

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1332 of 1999

Judgment Reserved on : 3.1.2018

Judgment Delivered on : 23.3.2018

- 1. Ganpat, S/o Ghosiram Chandra, aged about 24 years,
- 2. Ghosiram, S/o Alagram Chandra, aged about 50 years ----- **Deleted**
- 3. Laxmin Bai, W/o Ghosiram Chandra, aged 40 years,

All residents of Village Galgaladih, Police Station Jaijaipur, District Bilaspur,
M.P. (now Chhattisgarh)

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh) through the District
Magistrate Bilaspur

--- Respondent

For Appellants	:	Shri V.C. Ottalwar, Advocate
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 6.5.1999 passed by the Additional Sessions Judge, Sakti in Sessions Trial No.14 of 1998 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B read with Section 34 of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.5,000/- with default stipulation

- 2. During pendency of this appeal, Appellant No.2, Ghosiram died. Vide order of this Court dated 15.9.2009, his appeal has been

abated and on 12.3.2015, his name has been deleted from the array of cause-title. Now, the instant appeal is to be and is therefore decided in respect of Appellants No.1 and 3 only.

3. Case of the prosecution, in brief, is that Nirmala Bai (the deceased), aged about 22 years was wedded with Appellant No.1, Ganpat in the year 1995. Appellant No.2, Ghosiram was father-in-law of Nirmala Bai. Appellant No.3, Laxmin Bai is mother-in-law of Nirmala Bai. It is alleged that after the marriage, the accused/Appellants were asking Nirmala Bai for bringing Rs.20,000/- in dowry. Father of Nirmala Bai expressed his inability to fulfill the demand. On this, the Appellants kept Nirmala Bai hungry for 11 days. On account of *Tija* festival on 30.8.1997, when father of Nirmala Bai went to take her, the Appellants asked her father to first give them Rs.20,000/- and they did not send Nirmala Bai with her father. On 31.8.1997, a morgue intimation (Ex.P20A) was lodged by Appellant No.1, Ganpat, husband of Nirmala Bai stating that when he reached home after bringing his younger sister for *Tija* festival, his wife Nirmala Bai was not present at home and on being searched, her dead body was found in the well. Inquest (Ex.P2) was recorded on 1.9.1997. Post mortem examination of the dead body of Nirmala Bai was conducted by Dr. Mrs. S.D. Kanwar (PW6), Dr. S. Kachchhap and Dr. J. Singh on 2.9.1997. Post mortem report is Ex.P9 in which they have opined that cause of death was asphyxia and no definite opinion could be given by them regarding asphyxia. First Information Report (Ex.P20) was registered on 11.9.1997. During investigation, vide seizure memo (Ex.P3), a letter (Ex.P4) was seized from Jeetram (PW1), father of deceased Nirmala Bai. An iron bucket and a

saree were seized from the place of occurrence vide Ex.P7. On completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Section 304B read with Section 34 of the Indian Penal Code. Charges were framed against them under Section 304B read with Section 34 of the Indian Penal Code.

4. To rope in the accused/Appellants, the prosecution examined as many as 13 witnesses. Statements of the Appellants 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. No witness has been examined in their defence.
5. The Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants argued that though the doctors who conducted post mortem examination on the dead body of Nirmala Bai have opined that the cause of death was asphyxia, they have not given any definite opinion regarding asphyxia. From the evidence on record, it is also clear that at the time of incident, none of the Appellants were present at home, i.e., the place of occurrence. The incident took place between 10:00 – 11:00 a.m. The incident may be accidental. There is nothing on record to show that soon before her death, the deceased was subjected to harassment or cruelty by the Appellants. Therefore,

no case is made out against the Appellants under Section 304B of the Indian Penal Code.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence. He submitted that from the evidence led by the prosecution, it is clear that a sum of Rs.20,000/- was demanded from the deceased as dowry. Due to non-payment of the amount, she was being kept hungry. From the letter (Ex.P4) also, it reveals that she was being harassed by the Appellants. Therefore, the Trial Court has rightly convicted and sentenced the Appellants.
8. I have heard Learned Counsel appearing for the parties and perused the record minutely.
9. Jeetram (PW1), father of deceased Nirmala Bai has stated that in the year 1995, marriage of his daughter Nirmala Bai (the deceased) was performed with Appellant No.1, Ganpat. In June-July, 1996, Appellant No.1, Ganpat had come to him and made a demand of Rs.20,000/-. He could not fulfill his demand. Thereafter, Appellant No.1 started harassing his daughter Nirmala Bai. He has further stated that in-laws of Nirmala Bai were also harassing her. On 22.2.1997, Nirmala Bai had come to his house (paternal house). She had stayed at her paternal house for about 50 days. On 22.2.1997, she had told him that she was not being given food at her in-laws' house for the last 11 days and until their demand of Rs.20,000/- is not fulfilled, they will continue to harass her. He has further stated that since Nirmala Bai had become very weak, she

