement was hearsay and not admissible in evidence. In cross-examination, he states that his statement was recorded by the police two-three months after the date of occurrence. At the time of *Faldan* (engagement ceremony), talk about dowry had taken place. Some talk had also taken place at the time of wedding. He admits that the marriage of accused-Punitram's daughter also took place one day prior to marriage of his daughter. He also admits that accused-Punitram was not alone at the time of *Faldan* (engagement ceremony) and there were 10-12 more persons of his village in addition to ladies and children. The engagement ceremony took place in his village Kapisda. When a specific question was put to this witness, whether talk about dowry took place at the time of wedding, he replied that this talk took place at the time of *Faldan*. He further states that after the marriage, his daughter came to her parental house on three occasions. He stated that first time, she stayed for 10-15 days and on the next two occasions, she stayed for 15 days each. For the first two times, his daughter did not complain about any ill-treatment, but when she came third time, she told that her in-laws were troubling her. At that time, only his family members were present. He did not inform the police or panchayat about this fact. He did not even lodge any report in this behalf. In cross-examination, he admitted that when last time he went to bring his daughter she was to stay with him for three months. He also admits that his son-in-law Krishna had brought his daughter home and Krishna stayed in his house for five days. Thereafter, Krishna returned to his house. After 15 days, he sent his daughter to her in-laws house. He then stated that he had to go to Delhi and therefore, he sent his daughter to her in-laws house. He also admits that his daughter had stated that three months have not elapsed and the villagers would raise question why

he had sent her back earlier. According to him, his daughter did not want to go to her matrimonial home.

5. PW-2, Alag Ram states that at the time of *Faldan* (engagement ceremony), Punit Ram, father of accused-Krishna had come to their village-Chhind to the house of Shaukilal (PW-1). He had made a demand for ½ tola gold, one TV and bed etc. Many persons were present at that time. The engagement was settled. However, Shaukilal could not provide the aforesaid items at the time of wedding. According to him, Shaukilal brought his daughter home and she stayed home for 8-15 days. She then went back to her in-laws house and Shaukilal went to Delhi. This witness states that he does not know how the deceased died. He has not supported the prosecution story and has turned hostile.

6. The version of Sonsai (PW-3) is also similar that demand for ½ tola gold, TV and bed was made by accused-Punit Ram. These items were not given but the marriage took place. According to this witness, after the marriage, the deceased came home only once and her father never informed him of any misbehaviour. He also states that the person who came from village Kapisda to inform about the illness of the deceased stated that she had high fever. The occurrence took place on Thursday and the information was given on the next day i.e. Friday. Thereafter, some women went to village Kapisda. When the women returned from village Kapisda they told that the body of deceased had been taken by the police. The statement of this witness was never recorded by the police and he was never questioned during investigation. He was not associated with the investigation. Thereafter, this witness stated that the police had called him to the police station and made certain investigation. He also states that he went to the police station three months after the date of occurrence.

7. Dau Ram (PW-4) is a witness to the seizure of dead body of the deceased. According to him, at the time when the body was taken into possession, the clothes were removed but there was no sign of any injury on the body. No blood or foam was coming out of the nose. Even on turning over of the body no sign of injury was seen.

8. Bahatarin Bai (PW-11) is the mother of the deceased. According to her, before the marriage, engagement ceremony was performed. At that time, accused Punit Ram had come with other relatives and a talk had taken place that $\frac{1}{2}$ tola gold, one TV, bed etc. would be given. According to her, at the time of wedding, some items were given and her daughter went to her matrimonial home. At the time of Rath Yatra, her husband went to bring his daughter home. The main reason was that her father-in-law was unwell. The daughter informed that her in-laws used to talk about $\frac{1}{2}$ tola gold, TV, bed etc. and nothing else. This witness does not state that her daughter was tortured. She states that she does not even know how her daughter was kept and maintained by the in-laws. Thereafter, she stated that her daughter had informed that her in-laws used to trouble her in connection with dowry. In cross-examination, she admits that until she and her husband returned from Delhi, last rites of her daughter had not been performed. She also admits that except saying that she has not brought any dowry, her daughter had not made any complaint about her in-laws. She also admits that in their society, no dowry is demanded, but parents give gift to their daughter as per their financial condition. She also admits that her daughter was not ill-treated.

9. Dr. J.R.Dhritlahre (PW-6) conducted the postmortem on the deceased alongwith one female Medical Officer. He did not even find injuries on the deceased except two abrasions on both sides of mandible. The opinion of the Doctor is that the death was due to asphyxia which is due to constriction of air passage. There is no opinion that the death was

homicidal or suicidal. There is also no opinion that this was due to strangulation or hanging. It would be important to notice that the Doctor did not find any ligature mark on the throat or neck of the deceased. He states that he did not check below the abrasions. This is the entire evidence.

10. The deceased may have died an unnatural death but it is definitely not due to hanging because there was no ligature mark. If it was strangulation, then it would be a murder and in such eventuality, the prosecution was required to prove as to who committed the murder. The entire family cannot be roped in on the basis of demand of dowry. The only allegation which is proved on record is that at the time of engagement ceremony some demand was made and that too only by Punit Ram. No demand was made by the other two accused. Admittedly, this demand which was for providing ½ tola gold, one TV and bed was not met. Despite that, without any protest, the marriage took place. Therefore, the main question that arises for consideration is whether the deceased was subjected to any cruelty on account of dowry not being given after her marriage. None of the witnesses, except the parents of the deceased, have supported the prosecution case. In fact, the father of the deceased states that his daughter had come home thrice whereas the other witnesses state that she had come home only once. The mother of the deceased also states that her daughter came once to their house. This is a major contradiction. Even the statement of the mother does not prove that her daughter was subjected to cruelty or harassment by her husband or any other relatives in connection with demand of dowry. There is no specific allegation of cruelty in the statement of the mother.

11. The independent witnesses have not supported the prosecution case. There is no explanation why the FIR was lodged after six months. The statements of the witnesses were not recorded in time and in fact

some of the witnesses examined in the Court were not even associated with the investigation.

12. Most importantly, the version of the Doctor does not clearly show how the deceased died. In the postmortem report, all that is stated is as follows:

“In our opinion, the cause of death is Asphyxia which is due to constriction of Air Passages.

Duration within 22-26 hours”

13. Asphyxia only means that the death took place due to lack of air going to the lungs. The Doctor had to clearly opine whether this was due to strangulation or hanging and if it was hanging, whether the hanging was suicidal or homicidal. Hanging is ruled out because there was no ligature mark. With regard to strangulation also, there is no clear cut evidence.

14. In view of the above discussion, it cannot be said with certainty that the deceased was either subjected to cruelty for demand of dowry or that she died an unnatural death. In this view of the matter we have no other option but to set aside the judgment of the learned 2nd Additional Sessions Judge.

15. Accordingly, the appeal is allowed and the judgment dated 24.01.2001 delivered by the learned 2nd Additional Sessions Judge, Raigarh in Sessions Trial No. 85 of 1999 is set aside. The accused/Appellants are acquitted of the charge framed against them. They are already on bail. They need not surrender and their bail bonds are discharged.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE