

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.226 of 2014**

Jagmohan Kaushik S/o Ujiyar Kaushik, aged about 40 years, R/o village Dagori, Police Station, Bilha, Civil and Revenue District Bilaspur (CG).

---- Appellant

Versus

State of Chhattisgarh, through Station House Officer, Police Station, Bilha, District Bilaspur (CG).

---- Respondent

For Appellant	:	Ms. Smriti Shrivastava, Advocate.
For respondent/State	:	Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

24.03.2018

1. The appellant stands convicted for the offence punishable under Section 304-B IPC and have been sentenced to undergo RI for 10 years with fine of Rs.2000/- with default stipulation, vide judgment dated 30.01.2014 passed by the IInd Additional Judge to the Ist Additional Sessions Judge, Bilaspur, in Sessions Trial No.87 of 2013.
2. The case of the prosecution is that, the present appellant used to subject the deceased to ill treatment, torture and harassment from the date of marriage of the appellant with the deceased Shiv Kumari @ Saraswati Bai which took place in April, 2007. It is said that on the intervening night of 21-22.02.2013, the deceased died of burn injuries. Postmortem, Ex. P/9 was conducted by Dr. Avinash Thawait, PW-17 and Dr. M.L. Verma. The cause of death as per postmortem report is asphyxia due to burn injuries. The appellant was immediately arrested

on 22.02.2013 and since then he is in jail. Immediately after the merger intimation was given to the police station Bilha by the present appellant himself, an FIR, Ex. P/12, was lodged on 11.03.2013 where a case against the appellant for the offence punishable under Section 304-B IPC was registered. The matter was put to trial before the 1st Additional Sessions Judge, Bilaspur, vide Sessions Trial No.87/2013.

3. There were 19 witnesses examined on behalf of the prosecution side whereas, no witness was examined on behalf of defence. The learned 1st Additional Sessions Judge, after completion of trial vide the impugned judgment, finding the appellant to be guilty of having committed the offence, convicted and sentenced him as mentioned in the preceding paragraph of this judgment, leading to filing of present appeal.
4. Learned counsel for the appellant assailing the impugned judgment of conviction submits that the trial court has not been able to fully establish the case. The entire conviction is based on the circumstantial evidence and no specific evidence whatsoever has been produced by the prosecution with which the judgment of conviction can be sustained. There was no any witness who has cogently proved the prosecution case with which it can be stated that the present appellant used to subject the deceased to ill treatment, torture and harassment on demand of dowry. All the allegations are general and omnibus in nature which is usually made by the family members of the deceased in case of 304-B IPC and that no specific allegation of any specific date has been mentioned. Neither is there any proof of the averment that they

made in respect of providing any financial help or providing any gift like Cycle as dowry to the present appellant has been brought on record. Thus, the statement of prosecution witnesses are all doubtful. For all these reasons, the counsel for the appellant prays for setting aside the judgment of conviction and for acquitting the appellant of the charges under Section 304-B IPC.

5. The State counsel opposing the appeal submits that the prosecution in the instant case has produced sufficient evidence before the trial court to establish the offence. He submits that there is statement of PW-12, a neighbor of the present appellant, whose statement under Section 161 as also under Section 164 CrPC was recorded wherein he has stated that the present appellant had a dispute/altercation with the deceased wife and that he had gone to the house of appellant and have persuaded him not to fight with the wife. He was also informed by the wife of the appellant that the appellant had assaulted her and she also showed scar marks on the face as a result of the assault.
6. It was further contended by the State that the statement of PW-12 stands further corroborated from the statements of PW-1,3,4 and 8 i.e. two brother, sister in law and the sister of the deceased who have all stated before the court that the appellant used to ill treat and torture the deceased on demand of dowry frequently and also used to harass and assault her which has led to the commission of offence. Thus prayed for rejection of the appeal.
7. Having heard the rival contentions put forth on either side and on perusal of records, what is clearly reflected is that indisputably the

deceased appears to have died because of committing suicide by setting herself ablaze in the intervening night of 21-22.02.2013. Dr. Avinash Thawait, PW-17 has clearly deposed that the deceased died because of asphyxia due to burn injuries. This by itself prima facie establishes the fact that the prosecution has not been able to establish whether the death of deceased was homicidal or it was a suicide. From the evidence of PW-12, it reflects that he had rushed to the house of the appellant in the intervening night when the appellant's two daughter had asked him for help pursuant to deceased setting ablaze on the courtyard when he saw the deceased in a burning condition. From his deposition it does not reflect that it was the present appellant who had set the deceased ablaze.

8. Moreover, if we look into the evidence of PW-12, what reflects is that PW-12 had also gone to the house of the appellant on the afternoon of 21.02.2013 when there was a fight/altercation between the appellant and his deceased wife. It was informed to PW-12 by the wife of the appellant that the present appellant is fighting with her for her not going to the field for work and also doubting paternity of the two child that she has given birth after marriage with the appellant. This statement of the wife and her committing suicide on the same night forces this court to draw an inference that the deceased perhaps has committed suicide because of the fight that took place on the previous day with the appellant where he was fighting with the wife for not going to the field to work and also doubting the paternity of two children. Thus, the elements of harassing, cruelty on demand of dowry is not reflected in the previous

days fight.

9. Though the incident is of 22.02.2013, Merg was lodged to the police station on the same day yet the statement of family members of the deceased for the first time was recorded on 12.03.2013 i.e. after 20 days from the date of incident. What cannot be brushed aside is the fact that none of the family members whose statements for the first time was recorded on 12.03.2013 have doubted the present appellant having either killed the deceased or that the incident had occurred because of ill treatment or cruelty on account of demand of dowry. To add to this, is the fact that there is no complaint lodged whatsoever in between the 6 and ½ years of marriage life between the deceased and the present appellant anywhere either to the parents or family member or to village panchayat. Last but not the least, even the allegations which have been levelled by the family members also are all omnibus and general statement of the deceased complaining against the appellant of ill treatment, torture and harassment whenever she used to visit her matrimonial home. No specific date or any specific evidence has been given by the witness in respect of any dispute pertaining to demand of dowry.
10. Given the aforesaid facts and circumstances of the case, what prima facie reflects is that the cause of death of the deceased appears to be suicidal. There is no element of evidence to show that it was homicidal. The fight which the appellant had with the wife on the previous day of the incident i.e. on 21.02.2013 was in respect of the issue not related to dowry or demand of dowry. The family members also immediately after

the incident have not lodged any complaint against the appellant. The first statement of harassment as also demand of dowry was made when the statement under Section 161 CrPC was lodged.

11. All these facts forces this court to reach to the conclusion that the prosecution has not been able to bring forth before the trial court a strong case for establishing the offence under Section 304-B IPC beyond all reasonable doubts i.e. specific evidence in respect of ill treatment, torture, harassment and cruelty.
12. In the result, the appeal succeeds and is, accordingly, allowed. The impugned judgment is hereby set aside and the appellant is acquitted of the charge under Section 304-B of IPC. The appellant is in jail. He be released forthwith, if not required in any other case.

Sd/-
(P.Sam Koshy)
Judge