

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.433 of 2000

Judgment Reserved on : 5.1.2018

Judgment Delivered on : 4.4.2018

- 1. Binda Prasad, aged about 55 years, S/o Bhairavlal Yadav – **His appeal is abated vide order dated 10.4.2017**
- 2. Naresh, aged about 27 years, S/o Binda Prasad,
Both R/o Basantpur, Rajnandgaon, District Rajnandgaon

---- Appellants

versus

The State of Madhya Pradesh (now Chhattisgarh)

--- Respondent

For Appellants	:	Ms. Seema Singh, Advocate
For Respondent/State	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 21.1.2000 passed by the 2nd Additional Sessions Judge, Rajnandgaon in Sessions Trial No.155 of 1995 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 10 years

- 2. During pendency of this appeal, Appellant No.1, Binda Prasad died and vide order dated 10.4.2017 his appeal has been abated.

3. Case of the prosecution, in brief, is that about 3 years prior to the date of incident, i.e., in the year 1989-90, marriage of Uma (deceased) was solemnised with Appellant No.2, Naresh. Appellant No.1, Binda Prasad was father-in-law of deceased Uma. Acquitted accused Prabha Gupta is mother-in-law of the deceased. It is alleged that all the accused used to harass and beat deceased Uma on account of bringing less dowry. They used to threaten her that if she would not bring sum of Rs.10,000/- from her parents, they would kill her. On coming to her maternal house, deceased Uma had informed about this demand to her mother Sampatdevi (PW16) and sister Anju (PW18). Anju had resided at the matrimonial house of the deceased along with her for about 1½ months. During that period also, Appellant No.2/husband of the deceased had poured kerosene on the body of the deceased. Other accused had also beaten the deceased at that time and had made a demand of Rs.10,000/-. They had asked the deceased to bring the sum from her parents. They did not send the deceased to her paternal house. They did not allow her to write letters to her paternal house. Due to all these, on 17.2.1993, she committed suicide by hanging herself in the room of her matrimonial house. At that time, the accused were not present at their house and the daughter of deceased Uma, namely, Pooja, aged about 1½ years was present in the said room. Ramesh Gupta (PW9) lodged morgue intimation (Ex.P10). Inquest (Ex.P1) was prepared on 17.2.1993 itself. Post mortem examination was conducted by Dr. A.K. Gupta (PW8) on 18.2.1993. Post mortem report is Ex.P1A in which he opined that the death was due to asphyxia caused by hanging. On 19.2.1993, Sampatdevi (PW16), mother of the deceased came to Rajnandgaon on receiving intimation of death of

the deceased. A written (typed) report (Ex.P13) dated 26.2.1993 was sent by post to the Superintendent of Police, Rajnandgaon by her. On the basis of the said written report (Ex.P13), First Information Report (Ex.P14) was registered on 8.9.1994. During investigation, statements of witnesses under Section 161 of the Code of Criminal Procedure were recorded. On completion of the investigation, a charge-sheet was filed against the accused for offence punishable under Sections 306/34, 498A and 304B of the Indian Penal Code. Charges were framed against them under Sections 306/34, 498A and 304B of the Indian Penal Code.

4. To rope in the accused, the prosecution examined as many as 18 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.
5. The Trial Court acquitted accused Prabha Gupta, mother-in-law of the deceased of the charges framed against her, but convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for Appellant No.2 argued that the case is only based on the statements of Sampatdevi (PW16), mother of the deceased and Anju (PW18), sister of the deceased. It was argued that statements of both these witnesses are not reliable. There are material contradictions and omissions in their statements. Their statements have not been corroborated by other

independent witnesses. It was further argued that First Information Report was registered after 1½ years of the incident, but delay in registering the same has not been properly explained. Anju (PW18), sister of the deceased has specifically stated that the disputes were regarding family matters and, therefore, cruelty for dowry cannot be inferred. It was further argued that presumption under Section 113B of the Evidence Act has also not been drawn because there is no evidence of cruelty done soon before the death of deceased Uma. Reliance was placed on **(2015) 5 SCC 201 (Major Singh v. State of Punjab)** and **(2017) 1 SCC 101 (Baijnath v. State of Madhya Pradesh)**.

7. Per contra, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. Ramesh Gupta (PW9) has stated that he was residing about 1½ Kms. away from the house of the accused. One of the neighbours of the accused informed him that Uma had committed suicide. He went to the house of the accused. The door of the house was closed from inside. He peeped into the house from a window. He saw that dead body of Uma was hanging on the ceiling. Daughter of the deceased was present inside the said room and the accused were not present in the house. He has further stated that he went to the police station and lodged morgue intimation (Ex.P10).
10. Sub-Inspector R.S. Goutam (PW1) has stated that he had recorded inquest proceedings vide Ex.P1. He has further stated

that after preparation of the inquest, he had sent the dead body of the deceased for post mortem examination vide Ex.P2.

11. Vedkunwar (PW2), Krishna (PW12), Badhanu Sahu (PW13) and Sheikh Sadar (PW15) are the witnesses before whom panchnama (Ex.P3) was prepared and child of the deceased was recovered from the room. They have supported the above facts.
12. S.N. Vishwas (PW11), Science Assistant, Forensic Science Laboratory Mobile Unit, who inspected the spot and gave his report (Ex.P11), has supported the above facts and opined that *prima facie* it was a case of suicide.
13. Dr. A.K. Gupta (PW8), who conducted post mortem examination on the dead body of Uma and gave the post mortem report (Ex.P1A), has stated that the death of Uma was due to asphyxia caused by hanging.
14. Guddu alias Yakintadin (PW4), Suresh alias Chichu (PW5), Mohd. Rashid (PW6) and Mohanlal Gupta (PW14) are the neighbours of the accused and are independent witnesses of the case. They have not supported the case of the prosecution and have been declared hostile.
15. From the above, it is clear that on 17.2.1993, the dead body of Uma was found in hanging condition inside the house of the accused. It is also clear that at that time, all the accused were not present at home. It is also clear that the death of deceased Uma was suicidal in nature.

- 16.** Since all the witnesses, who were residing nearby the residence of the accused, have not supported the case of the prosecution and have been declared hostile and the conviction is only based on the statements of Sampatdevi (PW16), mother of the deceased and Anju (PW18), sister of the deceased, evidence of these two witnesses need to be examined carefully.
- 17.** Sampatdevi (PW16), mother of deceased Uma has stated that the deceased was married to Appellant No.2, Naresh in the year 1989. Thereafter, the accused had visited her house 2-3 times. Thereafter, a child took birth from the wedlock of the deceased and Appellant No.2. She has further stated that after 1 year from the death of Kanhaiyalal Gupta (father of the deceased), she had gone to the matrimonial house of the deceased at Rajnandgaon to take her back. She had gone to Rajnandgaon along with Rajesh, son of her Jeth (brother-in-law). She has further stated that at Rajnandgaon, she came to know from Padma that father-in-law of the deceased had told the deceased that father of the deceased had taken a sum of Rs.10,000/- from him and since he has died, the deceased should take that sum from her mother and repay him. (Rajesh and Padma have not been examined by the prosecution). She has categorically stated that the demand of Rs.10,000/- was not made from her by the accused. In paragraph 2, Sampatdevi (PW16) has further stated that deceased Uma had told her that her husband and father-in-law used to beat her saying that she had not brought anything in dowry and they were asking her to bring a ring of gold. She has further stated that she had again visited Rajnandgaon in the month of December to take her daughter Uma back, but both Appellant No.2 and Appellant No.1

(dead) had refused to send her. But, all the above facts are not mentioned in her written complaint (Ex.P13) and her case diary statement (Ex.D1). She has further stated that 2 months thereafter the accused had sent her a telegram communicating death of the deceased. She had visited the matrimonial house of the deceased, but till then cremation of the dead body of the deceased had been done. In paragraph 6 of her cross-examination, she has stated that after the death of the father of the deceased, the accused had started harassing the deceased and this harassment was not given to the deceased before the death of her father. In paragraph 9 also, she has categorically stated that when she had visited the matrimonial house of the deceased first time, at that time, the deceased had not made her any complaint. In paragraph 14, she has stated that the deceased had written her 2-3 letters and 1½ months prior to her death also, she had written her a letter in which she had requested to take her back from her matrimonial house. But, these letters have also not been produced by the prosecution before the Trial Court.

- 18.** Anju (PW18), sister of the deceased has stated that she had stayed along with the deceased at her matrimonial house for about 1½ months. She has further stated that quarrel between the accused and the deceased had taken place some times in her presence. Once, on a quarrel taking place between the deceased and her husband, the husband had poured kerosene on the deceased. She has further stated that the husband had been threatening the deceased that if she will not bring a sum of Rs.10,000/- from her mother, they will kill her. This witness has not stated about the particular day, month or period for which she

stayed at the matrimonial house of the deceased before her death. Though as per her case diary statement (Ex.D2), she was there in the month of September, 1992, i.e., about 6 months prior to the date of death of the deceased. During cross-examination, in paragraph 3, she has admitted that quarrel had been taking place between the deceased and her husband for domestic matters. In paragraph 3, she has categorically stated that the husband had told the deceased that her father had died after taking a sum of Rs.10,000/- from them and he was asking her to repay the said amount by bringing the same from her mother. On this, the deceased had asked her husband why did they not tell about the said amount till her father was alive.

19. In **Bajnath case** (supra), it has been observed thus:

“32. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B 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 304B as in *Shindo v. State of Punjab*, (2011) 11 SCC 517 and echoed in *Rajeev Kumar v. 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 304B 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 113B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established as that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.”

20. In **Major Singh case** (supra), it has been observed as follows:

“16. To attract conviction under Section 304B IPC, the prosecution should adduce evidence to show that “soon before her death”, the deceased was subjected to cruelty or harassment. There must always be proximate and live link between the effects of cruelty based on dowry demand and the concerned death. In the case of *Hira Lal v. State (Govt. of NCT of Delhi)*, (2003) 8 SCC 80, it was observed as under: (SCC pp. 86-87, para 9)

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The 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 the prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket 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 Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 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 the expression ‘soon before’ used in Section 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 or has received the goods knowing them to be stolen, unless he can account for their 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 cruelty or harassment concerned 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 death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

17. Same principle was also expressed in *State of A.P. v. Raj Gopal Asawa*, (2004) 4 SCC 470; *Balwant Singh v. State of Punjab*, (2004) 7 SCC 724, *Kaliyaperumal v. State of Tamil Nadu*, (2004) 9 SCC 157; *Kamesh Panjiyar v. State of Bihar*, (2005) 2 SCC 388; *Harjit Singh v. State of Punjab*, (2006) 1 SCC 463; *Biswajit Halder v. State of West Bengal*, (2008) 1 SCC 202 and *Narayanamurthy v. State of Karnataka*, (2008) 16 SCC 512."

21. In the light of above, now, I shall discuss the evidence adduced by the prosecution in the instant case.
22. From the evidence on record in the instant case, it is clear that death of Uma was suicidal in nature and the death had taken place within 7 years of her marriage. No independent witness has supported the case of the prosecution. The case of the prosecution is based on the statements of Sampatdevi (PW16), mother of the deceased and Anju (PW18), sister of the deceased. From the statement of Sampatdevi (PW16), it is also clear that no harassment was being given to the deceased till her father was alive. As per Court statement of Sampatdevi (PW16), when she had gone to the matrimonial house of the deceased along with Rajesh, at that time, she had come to know from Padma that father-in-law of the deceased had been telling the deceased that her father had died after taking a sum of Rs.10,000/- from them and he was asking the deceased to give the money back to them after taking the same from her mother. But, neither Rajesh nor

Padma have been examined by the prosecution. Sampatdevi (PW16) has categorically stated that the accused had not made any demand from her. Nothing has been stated by her that she was told by the deceased about the said demand of Rs.10,000/-. Even if for the sake of argument, it is considered that there was any demand of Rs.10,000/- by the accused, from the statement of Sampatdevi (PW16) it is clear that the same was not as a dowry but was being asked to repay which had been taken by the father of the deceased from the accused. Though this witness has stated that the deceased had told her that her father-in-law and husband used to harass and beat her for demand of dowry and they were asking her to bring a ring of gold from her mother yet this fact is not mentioned in her written complaint (Ex.P13) and case diary statement (Ex.D1). As stated by this witness, some letters had also been written to her by the deceased, but those letters have not been produced by the prosecution before the Trial Court.

- 23.** From the statement of Anju (PW18), sister of the deceased, it is also clear that 6 months prior to the death of the deceased, she had stayed at the matrimonial house of the deceased along with her for about 1½ months. At that time, quarrels had taken place between the accused and the deceased some times. But, those quarrels had taken place for domestic reasons is admitted by her. As per statement of this witness, once, on a quarrel taking place between the deceased and her husband, the husband had poured kerosene on the deceased. Even if this statement is considered to be true for a while, this incident had taken place 6 months prior to the death of the deceased. It is also clear from the statement of this witness that the so called quarrels had not been taking place

for demand of any dowry.

- 24.** From the above discussion, I find that there is no evidence on record as to demand of any dowry or deceased Uma was subjected to cruelty or harassment for demand of dowry “soon before her death”. There is nothing on record to substantiate the allegation of dowry demand. In the absence of any evidence that the deceased was subjected to cruelty or harassment in connection with demand of dowry “soon before her death” by the accused, the conviction of the accused under Section 304B of the Indian Penal Code cannot be sustained.
- 25.** Consequently, the appeal is allowed. The conviction and sentence imposed upon Appellant No.2, Naresh is set aside. He is acquitted of the charge framed against him.
- 26.** 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