

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1128 of 2001

Judgment Reserved on : 17.1.2018

Judgment Delivered on : 16.4.2018

1. Chhabilal, son of Venudhar Patel, aged 30 years – **His appeal is abated vide order dated 17.1.2018**
2. Smt. Lekha alias Rekha, wife of Ganeshram, aged 35 years,
Both residents of Village Navagaon, P.S. Tumgaon, District Mahasamund, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through P.S. Tumgaon, District Mahasamund

--- Respondent

For Appellant No.2	:	Shri Malay Bhaduri, Advocate
For Respondent/State	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 5.11.2001 passed in Sessions Trial No.279 of 1997 by the First Additional Sessions Judge, Mahasamund convicting and sentencing each of the accused/Appellants as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A/34 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.500/- with default stipulation
Under Section 304B/34 of the Indian Penal Code	Rigorous Imprisonment for 7 years

2. Appellant No.1, Chhabilal died during pendency of this appeal, therefore, his appeal has been abated vide order dated 17.1.2018.

3. Facts of the case, in brief, are that marriage between Savitribai (the deceased) and Appellant No.1, Chhabilal was solemnised in the year 1995. At the time of marriage, motorcycle, television, fridge, gold were demanded. In place of motorcycle, cash was given. Fridge and television were not given. After the marriage, making demand for television and fridge, Appellant No.1/husband and Appellant No.2/jethani of Savitribai were harassing Savitribai. On 27.2.1996, Ganeshram, brother of Appellant No.1 informed to Police Station Nawagaon that Savitribai had consumed caustic soda and she had been admitted in a hospital at Jagdishpur. This information was recorded in Rojnamcha Sanha (Ex.P7). On getting intimation, Vashishth (PW6), father of Savitribai and Bharatlal (PW9), brother of Vashishth reached Jagdishpur hospital where Savitribai told them that she was being harassed for demand of dowry at the in-laws' house and both of the Appellants forcefully fed her caustic soda. Vashishth (PW6) kept on getting Savitribai treated. On 27.3.1996, Bharatlal (PW9), uncle of Savitribai submitted a written complaint (Ex.P2) in a social panchayat, which was seized vide Ex.P1. Thereafter, the matter was reported by Vashishth (PW6) vide Dehati Nalishi (Ex.P3) on 24.5.1996. A case under Section 498A of the Indian Penal Code was registered against the Appellants in Police Station Tumgaon vide First Information Report (Ex.P11) on 25.5.1996. Later on, during treatment, on 17.9.1996, Savitribai died at her maternal house. Jagdish Patel (PW10), another uncle of Savitribai lodged intimation (Ex.P6) of death of Savitribai. On the basis of above, First Information Report (Ex.P12) was registered against the Appellants for offence punishable under Section 304B of the Indian Penal Code in Police Station Tumgaon on 25.9.1996. Inquest

(Ex.P5) was prepared. Post mortem examination on the dead body was conducted by Dr. A.K.S. Ratre (PW23). He gave his report (Ex.P14) in which he opined that the cause of death was hunger. He further opined that mode of death could not be ascertained. On completion of the investigation, a charge-sheet was filed against the accused/Appellants for offence punishable under Section 304B of the Indian Penal Code. Charges were framed against them under Section 498A of the IPC, in the alternative under Section 498A/34 of the IPC and under Section 304B of the IPC, in the alternative under Section 304B/34 of the IPC.

4. To rope in the accused/Appellants, the prosecution examined as many as 24 witnesses. Statements of the accused/Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them, pleaded innocence and false implication. No witness has been examined in their defence.
5. The Trial Court convicted and sentenced the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for Appellant No.2 argued that there is nothing on record to show that Appellant No.2 made any demand for dowry or for dowry she ever harassed deceased Savitribai. It was further argued that though Vashishth (PW6), father of the deceased, Bharatlal (PW9), uncle of the deceased, Jagdish Patel (PW10), another uncle of the deceased, Jaivanlal (PW7), another uncle of the deceased and Dholakunwar (PW8), mother of the

deceased have stated in their Court statements that the Appellants had fed the deceased caustic soda and this information was given to these witnesses in Jagdishpur Hospital by the deceased yet the same was not informed by these witnesses to the police. The application (Ex.P2), which was submitted by Bharatlal (PW9) for calling a social meeting also does not state about feeding of caustic soda to the deceased by the Appellants. In the social meeting, this fact was not disclosed. In the said meeting, separation of Appellant No.1/husband and the deceased was settled and for the first time, fact of feeding of caustic soda to the deceased was disclosed in the Dehati Nalishi (Ex.P3) which was recorded on 24.5.1996. No dying declaration of the deceased was recorded by the prosecution. Thus, the statements of the above witnesses are not reliable. The deceased was subjected to cruelty 'soon before her death' is also not established by the prosecution. Thus, no case is made out against Appellant No.2.

7. On the contrary, Learned Counsel appearing for the State, supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the record with utmost circumspection.
9. There is no dispute in this case that the marriage between Savitribai (the deceased) and Appellant No.1 was solemnised in the year 1995. There is no dispute that death of the deceased occurred on 17.9.1996. Sudama Prasad (PW1), Madnabai (PW2), Bhekhilal (PW13), Maniram (PW16), who are residents of Village Nawagaon, where the Appellants were also residing and Dhansai (PW11), who is a resident of Village Achhola have stated that on

the date of incident, caustic soda was consumed by the deceased and, therefore, she was taken to the hospital.

10. The deceased was firstly examined by Dr. O.P. Dubey (PW18) in Community Health Centre at Mahasamund on 25.2.1996. He has stated that on 25.2.1996, due to intensive gastritis, the deceased was admitted in the Community Health Centre and she was discharged on 26.2.1996.
11. The deceased was further examined and treated by Dr. Tushar Kanti Nayak (PW14). As per his statement, Savitribai was brought by her relatives to Seva Bhawan Hospital, Jagdishpur on 25.2.1996. On examination of Savitribai, it was found that there was excessive gastritis and she was a patient of bronconeumonitis. She was admitted in the hospital and after treatment she was discharged from the hospital on 7.3.1996. It was a suspected case of consumption of caustic soda. He has further stated that the deceased was again admitted in the hospital due to her complaint of vomiting on 11.3.1996 and she was thereafter referred for treatment to a better hospital on 31.3.1996. In paragraph 9, he has stated that the relatives, who had accompanied the deceased in the hospital, had told him that the deceased herself had consumed caustic soda in the morning.
12. After the death of Savitribai, post mortem examination on her dead body was conducted by Dr. A.K.S. Ratre (PW23) on 18.9.1996. In internal examination, he found that heart of the deceased was shrunk, food-pipe was also shrunk to more than normal size and its diameter was 1 c.m. whereas normal size is 2-3 cms. He opined that cause of death was hunger. His report to query made

regarding the post mortem report is Ex.P15. He also opined that status of consumption of caustic soda in the intestine of the deceased could be of the period of 4-8 weeks. He has stated that no definite opinion could be given regarding nature of death of the deceased.

13. From the above, it is clear that due to consumption of caustic soda first, Savitribai was taken to Community Health Centre, Mahasamund on 25.2.1996. Later on, she was admitted and treated at Jagdishpur Hospital, first from 25.2.1996 to 7.3.1996 and later on from 11.3.1996 to 31.3.1996. Her death occurred at her paternal house on 17.9.1996. As per the post mortem examination report (Ex.P14) and statement of Dr. A.K.S. Ratre (PW23), the deceased died due to hunger. As per query report (Ex.P15), the status of intestine of the deceased was the outcome of consumption of caustic soda. Thus, her death was not natural, but was an unnatural death.

