

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.911 of 2001

Judgment Reserved on : 8.5.2018

Judgment Delivered on : 6.8.2018

- 1. Dular Singh, aged about 32 years, S/o Son Sai Mali, Occupation Agriculture, Resident of Village Jatri, Police Station Pussore, District Raigarh, Chhattisgarh
- 2. Son Sai, aged about 75 years, S/o Rameshwar Mali, Occupation Agriculture, Resident of Village Jatri, Police Station Pussore, District Raigarh, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through the District Magistrate, Raigarh,
District Raigarh, Chhattisgarh

--- Respondent

For Appellants	:	Smt. Savita Tiwari, Advocate
For Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 13.9.2001 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.105 of 2000 convicting and sentencing the Appellants as under:

<u>Appellants</u>	<u>Conviction</u>	<u>Sentence</u>
Appellant No.1, Dular Singh	Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years
	Under Section 201/34 of the Indian Penal Code	Rigorous Imprisonment for 3 years

Appellant No.2, Son Sai	Under Section 201/34 of the Indian Penal Code	Rigorous Imprisonment for 2 years
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2. Facts of the case, in brief, are that marriage between Muktabai (the deceased) and Appellant No.1, Dular Singh was solemnised 3 years prior to 6.3.2000, i.e., the date of incident. Muktabai was second wife of Dular Singh. His first wife was Hiramati and no child had taken birth from the first wife. Therefore, Dular Singh married Muktabai for the purpose of getting a child. On 6.3.2000, Ghadilal (PW6), brother of deceased Muktabai received information from Samelal (PW3) that her sister Muktabai has died. On receipt of this information, he along with his family members rushed to the village of Appellant No.1, Dular Singh, but before their reach, the Appellants had already burnt the dead body of the deceased. Appellant No.2, Son Sai, who is father-in-law of the deceased told Ghadilal that the deceased was vomiting and as a result thereof she became unconscious and died. Few days prior to the incident, Appellant No.1 had taken back the deceased with him from her parental house. It was further alleged that whenever the deceased came to her parental house, she told about the demand of gold and silver made by the Appellants and as regards this demand, meeting of their community had also been convened several times. Ghadilal raised a doubt that the Appellants would have administered some substance to the deceased and thereby they have killed her. He further suspected that why before their arrival the Appellants burnt the dead body of the deceased and why none of the members of their community attended the funeral of the deceased except the Appellants. On the basis of information

given by Ghadilal, morgue intimation (Ex.P6) was recorded. Some pieces of bones and ash of burnt dead body of the deceased were seized from the spot vide Ex.P5 and sent for examination. Dr. R.N. Mandavi (PW4) examined those pieces of bones and ash on 5.4.2000 and advised for their chemical examination. His report is Ex.P2. The bones and the ash of the burnt dead body were sent to the Director, Medico-Legal Institute, Medical College, Bhopal (Madhya Pradesh) for chemical examination vide Ex.P13. Report of the Institute is Ex.P14. First Information Report (Ex.P7) was registered on 31.3.2000. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellants as well as acquitted accused Hiramati, first wife of Appellant No.1 for offence punishable under Sections 304B, 34, 201 of the Indian Penal Code. Charges were framed against them under Sections 304B/34, 201/34 of the Indian Penal Code.

3. To rope in the accused persons, the prosecution examined as many as 10 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. 2 witnesses have been examined in defence of the accused persons.
4. After trial, the Trial Court acquitted accused Hiramati of all the charges framed against her, but convicted and sentenced the Appellants as mentioned in first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submitted that the Appellants are innocent and they have been falsely implicated in the case only due to suspicion of Ghadilal (PW6), brother of the deceased. She further submitted that the second marriage of Appellant No.1, Dular Singh was performed with the deceased only for getting a child and that too the second marriage was performed with the consent of the deceased and her family members and the deceased had got a male child also from her wedlock. Therefore, no question of demand of dowry from the deceased or from her family members arise. She further submitted that after the death of the deceased, information of her death was duly given to her family members, but they did not attend the funeral. Therefore, cremation of the dead body was done in presence of the villagers. After the cremation, Goverdhan (PW7), father of the deceased came there, but he did not raise any suspicion. She further submitted that Kumobai (PW8), mother of the deceased and Goverdhan (PW7), father of the deceased have admitted the fact that the deceased was being maintained well at the house of her in-laws. She was also got treated at the hospital. There is nothing on record on the basis of which it could be inferred that “soon before her death”, the deceased was subjected to cruelty by the Appellants. Therefore, no offence under Section 304B or 201/34 of the Indian Penal Code is proved against the Appellants beyond reasonable doubt and, therefore, they are entitled to get acquittal.
6. On the other hand, Learned Counsel appearing for the State supported the impugned judgment.

