

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1529 of 1998**

Narsingh S/o Hemlal Sahu aged about 25 years, R/o village Nipani
P.S. Gurur, District Durg, Madhya Pradesh.

---- Appellant**Versus**

State of Madhya Pradesh (now Chhattisgarh) through P.S. Gurur,
District Durg, Chhattisgarh.

---- Respondent

For the Appellant	:	Shri B.P. Singh, Advocate.
For the Respondent/ State:		Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****13.04.2017**

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 6.7.1998, passed by the Learned Additional Sessions Judge, Balod, District Durg in Sessions Trial No. 238 of 1997, whereby and whereunder the learned Additional Sessions Judge has convicted the appellant/ accused under Section 304 (B) of the Indian Penal Code (for short 'the IPC') and sentenced him to undergo RI for 7 years and to pay fine of Rs.500/-, in default of payment of fine, to further undergo RI for three months.

2. The case of the prosecution, in brief, is that deceased Kamini Bai was married to the appellant about three years prior the date of incident. On 22.4.1997 at about 10:40 am, Mandas (PW-1) submitted a merg intimation

(Ex. P/1) in police station Gurur informing that Kamini Bai has expired due to consumption of some poisonous substance. Inquest was conducted vide Ex. P/3. Sukhram (PW-3), father of the deceased lodged FIR Ex. P/5 in police station Gurur informing that the deceased was his daughter, who was being tortured for demand of dowry which resulted into her death. An offence under Section 304-B of the IPC was registered against the appellant and two others. Autopsy on the dead-body of the deceased was conducted by Dr. R.S. Bharadwaj (PW-12) vide Ex. P/11. He could not opine about the definite cause of death. Viscera was preserved for chemical examination. On chemical examination, the FSL report vide Ex. P/15 confirmed the presence of organophosphorous insecticide in the viscera of the deceased. On completion of investigation, the appellant and two others were charge-sheeted.

3. The appellant and two others were charged for the offence punishable under Section 304-B of the IPC and in the alternative under Section 306 of the IPC. The appellant and the co-accused denied the charges and demanded for trial. The prosecution examined as many as 15 witnesses. The defence also examined three witnesses. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against them, the accused pleaded innocence and false implication. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed by which the two co-accused persons were acquitted of all the charges, whereas the appellant has been convicted and sentenced as mentioned above. Hence, this appeal.

4. The grounds in this appeal are that the trial court has wrongly convicted the appellant for an offence which he has not committed because the allegation of demand of dowry soon before the death of the deceased has not been proved by the prosecution. The cause of death of deceased Kamini Bai was on a different fact which was not at all noticed by the Court below. Suhan Bai (PW-7), mother of deceased and the other witnesses admitted that a meeting was held in the village with regard to the allegation that the deceased was having illicit relationship with her neighbour, namely, Kumar Sahu and in the said meeting, the deceased and Kumar Sahu both admitted their guilt and the deceased committed suicide due to humiliation and frustration. Hence, it is prayed that the appeal may be allowed and the judgment of conviction and order of sentence may be set aside.

5. Learned counsel for the appellant submits that there is no specific statement of any of the witnesses that there had been any demand of dowry soon before the death of the deceased.

6. Learned State counsel opposed the grounds and arguments submitted on behalf of the appellant.

7. Sukhram (PW-3), father of the deceased has stated that his daughter was married to the appellant about three years prior to the date of incident and for about six months she remained comfortable in her matrimonial home. Thereafter, Kamini Bai came to his residence and narrated that the appellant and her in-laws used to beat her intemperately for not bringing proper dowry. She also told that the appellant and others demanded Luna (moped), cycle, watch, bed etc. According to this witness, the deceased

again went to her matrimonial home and after passing of one year she came and told that appellant – Narsingh and her in-laws have beaten her with a chain. Kamini Bai was again sent to her matrimonial home. No reason has been stated about the beatings given to Kamini Bai on this occasion. After having some talks with father of the appellant to resolve the matter, she was again sent to her matrimonial home. On 22.4.1997, he received information about the deceased being admitted in hospital at Gurur and on going there he saw the dead-body of Kamini Bai. He immediately lodged a report Ex. P/5 in the police station. In cross-examination, he stated that the appellant and his father are labourers. He used to bring his daughter every year during *Teeja* Festival. He never called a meeting on the complaint of his daughter being tortured by the appellant and others. Prior to this incident, he never lodged any FIR in the police station as well. He denied that he had any knowledge about some man from neighbourhood had entered into the room of Kamini Bai and a meeting was held on this point in which Kamini Bai was asked to pay a fine of Rs.400/-. He denied that his daughter was mentally unsound. On perusal of the whole statement of this witness, the instance of demand of dowry seems to be a remote instance, very much prior to the date of incident i.e. 22.4.1997 and in between there had been incidents of beating given to the deceased.

