

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 322 of 2013**

1. Manoj Kumar S/o Somnath Shrivass, aged about 22 years
2. Manish Kumar S/o Somnath Shrivass, aged about 19 years
3. Somnath Shrivass S/o Late Khamhan Singh Shrivass, aged about 49 years
4. Smt. Ratna Shrivass W/o Somnath Shrivass, aged about 45 years
5. Ku. Manisha Shrivass D/o Somnath Shrivass, aged about 18 years

All R/o Mathpara, Berrgaon, Police Station Urla, District Raipur, CG

---- Appellants

Versus

1. State of Chhattisgarh through Police Station Urla, District Raipur, CG

---- Respondent

For Appellants	:	Smt. Fouzia Mirza, Advocate
For Respondent/State	:	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri R.P. Sharma

Judgment on Board by Pritinker Diwaker, J

13/07/2017

This appeal has been filed against the judgment of conviction and order of sentence dated 13.03.2013 passed by Additional Sessions Judge Raipur, in Sessions Trial No. 96/2011 convicting the accused/appellants under Sections 498-A and 304-B IPC and sentencing each of them to undergo rigorous imprisonment for 05 years with fine of Rs. 100/- u/s 498-A and imprisonment for life with fine of Rs. 500/- u/s 304-B IPC, plus default stipulations.

2. Name of the deceased in the present case is Laxmi Shrivass

wife of accused/appellant Manoj and their marriage was solemnized on 22.05.2010. Laxmi died on 26.01.2011 at 8 PM after suffering 98% burn injuries in her matrimonial home. Accused/appellants Manish, Somnath, Ratna and Manisha are the brother-in-law, father-in-law, mother-in-law and sister-in-law of the deceased respectively. After her death, un-numbered merg Ex. P-8 was recorded followed by numbered merg Ex. P-12 based on the information received from the hospital. Inquest on the dead body was conducted on 27.01.2011 vide Ex. P-2. Thereafter, body was sent for postmortem examination which was conducted by Dr. R.K. Patel (PW-2) who gave his report Ex. P-5. After merg inquiry, FIR Ex. P-14 was registered on 28.01.2011 against all the accused/appellants for the offences punishable under Sections 304-B and 498-A IPC. Police also filed the charge-sheet for the said offences, however, the trial Court framed the charge under Sections 498-A, 304-B and 302 IPC.

3. In order to prove the complicity of the accused/appellants in the crime in question, the prosecution has examined 19 witnesses. Statements of the accused/appellants under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case. This apart, two witnesses namely Virendra Yadav (DW-1) and Ramabai (DW-2) have also been examined by the defence in support of its case.

4. After hearing the parties, the Court below acquitted the accused/appellants of the charge u/s 302 but has convicted and sentenced them as mentioned above.

5. Counsel for the accused/appellants submits as under:

(i) That almost all witnesses have made the allegation of general nature that the accused/appellants subjected the deceased to

cruelty for demand of dowry on the basis of which the accused/appellants cannot be convicted.

(ii) That at least there is no serious allegation against accused/appellants Manish and Ku. Manisha aged about 19 and 18 year respectively.

(iii) That just before the incident there was some dispute between the two families - the family of the accused/appellants and that of the deceased sometime around Diwali festival falling in the year 2010 on account of the fact that accused/appellant Manoj met with some accident twice, he was hospitalised at Raipur and the entire expenditure towards his medical treatment was borne by the father of the deceased and that after being discharged from the hospital in stead of going to his parents' house, he lived with the parents of the deceased for few days and annoyed with the same a report was lodged by accused Somnath against the father of the deceased making an allegation that his son had been made captive by him.

(iv) That subsequently a compromise was arrived at between accused Somnath, manoj and father of the deceased namely Tikeshwar Singh (PW-1) vide Ex. P-4.

(v) That the basic ingredients of Section 304-B IPC are not attracted to the case in hand as there is no evidence to show that soon before the death of the victim, she was subjected to cruelty by the accused/appellants for demand of dowry.

(vi) That there is absolutely no evidence to show that any dowry was settled at the time of marriage of the deceased with accused Manoj.

(vii) That whatever presumption is there against the

accused/appellants it has been successfully rebutted by pleadings and proof of probable defence.

(viii) That as accused/appellants Manoj, Somnath and Ratna have remained in jail for about six and a half year and accused/appellants Manish and Ku. Manisha for about two and a half year, the sentence imposed on them may be reduced to the period already undergone in case their conviction is not going to be demolished.

(ix) In support of her submissions reliance is placed upon the decisions of the Apex Court in the matter of **Bajnath and others v. State of Madhya Pradesh** reported in **(2017) 1 SCC 101**, in the matter of **Monju Roy and others v. State of West Bengal** reported in **(2015) 13 SCC 693** and in the matter of **Sanjiv Kumar v. State of Punjab** reported in **(2009) 16 SCC 487**.

6. State counsel however supports the judgment impugned and submits that the findings recorded by the Court below are based on due appreciation of the evidence on record and there is no infirmity in the same. He submits that the deceased was subjected to cruelty for dowry to such an extent that there was no other option to her but to end her life by committing suicide.

7. Heard counsel for the parties and perused the material available on record.

8. Tikeshwar Singh (PW-1) – the father of the deceased has stated that the marriage of his daughter Laxmi with accused/appellant Manoj was solemnized on 22.5.2010 and that during Diwali festival when she came back to his house, she disclosed to her mother that the the people at her matrimonial

home were demanding the gold ornaments whereupon her mother expressed the inability to fulfil the demand saying that sufficient dowry as per their capacity was already given. Thereafter, according to this witness, the accused/appellants started harassing her for dowry. This witness has stated that at the time of Diwali festival accused Manoj met with accident twice and entire expenditure amounting to Rs. 50,000/- towards his medical treatment was incurred by him. During hospitalisation of accused Manoj, his father and brother had come there to see him and asked his daughter (deceased) to accompany them home but referring to her husband's condition she declined to do that. On recovery, his son-in-law came to his house and then went to his own house without taking his wife with him. Thereafter, a report was lodged at Mahila Thana for compromise and upon being convinced by the police, accused Manoj took his wife with him to Birgaon. About a month thereafter, his son went to the house of the accused/appellants to see his daughter Laxmi where she told him of being harassed by accused Manoj for dowry. He has further stated that his son was informed by his daughter that her husband was demanding Rs. 80,000/- for opening a shop. Thereafter again when his son and daughter-in-law (PW-19 and PW-18 respectively) had gone to the house of accused/appellants, the deceased had disclosed to them about the taunts being passed on to her by her in-laws (accused/appellants 2 to 5), and then on the date of incident itself he had a telephonic call about his daughter suffering burn injuries. On receiving such information, they rushed to the house of accused/appellants where the people of the locality informed that the accused/appellants had burnt his daughter to death. This witness however is stated to be unaware of the names

of those people of the locality. In cross-examination this witness has admitted the fact that after the accident of Manoj, his father had lodged a report Ex. D-6. It is relevant to note that as per report Ex. D-6, accused Somnath lodged the report to SP that his son (accused Manoj) was kept in confinement by the father of the deceased who was demanding Rs. 2 lakhs for the expenditure borne by him towards the treatment of accused Manoj. In the report it is further stated that father of the deceased was also threatening that in case the said amount was not given, he would implicate them in a dowry case. In cross-examination, this witness has stated that financially he was well off. In the compromise Ex. P-4 it was recorded that whatever dispute was there regarding the expenditure incurred for the treatment of accused Manoj, stood settled and there would be no problem to deceased Laxmi by anyone in his house. It is further relevant to note here that though certain allegations were made against the accused/appellants, they are not the part of the case diary statement of this witness. Smt. Maya Shrivastava (PW-3) - the mother of the deceased has stated that after marriage, accused Manoj came to her house and demanded certain gold ornaments and motorcycle on which she told him that being poor it was not possible for them to meet out his demand including that of motorcycle. According to this witness, after the accident, accused Manoj was hospitalised and the entire expenditure for that was borne by her husband (PW-1). She has stated that some complaint was made by accused Somnath, however, the matter was compromised subsequently. She has stated that on 26.1.2011 when her son and daughter-in-law had visited the house of the accused/appellants, her daughter informed them about the cruelty at the hands of the accused/appellants for

demand of dowry. If the cross-examination of this witness is seen, certain omissions on material particulars are noticeable in the same if compared to her case diary statement. Manish Shrivastava (PW-4) – the brother of the deceased has made almost similar statement as that of Smt. Maya Shrivastava (PW-3) and the allegations made by him are just general in nature. Bhagwati Shrivastava (PW-18) – the sister-in-law of the deceased has stated that about a month after marriage, the deceased had come to her house and informed that initially she was kept well by the accused/appellants but thereafter they started quarreling with her demanding the gold ornaments. At this stage this witness has been declared hostile. However, in cross-examination when she was confronted with her case diary statement, she has stated that she informed the police that 15 days after the marriage accused Manoj and deceased Laxmi had come to her house where a demand of gold ornaments and motorcycle was made by him. She has admitted that after the accident, accused Manoj was hospitalised and the entire expenditure amounting to Rs. 80,000/- was borne by her father-in-law and over that there was some dispute between the two families which however came to be compromised subsequently. Court statement of Harish Shrivastava (PW-19) also stands on the same footing and the things stated by him are quite similar to that of (PW-18). Smt. Vidya Ramteke (PW-5) has stated that the deceased used to inform her about the demand of dowry made by the accused/appellants and resultant cruelty for that. According to her, the deceased had also informed about being beaten by her husband. In cross-examination, she has stated that her case diary statement was recorded 6-7 days after the incident. She too has admitted that dispute between the family of the deceased and that

