

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 145 of 2013

- Smt. Prema Devi Tiwari W/o Ramratan Tiwari Aged About 49 Years
- Ku. Priyanka Tiwari D/o Ramratan Tiwari Aged About 21 Years

Both R/o Laxman Band Talab, Korba PS Kotwali, Distt. Korba C.G.

---- Appellants

Versus

- State Of Chhattisgarh Through PS Kotwali, Distt. Korba C.G.

---- Respondent

For appellants	:	Smt. Madhunisha Singh, Advocate
For Respondent/State	:	Shri Arvind Dubey, PL

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

20/01/2016

This appeal is directed against the judgment and order dated 23.1.2013 passed by Sessions Judge, Korba, District Korba in Sessions Trial No. 105/2011 convicting the accused/appellants under Section 304-B of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for seven years.

2. Name of the deceased in the present case is Sulochana Tiwari wife of Vinod Tiwari. Marriage of the deceased with Vinod Tiwari was performed on 28.4.2009, and she died on 19.5.2011 after consuming some poisonous substance. Appellant No.1 Smt. Prema Devi is mother-in-law and appellant No.2 Priyanka Tiwari is the sister-in-law (Nanad) of the deceased.

3. Facts of the case in brief are that on 18.5.2011 after the deceased consumed some poisonous substance, she was taken to District Hospital,

Korba where her death took place on 19.5.2011. Un-numbered *merg* intimation Ex. P-15 was recorded on that day itself followed by numbered *merg* Ex. P-14. On 26.6.2011 written report Ex. P-5 was made by Ramadhar Tiwari (PW-2) – the father of the deceased alleging that after marriage his daughter was subjected to cruelty by the appellants who used to pass taunt against her for bringing insufficient dowry. Written report further says that whenever the deceased visited his house, the appellants used to take out all her jeweleries, and ask her not to show her black face. As per the written report, even after her death, the intimation thereof was not given to him by her in-laws. The report contains the suspicion that his daughter might have died on account of cruelty meted out to her for not bringing sufficient dowry. Postmortem examination on the body of the deceased was conducted on 20.5.2011 by Dr. R.K. Divya (PW-6) who gave his report Ex. P-12 opining the cause of death as asphyxia. After *merg* inquiry, FIR Ex. P-14 was registered against the appellants on 4.8.2011 for the offence punishable under Section 304-B/34 IPC. After completion of investigation, charge-sheet was filed under Section 304-B/34 followed by framing of charge under section 304-B IPC.

4. In order to prove the guilt of the accused/appellants, prosecution examined as many as 10 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case. This apart, defence too examined one Raj Lalan Tiwari (DW-1) in support of its case.

5. After hearing the parties, the Court below has convicted the accused/appellants under Section 304-B IPC and sentenced them to undergo RI for 07 years, by the judgment impugned.

6. Counsel for the accused/appellants submits that the conviction of the appellants is based on the evidence of Ramadhar Tiwari (PW-2) and Sarita Payasi (PW-9) – father and sister of the deceased respectively, but if their

evidence is seen, there is no allegation in the same regarding demand of dowry or cruelty meted out to the deceased soon before death. He submits that both these witnesses have improved their version while deposing in the Court as the things stated therein do not find place in their case diary statements. According to the counsel for the appellants, Ratanbai (PW-3) – the neighbour of the accused/appellants has stated in her evidence that the relations between the deceased and the accused/appellants were cordial. According to him, at the time of inquest father of the deceased namely Ramadhar Tiwari (PW-2) was also present but he did not make any complaint nor expressed any suspicion against the appellants. Lastly, it is submitted by the counsel for the appellants that appellant Prema Devi is in jail for last three years and four months whereas appellant Priyanka Tiwari for four years and three months, their sentence may be reduced to the period already undergone by them.

7. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that from the evidence of PW-2 and PW-9 it is apparent that the accused/appellants used to demand dowry from the deceased and that is why she committed suicide. He submits that even in the written report made by Ramadhar Tiwari (PW-2) he has stated that the accused/appellants used to pass taunt against the deceased for bringing insufficient dowry and further branded her illiterate. State counsel thus submits that there is sufficient material available on record to convict the accused/appellants under Section 304-B IPC and being so the Court below has been fully justified in doing so by the judgment impugned.

8. Heard counsel for the parties and perused the material available on record.

9. L.D. Gendle (PW-1) is the witness who conducted inquest vide Ex. P-2. He has stated that at the time of inquest, none of the witnesses present stated anything like subjection of the deceased to cruelty for demand of

dowry. Ramadhar Tiwari (PW-2) – the father of the deceased and maker of the written report Ex. P-5 has stated that marriage of the deceased with Vinod Tiwari had taken place on 28.4.2009 and that after marriage whenever visited his house, she used to tell that the appellants laughed at her for bringing insufficient dowry and subjected her to cruelty and beating for the same. The deceased is also stated to have informed this witness that the accused/appellants used to ask her not to show her black face in case she did not bring money with her. In paragraph No.7 of the evidence, this witness has stated that marriage of the deceased was settled through one Rani of village Bhagwanpur after she was liked by appellant Prema Devi and her other son Kishore, and he had clearly told them that he would perform the marriage according to his capacity as his financial condition was not good, and on this appellant No.1 herein had expressed his readiness to accept the bride in one sari. This witness was examined at length but he could not specifically state as to when and what was demanded by the accused/appellants. In cross-examination, this witness has stated that at the time of making written report he had disclosed to the police about the dowry demand made by the appellants but if it is not mentioned therein, he could not tell the reason.

Ratanbai (PW-3) – the neighbour of the appellants has stated that behaviour of the appellants towards the deceased was good and she never noticed any quarrel between them. According to this witness, the deceased was short-tempered. Deceased, according to this witness, sometimes used to tell her that she would go to her parents' house and sometimes used to say the opposite. However, this witness has been declared hostile by the trial Court.

Dr. M.S. Paul (PW-4) is the witness who was called to attend the deceased in District Hospital Korba and that he attended her twice and ultimately at 5 AM she was declared dead by him.

Anita Gupta (PW-5) - the neighbour of the appellants has stated that the behaviour of the appellants towards the deceased was good. She has further stated that one day on account of vomiting the deceased was taken to the hospital and when she had gone to see her, it was told by her that as she was not feeling well and there was

some mistake on her part, she came to the hospital, and on the following day she died. However, this witness has also been declared hostile. Dr. R.K. Divya (PW-6) is the witness who conducted postmortem examination on the body of the deceased and submitted his report Ex. P-12 stating that he noticed certain abrasions on her right breast, left hip and both knees and the cause of death was asphyxia. Subhash Singh (PW-7) is the witness who did initial investigation on the basis of *merg*, made entry of written report in the *Rojnamcha Sanha* and registered FIR Ex. P-14. L.N. Mishra (PW-8) is the witness who also did initial part of investigation. Satita Payasi (PW-9) is the sister of the deceased who in paragraph No.3 of her evidence has stated that when she had come to the house of the accused/appellants to bring her sister (the deceased), appellant Prema Devi started abusing saying that his son was worth Rs. Five lakhs whereas the deceased was worth 25 paisa. According to her, the accused/appellants were not ready to send the deceased and made her sign a stamp paper. According to this witness, the accused/appellants were hurling filthy abuses at the deceased and asking her to eat excreta. In her cross-examination, this witness has stated that whatever she has stated before the Court, was not disclosed to the police. While giving evidence before the Court, this witness has improved herself a lot if compared to her diary statement and there are several contradictions and omissions in the same on material particulars. Even while deposing in the Court this witness has not specifically stated as to when and what demand was made by the accused/appellants. Prafulla Kispotta (PW-10) is the investigating officer who has duly supported the case of the prosecution. Raj Lalan Tiwari (DW-1) has stated that on coming to know about the hospitalization of the deceased, he had gone to the hospital to see her where she had disclosed to him that on account of mental tension, she had consumed paracetamol tablets. This witness has further stated that on being asked whether she had any problem with her in-laws, she had answered in negative.

10. Before advertng to the merit aspect of the case, this Court thinks it

proper to take note of the provision of Section 304-B IPC, which is being reproduced here for ready reference:

Sec. 304B. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]”

In the case in hand, there is no specific allegation by any of the witnesses including the father of the deceased that the accused/appellants subjected the deceased to cruelty for demand dowry soon before death. Father of the deceased has simply stated in his Court statement that the deceased had told him that the accused/appellants used to laugh at her for bringing insufficient dowry. Even sister of the deceased Sarita Payasi (PW-9) has not made any allegation in her case diary statement that the accused/appellants were subjecting her to cruelty for dowry and has simply stated therein that the accused/appellants used to laugh at the deceased for bringing insufficient dowry. But all of a sudden in her Court statement she has improved her version a lot and developed so many things against the accused/appellants that her son (husband of the deceased) was worth Rs. Five lakhs whereas the deceased was worth 25 paisa and that they offered the deceased excreta as to at what point of time what type of demand was made by the accused/appellants. The development made by this witness is nothing but a hypothetical exaggeration. On the

contrary, L.D. Gendle (PW-1) who conducted inquest vide Ex. P-2 has stated that at the time of inquest, none of the witnesses present there have disclosed anything like subjection of the deceased to cruelty for demand of dowry. Ratanbai (PW-3) – the neighbour of the appellants though declared hostile has stated in her Court statement that behaviour of the appellants towards the deceased was good and she never noticed any quarrel between them. Rather, she has stated that the deceased was short-tempered. Another neighbour of the appellants namely Anita Gupta (PW-5) though declared hostile, has also stated that the behaviour of the appellants towards the deceased was good. Evidence of defence witness namely Raj Lalan Tiwari (DW-1) also goes to show that when he had gone to the hospital to see the victim, she had disclosed to him that on account of mental tension, she had consumed paracetamol tablets and on being asked by him whether she had any problem with her in-laws, answer given by her was in negative. Most importantly, father of the deceased himself has stated that at the time of settlement of marriage, the mother-in-law of the deceased (appellant No.1) had shown her readiness to accept his daughter in one sari.

11. Having thus seen the evidence of the witnesses as a whole, this Court is of the opinion that the ingredients contained in Section 304-B IPC are not attracted to the case in hand as the prosecution has not been able to prove by leading cogent and reliable evidence that the accused/appellants subjected the deceased to cruelty soon before her death for demand of dowry. In these circumstances, the findings recorded by the Court below cannot be said to be in consonance with the evidence led by the prosecution in its proper perspective and therefore they are liable to be set aside.

12. Accordingly, the appeal is allowed, the judgment impugned is hereby set aside and the accused/appellants are acquitted of the charge

levelled against them. As the appellants are in jail, they are directed to be set free forthwith if not required in any other case.

13. The appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
Judge

Jyotishi