

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.952 of 2002

Judgment Reserved on : 4.1.2018

Judgment Delivered on : 3.4.2018

- 1. Pratul Bala, S/o Ramesh Bala, aged about 23 years, resident of Village P.V. 42, Thana Pakhajur, District Kanker, Chhattisgarh
- 2. Ramesh Bala, S/o Manohar Bala, aged about 66 years, resident of P.V. 42, Thana Pakhajur, District Kanker, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through Police Station Pakhajur, District Kanker, Chhattisgarh

--- Respondent

For Appellants	:	Smt. Minu Banerjee, Advocate
For Respondent/State	:	Shri Rajkumar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 11.2.2002 passed by the Additional Sessions Judge, Kanker in Sessions Trial No.196 of 2000 convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.1,000/- with default stipulation

- 2. Case of the prosecution, in brief, is that Appellant No.1 is husband of deceased Minti. Their marriage was solemnised 8-9 months

prior to 13.12.1999, i.e., the date of incident. Appellant No.2 is father-in-law of the deceased. After the marriage, the deceased was residing with accused. On 13.10.1999, the deceased came to her sister Sushma (PW2) and told her that after the marriage, her husband and in-laws create disputes with her on small things and beat her. She also told that Appellant No.2, father-in-law was telling her that she will have to sleep with him in the night. On the same day, Appellant No.1 and her mother-in-law Sumti Bala (acquitted accused) came to the house of Sushma and asked the deceased to come with them. On being refused by her, the husband, dragging her by hair, tried to take her with him. Neighbours intervened and persuaded them. On this, they left her there. A written complaint (Ex.P1A) was made by deceased Minti and her sister Sushma (PW2) to Village President Vishwajit (PW3) and Secretary Vimal Choudhary (PW4). Thereafter, Appellant No.2, telling that they will not give her any trouble, took her with him. Thereafter also, whenever the deceased was visiting her sister Sushma, she was telling her sister that her husband and in-laws were torturing and beating her. Due to that, on 13.12.1999, at about 7:00 – 8:00 p.m., she committed suicide by consuming some pesticide. Morgue Intimation (Ex.P8) was lodged by Sushma (PW2) on 13.12.1999. Inquest (Ex.P4) was prepared on the same day. Post mortem examination on the dead body was conducted by Dr. M.S. Kanwar (PW7). He gave his report (Ex.P6) in which he opined that no definite opinion could be given regarding cause of death. Viscera was preserved and sent to the Forensic Science Laboratory for examination. FSL Report is Ex.P16 which states that pesticide (poison) was found in the viscera. During investigation, an open packet of carbofuran pesticide was seized from the spot

vide Ex.P2. Written complaint (Ex.P1A) was seized vide Ex.P1. First Information Report (Ex.P10) was registered on 6.2.2000. 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 accused for offence punishable under Section 304B read with Section 34 of the Indian Penal Code. Charge was framed against them under Section 304B read with Section 34 of the Indian Penal Code.

3. To rope in the accused, the prosecution examined as many as 8 witnesses. Statements of the accused 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.
4. The Trial Court acquitted Sumti Bala, mother-in-law of the deceased, but convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellants argued that there is no evidence on record regarding any demand of dowry. Thus, no offence under Section 304B of the Indian Penal Code is made out. It was further argued that there are material contradictions and omissions in the statements of the prosecution witnesses. By whom the complaint (Ex.P1A) was written is not established. Recovery of Ex.P1A was made after 4 months of the incident. Therefore, Ex.P1A is suspicious. It is a forged document. There is

no evidence to show that the deceased was subjected to cruelty or harassment soon before her death by the Appellants. Though there is some evidence regarding quarrels between Appellant No.1/husband and the deceased yet the same were domestic in nature. There is nothing on record to show that the alleged cruelty was done with the deceased continuously. Therefore, no offence is made out against the Appellants. Reliance was placed on **2005 Cri.L.J. 625 (Nirmala Devi alias Ghunghera Devi v. State of Uttaranchal), 2000 (3) MPHT 94 (NOC) (Nibhulal v. State of M.P.) and AIR 2008 SC 2377 (Narayanamurthy v. State of Karnataka).**

6. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. Saraswati (PW1), neighbour of the deceased, Sushma (PW2), sister of the deceased, Vishwajit (PW3), Village President, Vimal Choudhary (PW4), Secretary of the Village Committee, namely, Palli Mangal and Subhash (PW5), husband of Saraswati have stated that the marriage of the deceased with Appellant No.1 had taken place 6-7 months prior to her death. Sushma (PW2) has further stated that on the date of incident at about 8:00 p.m., brother of Appellant No.1 came to her and informed that the deceased had consumed poisonous pesticide. She has further stated that when she went to the matrimonial house of the deceased, she saw that her dead body was lying on the bed. The matter was reported by her to the police.

9. Station House Officer U.R. Diwan (PW8) has stated that on 13.12.1999, morgue intimation (Ex.P8) was lodged by Sushma (PW2). Thereafter, inquest (Ex.P4A) was prepared by him and the dead body was sent for post mortem examination vide Ex.P9. He has further stated that on 14.12.1999, he seized a packet of carbofuran pesticide from the spot vide Ex.P2.
10. Dr. M.S. Kanwar (PW7) has stated that post mortem examination of the dead body was conducted by him. He gave his report (Ex.P6) in which he opined that no definite opinion could be given regarding cause of the death. Viscera was preserved and he advised for its chemical examination. He has further stated that on 14.12.1999, an open packet of pesticide was examined by him. He gave his report (Ex.P7) in which he opined that death could be occurred due to consumption of the said examined pesticide. He has further suggested that chemical examination of the seized packet of the pesticide should be got done. FSL Report is Ex.P16. As per the FSL Report, in the viscera of the deceased and in the seized packet of the pesticide, carbofuran pesticide was found.
11. From the above evidence, it is clear that the marriage of the deceased with Appellant No.1 was solemnised 6-7 months prior to the date of incident. It is further clear that within 7 months from her marriage, Minti died otherwise than under normal circumstances.
12. Prior to discussing other evidence available on record, it is appropriate to reproduce Section 304B of the Indian Penal Code, which deals with dowry death and reads as follows:

“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.”

13. In **Narayanamurthy case** (supra), the Supreme Court has observed thus:

“15. Section 304-B, IPC, deals with 'dowry death', which reads as follows:-

“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.

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which shall not be less than seven years but which may extend to imprisonment for life.”

16. The legislature has also introduced Section 113-B of the Evidence Act alongside insertion of Section 304-B, IPC.

“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 had 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).”

17. The basic ingredients to attract the provisions of Section 304-B, 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 be 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'."

19. In *Hira Lal v. State (Govt. of NCT), Delhi*, [(2003) 8 SCC 80], this Court observed that: (SCC pp. 86-87, para 9]

"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 express '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.”

14. In the light of above, now, I shall examine the other evidence available on record.
15. Sushma (PW2), sister of the deceased has stated that at the time of pooja festival, the deceased and her husband (Appellant No.1) came to her house. Next day, Appellant No.1/husband beat the deceased. When she intervened, Appellant No.1 tried to assault her also. She has further stated that the deceased had told her that whenever nobody remained present at the in-law's house, Appellant No.1 severely beat the deceased. She has further stated that Appellant No.1/husband and mother-in-law of the deceased, beating the deceased, had taken her back with them. 2 months thereafter, the deceased died.
16. Saraswati (PW1), neighbour of the deceased, Subhash (PW5), husband of Saraswati have supported the above statement of Sushma (PW2) and stated that on the occasion of pooja festival, the deceased and her husband had come to the house of Sushma (PW2). At that time, a quarrel had taken place between Appellant No.1/husband and the deceased. The deceased refused to go back to her matrimonial house. On this, Appellant No.1, beating the deceased, had come out of the house. The villagers had gathered there. Thereafter, Appellant No.1 and mother-in-law of the deceased had taken back the deceased. The deceased had gone back in the night.

- 17.** Saraswati (PW1) has admitted that she did not know about any other quarrel except the quarrel which took place on the occasion of Durga Pooja and the deceased did not tell her about any other quarrel except the quarrel took place on the occasion of Durga Pooja. She has further admitted that mother of the deceased had died on the day of marriage of the deceased itself due to which the deceased remained sad and she had told that her mother had died on the day of her marriage itself, therefore, she should not be alive.
- 18.** Sushma (PW2), sister of the deceased has also admitted that after the pooja festival and prior to the death of the deceased, she did not meet with the deceased. In paragraph 15, she has also categorically admitted that her mother had died on the day of marriage of the deceased itself, therefore, the deceased remained sad and the deceased had told that since her mother had died on the day of her marriage itself, therefore, she should not be alive.
- 19.** Sushma (PW2), in her Court statement, has stated that the deceased had told her that her father-in-law had told her that he loved her and she should also love with him. When she did not hear him, he started giving her trouble. But, this fact is not mentioned in her case diary statement (Ex.D1). There is no specific statement of this witness on record regarding any other prior quarrel which took place except the quarrel which had taken place between the accused/Appellants and the deceased on the occasion of pooja festival. As per statement of this witness, the quarrel, which had taken place on the occasion of pooja festival, was reported in the village committee. Vishwajit (PW3), President of the village committee has corroborated the above statement and

stated that the complaint (Ex.P1A) was given to him by the deceased which was seized by the police vide Ex.P1. He has further stated that at that time, sister and brother-in-law of the deceased were present and the deceased had told him that she was being tortured and beaten. As per the statement of this witness, this complaint was given to him 15-20 days prior to the date of death of the deceased. But, in the complaint (Ex.P1A), the date of the complaint is mentioned as 13.10.1999, i.e., the date which is 2 months prior to the date of incident. In paragraph 9 of cross-examination, this witness has admitted that on being asked by the deceased and her sister and brother-in-law, the complaint (Ex.P1A) was written by him. In paragraph 10, he has stated that he is unable to state that which part of the complaint was told by whom.

- 20.** Vimal Choudhary (PW4), Secretary of the village committee has stated that a complaint regarding quarrel between the deceased and her husband was given to him by the deceased and her sister. Both Vishwajit (PW3) and Vimal Choudhary (PW4) have stated that allegation of beating given to the deceased by her husband was made, but no allegation was made against the father-in-law of the deceased. Vishwajit (PW3) has also admitted that prior to that and thereafter, the deceased never came to him and told about the beating. From the statement of Vishwajit (PW3), it is also clear that the complaint (Ex.P1A) was not written by the deceased herself, but it was written by Vishwajit (PW3) on the information received from the deceased and her sister and brother-in-law. Vishwajit (PW3) is unable to state about which part was dictated by whom.

- 21.** On minute examination of the above evidence, it is clear that in this case, it is established that the deceased died within 7 years of her marriage otherwise than under normal circumstances. There is nothing on record to show that due to any dowry demand the deceased was harassed or cruelty was done with her. From the evidence, it is also clear that 2 months prior to the date of incident, i.e., at the time of pooja festival, a quarrel had taken place between Appellant No.1/husband and the deceased in the house of Sushma (PW2), sister of the deceased. From the evidence, it is also clear that the husband of the deceased wanted to take the deceased back and the quarrel had taken place on this dispute itself. There is no evidence on record that any quarrel had taken place between the Appellants and the deceased before or after this quarrel. From the evidence, it is also clear that on the date of quarrel, which took place on the occasion of pooja festival, the deceased had gone to the house of her in-laws in the night. 2 months thereafter, she committed suicide in the house of her in-laws. There is no evidence on record that any quarrel took place between the Appellants and the deceased during this period of 2 months. From the evidence, it is also clear that mother of the deceased had died on the day of marriage of the deceased itself and, therefore, the deceased had told that she should not be alive. Therefore, the possibility cannot be ruled out that the deceased would have committed suicide due to this frustration. From the evidence, it is also clear that evidence is available on record with regard to the quarrel which took place during the pooja festival. It is also clear that at that time, Appellant No.1/husband wanted to take the deceased back with him and due to which the quarrel had taken place between them. There is nothing on record to show that there

was any continuous harassment or cruelty done with the deceased by the Appellants. "Soon before her death", the deceased was subjected to cruelty or harassment is also not established in this case. From the above, it is established that no case under Section 304B of the Indian Penal Code is made out against the Appellants. They are entitled to get benefit of doubt.

- 22.** Consequently, the appeal is allowed. The conviction and sentence imposed upon the Appellants is set aside. The Appellants are acquitted of the charges framed against them.
- 23.** 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