of the accused was settled by way of compromise Ex. P-4. Mukesh Shrivastava (PW-6) – the maternal uncle of the deceased has also stated that he was informed by the deceased that accused Manoj was demanding money, gold and silver ornaments. Ku. Roshni Khare (PW-12) and Ku. Rani Khare (PW-13) have also made the similar statement like that of Vidya Ramteke (PW-5). Dr. R.K. Patel (PW-2) is the witness who conducted postmortem examination on the body of the deceased and gave his report Ex. P-5 opining that she noticed 98% burns on her body and the cause of death was asphyxia as a result of burn and its complication. Purnima Lamba (PW-8) and J.P. Dubey (PW-9) are the police people who carried out the investigation. Virendra Yadav (DW-1) has stated that the family members of the deceased had come to the house of accused persons and they were demanding money with regard to the expenses incurred in the treatment of accused Manoj. Rama Bai (DW-2) has proved the report Ex. D-6 lodged by accused Somnath and stated that father of the deceased not allowed accused Manoj to go back to his own house until he made the payment of amount demanded by him.

9. Ex. P-31-C is the report lodged by the deceased to the Mahila Thana, Raipur wherein she has stated that she was subjected to taunts at the hands of the people at her matrimonial home for bringing insufficient dowry. Report says that after accident of her husband, her father bore the entire expenditure for his medical treatment. Said report further discloses that as she was pregnant, she was living with her parents but accused Somnath came there and made the allegation that her pregnancy was not through his son. In the report she further stated that she was ready to live with

her husband and not with the in-laws. Yet another document which has been marked as Ex. P-32-C according to which in the police station the compromised was arrived at between the deceased, her father (PW-1) and accused Somnath where it was agreed that the deceased would go and live with her husband but not with her in-laws.

10. We have bestowed the required attention to the well-knit arguments adanced by both the sides as also to the evidence placed before us. As the prosecution is on the charge of the offences envisaged in Sections 304B and 498A of the Code, the provisions for reference are extracted hereunder:

“304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation. - For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable

security or is on account of failure by her or any person related to her to meet such demand.”

11. Now let us recapitulate the facts in the light of evidence collected by the prosecution. Tikeshwar Singh (PW-1) – father, Smt. Maya Shrivastava (PW-3) – mother, Manish Shrivastava (PW-4) & Harish Shrivastava – brothers and Bhagwati Shrivastava (PW-18) – the sister-in-law of the deceased are the witnesses who have deposed against the accused/appellants to the effect that after marriage whenever the deceased met them, a disclosure was made about her subjection to cruelty by the accused/appellants for demand of dowry. However, not even a single witness has been specific in making the allegation as to at what point of time, by which of the accused and in what manner the deceased was harassed for demand of dowry and almost all the imputations are made in a generalised way. Though the sister-in-law of the deceased (PW-18) has been declared hostile yet if her statement is referred to for a while, she has categorically stated that about a month after marriage, the deceased had come to her house and informed that initially she was kept well by the accused/appellants but thereafter they started quarreling with her demanding the gold ornaments. Further, as the evidence indicates, no demand was settled at the time of marriage. Though father of the deceased (PW-1) has stated that his financial condition was sound yet if the statement of her mother (PW-3) is seen, the statement of PW-1 stands contradicted as according to her, they were not well-to-do to fulfil the demand of ornaments alleged to have been made by the accused/appellants. One thing important to be seen is that according to the witnesses the deceased was subjected to cruelty for dowry just a month after the marriage but it is surprising as to why after coming to know of all that, the

members of her maternal home kept quiet and did not make any complaint to the police to nip her miseries at the bud itself and why they waited till her tragic death. This Court also could not lay its hand even on a single testimony that any demand of gold ornaments as alleged was made by the accused/appellants and that the deceased was subjected to cruelty for that by anyone of them soon before her death. Thus the principal ingredient to entail conviction for a dowry death remains unsubstantiated by the prosecution in the case in hand. Rather the evidence of the witnesses reflects that the entire problematic episode arose between the two families after the accident of accused Manoj where the parents of the deceased bore the expenditure of his medical treatment amounting to Rs. 50,000 to 80,000/- and later made a demand of the same from his father where with the passage of time a compromise was also arrived at between them. Evidence also speaks that the deceased was also ready to live with her husband Manoj provided he lived separately from her in-laws.

12. Thus the prosecution could not establish its case beyond all reasonable doubt and the presumption under Section 113-B of the Evidence Act operating against the accused/appellants has been rebutted by them by pleading and proving a probable defence. While dealing with a case of identical nature it has been held by the Apex Court in the matter of *Baijnath v. State of M.P.* (supra) as under:

(28) Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“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 purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)".

(29) Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

(30) A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

(31) The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss-over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

(32) This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo Alias Sawinder Kaur and another Vs. State of Punjab* - (2011) 11 SCC 517 and echoed in *Rajeev Kumar Vs. State of Haryana* - (2013) 16 SCC 640. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be

proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao Vs. Yadla Srinivasa Rao* - (2003) 1 SCC 217 to the effect that to attract the provision of Section 304-B of the Code, 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".

13. Further, in the case of *Sanjiv Kumar v. State of Punjab* (supra) as under:

"16. Having regard to the evidence on record, the question arises as to whether the prosecution has proved its case beyond reasonable doubt. Under Section 304-B IPC the prosecution is required to establish that the death was caused by any burn or bodily injury or occurred otherwise than under normal circumstances, that such death took place within seven years of marriage, and that it is shown that soon before her death the woman was subjected to cruelty or harassment by her husband for dowry. If these facts are established by the prosecution, the presumption under Section 113-B, Evidence Act, 1872, arise and the court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused."

"17. If the accused successfully rebuts the presumption by pleading and proving a probable defence, the presumption under Section 113-B stands rebutted and the prosecution must prove its case without the aid of such presumption. It must logically follow that in a case where such presumption arises, the evidence, oral, circumstantial or documentary, adduced in defence must be examined by the court with a view to find whether the presumption stands rebutted. It is essentially a matter of appreciation of evidence."

14. Further in the case of **Monju Roy and others v. State of West Bengal** reported in **(2015) 13 SCC 693** it has been held by the Apex Court as under:

"11. The Court has to adopt pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against brothers

and sisters and other relatives do not stand on same footing as husband and parents. In such case, apart from general allegation of demand of dowry court has to be satisfied that harassment was also caused by all the named members.”

“12. In the facts and circumstances of the present case, even if it is accepted that the appellants were involved in raising the demand for dowry there is material that the appellants harassed the victim resulting in her death. Normally, it is the husband or parents of the husband who may be benefitted by the dowry and may be in a position to harass and not all other relatives, though no hard and fast rule can be laid down in that regard. It is also true that till such an unfortunate event takes place, the family members may not disclose the demand of dowry being a private matter and under the hope that the relationship of the couple may improve. However, having regard to the nature of their relationships, there being possibility of the appellants' having been named by way of exaggeration, we are of the view that the appellants deserve to be given benefit of doubt in the facts of the present case.”

15. Having thus seen the aforesaid factual and legal position, this Court is of the considered opinion that the prosecution has failed to prove all the ingredients required to hold an accused guilty under Section 304-B IPC. On the contrary, the presumption under Section 113-B of the Evidence Act has been successfully rebutted by the accused persons by pleading and proving a probable defence. Being so, the findings recorded by the Court below convicting the accused/appellants under Section 304-B IPC are not based on due appreciation of the evidence on record and therefore they are liable to be set aside. We do so accordingly.

16. Now as regards conviction of the accused/appellants under Section 498-A IPC, none of the witnesses has made any allegation against accused/appellants Manish Kumar and Ku. Manisha the brother-in-law and sistern-in-law of the deceased that they subjected her to cruelty at any point of time. Even as regards husband Manoj the witnesses have stated that the deceased was ready to live with him provided he lived separately, and had there

been any problem with him, there was no reason for her to live in the company of her husband. Though the witnesses have made allegation of cruelty to the deceased by accused Somnath and Ratna – the father-in-law and mother-in-law of the deceased but if the evidence on record is seen in its entirety, it comes to the surface that such allegations came to be made against them only after the question of demand of payment of the expenditure incurred by the parents of the deceased towards the medical treatment of accused Manoj occupied the field and not before. Had the parents of the deceased in fact received the complaint of cruelty or harassment of their daughter at the hands of the accused-appellants, in the natural course they would hurried to the police or any other forum seeking redressal thereof. However, they did not do so and kept quiet till her untimely death. Therefore, under Section 498-A IPC also the conviction of the accused/appellants does not hold the ground and they are entitled for acquittal by way of benefit of doubt.

17. In the result, the appeal is allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. Accused Manish Kumar and Ku. Manisha are already on bail and therefore no order for their release etc. is necessary. Since accused Manoj Kumar, Somnath Shrivastava and Ratna Shrivastava are in jail, they are directed to be set free forthwith if not required in any other case.

18. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(R.P. Sharma)
Judge