

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 711 of 2012**

1. Dhana Bai Verma, wife of Narottam Verma, aged about 45 years, Labourer
2. Narottam Verma, son of Sukhi Ram, aged about 48 years, Labourer,

Both residents of village Navin Amlidih, Police Station Bilaigarh, District Raipur (Now Baloda Bazar/Bhatapara), CG

---- Appellants**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Bilaigarh, District Raipur (Now Baloda Bazar Collector) Chhattisgarh

---- Respondent**AND****CRA No. 757 of 2012**

1. Tek Ram son of Narottam, aged 23 years, Labourer, resident of Navin Amlidih, Police Station Bilaigarh, District Raipur (Now Baloda Bazar/Bhatapara) Chhattisgarh

---- Appellant**Versus**

1. State of Chhattisgarh through Station House Officer, Police Station Bilaigarh, District Raipur (Now Baloda Bazar Collector) Chhattisgarh

---- Respondent

For Appellants	:	Shri Govind Ram Miri, Advocate
For State	:	Shri Rahul Tamaskar, PL

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board by Pritinker Diwaker, J

09/03/2018

As the aforesaid two Criminal Appeals arise out of the same judgment and order dated 25.07.2012 passed by Additional Sessions Judge, Baloda Bazar, District Raipur in Sessions Trial No. 90/2011 convicting the accused/appellants under Section 304-B IPC and sentencing each of them to undergo imprisonment for life and pay fine of Rs. 500/- plus default stipulations, they are disposed of by this common judgment.

2. Name of the deceased in this case is Ramshila Bai who was the wife of accused/appellant Tek Ram and daughter-in-law of accused/appellants Narottam and Dhana Bai. Her marriage with accused Tek Ram had taken place on 13.5.2008 whereas she died on 17.10.2009 after suffering 85% burn injuries in her matrimonial house. Case of the prosecution is that when the accused/appellants were working in their field, deceased committed suicide by setting herself afire after pouring kerosene on her body. Immediately after coming to know of the deceased being set on fire, accused persons rushed to the spot and shifted the deceased to CIMS at Bilaspur where she succumbed to the injuries at 1.30 PM while taking treatment. It may be mentioned here that the distance between Amlidih where the incident took place and Bilaspur is about 80 KM. Un-numbered *merg* Ex.P-12 was recorded on

17.10.2009 at Police outpost CIMS, City Kotwali followed by inquest being drawn vide Ex. P-4. Thereafter, postmortem on the dead-body was conducted on 17.10.2009 itself at 4.30 PM vide report Ex. P-17 which mentions that the deceased had suffered 85% burn injuries. Subsequently, numbered *merg* Ex.P-18 was recorded at police station Bilaigarh, District Baloda Bazar and after *merg* inquiry, FIR P-16 was registered against the accused/appellants under Section 304-B/34 IPC. After investigation, *challan* was filed by the police under Sections 304-B/34 and the Court below framed the charge u/s 304-B, in the alternative u/s 302/34 IPC.

3. In order to prove its case the prosecution has examined 17 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied their guilt and pleaded innocence and false implication in the case.

4. After hearing the parties the Court below acquitted the accused/appellants of the charge u/s 302/34 IPC but has convicted and sentenced them as mentioned above, by the judgment impugned.

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

(i) That the accused/appellants have been convicted merely on the basis of general allegations and none of the witnesses has attributed any specific role against them.

(ii) That the deceased was living happily with the

accused/appellants which is clear from the statements of number of witnesses including relatives of the deceased.

(iii) That unfortunately the deceased underwent abortion as a result of which she used to remain sad and depressed and it appears that on account of mental disturbance she committed suicide.

(iv) That the ingredients of Section 304-B IPC are not attracted to the case in hand as none of the witnesses has been specific while making allegations against the accused/appellants.

(v) That even assuming that some amount was taken by the accused persons but as it was for providing job to the deceased and also for her treatment, it cannot be connoted that the accused/appellants demanded any dowry.

(vi) That the relatives of the deceased have admitted that at the time of marriage no dowry was settled nor was there any demand for that by the accused/appellants even subsequently.

(vii) That accused Tek Ram is in jail since 3.3.2010 whereas the remaining two are on bail.

6. On the other hand counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 304-B IPC are strictly in accordance with law and there is no infirmity in the same. He submits that had the deceased been happy with the behaviour

of the accused/appellants, there was no occasion for her to commit suicide just after a year of marriage. He further submits that even 15 days before the date of incident, deceased was subjected to cruelty by the accused/appellants for demand of dowry.

