

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 233 of 2007

- Ashvani S/o Vishnu Jangde, aged about 27 years, Occupation-Mason, Caste-Satnami, R/o Village - Sarkhi, , Tahsil-Abhanpur, District-Raipur (CG)

---- Appellant (In Jail)

Versus

- State Of Chhattisgarh through District Magistrate, Raipur (CG)

---- Respondent

For Appellant	:	Shri S.S. Rajput & Shri Sangeet Kushwaha, Advocates.
For Respondent	:	Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgement

P. Diwaker, J

18/01/2017

1. This appeal is directed against the impugned judgment dated 28.2.2007 passed by the 11th Additional Sessions Judge, FTC, Raipur in S.T. No.395/2006 convicting the accused/appellant under Section 304B of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life.
2. In the present case name of deceased is Chandrakala Bai, wife of accused/appellant, who died on 17.4.2006 in her matrimonial home by hanging herself.
3. Facts of the case in brief are that the marriage of accused/appellant and the deceased was said to have been solemnized three years prior to the date of incident and on 17.4.2006 she was found dead in her in-laws

house. According to the prosecution, the accused persons used to harass and torture the deceased in connection with demand of dowry and therefore she has put an end to her life by hanging herself. On receiving information that the deceased has died due to Diarrhoea, PW-1 Tekram, father the deceased, rushed to the spot and found her dead body lying on the cot. Merg Intimation (Ex.P-4) was recorded on 18.4.2006 at the instance of Tekram, father of deceased. Inquest over the body of deceased was prepared vide Ex.P-6. Dead body was sent for post-mortem examination which was conducted by Dr. S.N. Manjhi (PW-10) vide Ex.P-13 and as per report of Ex.P-10, the cause of death was asphyxia as a result of hanging.

4. On 20.7.2006 a written report was lodged by PW-1 Tekram, father of deceased, with the police stating that the deceased used to be harassed and humiliated by accused persons in connection with the demand of dowry and he had suspicion that on account of non fulfilment of their demands, the accused persons might have killed the deceased. On the basis of such information given by Tekram, the police registered FIR (Ex.P-21) for the offence under Section 304B IPC against the accused persons. The investigation was carried out and charge-sheet was filed by the police in the Court of Judicial Magistrate 1st Class, Raipur against the accused persons. The case was committed to the Court of Sessions and the same has been received by the Additional Sessions Judge, Raipur on transfer for trial. The Additional Sessions Judge framed the charge under Section 304B IPC against all the accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 12 witnesses in all. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication.

5. The trial Court after hearing the parties in the matter and considering the material available on record, by the impugned judgment while acquitting co-accused persons of the charge under Section 304B IPC, convicted & sentenced the accused/appellant in the manner as described above.
6. Counsel for accused/appellant submits that the main ingredient of the offence under Section 304B IPC is that the deceased must have been subjected to cruelty or harassment in connection with any 'demand of dowry' and in this case the prosecution has not established that the deceased was subjected to cruelty or harassment by the appellant in connection with any demand of dowry. He further submits that even the lodger of FIR i.e. father of deceased (PW-1), in his statement did not say anything about the cruelty on account of demand of dowry, rather he has admitted the deceased had no complaint whatsoever against her in-laws. and she was living happily in her matrimonial home. He further submits that financial help of Rs.10,000/- to the appellant for construction of house cannot be held to be a demand for dowry. Lastly, he submits that there was inordinate delay of three months in lodging the FIR and the prosecution failed to offer plausible explanation in this regard.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that there was sufficient evidence to show that the deceased was subjected to cruelty and harassment by the appellant in connection with demand of dowry.
8. We have heard counsel for the parties and perused the evidence available on record.
9. PW-1 Tekram, father of deceased, has stated that the deceased came to his house on the eve of Teeja but she did not disclose anything to him. He

has further stated that when the accused/appellant & the deceased were constructing their house, he had given Rs.10,000/- to them. He has stated that as the sister-in-law & brother-in-law of the deceased used to quarrel with the deceased, therefore, he had advised his daughter & appellant to start living separately and acting upon his advise, they have started living separately and for that purpose he has given Rs.400/- to her daughter. He has admitted that the deceased was not having any problem in her in-laws house nor she was suffering from any disease. He has further stated that the ornaments of deceased were missing from her body and it appears that the same have been removed from her body by the accused persons. He has further stated that the police took action only when the pressure was exerted upon them. At this stage, this witness has been declared hostile and in the cross-examination by the prosecution he has admitted that it is he who advised the appellant and the deceased to live separately and also advised the appellant to do some work. He has further admitted that at the time of incident the accused/appellant and the deceased were living separately. He has further admitted that his relation between his family and the accused persons were cordial and they used to help each other in all respects including financial help. He has stated that written complaint was lodged after about three months of the incident on the basis of suspicion.

10. Gopichand Sahu (PW-2) is the Ayurvedic Doctor who had first examined the deceased and declared her dead. However, he has not supported the case of prosecution and turned hostile.
11. Deendayal Khare (PW-3), brother of deceased, has stated that marriage of deceased with appellant was solemnized three years prior to the date of incident. As the in-laws of deceased used to quarrel with her, therefore, she & her husband had started living separately. He has further stated

that as the accused/appellant does not have any means of income, therefore, they were even finding it difficult to meet the ends of day. He has further stated that the appellant used to have his food in the house of his brother and his sister used to remain hungry and resultantly they used to quarrel. He has not made any allegation against the accused/appellant regarding demand of dowry etc.

12. Ramlal Chelak (PW-4) appears to be the uncle of the deceased, however, he has not stated anything incriminating against the accused/appellant.
13. Gautam Lal (PW-5) & Jathanandan Lal (PW-6) did not support the prosecution case and turned hostile.
14. Mohan Das (PW-7), village Kotwar, is the witness of seizure (Ex.P-10) and map (Ex.P-11). Vishnuram Sinha (PW-8) is the Patwari who prepared the spot map of Ex.P-11. Anil Sharma (PW-9) is the witness of inquest Ex.P-6.
15. Dr. S.N. Manjhi (PW-10) is the person who conducted post-mortem examination over the body of deceased and gave his report vide Ex.P-10.
16. Jagdish Uikey (PW-11) is the police person who recorded merger intimation Ex.P-4.
17. Rajesh Agrawal (PW-11) is the Investigating Officer and he has duly supported the prosecution case.
18. In order to attract application of Section 304-B IPC, the essential ingredients are as follows:-
 - The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance and such death should have occurred within seven years of her marriage.
 - She must have been subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry.

On proof of essential ingredients mentioned above, it become obligatory on the Court to raise a presumption that the accused caused the dowry death. 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. "Soon before" is a relative term and it would depend upon circumstance of each case and no straitjacket formula can be laid down as to what would constitute a period "soon before the occurrence". There must be in existence a proximate live link between the facts of cruelty in connection with the demand of dowry and the death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

19. The evidence and material on record is to be examined whether there is evidence to prove that "soon before the occurrence", deceased was subjected to torture and harassment in connection with demand of dowry.
20. Minute scrutiny of the evidence of Tekram (PW-1), father of deceased, & Deendayal Khare (PW-3), brother of deceased, make it clear that there is no whisper in their evidence that any kind of dowry demand was ever made or that "soon before the occurrence" the deceased was subjected to torture and harassment in connection with the demand of dowry. It has also not come in the evidence that the accused/appellant had been torturing the deceased with his cruel behaviour and she complained the same to them, rather it has been admitted by Tekram (PW-1), the deceased had no complaint in her matrimonial home and she was living there happily. Main allegation, according to complaint (Ex.P-3) & FIR, is of demand of motorcycle and payment of Rs.10,000/- to the accused/appellant, but in the evidence of PW-1 Tekram, father of

deceased & lodger of FIR, there is no whisper about the demand of motorcycle or Rs.10,000/-, rather there is admission of relation being cordial between the two families and that they used to financially help each other. Thus, by no stretch of imagination, this financial help of Rs.10000/- by PW-1 to the appellant cannot be termed as dowry, particularly when it has been admitted by Tekram (PW-1) that on help being sought by his daughter & son-in-law (present appellant), he gave Rs.10,000/- to them for construction of house. Furthermore, there is delay of about 3 months in lodging the FIR and it has come in the evidence of the complainant that after due deliberation, he decided to file complaint. It has been held time and again by the Supreme Court that a delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. In the present case also, the complainant has failed to offer plausible explanation for lodging the complaint with a delay of three months, which gives rise to suspicion about the genuineness of the complaint.

Considering the fact that there is no specific allegation of commission of cruelty and harassment upon the deceased by the present appellant in connection with demand of dowry coupled with unexplained delay in lodging the FIR, we are of the opinion that it would be unsafe to presume that "soon before her death" the deceased was subjected to cruelty and harassment by the accused/appellant and he is definitely entitled to be acquitted of the charge by extending him benefit of doubt.

As regards the death of the deceased 'otherwise than under normal circumstances' within seven years of marriage, it has come in the

evidence that the appellant was not having means of income; he used to take financial help from others including father of deceased and even the he used to have his food at his brother's house, which was not liked by the deceased and in this way to some extent she was not happy at her own and not because of any mischief from the side of accused/appellant. Thus in our opinion the possibility of deceased having committed suicide cannot be ruled out. Even otherwise, there is no evidence on the record to show that the accused/appellant committed cruelty & harassment on the deceased with a view to force her to commit suicide or to fulfil illegal demands of him.

As regards the wrong information given by accused/appellant that the deceased died because of Diarrhoea, there may be variety of reasons which must have forced him to make utterances like this including social ignominy, police phobia etc., but this alone cannot inculcate him in the offence like the present one.

21. In view of above discussion, we are of the opinion that the finding of conviction recorded by the trial Court is not based on due appreciation of evidence of the witnesses and therefore the same is not sustainable in the eye of law and is liable to be set aside. Accordingly, the appeal is allowed. Conviction & sentence of accused/appellant under Section 304-B IPC are hereby set aside and he is acquitted of that charge by extending him benefit of doubt. Appellant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge