

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 892 of 2000

- 1. Smt.Vimala Jain, wife of Ratanlal Jain, aged 48 years,
- 2. Smt. Anita Jain, wife of Narendra Jain, aged 34 years,
- 3. Suresh Jain, son of Ratanlal Jain, aged 34 years,

All residents of Nayapara, Jagdalpur, Distt. Bastar (MP)

---- Appellants

Versus

- 1. State Of M.P. (Now C.G.)

---- Respondent

For Appellants	:	Shri Keshav Dewangan, Advocate.
For Respondent/State	:	Smt.Smita Ghai, P.L.

CRA No. 755 Of 2005

- 1. The State Of Chhattisgarh (Now C.G.)

---- Applicant

Vs

- 1. Smt.Vimala Jain, aged about 48 years, W/o Ratanlal Jain,
- 2. Smt. Anita Jain, aged about 34 years, W/o Narendra Jain,
- 3. Suresh Jain, aged about 34 years, S/o Ratanlal Jain.

All residents of Nayapara, Jagdalpur, District Bastar (M.P.)

---- Respondent

For Applicant	:	Smt.Smita Ghai, P.L.
For Respondents	:	Shri Keshav Dewangan, Advocate.

And

CRR No. 869 Of 2000

1. Smt. Ladu Bai Golcha, W/o Shri Hukmi Chand Golcha, R/o Village Birgudi, Tah. Nagri, Distt. Raipur (M.P.) (Now CG)

---- Applicant

Vs

1. Smt. Vimla Jain, W/o Ratanlal Jain, aged about 48 years,
2. Smt. Anita Jain, W/o Narendra Jain, aged about 34 years,
3. Suresh Jain, S/o Ratanlal Jain, aged about 34 years,

Above all non-applicants No. 1 to 3 are resident of Nayapara, Jagdalpur, Distt. Bastar (M.P.) (Now C.G.)

---- Non-applicants

For Applicant	:	Shri Vishnu Koshta, Advocate.
For Respondents	:	Shri Keshav Dewangan, Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice R.C.S. Samant

Judgment On Board By Justice Pritinker Diwaker

10/04/2017

As the above three cases arise out of the judgment and order dated 24.3.2000 passed by First Additional Sessions Judge, Jagdalpur, Bastar in ST No.633/93, they are being disposed of by this common judgment.

02. In the present case, name of the deceased is Tarabai, wife of accused Suresh Jain. Their marriage was solemnized in the year 1989 and she died on 26.8.1993 at Sector-9 Hospital, Bhilai while

undergoing treatment after suffering 70% burn injuries. Accused Smt. Vimla Jain is mother-in-law of the deceased whereas accused Smt. Anita Jain is her sister-in-law (*Jethani*). On 23.8.1993 at about 4 am while boiling milk on the gas-stove, the deceased suffered burn injuries, she was taken to District Hospital, commonly known as Maharani Hospital, Jagdalpur, at about 11.50 am where she was treated till 25.8.1993 and thereafter, was taken to Sector-9 Hospital, Bhilai where she succumbed to burn injuries on 26.8.1993. Information was sent from the hospital to the police authorities, based on which merger intimation Ex.P/6 was registered on 26.8.1993. In the meanwhile, on 23.8.1993 statement under Section 161 of Cr.P.C. of injured Tarabai was recorded vide Ex.D/4 and likewise, her dying declaration (Ex.P/13) was also recorded on the same day. However, in her case diary statement as well as in the dying declaration, she has categorically stated that she suffered burn injuries while boiling milk and nowhere she has alleged that she was burned by the accused persons or that she made any attempt to commit suicide.

On 27.8.1993 postmortem on the body of the deceased was conducted by PW-13 Dr. RB Agrawal who noticed 55% burn injuries and in his opinion, the cause of death was shock as a result of extensive antemortem burn. On 14.9.1993 a typed written report (Ex.P/8) was made by PW-1 Ladu Bai, mother of the deceased and on the same day, FIR (Ex.P/4) under Section 304B of IPC was registered against the present accused persons and their four other family members. The other four accused persons preferred a petition before the High Court of MP and the charges against them were quashed by

the High Court. Present accused persons were charged under Sections 304B, 498A, 306, 201 read with Section 34 of IPC.

03. So as to hold the accused persons guilty, the prosecution examined 18 witnesses in all. Statements of the accused were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In their defence, they examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting the accused persons of the charges under Sections 304B, 306, 201 and 34 of IPC, convicted each of them under Section 498A of IPC and sentenced to undergo RI for two years & to pay a fine of Rs.1000/- with default stipulation.

05. Being aggrieved with their conviction, the accused persons have preferred Cr.A.No.892/2000 whereas the State and the complainant have filed Cr.A.No.755/2005 and Cr.R. No.869/2000 respectively challenging the acquittal of the accused persons of the major offences.

06. In Cr.A.No.892/2000 it has been argued on behalf of the accused/appellants as under:

- that there is absolutely no evidence against the accused/appellants warranting their conviction under Section 498A of IPC;
- that the dying declaration as well as statement under Section 161 of Cr.P.C. of the deceased makes it clear that she was living

happily with the accused persons and they have been falsely implicated at the instance of relatives of the deceased.

- that the typed written complaint (Ex.P/8) made by PW-1 Ladubai, mother of the deceased, appears to have been made after due deliberation at the instance of her counsel and it was merely signed by the complaint. From the signature of the complainant, it appears that she is an illiterate lady and has just signed the typed document.
- that even the basic ingredients of Section 498A of IPC are not attracted against the accused persons in this case.
- if this Court comes to the conclusion that the accused persons have rightly been convicted under Section 498A of IPC by the trial Court, considering the fact that the incident took place 22 years ago, appellants No. 1 & 2 have remained in jail for about 24 days whereas appellant No.3 has already remained in jail for about 56 days; appellant No.1 is now an aged lady and appellants No. 2 & 3 are middle aged, instead of sending them back to jail at this stage, their sentence may be reduced to the period already undergone by them.

In reply to the arguments advanced by the State counsel and the counsel appearing for the complainant, it has been submitted by learned counsel for the appellants that basic ingredients for bringing home the charge under Sections 304B and 306 of IPC against the appellants are completely missing in this case and therefore, their acquittal of those charges is strictly in accordance with law.

07. On behalf of the counsel for the complainant and the State counsel it has been put forth that the Court below has erred in law in acquitting the accused of the major offences. They submit that conduct of the accused persons is suspicious, they did not hospitalize the deceased immediately after the incident and had she been hospitalized in time, she could have been saved. Lastly, it has been submitted that dying declaration and case diary statement of the deceased are doubtful and it appears that the same have been made by the deceased in the presence of accused persons and as such, she was not free at the time of making such statements.

Counsel for the complainant further submits that the trial Court has erred in law in not framing charge against the accused persons under Section 304-A of IPC for causing death of the deceased by their negligent act as the evidence on record goes to show that they did not take the deceased to hospital immediately after the burn incident.

08. Heard counsel for the respective parties and perused the material on record.

09. PW-1 Ladubai, mother of the deceased, who made typed written complaint (Ex.P/8) has stated that about four years back marriage of her daughter Tarabai was solemnized with accused Suresh Jain. On number of occasions Tarabai visited her house, whenever she visited her house she used to remain perturbed, however, she would not disclose anything to her and upon being asked repeatedly, she informed that she was not happy with the behaviour of her mother-in-law and sister-in-law and that she was not interested to live at

Jagdalpur and was keen to live at Balod. She thought that the accused persons might be harassing Tarabai for something, so she gave her a gold chain, ear ring and some money. She has further stated that she also received a letter of the deceased and after few days she received information from her another son-in-law (PW-10 Subhash Chand Jain), who was residing at Dhamtari, that some untoward incident has taken place and then she came to know that the deceased has suffered burn injuries. She states that it was informed by the family members of the accused persons to one Malhar Rao (PW-4) that there is nothing serious and some minor burn injury has been sustained by Tarabai. She states that thereafter her daughter Tarabai was taken to Sector-9 Hospital, Bhilai and correct facts about the incident were not disclosed by the accused persons, on account of which there was hot talk between her husband and the accused persons. She states that her daughter Tarabai expired in the hospital. According to her, even the last rites of the deceased were not performed by the accused persons as per prevailing custom. She states that whatever she has disclosed to the police was as per advice of her husband, the information given by her son-in-law, Malhar Rao and her other daughter Mannubai (PW-15). She admits that she was not directly involved in the entire series of events.

