

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.28 of 2001

Judgment Reserved on : 14.8.2018

Judgment Delivered on : 13.11.2018

Hariram, son of Late Shri Gaya Prasad Dhritlahare, aged about 22 years, resident of Yadu Khamaria, Police Station Baloda Bazar, District Raipur, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Baloda Bazar, District Raipur, Chhattisgarh

--- Respondent

For Appellant	:	Shri Manoj Paranjpe and Shri Bharat Sharma, Advocates
For Respondent/State	:	Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 14.10.2000 passed by the 2nd Additional Sessions Judge, Baloda Bazar, District Raipur in Sessions Trial No.378 of 1999 convicting and sentencing the Appellant as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Case of the prosecution, in brief, is that the Appellant is husband of deceased Savitabai. Their marriage was solemnised in April, 1998. Acquitted accused persons Tijram, Nohar and Dayaram are

brothers of the Appellant. Other acquitted accused Gayatribai is mother of the Appellant. Allegedly, after the marriage, the Appellant/husband and other acquitted accused persons demanded cash of Rs.10,000/- and a motorcycle as dowry from the deceased and her parents and on not being fulfilled the demand, they tortured and harassed the deceased. As a result of the torture and harassment, the deceased committed suicide by hanging herself at her matrimonial house on 22.6.1999 at about 8:00 a.m. Morgue intimation (Ex.P5) was given by Gaya Prasad, father-in-law of the deceased. Inquest (Ex.P2) was done by Naib-Tahsildar Y.S. Kurre (PW1). Post mortem examination on the dead body was conducted by Dr. Pramod Tiwari (PW7). His report is Ex.P4 in which he opined the cause of death to be asphyxia and the mode of death to be suicidal. Morgue inquiry was done by Assistant Sub-Inspector S.K. Pradhan (PW8). On the basis of morgue inquiry, First Information Report (Ex.P13) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant and the acquitted accused persons Tijram, Nohar, Dayaram and Gayatribai for offence punishable under Section 304B of the Indian Penal Code. Charge was framed against them under Section 304B of the Indian Penal Code.

3. To rope in the accused persons, the prosecution examined as many as 11 witnesses. Statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. 1 witness has been

examined in their defence.

4. After trial, The Trial Court acquitted accused persons Tijram, Nohar, Dayaram and Gayatribai of the charge framed against them under Section 304B of the Indian Penal Code, but convicted the accused/Appellant under Section 304B of the Indian Penal Code and sentenced him with rigorous imprisonment for 7 years as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the Trial Court has grossly erred in relying upon the testimonies of the prosecution witnesses. The Trial Court ought to have appreciated that the testimonies of the prosecution witnesses are full of discrepancies and contradictions and as such the testimonies are unworthy of reliance. The prosecution has totally failed to prove any demand of dowry by the present Appellant. Soon before her death, the deceased was subjected to cruelty for demand of dowry is not established by the prosecution. Therefore, no offence under Section 304B of the Indian Penal Code is made out against the Appellant.
6. Per contra, Learned Counsel appearing for the State opposed the above arguments and supported the impugned judgment of conviction and sentence. He submitted that from the statements of Santram (PW2), father of the deceased and Khednibai (PW3), mother of the deceased, it is established that the deceased was subjected to cruelty for demand of dowry soon before her death. Their statements are duly corroborated by independent witnesses

Gulab (PW5) and Dukhwadas (PW6). Therefore, the Trial Court has rightly convicted the Appellant.

7. I have heard Learned Counsel appearing for the parties and perused the record minutely.
8. It is not in dispute that the marriage of the deceased and the Appellant was solemnised in April, 1998. Morgue Intimation (Ex.P5) was lodged by father-in-law of the deceased. Post mortem examination on the dead body was conducted by Dr. Pramod Tiwari (PW7) on the date of death itself, i.e., on 22.6.1999. His report is Ex.P4 in which he has categorically opined that the cause of death was asphyxia and the mode of death was suicidal. The report is not disputed by the defence. Thus, it is clear that within 7 years of her marriage, the deceased died in suspicious condition.
9. Naib-Tahsildar Y.S. Kurre (PW1) is the witness who conducted inquest proceedings. He has deposed that on 22.6.1999, he conducted inquest proceedings of the deceased before witnesses. He has admitted that at that time, Santram (PW2), father of the deceased was present there, but he did not raise any suspicion about the death of the deceased.
10. Santram (PW2), father of the deceased has deposed that 1 month before the death of the deceased, she had visited his house. At that time, she was pregnant. She had told that the Appellant was making demand for cash of Rs.10,000/- and a motorcycle in dowry and other acquitted accused persons were also torturing her. He has further deposed that at that time, the Appellant had visited his

