

HIGH COURT OF CHHATTISGARH, BILASPUR

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CRA No. 718 of 2000

Pandu Lal,

Versus

State of Madhya Pradesh (now Chhattisgarh)

CAV JUDGMENT

Post for 25 /10/2016

Sd/-
Rajendra Chandra Singh Samant
Judge

24 /10/2016

(2)

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HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 718 of 2000

Judgment Reserved on 06/10/2016

Judgment Delivered on 25/10/2016

- Pandu Lal, son of Bhaiyalal Bhariya, aged about 25 years, resident of village Nevri Navapara, Police Station Gorela, District Bilaspur (M.P.) (Now Chhattisgarh)

---- Appellant

Versus

- State of Madhya Pradesh, Through Police Station, Gorela, District Bilaspur (M.P.) (now Chhattisgarh)

---- Respondent

For Appellant :	Shri Rakesh Pandey, Advocate
For Respondent/State :	Shri Neeraj Jain, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

1. This appeal has been preferred against the judgment of conviction and order of sentence passed by 4th Additional Sessions Judge, Bilaspur, Link Pendraroad in Sessions Trial No. 476/98 on 25/02/2000, by which the appellant has been convicted under Section 304-B of Indian Penal Code and has been sentenced with rigorous imprisonment of four years along with fine of Rs.1000/- with default stipulation.

2. The case of prosecution in brief is that marriage of the appellant and deceased Anju was solemnized in the year 1992 in customary manner thereafter on 29/04/1998 complainant

Ramavtar Sonwani (PW-1) sent his daughter Anju after gouna ceremony to her matrimonial home. After two days of gouna as per the custom Anju was brought to the home of complainant, then Anju narrated that her in-laws were not satisfied with the gifts given at the time of gouna. Thereafter Anju was again sent to matrimonial home. After a month complainant Ramavtar Sonwani along with his wife went to see his daughter in village Nevri Navapara when Anju told that she is being tortured daily for dowry and her husband beats her. Thereafter complainant and his wife received complaints of ill treatment with their daughter Anju by appellant on numerous occasions, ultimately on 08/07/1998 they were informed by Rukam Singh and Pushparaj in the morning at about 6.00 a.m. that their daughter has consumed poison. On reaching the hospital the complainant found that his daughter was dead. Complainant Ramavtar Sonwani filed a written complaint (Ex.P/1) in Police Station, Gorela in which it was alleged that the appellant was putting pressure for demand of money on his daughter for getting service in Janpad Panchayat, Gorela, on the basis of this complaint and on the basis of inquest report, First Information Report (Ex.P/13) was lodged in Police Station, Gorela under Section 304-B read with Section 34 of IPC against the appellant and two others.

3. After the process of committal, appellant and two others were charged under Section 304-B of IPC on their denial to the charge the trial was conducted after giving opportunity of the prosecution and defence the impugned judgment has been passed

by the trial Court in which co-accused Bhaiya Lal and Lalmati were acquitted of the charge, whereas appellant was convicted under Section 304-B of IPC and sentenced as mentioned above.

4. The grounds in this appeal are this that the learned trial Court has totally failed to take into consideration contradictions, omissions and improvements made by the prosecution witnesses. Trial Court failed to notice that the appellant was appointed and working as Shiksha Karmi prior to the date of incident. It was the version of defence that deceased Anju herself was not willing to live with appellant which was the reason she committed suicide. Hence the instant appeal be allowed and the appellant be acquitted of the charge.

5. It was argued on behalf of the appellant that the evidence of prosecution does not disclose any demand of dowry. It was the version of defence that appellant was appointed as Shiksha Karmi prior to the date of incident, hence the case of demand of Rs.10,000/- on and before the date of incident was of no consequence. Hence the whole story of the prosecution is concocted, the appellant was entitled for acquittal.

6. Primary question before this Court is whether the evidence led by the prosecution had been sufficient and beyond reasonable doubt to prove the charge against the appellant for which the evidence before the trial court is perused and finding is arrived at in this appeal.

