

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.811 of 2001

Judgment Reserved on : 5.12.2017

Judgment Delivered on : 13.2.2018

- 1. Dwarika Prasad, aged 25 years, S/o Budhram Sen
- 2. Kewal, aged 18 years, S/o Budhram Sen
- 3. Besan Bai, aged 50 years, W/o Budhram Sen

All residents of Esai Para, Mahasamund, Thana Mahasamund, District Mahasamund

---- Appellants

versus

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

--- Respondent

For Appellants	:	Smt. Indira Tripathi, Advocate
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

- 1. This appeal is directed against the judgment dated 31.8.2001 passed by the 2nd Additional Sessions Judge, Mahasamund in Sessions Trial No.310 of 2000 convicting and sentencing each of the Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years and fine of Rs.2,000/- with default stipulation

- 2. As per the prosecution case, name of deceased is Kumari Bai. Appellant No.1, Dwarika is her husband. Appellant No.2, Kewal is

her *Devar* (brother-in-law) and Appellant No.3, Besan Bai is her mother-in-law. Marriage between deceased Kumari Bai and Appellant No.1, Dwarika was solemnized in the year 1994. It is alleged that after the marriage, the Appellants started torturing and harassing the deceased for not bringing T.V., Godrej Almirah, fan etc. in dowry. Whenever the deceased came to her maternal home, she told about this. On 22.2.1999, in the morning hours, she got burnt and was brought to Community Health Centre, Mahasamund in burnt condition. There she was medically examined by Dr. N.K. Mandape (PW-8). She was unconscious and had suffered 95% burn injuries. She was not in a position to make a statement. She was advised to be taken to Medical College Hospital, Raipur. She was taken there. On 22.2.1999 at about 3:00 p.m., she died there. Information of her death (Ex.P7) was sent by Dr. G.P. Dewangan of the Medical College Hospital, Raipur to the Station House Officer, Maudahapara, Raipur, on the basis of which unnumbered morgue intimation (Ex.P10) was registered in Police Station Maudahapara, Raipur. Inquest (Ex.P1) was prepared by Tahsildar Ajay Yadav (PW14). Numbered morgue intimation (Ex.P11) was registered at Police Station Mahasamund. Post mortem examination of the dead body was conducted by Dr. Sanjay Kumar Dadu (PW-15). His report is Ex.P16 in which he stated that the scalp hair had smell of kerosene and the death was due to cardio-respiratory failure as a result of burns and its complications. A stove made of brass, burnt pieces of clothes, matchstick, plastic jerry-can were seized from the spot vide Ex.P9. After morgue inquiry, First Information Report (Ex.P13) was registered in Police Station Mahasamund on 9.6.1999. Statements of witnesses were recorded under Section 161 Cr.P.C. On

completion of the investigation, a charge-sheet was filed against the Appellants for offence punishable under Section 304B of the Indian Penal Code.

3. To rope in the Appellants, the prosecution examined as many as 15 witnesses. Statements of the Appellants/accused were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication. Two witnesses have been examined in their defence.
4. After Trial, 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 there are material contradictions and omissions in the statements of the prosecution witnesses. The prosecution witnesses have improved their version in the Court. There is no evidence on record to show that the deceased was harassed 'soon before her death'. The evidence available on record does not establish the offence under Section 304B IPC. The prosecution has failed to establish its case beyond reasonable doubt. Therefore, the Appellants deserve to be acquitted of the charge framed against them.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the material available on record minutely.
8. Draupadi Bai (PW1), mother of the deceased has stated that the deceased was married 5 years prior to her death. 2 children took birth out of her wedlock. She has further stated that after the marriage, the deceased lived happily for about 5 years. During cross-examination, in paragraph 5, she has stated that the deceased had met her in Sirpur Fair 15 days prior to her death. At that time, the deceased had told her that the Appellants used to taunt and harass her for not bringing T.V., Godrej Almirah, fan etc. in dowry. In paragraph 9 of her deposition, she has further stated that during the aforesaid period of 5 years, she had visited the matrimonial house of the deceased 1-2 times. On the occasion of those visits, the deceased had complained her of dowry being demanded by the Appellants.
9. Fagua (PW2) and Hariram (PW3) are the witnesses before whom inquest (Ex.P1) was prepared. Patwari Chhaviram (PW4) prepared spot-map (Ex.P2).
10. Hariram (PW3), who is brother-in-law (*Jija*) of the deceased, in his cross-examination, has stated that one day prior to the death of the deceased, in the night hours, he and the brother of the deceased, namely, Bharat had stayed at the matrimonial house of the deceased. At that time, there was no dispute between the deceased and her in-laws.

11. Laxman (PW5), brother of the deceased has stated that after the marriage, the deceased lived happily for about 6 months and thereafter, whenever she used to visit his house, she told him that her in-laws were harassing her for not bringing T.V., Almirah etc. in dowry. He had persuaded her and sent her back to her matrimonial house. He has further stated that on 22.2.1999, he received an intimation that the deceased had burnt. He went to the hospital and saw the deceased in burnt condition. 4-5 days thereafter, he made a complaint to the Superintendent of Police. On no action being taken, he again made a written complaint (Ex.P3). In cross-examination, he has stated that one year prior to the death of the deceased, he had met her in Sirpur Fair. At that time, the deceased had told him that she was being harassed by her in-laws for not bringing T.V., Almirah, Cooler etc. In paragraph 5, he has stated that after 6–7 months of the marriage of the deceased, when he visited the matrimonial house of the deceased, the deceased had complained him and 4–5 months thereafter, when he again visited the matrimonial house of the deceased, at that time also, the deceased had complained him. He has further stated that he was present at the time of preparation of the inquest. At that time, since he was sad, he did not make any complaint.
12. Santram (PW6), another brother-in-law of the deceased is the witness before whom some burnt pieces of clothes were seized from the spot vide Ex.P4.
13. Santosh Kumar (PW7), another brother-in-law of the deceased has stated that 2 years prior to her death, the deceased had attended the marriage ceremony of his daughter. At that time, the deceased

had complained against her in-laws that they harass her for dowry.

