

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 583 of 2012

- Nanku Ram Chandrakar S/o Shiv Narayan Chandrakar, R/o Village Nevari, P.S. Masturi, Distt. Bilaspur C.G. , At Presently R/o Rathor's House Madanpur Chowki, P.S. Kharsiya , Distt. Raigarh C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through - Police Station Kharsiya , Tahsil, Distt. Raigarh (CG)

---- Respondent

For Appellant	:	Shri Rajesh Jain, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer.

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

Judgement

Per P. Diwaker, J

20/04/2017

1. By this criminal appeal, the accused/appellant has challenged the legality and propriety of the judgment of conviction and order of sentence dated 12.6.2012 passed by the Sessions Judge, Raigarh in S.T. No.41/2011 by which he has been convicted for the offence punishable under Section 498A & 304B of the Indian Penal Code (for short 'IPC') and sentenced to undergo RI for 3 years & fine of Rs.3,000/- and RI for 12 years & fine of Rs.10,000/-, with default stipulations, respectively.
2. In the present case name of deceased is Lalita, wife of accused/appellant.
3. Case of the prosecution is that the deceased was married to

accused/appellant on 20.6.2010 and on 26.11.2010 her dead body in two pieces was recovered from the railway track between Jharadih & Kharsiya. Un-numbered merg (Ex.P-4) was recorded on 26.11.2010 and after that numbered Merg (Ex.P-8) was recorded on 27.11.2010. Undated written report (Ex.P-10) was lodged Sakhiram(PW-17), father of deceased, alleging that her daughter was subjected to cruelty by the accused/appellant and his parents because of non-compliance of their demand. Un-numbered FIR (Ex.P-6) was registered in the Police Outpost Kharsiya and on 29.11.2010 numbered FIR (Ex.P-7) was registered against the accused persons for commission of offence punishable under Section 304B IPC. In the meanwhile, Inquest on the body was prepared vide Ex.P-2 on 26.11.2010. Body of the deceased was sent for post-mortem examination which was conducted by Dr. Sajan Kumar Agrawal (PW-9) vide Ex.P-11 and he found the following injuries on the body of the deceased:-

- Fronto parietal region of head was crushed.
- lacerated wound of 3 x ½ cm above the nose.
- Fracture in both the lower jaws.
- 3rd, 4th & 5th cervical bones were fractured.
- Right eyeball crushed.
- Abrasion of 15x3 cm on right upper arm.
- Right elbow fractured.
- Right knee crushed and fracture in bone of left leg.
- Abrasion of 2 x ½ cm on the right breast.
- Left Knee & 1/3rd portion of left leg was crushed.
- Fracture of 3rd, 4th, 5th ribs.

The doctor gave an opinion that cause of death was due to injuries on

brain, lungs & haemorrhage and time elapsed since death was around 18 hours. Mode of death seems to be suicidal. The post-mortem report also discloses that deceased was carrying 20 weeks pregnancy.

4. After investigation, charge sheet against the accused persons including present appellant was filed. The Court below framed the charges under Sections 498A & 304B of IPC against the accused persons. The prosecution in order to bring home the charges levelled against the accused persons examined 12 witnesses in all. One person was examined as a defence witness on the side of the defence. 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 appreciation of the entire records came to the conclusion that the prosecution has not been able to establish the offence charged against the father-in-law & mother-in-law of the deceased except the husband (present appellant). Accordingly, the trial Court vide impugned acquitted the other accused persons from the charges that were levelled against them and convicted the accused/appellant for the offences punishable under Sections 498A & 304B IPC.
6. Counsel for the appellant submitted that;
 - the entire conviction of the appellant is based on the evidence of near relatives and interested witnesses produced by the prosecution i.e. father, mother and brother of the deceased.
 - there is absolutely no proof of demand of dowry being made by the appellant nor is there any proof of deceased being subjected to cruelty or harassment by the appellant soon before her death so as to attract the provisions of Section 304B IPC. All the allegations levelled by the complainant are general in nature and omnibus and do not make out any of the ingredients as required under Section 304B IPC.

