

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1080 of 2003

- Santosh Anand Patle S/o Dhawal Ram Patle, aged about 27 years, Resident of Village - Nawagaon, Ghuntesh, Thana and Tahsil Mungeli, Bilaspur, at present House of Praveen Pandey, Urga, Chowki - Urga, Korba, Distt. Korba (CG)

---- Appellant

Versus

- State Of Chhattisgarh through District Magistrate, Korba, Distt. Korba (CG)

---- Respondent

And

ACQA No. 251 Of 2010

- State Of Chhattisgarh through Police Station Korba, Distt. Korba (CG)

---- Appellant

Vs

- Santosh Anand Patelay S/o Dhaval Rai Patelay, aged 27 years, R/o Navagaon, Police Station and Tahsil Mungeli, Dist. Bilaspur, Now R/o Pravin Pandey House, Urga Chowky Urga, Distt. Korba.

---- Respondent

For Appellant/accused : Shri Awadh Tripathi, Advocate.

For Respondent/State : Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment On Board By Justice Pritinker Diwaker

19/09/2016

As these two appeals arise out of the common judgment dated 30.9.2003 passed by Additional Sessions Judge, Korba in ST No.134/2003, they are being disposed of by this common judgment.

02. Brief facts of the case are that marriage of deceased Bagehswari Bai @ Rajeshwari was solemnized in April, 2002 with the accused/appellant and she died on 22.10.2002 after sustaining 50% burn injuries in her matrimonial house. The accused/appellant also suffered burn injuries while saving the deceased. Immediately after the incident, the deceased was taken to hospital but she succumbed to her burn injuries. Unnumbered merg intimation Ex.P/5 was recorded on 22.10.2002. Inquest over the dead body was prepared on 23.10.2002 and thereafter, the body was sent for postmortem which was conducted on 23.10.2002 by PW-8 Dr. NS Chandel vide Ex.P/6. According to the autopsy surgeon, the deceased suffered 60% burn injuries and in his opinion, the cause of death was burn and its complication. Numbered merg was recorded vide Ex.P/6 on 14.11.2002. In the meanwhile, FIR was registered at Police Outpost - Uрга on 16.11.2002 and numbered FIR (Ex.P/7) was registered on 17.11.2002 against the accused/appellant under Section 304B of IPC. After completion of investigation, charge sheet was filed against him under Section 304B of IPC. However, the trial Court framed charges under Sections 498A and 304B of IPC against him.

03. So as to hold the accused/appellant guilty, the prosecution examined 10 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment while acquitting the accused/appellant of the charge under Section 304B of IPC, convicted him under Section 498A of IPC and sentenced to undergo RI for three years and fine of Rs.500/- with default stipulation.

05. Cr.A.No.1080/2003 has been preferred by the accused/appellant against the said judgment insofar as it relates to his conviction under Section 498A of IPC whereas Acq.A.No.251/2010 has been preferred by the State against the same judgment acquitting the accused of the charge under Section 304B of IPC.

06. **Cr.A.No.1080/2003**: Counsel for the accused/appellant submits as under:

- that it was an unfortunate incident where the deceased died after suffering burn injuries; mental cruelty and harassment, as alleged by the prosecution, is nothing but an afterthought; there is nothing on record to show that the accused/appellant in any manner committed willful cruelty against the deceased in connection with demand of dowry.
- that if the statements of PW-1 Ramnarayan Das and PW-2 Bharat Lal Banjare, father and brother of the deceased, are read together it is apparent that there are material contradictions and omissions in their statements and they have falsely implicated the accused/appellant.
- that PW-4 Dr. DR Raj, an independent witness, has supported the case of the defence and stated that relations between the accused/appellant and the deceased were cordial. Likewise, PW-5 Praveen Kumar Pandey, landlord of the appellant, has

also partially supported the defence version.

- that the accused/appellant is a government employee, from the beginning he is on bail and if his conviction under Section 498A of IPC is maintained, he is likely to lose his job.

07. On the other hand, State counsel supporting the impugned judgment, insofar as it relates to conviction of the accused/appellant under Section 498A of IPC, submits that there are sufficient evidence on record to suggest that the accused/appellant used to subject the deceased to cruelty in connection with demand of dowry and as such, the trial Court was fully justified in holding him guilty under Section 498A of IPC.

08. **Acq.A.No.251/2010**: State counsel submit as under:

- that the trial Court has erred in law while acquitting the accused of the charge under Section 304B of IPC. When on the same set of evidence, it has convicted the accused under Section 498A of IPC, it ought to have held him guilty under Section 304B of IPC as well.
- that the illegal demand of colour TV, motorcycle and other articles by the accused has duly been proved the prosecution.
- that the deceased died within a period of only six months from her marriage in her matrimonial house under abnormal circumstances due to burn injuries and evidence also goes to show that she was being ill-treated for demand of dowry. In these circumstances, acquittal of the accused of the charge under Section 304B of IPC is bad in law.

09. Per contra, Shri Awadh Tripathi, counsel appearing for the accused

submits that even if the entire prosecution case is taken as it is, offence under Section 304B of IPC is not made out because basic ingredients for attracting this section are completely missing. PW-1 and PW-2 have exaggerated their version while deposing in the Court and falsely implicated the accused. There are not only material contradictions in the statements of PW-1 and 2 but they are also self-contradictory. He further submits that PW-4 and PW-5 have not supported the prosecution case; from their evidence it is clear that relations between the deceased and the accused were cordial and they were enjoying a happy married life. Lately, it has been submitted that from the letter written by the deceased (Ex.D/1) it is apparent that she was under depression and her relations with her husband/accused were cordial.

10. Heard learned counsel for the respective parties and perused the material available on record.

11. PW-1 Ramayandas, father of the deceased, has stated that after marriage the deceased started living with the accused, who was residing at Uрга where he was working in Railways. He states that after summer he had brought his daughter from Uрга and thereafter she informed him that her husband/accused used to harass her after consuming liquor by saying that he (this witness) has not given colour TV and Rs.20,000/- to him. He states that on the eve of Rakhi festival his son had gone to take the deceased but her husband/accused did not allow her to go. He has further stated that on or around October, the deceased asked his son not to talk to her on telephone. At the time of Diwali he received information about serious condition of his

daughter, he went to hospital at Bilaspur, however, by that time she had expired. He had noticed burn injuries throughout her body. After putting glasses he states that he signed the inquest. He has stated that after seeing the condition of family of the appellant, he had consented for marriage and at the time of marriage no dowry was demanded, however, demand of colour TV and Rs.20,000/- were made subsequent to marriage. He admits that there is telephone in the house of the accused; on 5.7.2002 the accused came to his house along with the deceased and stayed for about a week. From 22.8.2002 to 24.8.2002 his son stayed in the house of the accused and the deceased at Urga. He has stated that he never made any attempt to make the accused understand and not to make any demand of dowry, rather he made his daughter understand. He admits that even after receiving information about demand of dowry by the accused, he had never gone to Urga to meet his daughter. He states that marriage of his younger daughter was solemnized two years prior to the marriage of the accused and the deceased. He has denied the suggestion that the deceased was having affair prior to her marriage and that is why her marriage could not be solemnized earlier. He has also denied that as the deceased could not contact her paramour, she was tense. In para-22 while recording evidence, a note has been put by the Court that the witness has expressed his inability to read Ex.P/1 and P/2 without glasses whereas when he was shown Ex.D/1, without putting glasses, he has denied the fact that the same was written by the deceased. He admits that he did not inform anyone about the demand of dowry by the accused.

12. PW-2 Bharat Lal Banjare, son of PW-1 and brother of the

deceased, has stated that the deceased lived with the accused for about 4-5 months at Uрга and then he had gone to take her. He states that the deceased had informed her parents in his presence that the accused used to demand motorcycle and TV from her. In cross-examination he admits that there were TV and Moped in the house of the appellant. He states that in between 5.7.2002 and 14.7.2002 when the deceased had come to his house, she did not inform about any cruelty being meted out to her for demand of dowry. When he had gone to take her on the eve of Rakhi, she informed him about the cruelty meted out to her and then he states that when had gone to the house of the deceased, she never informed him about any cruelty done by the accused. Paras 12, 13 & 14 of this witness are full of contradictions.

