

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 78 of 2012

1. Vimla Bai, W/o Shri Bharat Lal Dewangan, aged about 50 years.
2. Pires Kumar S/o Shri Bharat Lal Dewangan, aged about 28 years.
3. Bharat Lal Dewangan, S/o Shri Khusuram Dewangan, aged about 54 years.

All R/o Vilalge Kasahi, P.S. Doni Lohara, Distt. Durg (CG)

---- Appellants (In Jail)

Versus

1. State Of Chhattisgarh, through Police Station Doni Lohara, Durg (CG)

---- Respondent

For Appellants:
For Respondent:

Shri Rakesh Pandey, Advocate
Shri V.A. Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

18/02/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 13.12.2011 passed by the Additional Sessions Judge, Balod in S.T. No.77/11 convicting the accused/appellants under Section 304 (B) of the Indian Penal Code (for short 'the IPC') and sentencing each of them to undergo RI for 07 years and fine of Rs.50/-, in default to undergo additional RI for 3 months.
2. In the present case name of deceased is Nutan Dewangan, wife of accused/appellant No.2. Accused/appellant No.1 & 3 are the mother-in-law & father-in-law of the deceased respectively. The marriage of deceased was solemnized with accused/appellant No.2 on 24.5.2010 and she died on 27.3.2011 in her matrimonial house after receiving 90% burn injuries. Dead body of deceased was found outside her marital home. On

being informed by Sukhram, Village Kotwar Udal Singh (PW-3) lodged the merger intimation Ex.P-7. Written complaint (Ex.P-5) was lodged by Pawan Dewangan (PW-1), father of deceased, to the police mentioning therein that the deceased was subjected to cruelty by the appellants in connection with demand of dowry and this fact was informed by the deceased to him and his family members. It has further been mentioned that she was even not provided proper treatment at her matrimonial home and he suspects that it is the appellants who have set her ablaze. Based on this written report, FIR (Ex.P-6) was registered on 27.3.2011 against the appellants under Section 304B/34 of the IPC. Inquest on the dead body was prepared on 27.3.2011 vide Ex.P-2. Body was sent for post-mortem which was conducted on the same day by Dr. S.L. Uikey (PW-4) who noticed 90% burn and opined that cause of death was shock resulting from burn. After investigation, charge sheet under Sections 304B of the IPC was filed against the accused persons, however, the charge under Section 304-B of IPC, in alternative under Section 302/34 of IPC, was framed against the accused persons by the trial Court.

3. To substantiate the charge against the accused persons, the prosecution has examined 09 witnesses. When the accused persons were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances, they denied the same and pleaded that they are innocent.
4. Upon consideration of evidence, the trial Court convicted and sentenced the appellants as described above.
5. Counsel for the accused/appellants submits that;
 - conviction of appellants is solely based on the general and omnibus allegations made by Pawan Dewangan (PW-1), Arjun Singh Dewangan (PW-3) & Sunita Dewangan (PW-5).
 - even if the entire allegations are taken on its face value, the basic

ingredients of Section 304-B of IPC are not made out against the present appellants because there is no evidence to show that soon before death the deceased was subjected to cruelty by the appellants for demand of dowry.

- It has come in the evidence of Pawan Dewangan (PW-1) that the deceased being born & brought-up in urban area was not happy with her marriage in the village and this could be a reason for committing suicide by her.
 - Not only the defence witnesses have stated that deceased was never subjected to cruelty for demand of dowry but the independent witness Ramawtar Dewangan (PW-8) has supported the defence taken by the appellants.
 - At the time of incident, appellant No.1 had gone to fetch water, appellant No.2 was in Rajnandgaon in connection with his work and appellant No.3 was also not in the village.
 - Lastly, he submits that appellants No.2 & 3 are in jail since 28.3.2011, whereas appellant No.1 has already remained in jail for about eleven months.
6. On the other hand, supporting the impugned judgment learned counsel for the State submits that;
- Pawan Kumar (PW-1), Arjun Singh Dewangan (PW-3) & Sunita Dewangan (PW-5) have categorically stated that the deceased was subjected to cruelty & harassment by the accused persons in connection with the demand of dowry.
 - Brutality of the act of appellants can be further seen from the fact that the deceased suffered 90% burn injuries.
7. Heard learned counsel for the parties and perused the evidence available on record.

