

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 18.10.2016

Judgment delivered on 08.11.2016

CRA No. 797 of 2013

1. Raj Kumar Singh S/o Kanhaiya Lal Singh, aged about 34 years, R/o Plot No. 278, Kailash Nagar, Bhilai, PS Jamul, Tahsil and District Durg, CG

---- Appellant

Versus

1. State Of Chhattisgarh through P.S. Jamul, District Durg (C.G.)

---- Respondent

For Appellant.	-	Shri U.N. Awasthy Sr. Advocate with Ms.Raksha Awasthy Advocate
For Respondent.	-	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker

CAV Judgment

08/11/2016

This appeal is directed against the judgment and order dated 24.7.2013 passed by Additional Sessions Judge, Durg in Sessions Trial No. 154/2012 convicting the accused/appellant under Section 304-B IPC and sentencing him to undergo rigorous imprisonment for eight years.

2. Name of the deceased in this case is Dharamsila, wife of the accused/appellant herein. Their marriage was solemnized on 27.6.2007 and out of the wedlock a male child was born. On 27.4.2012 in between 2.30 and 5.30 PM she along with her son committed suicide by hanging from a ceiling fan. *Merg* Ex. P-9 was recorded on the same day at 8:05 PM on the basis of information given by father of the accused/appellant namely Kanhaiya Lal (PW-9). Spot *Panchnama* Ex. P-5 was prepared on that very day at about 9.00 PM by the Patwari namely Sushil Kumar Dharmik (PW-8). Dead body was sent to the mortuary where inquest was made vide Ex.P-2 on 29.4.2012 and thereafter postmortem examination was done by Dr. B.N. Dewangan (PW-4) who gave his report Ex. P-6. On 5.5.2012 written report Ex. P-4 was lodged by Mahender Singh (PW-1) – the father of the deceased resident of State of Bihar alleging that two years after marriage, the accused/appellant started harassing her demanding rupees two lakhs and a gold chain. Accused is also alleged to have asked for one acre of land to be recorded in his name in case the demand of cash and gold is not fulfilled. It is alleged that the accused had also threatened the deceased to be killed if there is a failure in fulfilling his demand. The written report also mentions that the accused/appellant made the deceased sleep on the floor saying that in the marriage cot was not given by her father and when this fact was disclosed to her father, he withdrew some amount from ATM and by adding some more from

his own pocket gave to the accused at the time of house warming ceremony. Father of the deceased has also alleged that once at the time when he visited the house of the accused, his belt was left there with which he (accused) used to whip his daughter, and it is this tortuous attitude of the accused which drove the deceased to put an end to her life by hanging to a ceiling fan along with her three year old son. After *merg* inquiry, FIR Ex. P-14 was registered against the accused/appellant on 5.5.2012 under Section 304-B IPC. After completion of investigation, charge sheet was filed by the police under said section followed by framing of charge accordingly.

3. So as to hold the accused/appellant guilty, prosecution has examined 13 witnesses in support of its case. Statement of the accused/appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charge levelled against him and pleaded his innocence and false implication in the case. This apart, two witnesses namely Ramesh Kumar Nandanwar (DW-1) and Anil Verma (DW-2) have also been examined by the defence in support of its case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellant as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellant submits as under:

- (i) that from the evidence on record it is clear that for the first two years the accused and the deceased lived happily and no allegation of cruelty for dowry was made by anyone;
- (ii) that had there been any demand for dowry by the accused/appellant, the report to that effect would have been lodged much earlier either by the deceased herself or by her parents ;
- (iii) that in the FIR some stray instances have been referred to but the same do not attract the ingredients of Section 304-B IPC;
- (iv) that there is nine days delay in lodging the report which has not been satisfactorily explained by the prosecution;
- (v) that the accused/appellant has been convicted merely on the basis of statements of Mahendra Singh (PW-1) – father, Lalita Devi (PW-5) – sister-in-law (Bhabhi), Bhuttan Singh (PW-6) – uncle and Vinay Kumar (PW-7) – brother of the deceased but if they are looked into carefully, it is apparent that they themselves did not see the incident and just on the basis of the version of hearsay witnesses an allegation has been made by them against the accused;
- (vi) that the basic ingredients of Section 304-B IPC coupled with Section 113-B of the Evidence Act, principally that of cruelty meted out to the deceased “soon before death” have not been proved by prosecution;
- (vii) that the suicide by the bride in her matrimonial home does not fall within the ambit of Section 304-B IPC;

(viii) that present is case where no old or recent injury has been found on the body of the deceased and all this shows that she was never subjected to cruelty by the accused.

(ix) In support of his submissions, reliance is placed on the judgment of this Court dated 8.8.2013 in **Criminal Appeal No. 4/2013 (Office Reference v. Dhal Singh Dewangan)** connected with **Cr.A. No. 563/2013 (Dhalsingh Dewangan v. State of Chhattisgarh)**.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellant under Section 304-B IPC are strictly in accordance with law and there is no infirmity in the same. He submits that on account of death of the deceased, her family members were in deep shock and immediately after attending her last rites they had left Bhilai for their native place in Bihar State, and after getting back subsequently the written report Ex. P-4 came to be lodged on 5.5.2012 and in these circumstances the delay if any, was *bona fide*. According to the State counsel, in the cases like the present one, normally the direct evidence is not available with the prosecution for the reason that such crimes are executed in secrecy and for cases of like nature circumstantial evidence is quite enough. He submits that statement of father of the deceased has been duly corroborated by other witnesses such as PW-5 to PW-7 and that minor contradictions and omissions in

their statements are required to be ignored as they happen to be the rustic villagers. According to him, had there been any intention on the part of these witnesses to falsely implicate the accused, they would have done so in the beginning itself and would not have waited for this tragic incident and therefore, the disclosure made by them regarding cruelty to the deceased leading to her death is correct and not imaginary. State counsel further submits that the words “soon before death” can not have a narrow connotation for the reason that there is no straitjacket formula to determine the same and the proximity of time in each case would be according to the facts and circumstances of the case. State counsel submits that undisputedly the deceased died an unnatural death within seven years of marriage and since her subjection to cruelty for demand of dowry has been duly proved by the prosecution, burden lies on the defence to prove to the contrary by adducing cogent and clinching evidence. In support of his submission, reliance is placed on the decisions of the Apex Court in the matter of **Alamgir Sani v. State of Assam (2003) Cri.L.J. 4917** and in the matter of **Trimukh Maroti Kirkan v. State of Maharashtra (2006 AIR SCW 5300)**.

7. Heard counsel for the parties and perused the evidence on record.

8. Mahender Singh (PW-1) – the father of the deceased has stated that 5-6 months prior thereto when he was in his house situated in State of Bihar, father of the accused/appellant informed him on

telephone regarding the death of the deceased. On receiving this information he came back to Durg and saw the dead-bodies of his daughter and grand-son in the hospital. He has stated that marriage of the deceased was performed with the accused on 27.6.2007 and for the first two years she remained happy in her matrimonial house but thereafter the accused started harassing her demanding rupees two lakhs and a gold chain. In case of difficulty to arrange cash and gold, the accused is stated to have asked for one acre of land to be recorded in his name under the threat of life if all that was not done. He has further stated that the deceased had informed him that the accused/appellant made her sleep on the floor saying that in the marriage cot was not given by her father. On coming to know about the agony of his daughter, he withdrew Rs. 28,000/- from ATM and after adding Rs. 8,000/- from his pocket he gave the same to the accused. Deceased is also stated to have disclosed to him that the accused had a liking for her sister-in-law and not for her. According to him, once his belt was left in the house of the accused and after his departure therefrom her daughter told him on phone that accused used to whip her with the same belt. In cross-examination, he has stated that at the time of inquest he did not disclose this incident to the magistrate and after the rituals of his daughter were over, he left for his nativity and subsequently on getting back the report came to be lodged. Though there are minor contradictions and omissions in the statement of this witness, on material particulars he

maintained firmness. Lalita Devi (PW-5) – the sister-in-law (*Bhabhi*) of the deceased has stated that for some time after marriage the accused kept the deceased well and thereafter started harassing her demanding rupees two lakh, gold chain or one acre of land in lieu thereof. According to this witness, at the time of house warming ceremony, the deceased informed her father (PW-1) that the accused was ill treating her and asked to sleep on the ground saying that the cot was not given by her father. Thereafter, according to this witness, rupees thirty thousand were given to the accused by her father-in-law to purchase the cot. She has stated that accused used to assault the deceased with the belt of her father-in-law which was once left in the matrimonial house of the deceased by mistake. Barring some minor contradictions and omissions in the statement of this witness, she stood firm on material particulars. Bhuttan Singh (PW-6) and Vinay Kumar (PW-7) – the uncle and brother of the deceased respectively have also supported the case of the prosecution stating almost the same thing as has been stated by Mahender Singh (PW-1) and Lalita Devi (PW-5). Shrikant Verma (PW-2) is the Tehsildar who conducted inquest on the body of the deceased. He has stated that at the time of inquest father of the deceased and her other relatives did not disclose the reason as to why she committed suicide. Shridhar Singh Kushwaha (PW-3) is the witness who after being informed by his nephew Pradeep about the deceased confining herself in the room and not opening

the door, he went to the house of the accused and found her hanging from the fan along with her minor child. According to him, the accused never harassed the deceased and the relations between the two were cordial. He has stated that few days prior to the incident the deceased had come to his house and informed that as her brothers were creating a nuisance to her parents, she was upset. He however has admitted that he did not disclose to the police about the nuisance going on in the maternal house of the deceased by her brothers as was informed to him by herself few days prior to the incident. Dr. B.N. Dewangan (PW-4) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-6 opining the cause of death as asphyxia due to air-way obstruction caused by ante mortem hanging. Sushil Kumar Dharmik (PW-8) is the Patwari who prepared spot map Ex. P-7. Kanhaiya Singh (PW-9) is the father of the accused at whose instance *merg* intimation was recorded. He however has not supported the case of the prosecution and has been declared hostile. Durgesh Chand (PW-10) - the witness to spot *panchnama* and seizure memo Ex. P-11 has also not supported the case of the prosecution and has been declared hostile. Nathuram Nishad (PW-11) is the Assistant Sub Inspector who assisted in the investigation. Hem Prakash Nayak (PW-12) is the witness who recorded FIR. U.B.S. Chouhan (PW-13) is the investigating officer who has duly supported the case of the prosecution. Ramesh Kumar Nandanwar (DW-1) is the

Assistant Bank Manager who has stated that some amount was deposited in the account of accused and that of his father. Anil Verma (DW-2) is an employee of Reliance Communication who has stated that the required call details being one-year-old cannot be made available.

9. This Court has very closely scrutinized the material available on record including the evidence of the witnesses. From the evidence of Mahender Singh (PW-1) – the father of the deceased which has been duly supported by PW-5 to PW-7 – who happen to be her sister-in-law, uncle and brother it is quite apparent that the marriage of the deceased with the accused was solemnized on 27.6.2007 and out of their wedlock a male child was also born. The death of the deceased within seven years from the date of marriage that too under the circumstances other than the normal ones i.e. by hanging to a ceiling fan along with her three year old son, is also established. Evidence of the witnesses also goes to show that two years after marriage the accused started taunting and tormenting the deceased raising demand of rupees two lakhs and gold or getting recorded one acre of land in his name in lieu thereof putting her under threat of life in case the demand was not fulfilled. Witnesses have further stated that the accused also used to pester the deceased by forcing her sleep on the ground saying that her father did not give bed (cot) in the marriage and when this inhuman attitude of the accused was disclosed to her father, he somehow managed Rs.

30,000/- and gave to the accused for purchasing the cot. According to the witnesses the accused had developed intimacy towards the wife of his younger brother and thus showed absolutely an indifferent attitude towards his wife (the deceased). If all these fragmented elements are given a composite look, one thing which emerges is that the accused had made the life of the deceased so miserable by making ceaseless monstrous demands that ultimately became unbearable and left her with the only option to get rid of them for ever along with her minor son. There is nothing on record to show that the deceased was suffering from any depression or mental ailment and has taken this extreme step as sequence and consequence thereof. It is not even the case of the defence. This Court does not see any substance in the argument of the counsel for the accused/appellant that the prosecution has not been able to establish the cruelty to the deceased soon before death. From the material on record it is crystal clear that the deceased made a last visit to her parents' house in the month of November 2011 and stayed there for 6-7 months. Evidence on record further shows that during this long period the accused did not turn up to take her back or at least to see his son. Eventually in the month of March 2012 brother of the accused namely Pradeep visited the parents' house of the deceased and took her back and on 27.4.2012 she met the tragic end. Though there is not and cannot be any direct evidence as to in what manner the deceased was

subjected to cruelty yet the circumstances apparently existing then speak a lot to this effect. If there is no direct evidence about the cruelty meted out to the deceased or that such cruelty was soon before death or was she the victim of any mental disorder or depression which might have forced her to think of the extremity, existence of certain underlying things not on surface can be presumed as per Section 114 of the Evidence Act. Record shows that lastly the deceased stayed with her parents from November 2011 to March 2012 and in this duration the accused did not show any interest in taking her back and ultimately when she went back to her matrimonial home in the month of March, 2012 that too empty handed against the desires of the accused, the implosion inside created an explosion outside in the form of harassment, cruelty and what not. Such crimes are executed so secretly so cleverly and so clandestinely inside the house that the prosecution agency, not consisting of superhuman beings, are often helpless to collect any direct inculpatory evidence. No member of the family, even if he or she is a witness to such crime, would come forward to depose against his or her own kinsman or kinswoman. Even the next door neighbours whose evidence can provide some clue also show complete reluctance in making any disclosure or deposition in the Court and keep themselves aloof. They in fact do not ever want to be antagonistic towards the neighbours. So is the position with the parents and other family members of the bride as being away from the scene

of crime they are not in a position to give any direct evidence of cruelty or dowry demand inculcating the real accused. All this does not mean that the crimes executed silently and clandestinely inside the house should go unpunished. Likewise, the submission of the counsel for the accused that there is inordinate nine days' delay in lodging the report also does not appear to have much force. It is the father of the deceased who has set the criminal law in motion by making a report. There is evidence that after performing last rites of the deceased, her parents moved away to their nativity in Bihar State and after their anguish subsided, they came back and lodged the report. Of course it took nine days in casting off their grief and shock on account of the untimely demise of their daughter but there is nothing unnatural on their part because human nature is very complex and different persons react differently to the situation particularly the odd one. Thus the explanation for lodgment of report with nine days' delay is satisfactory and such delay in the cases of like nature should not come in the way where evidence as to the meat of the matter is galore. Argument of the counsel for the appellant that for the first two years the deceased lived happily with the accused and therefore the question of demand of dowry and cruelty therefor does not arise is a baseless one. Yet another argument that when there was cruelty for dowry just two years after marriage, the report to that effect should have been lodged promptly, also has no substance because first of all the

parents of the bride try their best to pacify the matter mutually and when the rupture becomes beyond repair, the remedy is resorted to. That is what has happened in this case also. Likewise, the argument that suicide does not fall under Section 304-B IPC is noted and rejected being without logic. Thus all the ingredients required for holding one guilty u/s 304-B IPC are duly attracted to the case in hand. The judgments taken support of by the counsel for the accused are of no help to the accused as they rest on altogether different facts and circumstances.

10. Thus from the aforesaid factual analysis involvement of the accused/appellant in the crime in question is writ large and the evidence on record cannot give rise to the conclusion other than holding the accused guilty under Section 304-B IPC. Findings recorded by the Court below are based on due appreciation of the evidence of the witnesses and being so no interference therewith is called for. Appeal thus being unmerited is liable to be dismissed. It is dismissed as such. Accused/appellant is already inside and therefore no direction to send him behind the bars is required.

Sd/-

(Pritinker Diwaker)
Judge