house and he had also slapped his wife (the deceased). Later on, the deceased was inculcated and sent back to her matrimonial house. He has further deposed that after giving birth of a child by the deceased, this witness visited the deceased. At that time, she told him that the Appellant was asking the deceased to bring a motorcycle from her parents. This witness has further stated that after the delivery of the child, the deceased was residing at her matrimonial house. At that time, about 15 days before the death of the deceased, the Appellant had visited the house of this witness and had demanded for Rs.10,000/- and a motorcycle and he had threatened that if the demand is not fulfilled, he will kill the deceased or will expel her out after beating her. This witness has further stated that the villagers had also inculcated the Appellant, but he did not agree and returned after quarreling. This witness has also stated that after receiving intimation of death of the deceased, he had visited the house of the Appellant and at the time of inquest proceedings, he had raised a suspicion saying that the death was suspicious. In his cross-examination, he has admitted the fact that at the time of marriage, no talk for taking or giving of dowry was done. In paragraph 33 of his statement, he has further stated that he had not made any complaint in police station or in any social panchayat regarding demand of dowry.

11. Khednibai (PW3) is mother of the deceased. She has also stated in similar fashion as has been stated by her husband Santram (PW2). She has also admitted the fact that at the time of marriage, no talk regarding taking or giving of dowry was done.

12. Gautam (PW4) is brother of the deceased. He has stated that on

the date of incident, he was present in the house of her sister (the deceased) and after the incident, his father was also present at the time of inquest proceedings. He has not stated anything with regard to demand of dowry or cruelty.

13. Both Gulab (PW5) and Dukhwadas (PW6) have stated that the Appellant had made a demand of Rs.10,000/- and a motorcycle from the father of the deceased. On being called by Santram (PW2), father of the deceased, they had visited his house and inculcated the Appellant that giving of dowry is not in practice in their community. As per the statement of Gulab (PW5), at that time, the Appellant had annoyed and as per the statement of Dukhwadas (PW6), the Appellant had told that if the deceased is wanted to be maintained well, a sum of Rs.10,000/- and a motorcycle will have to be given otherwise he will beat the deceased. Thereafter, the Appellant returned.
14. Assistant Sub-Inspector S.K. Pradhan (PW8) is the witness who recorded morgue intimation (Ex.P5). During his cross-examination, this witness has admitted the fact that during morgue inquiry, he came to know that the deceased was in abnormal condition. He also admitted the fact that the letters allegedly written by the deceased were also shown to him. The letters allegedly written by the deceased were part of a diary marked as Ex.P14, which does not bear any signature.
15. Investigating Officer S.D.O. (P) P.K. Singh (PW10) has stated that he recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure. Sub-Inspector R.M. Tiwari (PW11) is

the witness who recorded First Information Report (Ex.P13) on the basis of morgue inquiry.

16. One witness, namely, Chintaram has been examined by the defence as DW1. He has only stated that the deceased was not living in normal condition. She used to keep her hair spread and used to throw away utensils of the house.
17. 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 **(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'."

18. In 2017 LawSuit (Utt) 1198 (Nain Singh v. State of Uttarakhand), a judgment of the Supreme Court has been referred to as under:

"19. Their Lordships of Hon'ble Supreme Court in the case of *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 has observed as under:

"7. The primary ingredient to attract the offence under Section 304B is that the death of a woman must be a "dowry death". "Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"2. Definition of "dowry".—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I.—(***)

Explanation II.—The expression “valuable security” has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860).”

8. A perusal of this Section shows that this definition can be broken into six distinct parts:

(1) Dowry must first consist of any property or valuable security — the word “any” is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression “in connection with” would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean “in relation with” or “relating to”.

(9) The ingredients of the offence under Section 304B have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in

connection with the demand for dowry.”

