

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.233 of 2015

Chandradev Yadav, S/o Lahru Ram Yadav, aged about 40 years, R/o Village Choura, P.S. Rajpur, District Balrampur-Ramanujganj, Civil District Surguja, Chhattisgarh

---Appellant

versus

1. State of Chhattisgarh through Police Station Balrampur, District Balrampur Ramanujganj, Civil District Surguja, Chhattisgarh
2. Heeralal, S/o Tarachand, aged about 25 years,
3. Tarachand, S/o Ramnaresh Yadav, aged about 44 years,
4. Savitri Devi, W/o Tarachand Yadav, aged about 40 years,

Respondents No.2 to 4 are R/o Village Daldhowa, P.S. Balrampur, District Balrampur-Ramanujganj, Civil District Surguja, Chhattisgarh

---- Respondents

For Appellant	:	Shri Shrawan Agrawal, Advocate
For State/Respondent No.1	:	Ms. Madhunisha Singh, Panel Lawyer
For Respondents No.2 to 4	:	Shri A.K. Yadav, Advocate

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per Navin Sinha, Chief Justice

11/2/2016

1. Learned Counsel for the Appellant prays for and is permitted to add the prayer for leave to appeal in the memo of appeal itself, during the course of the day.
2. The Appellant assails acquittal of Respondents No.2 to 4 dated 15.9.2015 under Section 304B/34 IPC alternately under Section 302/34 IPC by the Additional Sessions Judge, Ramanujganj in Sessions Trial No.246 of 2013. The Appellant is the father of the deceased.
3. Learned Counsel for the Appellant submits that the deceased was married to Respondent No.2 on 24.4.2012. She died an unnatural death on 7.2.2013 barely within ten months of the marriage. In the First Information Report allegations had been made for demands of dowry and that he had

seen injury marks on the neck and the back of the deceased. The FIR was lodged on 8.2.2013 and not on 14.3.2013. During evidence also, it was contended that dowry demands had been made in the form of a four-wheeled vehicle. If death had taken place within seven years of the marriage in an unnatural circumstance in the background of demands of dowry, Section 304B IPC raises a presumption of dowry death. The onus was on the private Respondents to rebut the same. Without any proper rebuttal by them, the Trial Court erred in acquitting. No evidence was led with regard to the nature of the ailment that the deceased may have been suffering from and for which she was being treated. The defence taken by the private Respondents to suggest a natural death therefore was *prima facie* not sustainable and the presumption should have been invoked.

4. Learned Counsel for the private Respondents submitted that the deceased was suffering from ailment. She was being treated by the doctor. The Trial Court has recorded a finding that there was seizure of prescriptions, medicines and syringe all of which go to prove that the deceased was in fact undergoing treatment. She had vomited also. The Appellant himself states that he was informed that his daughter was unwell after which he had come. The Appellant lodged the merger on 8.2.2013 itself in which he merely expressed an unfounded suspicion without any statement that he had seen any injury marks on the neck or back of the deceased. There was no reference to any request made by him not to cremate the body immediately and neither was any statement with regard to any dowry demand at any time made. The FIR was lodged more than a month later on 14.3.2013 after discussions and deliberations now urging that the deceased was being harassed for dowry stating that a two-wheeled vehicle had been given instead of a four-wheeled vehicle. The FIR was more in the form of a representation signed by several persons. There is no material on record to suggest that any FIR was lodged on 8.2.2013. The

FIR was sent to the Chief Judicial Magistrate on 15.3.2013. The doctor has also opined that the injuries on the neck were not dangerous to life and cause of death could not be said with certainty. No poison has been found in the viscera. The prosecution having failed to establish a *prima facie* case the question of raising any presumption against the private Respondents does not arise.

5. We have heard Learned Counsel for the State also.

6. Before the presumption of a dowry death can arise, Section 304B IPC requires that death must be under other than normal circumstances within seven years of the marriage and there must be evidence that soon before death she was subjected to cruelty or harassment and that such cruelty or harassment was for purposes of dowry. Once the prosecution establishes a *prima facie* case, the burden shifts on the accused. Merely because death may have taken place within seven years of the marriage does not *ipso facto* shift the burden on the accused straightway. Interpretation of the provision shall have to be strict considering that it is contrary to the normal principle of the prosecution having to prove the charge beyond reasonable doubt.

7. In the present case, there is no material on record with regard to the nature of cruelty or harassment that the deceased was being subjected to except for a vague and generalised statement made in Court that the deceased was taunted for a four-wheeled vehicle in the month of August, 2012, about six months earlier.

8. Furthermore, the Appellant came to the matrimonial home of the deceased on 8.2.2013 itself. He lodged mereg the same day in which he merely expressed an unfounded suspicion acknowledging that he was told over the phone that his daughter was unwell. No statement was made with regard to his having seen any injury mark on the neck or back of the

deceased much less that he had requested the private Respondents not to cremate the body in hurry coupled with any demands for dowry. The fact that the FIR in the form of a written representation was submitted on 14.3.2013 is evident from the fact that it has been registered on that date and forwarded to the Magistrate within twenty-four hours. The delay in lodging of the FIR has remained unexplained and there is no material to suggest that the FIR was lodged on 8.2.2013. The contention that the police was not lodging an FIR does not appeal to the Court as in that event the Appellant had adequate remedies either under Section 156(3) Cr.P.C. before the Superintendent of Police or even under Section 200 Cr.P.C.

9. The doctor has opined that no definite cause of death could be stated. The injury on the neck was not dangerous to life. No poison has been found in the viscera. The Appellant in his deposition had also mentioned that the deceased suspected that her husband, Respondent No.2 was having illicit relation with another woman.

10. Considering all the aforesaid facts and circumstances, we are not satisfied that the present is a fit case to interfere with the acquittal of the private Respondents either on the ground for lack of appreciation of evidence or non-consideration of evidence or perversity of findings.

11. The acquittal appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE