

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Criminal Appeal No. 616 of 2013**

1. Gayaprasad Choubey @ Shiva, S/o. Pardeshi, Aged About 25 Years, Caste Suryawanshi.
 2. Pardeshi, S/o. Birju, Aged About 50 Years, Caste Suryawanshi.
 3. Bisahin Bai, W/o. Pardeshi, Aged About 45 Years, Caste Suryawanshi.
- All are R/o. Village Devri, P.S. Seepat, Civil & Revenue District Bilaspur, Chhattisgarh

---- Appellants

Versus

State Of Chhattisgarh, S/o Through Station House Officer, Police Station-Seepat, Civil & Revenue District Bilaspur, Chhattisgarh

---- Respondent

For Appellant : Mr. Vivek Kumar Pandey, Advocate

For State/Respondent : Mr. Anil Pillai, Dy. A.G.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****05.05.2018**

1. This appeal is against the judgment of conviction dated 09.05.2013 passed in Session Trial No.102/2012 by the Third Additional Sessions Judge, Bilaspur (C.G) whereby the appellants have been convicted under Section 304-B of Indian Penal Code and sentenced to undergo R.I. for 10 years.
2. As per the prosecution case, the deceased Smt. Aarti Suryawanshi was married to Gayaprasad (A-1) in the year 2008. During her marriage, the father of the deceased has given the Gift, T.V., Almirah, Cycle, Fan, Watch & Utensils etc. Subsequently, the appellants i.e. Gayaprasad, husband (A-1), Pardeshi, father-in-law (A-2) and Bisahin Bai, mother-in-law (A-3) started treating the deceased with cruelty for demand of dowry. Pursuant to such cruelty, once before the incident, she was forced to leave her house, thereafter, some social meeting was convened and deceased was

again taken back with the understanding that he will not be subjected to torture further anymore. However, the torture and cruelty continued for demand of dowry and eventually on 12.10.2011, the deceased suffered burn injury and succumbed to it on 13.10.2011. After the report was made, the investigation was carried out and after recording the statement the charge sheet under Section 304-B read with Section 34 was filed.

3. During the course of trial, the appellant/accused abjured their guilt and claimed to be tried. The prosecution on their behalf had examined as many as 18 witnesses and primarily relied on the statement of Laxminarayan (PW-2) the Father, Kushal Dongre (PW-3) the Brother-in-law, Jagmohan (PW-4) who was a person who attended the meeting which was held in the village, Mongra Bai (PW-7) Mother & Girija Bai (PW-9) Aunt. The learned Court below after evaluating the facts and evidence came to a finding that the prosecution was able to prove the offence committed under Section 304-B of Indian Penal Code and accordingly convicted the accused/appellants as aforesaid; hence this appeal.
4. Learned counsel for the appellant would submit that in this case the prosecution has failed to prove the fact that soon before the death, the deceased was subjected to cruelty for demand of dowry. The statement of the prosecution witness would show that the trivial allegations were made but that cannot be conclusively said that the cruelty was for the reason of demand of dowry. He submits that unless and until the prosecution is able to prove that the death occurred within seven years was preceded by cruelty for demand of dowry, the presumption under Section 113-B of the Indian Evidence Act cannot be drawn against the accused. He submits that there is no evidence against the appellant to convict, accordingly the order of the Court below is liable to be set aside.

5. Per contra, learned State counsel would submit that the cruelty in this case would show that it persisted till the deceased died. He further submits though the agreement which is on record has been proved but reading the agreement alongwith the statement of the witnesses would show that the deceased was subjected to cruelty for demand of dowry. In a result, she died an unnatural death within seven years of her marriage as death was in the year 2011 and the marriage took place in the year 2008. He submits that there is no plausible explanation has been offered by the accused appellant that there was no demand was made; therefore, the conviction is well merited, which do not call for any interference.
6. Perused the record and statement of the Court below. The father of the deceased Laxminarayan (PW-2) has deposed that her daughter Aarti was married on 18.05.2008 and during her marriage, he had given all the Gift according to his capacity valued at Rs.22,000/-. He has deposed that after two years of the marriage, the appellant has left her daughter to his village Uchbhatti and on enquiry it revealed that her daughter was forced to leave her house and was subjected to assault for demand of dowry. He stated that his daughter further stated that the demand of dowry was made of Rs.40,000/-. Thereafter, it is stated that he went to the in-laws house and had a talk with Pardeshi (A-2) father-in-law and requested to take back his daughter to which he agreed. Subsequently, from village Khaira, Ahilya Bai, Girija Bai, Kotwar namely Sadhram and one Derha Ram came and a meeting was held and in such social meeting, he stated that the appellants used to treat her daughter with cruelty and had forced her to leave the house for which he wanted a decision. Thereafter, an agreement was inscribed on 25.10.2010 which is marked as Ex.P-4. Reading of the agreement Ex.P-4 would show that Gayaprasad, husband of the deceased, gave an undertaking that he will not further torture his wife without any reason. The agreement would show that the entire admission

was made on behalf of the husband Gayaprasad (A-1), father-in-law Pardeshi (A-2) and mother-in-law Bisahin Bai (A-3). In this agreement, reference to the father-in-law and mother-in-law has not been made. In the cross-examination of this witness, he stated that before the incident, he has not made any report to the police that her daughter was subjected to torture for demand of dowry. The brother-in-law Kushal Dongre (PW-3) stated that her sister whenever used to visit during festival, she stated that all the appellants used to abuse her and assaulted and also used to torture in the name of dowry. So an omnibus allegations were made. The statement of PW-3 would further show that she stated that her sister remained in the house for 2-3 months, thereafter, a meeting was convened wherein the appellants admitted their guilt in the meeting and she was sent back. The reference of meeting i.e. Ex.P-4 is again made which points out only the name of husband and he appears to have admitted the guilt.

7. One individual witness Jagmohan (PW-4) stated that when the deceased Aarti went back to her maternal home at village Uchbhatti a meeting was convened wherein he was also present. It is deposed that in such meeting both the family members of the boy and girl were also present and in the meeting when the enquiry was made it revealed that the boy used to torture the girl whereby the allegation is confined to Gayaprasad @ Shiva (A-1) who is husband. He further stated the reason which is revealed in the meeting that the boy used to torture the girl for the fact that the deceased Aarti i.e. wife do not used to respect his mother and father and she refused to massage his mother. Further, the statement would show after the meeting the girl refused to go but thereafter she was consoled and after the agreement was written by Ex.P-4 she went back to her matrimonial home. In the agreement, the signature of this witness has also been proved. He further stated that earlier to that the husband

Gayaprasad also tried to commit suicide. The cross-examination of this witness would show that the entire allegation was confined to the husband Gayaprasad and it was settled and agreed that the husband Gayaprasad would not further torture her wife.

8. Therefore, the statement of PW-4 would show that when the girl left the house and meeting was held in the village, in such meeting, the husband primarily accepted his guilt and thereafter the girl went back to her matrimonial home. In the statement of PW-4 reference was made to Ex.P-4 wherein also the allegations are confined and accepted by the husband Gayaprasad. The mother PW-7 has deposed that after the daughter went to her matrimonial home, all the accused used to torture her and also assaulted. The mother has not deposed anything about the demand of dowry. PW-9 Girija Bai who is Aunt has deposed that the deceased told her that her husband Gayaprasad has beaten her by belt and had shown the injury marks. She further stated that Bisahin Bai also assaulted by way of Club and the injuries were also shown by her. She stated that the deceased had injury mark on her thigh, hand and other parts of the body which was seen by her. She stated that the father of Gayaprasad i.e. Pardeshi (A-2) had come to house of Ahilya Bai and told the deceased Aarti that she should not come back to their house as he do not want to see her face. Subsequently, the husband came and started abusing on the ground that who has given shelter to her wife and witness further stated that the husband also extended threat that he will not leave her wife alive. In the statement PW-9 had further stated that Gayaprasad, the husband, had taken back the wife the deceased Aarti thereafter when she visited her house the deceased stated that her husband has assaulted and beaten her and shows her injury marks. She further stated that when she wanted to confront her mother-in-law the deceased requested not to say anything as she would further be subjected to torture and assault. In

continuation it is stated that because of the dowry was not fulfilled as such she was subjected to torture.

9. The post mortem report in this case is marked as Ex.P-32 and the cause of death is shown as extreme burn and shock. Dr. Rahul Bhargav (PW-10) has proved the fact that the deceased was admitted in the burn unit on 12.10.2011 and proved the bed-head ticket as Ex.P-18. Subsequently, she succumbed to the injuries and died out of the burn injuries which is proved by Dr. Madhulika Singh (PW-6). Consequently, it may be inferred that the deceased Aarti died out of the burn injury on 12.10.2011 within seven years of her marriage of the year 2008.
10. As has been held in the case reported in **AIR 2010 SC 3391** in between **Amar Singh Vs. State of Rajasthan**, that demand of dowry by itself is not an offence under Section 498A or Section 304B IPC. What is punishable under Section 498A or Section 304B is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113B of the Indian Evidence Act that only when it is shown that soon before her death a woman has been subjected by any 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 within the meaning of Section 304B IPC. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the Court to presume that the accused has caused the dowry death.
11. Further more as has been held in the case, reported in **AIR 2014 SC 241** in between **Bhola Ram Vs. State of Punjab** that in case of dowry death

every members of family may not be fully and equally guilty. The degree of involvement may differ as an associate, as a silent witness, as a conniving witness and so on. So far as the case in hand is concerned, I have gone through the evidence of all the witnesses on record. Evaluating the statement of the witnesses would show that the witnesses have deposed primarily against husband. The witness PW-2 father has made an omnibus allegation and has made a reference to Ex.P-4. Ex.P-4 is solely confined to the husband Gayaprasad wherein he has admitted to have committed the cruelty. Reading such Ex.P-4 alongwith the statement of PW-9 wherein she stated that the deceased was subjected to assault and beating by the husband and that the allegation of cruelty is confined to him qua demand of dowry. Kushal Dongre PW-3 made an omnibus allegation that the deceased was subjected to torture by the mother-in-law and husband and abused for demand of dowry and PW-4 who was present during the agreement, which was executed in a meeting has deposed and allegations of cruelty are confined to husband i.e. Gayaprasad (A-1). Though an omnibus averments have been made against the mother-in-law & father-in-law but the actual severe degree of torture is confined to the husband. Therefore, in my opinion, after evaluating the statement of the witnesses, the degree of involvement for the commission of Section 304-B of I.P.C. in respect of Pardeshi, Father-in-law (A-2) and Bisahin Bai, Mother-in-law (A-3) cannot be sustained as the allegations not trustworthy though the evidence of cruelty to some extent exists for their being dormant, as such, they are liable to be convicted under Section 498-A of I.P.C.

12. With respect to the husband, the prosecution was able to prove the case beyond the reasonable doubt that for demand of dowry, he subjected cruelty to his wife and eventually she died an unnatural death within seven years of marriage. Consequently, the conviction made under Section 304-

B of I.P.C. in respect of appellant No.1 Gayaprasad is upheld. With respect to the evidence in respect of appellant No.2 & 3 since their conviction has been altered to 498-A of I.P.C. and it appears that they are in jail since 21.03.2012, their sentence shall be held as undergone and they be released forthwith, if not required in any other case.

13. In a result, the appeal is allowed to the extent indicated herein above.

Sd/-
(Goutam Bhaduri)
JUDGE