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

8. Pawan Kumar Verma (PW-1) - the witness to seizure made under Ex. P-1 and that of map Ex. P-2 has not supported the case of prosecution and has been declared hostile. He however has stated that after undergoing abortion the deceased was not comfortable. Jawahir Pradhan (PW-2) - the witness to seizure memo Ex. P-1 has also not supported the case of the prosecution and has been declared hostile. This witness happens to be the neighbour of the accused/appellants and according to him when he entered their house after the incident, door was bolted from inside and on same being pushed open, the deceased was found to be in burning condition. Rajkumari Kashyap (PW-3) - the mother of the deceased has stated that marriage of her daughter (deceased herein) was solemnized with accused Tekram sometime in the year 2007. She has further stated that deceased had informed her aunt Godavari (PW-4) about being subjected to cruelty by the accused/appellants for demand of motorcycle. According to this witness, deceased however did not inform anything like that to her to avoid her feelings being

hurt. According to her, once the accused/appellants had demanded Rs. 15,000/- out of which Rs. 10,000/- were given to them. Likewise again on two occasions accused/appellants raised a demand for Rs. 10,000/- each for providing job to the deceased and then for meeting the expenses of abortion which she underwent. According to this witness, deceased had once informed her aunt Godavari that she would not survive beyond 15 days as the accused/appellants were harassing her for dowry. Now in paragraph No. 6 of her deposition this witness has stated that six months prior to the date of incident the deceased had informed her of being subjected to cruelty raising demand for motorcycle. However, in paragraph No. 13 she has stated that at the time of marriage of the deceased no dowry was settled and whatever was given by them was at their on sweet-will. This witness has stated that about a month after the incident, police had come to her house but she did not inform the date, month or year in which her daughter died. She has stated that after marriage of the deceased, her husband (accused Tekram) used to bring her to her parents' house out of affection and then take her back after staying for 5-10 minutes. According to this witness, at no point of time she lodged any report about her daughter being subjected to cruelty by the accused/appellants for demand of dowry. Godavari Bai Kashyap (PW-4) - the aunt of the deceased has stated that the deceased had informed her that one year after marriage, the accused/appellants started harassing her and subjecting to cruelty for demand of

motorcycle. In cross-examination this witness has stated that she never visited the house of the accused/appellants nor did they ever talk to her about demand of dowry. This witness is stated to have heard about the payment of Rs. 10,000/- made to the accused/appellants but such transaction was not made in her presence. She has however stated that after marriage the deceased used to visit her maternal house with her husband happily. Like PW-3, this witness has also stated that she never informed the police about the complaint made to her by the deceased regarding cruelty for demand of motorcycle. Ganga Bai (PW-5) - the grand-mother of the deceased living in a different locality has made almost general allegations against the accused/appellants. In paragraph No. 9 she has stated that after undergoing abortion, the deceased used to remain sad. Budhram Kashyap (PW-6) - the father of the deceased has also made the allegations of general nature against the accused/appellants that they used to harass the deceased for demand of motorcycle. In cross examination, he however has stated that at the time of marriage no demand of dowry was made by the accused/appellants. He has stated that on demand of Rs. 5,000/- made by the accused/appellants first at the time of appointment of the deceased in the Anganwadi and then at the time of training he had given the same to them. According to him, prior to deceased getting appointment the accused/appellants were living happily and that at the time of appointment of the deceased they were in need of money. According to him, only

once he visited the house of accused persons where the deceased was found to be in talking terms with them. At the same time he has stated about deceased being subjected to beating by them but he did not lodge any report for that nor did the deceased do that. At the time of inquest, statement of this witness was recorded but he never made any allegation for demand of dowry made by the accused persons. He however has admitted the abortion which the deceased underwent. It is relevant to note that *merg* statement of this witness Ex. D-1 was recorded on 17.10.2009 but he has not made any allegation against the accused persons. Rather, he has stated that the deceased used to visit his house and inform that she was happy with the accused persons. Sant Ram Kashyap (PW-7) – the uncle of deceased has stated that the deceased informed him that accused persons were demanding motorcycle and that Rs. 10,000/- were also given to them. He admits that Ganga Bai – grand-mother of the deceased was living separately. Accused Tekram visited his house with the deceased for about 15 times but he did not notice any ill-will between them. According to this witness, to see his son-in-law happy he had give Rs. 10,000/- for purchasing motorcycle. Kholbahra (PW-8) – the grand-father of the deceased who before being declared hostile has stated that in-laws of the deceased used to keep his daughter properly but it is accused/ husband who used to beat her for motorcycle. Ramphal Kashyap (PW-9) – relative of the deceased has stated that whenever he visited the house of