8. Pawan Kumar (PW-1) is the father of deceased and he has stated that on 27.3.2011 upon receiving information on telephone regarding death of the deceased, he reached the in-laws house of the deceased and saw her body covered by cloth. Thereafter he gave intimation in the police station and based on which FIR was registered against the accused/appellants. This witness has further stated that after 1 ½ month of the marriage, the deceased informed him over telephone that the accused persons are committing torture and cruelty upon her for bringing old defective fridge & washing machine and broken bed. He has further stated that the deceased had come to his house on the eve of Teeja festival and stayed there for about 1½ month and during her stay, she informed that the accused persons used to commit cruelty upon her for demand of dowry. A week after her departure from his house, she again informed him over telephone that the accused persons are committing torture upon her for demand of dowry and then he made her understand that presently he does not have money to fulfil their demand. He has further stated that after leaving her matrimonial house without informing her in-laws, the deceased had gone to her uncle's house situated at village Devtarai (Balod) and thereafter he along with his friend Ramawtar had gone to drop the deceased in her matrimonial home. He has further stated being fed-up with the cruel behaviour of accused persons her daughter had escaped from her matrimonial home and gone to her uncle's house situated at village Devtarai (Balod). He has further stated the deceased gave birth to a male child on 20.2.2011 in his house and thereafter on 27.2.2011 he sent the deceased to her in-laws house. After 5-7 days thereafter his daughter informed him over telephone that her in-laws are still committing torture & cruelty on her for demand of dowry and next day on telephone on telephone and next day he came to know about the death of his daughter.

In the cross-examination this witness has admitted that he has filed an application before the Court below seeking permission to appoint a lawyer on his behalf for assisting the prosecution. He has further admitted that his lawyer has explained him the manner in which he has to depose in the Court. He has further stated that upbringing of deceased was done in the urban environment, he had given his daughter all the liberty and never put any restriction on her. He has further stated that at the time of marriage there was no demand for dowry from the side of accused/appellants. He has further stated that he had guessed that his daughter was done to death for dowry. In Para-26 he has admitted that written report was prepared by his lawyer and he had merely put his signature on it.

9. Arjun Singh Dewangan (PW-2) is the maternal uncle of the deceased. He has stated that he had visited the matrimonial house of deceased after coming to know about her death. This witness has further stated that once the deceased had come to his place and told him that accused persons used to commit cruelty upon her for the demand of dowry. He has stated that prior to Holi festival the relations between him and the in-laws of deceased were cordial and they have never shown any displeasure while sending the deceased to her parental home. In the cross-examination this witness has stated that he was informed by the deceased that her husband got employment in a private company at Rajnandgaon and presently he is staying there.

10. Udal Singh (PW-3) is the village Kotwar who lodged the merger intimation. He is also witness of inquest (Ex.P-2) and seizure memo (Ex.P-3) by which one stove & bundle of burnt clothes were seized. In the cross-examination he has stated that at the time of incident mother-in-law of deceased i.e. appellant No.1, had gone to fetch water and her father-in-law i.e. appellant No.3, was also not in the village. He has further stated that prior to 15-20

days of incident, husband of the deceased i.e. appellant No.2, got the job in Dongergarh and on the date of incident he was in Dongergarh. This witness has admitted that neither the deceased or her parents had made any complaint against the accused persons regarding demand of dowry nor has he heard from anybody that the accused persons were demanding dowry.

11. Dr. S.L. Uikey (PW-4) is the person who conducted autopsy on the body of deceased and gave his report (Ex.P-8). According to this witness, he had noticed 90% burns on the body of deceased including face, neck, whole abdomen, chest & back side and opined the cause of death as shock resulting from burn.

12. Sunita Dewangan (PW-5) is the real sister of the deceased. She has deposed that whenever she would come to Dhamtari, she used to inform that her husband & in-laws commits *maarpeet* with her for the demand of dowry. On 25.3.2011 the deceased informed over telephone that her husband and in-laws commits *maarpeet* with her and on this, her father told that we would bring back the deceased after getting the matter resolved in the village meeting. In the cross-examination she has stated that she has informed the police that the deceased made a telephone call to her on 25.3.2011, however, if the said fact is not mentioned in her police statement then she cannot tell reasons.

13. Vijay Katre (PW-6) is the investigating officer who has duly proved the prosecution case.

14. Dpendra Kumar Deshmukh (PW-7) is the Patwari who prepared the spot map.

15. Ramawtaar Dewangan (PW-8) is the friend of Arjun Singh Dewangan (PW-1). He has stated that after 3-4 months of marriage, the deceased informed that her in-laws are harassing her, she does not like to stay there

and she informed her parents regarding the defective fridge, bed & other articles given in the marriage. After the incident, he visited the in-laws house of the deceased along with Arjun Singh Dewangan (PW-1). In the cross-examination this witness has admitted that the deceased never informed him that she is being subjected to ill-treatment & harassment by accused persons in connection with demand of dowry. He has further admitted that in the police station Nandkumar has prepared an application and gave to Pawan (PW-1). According to this witness, after leaving her matrimonial home the deceased had directly come to her uncle's house and then to her parent's house and therefore he had gone to village Kasahi along with Pawan Kumar (PW-1) & others to drop her at her matrimonial home where Pawan Kumar (PW-1), father of the deceased, had apologized and assured that the same mistake will not recur in future.

16. Vimla Bai (DW-1) is the neighbour of the accused persons. She has deposed that the accused persons were treating the deceased as their daughter and the deceased was never subjected to cruelty or harassment in connection with demand of dowry by the accused persons. She has further stated that the deceased used to say that she does not want to live in the village. She has further stated that she tried to reason with her that she had to now spend rest of her life in the matrimonial home. She has further stated that once the deceased had left her matrimonial home without intimating her in-laws and thereafter her father had come to drop her and at that time he had apologized for the conduct of deceased and promised that the same mistake will not recur in future.

17. Geetabai Sahu (DW-2) has stated that on the date of incident at about 5.30 a.m. in the morning she and accused/appellant No.1 had gone to fetch water. Accused/appellant No.1 remained there with her for about 15-20 minutes. She has further stated on the date of incident the accused

Nos.2 & 3 were not in the village. She has further stated that as soon as she went inside her house, she heard the voice of 'save-save' coming from side of the house of accused/appellant No.1 and when she came out, she saw the deceased burning and that accused/appellant No.1 was trying to extinguish fire with the help of soil. In the cross-examination she has stated that the deceased never disclosed to her anything about the demand of dowry by accused persons.

18. We have given our thoughtful consideration to the contentions urged by the counsel for parties and perused the impugned judgment and the materials on record.

19. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:-

- The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance and such death should have occurred within seven years of her marriage.
- She must have been subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry.

On proof of essential ingredients mentioned above, it become obligatory on the Court to raise a presumption that the accused caused the dowry death. A conjoint reading 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. "Soon before" is a relative term and it would depend upon circumstance of each case and no straitjacket formula can be laid down as to what would constitute a period "soon before the occurrence". There must be in existence a proximate live link between the facts of cruelty in connection with the demand of dowry and the death. If the alleged incident of cruelty is remote

in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

20. The evidence and material on record is to be examined whether there is evidence to prove that “soon before the occurrence”, deceased was subjected to torture and harassment in connection with demand of dowry.

21. Minute scrutiny of the evidence of Pawan Kumar (PW-1), father of deceased, Arjun Singh Dewangan (PW-2), uncle of deceased, and Sunita Dewangan (PW-5), sister of deceased, goes to show that the deceased informed them several times about the ill-treatment and harassment meted out to her for bringing defective fridge, washing machine & broken bed in the dowry and except this allegation, there is nothing on record to substantiate the allegation that any kind of dowry demand was ever made or that “soon before the occurrence” the deceased was subjected to torture and harassment in connection with the demand of dowry. On the contrary, the aforesaid witnesses have admitted in their evidence that before the marriage or at the time of marriage there was no demand of dowry from the side of groom; on discussion being made, the accused persons had told that whatever is given in dowry would be acceptable to them and on the eve of Holi festival i.e. just before a few days of the incident, the accused persons had happily sent the deceased to her parental home. According to evidence of Ramawtar Dewangan (PW-8), an independent witness & friend of Pawan Kumar (PW-1), the deceased had never disclosed to him that she was being ill-treated and subjected to cruelty in connection with demand of dowry by accused persons. Furthermore, Kotwar Udal Singh (PW-3), Vimla Bai (DW-2) & Geetabai (DW-2), neighbours of accused/appellants, have deposed that neither they have seen nor heard about any dispute in between the accused/appellants and the deceased or that she was treated with cruelty or harassment in

connection with the demand of dowry by the appellants.

True it is that PW-5 Sunita Dewangan, sister of deceased, has stated that on 25.3.2011 i.e. just two days before the incident, the deceased informed her over telephone that accused persons are treating her with cruelty for demand of dowry, however, this appears to be an improvement in the Court statement because this fact does not find place in her statement (Ex.D-1) recorded under Section 161 Cr.P.C.

Thus, there is no evidence showing any persistent dowry demand or conduct of the appellants subjecting the deceased to cruelty or harassment for or in connection with dowry and in absence of any such specific allegation, it would be unsafe to presume that “soon before her death” the deceased was subjected to cruelty and harassment by the present accused/appellant in connection with demand of dowry.

22. Yet another important aspect of the case is that Pawan Kumar (PW-1), father of deceased, has admitted that Nandkumar, who was acquainted with niceties of law, is the maker of written complaint (Ex.P-5) and he had only signed it. The prosecution has not examined said Nandkumar to establish that the report was written literally at the instance of Pawan Kumar (PW-1) and no addition or omission was made on his part. Thus, the possibility of preparation of said report (Ex.P-5) in such a manner as would result into conviction of accused persons cannot be ruled out.

23. From the evidence it is apparent that prior to marriage the deceased was living in the city having sufficient means of entertainment and other amenities which she was enjoying without any restriction, but those facilities were lacking at her in-laws place. Evidence further goes to show that on an earlier occasion the deceased after leaving her matrimonial home had directly come to her parents' house without informing her in-laws and thereafter she was sent back to her matrimonial home by her

parents. According to statement of Vimla Bai (DW-1), the deceased used to tell her that she does not want to live in the village. Evidence further goes to show that at the time of incident appellant No.1 had gone to fetch water, accused/appellant No.2 was in Rajnandgaon in connection with his work and appellant No.3 had gone to the house of his daughter situated in other village. In the statement recorded under Section 313 Cr.P.C. the accused/appellants have also taken the defence that as the deceased does not want to live in her matrimonial home, therefore, she had committed suicide. In these circumstances, this possibility cannot be ruled out that since it was deep-seated in psyche of the deceased, whose upbringing was done in the urban environment and who did not want to live in the village, that she had to now spend rest of her life in the rural area i.e. at matrimonial home, she had committed suicide by setting herself ablaze on the fateful day when she was all alone in the house.

24. Taking into consideration all the above factors, we find that the circumstances create doubt about the involvement of accused/appellants in the crime in question and therefore the benefit of doubt has to be given to them.

25. In the result, the appeal is allowed. Conviction & sentence of accused/appellants under Section 304-B of the IPC are hereby set aside and they are acquitted of that charge by extending them benefit of doubt. Appellant No.1 is on bail, therefore, her bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.P.C.. Appellants No.2 & 3 who are in custody are ordered to be set at liberty forthwith if not required to be detained in connection with any other offence.

Sd/-
(Pritinker Diwaker)
Judge

roshan/-