

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 613 of 2013

1. Rajesh S/o Panchram Suryavanshi Aged About 25 Years
2. Panchram S/o Asharam Suryavanshi Aged About 53 Years
3. Than Singh @ Gokul S/o Panchram Suryavanshi Aged About 26 Years
4. Reshambai W/o Panchram Suryavanshi Aged About 45 Years

All R/o Bhurkunda, Chouki Pachpedhi, Police Station Masturi , District Bilaspur C.G.

--- Appellants

Versus

State of Chhattisgarh Through – Police Station Masturi, Chouki Pachpedhi , District Bilaspur Chhattisgarh

--- Respondent

For the appellant	:	Ms. Meena Shastri, Advocate.
For the Respondent	:	Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

C A V Order

(Reserved on 13.04.2018)

(Delivered on 15.05.2018)

1. This appeal is against the judgment of conviction and order of sentence dated 26.06.2013, passed by the Sixth Additional Sessions Judge, Bilaspur in Sessions Trial No.147 of 2012 whereby the appellants have been convicted u/s 304-B read with section 34 of IPC and sentence to undergo R.I. for 10 years (each).
2. The brief facts of the case are that a complaint was made by Surajlal (P.W.5), the father of deceased on 21.06.2012 at Police Chowki Pachpedi Police Station Masturi that her daughter Sarita @ Pinki was married to Rajesh (A-1) two &

half years back and during her marriage, the father has given cash of Rs.40,000/-, T.V., Cooler, utensils cycle etc. Subsequent to the marriage, the daughter was being tortured for demand of dowry by the husband Rajesh (A-1), father in law Panch Ram (A-2), Than Singh @ Gokul, the brother in law (A-3) and Reshambai (A-4) the mother in Law. It is alleged that the accused used to comment that she is unable to bear the child and alleged to be Banjh (unfertile) and demanded motorcycle and an amount of Rs.50,000/- was demanded to construct the house. Having not been fulfilled the demand, she was subjected to torture and assault. Initially the deceased disclosed to her mother, brother, aunt (Mousi) and other relatives but nothing improved. Thereafter, a social meeting was convened at village Pachpedi. In the meeting though the accused accepted not to further torture the deceased, but the cruelty continued in the name of dowry and eventually on 19.06.2012 it was found that lady had died of hanging. The report was made by Ex.P-4 and after investigation, the appellants were arrested and the charge sheet was filed u/s 304-B read with section 34 of IPC.

3. The learned Court below framed charges u/s 304-B read with section 34 IPC and in the alternative, the charges u/s 302 read with section 34 of IPC was framed. During the course of trial the appellants abjured the guilt and claimed to be tried. The prosecution primarily relied on the statements of Surseni (P.W.1), the mother of deceased Pinki @ Sarita; Ku. Saraswati, the aunt (Mousi) P.W.2, Gotilal teacher in the village (P.W.4), Suraj, the father of deceased (P.W.5),

Timeshwar, the brother of deceased as P.W.6, the relative Surajlal as P.W.8 , Manoj Kumar UpSarpanch as P.W.9, Dr. S.K. Satpal (P.W.13), the Investigating Officer Jyoti Singh as P.W.15. The defence has examined Nirmal Kosley one of the neighbour as D.W.1 and Kanti Ram Kurre who is also a villager and neighbour as D.W.2.

4. The trial Court after evaluating the evidence has convicted and sentenced the appellants u/s 304-B and sentenced as aforementioned. Hence this appeal.
5. Learned counsel for the appellants would submit that though the conviction has been made u/s 304-B IPC but proximate live connection for commission of offence as to the demand of dowry has not been established by the prosecution. It is further stated that only because of the fact that the deceased died within 7 years of marriage, the presumption u/s 113-B of the Evidence Act cannot be drawn. It is further submitted that casual submissions have been made and the relative of the witnesses have not proved the fact that due to demand of dowry the deceased was subjected to cruelty so as to attract the provisions of section 304-B of IPC, it is contended that only on the presumption without any sufficient evidence, the conviction has been recorded, therefore, the same requires to be set aside and the appellants be acquitted of the charges.
6. Per contra, learned State Counsel opposes the arguments of appellants and supports the judgment of the trial Court which do not call for any interference by this Court.
7. Perused the records of the Court below. In the case, the deceased namely Pinki @ Sarita died of hanging. It is proved

by the postmortem report dated 19.06.2012 Ex.P-11 wherein the cause of death was shown to be asphyxia due to hanging. The postmortem report is further corroborated by Dr. S. K. Satpal (P.W.13). Therefore, the death is not in dispute that Pinki @ Sarita died on 19.06.2012 and as per the statement of the witnesses, she was married to Rajesh 2 & ½ years back.

