

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.228 of 2003

Judgment Reserved on : 23.1.2018

Judgment Delivered on : 18.4.2018

- 1. Arunabh Dave, S/o Arun Kumar Dave, aged about 30 years, R/o Maruti Vihar Colony, Raipur
- 2. Arunesh, S/o Arun Kumar Dave, aged about 26 years,
- 3. Smt. Aruna Dave, Wd/o Arun Kumar Dave, aged about 50 years,
Both residents of 11-A, College Road, Choube Colony, Raipur, Chhattisgarh

---- Appellants

versus

The State of Chhattisgarh through the District Magistrate, Raipur, Chhattisgarh

--- Respondent

For Appellants	:	Shri S.C. Verma, Advocate
For Respondent/State	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 14.2.2003 passed in Sessions Trial No.325 of 2001 by the First Additional Sessions Judge, Raipur 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. Facts of the case, in brief, are that marriage between Sunita (deceased) and Appellant No.1 was solemnised on 24.4.1998.

Appellant No.3 is mother-in-law of Sunita and Appellant No.2 is *Dever* (brother-in-law) of Sunita. One child, namely, Anu took birth out of the wedlock of Sunita and Appellant No.1. On 12.8.2000 at about 7:30 p.m., milkman came to the house of Sunita. When door of the house was not opened, he peeped inside the house. He saw that Sunita was hanging inside a room. The matter was informed by Appellant No.3, mother-in-law of Sunita. Morgue inquiry (Ex.P4) was conducted. Inquest (Ex.P6) was prepared. Post mortem examination on the dead body of Sunita was conducted by Dr. Sanjay Kumar Dadu (PW1) on 14.8.2000. His report is Ex.P1 in which he opined that the death was due to asphyxia as a result of hanging. Vide seizure memo (Ex.P5), a suicidal note (Ex.P17) and one ball pen were seized on 13.8.2000. Spot-map (Ex.P7) was prepared. First Information Report (Ex.P3) was registered on 22.8.2000. During investigation, on 26.11.2000, letters (Ex.P18 dated 13.12.1998 and P19 dated 20.7.2000) written by Sunita to her friend Kalpana were seized vide seizure memo Ex.P11. The letters (Ex.P18 and P19) and the suicidal note (Ex.P17) were sent to the State Examiner of Questioned Documents vide Ex.P16. Report of the Examiner is Ex.P21 in which it has been opined that all the three documents were written by one and the same person. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. From those statements and the morgue inquiry (Ex.P4), it was found that after the marriage, Sunita was subjected to physical and mental cruelty for demand of dowry by the accused/Appellants due to which she hanged herself. On completion of the investigation, a charge-sheet was filed against the accused/Appellants for offence punishable under Section 304B, 34 of the Indian Penal Code.

Charges were framed against them under Section 304B of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 11 witnesses. Statements of the accused/Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which a defence was taken that Sunita was already a mental patient and her treatment was going under Psychiatrists from before her marriage and due to depression she committed suicide. She was never subjected to cruelty by them at any point of time. 2 witnesses, namely, Psychiatrist Dr. Ashok Trivedi (DW1) and Psychiatrist Dr. Prakash Narayan Shukla (DW2) have been examined in defence of the accused/Appellants.
4. The Trial Court 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 statement (Ex.D1) of Ashabai (PW5), mother of the deceased was recorded on 16.10.2000 and statement (Ex.D2) of Shobha Pandya (PW6), sister of the deceased was recorded on 16.12.2000, that is to say, too late, but no explanation has been offered for belated record of the statements. It was further argued that morgue intimation was allegedly lodged by Appellant No.3, mother-in-law of the deceased, but the same is not available on record. First Information Report (Ex.P3) was lodged on 22.8.2000, but there is no mention in the FIR about availability of suicidal note from the spot, while the said suicidal note was seized on 13.8.2000. Investigating Officer Dharmendra Kumar Garg (PW9) has admitted

that in the seizure memo (Ex.P5), he had not put any date below his signature and he was also unable to state about the fact that in whose handwriting the seizure memo (Ex.P5) was recorded. It was argued that the suicidal note and the seizure memo were fraudulently prepared later on and, therefore, these documents are not reliable. There is nothing on record to show that the deceased was subjected to cruelty or harassment for demand of dowry soon before her death by any of the accused/Appellants. Therefore, no offence under Section 304B of the Indian Penal Code is made out against them. From the record, it is also clear that the deceased was a mental patient and her treatment was going on. She was under depression and, therefore, she was kept along with her husband/Appellant No.1 in a separate house. All the prosecution witnesses, especially the relatives of the deceased, have improved their statements during examination in the Court. It was further argued that the suicidal note allegedly written by the deceased does not make allegation for demand of dowry or any cruelty and the letters written by the deceased to her friend Kalpana also do not establish allegation of cruelty by any of the accused/Appellants. Even if the suicidal note is considered to be written by the deceased, mere different behaviour of the accused/Appellants with the deceased does not amount to subjecting her to cruelty. Appellants No.2 and 3 were undisputedly residing separately from the deceased. Therefore, they cannot be held guilty for the offence in question. Merely because there was some dispute between the husband and the wife, it cannot be said that the wife was subjected to cruelty by the husband. From the statements of the defence witnesses, it is apparently proved that the deceased was a patient of depression and, therefore, she committed suicide and there was