13. PW-3 Jayantilal, is the seizure witness and has turned hostile. PW-4 Dr. DR Raj is the immediate neighbour of the accused/appellant. It is this witness who had first attended the deceased after burn incident. He states that when he reached the house of the accused/appellant, he found burn injuries on the body of the deceased and also noticed burn injuries on the person of the accused/appellant. According to him, the deceased had suffered 50% burn injuries, smell of kerosene was emanating from her body and for proper treatment he immediately referred her to District Hospital, Korba. He states that he was residing as neighbour of the accused/appellant since 1999 - 2000; he never saw the accused/appellant consuming liquor and quarreling. He admits that after marriage both the accused/appellant and the deceased were living happily and he never heard any dispute between them. He states

that when the police enquired from the deceased, the deceased told the police that she has committed suicide because she was mentally disturbed. He states that when he medically examined the accused/appellant, he found both his hands 20% burnt.

14. PW-5 Praveen Kumar Pandey, landlord of the accused/appellant, has stated that after seeing the deceased and the accused/appellant in burnt condition and both of them asking for help, he immediately called the doctor. When he enquired from the deceased as to how she suffered burn injuries, she told that as she had lost her mental balance, she suffered burn injuries. He also asked the accused/appellant as to how his wife/deceased got burnt, whereupon he said that he did not know the reason. After preliminary treatment, the deceased was referred to some bigger hospital. Thereafter, this witness was declared hostile. He is also a witness to seizure memo Ex.P/3 whereby certain articles from the place of incident, such as one half burnt bag, matchstick, burnt matchstick, one small lamp containing some kerosene, pieces of yellow sari, red coloured peticoat, black blouse, some half burnt hair etc., were seized. PW-6 RD Singh, ASI, recorded merg intimation Ex.P/5 after receiving information from the hospital. PW-7 Mahavir Prasad, Police Constable, helped in the investigation. PW-8 Dr. NS Chandel conducted postmortem on the body of the deceased vide Ex.P/6, noticed 60% burn on her body and in his opinion, the cause of death was burn and its complications. PW-9 B. Panna registered FIR (Ex.P/7) and helped in the investigation. PW-10 Rajesh Kukreja, investigating officer, has supported the prosecution case. In para-9 he has stated that at the time of merg enquiry, father of

the deceased (PW-1) had stated that no dowry was demanded but he raised suspicion about his daughter being burnt by someone.

15. Close scrutiny of the evidence makes it clear that there is no legally admissible evidence showing involvement of the accused/appellant in commission of the offence punishable under Sections 498A or 304B of IPC. The basic ingredients for attracting Section 304B of IPC are completely missing. In order to hold a person guilty under Section 304B IPC, following ingredients must be established before any death can be termed as dowry death:-

- 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.

16. 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. In the present case, though the deceased died within seven years of her marriage under abnormal circumstances after sustaining burn injuries but that itself is not good enough to hold the appellant guilty under Section 304B of IPC especially when there is no evidence whatsoever which could suggest that the deceased was subjected to cruelty soon before her death in connection with demand of dowry. As such, the trial Court was fully justified in acquitting the accused/appellant of the charge under Section 304B of IPC.

17. As regards conviction under Section 498A of IPC, though there is some allegation by PW-1 and PW-2, father and brother of the deceased, against the accused/appellant, but so far as PW-1 is concerned, his Court statement is contrary to his diary statement. In the Court he has stated that he himself had gone to take his daughter to the house of the accused/appellant and there he was told by his daughter that she was being harassed by the accused/appellant but in his diary statement he states that it is his son PW-2 who had gone to the house of the accused/appellant to take the deceased. That apart, there are contradictions on material points in the statements of both these witnesses and they are self-contradictory. Being so, it would be hazardous to place reliance on the testimony of these witnesses. Most importantly, PW-4 and PW-5 who are independent witnesses have not stated anything against the accused/appellant regarding his conduct or that the deceased was subjected to cruelty by the appellant. Rather these witnesses have stated in favour of the appellant that the

appellant and the deceased were living happily and they never heard any quarrel between them. Yet another important piece of evidence which goes in favour of the accused/appellant is the entry in diary Ex.D/1 and from perusal of which it appears that the deceased was under the state of confusion and dilemma.

18. Thus, taking into consideration the nature and quality of overall evidence, oral and documentary, on record, we find it difficult to uphold the conviction of the accused/appellant even under Section 498A of IPC and in the facts and circumstances of the case, he deserves to be acquitted of this charge as well.

19. In the result:

- Cr.A.No.1080/2003 preferred by the accused/appellant is allowed. He is acquitted of the charge under Section 498A of IPC. He is on bail, therefore, his bail bonds stand discharged and he need not surrender.
- Acq. A. No. 251/2010 being without substance is hereby dismissed.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(C.B. Bajpai)
Judge