had stayed at his house for treatment for about 50 days. He has further stated that he, asking his father Tikaram (PW3) that on recovery of health of Nirmala Bai, she may be sent back to her matrimonial house, had gone to Village Kusmunda. He has further stated that his father Tikaram had taken Nirmala Bai to her matrimonial house. 4 months thereafter, she died. He has further stated that his father Tikaram had sent a letter (Ex.P4) to him in which he wrote that Nirmala Bai was in serious trouble and she should be brought back from her matrimonial house. During cross-examination, he has further stated that on 22.2.1997, Nirmala Bai had told him that she was not being given food at her matrimonial house for the last 11 days. At that time, Amritlal (PW5) and Sitram (PW2) were present there. He has further admitted that he did not report the matter in police station nor did he go to the matrimonial house of Nirmala Bai and ask anything from the Appellants. In paragraph 7, he has categorically stated that Appellant No.1, Ganpat had demand the sum of Rs.20,000/- for opening a shop. Before that, no demand was made. He has further admitted that in-laws of Nirmala Bai never asked him about the demand of Rs.20,000/-. In paragraph 13 also, he has stated that Appellant No.1, Ganpat had made the demand of Rs.20,000/- for opening a shop only. In paragraph 11 also, he has categorically stated that on 22.2.1997, Nirmala Bai had reached Kasigarh in good health condition, but thereafter she had suffered dysentery. Thereafter, he had gone to Village Kusmunda and he does not know in which condition Nirmala Bai was sent back to her matrimonial house. In paragraph 7, he has stated that on 29.7.1997, his father Tikaram had written him the letter (Ex.P4). Thereafter, no meeting took place between him and his father.

10. Sitram (PW2), uncle of deceased Nirmala Bai has stated that after the marriage of Nirmala Bai, she was maintained well by the Appellants at her matrimonial house. Thereafter, Nirmala Bai and her husband Appellant No.1, Ganpat had come to his house after visiting paternal house of Nirmala Bai. Till that time, relationship between Nirmala Bai and Ganpat was good. He has further stated that thereafter when he went to his brother Jeetram (PW1), he told him that Appellant No.1, Ganpat was making a demand of Rs.20,000/-.
11. Tikaram (PW3), grandfather of deceased Nirmala Bai has stated that he had heard that Nirmala Bai was being harassed by her in-laws. He had gone to her matrimonial house on the occasion of *Tija* festival, but she was not sent back with him and at that time Nirmala Bai had told him that the Appellants were demanding a sum of Rs.20,000/- and they were torturing her therefor. He has further stated that he had asked the in-laws of Nirmala Bai to send her with him for 2-4 days, but they refused saying that till the amount of Rs.20,000/- is not given to them, they will not send her back. On this, he returned his house. Next day, he came to know that Nirmala Bai died due to drowning in the well. But, in paragraph 8, he has stated that he came to know about the death of Nirmala Bai due to her drowning in the well after 3-4 months of his taking her to her matrimonial house.
12. Khamhanlal (PW4) has stated that in the year 1997, when father of Nirmala Bai had brought Nirmala Bai to Kasigarh and she had stayed at Kasigarh for about 24-25 days, at that time, on being asked, Nirmala Bai had told him that she was being harassed and

beaten for demand of Rs.20,000/-. He has further stated that on being persuaded, Nirmala Bai had become ready to return to her matrimonial house and thereafter she was taken to her matrimonial house. In his police statement (Ex.D-2), he has not stated about the demand of Rs.20,000/- made by the in-laws of deceased Nirmala Bai.

13. Amritlal (PW5) has stated that when he had visited the matrimonial house of Nirmala Bai, at that time, she had told him that her husband had made a demand from her father and on not being fulfilled the demand, she was being harassed. He has further stated that he had revisited the matrimonial house of Nirmala Bai. At that time, he had seen a swelling on the cheek of Nirmala Bai. On being asked, mother-in-law of Nirmala Bai had told him that she was beaten by husband Ganpat, therefore, the swelling had been suffered by Nirmala Bai. In paragraph 10, he has categorically stated that he had asked about the demand from the mother-in-law of Nirmala Bai and she had told him that the same could be explained by the husband of Nirmala Bai.
14. Dr. Mrs. S.D. Kanwar (PW6), who, along with Dr. J. Singh and Dr. S. Kachchhap conducted the post mortem examination on the dead body of Nirmala Bai on 2.9.1997 and gave report thereof (Ex.P9), has stated that the cause of death was asphyxia but no definite opinion could be given regarding asphyxia. She has further stated that vide Ex.P10, a query regarding cause of death was made against which she had replied vide Ex.P11 that no definite opinion could be given regarding asphyxia.

15. Gangabai (PW8), sister of Appellant No.1, Ganpat has stated that on the occasion of *Tija* festival, her brother Ganpat had come to take her back. She had come to her village along with her brother. At that time, Nirmala Bai was not present at the house. On being searched, she was not found. Later on, her dead body was found in the well. She has been declared hostile.
16. Assistant Sub-Inspector R.G.S. Goutam (PW11) has stated that he had taken out the dead body of deceased Nirmala Bai from the well and prepared inquest (Ex.P2). Along with the dead body of deceased, he had seized one iron bucket and one saree from the spot vide Ex.P7.
17. Sub-Inspector N. Kujur (PW12) has stated that he had recorded First Information Report (Ex.P20) on the basis of morgue inquiry. He has stated that he further investigated into the matter.
18. Head Constable Ram Kumar Sahu (PW13) has stated that he recorded morgue intimation (Ex.P20A) on the basis of the information received from Appellant No.1, Ganpat, husband of deceased Nirmala Bai.
19. In **AIR 2003 SC 2865 [Hira Lal v. State (Govt. of NCT), Delhi]**, it has been observed by the Supreme Court as under:

“8. Section 304-B, I.P.C. deals with dowry death reads as follows:

“**304-B.** 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 same meaning as in S. 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."

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of S. 304-B, I.P.C. the essential ingredients are as follows:-

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113-B of the Evidence Act is also relevant for the case at hand. Both S. 304-B, I.P.C. and S. 113-B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:-

“113-B. 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 S. 304-B of the Indian Penal Code (45 of 1860).”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform.' Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive S. 113-B in the Evidence Act has been inserted. As per the definition of 'dowry death' in S. 304-B, I.P.C. and the wording in the presumptive S. 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry.”

Presumption under S. 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under S. 304-B, I.P.C.).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

9. A conjoint reading of S. 113-B of the Evidence Act and S. 304-B, I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances.' The expression 'soon before' is very relevant where S. 113-B of the Evidence Act and S. 304-B, I.P.C. are pressed into service. 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 prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket 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 S. 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive S. 304-B, I.P.C. and S. 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 expression 'soon before' used in S. 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 has received the goods knowing them to be stolen, unless he can account for his 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 concerned cruelty or harassment 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 concerned death. If 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.”

20. 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 **(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'."

- 21.** In the present case, on minute examination of the evidence on record, it is clear that deceased Nirmala Bai was married 2 years prior to her death. There is nothing on record which could reveal that any demand of dowry was made on behalf of the Appellants prior to the marriage or at the time of marriage of the deceased. Though Jeetram (PW1), father of the deceased has stated that in June-July, 1996, Appellant No.1, Ganpat had come to him at his village and made a demand of Rs.20,000/-, which he could not have fulfilled. Sitram (PW2), Tikaram (PW3), Khamhanlal (PW4) and Amritlal (PW5) have also supported the above statement of Jeetram (PW1) yet Jeetram (PW1), in paragraphs 7 and 13, has categorically stated that only Appellant No.1, Ganpat, husband of

deceased Nirmala Bai had made the demand of Rs.20,000/-. Appellants No.2 and 3, father-in-law and mother-in-law of the deceased had not made the demand. Appellant No.1, Ganpat had made the demand for opening a shop. From the above, it is also clear that the so called demand of Rs.20,000/- was made by Appellant No.1, Ganpat only after about 1 year of the marriage and that demand of Rs.20,000/- was not made as a dowry, but was made as a help for opening a shop. As per the statement of Jeetram (PW1) since he did not fulfill the demand, the deceased was being harassed. According to his Court statement, on 22.2.1997, i.e., 6 months prior to the date of death of the deceased which took place on 31.8.1997, the deceased had come to his house and told him that she was not being given food for the last 11 days due to which she had become weak and she had stayed at his house for about 50 days. But, he admits that neither he lodged any report nor did he call any village panchayat in this regard or went to the house of the Appellants and made any query from them.

- 22.** According to the Court statement of Tikaram (PW3), grandfather of deceased Nirmala Bai, he had gone to the matrimonial house of the deceased to take her back to her paternal house on the occasion of *Tija* festival, but she was not sent back. At that time, the husband and mother-in-law had told him that the deceased will be sent back only on being given the amount of Rs.20,000/-. On this, he had returned his house. Next day, Nirmala Bai died. But, in paragraph 8, he has categorically stated that he received intimation of death of Nirmala Bai due to her drowning in the well after 3-4 months of his taking her back to her matrimonial house.

Even if for the sake of argument this statement of Tikaram (PW3) is considered to be true, from the statement of Jeetram (PW1), it is clear that the demand was not a dowry demand but was a demand for help and that was made about 1 year prior to the death of the deceased. In these circumstances, it is doubtful that any cruelty was done with the deceased for the said demand. From the evidence adduced by the prosecution, it is not proved beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the Appellants soon before her death. Therefore, the offence alleged against the Appellants under Section 304B of the Indian Penal Code is not made out beyond reasonable doubt. The Appellants are entitled to get benefit of doubt.

- 23.** 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.
- 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