

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.817 of 2001

Judgment Reserved on : 27.10.2017

Judgment Delivered on : 11.1.2018

- 1. Vishnu Ram, S/o Shantilal Nirmalkar, aged about 48 years,
 - 2. Smt. Dhan Bai, W/o Shri Vishnu Ram Nirmalkar, aged about 45 years,
 - 3. Devendra Kumar, S/o Shri Vishnu Ram Nirmalkar, aged about 26 years,
 - 4. Jitendra Kumar, S/o Shri Vishnu Ram Nirmalkar, aged about 25 years,
 - 5. Ku. Santoshi, D/o Shri Vishnu Ram Nirmalkar, aged about 19 years,
- All Residents of Village Bharar, P.S. Ranchirai, District Durg (Chhattisgarh)

---- Appellants

versus

State of Chhattisgarh through P.S. Ranchirai, District Durg

--- Respondent

For Appellants	:	Shri Malay Shrivastava, Advocate
For Respondent/State	:	Shri Neeraj Jain, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 27.8.2001 passed in Sessions Trial No.271 of 2000 by the First Additional Sessions Judge, Durg convicting and sentencing the accused/Appellants as under:

Conviction	Sentence
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.200/- with default stipulation
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 10 years

Under Section 306 of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.500/- with default stipulation
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2. Facts of the case, in brief, are that marriage of deceased Kameshwari was performed in the month of May, 1999 with Appellant No.3, Devendra. Appellants No.1 and 2 are father and mother of Appellant No.3, Appellant No.4 is brother and Appellant No.5 is sister of Appellant No.3. The marriage was arranged between Appellant No.3 and the deceased by Ramnarayan (PW5), *Mama* (Maternal Uncle) of the deceased. It is alleged that after the marriage, the Appellants, saying that the deceased had not brought anything in dowry, were taunting her and quarreling with her and were also forcing her to leave their house, i.e., her matrimonial house. According to the Hindu Calendar, in the month of Fagun, she left her matrimonial house and came to the house of her maternal uncle Ramnarayan (PW5). On being asked by Ramnarayan, she told him that the Appellants used to taunt her for dowry. She also told that she had been expelled by her husband, therefore, she had come to his house. At that time, Ramnarayan had persuaded the husband of the deceased and sent her back to her matrimonial house. On 16.4.2000, the deceased along with her husband had come to attend a marriage ceremony at Village Chulgahan. At that time, she had told her father Kisanlal (PW1) and mother Parniyabai (PW2) that the Appellants used to taunt her and quarrel with her for dowry. On 19.5.2000, she died due to catching fire in her matrimonial house. She was brought to the hospital in dead condition. The matter was reported to police. Unnumbered Morgue Intimation (Ex.P7) was registered. Inquest (Ex.P2, P2A) was prepared by S.R. Mandavi, Naib-Tahsildar

(PW6) on 20.5.2000. Post mortem examination was conducted by Dr. A.K. Mishra (PW10) on 20.5.2000 itself. His report is Ex.P19 in which he opined that the mode of death was shock due to extensive (90%) ante mortem burns. Numbered Morgue Intimation (Ex.P8) was registered in Police Station Ranchirai on 30.5.2000. After morgue inquiry, First Information Report (Ex.P9) was registered on 27.6.2000. 1 plastic container bearing smell of kerosene and 1 match-box filled with match-sticks were seized vide Ex.P3. On completion of the investigation, a charge-sheet was filed against the accused/Appellants for offences punishable under Sections 498A and 304B of the Indian Penal Code. Charges were framed against them under Sections 498A, 304B of the Indian Penal Code. In the alternative, charge was framed under Section 302 of the Indian Penal Code. Again, in the alternative, charge was framed under Section 306 of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 10 witnesses. Statements of the accused/Appellants were also recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has 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 for the Appellants argued that there are material contradictions and omissions in the evidence of Kisanlal (PW1), father of the deceased, Parniyabai (PW2), mother of the deceased and Ramnarayan (PW5), maternal uncle of the deceased. It was

further argued that Kisanlal has categorically stated that the deceased was entangled with one Bhikhu Nai prior to her marriage with Appellant No.3. She was not willing to be married with Appellant No.3. Therefore, she committed suicide. There is delay in lodging the FIR, but no explanation has been offered for the delay. It was further argued that Tulasram (PW4), neighbour of the Appellants, who is the only eyewitness of the incident, has stated that when he reached the spot, he saw that the deceased was standing in the courtyard in burning condition and she was saying that she had committed a mistake and she may be saved once. Thus, it is clear that she had committed suicide. There is nothing on record which could establish that the deceased was subjected to harassment for dowry soon before the incident. There is nothing on record to show that any demand of dowry was ever made.

6. On the contrary, Learned Counsel appearing for the State, supporting the impugned judgment, argued that from the statement of Ramnarayan (PW5), maternal uncle of the deceased, it is established that the deceased was subjected to cruelty by the Appellants and, therefore, she committed suicide.
7. I have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
8. 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'."

9. In the light of above, I shall now discuss the evidence adduced by the prosecution in the case in hand.
10. The case of the prosecution is mainly based on the statements of Kisanlal (PW1), Parniyabai (PW2) and Ramnarayan (PW5). The other important witness is Tulasram (PW4). He is the sole eyewitness who was present at the time of occurrence. In his Court statement, he has stated that at the time of incident, the deceased was standing in her courtyard in burning condition. Having heard her screaming, when he reached there, she requested him to save her once saying that she had committed a

mistake. He has categorically stated that at that time, no family member was present there. Later on, all the family members of the deceased reached there and took the deceased to the hospital. Later on, she died. Though this witness has been declared hostile yet from his statement it is clear that at the time of incident none of the Appellants were present at the spot. Therefore, it is also clear that the deceased had herself committed suicide by burning fire.

11. From the statements of Kisanlal (PW1) and Parniyabai (PW2), parents of the deceased, it is also clear that the marriage of the deceased with Appellant No.3 was solemnised by Ramnarayan (PW5), maternal uncle of the deceased. Kisanlal has admitted in his cross-examination that earlier marriage of the deceased was finalised with one Vishnu. He has further admitted that before taking place marriage of the deceased with Vishnu, she ran out of home with Bhikhu Nai. A case was registered against Bhikhu Nai under Section 376 of the Indian Penal Code. Thereafter, Kisanlal, father of the deceased, instead of keeping her at his house, sent her to the house of her maternal uncle Ramnarayan (PW5). Kisanlal (PW1) as well as Parniyabai (PW2) have also admitted that thereafter the deceased was residing at the house of her maternal uncle Ramnarayan and it is Ramnarayan who arranged and ceremonised the marriage of the deceased with Appellant No.3 and it is Ramnarayan only who had maintained relationship with the in-laws of the deceased. In paragraph 12 of his cross-examination, Kisanlal has stated that Ramnarayan was a labour and a poor person. Ramnarayan has stated in paragraph 15 of his cross-examination that for making talks regarding marriage of the deceased he only had gone to the house of the in-laws of the

deceased and he alone had finalised the marriage of the deceased. No talk was done regarding dowry at the time of settling the marriage of the deceased with Appellant No.3. He has further admitted that after the marriage, the Appellants did not make any demand for dowry nor did they send any intimation in this regard after the marriage.

- 12.** As per the Court statement of Kisanlal (PW1), 1 month prior to the date of occurrence, i.e., in the month of April, the deceased along with her husband had attended the marriage ceremonised at the house of her uncle (*Fufa*) Dashrath. Thereafter, they had come to the house of Kisanlal (PW1). At that time, the deceased had told Kisanlal that her husband and in-laws used to torture her by taunting for not bringing dowry. Parniyabai (PW2), wife of Kisanlal has also stated that the deceased had come to their house after her marriage and told that her mother-in-law and other family members used to abuse and assault her for not bringing any article in dowry. But, in paragraph 16 of his cross examination, Kisanlal has himself rebutted the above statement and stated that the deceased had not come to their house after the marriage and she had gone to the house of Pratimabai at Dhamtari and the husband of the deceased had taken her back from there. Thus, from the above evidence, it is suspicious that the deceased would have come to the house of her parents at Village Danitola and told them anything.