7. I have heard Learned Counsel appearing for the parties and perused the record with utmost care.
8. Necessary ingredients for invoking the provisions of Sections 302, 304B and 306 of the Indian Penal Code read with Section 113B of the Indian Evidence Act have been discussed by the Supreme Court in the case of **(2008) 4 Supreme 228 (Narayanamurthy v. State of Karnataka)**. In paragraphs 17 and 18 of the said judgment, it has been observed thus:

“17. The basic ingredients to attract the provisions of Section 304B, IPC, are as follows:-

“(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the date of her marriage;

(3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.”

18. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in *Satvir Singh v. State of Punjab*, [2001 (8) SCC 633] wherein it was held: (SCC p. 643, paras 21-22)

“21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But, it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all

probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'."

9. In the light of above, I shall now discuss the evidence adduced by the prosecution in the instant case.
10. Pradeep Kumar (PW1) is the witness who, at the time of incident, was posted as a Compounder at Primary Health Centre, Bade Bhandar. In his Court statement, he has stated that on 3.3.2000, Appellant No.1, Dular Singh and his wife Muktabai (the deceased) came to him for treatment of Muktabai. They told him that Muktabai was vomiting. He treated Muktabai. Again on 6.3.2000, Dular Singh and others brought Muktabai to him. On that date, he found that pulse of Muktabai was not working. Therefore, he advised to take her to a higher medical treatment centre.
11. Ishwar Prasad (PW2) has stated that regarding relationship of Muktabai and Dular Singh, social meetings had been convened 2-3 times. In those meetings, deceased Muktabai had told that her husband Dular Singh (Appellant No.1) beats her. On being inculcated in the meetings, Dular Singh, assuring that he will maintain her well, took her to his house and they began to live happily. In paragraph 4 of his cross-examination, he has admitted that Muktabai had told in the meetings that Dular Singh alleging that she does not carry out household works quarrels with her and beats her too. He has further stated that first marriage of Dular

Singh was performed with Hiramati and since no child was taking birth from Hiramati, with the consent of all concerned, second marriage of Dular Singh was performed with Muktabai. Thereafter, Muktabai gave birth to a male child, who is living with Appellant No.1, Dular Singh.

12. Samelal (PW3) is the witness who first saw and talked to Muktabai on the date of incident in the morning. He has stated that he had gone to the house of Dular Singh for labour work. There he had met with Muktabai in the morning. At that time, she had told him that she was not feeling well. Thereafter, he had gone to the agricultural field. When he returned home, he came to know that Muktabai had died. He has further stated that on being asked, he had gone to the village of Muktabai, namely, Chhuipali and informed her parents about her death. In paragraph 4 of his cross-examination, he has admitted that when no person of the village of Muktabai came to attend her funeral before taking place of darkness, her dead body was cremated. At the time of cremation, villagers were present.
13. Dr. R.N. Mandavi (PW4) examined the pieces of bones and ash of the dead body of Muktabai. His report is Ex.P2. He has not given any opinion regarding bones and ash stating whether they are of a male body or of a female body. He advised that a report can be obtained from Medical College.
14. Gourishankar (PW5), before whom inquest (Ex.P4) was done, has stated that the pieces of bones and ash of the dead body of the deceased were seized in his presence vide Ex.P5.

- 15.** Ghadilal (PW6), brother of the deceased has stated that Muktabai had told him that gold, silver and cash of Rs.10,000 – 20,000/- were being demanded from her as dowry by the Appellants and they were also asking her to get a tubewell dug and installed. He has further stated that watch, cycle and radio were given by him on being demanded by the Appellants. He has further stated that on receiving the information of death of Muktabai, he had gone to the house of the Appellants, but dead body of Muktabai had already been cremated. Thereafter, he had lodged morgue intimation (Ex.P6). In his cross-examination, he has admitted that at the time of marriage, no demand of dowry was made and Appellant No.1, Dular Singh had performed second marriage with Muktabai for getting a child. He has further admitted that Muktabai was living in his house for about 1 year. Thereafter, a village meeting had taken place in which it was alleged that they did not allow Appellant No.1, Dular Singh to meet his wife Muktabai and on being asked, they had sent Muktabai back with Dular Singh.
- 16.** Goverdhan (PW7) is the father of deceased Muktabai. He has stated that Dular Singh had made a demand of 3 tola gold, silver and had also asked for getting a bore dug. Muktabai was living in her parental house. When she returned to her matrimonial house, she died 15 days thereafter. He has admitted that after the marriage, Muktabai was maintained well by the Appellants and a child had also taken birth from her. Thereafter, Muktabai had returned from her matrimonial house to live at her parental house. He has further admitted that at the time of marriage, no demand for dowry was made. He has also admitted that on receiving information of death of Muktabai, they had gone to the village of

Appellant No.1, Dular Singh, but till then it had been night and cremation of the dead body of Muktabai had been done. However, they had performed the customs by putting wood and returned.

17. Kumobai (PW8) is mother of deceased Muktabai. She has also stated that after the marriage, when she had gone to see Muktabai at her matrimonial house, she had seen that her husband Dular Singh (Appellant No.1) was beating Muktabai. She has further stated that Dular Singh had made a demand for a sum of Rs.20,000/-, gold and silver. She has further stated that a child had taken birth from Muktabai. Thereafter, Muktabai was brought back to her parental home and she lived there for about 1 year. Thereafter, on a panchayat meeting, Dular Singh took Muktabai back with him. But, 22 days thereafter, she died. This witness has also admitted that no demand was made at the time of marriage. Since Dular Singh had no child, with the consent, his marriage with Muktabai was performed. She has also admitted that the Appellants had maintained Muktabai well. She has also admitted that when they did not send Muktabai back to her matrimonial house, a panchayat meeting was convened in which they were asked to send Muktabai back to her matrimonial house because her marriage had been performed.
18. Bastom (PW9), another witness relating to panchayat meeting, has stated that Dular Singh had called a panchayat meeting. At that time, Muktabai was living at her parental home due to quarrel with Dular Singh. Thereafter, Dular Singh inculcated Muktabai and took her back to his house. 7-8 days thereafter, she died.

- 19.** Ram Kumar Singh Rana (PW10) is the witness who investigated the offence in question. He has stated that he recorded morgue intimation (Ex.P6) on the basis of report made by Ghadilal (PW6), prepared inquest (Ex.P4), seized pieces of bones and ash of the dead body from the spot vide Ex.P5, registered First Information Report (Ex.P7) and he also recorded statements of witnesses. He has further stated that he had sent the seized pieces of bones and ash for chemical examination vide Ex.P13 and the report received thereof is Ex.P14.
- 20.** A minute examination of the above evidence makes it clear that within 3 years of her marriage, Muktabai died. There is no medical report regarding cause of her death. Whether her death was homicidal, suicidal, accidental, natural or unnatural is not clear as there is no report available on record in this regard because her dead body had been cremated. As per the statement of Pradeep Kumar (PW1), on 3.3.2000, Muktabai was brought to the Primary Health Centre by her husband Dular Singh for treatment. At that time, she was vomiting. Thereafter, on 6.3.2000 again, she was brought to the Primary Health Centre for treatment. At that time, her pulse was not working. Apart from the above, there is no evidence on record regarding cause of her death. There is nothing on record to show that the deceased was suffering from any serious disease. Therefore, looking to the facts and circumstances of the case, it seems that her death took place in suspicious circumstance.
- 21.** From the evidence on record, it is also clear that Muktabai was second wife of Appellant No.1, Dular Singh. As from his first wife

no child was taking birth, Dular Singh married Muktabai with the consent of all concerned. It is also clear that thereafter Muktabai delivered a male child. It is also clear that thereafter Muktabai lived at her parental home for about 1 year. On convening of a panchayat meeting, she returned to her matrimonial house and few days thereafter she died. As has been stated by Ghadilal (PW6), brother of the deceased, Goverdhan (PW7), father of the deceased and Kumobai (PW8), mother of the deceased, no demand for dowry was made at the time of marriage. Though all these three witnesses have stated that as dowry cash, gold, silver and digging of a bore was being demanded by the Appellants, but Ishwar Prasad (PW2) and Bastom (PW9), who were present in the panchayat meeting, have not stated anything about this. Had there been any such demand by the Appellants and Muktabai was being harassed therefor, the fact of aforesaid demand of dowry would have been stated in the panchayat meeting. From the evidence, it is also clear that Muktabai had been living at her parental home for about 1 year and few days before her death, on being inculcated in the panchayat meeting, she had returned to her matrimonial house. There is no evidence on record that any demand for dowry was made from Muktabai or for that purpose she was subjected to harassment and cruelty during the period when she lived at her parental home for about 1 year or when she thereafter returned to her matrimonial house. From the statement of Ishwar Prasad (PW2) and Bastom (PW9), it is also clear that a panchayat meeting had been convened on account of quarrel between Dular Singh and Muktabai. There is no evidence on record to show that any village meeting was convened due to the alleged demand of dowry. From the evidence on record, it is also established that Muktabai

was second wife of Dular Singh. Since no child had taken birth from the first wife of Dular Singh, marriage of Muktabai was performed with Dular Singh with the consent of all concerned and no demand was made at the time of her marriage. Thus, demand for dowry was made or for that purpose she was subjected to continuous cruelty is totally not proved in this case. "Soon before her death", the deceased was subjected to cruelty for demand of dowry is also not proved in this case. Therefore, the offence under Sections 304B and 201/34 of the Indian Penal Code alleged against Appellant No.1, Dular Singh and the offence under Section 201/34 of the Indian Penal Code alleged against Appellant No.2, Son Sai are not proved beyond reasonable doubt.

- 22.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
- 23.** It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of the provisions contained in Section 437A of the Code of Criminal Procedure.
- 24.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE