

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 98 of 2015****Judgment reserved on 10.08.2018****Judgment delivered on 25.09.2018**

- Vikas Chandravanshi, son of Vishnu Chandravanshi, aged about 32 years, resident of village Khamhi, Police Station Pipariya, District- Kabirdham (Chhattisgarh)., Civil & Revenue District Kabirdham (Kawardha).

---- Appellant

Versus

- The State Chhattisgarh, Through: the Police Station Pipariya, Cr. No. 97/2013, District- Kabirdham (Kawardha), Chhattisgarh.

---- Respondent

For Appellant	:Shri Kishore Bhaduri, Advocate and Shri Ashok Soni, Advocate and Shri Pawan Kesharwani, Advocate
For Respondent/State	:Shri Ravindra Agrawal, G. A.

Hon'ble Shri justice Pritinker Diwaker &**Hon'ble Shri Justice Gautam Chourdiya****C.A.V. Judgment****Per Hon'ble Shri Gautam Chourdiya J.**

1 This appeal arises out of the judgment of conviction and order of sentence dated 19.01.2015 passed by the Additional Sessions Judge, (FTC) Kabirdham (Kawardha) in S. T. No. 04/2014, convicting the accused/appellant under Sections 304-B of Indian Penal Code and

sentencing him to undergo Rigorous imprisonment for life and to pay fine of Rs. 25,000/-, in default of payment of fine to further undergo imprisonment for one year.

2. Facts of the case in brief are that on 15.01.2013 on the information of Nitish Chandrawanshi, cousin of appellant, a mereg intimation vide Ex. P/07 was recorded regarding the death of deceased Smt. Prinshu @ Poorvi Chandrawanshi (wife of accused). On the basis of mereg enquiry, FIR vide Ex. P/16 under Section 306 of IPC was lodged by Investigating Officer, Police Station Pipariya.

3. During investigation, it was found that Prinshu @ Poorvi Chandrawanshi (since deceased) married with the accused/appellant in the year of 2011 i.e. two years prior to the date of incident. After the marriage, appellant and his family members started harassing and torturing the deceased for demand of dowry, as a result of which, Prinshu @ Poorvi Chandrawanshi (since deceased) committed suicide by hanging herself in the house of the appellant on 15.1.2013. Spot map (Ex. P/3) was prepared by Sakeel Khan, Patwari (PW-2). As per property seizure memo Ex. P/5 one sari, one suicide note, one mobile phone and diary of the deceased were seized. As per post-mortem report (Ex.P/4), Dr. Puja Nahar opined that the death of the deceased due to asphyxia resulting from ante-mortem hanging. Two mobile phones of accused/appellant were also seized from the accused. After completion of investigation, charge sheet was filed against the appellant under Sections 304-B of Indian Penal Code. While framing

charge the trial Court framed charge against the accused/appellant under Section 304-B of IPC.

4. So as to hold the accused/appellant guilty, the prosecution examined 12 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In defence no witness has been examined.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as incorporated in opening paragraph of this judgment.

6. Learned counsel for the appellant submits that the deceased was married with the appellant and she died due to hanging herself in the house of appellant and it is proved beyond reasonable doubt that the deceased committed suicide by hanging herself. There is no evidence on record regarding the demand of dowry from the date of marriage till the death of deceased. After the death of deceased Prinshu, it is a false allegation made by family members of the deceased against the appellant/accused and his family members. There is no any physical or mental cruelty caused by the appellant or his family members. There is no any sign of struggle on the body of the deceased on the date of death or any prior during the matrimonial

life of appellant and deceased.

7. He further submits that appellant never demanded any car or any article of dowry and no family members of deceased consulted for this demand made by the appellant. Only the family members of the deceased are the interested witnesses and alleged all omnibus allegation against the accused/appellant. Before the death of the deceased, she wrote a suicide note on a piece of paper vide Ex. P/5 in which she accepted that she was committing suicide of her own guilt due to failure of love to another person. She specifically mentioned in her suicidal note that she was committing suicide due to her own mistakes and her husband and her family members had no mistake and no any harm caused to her family members, she also apologies to her father and mother in her suicide note. It is specifically mentioned that husband of deceased was not responsible for her suicide. The said suicide note was written by deceased and it is proved by the prosecution evidence and hand writing expert opinion vide Ex. P/22.

8. Learned counsel for the appellant further submits that prior to marriage with the accused/appellant, the deceased had love affair with a person namely Narendra and prior to marriage and after marriage she contacted with that person Narendra. The aforesaid facts stated by Investigation Officer, Shri K. N. Shami (PW11). During investigation the Investigating Officer also recorded the statement of Narendra in which he admitted that the deceased was complaining against her husband and telling that her husband is foolish.

9. All these circumstances specifically indicated that deceased had love affair prior to the marriage with someone and, as she was not satisfied with her marriage and feeling guilt, deceased committed suicide. But after death of deceased- Prinshu the family member of deceased have falsely implicated the accused/appellant. Appellant was a socially sound person. Appellant and his family members neither asked for dowry nor any cruelty caused to the deceased and, therefore, the learned trial Court has committed grave legal error in convicting and sentencing the accused/appellant for the aforesaid offence and the impugned judgment is bad in eye of law and thus, it is prayed that appeal be allowed and the judgment of conviction and order sentence dated 19.1.2015 may be set aside and the appellant be acquitted of the charge leveled against him.

10. Opposing the submission of counsel for the appellant, it has been vehemently argued by learned counsel for the State the impugned judgment has been passed keeping in view the entire evidence adduced by the prosecution in light of the legal provisions and, as such, there is no illegality or infirmity in it warranting interference by this Court.

11. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

12. In this case it is not disputed that the deceased Prinshu was

married with the appellant in the year of 2011 i.e. two years prior to the date of incident and on 15.01.2013 deceased committed suicide by hanging herself in the house of the appellant. Spot map (Ex. P/3) was prepared by Sakeel Khan, Patwari (PW-2). As per property seizure memo Ex. P/5 one sari, one suicide note, one mobile phone and diary of the deceased were seized. As per post-mortom report (Ex.P/4), Dr. Puja Nahar opined that the death of the deceased due to asphyxia resulting from ante mortem hanging. Two mobile phone of accused/appellant were also seized from the accused.

13 Lalji Chandrawanshi (PW-1) the maternal grand father of the deceased proved the inquest report Ex. P/2 and it is not challenged in his cross-examination. Lalji Chandrawanshi (PW-1) was the person who was present at the place of incident when the inquest report was prepared. In his cross-examination, he has admitted that when the inquest report was prepared, father, mother and relatives of deceased- Prinshu were present but no one complained against the appellant and his family members regarding demand of dowry and harassment or cruelty.

14. Sakil Khan (PW-2) Patwari of the village prepared spot map Ex. P/3 and contents of the Ex. P/3 i.e. place of spot where the deceased committed suicide is also not challenged in his cross-examination.

15. U. S. Agrawal (PW-4), is the witness of inquest report, place of incident was searched by him and as per seizure memo Ex. P/5 one

LIC diary, one suicide note Ex.P/5-A found and seized on the place of incident. He found no injuries on the body of the deceased, no any sign found on the body of the deceased regarding struggle. Even the family members of the deceased were present at that time but no any information was given to this witness regarding demand of dowry or any harassment to the deceased. Inquest report was prepared on 15.01.2013. Inquest report was signed by PW-1 and PW-4. Prior to the death of deceased no any complaint made to police or any society meeting by the deceased or her family member regarding complaint of demand of dowry or any harassment to deceased. After the marriage in the year 2011 till the death of the deceased she was living with her husband and family members.

16. Priyanka Chandrawanshi (PW-5), who is sister of the deceased, has admitted this fact that when the marriage was solemnized there was no demand of dowry. In para 20 of her statement she admitted that there was no demand by accused/appellant or his family members on the day when marriage was solemnized. Only before the death of the deceased on 14.01.2013, one phone call was made by the deceased to her sister Priyanka Chandrawanshi (PW-5) and she complained against her husband, father-in-law, brother-in-law and mother-in-law that they are demanding car and accused/appellant had beaten her and her in-laws were taunting her for not given car in the dowry.

17. Naresh Chandrawanshi (PW-6) uncle of the deceased also

stated that in the month of December 2012 deceased came to her paternal house and told that the appellant had beaten her and her in-laws taunting her for not giving car.

18. Father of deceased Narad Lal (PW-09) stated that on the date of incident on the telephone, deceased asked him as to when car is going to be given to her in-laws, he assured that after receiving crop (*fasal aane par de dunga*), he will give the car to the accused and his family members, thereafter she cut the phone. On the same day information received by Rajendra Chandrawanshi that for the treatment of deceased was taken to the Kawardha hospital and where she died.

19. Dr. Pooja Nahar (PW-3) and Dr. Narendra Golan (PW-12) have done the postmortem vide Ex. P/04 and they opined that the death of Deceased- Prinshu is suicidal in nature by hanging herself and there is no mark of any injury on the body of the deceased.

20 When deceased came to her paternal house she complained against her husband, father-in-law, mother-in-law that they are commenting and harassing for the car stating that the car was not given at the time of marriage. The same statement was reiterated by Chitrekha (PW-10).

21. Above mentioned four witnesses namely- Lalji Chandrawanshi (PW-1), Priyanka Chandrawanshi (PW-5), Naresh Chandrawanshi (PW-6) and Narad Lal (PW-09) are complaining against the entire family members i.e. father-in-law, mother-in-law, brother-in-law and

husband of the deceased regarding demand of car and further alleged that accused/appellant had beaten the deceased. In the instant case FIR was lodged after about the 3 months 20 days of the incident i.e. on 05.06.2013. Inquest report was prepared by U. S. Agrawal (PW-4) stating that all family members of the deceased were present on the place of incident but no-one made any complaint with regard to cruelty and harassment made by the accused/appellant with the deceased or any dowry (car) is demanded by accused/appellant or by his family members. Prior to death of the deceased, no any report was made regarding demand of car and harassment by appellant and appellant's family members.

22. After marriage, deceased- Prinshu resided with appellant for the period of about one year and 8 months from May 2011 to January 2013, during this period no any particular incident was seen by Priyanka Chandrawanshi (PW-5), Naresh Chandrawanshi (PW-6), Narad Lal (PW-09) and Chitrekha (PW-10). Narad Lal (PW-09), admitted this fact that regarding the harassment and demand of dowry he never complaint to anybody. For the first time, after the death of the deceased the family members of the deceased complained that accused/appellant demanded car. No specific date or time was given by all the family members of the deceased that when the deceased was beaten and on which date appellant and his family members asked for car. Common allegations were made against the accused/appellant and his family member for demand of car and they

are harassing her for demand of dowry. Father of deceased Narad Lal (PW.-9) stated in paragraphs 20-22 of his statement that at the time of marriage there was no demand made by the appellant and his family members. Marriage was solemnized at pleasant atmosphere. No demand was made regarding dowry at the time of marriage. After marriage till the death of deceased the accused/appellant and his family members have never demanded any dowry(car) from the parents of the deceased- Prinshu.

23. The family members of deceased alleged that the deceased was murdered by appellant and his family members. This allegation is totally baseless on the face of the record. The post-mortem report Ex.P/4 and the Statement of Dr. Pooj Nahar and Narendra Golan (PW-3) clearly proved this fact that the deceased died due to hanging herself. Priyanka Chandrawanshi (PW-5) sister of deceased in her statement deposed this thing that deceased has not committed suicide, the appellant and his family members murdered her and thereafter, hanged her. Same statement was given by Naresh Chandrawanshi (PW-6) in para 15 of his deposition. Their apprehension that the deceased was murdered was only imagination. During the marital life of appellant and the deceased near about 18 months, neither any family member of deceased went to the house of the appellant nor asked appellant and his family members why they harassing the deceased or demanding the dowry (car).

24. As per postmortem report, there is no injury found on the body

of deceased. Cruelty is defined under Section 498-A of IPC. During the period of marital life of deceased which is near about 18 months no any physical assault is reported to have been committed and there is no evidence regarding the physical assault being made by appellant as well as by his family members. Section 498-A of IPC defines cruelty as under:

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.**

25. There is no any specific detail of incident or willful conduct of appellant and his family members to commit or to cause grievous

injuries, which were dangerous to life (mental or physical) or harassment of deceased to be reported during the 18 months of matrimonial life of deceased till the death of deceased. Any physical assault was being made by the appellant and his family members is also not proved by any cogent evidence by prosecution.

26. Family members of appellant never contacted to the family members of deceased for demand of dowry (car) at the time of marriage. Only general allegation is made against them for demand of dowry and harassment of deceased. On the basis of that general allegations, no any conclusion can be drawn unless the specific demand was made by accused/appellant and his family members, and the apprehension that deceased was murdered by her husband and her in-laws also stands falsified according to the postmortem report and the prosecution witnesses.

27. Narad Lal (PW-9) stated in para 24 of his statement that they have a community social organization where they can report regarding any dispute of marriage or any kind of matrimonial dispute but before the said social organization no any information regarding demand of dowry or harassment to the deceased was reported by deceased or his family members.

28. Entire evidence of the prosecution witnesses is based on general allegations made against the appellant and his family members. FIR was delayed by near about 4 months. Statements of

the family members recorded under Section 161 of Cr.P.C. were also delayed.

29. In the instant case, one suicide note was also seized by the U. S. Agrawal (PW-3) vide Ex. P/5-A on the same day of incident when merg No. 02/13 was registered that suicidal note states as under:-

“मैं अपनी गलती के कारण आत्म हत्या कर रही हूँ मेरे पति या मेरे परिवार की कोई गलती नहीं है। मेरे परिवार को कुछ नहीं होना चाहिए **Sorry** पापा अम्मा मुझे माफ कर देना आपकी बेटी (प्रिशु)”

30. From perusal of suicide note it is seen that there is no allegation against the family members of the appellant or the appellant regarding any demand of car in dowry and any harassment by them. As per Ex.P/5-A deceased committed suicide due to her own mistake and also apologies from her parents. Shri K. N. Sharma (PW-11) Investigating Officer of this case also admitted this fact that for the comparison of suicide note with the handwriting of the deceased from her note book seized vide Ex. P/15 they were sent to the Office of the State Examiner of Questioned Document Government of Chhattisgarh, Raipur and report was submitted by Shri P. C. Trivedi. They opined that the suicide note Ex. P/5-A was written by deceased. Shri K. N. Sharma (PW-11) Investigating Officer of this case also stated that before marriage, deceased used to meet Narendra Chandrwanshi and before marriage and after marriage she used to

talk to Narendra who was her boy-friend. Before marriage and after marriage deceased used to talk to Narendra and this fact was admitted by Narendra Chandrwanshi in his statement recorded under Section 161 of Cr.P.C. in which he has stated that deceased was complaining about her husband that he is mad. Even call details were also collected during investigation but that could not be proved by the prosecution according to provisions of Evidence Act.

31. Thus, from the evidence of the Investigating Officer it is clear that prior to marriage and after marriage the deceased used to talk to Narendra who was the friend of the deceased and was not relative of the deceased and that she complained to Narendra that her husband is mad. In his defence, the appellant/accused stated in his statement in reply to question No. 20 that after marriage deceased was continuously talking to another person on mobile and appellant restrained her from doing so, because of which perhaps she committed suicide.

32. Soon before the death of deceased no harassment or cruelty was committed by appellant or his family members and no any sign of physical assault was found on the body of the deceased. Neither any demand of dowry was proved against the family members of appellant nor any specific allegations have been made against the appellant. One suicide note is also seized which shows that the deceased committed suicide due to her own mistake and her own guilt and for which she apologized to her parents.

33. The Supreme Court in the matter of **Baijnath and others Vs. State of MP**¹, has held as under:-

“....mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Ss. 304-B and 498-A- only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under S. 113-B can be invoked.

34. Applying the ratio of law laid down by the Supreme Court in the matter of Baijnath (supra), in the facts & circumstances of the case, it is apparent that in instant case definitely wife of appellant died due to hanging herself within 7 years of the marriage but it is not sufficient to convict accused under Section 304-B unless prosecution proves beyond reasonable doubts that deceased was subjected to cruelty or harassment in connection with demand of dowry soon before her death. Presumption under Section 113-B of the Evidence Act, 1872 (henceforth “Act, 1872”) can be invoked only when these circumstances are proved by the prosecution by leading cogent evidence. In the instant case no specific allegation made against the appellant and only general allegation made by the family members of the deceased, no any demand of dowry (car) was made when the marriage was solemnized. No any demand was made by the appellant directly or indirectly from the parents of the deceased. None of the ingredients of cruelty or harassment has been proved by the

¹ (2017) 1 SCC 101

prosecution by cogent evidence. Family members of deceased tried to robe the appellant and his family members based on imaginary thoughts of their feelings. There is no any quarrel which took place between the deceased and appellant over the demand of car after the marriage and till the death of deceased. In these circumstances under Section 113-B of Evidence act presumption can not be drawn in favour of the prosecution. Presumption under Section 113-B of the Act, 1972 can be invoked only in case the deceased was subjected to cruelty and harassment in connection with the demand of dowry soon before her death which has to be proved by the prosecution beyond reasonable doubt.

35. The Supreme Court in the matter of **Vipin Jaiswal Vs. State of Andhra Pradesh represented by public prosecutor**² has reiterated the principles of law laid down by it earlier.

36. In view of above legal analysis, it is quite apparent that the suicide note was left by deceased in which she had exonerated her husband of any criminal liability and no any allegation regarding the harassment or demand of dowry was made in the suicide note. In these circumstance particularly keeping in view the suicide note, which was written by deceased and has been duly proved by the prosecution, wherein she specifically mentioned that by her own mistake, she was committing suicide, culpability under Section 304-B of IPC against the appellant can not be sustained.

² (2013) 3 SCC 684

37. On the basis of entire evidence we find that there is no specific allegation in respect of demand of dowry(car) and harassment to the deceased by the appellant. We are of the opinion that this is a fit case to set aside the judgment of the trial Court.

38. In the result, the appeal is hereby allowed. Judgment impugned is set aside and the accused/appellant is acquitted of the charge leveled against him.

39. As the appellant is already on bail, surety and personal bonds earlier furnished at the time of suspension of sentence shall remain operative for a period of six months in view of the provisions of Section 437-A of the Cr.P.C. The appellant shall appear before the higher Court as and when directed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Gautam Chourdiya)
Judge