14. In **AIR 2016 SC 5313 (Bajinath v. State of Madhya Pradesh)**, the Supreme Court has observed thus:

“27. The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304B and 498A of the Code, the provisions for reference are extracted hereunder:

“304B. 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.

498A. Husband or relative of husband of a woman subjecting her to 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 purpose 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.”

While dealing with the case of dowry death, it was further observed by the Supreme Court as under:

“28. Whereas in the offence of dowry death defined by Section 304B 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 relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section expositis “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 to any person related to her to meet such demand.

29. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

30. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry to reiterate is the gravamen o the two offences.

31. Section 113B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“113B. 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 has 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 purpose of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).”

32. Noticeably this presumption as well is founded on the proof on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death.

Such a proof is thus the legislatively mandated pre-requisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

33. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

34. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss-over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

35. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in *Shindo alias Sawinder Kaur and another v. State of*

Punjab – (2011) 11 SCC 517 : (2011 AIR SCW 6556) and echoed in Rajeev Kumar v. State of Haryana – (2013) 16 SCC 640 : (AIR 2014 SC 227). In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao – (2003) 1 SCC 217 : (AIR 2003 SC 11) to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.

15. In the light of above, now, I shall examine the evidence available on record in the instant case.
16. Maniram (PW16), who was servant of the Appellants at the relevant point of time, has stated that he was watching television. When Savitribai cried, he went to her. He saw that blood was oozing out of her mouth. Appellant No.1 had already gone out of the village 1 day before and Appellant No.2 was present at the house. He went out of the house and called the villagers. In cross-examination, he has stated that relationship between the deceased and the Appellants was cordial.
17. Sudama Prasad (PW1) has stated that on receiving information from Maniram (PW16), he went to the house of Appellant No.1, where Appellant No.1 was not present and wife (the deceased) of Appellant No.1 was vomiting frequently. He has also stated that he had never seen any quarrel between the deceased and the Appellants.

- 18.** Madnabai (PW2), a neighbour of the Appellants has stated that Appellant No.2 had come to her house and told her that the deceased was vomiting. She had visited the house of the Appellants and seen that the deceased was vomiting.
- 19.** Dhansai (PW11) has stated that earlier he was engaged in medical profession as a private practitioner. On the information received from Maniram (PW16), he went to the house of Appellant No.1, where the deceased was vomiting. On being asked, what had she consumed, she told him that she had consumed soda. In cross-examination, he has categorically stated that the deceased herself had consumed soda.
- 20.** Bhekhilal (PW13), another neighbour of the Appellants has stated that on the information received from Shyamkumar that the deceased had consumed caustic soda and she had been taken to Mahasamund, he went to the paternal house of the deceased and gave information about the same.
- 21.** Vashishth (PW6), father of the deceased has stated that at the time of marriage of the deceased, he had given fridge, vehicle and cash. He has further stated that 1 month prior to the death of the deceased, she had told him that for fridge, vehicle and cash, her husband (Appellant No.1) was harassing her. He has further stated that once the Appellants had ousted her from their house in the night. He has further stated that the Appellants had forcefully fed caustic soda to the deceased. This fact was told to him by his brother Bharatlal (PW9). He has further stated that thereafter Trilochan and one other person of Village Nawagaon had come to his house and informed him that the Appellants had fed caustic

soda to the deceased. On receiving the said information, he went to Village Nawagaon. At that time, Savitribai was taken to Mahasamund hospital. In the night, Savitribai was brought back to Village Nawagaon. He has further stated that thereafter he took the deceased to hospital at Jagdishpur. For about 1 month, treatment of the deceased continued in that hospital. Thereafter, the deceased remained admitted in the hospital at Raipur. Thereafter, he brought her back to his house. 7-8 days thereafter, the deceased died. In paragraph 12, in cross-examination, he has admitted that after the marriage, the deceased lived happily in her matrimonial house for about 1 year and he also used to visit her at her matrimonial house. In paragraphs 26 and 27, he has further stated that after the incident of consumption of caustic soda, the deceased was living at his house (her paternal house). At that time, the Appellants had called a social meeting in which it was decided that treatment of the deceased shall be got done by him (this witness) keeping her at his house and separation between the deceased and her husband (Appellant No.1) will take place.

- 22.** Dholakunwar (PW8), mother of deceased Savitribai has stated that after the marriage of Savitribai, she (Savitribai) used to visit her maternal house. During those visits, she had told her that her husband used to make demand for television and fridge. She has further stated that the husband of Savitribai had visited her house once only and at that time he had not made demand for anything. She has further stated that when she had gone to see Savitribai at the hospital, at that time, Savitribai had told her that Appellant No.2 had caught her and Appellant No.1 had fed her caustic soda. She has further stated that till 6 months thereafter, Savitribai was alive.

In paragraph 13, she has admitted that after this incident, a social meeting had taken place about *Chhorchhutti* (separation) in which it was settled that separation between Appellant No.1/husband and his wife Savitribai (deceased) will take place on the husband's giving Rs.40,000/- cash and 10 *Tola* gold to wife Savitribai. She has further admitted that Appellant No.1 neither gave cash nor gold. On this, they made the report.

23. Jaivanlal (PW7), uncle of the deceased has also stated that on the information received from the persons came from Village Nawagaon, they went to Village Nawagaon, but Savitribai was not there. She had been taken to Mahasamund hospital. He has further stated that after 2 days, he went to Jagdishpur hospital to see Savitribai, where she told him that she was fed caustic soda by Appellant No.1/husband and during the feeding of caustic soda, Appellant No.2 had caught her. But, this fact is not mentioned in his case diary statement (Ex.D3). He has further stated that after 1 year of the marriage, Savitribai had visited his house and at that time, she had told him that her husband and his family members were making demand for television, fridge and cash. He has admitted that Savitribai was maintained well for about 1 year after the marriage. During that period, she never made any complaint in this regard.

24. Bharatlal (PW9), another uncle of deceased Savitribai has stated that he was told by Savitribai at Jagdishpur hospital that the Appellants had forcibly fed her caustic soda. He has further stated that Savitribai had also told him in the hospital that Appellant No.1/husband was making demand for television and fridge in dowry. He has admitted that Savitribai was maintained well till 1

year after her marriage and she had not made any complaint during that period.

- 25.** Jagdish Patel (PW10), another uncle of the deceased, who lodged morgue intimation (Ex.P6), has also stated that in Jagdishpur hospital, Savitribai had told him that the Appellants were harassing her for dowry. They had ousted her from their house. Next day, when she returned to their house, they fed her caustic soda. In paragraph 12, he has admitted that the parents of Savitribai had never made him any complaint regarding harassment of Savitribai nor had they informed him that Savitribai was being harassed by the Appellants for dowry.
- 26.** Donger Singh (PW19) has stated that on the day of incident, he had visited the house of the Appellants and seen that Savitribai was vomiting. She had told him that she had consumed caustic soda by mistake.
- 27.** Assistant Sub-Inspector T.R.Sahu (PW20) is the witness who partly investigated into the offence in question. He has stated that he had recorded statements of some witnesses under Section 161 of the Code of Criminal Procedure and seized a letter (Ex.P2) vide Ex.P1. He has admitted that the letter (Ex.P2), which was written by Bharatlal (PW9) for community meeting, does not state about consumption of caustic soda by the deceased.
- 28.** P.N. Shukla (PW21), the then S.D.O. (P), Mahasamund further investigated the offence in question and recorded statements of some witnesses under Section 161 of the Code of Criminal Procedure. Sub-Inspector Narendra Banchhor (PW22) has stated that he had registered First Information Report (Ex.P12) and

morgue intimation (Ex.P13). Inspector Dinesh Sharma (PW24) recorded morgue intimation (Ex.P6) and prepared inquest (Ex.P5). He also prepared spot-map (Ex.P17), recorded statements of some witnesses under Section 161 of the Code of Criminal Procedure.

- 29.** From minute examination of the above evidence, it is clear that though Vashishth (PW6), father of the deceased, Jaivanlal (PW7), uncle of the deceased, Dholakunwar (PW8), mother of the deceased, Bharatlal (PW9), another uncle of the deceased, Jagdish Patel (PW10), another uncle of the deceased have stated that in Jagdishpur hospital, Savitribai had told them that Appellant No.2 had caught her and Appellant No.1 had fed her caustic soda yet this fact is not mentioned in Ex.P2, which is the letter dated 27.3.1996 written by Bharatlal (PW9) addressing to the President of the Community. When in Jagdishpur hospital itself, they had come to know about the fact of feeding of caustic soda by the Appellants to the deceased, why this fact was not mentioned in Ex.P2, is not explained by Bharatlal (PW9). Dehati Nalishi (Ex.P3) was lodged on 24.5.1996, in which, for the first time, this fact was mentioned. In spite of that, no dying declaration of the deceased has been recorded by the prosecution. When this fact came to the knowledge of the police and the deceased was staying at her paternal house, why no effort was made by the prosecution to record her dying declaration, is not explained by the prosecution. From the statements of Donger Singh (PW19) and Maniram (PW16), it is also clear that at the time when Savitribai had consumed caustic soda, Appellant No.1 was not present at home. The deceased had told Donger Singh (PW19) about her

consumption of caustic soda by mistake. From the statement of Dr. Tushar Kanti Nayak (PW14), who examined the deceased on 25.2.1996 itself, it is also clear that when the deceased was brought to the hospital for admission and treatment, at that time, her relatives had told him that the deceased herself had consumed caustic soda in the morning. Dhansai (PW11), who was a private medical practitioner, has stated that on the information being received from Maniram (PW16), when he went to the house of the Appellants, at that time, Savitribai had admitted before him that she herself had consumed caustic soda.

30. From the above discussion, it seems that the deceased herself had consumed caustic soda. Appellant No.1 forcefully fed her caustic soda and during that period Appellant No.2 had caught her, this fact is not reliable because when this fact was told by her to her parents in Jagdishpur hospital, this matter was not reported by them to the police. The letter (Ex.P2) written by Bharatlal (PW9) also does not state about the said fact of consumption of caustic soda. After the community meeting, as decided by the community, when the Appellants did not give cash and gold, then this fact was, for the first time, mentioned in the Dehati Nalishi (Ex.P3), which appears to be an after-thought.

31. From the above evidence on record, it is also clear that after the marriage, the deceased remained happy for about 1 year. Though some witnesses have stated that after 1 year of the marriage, the deceased was being harassed for demand of television, fridge yet this allegation is only against Appellant No.1/husband. No evidence that Appellant No.2 ever harassed the deceased for demand of dowry is available on record. From the statement of

Vashishth (PW6), father of the deceased, it is also clear that the deceased was being harassed by her husband. This fact came to his knowledge from his brother Bharatlal (PW9). This shows that the deceased herself never made him any complaint in this regard. Dholakunwar (PW8), mother of the deceased has also stated that the deceased had told her 1 year after her marriage that the husband was making demand for television and fridge. But, she has admitted that Appellant No.1 had visited her house once, but he did not make any demand from her. Bharatlal (PW9), uncle of the deceased has also admitted that the deceased remained happy for about 1 year after the marriage. Thereafter, the deceased had complained him only against her husband/Appellant No.1 that he was making demand for television and fridge. Evidence regarding "soon before her death" the deceased was subjected to cruelty or harassment for demand of dowry is also not available on record. Therefore, the offence alleged against Appellant No.2 is not proved beyond reasonable doubt.

32. In the premises of aforesaid, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. Appellant No.2 is acquitted of the charges framed against her.
33. 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