8. The prosecution had examined one Surseni, the mother of the deceased. Narrating the relations she stated that Rajesh (A1) is the son-in-law, Panchram (A2) is father-in-law, Than Singh @ Gokul (A3) is the Jeth (brother-in-law) and Resham bai (A4) is the mother-in-law. This witness deposed that her daughter Pinki @ Sarita was married to Rajesh 2 & ½ years back from the date of incident. Thereafter, she went along with her husband to Silvas, Mumbai (MH), wherein Rajesh was working. Subsequently, after 2 - 3 months, they came back and came to the maternal home, thereafter again Rajesh came and she went along with Rajesh, the husband, to Silvas, Mumbai. Subsequently, it is stated that after 3 - 4 months, the complaint was made that the mother-in-law and father-in-law, husband and Jeth (brother-in-law) were creating problem as a demand of Rs.50,000/- was made to construct the house and motorcycle was also demanded. Thereafter, she stated that her daughter became pregnant and Rajesh left her daughter to her maternal home. After delivery, he took her back and again all the accused started torturing the daughter for demand of dowry, as such a Panchayat was called. In the cross-examination, she further stated that after the marriage, Rajesh, son-in-law took the

daughter to Silvas, Mumbai (MH). She further stated that no report was earlier made about such demand of dowry to the police. She further stated that for the first time she disclosed about the demand after death of her daughter. The witness further stated that 3 days before the incident, her daughter and son-in-law had come and at that time they were all well. She further stated that the daughter was staying with her husband at Silvas, Mumbai and at different intervals, she used to stay at in-laws place.

9. Saraswati (PW-2), who is the aunt of the deceased, had made the omnibus allegation that the accused had demanded money and the motorcycle from the deceased, as such she was subjected to cruelty. She also made the similar allegation that the demand of Rs.50,000/- and the motorcycle was made. In the cross-examination, witness Saraswati (PW-2) has stated that the marriage was performed without any dowry. She further stated that after 3 - 4 months of the marriage, the deceased came from Silvas Mumbai and thereafter they went to village Bhurkunda. She also stated that earlier no report was made about the demand of dowry.
10. Suraj, who is the father of the deceased is examined as PW-5, he has stated that after the marriage, the deceased and her husband Rajesh (A1) were living at Silvas, Mumbai. Thereafter, she came after 3 - 4 months and continued at intervals to come. This witness has made omnibus allegations that for construction of house Rs.50,000/- and a motorcycle was demanded by all the accused. He further stated that consequently, when her daughter came, she

complained that she was termed as *Baanjh*. The witness further stated that subsequently when she became pregnant she delivered a child and after she went to her matrimonial home and she was forced to leave the house by accused. Thereafter, his son-in-law Rajesh again came and attended a marriage at their place and stayed there for 3 days and again went back and thereafter news of death came. This witness has not supported the the entire prosecution story. With respect to Ex. P-3, which is an agreement, it is stated that the agreement purports that a social meeting was held and the accused accepted their guilt that they will not further demand Rs.50,000/- for construction of the house and motorcycle and will not treat the deceased with cruelty. He has refused to sign the same, though Ex. P-3 records name of the witness.

11. Further with regard to Ex. P-3, one Manoj Kumar (PW-9), who is a Sarpanch stated that before 15 days of the incident, Suraj (PW-5), father of the deceased had made a complaint that Rajesh was demanding money and vehicle. The witness further stated that the complaint was made that Rajesh has assaulted the deceased by Belt. Thereafter, the witness deposed that when he reached to the house of Goti Lal, thereafter Pinki @ Sarita, the deceased has stated that her husband has assaulted her by belt and demanded money and vehicle. Thereafter, Rajesh was made to understand to correct and in presence of all the elders Ex. P-3 was executed. Perusal of Ex. P-3 shows that Rajesh admitted the fact that he would not further torture his wife for money.
12. Suraj (PW-5), the father, had stated that her daughter had

disclosed that her husband did not like her, therefore, she remained unhappy. The witness further stated that the daughter was consoled and made to understand, thereafter, she joined her husband. The witness further stated that the disclosure of the fact of demand of dowry was made after the death happened.

13. Timeshwar (PW-6), who is the brother of the deceased, has made omnibus allegation that all the accused i.e. the husband, father-in-law, mother-in-law and brother-in-law, used to torture the deceased for demand of dowry. The witness though has stated that before the death she complained about the demand of dowry from all the accused, at the same time, she has stated that her husband Rajesh did not like her, upon which she was made to understand that if they live together then slow by slow with the passage of time her husband would start liking and with that understanding was forced to join her husband. The witness further stated that after delivery her sister could not make breast feeding to her child, as such she was very much disturbed.
14. Likewise, Suruj Lal (PW-8) had stated that it was disclosed by Suraj (PW-5), the father of the deceased, that the husband Rajesh used to beat the deceased for demand of dowry, for which a Panchayat was held, wherein Rajesh was only present. Panchayat agreement Ex. P-3 was proved by this witness also, wherein the presence of only Rajesh (A1) is established.
15. Manoj Kumar (PW-9) had stated that father of the deceased had disclosed to him that Rajesh (A1) has demanded money

and the vehicle and thereafter has assaulted the deceased by way of a belt. Thereafter, it is stated that when he went to the house of Goti Lal, wherein the deceased Pinki @ Sarita had disclosed to him that her husband Rajesh has assaulted her by way of a belt as was demanding money and vehicle. After 15 - 20 days, Pinki @ Sarita died. This witness has also proved Ex. P-3 the agreement prepared in social meeting and has signed it from B to B.

16. Section 304 IPC deals with dowry death and section 113-B of the Evidence act deals with presumption as to dowry death. For the sake of brevity, Section 304-B IPC as well as 113-B of the Evidence Act are reproduced herein below :

304-B. 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.

C. 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.

113-B. 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.

17. Further, Hon'ble Supreme Court in case of ***Gurudeep Singh v. State of Punjab & others AIR 2011 S.C. 3616*** with respect to commission of offence u/s 304-B held thus:

“Indisputably, in order to attract Section 304-B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased 'soon before her death'. There can not be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fixed period can be indicated therefor. It, however, must undergo the test known as 'proximity test.' What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim.”

18. Again, Hon'ble Supreme Court in case of ***Rajesh Bhatnagar Vs. State of Uttarakhand reported in (2012) 7 SCC 91*** held thus in paragraphs 15 & 16.

“15. Before we examine the merit or otherwise of this contention, it will be useful to state the basic ingredients of Section 304-B IPC. The requirement of Section 304-B is that the death of a woman be caused by burns, bodily injury or otherwise than in normal circumstances, within seven years of her marriage. Further, it should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or her husband's family or relatives and thirdly, that such harassment should be in relation to a demand for dowry. Once these three ingredients are satisfied, her death

shall be treated as a “dowry death” and once a “dowry death” occurs, such husband or relative shall be presumed to have caused her death. Thus, by fiction of law, the husband or relative would be presumed to have committed the offence of dowry death rendering them liable for punishment unless the presumption is rebutted. It is not only a presumption of law in relation to a death but also a deemed liability fastened upon the husband/relative by operation of law.

(Emphasis supplied)

“16. This Court, in ***Bansi Lal V. State of Haryana, (2011) 11 SCC 359*** while analysing the provisions of Section 304-B of the Act, held as under : (SCC pp. 366-67, paras 18)

18. In such a fact situation, the provisions of Section 113-B of the Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. The said provisions read as under:

“113-B. 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 had 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.’

(Emphasis supplied)”

19. Further more, in case of ***Kashmir Kaur and Another V. State of Punjab AIR 2013 SC 1039*** it has been held by Hon'ble the Supreme Court in Para 16 thus:

“16. From the above decisions the following principles can be culled out:

(a) To attract the provisions of Section 304-B, IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straight-jacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act.

(i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

(j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

(k) Section 304-B is an exception to the cardinal

principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304-B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B were not satisfied.

(m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence”.

20. Further, in case of ***Sher Singh @ Partapa v. State of Haryana***, reported in **(2015) 3 SCC 724**, the Supreme Court has held thus:

“16. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word ‘shown’ in Section 304B of the IPC as to, in fact, connote ‘prove’. In other words, it is for the prosecution to prove that a ‘dowry death’ has occurred, namely,

- (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,
- (ii) within seven years of a marriage,

- (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) in connection with any demand for dowry and
- (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt."

21. Supreme Court in the case of ***Baijnath & ors. Vs. State of Madhya Pradesh {(2017) 1 SCC 101}*** has held thus in para 32 :-

"32. This Court while often dwelling on the scope and purport of [Section 304B](#) of the Code and [Section 113-B](#) 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 304-B](#) as in *Shindo Vs. State of Punjab*¹ and echoed in *Rajeev Kumar Vs. State of Haryana*². In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under [Section 304-B](#) of the Code is that the accused must have subjected the woman to cruelty in connection with demand for

1(2011) 11 SCC 517

2(2013) 16 SCC 640

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 113-B](#) of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao Vs. Yadla Srinivasa Rao*³ to the effect that to attract the provision of [Section 304-B](#) 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”.

22. If the statements of the witnesses are analyzed in the light of the principles has has been laid down supra one thing emerges out that after the marriage, the deceased Pinki @ Sarita joined her husband and went to Mumbai and was residing with her husband. The statement of the witnesses namely; Surseni (PW-1) (mother), Ku. Saraswati (PW-2) (Aunt), Suraj (PW-5) (the father of the deceased), Timeshwar (PW-6) (brother of the deceased) would show that the main allegations of demand of dowry is attributed to the husband Rajesh (A1). Suruj Lal (PW-8) (the relative), the witness Manoj Kumar (PW-9) who was present when the agreement document Ex. P-3 was executed, would show that an agreement (Panchayatnama) was recorded in presence of the villagers and reading it with the statement of Suraj (PW-5), the father, Suruj Lal (PW-8), Up-Sarpanch Manoj Kumar (PW-9) would show that in meeting Rajesh (A1) was alone present and he admitted his guilt.
23. Manoj Kumar (PW-9), who is the independent witness and Suruj Lal (PW-8), who is one of the distant relative, they stated that it was Rajesh who used to assault his wife for

3(2003) 1 SCC 217

demand of money and the motorcycle, whereas omnibus allegations have been made against other co-accused namely Panchram (A2), who is the father-in-law, Than Singh @ Gokul (A3), who is the brother-in-law and Reshambai (A4), who is the mother-in-law.

24. The father, mother and aunt have stated that initially no report was made and the report of dowry was only made after the death occurred. One thing also creates a doubt about the presence of co-accused Panchram (A2), who is the father-in-law, Than Singh @ Gokul (A3), who is the brother-in-law and Reshambai (A4), who is the mother-in-law that all the witnesses have stated that after the marriage, the deceased went along with her husband Rajesh (A1) to Mumbai, where he was working and thereafter when she came back, she complained about the assault. The circumstances, therefore, point out that she was in the company of her husband i.e. Rajesh (A1). In the circumstances, it points out that soon before her death, the deceased was in the company of her husband Rajesh (A1) for maximum period of time. Therefore, analyzing the statement would show that the prosecution has failed to prove beyond reasonable doubt the cruelty or harassment to the deceased for or in connection with any demand of dowry by all the accused, soon before her death by all the accused and it is confined to only Rajesh (A1) and the omnibus allegations have been made against Panchram (A2), who is the father-in-law, Than Singh @ Gokul (A3), who is the brother-in-law and Reshambai (A4), who is the mother-in-law. The demand as sought to be projected shows from

circumstances that is confined that the deceased was in the company of her husband and as she went to Silvasa, Mumbai, immediately after the marriage, therefore, the demand of dowry coupled with the cruelty is primarily would be against Rajesh (A1). The document Ex. P-3, which is an agreement executed before the villagers also show that Rajesh was only present in such social meeting and he accepted his guilt, which is also proved by the prosecution witnesses.

25. After careful scrutiny of the entire evidence, I am of the opinion that the conviction made to Panchram (A2), Than Singh @ Gokul (A3) and Reshambai (A4), the prosecution was not able to prove the guilt under Section 304-B IPC beyond the reasonable doubt. Whereas, in respect of Rajesh (A1), the prosecution was able to establish the guilt and the offence committed by the husband.
26. Accordingly, the conviction imposed upon Panchram (A2), Than Singh @ Gokul (A3) and Reshambai (A4) under Section 304 B/34 IPC, is set aside. They are acquitted of the said charge. They be set at large forthwith unless required to be detained in any other case. The appeal in respect of these appellants is allowed.
27. Whereas, the conviction and sentence imposed upon Rajesh (A1) under Section 304 B IPC are maintained. The appeal in respect of this appellant is dismissed.
28. In a result, the appeal is allowed in part.

Sd/-

Goutam Bhaduri

Judge