- mere taunting for bringing articles of most inferior quality will not be sufficient enough for convicting the appellant under Section 498A IPC.
 - Kailash Kumar (PW-2), landlord of the appellant and deceased in whose house they were living as tenant, has categorically stated that there was no dispute between the deceased and the appellant and they were living happily.
 - Lastly, it is submitted that even if the prosecution case is accepted as it is in toto, the only offence which at best could be saddled against the appellant is one under Section 498A or 306 IPC and if for any reason the Court comes to conclusion that offence under Section 306 IPC is made out then taking into consideration that the appellant is in jail for the last about 06 years, the sentence may be reduced to the period already undergone by the appellant.
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.
 8. We have heard learned counsel for the parties and perused the evidence on record as also the impugned judgment.
 9. Rajesh Pal (PW-1) is the person who gave written information (Ex.P-1) that a body of female is lying between Jharadih and Kharsiya stations and based on which Merg Intimation (Ex.P-1).
 10. Kailash Kumar (PW-2) is the landlord of the accused/appellant. He has stated in his cross-examination that the accused/appellant and the deceased were living in her house as tenant and the deceased never made any complaint to him regarding commission of cruelty & torture for demand of dowry upon her by the accused/appellant. He has further stated that he is aware of the fact that deceased was suffering from

stomach & waist pain.

11. Jagatraj Singh (PW-3) is the police person who recorded Merg Intimation (Ex.P-4).
12. Govinda Suryavanshi (PW-4), brother of the deceased, has stated that after 2-3 months of the marriage, the accused persons started harassing the deceased for demand of dowry and they used to taunt her by saying that she has brought junk (टीन टप्पर) in the dowry. They used to say that if the cash was given by her parents, they would have paid their debt. He has further stated that accused persons used to taunt the deceased every time by saying that her parents are illiterate. He has further stated that during the visit of accused/appellant to their house on the eve of Deepawali, he was given Rs.1,000/- for the treatment of the deceased. He has further stated that a day prior to the incident the deceased had a talk to his mother over telephone and she informed her that the accused/appellant had beaten and threatened her not to show her face on his return from the school. At that time the deceased was pregnant but accused/appellant asked her to get the child aborted as he did not want the child. In the cross-examination this witness has stated that earlier he was residing in Bilaspur in a tenanted accommodation and in case of any difficulty, he used to discuss the same with his landlord. He has admitted that the accused/appellant and the deceased were residing separately at Kharsiya, whereas in-laws of the deceased were residing in their village. This witness has admitted in the cross-examination that he was for the first time making allegation against the accused persons about the demand of dowry etc. and he did neither lodge any report regarding the alleged demand of dowry by the accused persons prior to the death of deceased nor lodged any report with the police, panchayat or Collector. He has further admitted that at the time of Durga Pooja his younger sister

visited the house of accused persons and stayed there for 3-4 days. He has further stated that after the incident, they have visited the place where the deceased was living along with appellant and at that time the landlord and 4-5 other tenants were there and after some time the police also reached there, but at that time they did not lodge any report or complaint with the police. He has further stated that at the time of *bidaai*, his sister became unconscious for which she was treated. He has admitted that prior to 3-4 years of marriage, the deceased was having some problem in her stomach for which she was being treated. He has further admitted that when he and his family members met the landlord of the appellant, he informed them that the couple was living happily.

13. R.K. Kesharwani (PW-5) is the person who recorded unregistered FIR (Ex.P-6). Silmani Toppo (PW-7) is the person who recorded FIR (Ex.P-7) and Merg Intimation (Ex.P-8).

14. Saakhiram (PW-7), father of the deceased, is the lodger of FIR (Ex.P-10). He has stated that he gave sufficient dowry at the time of marriage as per his capacity. On complaint being made by co-accused Shivprasad, *at the time of bidai*, by saying that the articles given in the marriage are of sub-standard quality (टीन टप्पर) , the deceased said to him that her parents have given sufficient dowry as per their capacity. He has further stated that after two months of marriage, he came to know that the deceased was not being treated properly by accused persons who started demanding dowry of Rs.1,50,000/-. He has further stated that when the deceased was 4-5 months' pregnant, she informed him over telephone that the accused/appellant is asking her to get the foetus aborted. She has further informed him that the accused/appellant is also asking her to bring money else go and die or otherwise they will kill her. This witness has further stated that on 26.11.2010 accused/appellant informed him

over telephone that the deceased is missing and on the same day at about 4.30 p.m. he informed that the body of deceased was cut by the train. In the cross-examination this witness has admitted that after some days of the marriage, the accused/appellant and the deceased have shifted to Kharsiya, whereas her in-laws were residing at village Newai. He has further stated that on the date of incident itself the deceased informed him over telephone that the accused/appellant is asking her to get the child aborted and also demanding cash of Rs.1,50,000/-. However, in para-26 this witness has clearly admitted that he did not lodge any report regarding the alleged demand of Rs.1,50,000/- or abortion of child by the accused/appellant in the police station etc.

15. Geeta Bai (PW-8), mother of the deceased, has made almost similar allegations as have been made by Govinda Suryavanshi (PW-4) & Saakhiram (PW-7). She has also stated that accused/appellant was having affair with his sister-in-law and that he never loved her daughter. This witness has also admitted that allegations levelled against the accused persons for demand of dowry and for compelling the deceased to go for abortion were never disclosed by her to the police or anyone. She has also not informed the police about the details of phone calls received by her on 26.11.2010.
16. Dr. Sajjan Kumar Agrawal (PW-9) is the person who conducted post-mortem examination on the body of deceased and opined that the death seems to be suicidal.
17. D.R. Sidar (PW-10) is the Tahsildar who prepared the map Ex.P-2 after issuing notice of Ex.P-3 to the panch witnesses.
18. J.P. Patwari (PW-11) is the Patwari who prepared the spot map Ex.P-12 and also given the report of Ex.P-13.
19. Jagjeet Rakhra (PW-12) is the investigating officer who has duly

supported the prosecution case.

20. As regards the conviction of accused/appellant under Section 304B IPC, 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.
- Such a death should have occurred within seven years of 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.
- Such cruelty or harassment is shown to have meted out to the woman soon before her death.”

21. Section 113B of the Indian Evidence Act, 1872 is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:-

"113B: Presumption as to dowry death- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation; For the purposes of this section "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

22. 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.

23. Keeping in view the above provisions of law, we are to see whether the evidence and material on record are sufficient to constitute the offence under Section 304B of IPC against the accused/appellant.
24. In the case in hand, it is not in dispute that the death of deceased took place within seven years of her marriage and that the death was caused otherwise than under a normal circumstance. Coming to the other ingredient of Section 304B IPC namely 'soon before her death the victim was subjected to cruelty or harassment for demand of dowry'. To prove this ingredient the prosecution had examined PW-4 Govind Suryavnashi, brother of deceased, PW-7 Sakhiram, father of deceased, and PW-8 Geeta Bai, mother of deceased, only. Taking into consideration the depositions of PW-4, PW-7 & PW-8 what is culled out is that there is no whisper in their testimonies that soon before her death, deceased Lalita was subjected to cruelty or torture on the ground of dowry. The allegation levelled against the accused/appellant by the aforesaid witnesses is to the effect that on the previous day of incident, the deceased informed over telephone that the accused/appellant had abused and beaten her and he was asking her to get the foetus aborted as he does not want the child. In absence of any specific allegation it cannot be presumed that the said beating and utterance of obscene words by accused/appellant was on

account of non fulfilment of any demand, rather this could be due to pregnancy of the deceased because the accused/appellant was pressurizing the deceased to get the child aborted as he does not want the child and this fact also reflects in the written complaint lodged by PW-7. Thus, it is evident that there is no reliable evidence to indicate that deceased Lalita was subjected to cruelty or harassment by the accused/appellant soon before her death for or in connection with demand of dowry. Since the prosecution has failed to prove beyond reasonable doubt that the deceased was subjected to cruelty in connection with demand of dowry soon before her death, which is the sine qua non to bring home the charge under Section 304B IPC, therefore, the presumption of dowry death could not have been drawn against the appellant under Section 113B of the Evidence Act and the accused/appellant would get a benefit of doubt so far as offence under Section 304-B IPC is concerned.

25. Even if the appellant gets an advantage of the doubt for the offence under Section 304B IPC on account of failure on the part of the prosecution to establish the aforesaid charge beyond reasonable doubt, but he is certainly guilty of offences of abetment of suicide and cruelty. Section 113A of the Evidence Act states as follows;-

“113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other

circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).”

26. The language of Section 113-A of the Evidence Act makes it clear that if a woman has committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband. The Explanation to Section 113-A states that for the purpose of Section 113-A “cruelty” shall have the same meaning as in Section 498A IPC. The Explanation to Section 498A IPC defines 'cruelty' and clause (a) of the Explanation states that cruelty means any wilful conduct which is of such nature as likely to drive a woman to commit suicide.
27. In this case, from the statements of PW-4, PW-7 & PW-8 it is evident that just after a couple of weeks from the marriage, the accused/appellant used to harass her for demand of dowry and also used to taunt the deceased by saying that she has brought junk (ਟੀਨ ਟੱਪਰ) in the dowry, she is less educated, she is burden on the earth, she has no right to live, her parents are illiterate. It has also come in the evidence that when the deceased became pregnant, the accused/appellant started pressurizing her to abort her pregnancy because the accused/appellant did not want any child and even a day prior to the incident the accused/appellant subjected the deceased to beating and had asked her to go for abortion or embrace death. Thus, the nature of harassment which was inflicted upon the deceased which started just after a couple of weeks from her marriage and continued all along depict a tremendous amount of stress, trauma and

indignities which she was being subjected to. Ultimately when she lost all of her patience and the strength to sustain any further indignities, she was left with no other option but to end her life by committing suicide. The fact which is also to be borne in mind is that the deceased was pregnant and no pregnant lady with a healthy child in her womb would ever think of ending her life and that of the child after carrying it for months together. This itself is sufficient to infer that her life at her matrimonial home was a hell and when things went all out of her control she was forced to end her life. It was appellant who created such an atmosphere and thereby intentionally abetted the deceased to take the extreme step. One must not forget that the appellant in the process of subjecting the deceased to harassment forcing her to end her life has not only got his wife killed but at the same time has also got killed a baby in the womb of the mother. As a result, literally two lives have been lost because of the conduct, act and attitude of the accused/appellant.

28. The cumulative reading of the entire evidence on record would clearly lead us to conclude that though the accused/appellant is not guilty under Section 304B of IPC but is certainly guilty of abetment of suicide and cruelty for demand of dowry invoking the provisions of Section 113A of the Evidence Act which strengthens the prosecution case on presumption and as such not only conviction of the accused/appellant under Section 498A IPC is liable to be affirmed but he is also liable to be convicted for the offence under Section 306 IPC. For this view, we are fortified from the decision of the Supreme Court in the matter of **Rajeev Kumar vs. State of Haryana** reported in **(2013) 16 SCC 640** wherein the Supreme Court turning down the argument of the appellant that the appellant could not have been convicted under Section 306 of IPC in absence of a charge being framed in the aforesaid Section, held that even if the charge has not

been framed, since there was sufficient material to indicate that the deceased committed suicide due to harassment meted out to her by the appellant-husband attracts offence of abetment of suicide as it was his conduct which drove the wife to commit suicide. Para-24 of the aforesaid judgment reads thus;-

“24. In *K. Prema S. Rao v. Yadla Srinivasa Rao*⁷ this Court on similar facts has held that

“16.....To attract the provisions of Section 304-B IPC, one of the main ingredients of the offence, which is required to be established, is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry” and this ingredient of the offence was not there in that case. This Court, however, held that it was not necessary to remit the matter to the trial court for framing a charge under Section 306 IPC and the accused also cannot complain for want of opportunity to defend the charge under Section 306 IPC, if the facts found in evidence justify the conviction of the appellant under Section 498A and 306 IPC, instead of the graver offence under Section 304B IPC. In that case, the three-Judge Bench of this Court held the appellant guilty of the offences under Section 498A and 306 IPC instead of the graver offence under Section 304B IPC.”

29. For the foregoing reasons, the appeal is partly allowed. Conviction of accused/appellant under Section 498A IPC stands affirmed. However, while acquitting the accused/appellant of the charge under Section 304B IPC, he is held guilty under Section 306 IPC.

30. As regards the sentence, considering the fact that the incident is of the year 2010, the appellant has already undergone imprisonment of more

than six years and further considering the fact that no minimum sentence is prescribed under Section 306 IPC, he is sentenced to the period of already undergone by him. Appellant is reported to be in custody. He be released forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(RCS Samant)
Judge

roshan