8. Roop Singh Sahu (PW-4) has stated that when the deceased came back from her matrimonial home soon after the marriage, she told that she was beaten by her husband/ the appellant for demand of dowry. He has no knowledge about the incident or the circumstances that appeared before the incident. This evidence cannot be regarded as an instance of demand of dowry soon before the death of the deceased. Similar is the statement of

Heera Singh (PW-5). Even if it assumed that there had been a demand of some items of dowry by the appellant and his parents, but the same appears to be unconnected with the death of the deceased.

9. Ram Ratan (PW-6) stated that Kamini Bai came back from her matrimonial home on her own. Hemlal, father-in-law of the deceased came to take her back and at that time this witness was called by Sukhram (PW-3) to talk with Hemlal. At that point of time, Kamini Bai told that her husband used to beat her. There is no statement given by him regarding demand of dowry at that point of time or in later point of time.

10. Suhan Bai (PW-7), mother of the deceased stated that her daughter Kamini Bai informed about demand of dowry, however, Hemlal, her father-in-law came and asked to take her on his own responsibility, thereupon the deceased was sent back to her matrimonial home. There is no statement given by her that there had been any demand of dowry soon before the death of the deceased. In cross-examination, she denied that she had any knowledge about the meeting held in village in which it was alleged that the deceased had developed illicit relationship with a man named Kumar Sahu of the same village and on her admission she was asked to pay a fine of Rs. 400/- though, she admitted that her son-in-law/ the appellant scolded the deceased and because of that reason, the deceased came to her matrimonial home on her own. Bani Ram (PW-10) was cited as witness having knowledge about the circumstances of this incident, but he has not supported the case of the prosecution and was declared hostile. Similarly, Bisheshar (PW-11) has also been declared hostile. Other witnesses examined by the prosecution are related to the investigative procedures and

the statements given by them need no discussion in the judgment of this appeal.

11. It is not disputed that deceased Kamini Bai died due to consumption of some poisonous substance which was suspected by Dr. R.S. Bharadwaj (PW-12) and he advised vide his report Ex. P/11 for FSL examination of the viscera preserved during the postmortem examination. The FSL examination report Ex. P/15 confirmed the presence organophosphorous pesticide in the viscera of the deceased. On the basis of which, it is clear that deceased Kamini Bai died due to consumption of organophosphorous poisonous substance.

12. Since in the present case, the question is whether the offence under Section 304B of the IPC is made out or not, there is specific requirement or proof, that there had been a demand of dowry and the deceased, who died within seven years of marriage, was subjected to cruel treatment by her husband and in-laws for such demand. On perusal and analysis of the evidence of the witnesses, it is found that none of them have made a clear statement that there had been any such demand soon before the death of deceased took place. On the contrary, the defence has set up a story that the deceased was caught with her neighbour named Kumar Sahu in her room, for which a village meeting was held. The suggestions on this story were given to Sukhram (PW-3) and Suhan Bai (PW-5) who denied that they had any knowledge in this respect. But Suhan Bai (PW-7) admitted that because of this reason the appellant scolded the deceased. No such question was put in cross-examination to any other witnesses of the prosecution. The defence witnesses, Gajanand (DW-1), Madan Lal (DW-2)

and Hemlal (DW-3) have stated in detail about the incident of a meeting, which was called alleging illicit relationship between the deceased and her neighbour Kumar Sahu. This evidence holds place as it could not be rebutted in cross-examination of all these witnesses.

13. As the defence has succeeded in bringing a story which can be regarded as probable cause as to why the deceased committed suicide by consuming poisonous substance, which is totally an independent case of suicide and not connected with the ill-treatment given to her by the appellant in prior times. No case is made out on the basis of the prosecution evidence that the deceased was tortured and subjected to cruelty for demand of any dowry soon before her unnatural death. Hence, the conviction of the appellant under Section 304B of the IPC is perverse and not supported by legally admissible evidence of the prosecution. The only case is made out against the appellant is under Section 498-A of the IPC.

14. For the aforesaid reasons, the appeal is allowed in part. The impugned judgment of conviction and order of sentence against the appellant is set aside and instead thereof, the appellant is convicted under Section 498-A of the IPC.

15. As submitted by counsel for the appellant, the appellant was in custody from 30.4.1997 to 6.7.1997 i.e. 3 months and 7 days and thereafter he was again taken into custody on 6.7.1998 and was released on bail vide order dated 26.8.1998 of this court. Thus, the appellant has already undergone a total period of custody of 3 months 27 days. Looking to the facts and circumstances of the case, this Court is of the opinion that the

period of custody already undergone by the appellant is sufficient punishment for the conviction under Section 498-A of the IPC. Hence, the appellant is sentenced to the period of custody already undergone by him in jail alongwith fine of Rs.500/- and in default of payment of fine to further undergone RI for one month. The appellant is on bail. He need not surrender, if not required in any other case. However, his bail bonds are not discharged at this stage and shall remain operative for a further period of six months in terms of Section 437-A CrPC.

Sd/-

(Rajendra Chandra Singh Samant)
Judge