- 13.** Kisanlal (PW1) has stated that the deceased had committed suicide after 1 week of her return to the house of her in-laws. As per the Court statements of Kisanlal (PW1) and Parniyabai (PW2),

on 15.5.2000, Parniyabai and the family members of Ramnarayan (PW5) had gone to Village Chulgahan. At that time, they had also gone to Village Bharar where the Appellants were residing and from there they had taken the deceased and her husband to Village Chulgahan. Kisanlal (PW1) has categorically stated in paragraph 18 of his deposition that on 18.5.2000, i.e., before 1 day of the incident, the deceased (his daughter) and her husband had returned to their house at Village Bharar and his wife Parniyabai had returned to her home at Village Danitola. At that time, his wife Parniyabai had told him that everything was good between their daughter (deceased) and her husband at the house of her in-laws and the deceased had not made any complaint against the Appellants.

14. Parniyabai (PW2) has categorically stated in paragraph 12 of her cross-examination that she is not able to tell that any dispute was existing between her daughter (the deceased) and her husband till the date of death of the deceased. In paragraphs 15 and 16 of her cross-examination, she has further stated that after her marriage, the deceased used to come to the house of her uncle (*Mama*) Ramnarayan (PW5) only. Ramnarayan also never told them that the Appellants ever tortured the deceased.
15. Ramnarayan (PW5) has stated that after 2-3 months of the festival of *Tija*, the deceased, after running away from the house of her in-laws, had come to his house alone. On being asked by him, she had told him that her in-laws used to abuse and harass her for demand of dowry. He had persuaded the husband of the deceased and sent back the deceased along with her husband. In

paragraph 11 of his cross-examination, he has further stated that thereafter he never met with the deceased and he saw the deceased thereafter only after her death. Even if the above statement of this witness is taken as it is, the deceased had made the complaint 2 months prior to her death, i.e., at the time of Holi festival. Though in paragraph 4 of his examination, this witness has stated that 3 days prior to the date of incident, the deceased had made a complaint to the wife, his brother and the wife of his brother at Village Chulgahan that her in-laws used to abuse her and they do not feed her properly. But, the wife and brother of this witness and the wife of his brother have not been examined by the prosecution.

16. Minute examination of the evidence available on record makes it clear that there is nothing on record to establish that soon before the death of the deceased, she was subjected to cruelty by the Appellants.
17. From the evidence adduced by the prosecution, it is also clear that at the time of marriage of the deceased, there were no demand of dowry. It is also clear from the statement of Ramarayan (PW5) that even after the marriage, no demand of dowry was made before Ramnarayan. Though as per the statement of Ramnarayan, at the time of Holi festival, the deceased had come to the house of Ramnarayan. At that time, she had made him a complaint that her in-laws used to abuse her and do not feed her property. But, from the statement of Ramnarayan, it is also clear that he had persuaded the deceased and her husband and sent back the deceased to the house of her in-laws. Thereafter, he never met

with her nor any talk took place between them. Ramnarayan has also admitted that he himself had told the husband/Appellant No.3 of the deceased that he should not stop visiting his house. He has further stated that thereafter Appellant No.3 visited his house 1-2 times and he paid him proper respect. Thus, it is also clear that even after the incident, the relationship between both the parties were cordial. From the statement of Kisanlal (PW1), it is also established that before her marriage the deceased had run away along with Bhikhu Nai. Thereafter, the deceased was left at the house of Ramnarayan and it is Ramnarayan who ceremonised her marriage. From the above, it can be presumed that the deceased had a relation with Bhikhu Nai and, therefore, she did not want to be married with Appellant No.3, Devendra. It is true that she died within 7 years of her marriage at her matrimonial house, but, there is no clinching evidence on record to establish that the Appellants ever committed cruelty with her for any reason due to which she committed suicide. The prosecution has not been able to prove its case beyond reasonable doubt. Hence, the Appellants are entitled to get benefit of doubt.

18. Consequently, the appeal is allowed. The judgment under challenge is set aside. The Appellants are acquitted of the charges framed against them.
19. 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