45

7. Ramavtar Sonwani (PW-1) has stated that marriage was solemnized in the year 1992 and the ceremony of Gouna was held on 29/04/1998 when deceased Anju was sent to her matrimonial home. He received complaints time and again that in-laws of Anju were not satisfied with the gifts given to her and they used to comment about the gifts now and then. This witness was told by his daughter that her husband used to give her beating time and again. He tried to reconcile and failed. He was told by his wife that when Anju was with her she told her that appellant was insisting deceased Anju to consume poison at one time. Anju went to her matrimonial home on 26/06/1996 and on the same day she was very badly beaten by appellant due to which Anju left the house of appellant and went to house of her Nana (maternal grandfather) Hariram in village Sarwani. On 28/06/1998 brother-in-law of this witness came and told him about this incident and also told him appellant demanded Rs.10,000/- for his appointment of Shiksha Karmi and few days after the incident Anju consumed poison and died. In cross-examination his statement has remained un-rebutted. This witness has been confronted with his previous statement (Ex. D/1) recorded under Section 161 of Cr.P.C. On its perusal no material of contradiction seems to have come in the statement before the Court. This witness in his statement has established that deceased Anju was tortured by appellant with comments about the gifts given by her parents and also by giving beating to deceased Anju time and again. The statement of demand of Rs.10,000/- is also in conformity with the previous

statement.

8. Dayamati (PW-2) has given statement on the same lines. Her statement has remained un-rebutted in which she has stated as in her previous statement (Ex.D-2) and no material improvement or contradiction seems to have come in her Court statement.

9. Hariram (PW-3) is maternal grandfather of deceased Anju he has stated that about two months after the date of gouna, her grand daughter Anju came to her house and appellant also came following her to tell that Anju has come without informing him. In his presence the appellant wanted to take Anju and on her refusal he slapped her. This witness intervened in this incident on which appellant used abusive language for him. This witness was told by Anju that appellant was demanding Rs. 10-20 thousand for service and medical examination. Anju was again sent to matrimonial home and after few days the incident of suicide occurred. In cross-examination no material contradiction, omission or improvement has been established. Jagdish Prasad (PW-6) and Pachaniya Bai (PW-7) have stated in support of the complainant with respect to gifts given to Anju and about the gifts in the marriage, but they have not given any statement about demand of Rs.10,000/-.

10. Dr. R.C. Mishra (PW-5) conducted post-mortem examination of deceased Anju and has opined in his report (Ex.P/6) that the cause of death is asphyxia. Viscera was preserved for suspected poisoning.

47

11. Other witness Shivsahaya Awasthi (PW-4) recorded mereg intimation. Lalaram (PW-8) is Patwari who prepared the spot map. Rukam Singh (PW-9) is witness to seizure of vomiting material and plain soil as (Ex.P/8) along with a glass bowl containing some liquid with smell and some material wrapped in the paper. S.G. Pandey (PW-11) Assistant Sub Inspector has stated about conducting this seizure (Ex.P/8). Chaitram (PW-10) is the witness who arrived at this spot soon after poison was consumed by Anju. He was told by Anju that she has consumed poison. Thereafter she was carried to the hospital and was declared dead. He is also witnessed the seizure memo (Ex.P/8).

12. The defence has also examined witness Rajkumari (DW-1), who has stated that Anju herself was not happy with appellant and had at one time told her that she is in love with somebody else of her village. Ramratan Karsayal (DW-2) has stated that he had been appointed as Shiksha Karmi by appointment letter Ex.D/1 and along with him appellant Pandu was also appointed. Statement of these witnesses have remained un-rebutted in cross-examination.

13. According to defence raised in this appeal deceased Anju was in love with somebody else of her village. No suggestion has been put to the witnesses of prosecution in this aspect by the counsel for defence in cross-examination, that the deceased Anju was having some affair with some other person of her village. The suggestion of the prosecution witnesses that the appellant was not

a man of her liking of the deceased has been denied. Hence this ground of defence has been rightly rejected by the trial Court.