no demand for dowry by any of the Appellants. Material witness Kalpana, a friend of the deceased to whom the deceased had allegedly written letters, has not been examined. Therefore, it is not proved that the said letters (Ex.P18 and P19) and the suicidal note (Ex.P17) were written by the deceased. It may be possible that the deceased would not have been pleased or satisfied with the status of her life, but that does not amount to cruelty with her by the Appellants. Therefore, the Appellants deserve acquittal.

6. On the contrary, Learned Counsel appearing for the State, supported the impugned judgment of conviction and sentence. He submitted that from the evidence adduced by the prosecution, it is established that the deceased was subjected to cruelty by the Appellants for demand of dowry. From the opinion (Ex.P21) of the handwriting expert, it is also clear that the suicidal note (Ex.P17) was written by the deceased. Though there are some improvements in the statements of the prosecution witnesses yet they are not material. The Trial Court has rightly convicted and sentenced the Appellants.
7. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
8. Dr. Sanjay Kumar Dadu (PW1) is the witness who conducted the post mortem examination on the dead body of deceased Sunita on 14.8.2000. His report is Ex.P1 in which he has opined that the death was due to asphyxia as a result of hanging.
9. Romu Satnami (PW2) and Bharatlal (PW4) are the witnesses before whom seizure of nylon rope, with the help of which the

deceased had hanged herself, was made vide Ex.P2. Romu Satnami has not supported the above fact and he has been declared hostile. But, Bharatlal has supported the above fact.

10. B.K. Dutt (PW3), the then Inspector, is the witness who registered the FIR (Ex.P3) on the basis of morgue inquiry. During cross-examination, he has admitted that though the statements of the relatives of the deceased and other witnesses which were recorded during morgue inquiry were placed in the case diary yet they were not filed along with the charge-sheet.
11. Pushpa Mehta (PW7), Mousi (mother-in-law) of the deceased, Akshay Mehta (PW8), son of Pushpa Mehta are residents of Bilaspur. They are the witnesses of inquest (Ex.P6) and seizure of the suicidal note (Ex.P17). Both the witnesses have supported the above fact and stated that the suicidal note was seized vide Ex.P5. During cross-examination, Pushpa Mehta has admitted that at the time of the marriage, there was no dispute. She has further admitted that no dowry is given or taken in their society. She has further admitted that after the marriage, the deceased had visited her house 1-2 times and told her that she was happy in her in-laws' house. In paragraph 5 of her cross-examination, she has further admitted that after the death of the deceased, when she went to Raipur, she came to know that the deceased was living with her husband separately from her in-laws' house. She has further admitted that she had read the suicidal note in which it was expressed that the deceased committed suicide due to frustration in her life. She has further admitted that she was unable to state that in whose handwriting the said suicidal note was written.

Akshay Mehta (PW8) has also stated that he did not know the handwriting of the deceased and, therefore, he was unable to state about who wrote the suicidal note.

- 12.** Ashabai (PW5), mother of the deceased has stated that after the marriage of the deceased, the Appellants were subjecting the deceased to cruelty and beating her for demand of dowry. She has further stated that on 12.8.2000 at about 9:00 -10:00 a.m., the deceased had made her a telephonic call that she was being harassed and, therefore, she should be taken back, otherwise they will kill her, but this fact is not mentioned in her case diary statement (Ex.D1). Next day, at about 5:00 – 6:00 p.m., they reached Raipur. They came to know that dead body of the deceased was lying in the hospital. During cross-examination, she has admitted that at the time of marriage, no demand for dowry was made. She has further admitted that the financial condition of the Appellants was better than them. In paragraph 7, she has categorically stated that 15 days after the marriage, the deceased had come to her maternal house. At that time, she was happy. She had not made any complaint. After 3-4 months, she again came to her maternal house. At that time also, she had not made any complaint. In paragraph 9, she has stated that after delivery of a child, when she had again come to her maternal house, she stayed for about 1½ months. At that time, quarrel had been taking place between the deceased and her husband while their talking on phone. When the husband of the deceased came to take her back from her maternal house, she happily went along with him. In January, 2000, when marriage of son of brother of the deceased had taken place, at that time also, the deceased had stayed at her

maternal house for about 15–20 days. At that time also, the deceased was living with the husband happily. She has further stated that in the month of May, brother of the deceased had taken the deceased back to her maternal house. At that time, the deceased had told that she was hungry for the last 2 days. On 6th June, 2000, the husband of the deceased came to the maternal house of the deceased. At that time, it was settled that the husband will keep her in a separate house. At that time, the dispute had been resolved. Thereafter, on 12.8.2000, the deceased committed suicide. In paragraph 13, she has stated that after death of her daughter (the deceased), she came to know that the deceased was not having a good mental health. Therefore, she committed suicide.

13. Shobha Pandya (PW6), sister of the deceased, has stated that after the marriage, the husband was beating the deceased. He had an illicit relationship with another girl, namely, Shubhra. Appellant No.2, Arunesh, *devar* (brother-in-law) of the deceased had once beaten the deceased. All the three Appellants were harassing the deceased for demand of dowry. They had ousted her once from their house. Wife of Appellant No.2 also used to harass the deceased. In paragraph 4, she has further stated that the deceased had telephonically made a demand from her for money because no money was being given to the deceased for her needs. She has further stated that on 10.8.2000 at about 9:00 p.m., the deceased had made her a telephonic call. At that time, she was weeping and told her that her husband used to remain over drunk and also told that they will kill her and, therefore, she be taken back from there. Then, she talked to the husband of the

deceased on phone and scolded him. At that time also, voices of beatings were coming on her phone. She has further stated that on 11.8.2000 at about 11:00 a.m., the deceased had made a telephonic call from a P.C.O. (Public Call Office). At that time, she was weeping and asked to take her back. She also told that she had been fed something by the Appellants, therefore, she was feeling weakness. Thereafter, she came to know that the deceased committed suicide. But, all the above facts are not mentioned in the case diary statement (Ex.D2) of this witness. During cross-examination, she has admitted that at the time of marriage, no demand was made. She has further admitted that when the deceased had stayed at her maternal house, her husband had come there. At that time, on the condition that the husband will keep the deceased in a separate house, the deceased had gone along with the husband. She has further admitted that financial condition of the Appellants were better than them. She has also stated that after the marriage, at her matrimonial house, the deceased had learnt to drive a car.

- 14.** Rajesh Shukla (PW10), brother of the deceased has not stated anything during his examination-in-chief regarding demand of dowry or harassment of the deceased by the Appellants. He has only deposed that vide seizure memo (Ex.P11), some letters which were written by the deceased, had been seized from him. During cross-examination, in paragraph 8, he has stated that once he had received a telephonic call from the deceased that she had been beaten by her husband. Then, he had gone to take her back. At that time, due to drinking liquor by the husband, a quarrel had taken place between the husband and the deceased. But, this fact

is not mentioned in his case diary statement (Ex.D7).

15. Dharmendra Kumar Garg (PW9) is the Investigating Officer. As per his statement, during morgue inquiry (Ex.P4), he prepared a spot-map (Ex.P9) and inquest (Ex.P6). He has stated that from the spot, he had seized suicidal note (Ex.P17) vide seizure memo (Ex.P5). He has further stated that on being placed by Rajesh Shukla (PW10), brother of the deceased, vide Ex.P11, he had seized the letters (Ex.P18 and P19), which were written by the deceased to her friend Kalpana. During cross-examination, in paragraph 13, he has admitted that at the time of morgue inquiry, Rajesh Shukla had stated that the husband was loving the deceased very much and the deceased had told him that the husband used to remain busy in factory and Appellants No.2 and 3 used to ask the deceased that whatever articles were to be used by her should be brought by her from her maternal house. In paragraph 17, he has admitted that during investigation, he came to know that mental condition of the deceased was not good and her treatment was going on.
16. The Additional Examiner of Questioned Documents M.N. Pandey (PW11) examined the suicidal note (Ex.P17) and the letters (Ex.P18 and P19) and opined that all the three documents were written by one and the same person. His report is Ex.P21.
17. The suicidal note (Ex.P17) reads as under:

“मैं अपने पूरे होश में आत्महत्या कर रही हूँ मेरी सास दिन रात पति को भड़काती है, दहेज ना लाने से मुझसे चिढ़ती है । अरूणेश ने शुरु से हम दोनों को लड़वाया और आज ये नौबत आ गई । पर पति इस बात को नहीं समझते उन्हें तो सिर्फ अपनी मां, भाई ही नजर आते हैं, मेरे साथ कभी अच्छा व्यवहार नहीं किया मेरी मौत के जिम्मेदार मेरी सास और देवर अरूणेश है । मैंने अलग रहकर सब ठीक करने की कोशिश की पर ऐसा

नहीं हुआ ये लोग मुझे पागल सिद्ध कर रहे हैं । मेरी बच्ची को भी मुझसे दूर कर रहे हैं । मैं इन लोगों से लड़ते थक गई हूँ । मेरे बाद मेरी बच्ची को मेरे मायके वालों को दिया जाए । मुझे इन लोगों पर भरोसा नहीं है ।

सुनीता”

18. From a bare perusal of the suicidal note (Ex.P17), it reveals that there is nothing against the husband of the deceased in the said suicidal note. In the suicidal note, there is only allegation against Appellant No.3, mother-in-law of the deceased that she used to incite the husband of the deceased and she also used to get irritated due to non-bringing of dowry. Against Appellant No.2, *devar* of the deceased, the allegation in the suicidal note is that he was creating disputes and quarrels between the husband and the deceased. There is no mention in the suicidal note that Appellants No.2 and 3 ever made demand for dowry or harassed the deceased for dowry.
19. In **AIR 2014 SC 2555 (Manohar Lal v. State of Haryana)**, it was observed by the Supreme Court as under:

“19. The expression “soon before her death” used in the Section 304B IPC and Section 113B of the Evidence Act was considered by this Court in *Hira Lal & others v. State (Govt. of NCT), Delhi, (2003) 8 SCC 80 : (AIR 2003 SC 2865)*, which reads as under:

“8. Section 304-B IPC which 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 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.”

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 Section 304-B, IPC, 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 Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by 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 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 purposes of this section, 'dowry death' shall have the same meaning as in Section 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 10.8.1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature through it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 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 the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(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."

Similar observation was made by this Court in *Balwant Singh and another v. State of Punjab* (2004) 7 SCC 724 : (AIR 2005 SC 1504). In the said case this Court held:

“10. These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that “soon before” is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.”

20. In the present case, from the statement of PW.1 it appears that the death took place within seven years of marriage. Admittedly, death of the deceased was due to burning i.e. not in normal circumstances. We have to see now whether the remaining two ingredients are satisfied looking into the evidence on record.”

20. In (2008) 1 SCC 202 (*Biswajit Halder v. State of W.B.*), it was further observed as under:

“13. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under “dowry death” and there shall be a presumption against the husband and the relatives.

14. In this case we find that there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that

such cruelty or harassment was for or in connection with the demand for dowry. (See *Kanchy Komuramma v. State of A.P.*, 1995 Supp (4) SCC 118) Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained.”

- 21.** In the light of above, on examination of the evidence available on record, it is clear that the deceased died within seven years of her marriage and her death was unnatural. From the evidence, it is also clear that at the time of marriage, there was no demand for dowry. It is also clear that at the time when the deceased died she was residing with her husband in a separate house and Appellants No.2 and 3 were not residing with them. From the statement of Ashabai (PW5), mother of the deceased, it is also clear that after the marriage, whenever the deceased visited her maternal house, she was happy and she did not make any complaint. Though she has stated that after delivery of the child, when the deceased had stayed at her maternal house, at that time, the deceased had been talking with the husband on phone with angry expressions. But, she has admitted that when the husband had come to the maternal house of the deceased, on being inculcated by the husband, the deceased had persuaded. From the statement of this witness, it is also clear that in the month of June also, some dispute had taken place. At that time, on a condition that they will reside separately, the dispute had been resolved. No specific allegation that any of the Appellants ever made demand for dowry is made by this witness. Though Shobha Pandya (PW6), sister of the deceased has stated about demand of dowry by the Appellants, but this fact is not mentioned in her case diary statement. During her examination in the Court, this witness has deposed in detail

regarding cruelty, but the same was not stated during recording of her case diary statement. She has exaggerated her statement in the Court. She has admitted that the letters (Ex.D3 to D6) were written by the deceased and in all these letters the deceased had mentioned about depressive life and in the letter (Ex.D3), the deceased had also written that she wanted to die. S.D.O. (P) Dharmendra Kumar Garg (PW9) has also admitted that during investigation, he came to know that mental condition of the deceased was not good and she was under treatment therefor.

- 22.** From the statements of Psychiatrists Dr. Ashok Trivedi (DW1) and Dr. Prakash Narayan Shukla (DW2), it is clear that both these doctors had treated the deceased. Both the doctors have stated that the deceased was under depression. They have further stated that if any patient remains under depression, suicidal thoughts come to such patient and the patient loses self confidence. From the above, it is also clear that the deceased could commit suicide due to depression. In the suicidal note (Ex.P17) also, there is no mention that the deceased was being harassed for demand of dowry. From the evidence on record, the only thing that establishes is that some quarrels had taken place between the husband and the deceased at some intervals, but there is no evidence on record to show that those quarrels had taken place for demand of dowry. "Soon before her death", the deceased was subjected to cruelty or harassment is also not established. In these circumstances, the offence alleged against the Appellants is not proved beyond reasonable doubt.

- 23.** Consequently, the appeal is allowed. The impugned judgment of

conviction and sentence is set aside. The Appellants are acquitted of the charge 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