10. PW-2 Rajendra Golcha, brother of the deceased, has stated that upon being asked the deceased informed him that she was being harassed by the accused persons. Even this witness has nowhere stated that there was any demand of dowry by the accused persons. PW-4 Malhar is the person who had gone to the house of the

accused/appellants at the instance of PW-10 Subhash Chand Jain and was allegedly informed by the accused persons that some minor burn injury had been suffered by the deceased. PW-6 Dr. JD Dulhani admitted injured Tarabai in Maharani Hospital, Jagdalpur and noticed 70% burn. PW-7 Nirmal Loda, sister of the deceased, has stated that she was informed by Tarabai that her mother-in-law and sister-in-law (Jethani) used to taunt her in relation to dowry saying that the dowry was not given as per their choice. PW-8 Prakash Golcha, brother of the deceased, has also not stated anything about demand of dowry by the accused persons, though he states that the deceased had told him that whatever article is to be given, it should be of good quality so that her in-laws may not complain about the same. He has also made some allegations regarding conduct of the accused persons. PW-10 Subhash Chand Jain, brother-in-law of the deceased, has not made any specific allegation against the accused persons in relation to demand of dowry. He had sent Malhar Rao to the house of the accused persons after the incident.

11. PW-13 Dr. RB Agrawal conducted postmortem on the body of the deceased and noticed 55% burn injuries. In his opinion, the cause of death was shock as a result of extensive antimortem burn. PW-14 Dr. KD Chandrakar first attended the deceased after the incident and then looking to her condition, advised for her hospitalization. PW-15 Mannubai, sister of the deceased, has stated that when she met the deceased, she was informed by the deceased that behaviour of her sister-in-law is not proper and that she was scared of her mother-in-law. PW-17 Premlal Sahu, investigating officer, has supported the

prosecution case. PW-18 Bhushan Prasad Dubey, Tehsildar, who recorded dying declaration of the deceased (Ex.P/13) has stated that he recorded the dying declaration in question and answer form and the deceased was in a fit state of mind while making such statement. In the dying declaration it has been stated by the deceased that she got married to accused Suresh Jain about 4-5 years back, she has a son, aged 17 months and that she suffered burn injuries at about 4 am on 23.8.1993 while boiling the milk for her son. She has categorically denied the fact that there was any quarrel between her and the accused persons or there was any ill-treatment to her for demand of dowry. She has further stated that she has not made any attempt to commit suicide nor has she been burnt by anyone. Almost similar statement has been made by her in her statement under Section 161 of Cr.P.C.

12. As regards charge under Section 304B of IPC, in order to attract conviction under this section, there has to be cogent and reliable evidence to the effect that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. The Hon'ble Supreme Court in the matters of ***Major Singh and Others Vs. State of Punjab, AIR 2015 SC 2081***, while dealing with this issue observed as under:

“15. To attract conviction under [Section 304B](#) IPC, the prosecution should adduce evidence to show that "soon before her death", the deceased was subjected to cruelty or harassment. There must always be proximate

and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of [Hira Lal & Ors. vs. State\(Govt. of NCT\) Delhi](#), (2003) 8 SCC 80, in paragraph (9) it was observed as under:-

"9. A conjoint reading of [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where [Section 113-B](#) of the Evidence Act and [Section 304-B](#) IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under [Section 113-B](#) of the Evidence Act. The expression "soon before her death" used in the substantive [Section 304-B](#) IPC and [Section 113-B](#) of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in [Section 114](#) Illustration (a) of the [Evidence Act](#) is relevant. It lays down that a court may presume that a man who is in the

possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

16. Same principle was also expressed in [State of A.P. vs. Raj Gopal Asawa & Anr.](#), (2004) 4 SCC 470; [Balwant Singh & Anr. vs. State of Punjab](#), (2004) 7 SCC 724, [Kaliyaperumal & Anr. vs. State of Tamil Nadu](#), (2004) 9 SCC 157; [Kamesh Panjiyar @ Kamlesh Panjiyar vs. State of Bihar](#), (2005) 2 SCC 388; [Harjit Singh vs. State of Punjab](#), (2006) 1 SCC 463; [Biswajit Halder @ Babu Halder & Ors. vs. State of West Bengal](#), (2008) 1 SCC 202 and [Narayanamurthy vs. State of Karnataka & Anr](#), (2008) 16 SCC 512.