14. Regarding the demand of Rs.10,000/- for the purpose of getting appointment as teacher/Shiksha Karmi has been established. In this respect the appellant has relied on the judgment of Apex Court in the matter of **Vipin Jaiswal (A-I) v. State of Andhra Pradesh** reported in **(2013) 3 SCC 684** in which it has been held that demand of accused for starting his business is not really a dowry demand within the meaning of Section 2 of Dowry Prohibition Act, 1961, relying upon the judgment in the matter of **Appasaheb v. State of Maharashtra** reported in **(2007) 9 SCC 721** it was held that in view of the definition of word "dowry" means 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. Counsel for the appellant also relies the judgment of **Major Singh and another v. State of Punjab**, reported in **(2015) 5 SCC 201** in which the Apex Court has held that in prosecution under Section 304 B of I.P.C. there should be evidence to show that 'soon before her death', deceased victim was subjected to cruelty or harassment, there must always be a proximate and live link between effects of cruelty based on dowry demand and death concerned.

49

- 8 -

15. Section 113-B of Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry, the Court shall presume that such person had caused the dowry death.

16. On the basis of these guidelines consideration is needed on the facts of this case. Defence witness Ramratan Karsayal (DW-2) who has stated about the appointment of appellant as the Shiksha Karmi prior to the date of incident and mentioned about the appointment order (Ex.D/1) which is not on the record of the trial Court. Document (Ex.D/1) present in the record is the Police Statement of Ramavtar (PW-1). The statement of prosecution witnesses is clear on this point that the appellant was forcing deceased Anju to meet this demand of Rs.10,000/- which was for the purpose of getting his appointment as Teacher/Shiksha Karmi, hence as per the guidelines led by the Apex Court this kind of demand is not in any connection with the marriage, on the other hand it is a demand for making arrangement of livelihood. Hence this kind of demand is not covered under the definition of dowry as defined in Section 2 of Dowry Prohibition Act, 1961. On this finding the demand by the appellant of Rs.10,000/- for his appointment as Shiksha Karmi/Teacher not being a dowry, the presumption under Section 113 B of the Evidence Act cannot be drawn in such a case.

17. Trial Court has given this finding that deceased Anju has

committed suicide and considered it as unnatural death for the purpose of conviction under Section 304-B of IPC. After the finding arrived at on this point in this appeal this is not a case where a presumption can be drawn under Section 113 B of the Evidence Act. This case has to be viewed in different manner. There is evidence on record that deceased Anju has subjected to cruelty by the appellant-accused by torturing her time and again and using violence by beating her on any pretext, hence the case of cruelty is normally made out. In the situation the question arises whether a case is made out for presumption under Section 113 A of Evidence Act of abetment to suicide, has to be considered.

18. For presumption under Section 113 A of the Evidence Act it is necessary that occurrence of suicide takes place within seven years of marriage and it must be proved that the married woman was subjected to cruelty prior to the date of incident. As per the evidence on record marriage of appellant and deceased was solemnized in the year 1992 and her death suicide occurred on 08/07/1998 which is well within seven years of their married life. It has been sufficiently proved by the prosecution with the help of un-rebutted statement of the witnesses that deceased Anju was treated with cruelty by the appellant-accused on various occasions. Hence this is a case where presumption under Section 113-A of the Evidence Act can be drawn and it can be held that the appellant-husband of the deceased subjected her to cruelty due to which deceased was compelled to commit suicide. Hence on the basis of this presumption it can be held that appellant abetted his

81

-10-

wife deceased Anju to commit suicide which is an offence under Section 306 of IPC.

19. Offence under Section 306 of IPC is a minor offence within the definition of offence under section 304B, wherein a married women is subjected to cruelty or harassment with a purpose to satisfy the demand of dowry from the relatives of such women. The demand of dowry is not established in this case, but it is established that the deceased Anju was subjected to cruelty by her husband which has led her to commit suicide. Section 222 of the CrPC permits that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it. In view of this provision the conviction of appellant can be and is liable to be altered to conviction 306 of IPC, hence this appeal is partly allowed. The conviction of appellant under Section 304-B of IPC is altered to conviction under Section 306 of IPC and appellant is sentenced for a period of rigorous imprisonment for two years along with fine of Rs.1000/-, in default of payment of which he shall further undergo rigorous imprisonment of three months, with this modification conviction and sentence under Section 304 B of IPC is set-aside.

20. Appellant is directed to surrender before the trial Court to undergo the remaining part of the sentence awarded in this appeal

52

after set off of the period undergone in custody during trial and appeal.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

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