

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1059 OF 2012

1. Dinesh Sahu, S/o Babu Lal Sahu, aged about 25 years.
2. Babu Lal, S/o Brajlal Sahu, aged about 50 years.
3. Devwati Bai, W/o Babulal Sahu, aged about 40 years.
All R/o Village Sanod, Outpost Kanwar, P.S. Gurur, District Durg (CG)

... Appellants

Versus

- State of Chhattisgarh, through Station House Officer, Police Station Gurur, District Durg (CG)

... Respondent

For Appellants	:	Mr. B.P. Singh, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

23/11/2016

1. The present appeal has been preferred by the Appellants assailing the judgment dated 3.11.2012 passed by the Additional Sessions Judge, Balod in Sessions Trial No. 93 of 2011, whereby the Appellants have been convicted and sentenced to undergo R.I. for 7 years each under Section 304(B) of IPC.
2. Case of the prosecution in brief is that the deceased, Lekhni Bai, was married to Appellant No.1, Dinesh Sahu, in the year 2009. Appellant No.2, Babu Lal and Appellant No.3, Devwati Bai are the father and mother of Appellant No.1. The deceased, Lekhni Bai, is said to have committed suicide by setting herself ablaze after pouring kerosene upon her at her matrimonial home on 5.6.2011 and she succumbed to the injuries on the next day at Medical College, Raipur. The FIR (Exhibit P-5) in this regard was registered on 18.6.2011. Since the death of Lekhni Bai was within seven years from the date of marriage and the death was other than under the natural circumstances, the police registered a case under Section

304(B) of IPC against the Appellants and they were subjected to trial where the case was registered as Sessions Trial No. 93 of 2011 before the Additional Sessions Judge, Balod.

3. During the course of trial the prosecution examined as many as 11 witnesses in support of its case. There was no witness examined in defence. Of the 11 prosecution witnesses, there were only two witnesses namely PW-1 Shanti Bai, mother of the deceased, and PW-2 Ganesh Sahu, brother of the deceased, who were the two relatives examined on behalf of the prosecution to prove the allegation for the offence under Section 304(B) of IPC.

4. The Court below after conclusion of the trial, vide its judgment dated 3.11.2012 reached to the conclusion that the prosecution has been able to prove its case beyond doubt and found the Appellants guilty of having committed the offence under Section 304(B) of IPC and accordingly convicted them for the said offence and sentenced them to undergo R.I. for 7 years each.

5. Learned Counsel for the Appellants at the outset submits that it is a case where the prosecution has miserably failed to establish the necessary ingredients required for making out an offence under Section 304(B) of IPC. According to him, it is a case where the three necessary ingredients for the constitution of an offence under Section 304(B) of IPC has to be necessarily established, that is, firstly it has to be established that the death of the deceased took place within seven years from the date of marriage, which is not in dispute in the present case as the death has occurred within a period of around two years. It is also required that the death has to be other than under natural circumstances, which also in the instant case stands established for the reason that indisputably the death of the deceased was

because of excessive burn injuries which occurred because of the deceased setting herself ablaze after pouring kerosene upon her at the matrimonial home. However, Counsel for the Appellants submits that the third and the most vital ingredient to establish was soon before the incident the deceased had been subjected to cruelty and harassment in respect of demand of dowry, which is missing in the present case and in the absence of any evidence so far as this third ingredient is concerned the case of the prosecution has no legs to stand and it gets collapsed here itself.

6. Counsel for the Appellant refers to the two main witnesses, i.e., PW-1 Shanti Bai and PW-2 Ganesh Sahu, who are mother and brother of the deceased, and submits that firstly the deposition of these two witnesses does not reflect that immediately before the date of incident, that is, soon before 5.6.2011 the deceased was subjected to cruelty by the Appellants. It was further contended that these two prosecution witnesses have also not made any specific allegation against each of the Appellants and that all the allegations in respect of demand of dowry are omnibus and general allegations without any specific details. He further refers to the deposition of the mother of the deceased, i.e., PW-1 Shanti Bai, wherein it reflects that whatever little allegation of the deceased being subjected to cruelty, was of considerable long period back when she (the deceased) had come to her matrimonial home and there was no evidence so far as ill-treatment or cruelty being met to the deceased soon before the incident. He therefore prays for the setting aside the impugned judgment and for acquittal of the Appellants of the charge under Section 304(B) of IPC.

7. Learned Counsel for the State however opposing the appeal submits that it is a case where the prosecution led evidence to show that the deceased was in fact subjected to ill-treatment at her matrimonial home at the hands of the Appellants. She refers to the statements of PW-1, Shanti

Bai, mother of the deceased, as well as the PW-2 Ganesh Sahu, brother of the deceased, and submits that both of whom had stated that whenever the deceased, Lekhni Bai, had come to her parental home, she had narrated the ill-treatment that she was being met with at her matrimonial home, which establishes the cruelty that was inflicted upon the deceased and which forced her to take such an extreme step of ending her life by committing suicide. She thus prayed for rejection of the appeal.

8. Having considered the rival contentions put forth on behalf of either side and on perusal of the records, the undisputed fact in the present case is that on behalf of the prosecution so far as the family members are concerned the prime witnesses to establish the cruelty met upon the deceased were PW-1 Shanti Bai, mother of the deceased and PW-2 Ganesh Sahu, brother of the deceased. Both these witnesses do not disclose the exact date when the deceased had confided to them of the cruelty which she had been met with at the hands of the Appellants. Both these witnesses also referred to the incident which had occurred long back and that too when the deceased had come to her parental home, in respect of ill-treatment that she received at the hands of the Appellants. Though the death has occurred within two years and the death also was under unnatural circumstances but as regards the third ingredient of the prosecution establishing the deceased being subjected to cruelty soon before her death is missing. Thus, for the said reason, the offence under Section 304(B) of IPC would not be made out.

9. At this juncture, it would be relevant to refer to a recent decision of the Supreme Court passed on 18.11.2016 in S.L.P. (Crl.) No. 9718 of 2014 in the matter of Baijnath & Others Vs. State of Madhya Pradesh, wherein under similar facts and circumstances the appeal of the accused person was allowed and the judgment of the Trial Court which was affirmed by the

High Court was set aside by the Supreme Court. The ratio laid down by the Supreme Court in the said case also is that the third ingredient of the deceased being subjected to cruelty soon before her death is *sine qua non* for establishing the offence under Section 304(B) of IPC.

10. Similar view has also been taken by the Supreme Court in another recent decision reported in 2015 (5) SCC 201 (Major Singh & Another Vs. State of Punjab), wherein also the Supreme Court has reiterated the fact that the essential ingredient for sustaining the conviction under Section 304(B) of IPC would be, to ascertain whether soon before the death the victim was subjected to cruelty or harassment. It was also observed by the Supreme Court that there must always be a proximate and live link between the effects of cruelty based on dowry demand and the death concerned.

11. If the aforesaid two judgments are considered in the backdrop of the facts of the present case it would clearly reflect that in the present case the only allegation which has been attributed by PW-1 and PW-2, mother and brother of the deceased, is omnibus and general in nature without any specific details or instances and also in respect of cruelty which was met long before the death of the deceased.

12. For the foregoing reasons, this Court has no hesitation in reaching to the conclusion that the finding of the Court below in convicting the Appellants for the offence under Section 304(B) of IPC is without any evidence so far as the third ingredient as is required under Section 304(B) of IPC.

13. The appeal thus succeeds and is accordingly allowed. The impugned judgment is set aside and the Appellants are acquitted of the charge under Section 304(B) of IPC.

14. The Appellants are in jail. They shall be released forthwith if not required in any other case.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/