

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 13/07/2018****Judgment delivered on : 10/10/2018****CRA No. 1125 of 2001**

1. Krishna Kumar, S/o. Ram Ratan, Aged 69 years
2. Onkar S/o. Krishna Kumar Aged 33 years
3. Kaveri Bai, W/o. Krishna Kumar Aged 63years

All residents of Village Akhrabhata, Post Mujhgahan, Thana Gurur, District Durg (CG)

4. Anju Bai W/o. Devendra Kumar, Aged 29 years, Resident of Village Aamdi, Thana Dhamtari, District Dhamtari

----Appellants**Versus**

- State Of Chhattisgarh, through the District Magistrate, Durg (CG)

---- Respondent/State

For Appellants	:	Smt. Indira Tripathi, Advocate.
For Respondent/State	:	Shri Arvind Dubey, Penal Lawyer.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Judgement****10/10/2018**

This Criminal appeal is directed against the judgment of conviction and order of sentenced dated 08/11/2001 passed in Session Trial No. 152/1996 whereby learned Additional Session judge Balod, District-Durg has convicted the appellants under Sections 304-B and 498-A/34 of IPC and sentenced each of them to undergo R.I. for 7 years with fine of Rs.1000/- and R.I. for 2 years with fine of Rs.1000/- respectively, plus

default stipulation.

2. During pendency of this appeal, a letter dated 20.07.2018 has been sent by Thana Incharge, Guru, District Balod, informing that appellant Krishna Kumar (A-1) had died.

3. State counsel has also confirmed this fact.

4. In view of the above, the appeal in respect of Krishna Kumar (A-1) is abated and dismissed as abated. Now, this appeal is only in respect of appellants Onkar (A-2), Kaveri Bai (A-3) and Anju Bai (A-4)

5. In the present case, name of the deceased is Ratna Bai, wife of Onkar (A-2). The prosecution case, in brief, is that marriage of Ratna Bai (deceased) was solemnized with appellant No. 2 way back in the year 1992. On 14.11.1994, written report (Ex.P-1) was lodged by Mannu Lal (PW-1), father of the deceased, alleging in it that after 10-15 days of their marriage, his daughter Ratna Bai was subjected to cruelty for demand of dowry by the accused persons as a result of which her mental and physical condition was deteriorating. The appellants have ill treated the deceased for demand of dowry of Rs. 10,000/-. It is pertinent to mention here that Ratna Bai had gone to her parents' house where she had miscarried two times. On account of cruelty being made by accused persons, Ratna Bai died on 14.11.1994. Based on this, FIR (Ex.P/2) was registered against the accused persons. Merg intimation (Ex.P/3) was recorded at the instance of Mannu Lal (PW/1). Inquest on the body of deceased was conducted vide Ex.P/11 and body was sent for postmortem examination, which was conducted by Dr. Vinod Kumar (PW/4) who gave his report Ex.P/6 opining the cause of death of

deceased to be shock due chronic illness and starvation. After filing of the charge sheet, the trial Court framed the charges against accused/appellant under Sections 498-A and 304 (B) of IPC alternatively Section 306 IPC.

6. So as to hold the accused persons guilty, the prosecution has examined as many as 12 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Cr.P.C. in which they denied the charges levelled against them and pleaded innocence and false implication in the case. This apart, six defence witnesses have also been examined to substantiate its case.

7. After hearing counsel for the parties, the learned trial Court while acquitting the accused/appellants of the charge under Section 306 IPC, has convicted and sentenced them as mentioned above in para 1 of this judgment. Hence this appeal.

9. Contention of the counsel for the appellants is that at the time of death of deceased she was residing in her parents' house. He submits that father of the deceased has stated that his daughter had come to his house two-three months prior to her death and has admitted the fact that his daughter had never complained anything against the accused persons. He has further argued that it is surprising that Article 1 and 2 are the letters written by deceased to her parents while she was residing in her parents' house, and that when she was residing at her in-laws' house, she never complained against the accused/appellants. It has been also argued that the finding of the Court below is based on the prosecution witnesses, and the defense taken by the appellants has

been duly corroborated by the statement of father of deceased (PW/1). He has also argued that evidence of independent witness Deo Das Vaishnav (PW/6) clearly established the fact that at the request of the deceased, her husband appellant No. 2 left her in her parents' house and that the appellant No. 2 was living separately with the deceased. It has been also argued by learned counsel for the appellants that when health of the deceased was getting deteriorated, she requested A-2 to drop her in her parents' house so that proper care could be taken and this conduct of appellant No.2 does not come within the purview of harassment or cruelty in connection with any demand of dowry. Learned counsel has also stated that the evidence of handwriting expert (PW-12) is not at all sufficient to conclusively prove the fact that the handwriting was of the deceased. It has been also argued that deceased was residing with her parents for last 3 months and from the postmortem report it has been established that the death was due to post complication of delivery of child, who later on died, and the doctor has opined the cause of death to be shock due to Chronic illness and starvation. It is clear from the statement of defense witness that Ratna Bai was suffering from anemia and most probably she died due to shock on account of giving birth who later on died. There is nothing on record to show that the appellants, in any manner, harassed the deceased for demand of dowry and the Article P-1 and P-2 are not reliable documents and creates suspicious. Learned counsel for the appellant has placed his reliance on the decisions in the matter of **Jitendra Kumar & Ors. Vs. State Of C.G.** reported in **2011 (1) C.G.L.J. 297 (DB)**, **Baijnath & Ors. Vs. State of M.P.** reported in **2017 (1) SCC 101** and **Ananda Babu Punde Alias Koli Vs. Balasaheb Anna Koli & Ors.** reported in **(2017)**

4 SCC 642.

10. On the other hand, learned State counsel supporting the judgment impugned submits that findings recorded by the court below convicting the accused/appellants is strictly in accordance with law and there is no infirmity in the same.

11 Heard counsel for the parties and perused the material available on record including the impugned judgment.

12. Mannulal (PW-1) is father of the deceased. He has stated in examination-in-chief that he had brought his daughter to his house as her in-laws were not ready to take her in their house. He has further stated that his daughter was frightened as she was being subjected to cruelty and at the relevant time deceased herself had gone to police station Kurud and lodged a written report (Ex.P/1). He has also stated that his daughter had come to his house two-three months prior to her death and during her stay she did not make any complaint against the accused/appellants. This witness admits the fact that deceased, while living in her in-laws house, never sent any letter complaining about the accused. From the statement of this witness it is clear that at the time of her death deceased was in her parental house. It is strange that Article-'1' and '2' are claimed to be written by deceased to her father that too while living with her parents. This witness, in para 15, has admitted that in hospital he came to know that his daughter was suffering from anemia and after three months of delivery, her daughter expired. It is true that deceased was under shock on account of death of her newly born child and after delivery the condition of deceased was continuously

getting deteriorated. It is also true that deceased was so weak and ultimately she died.

13. Johtarin Bai (DW-1) has stated that accused Omkar was his tenant and he was residing with his wife Ratna Bai. She had never seen them quarreling. She has also stated that when Ratna Bai was carrying pregnancy of about five months, her father came and took her along with him. Dr. Morris (DW-2) and Dr. Vijay Panjwani (DW-4) have stated that they have treated Ratna Bai from time to time, which shows that the accused used to take care of his wife and she was given better treatment by the appellant (A-2) as and when required. It is relevant to note here that learned court below did not pay any heed to the documents and oral evidence produced by defense. The prosecution is required to prove its case beyond all reasonable doubt, but in the present case, written complaint Ex.P/1 and article '1' & '2' raised suspicion that whether it was written by the deceased or not ? and if that be so, why she had chosen to write it just before her death. The report of handwriting expert Ex. P-16 only certifies that the copy (article 3) and letters 1 & 2 have been written by the same person, but the prosecution has failed to prove that article 3 belongs to Ratna Bai and it was written by her.

14. Written report (Ex.P-1), a typed complaint, is said to have been acknowledged by some officer in Police Station on 17.09.94, but the investigating Officer has himself said that Mannu Lal had filed this application on 14.11.94 and the same has been confirmed by him in his cross-examination also. Even after this, the learned trial court relied upon Ex.P-1 written complaint, and letter article 1 & article 2, and on the basis of these three documents, the learned trial court recorded its findings that

the deceased was ill treated, tortured and harassed by the appellants. Even if for the sake of argument it is considered that deceased was not given proper diet in her matrimonial house but the fact remains that she died only after three months during her stay at her parents' house.