the deceased, she used to inform him of being subjected to cruelty by the accused/appellants. He has stated that accused Narottam had come to the house of father of the deceased to borrow money when the deceased was appointed as Anganwadi worker. Shiv Shankar Sahu (PW-10) has not stated anything against the accused/appellants. Bhupendra Kumar Shukla (PW-11) is the investigating officer who has duly supported the case of the prosecution. J.K. Rathore (PW-12) and R.S. Rajput (PW-15) are the witnesses who assisted in the investigation. P.S. Sen (PW-13) is the witness who registered FIR Ex.P-16. Dr. (Smt.) Krishna Mittal (PW-14) is the witness who conducted postmortem on the body of the deceased and gave her report Ex. P-17 stating that she noticed 85% burns on the dead-body and opined the cause of death as shock due to excessive burn injuries. Panaram (PW-16) is the ward boy at whose instance *merg* was recorded. Gendlal Sahu (PW-17) is the witness who recorded *merg* Ex. P-18.

9. We have given our thoughtful consideration to the arguments advanced by both sides as also to the evidence placed before us. As the prosecution is on the charge of the offence envisaged in Section 304-B of the Code, this Court feels it appropriate to take note of the same, which is reproduced hereunder:

“304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her

husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

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

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

10. Now let us turn back to the fact history in short in the light of evidence before us. None of the witnesses including the parents and other relatives has stated that at the time of marriage of the deceased any dowry was settled or a demand for that was raised even subsequently. Almost all the witnesses including the ones who happen to be from the side of bride though have made the allegations of general nature like demand of money and motorcycle made by the accused/appellants yet they have been clear enough in stating that no complaint whatsoever was made by them to the police for that. Though the record speaks that on two-three occasions some amount was paid to the accused/appellants yet at the same time it also unequivocally goes to show that it was for meeting out the expenses of abortion which the deceased had undergone and then for making some payment at the time of appointment of the deceased as Anganwadi Worker. Speaking legally, such payment made by the parents of the deceased against the so-called demand by the accused/appellants cannot be construed as dowry. Further, none of the witnesses has stated that the

relations between the deceased and the accused/appellants were ever constrained. On the contrary, the parents and relatives of the deceased have spoken that on many an occasion the deceased visited her maternal home in the company of accused/husband and after staying for a short while they returned. It has also come in their evidence that the accused Tek Ram took the deceased to her parents' house genially. What is worth noting here is that though in the Court father of the deceased has made the allegation of cruelty for demand of motorcycle and money but in his *merk* statement Ex. D-1 he has stated just the opposite that the deceased was treated well by all the accused/appellants. Prosecution has also not adduced any material to successfully prove that the deceased was subjected to cruelty by the accused/appellants for demand of dowry soon before the incident which prompted her to ensure her untimely tragic death. This being the situation, submission of the State counsel that had the deceased been happy with the behaviour of the accused/appellants there was no occasion for her to end her life by setting herself ablaze does not fit in our judicial firmament. There are several factors including adjustability in an altogether new environment which sometimes impell the bride to take such extreme steps but unfortunately for that innocent people are un-necessarily made to face trial culminating in conviction most of the times. It is indeed pathetic.

11. Thus the prosecution could not establish its case beyond

all reasonable doubt and the presumption under Section 113-B of the Evidence Act operating against the accused/appellants has been rebutted by them by pleading and proving a probable defence. While dealing with a case of identical nature it has been held by the Apex Court in the matter of ***Baijnath v. State of M.P. (2017) 1 SCC 101*** as under:

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

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

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

(30) A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive

evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

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

(32) This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo Alias Sawinder Kaur and another Vs. State of Punjab* – (2011) 11 SCC 517 and echoed in *Rajeev Kumar Vs. State of Haryana* – (2013) 16 SCC 640. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao Vs. Yadla Srinivasa Rao* – (2003) 1 SCC 217 to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.

12. Further, in the case of ***Sanjiv Kumar v. State of Punjab* (2009) 16 SCC 487** it has been held as under:

“16. Having regard to the evidence on record, the question arises as to whether the prosecution has proved its case beyond reasonable doubt. Under Section 304-B IPC the prosecution is required to establish that the death was caused by any burn or bodily injury or occurred otherwise than under normal

circumstances, that such death took place within seven years of marriage, and that it is shown that soon before her death the woman was subjected to cruelty or harassment by her husband for dowry. If these facts are established by the prosecution, the presumption under Section 113-B, Evidence Act, 1872, arise and the court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused."

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

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

14. In the result, the appeals are allowed, judgment impugned is set aside and the accused/appellants are acquitted of the charges levelled against them. Accused

Dhana Bai Verma and Narottam Verma are already on bail and therefore no order for their release etc. is necessary. Since accused Tek Ram is in jail, he is directed to be set free forthwith if not required in any other case.

15. Appeals are thus allowed.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge

Jyotishi