- 19.** In the light of above, I shall examine as to whether the basic ingredients to establish the provisions of Section 304B of the Indian Penal Code have been proved by the prosecution or not. The first ingredient under Section 304B of the Indian Penal Code is that the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal. In order to prove this ingredient, the prosecution has examined Dr. Pramod Tiwari (PW7), who had conducted post mortem examination on the dead body of the deceased and has opined that the cause of death was asphyxia and the mode of death was suicidal. Therefore, there is no doubt that the first essential ingredient of Section 304B of the Indian Penal Code is present in the instant case that the deceased died under unnatural circumstances as she died by committing suicide by hanging herself.
- 20.** There is no dispute regarding existence of second essential ingredient of Section 304B of the Indian Penal Code. The deceased died within 7 years of her marriage. All the prosecution witnesses have throughout remained cogent and consistent with regard to the fact that the deceased died after 14 months of her marriage which means within 7 years of her marriage. Thus, second ingredient of dowry death is also present in the instant case.
- 21.** Now, the question is whether third ingredient of Section 304B of the Indian Penal Code relating to cruelty and harassment by the husband/Appellant in connection with dowry demand and

harassment of the deceased soon before her death is present in this case or not.

- 22.** A minute scrutiny of the evidence available on record reveals that both Santram (PW2), father of the deceased and Khednibai (PW3), mother of the deceased have categorically stated that before the death of the deceased, she was pregnant and had visited their house and at that time, she had told that the Appellant used to make demand for Rs.10,000/- and a motorcycle and he used to harass her therefor. Both these witnesses have further stated that in their presence itself, the Appellant had slapped the deceased once. Both the witnesses have also stated that after giving birth to a child, the deceased had stayed at their house for about 15 days. At that time, 15 days prior to her death, the Appellant had visited their house and had demanded for Rs.10,000/- and a motorcycle. At that time, he had threatened that on not being fulfilled his demand, he will kill the deceased or will expel her out after beating. On this, villagers were called. On being inculcated by the villagers, the Appellant did not agree and returned after quarreling. Both the witnesses have remained firm during their cross-examination. Their above statement is duly corroborated by independent witnesses Gulab (PW5) and Dukhwadas (PW6). Both the independent witnesses have categorically stated that on being called by Santram (PW2), father of the deceased, they had visited his house. In their presence, the Appellant had made demand for Rs.10,000/- and a motorcycle from Santram (PW2) and on their being inculcated, the Appellant did not agree and getting angry he returned. Dukhwadas (PW6) has further stated that at that time, on being inculcated by him, the Appellant did not agree and told

that if the deceased is wanted to be happy, Rs.10,000/- and a motorcycle will be required to be given otherwise he will beat her and expel her out. The above statements of Gulab (PW5) and Dukhwadas (PW6) have not been rebutted in any manner during their cross-examination by the defence. It was the argument on behalf of the Appellant that the mental condition of the deceased was not sound. She was having suspicion of witchcraft on her and due to which she had committed suicide and all these are supported by the letters (Ex.P14). Those letters (Ex.P14) are contents of a diary allegedly written by the deceased, but there is nothing on record on the basis of which it could be considered that the letters are in the handwriting of the deceased. The said letters also do not contain any signature. Gautam (PW4), brother of the deceased has categorically denied the suggestion that the letters are in the handwriting of the deceased. Apart from this, Chintaram (DW1) has stated that the deceased did not appear to him in a normal condition, she used to keep her hair spread and also used to throw away utensils of the house. But, all these are not reliable because from the evidence on record, it is clear that during the period of pregnancy of the deceased, she was being treated by Dr. Asha Mishra. Had the mental condition of the deceased been not sound, the defence would have examined Dr. Asha Mishra in this context or would have submitted a medical certificate to such extent. But, no such step was taken by the defence.

- 23.** From the above discussion, it is clear that the allegation of demand for dowry and harassment to the deceased in connection with the demand for dowry soon before her death is also established. Therefore, on the basis of the evidence on record, in my

considered opinion, the Trial Court has rightly convicted the Appellant. The sentence imposed upon him is also just and proper and does not warrant any interference.

24. Consequently, the appeal is dismissed. The impugned judgment of conviction and sentence is affirmed.
25. The Appellant is reported to be on bail. He shall immediately surrender before the Trial Court or shall be taken into custody forthwith for undergoing the remaining part of his sentence, if any.
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