17. Applying these principles to the instant case, we find that there is no evidence as to the demand of dowry or cruelty and that deceased Karamjit Kaur was subjected to dowry harassment "soon before her death". Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, in our view, it can only

be attributed to the husband-Jagsir Singh who in all probability could have demanded the same for his use. In the absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellants, the conviction of the appellants under [Section 304B](#) IPC cannot be sustained. The trial court and the High Court have not analyzed the evidence in the light of the essential ingredients of [Section 304B](#) IPC and the conviction of the appellants under Section 304B IPC is liable to be set aside."

13. Admittedly, in the present case the deceased died within seven years of her marriage due to burn injuries. However, there is no conclusive piece of evidence which could suggest that soon before her death she was subjected to cruelty by the accused persons, which is the sine qua non for attracting conviction under Section 304B of IPC. In the case in hand, as per evidence of PWs-1, 2, 7, 8 & 15 only it has come that the deceased used to remain disturbed and complain about the behaviour of the accused persons that they taunt her saying that the articles brought by her are not of good quality. Thus, there is no evidence that soon before her death, the deceased was subjected to cruelty or harassment by the accused persons. True it is that there is some delay on the part of the accused persons in taking the deceased to hospital after the incident but that itself is not good enough to hold that it is they who burnt the deceased or subjected her to cruelty in connection with demand of dowry soon before her death and as such, would not *ipso facto* constitute the offence under Section 304B of IPC. Rather from the dying declaration as well as statement under Section

161 of Cr.P.C. of the deceased it is clear that she caught fire accidentally while boiling milk for her son. In these circumstances, the basic ingredients for attracting the offence under Section 304B of IPC are completely missing in this case.

14. So far as charge under Section 306 of IPC is concerned, in order to convict any person for instigating any person to commit suicide, it is to be established that the victim committed suicide. However, in the present case, as already discussed above, the deceased did not commit suicide but got burnt accidentally while boiling milk on the gas-stove and further, there is no legally admissible and cogent evidence to show that she was being harassed or ill-treated by the accused persons to such an extent where she was left with no other option but to put an end to her life. Being so, offence under Section 306 of IPC is also not made out against the appellants.

15. As for offence under Section 498A of IPC, from a bare perusal of Sec. 498A as enshrined in IPC, it can be said that for attracting Explanation (a) of Sec. 498A, the cruelty has to be of such gravity as is likely to drive a woman to commit suicide or to cause grave injury or danger to her life, limb or health. Explanation (b) to Sec. 498A is attracted only where harassment is shown to have been committed for the purpose of coercing a woman to meet any unlawful demand for any property or valuable security or because such demands have not been met. Thus, harassment in order to constitute cruelty under Explanation (b) must have nexus with the unlawful demand of any property or valuable security and if this is missing, the case will fall beyond the

scope of Sec. 498A IPC.

From the evidence on record it reflects that the prosecution witnesses have made only general and omnibus allegations against the accused persons that they did not like the articles given to the deceased at the time of marriage and their behaviour was not proper. No specific allegation is there against the accused persons that they were harassing or subjecting the deceased to cruelty for non-fulfillment of a particular demand or for any other reason. The allegations leveled against them are not of such a nature, which even if taken to be true, would tantamount to harassment or cruelty, making them liable for conviction under Section 498A of IPC. The prosecution has not been able to prove this charge also by adducing proper evidence. Thus, considering the quality and nature of evidence adduced in respect of charge under Section 498A of IPC, we are of the opinion that the accused persons are entitled to be acquitted of this charge also by giving them benefit of doubt.

16. In the given facts and circumstances of the case as also in view of the aforesaid discussion, we further find no substance in the argument of counsel for the complainant that the trial Court was under an obligation to frame charge under Section 304A of IPC against the accused persons.

17. On the basis of aforesaid discussion, we are of the opinion that the trial Court was fully justified in acquitting the accused persons of the charges under Section 304B and 306 of IPC, but has fallen in error while holding them guilty under Section 498A of IPC.

18. In the result:

- Cr.A.No.892/2000 preferred by accused/appellants is allowed.

They are acquitted of the charge under Section 498A of IPC by giving them benefit of doubt. They are reported to be on bail, therefore, their bail bonds stand discharged and they need not surrender.

- Cr.A.No.755/2005 preferred by the State and Cr.R.No.869/2000 preferred by the complainant being without substance are liable to be dismissed and are dismissed as such.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge