

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 41 OF 2001

Pritam Singh, S/o Sitaram Marar, aged about 21 years, occupation Cultivation, R/o Village Nadi Charoda, Thana Pithora, District Mahasamund.

... Appellant

Versus

The State of Chhattisgarh, through the District Magistrate, Mahasamund

... Respondent

For Appellant	:	Ms. Seema Singh, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

01/02/2017

1. The present appeal has been preferred by the Appellant assailing the judgment dated 22.12.2000 passed by the First Additional Sessions Judge, Mahasamund, in Sessions Trial No. 430 of 1999, whereby the Appellant stands convicted under Sections 498(A) and 304(B) of IPC and sentenced to undergo R.I. for 2 years and to pay fine of Rs.1000/- in default of payment of which, to undergo additional R.I. for 6 months under Section 498(A) of IPC and also to undergo R.I. for 10 years under Section 304(B) of IPC. Both the sentences were directed to run concurrently.

2. Brief facts of the case are that on 15.4.1999, a Merg Intimation (Exhibit P-1) was lodged at Police Station Pithoura intimating that the deceased Parmila Bai, wife of the Appellant, is said to have died because of burn injuries and that she was taken to Pithoura Hospital where she was declared dead. Post-mortem report opined that the cause of death was suffocation due to burn and the time elapsed since death was within 12-24 hours. Though the incident was of 15.4.1999, the FIR in this regard was lodged on 28.5.1999, i.e., after about 43 days from the date of incident. In the FIR, total four persons were made accused, i.e., apart from the

Appellant who is the husband of the deceased, her father-in-law Sitaram, mother-in-law Hathiya Bai and sister-in-law Indroutin Bai i.e. the wife of the elder brother of the Appellant, were made accused and were subjected to trial before the Court of First Additional Sessions Judge, Mahasamund, where the case was registered as Sessions Trial No. 430 of 1999.

3. During the course of trial, the prosecution examined as many as 14 witnesses in support of its case. There were no witnesses examined in defence. After conclusion of the trial, vide impugned judgment dated 22.12.2000, the Court below found the Appellant to be guilty of having committed the offence under Section 498(A) as also under Section 304(B) of IPC and sentenced him to undergo the sentence as mentioned in the first paragraph of this judgment. However, while convicting the Appellant for the said offence, the Court below acquitted the other three accused persons, i.e., father-in-law, mother-in-law and sister-in-law of the deceased, from the charges levelled against them.

4. It is this judgment of conviction against the Appellant which is under challenge in the present appeal.

5. Ms. Seema Singh, learned Counsel for the Appellant, submits that in the entire evidence which have come on record the necessary ingredients for making out an offence under Section 304(B) of IPC so also under Section 498(A) of IPC is not reflected and therefore the impugned judgment of conviction is liable to be interfered with and the Appellant deserves to be acquitted of the said charges. She further submits that in the instant case the marriage between the Appellant and the deceased took place in January, 1998 and the incident is of April, 1999 i.e., barely after 15 months from the date of marriage. That, so far as the offence under Section 304(B) as well as under Section 498(A) of IPC is concerned, the most necessary

ingredients so as to bring home the said two offence is that of cruelty. According to her, the prosecution in the instant case ought to have produced cogent, substantial and effective evidence to show that there was cruelty at the hands of the present Appellant which force the deceased to end her life. It is not in dispute that the deceased died of committing suicide on 15.4.1999. It is also not in dispute that when the incident occurred the deceased was all alone at her home and none of the accused persons were present at the place of incident. The only person who was present in the home or in the place of incident was PW-2 Khemraj, a 9 year old boy, who was the son of the elder brother of the present Appellant (nephew of the deceased).

6. It was further contended by the Counsel for the Appellant that so far as the offence under Section 304(B) of IPC is concerned, the prosecution has to first establish the fact that the death of the deceased took place other than under normal circumstances and secondly the death to have occurred within 7 years and thirdly the most vital fact that the deceased was subjected to cruelty or harassment by the Appellant and cruelty and harassment has to be related with the demand of dowry. According to the Counsel for the Appellant, in the entire depositions of the witnesses which have come on record, the demand of dowry as well as the deceased being subjected to cruelty is not made out. In addition, it was also contended that the cruelty and harassment at the hands of the Appellant also has to be established of having occurred soon before her death. In the instant case, all these vital ingredients are not established or proved by the prosecution and thus the offence under Section 304(B) is not made out at all. Likewise, it was also contended that the offence under Section 498(A) of IPC also is not made out, for the reason that the ingredients for making out the case of cruelty is not established. She thus prayed for the setting aside of the entire

judgment of conviction and for the acquittal of the Appellant of the offence charged.

7. Ms. M. Asha, learned Counsel for the State, at this juncture, opposes the appeal and submits that it is a case where the case of the prosecution has been properly proved and established, inasmuch as the father of the deceased, PW-6 Motilal, her sister PW-7 Silochni and her uncle (Chacha) PW-8 Panchram, have proved the case of the prosecution and have corroborated the statement of the other witnesses so as to establish that the deceased was subjected to cruelty and also there was a demand of Rs.5000/- and also a Moped (Luna) by the Appellant and thus the offence both that of cruelty as also the demand of dowry stands established. She further alleges that the FIR also reflects the deceased to be a pregnant lady and that unless there would had been a strong and compelling circumstance the deceased would not have committed suicide and ended her life particularly, when she was conceived and was in her advance stage of pregnancy. She thus prayed for the rejection of the appeal.

8. Having considered the rival contentions put forth on either side and on perusal of the record, while considering the case with regard to the offence under Section 304(B) is concerned, undisputedly, to bring home the offence under Section 304(B) the necessary ingredients are; (a) death of the deceased has to be other than under normal circumstance (b) death to have occurred within 7 years from the date of marriage and (c) soon before the death the deceased was subjected to cruelty in respect of demand of dowry. So far as the first two ingredients are concerned, i.e., the death occurring other than under natural circumstance and also the death occurred within 7 years from the date of marriage, are not in dispute. Though, these two ingredients are proved in the instant case but the fact which also has to be ascertained is, whether the deceased was subjected to

cruelty soon before her death in respect of demand of dowry. The evidence of the father of the deceased, PW-6 Motilal, so also the other two witnesses i.e. PW-7 sister of the deceased and PW-8 uncle of the deceased, gives a clear indication that there was no cruelty met upon the deceased soon before the date of incident. PW-7, sister of the deceased, refers to a incident that took place the previous year when she visited the matrimonial home of the deceased and so also PW-8, uncle of the deceased, refers to an incident much prior to the date of incident that too when he had visited the matrimonial home of the deceased. Likewise, PW-6, father of the deceased, also has not been able to give any clear indication or a date soon before the date of incident, by which it could be said that it was the incident that occurred soon before the death which led the deceased to take the extreme step of ending her life by committing suicide. Thus, in the opinion of this Court, the necessary ingredient of the deceased being subjected to cruelty in respect of demand of dowry soon before her death has not been proved beyond reasonable doubt by the prosecution. Thus, the conviction of the Appellant for the offence under Section 304(B) is clearly not made out and the same deserves to be and is accordingly set aside and the Appellant stands acquitted from the said offence.

9. The view of this Court stands fortified from a recent decision of the Supreme Court rendered in the case of *Baijnath & Others v. State of Madhya Pradesh* [2017 (1) SCC 101], wherein under similar facts and circumstances the appeal of the accused person was allowed and the judgment of the Trial Court which was affirmed by the High Court was set aside by the Supreme Court. The ratio laid down by the Supreme Court in the said case also is that the third ingredient of the deceased being subjected to cruelty soon before her death is *sine qua non* for establishing the offence under Section 304(B) of IPC.

10. Similar view has also been taken by the Supreme Court in another recent decision reported in 2015 (5) SCC 201 (*Major Singh & Another v. State of Punjab*), wherein also the Supreme Court has reiterated the fact that the essential ingredient for sustaining the conviction under Section 304(B) of IPC would be, to ascertain whether soon before the death the victim was subjected to cruelty or harassment. It was also observed by the Supreme Court that there must always be a proximate and live link between the effects of cruelty based on dowry demand and the death concerned.

11. So far as the offence under Section 498(A) of IPC is concerned, true it is that the prosecution evidence particularly that of PW-6, father of the deceased, so also PW-7, sister of the deceased, and PW-8, uncle of the deceased, all have stated that there has been a constant demand of Rs.5000/- as also of a Moped (Luna) by the Appellant from PW-6 and PW-8 and that PW-7 has also witnessed the Appellant assaulting the deceased on an earlier occasion when she had visited the matrimonial home of the deceased and the assault was in respect of the demand for a Luna as also an amount of Rs.5000/-. Thus, so far as the cruelty for demand of dowry is concerned there is undisputedly some proof which has been produced by the prosecution before the Court below and hence the offence under Section 498(A) of IPC stands proved and the conviction of the Appellant for the said offence stands affirmed.

12. However, considering the fact that the Appellant at the relevant point of time, i.e., at the time of incident, was aged about 21 years and by efflux of time he has grown up into a middle aged man and further the Appellant having already remained in custody for a period of little over 1 year and 10 months and that the maximum sentence under Section 498(A) of IPC is for a period which may extend up to three years, this Court is of the opinion

that the ends of justice would meet if the sentence for the offence under Section 498(A) of IPC is reduced to the period already undergone.

13. Thus, for the foregoing reasons, the appeal stands partly allowed. The conviction of the Appellant under Section 304(B) of IPC is set aside/quashed and he is acquitted of the said charge. However, the conviction of the Appellant for the offence under Section 498(A) of IPC is affirmed and the sentence for the said offence stands reduced to the period already undergone by the Appellant.

14. The Appellant is on bail. His bail-bonds shall remain in operation for a period of six months from today in view of provisions contained in Section 437-A of CrPC.

15. The appeal stands accordingly disposed of.

Sd/-
(P. Sam Koshy)
Judge