

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.185 of 2001

State of Chhattisgarh

---- Appellant

versus

1. Mahendra Kumar Lonia, aged about 34 years, son of Uderam,
2. Santosh Kumar Lonia, aged about 26 years, son of Uderam,
3. Uderam Lonia, aged about 52 years, son of Gurudatt,
4. Sudhabai, wife of Santosh Lonia, aged about 24 years,
5. Phulbai, wife of Uderam Lonia, aged about 52 years,

All residents of Village Barpali, Police Station Koni, Tahsil and District Bilaspur, Chhattisgarh

---- Respondents

For State/Appellant	:	Shri Raj Kumar Gupta, Deputy Advocate General
For Respondents	:	Shri D.R. Sharma, Senior Advocate with Shri Ram Kumar Tiwari, Advocate

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

12/4/2016

1. The State assails acquittal of the Respondents of the charge under Section 304B read with Section 34 IPC dated 11.8.2000 by the Additional Sessions Judge, Bilaspur in Sessions Trial No.50 of 1999.
2. Deceased Sunita Lonia, wife of Respondent No.1 was married on 27.4.1996 and died in her matrimonial house in unnatural circumstances on 28.6.1998. The post mortem report, Exhibit P-15 by PW-10, Dr. K.K. Sao reported tongue protruded out from mouth partially burnt, the chest towards left breast and skin was burnt, the skin on the thigh and centre of stomach was burnt and had split leading to the intestine spelling out, the anus was open and there was no carbon particle found in the trachea. The burns were opined to be post mortem, but no definite opinion could be given with

regard to the cause of death which was estimated to be 24 to 72 hours earlier. The Additional Sessions Judge arrived at the conclusion that there was no evidence with regard to demands for dowry and cruelty or harassment for that purpose and thus granted acquittal.

3. Learned Counsel for the State/Appellant submitted that the Trial Judge erred in holding that there was no evidence with regard to demands for dowry. Reliance was placed on the deposition of PW-1, Laxmi Prasad Lonia, uncle of the deceased, PW-2, Shriram Lonia, father of the deceased and PW-3, Godavaribai, mother of the deceased along with PW-4, Shanti Prakash, PW-5, Bajrang and PW-6, Sanjay Prakash Lonia, cousins of the deceased. It was submitted that a cumulative assessment of their evidence establishes demands for dowry and therefore the Trial Judge was not right in concluding that the prosecution had not proved *prima facie* demands for dowry and thus the question of shifting the burden onto the accused did not arise. No other argument has been made to assail the acquittal.

4. Learned Counsel for the Respondents has opposed the appeal questioning acquittal submitting that the judgment calls for no interference as the Trial Judge has adequately discussed the evidence and arrived at a reasoned conclusion regarding absence of any evidence whatsoever regarding demands for dowry.

5. We have considered the submissions on behalf of the parties.

6. To sustain a conviction under Section 304B IPC the prosecution is required to establish a *prima facie* case that death was unnatural, it was within 7 years of the marriage, the deceased was subjected to cruelty or harassment, such cruelty or harassment was soon before death and that the cruelty and/or harassment was for purpose of dowry. If any one of these ingredients are missing, Section 304B IPC cannot be invoked. To apply the presumption under Section 113B of the Evidence Act again it is necessary

for the prosecution to establish that the deceased was subjected to cruelty or harassment in connection with a demand for dowry, which again has to be in proximity to time of death.

7. PW-1, Laxmi Prasad Lonia, uncle of the deceased acknowledged that at the time of marriage, the Respondents had agreed that whatever would be given would be acceptable to them. Silver ornaments, sofa, bed, TV, Godrej Almirah, watch and utensils were given voluntarily. Thereafter, general allegations have been made that dowry was being demanded without any mention of the nature of demand much less any singular act of cruelty or harassment described motivated by the desire for extraction of dowry. Rs.5,000/- was demanded to ensure employment for the deceased as an Anganbadi Worker, which cannot be construed as a dowry demand. There is no evidence of any specific dowry demand. Likewise, PW-2, Shriram Lonia, father of the deceased also deposed in general terms that dowry was being demanded without mentioning any specific items or much less the nature of cruelty or harassment let alone any specific instance with regard to the same. He also acknowledged that at the time of marriage, no dowry was demanded and he gave gifts voluntarily. Likewise, PW-3, Godavaribai, mother of the deceased also deposed in very general terms not citing any instance of harassment or cruelty much less any nature of the same or that in proximity to death. Other witnesses also have talked of Rs.5,000/- having been demanded to ensure employment for the deceased as an Anganbadi Worker. Even other witnesses on which reliance has been placed have not spoken of any specific nature of cruelty or harassment much less the nature of the dowry demand and have not cited a single instance of harassment or cruelty for dowry.

8. We therefore do not find any reason to differ with the conclusions of the Additional Sessions Judge that there was complete want of evidence

with regard to any cruelty or harassment for purposes of dowry, much less any specific instance cited or the nature of such cruelty or harassment mentioned let alone any specific demand for dowry made. There is complete want of evidence with regard to any occurrence related to a demand for dowry in proximity to death. The ingredients of Section 304B IPC having not been fulfilled, we find no reason to interfere with the acquittal.

9. The appeal is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE