

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 335 of 2007

- Bandhan Dubey, aged about 57 years, S/o Ram Murat Dubey, R/o Vill. Sanjay Nagar, Railwaycolony, P.S. Bodhaghat, Distt.Bastar, C.G.

---- Petitioner

Complainant

Versus

1. Smt. Saroj, widow of Late Madan Mohan Tiwari, aged about 60 years, housewife, resident of Near Kali Mandir, Hat Kochaura, Police Station - Bhodhaghat, District Bastar (CG)
2. Virendra @ Babalu Tiwari S/o Late Madan Mohan Tiwari, aged about 31 years, Vehicle Driver, R/o Near Kali Mandir, Hat Kachaura, P.S. Bodhaghat, Distt. Bastar, C.G.
3. State of Chhattisgarh, through the Police Station Bodhaghat, Distt. Bastar (CG)

---- Respondent

For Petitioner	:	Mr. Subhash Yadav, Advocate.
For Respondent No.1 & 2	:	Dr. N.K. Shukla, Sr. Advocate with Ms. Priya Mishra, Advocate.
For Respondent No.3	:	Shri V. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

25/01/2017

This revision filed on behalf of the complainant arises out of the judgment dated 20.4.2007 passed by the Sessions Judge, Bastar at Jagalpur in S.T.No.349/2006 acquitting the respondents of the charge under Section 304B of IPC and convicting only respondent No.2 under Section 498A of IPC and sentencing him to the period already suffered by him i.e. seven months' SI as also fine of Rs.2,000/- with default

stipulation.

02. In the present case, name of the deceased is Smt. Renu Tiwari, wife of respondent No.2 Virendra @ Bablu Tiwari and daughter-in-law of respondent No.1 Smt. Saroj. Marriage of the deceased was solemnized with respondent No.2 on 8.6.2003 and she died on 24.8.2006 after suffering 90-95% burn injuries in her matrimonial house. Case of the prosecution is that immediately after marriage the deceased was subjected to cruelty, initially for demand of TV and thereafter motorcycle. As the deceased was subjected to cruelty, she left her matrimonial house and started living at her parental house where she delivered a male child. Respondent No.2 had gone to the house of parents of the deceased and after assuring the deceased that he would keep her well, brought her back to his house. However, on 24.8.2006 she suffered burn injuries, was taken to hospital where she died due to burn injuries. In the hospital on 24.8.2006 itself her dying declaration Ex.P/10 was recorded wherein she has stated that there used to be quarrel between her and the accused persons, she was beaten by her husband and out of anger she committed the act. After recording of her dying declaration, she succumbed to burn injuries. Merg intimation Ex.P/15 was recorded on 24.8.2006. Inquest Ex.P/6 was prepared on 24.8.2006 and thereafter the dead body was sent for postmortem which was conducted on the same day by PW-5 Dr. Smt. S. Nagwanshi vide Ex.P/8 wherein she noticed 90-95% burn injuries on her person and opined that the cause of death was shock due to burn. On 26.8.2006 a written report (Ex.P/1) was made by brother of the deceased Dilip Kumar Dubey (PW-1) mentioning therein that the

deceased committed suicide as she was being subjected to cruelty for demand of dowry by the accused persons. Based on this written report, FIR (Ex.P/2) was registered on 26.8.2006 under Section 304B of IPC against the accused persons. After filing of charge sheet, the trial Court framed charge under Section 304B of IPC against the accused/respondents No. 1 & 2.

03. So as to hold the accused persons guilty, the prosecution examined 17 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.

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 respondents of the charge under Section 304B of IPC, convicted and sentenced respondent No.2 as mentioned above. Aggrieved by the acquittal of respondent No. 1 & 2 of the charge under Section 304B of IPC, the present criminal revision has been preferred by father of the deceased.

05. Counsel for the petitioner submits as under:

(i) that the trial Court has completely ignored the evidence of PW-1 Dilip Dubey, PW-2 Bandhan Dubey, PW-7 Ku. Anju Dubey and PW-17 Indra Dubey, who have made specific allegations of cruelty against the accused persons.

(ii) even in the dying declaration (Ex.P/10), the deceased has categorically stated that she was burnt by the accused persons,

however, it has not been recorded in a proper manner and it seems that taking advantage of her burnt condition, it has been recorded in such a manner where she could not explain the entire things.

(iii) that though the trial Court has recorded a finding that the statements of witnesses support the written report, however, it has erred in law in disbelieving the prosecution witnesses.

(iv) that the basic ingredients of Section 304B of IPC present in the case have been completely overlooked by the trial Court, which has resulted in miscarriage of justice.

06. On the other hand, Dr. N.K. Shukla, learned counsel appearing for respondents No.1 & 2/accused submits as under:

(i) that in the dying declaration (Ex.P/10) the deceased has nowhere stated that it is the accused persons who set her on fire, rather it appears that she herself committed the said act out of anger.

(ii) that the basic ingredients for attracting the offence under Section 304B of IPC have not been proved by the prosecution as per requirement of law.

(iii) that witnesses PWs-1, 2, 7 & 17 are not reliable witnesses as all of them have stated that the deceased was murdered by the accused persons whereas as per written report Ex.P/1, which was lodged on 26.8.2006, the deceased committed suicide on account of being harassed and tortured by the accused persons for demand of dowry.

(iv) that in the facts and circumstances of the case, it appears that the only intention of the witnesses was to somehow falsely implicate the accused persons for the offence under Section 304B of IPC and once it is found that they are not trustworthy, their evidence is required to be

discarded as a whole and even part of the same is not worth reliance.

(v) that there are material contradictions in the statements of prosecution witnesses, and PW-17 in one place has even stated that there was no demand whatsoever by respondent No.1.

(vi) that it is a settled legal position, that scope of interference in revision filed by the complainant is very limited and if there are two views - one favouring the accused and another pointing towards his guilt, the one favourable to the accused has to be accepted and that is what has been done by the trial Court, which calls for no interference by this Court.

Reliance is placed on the judgments of the Apex Court in the matters of ***Major Singh and others Vs. State of Punjab, AIR 2015 SC 2081*** and ***Bindeshwari Prasad Singh @ B.P. Singh and others Vs. State of Bihar (Now Jharkhand) and another, AIR 2002 SC 2907.***

07. State counsel has duly assisted the Court.

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

09. PW-1 Dilip Dubey, brother of the deceased, has stated that marriage of the deceased was solemnized with respondent No.2 on 8.6.2003 and she died on 24.8.2006 after suffering burn injuries in her matrimonial house. He has stated that sufficient gifts were given in the marriage, however, after 2-3 months, there was a demand of TV and motorcycle, for which the deceased was being beaten. According to this witness, a TV was purchased after selling a cow and was given to the accused persons. However, one month thereafter they started

demanding motorcycle and that the deceased was ousted after being beaten. The deceased thereafter was staying at her parental house, respondent No.2 visited her on several occasions but her family members refused to sent her back along with respondent No.2 because they were harassing her for demand of dowry. He further states that on 7.4.2006 the deceased delivered a male child in her parental house, respondent No.2 visited her and after assuring that she would not be troubled any more, took her back with him. However, on the eve of Rakhi when he went to the house of the deceased, the accused persons did not allow her to accompany him and at that time he was informed by the deceased that the accused persons are demanding motorcycle. He states that even the gift taken by him for the deceased was not accepted by saying that motorcycle has not been given. He further states that on the date of incident he received a call on his cell phone that his sister has been burnt and when he went to the house of the accused persons, he found his sister lying outside in burnt condition about 40 ft. away from the house. When he asked her sister as to how she got burnt, she informed him that on 24th August, 2006 on the eve of Teeja festival she was asking for her *Mangalsutra* from respondents No. 1 & 2, which was refused and thereafter, she was beaten in the night. She further informed that when she along with her child was leaving for her parental house, she was caught hold by the accused persons, respondent No.1 poured kerosene on her and set her ablaze. He states that the deceased was taken to hospital where she succumbed to her burn injuries.

In cross-examination he states that there was two days' delay in

lodging FIR as the Station House Officer had refused to write the same and asked him to give report in writing. In para-8 he states that he does not remember those dates when the deceased was being subjected to cruelty and that he did not lodge any report earlier. He has clarified that he did not report to save the marriage of the deceased with respondent No.2. He admits that while lodging report he had not mentioned that after selling a cow, he had purchased TV and likewise he also did not mention as to on what date this was done by him and this fact is being disclosed by him in the Court for the first time. He admits that statement of his sister was recorded, however, he could not hear the same. In para-11 he admits that he lodged report only because his sister died and had his sister been alive, he would not have made any report. He further admits that in his diary statement he has not mentioned many things which he is disclosing against the accused persons in the Court. There are material contradictions in the Court statement of this witness in paras 11, 12, 13, 14 & 15 from that of his diary statements.

10. PW-2 Bandhan Dubey, father of the deceased, has made almost similar statement as has been made by PW-1 regarding cruelty being meted out to the deceased. He states that after receiving a phone call he and his family members had gone to the house of the accused persons. His son Dilip, daughter Anju and wife Indira had left early and thereafter he followed them. On the way he met his other family members who were shifting the deceased to hospital. At that time, the deceased was alive and she disclosed that while she was leaving for her parental house, she was caught by the accused persons,

respondent No.1 poured kerosene on her body and her husband/respondent No.2 set her afire. In para-6 he admits that he had not disclosed the police about the date of beating incident and the date when the deceased was ousted and likewise as to on what date TV and motorcycle were demanded. He admits that he even did not disclose the police about the demand of motorcycle and TV by the accused persons nor did he disclose this fact to the panchas or the society members.

11. PW-3 Bhrigunath Shukla and PW-4 Manglu are witnesses of inquest Ex.P/6. PW-5 Dr. Smt. S. Nagwanshi conducted postmortem on the body of the deceased vide Ex.P/8 and noticed 90-95 burn injuries on her body. In her opinion, the cause of death was shock due to burn. In cross-examination she admits that there was no injury of assault on the person of the deceased. PW-6 Dr. Vivek Kumar Joshi first attended the deceased in burnt condition when she was brought to hospital and also recorded her dying declaration (Ex.P/10). He has stated that in the dying declaration he put questions as mentioned in the same and accordingly, answers were given by the deceased. In cross-examination, this witness has stated that the deceased had not disclosed as to on which part of her body assault was made by her husband.

12. PW-7 Anju Dubey, sister of the deceased, has also made almost similar statement as has been made by PW-1 & PW-2. According to her also the deceased informed her that she was being burnt by the respondents No. 1 & 2. When this witness was confronted with her diary statement, there appears to be material contradictions. PW-9

Smt. Rajkumari Pandey, S.I., helped in the investigation. PW-10 Raj Kumar Mishra, tenant of respondents No. 1 & 2, has turned hostile and not supported the prosecution case. In cross-examination he has, however, stated that respondent No.1 was residing separately from her son and daughter-in-law. PW-11 Munna Lal Tripathi, neighbour of respondents No. 1 & 2, has also turned hostile. PW-12 Keshav Ram Sahu recorded merged intimation Ex.P/15. PW-13 G.S. Singh, A.S.I., helped in the investigation. PW-14 Rohit Kumar prepared the inquest. PW-16 Sanjay Goutam has not supported the prosecution case and has been declared hostile. PW-17 Indira Duby, mother of the deceased, has made almost similar statement as has been made by PWs-1, 2 & 7. However, there are material contradictions and omission in her Court statement from that of her diary statement, which is evident from para-5 of her Court statement. She has stated that respondent No.1 never demanded any dowry and it is respondent No.2 who demanded the same when her daughter was residing at her parental house.

13. Close scrutiny of the evidence makes it clear that though PWs-1, 2, 7 & 17 have made allegations regarding demand of dowry by the accused persons and subjecting the deceased to cruelty in connection therewith, but if their statements are read as a whole we find that there are contradictions and omission on material points and while deposing in the Court they have improved a lot and have stated even those things which are not there in their case diary statements. They have made general allegations of demand of TV and motorcycle, however, none of them could state as to on what date such demand was made.

PW-17 has even stated that no such demand was ever made by respondent No.1 and it is only respondent No.2 who used to raise such demands while the deceased was residing in her parental house. Thus considering the overall statements of the witnesses, it is apparent that respondent No.2/husband of the deceased was making demand of dowry and was ill-treating the deceased therefor and hence, so far as his conviction under Section 498A of IPC is concerned, the same is based on proper appreciation of the evidence and requires no interference.