15. Further, the finding of learned trial Court is based on evidence of Dr. Vijay Panjwani (PW-4) who has conducted the postmortem examination on the body of deceased and gave his report (Ex.-P-6) opining the cause of death of deceased to be shock and post complication of delivery, report of handwriting expert (Ex.P-14), written complaint (Ex.P/1) filed at Police Station – Kurud on 17.09.1994, FIR (Ex-P2) lodged by father of the deceased Ratna Bai who died on 15.11.1994. Written complaint lodged by father of the deceased which was registered by Shri V.S. Urmaliya (PW-10) who states that on 14.11.1994 Mannulal submitted the written report Ex.P-1 and, thereafter, based on it, he recorded FIR Ex.P-2. In his cross-examination he admitted that he did not know about the appellant's previous complaint.

16. The learned trial Court, in para 21, has recorded that death of the deceased was unnatural and the Doctor (PW-4), in para 6, has stated as under:

हमारे मत अनुसार मृत्यु का कारण शॉक है जो कि पुरानी लम्बी बिमारी और भूख के कारण हो सकती है तथापि विस्तृत परीक्षण के लिये विसरा सुरक्षित किया जाता है मृत्यु का अंतराल शव परीक्षण से 24 घंटे के अंदर की प्रतीत होती है शव परीक्षण रिपोर्ट प्रदर्श पी-6 है।

In his cross-examination, he has stated that as under:

यह कहना सही है कि कमजोरी, डिलिवरी के पश्चात ओव्हर ब्लीडिंग से आ सकती है डिलिवरी के बाद परप्यूरी “प्रसव उपरान्त की जटिलताये” होना सम्भावित है जिसके कारण भोजन ले नहीं पाई और सम्भवतः उसकी मृत्यु हुयी

हो।

17. From the aforesaid evidence and material on record, it is clear that prior to the death of the deceased she was in her parents house. Learned trial court in Para 21 to 22 has recorded that deceased was tortured by her in-laws, which is supported by her letter article 1 and 2 wherein she had categorically stated that after her delivery, there were some complications. It is proved that death of deceased was unnatural.

18. As the prosecution is on the charge of the offence envisaged in Sections 304-B and 498-A of the Code, the provisions for reference are extracted hereunder:

“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).

1. 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.

2. **498-A. Husband or relative of a woman subjecting her 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 purposes of this section, "cruelty" means-

(a) any willful 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. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relatives of the husband for, or in connection with, any

demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits “cruelty” as:

(i) any willful 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), or

(ii) 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.

19. In the case in hand, learned trial Judge held that the prosecution has proved the death of Ratna Bai due to unnatural circumstances, within 7 years of her marriage, and soon before her death she was subjected to cruelty, harassment by her husband and relatives of husband (appellants herein A-3 and A-4) in connection with demand of dowry.

20. In the matter of **Inderpal Versus State of M.P.** reported in **(2001) 10 SCC 736**, **Kantilal Martaji Pandor Versus State of Gujarat and others** reported in **(2013) 8 SCC 781**, the Apex Court has held that:

“Unless the statement of a dead person would fall within the purview of Section 32(1) of the Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a

dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the statement must be as the cause of her death or as to any of the circumstance of the transactions which resulted in her death which the cause of death.

Apart from the statement attributed to the deceased none of the witness had spoken of anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8(letters)."

21. The finding of leaned trial Court with regard to Sections 304-B and 498-A is based on Article '1', Article '2' and Ex.P1. Except these letters, none of the prosecution witnesses have stated that the deceased was being deprived of food, physically and mentally tortured by the appellants. There is no single piece of evidence on record, admissible in evidence, which could points towards the guilt of the appellants. On the basis of aforesaid analysis, I am of the view that the finding of the Court below convicting the appellants under Sections 304-B and 498-A IPC is not based on proper appreciation of evidence and the benefit of doubt must be credited to the appellants and they deserve to be acquitted of the charges leveled against him.

22. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellants are acquitted of the charges under Sections 304-B and 498-A IPC by extending them benefit of doubt. The appellants are reported to be on bail. Their bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
Judge