14. Dr. N.K. Mandape (PW8) examined the deceased on 22.2.1999. He has stated that she was burnt and was not able to make a statement. Dr. G.P. Dewangan (PW9), Medical College Hospital, Raipur has stated that on 22.2.1999, at about 3:00 p.m., the deceased died and an intimation of which he had sent to Police Station Maudahapara vide Ex.P7.
15. Sub-Inspector G.S. Kuruwanshi (PW10) did the morgue inquiry. He prepared seizure memo against seizure of burnt pieces of clothes vide Ex.P4. He seized a stove made of brass, a match-stick and 50-60 ml. of kerosene vide Ex.P9.
16. Head Constable Shoukhal (PW11) registered Ex.P11, the numbered morgue at Police Station Mahasamund. Inspector H.O. Gupta (PW12), on the basis of the morgue inquiry, registered FIR (Ex.P13). Tahsildar Ajay Yadav (PW14) prepared inquest (Ex.P1) on 22.2.1999. Dr. Sanjay Kumar Dadu (PW-15) has stated that he conducted post mortem examination of the dead body of the deceased and gave his report (Ex.P16) in which he stated that the scalp hair had smell of kerosene and the death was due to cardio-respiratory failure as a result of burns and its complications.
17. From the evidence available on record, it is clear that the deceased died within 7 years of her marriage in unnatural circumstances due to burn injuries. As per the Court statement of Draupadi Bai (PW1), mother of the deceased that the deceased was living

happily in her matrimonial house for about 5 years after the marriage. Though she has stated that when she had visited the matrimonial house of the deceased 1-2 times, at that time, the deceased had complained her about the harassment being done with her by the in-laws, but when did she go to the matrimonial house of the deceased and when did the deceased complained her has not been mentioned by her in her case diary statement. Though she has stated that 15 days prior to the death of the deceased, when she met with the deceased in the Sirpur Fair, the deceased had told her about the demand of dowry by the Appellants. But, this statement of the witness is not acceptable because as per her own statement, after the marriage, the deceased was living happily for about 5 years. The deceased had never made her such complaint earlier and such complaint would have been made her in a fair is not acceptable.

18. Laxman (PW5) has stated that after the marriage, the deceased had been living happily for about 6 months, but thereafter, the deceased started making complaints and he had been persuading and sending her back. 1 year prior to her death, when she met him, she complained him about the demand of dowry by the Appellants. Whereas, Draupadi Bai (PW1) has stated about meeting with the deceased 15 days prior to the death of the deceased. Draupadi Bai (PW1), mother of the deceased, Santram (PW6), brother-in-law of the deceased and Santosh Kumar (PW7), another brother-in-law of the deceased have categorically stated that Laxman (PW5), brother of the deceased was living separately from his family at Raipur for about 8-10 years. When Laxman (PW5) was living separately and was not living with his family, in

such a situation, the deceased complained him, appears unreliable. Hariram (PW3), brother-in-law of the deceased has stated that 1 day prior to the death of the deceased, he and Bharat, brother of the deceased had stayed at the matrimonial house of the deceased in the night, but the deceased had not made them any complaint. At the time of preparation of inquest (Ex.P1), Laxman (PW5) was present. At that time also, no complaint was made by him or by any other witness.

- 19.** Necessary ingredients for invoking the provisions of Sections 302, 304B and 306 of the Indian Penal Code read with Section 113B of the Indian Evidence Act have been discussed by the Supreme Court in the case of **(2008) 4 Supreme 228 (Narayanamurthy v. State of Karnataka)**. In paragraphs 17 and 18 of the said judgment, it has been observed thus:

“17. The basic ingredients to attract the provisions of Section 304B, IPC, are as follows:-

“(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the date of her marriage;

(3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death.”

- 18.** In the case of unnatural death of a married

woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in *Satvir Singh v. State of Punjab*, [2001 (8) SCC 633] wherein it was held: (SCC p. 643, paras 21-22)

“21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But, it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by

employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'."

20. In (2013) 14 SCC 678 (Indrajit Sureshprasad Bind v. State of Gujarat), the Supreme Court has observed thus:

“9. To establish the offence of dowry death under Section 304-B IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498-A IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in clauses (a) and (b) of the Explanation to Section 498-A IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 24-4-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the

suicide by the deceased on 18-5-2004.”

- 21.** In the light of above, in the present case, on minute examination of the evidence on record, it is clear that the deceased was married 5 years prior to her death. She had 2 children from her wedlock. Initially, after the marriage, she had not made any complaint regarding harassment. She made complaints on some occasions. It is stated that she complained to her mother Draupadi Bai (PW1) and brother Laxman (PW5), but statements of these two witnesses do not appear to be natural. They have exaggerated their version before the Court. Even if their testimony is taken as it is, there is no evidence on record to establish that the deceased was harassed by the Appellants soon before her death. Thus, the offence alleged against them under Section 304B IPC is not established beyond reasonable doubt.
- 22.** 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.
- 23.** It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of Section 437A of the Code of Criminal Procedure.
- 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