14. As regards acquittal of respondents No. 1 & 2 of the 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.”

15. 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, immediately after coming to know about the burn incident they rushed to the house of the accused persons where they met the deceased who, according to them, on being asked informed them as to how she got burnt. As per evidence of PW-1 Dilip Dubey the deceased was burnt by respondent No.1 whereas PW-2 Bandhan Dubey states that it is respondent No.2 who set the deceased on fire by pouring kerosene on her body and according to respondent No.7 Ku. Anju Dubey it is respondent No.1 who poured kerosene on the deceased and set her ablaze. Thus from the evidence of these witnesses it is not clear as to who set the deceased on fire. Another important aspect of the case is that according to these witnesses, the deceased informed them on 24.8.2006 itself about the burn incident and therefore, present is a case of murder where the accused persons burnt her to death. However, while lodging report (Ex.P/1) on 26.8.2006, PW-1 Dilip Dubey has nowhere mentioned the fact that the deceased was murdered by the accused persons, on the contrary as per written report the deceased committed suicide on account of being subjected to cruelty by the accused in connection with demand of dowry. Had it been a case of murder, this fact ought to have been very much there in

the written report as the same was allegedly well within the knowledge of the witnesses on 24.8.2006 itself. It is thus apparent that while deposing in the Court the witnesses have improved a lot and tried to implicate the accused persons for commission of murder of the deceased. For these reasons, the testimony of PWs-1, 2, 7, & 17 become doubtful and it would be hazardous to place reliance upon their evidence and more so, the possibility of false implication of the accused cannot be ruled out.

16. Yet another piece of evidence against the accused persons adduced by the prosecution is the dying declaration (Ex.P/10) of the deceased recorded on 24.8.2006, which reads as under:

मृत्यु पूर्व बयान

श्रीमती रेनु तिवारी W/o विरेन्द्र तिवारी 27/F

Admitted Burn unit

1/ आपका नाम क्या है	—	रेनु तिवारी
2/ कैसे जल गये	—	मेरे को मारे मेरे आदमी ने मारा
3/ (पति) आदमी का नाम क्या है	—	विरेन्द्र तिवारी
4/ जले कैसे	—	मेरे को सास तथा पति रोज लड़ाई करते हैं
5/ क्यों मारते थे	—	मेरे को रोज मारते थे, गुस्सा आया ।
6/ आपको और कुछ कहना है	—	नहीं

Dr. V.K. Joshi

24.08.2006

9.25 AM

From perusal of the above dying declaration, it is evident that there used to be quarrel between the deceased and the accused and that they used to beat her. It is not clear from the above as to what the deceased wanted to say or as to who set her on fire, rather it suggests that on account of being beaten by the accused persons, she out of anger set herself ablaze. Even the doctor (PW-6) who recorded the dying declaration has not stated that the deceased had disclosed that

she was burnt by the accused persons. When a specific question was put to PW-6 as to on which portion of body of the deceased she was beaten, this witness clarified that the deceased did not disclose about the same. This apart, according to the postmortem report there was no injury of assault on the person of the deceased, which could suggest that before the burn incident the deceased was beaten by the accused persons. Thus, the trial Court was fully justified in not placing reliance on the dying declaration of the deceased for holding the accused persons guilty of offence under Section 304B of IPC.

As per prosecution witnesses (PW-1 and PW-7) a day prior to the date of incident there was quarrel between the deceased and the accused persons when the deceased on the eve of Teeja festival asked for her Mangalsutra from them and the same was refused by them. It appears that on account of this refusal by the accused persons, the deceased out of anger took this extreme step and committed suicide. Thus, the immediate cause for commission of suicide cannot be said to be the harassment or cruelty in connection with demand of dowry.

17. For the reasons stated above, we are of the opinion that the prosecution has utterly failed to prove the basic ingredients of offence under Section 304B of IPC against the accused persons and being so, the trial Court has rightly acquitted the respondents/accused of that charge. Even otherwise, present is a revision at the instance of complainant where the scope of interference by this Court in the order of acquittal under revisional jurisdiction is limited. In the matter of ***Bindeshwari Prasad Singh Vs. State of Bihar and another, AIR 2002 SC 2907***, the Supreme Court while dealing with the scope of

interference in revision against acquittal observed as under:

“13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under [Section 401](#) of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdictional against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering re-trial of the appellants.”

18. On the basis of aforesaid discussions, we are of the opinion that

the trial Court has not committed any illegality while passing the the impugned judgment acquitting respondents No. 1 & 2 of the charge under Section 304B of IPC and holding only respondent No.2 guilty under Section 498A of IPC. The findings recorded by the Court below have been arrived at after due appreciation of the evidence, oral and documentary, available on record and as such, do not require any interference by this Court. Accordingly, the revision being without any substance is liable to be dismissed and is dismissed as such.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge