

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 18.09.2019****Order pronounced on 05.12.2019****CRA No. 258 of 2001**

1. Rajkumar Patel, aged about 28 years, S/o Chakradhar Prasad Patel,
Occupation - Cultivation
2. Champa Bai, aged about 58 years, W/o Chakradhar Prasad Patel,
Occupation - House wife

Both R/o Village Kocharra Police Station Pithora, Tehsil and District
Chhattisgarh **-- Appellants**

Versus

State of Chhattisgarh

-- Respondent

For Applicant	-	Mr. Anubhuti Marhas, Advocate
For Respondent	-	Ms. Shriya Mishra, PL

Hon'ble Smt. Vimla Singh Kapoor, J.**CAV Order**

Merg No.35/2000 (Ex.P-6) registered at the instance of Purshottam (PW-5) – brother-in-law (Jeth) of deceased Kamla Bai reveals that on 21.05.2000 the father of the deceased had brought his daughter (Kamla Bai) to her matrimonial house and on the next day i.e. 22.05.2000 she died by consuming insecticide. During Merg enquiry it was found that the accused/appellants herein (the husband and mother-in-law of the deceased) used to harass her demanding Rs.20,000 as dowry and as the said amount remained unpaid, the deceased was not allowed to visit her maternal home. During Merg enquiry it was also found that the tortuous attitude towards the deceased at the hands of the accused/appellants forced her to end her life by consuming insecticide. Seizure of container of Democron Sypermesrin was made under Ex.P-4, dead body was sent to Community Health Center

Pithora for postmortem examination vide report Ex.P-3. Seized articles were sent for chemical examination. After conclusion of Merg enquiry, FIR (Ex. P-8) was registered against the accused/appellants under Section 304-B IPC. On completion of investigation charge sheet was filed against the accused/appellants under the said section and the charge was also framed against them accordingly.

2. During trial prosecution examined 18 witnesses in support of its case. One witness namely Dr. Sashikant Dani (DW-1) was also examined by the defence. Learned Court below vide its judgment impugned dated 01.03.2001 passed in Sessions Trial No.309/2001 convicted the accused/appellants under Section 304-B IPC and sentenced them to undergo RI for 7 years each. Hence this appeal.

3. Before dealing with the merits of the case this Court feels it proper to take note of the provisions of Section 304-B IPC which is being reproduced as hereunder:-

“(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.”

4. From the evidence of Jailal Patel (PW-1), Santosh Patel (PW-2), Swaroop Ram (PW-3) and Purshottam (PW-5) it is not clear that the deceased was subjected to any cruelty at the hands of the accused/appellants. On the contrary, if their evidence is read as a whole, it is apparent that the deceased was living happily in her matrimonial home and

there was no quarrel between her and the accused/appellants. Jailal (PW-1) has even stated that he often visited the matrimonial home of the deceased and that he was informed by her regarding her abdominal pain for which medical treatment was going on at Mahasamund. He has further stated that the deceased visited her maternal home more often than not. He has also reiterated that there was no dispute between the deceased and the accused/appellants nor any community meeting was held in this regard. From the evidence of Purshottam (PW-5) it is also apparent that since two years prior to the incident accused/appellant Champa Bai was living separately with him whereas accused/appellant Rajkumar Patel and the deceased were living elsewhere. Further, Vanshidhar Patel (PW-6) though has initially stated that the accused/appellants were not sending the deceased to her maternal home on account of non fulfillment of the demand of Rs.20,000 and a community meeting was also convened to sort out the matter yet in the last paragraph of his deposition he has clarified that the accused/appellants never demanded any dowry prior thereto and that whatever items were given at the time of marriage by the father of the deceased, was out of his own volition but no demand for that was made from the side of the accused/appellants. Even Mohanlal (PW-9) father of the deceased though has made an allegation against the accused/appellants regarding demand of Rs.20,000 and not sending the deceased until the same remained unfulfilled, in paragraph No.11 he has further stated that no dowry was demanded by the accused/appellants at the time of marriage and the entire ceremony concluded with gaiety. This witness has further clarified that the deceased visited his house on the occasion of festivals. He has further stated that the deceased was an educated woman but she never wrote any letter to him complaining any demand of dowry or cruelty to her by the accused/appellants. From the evidence of this witness it also appears

that the amount received in marriage of the deceased was deposited in fixed deposit and perhaps it being within the knowledge of the accused/appellants they would have asked the deceased to get the same being of her own, otherwise there is nothing to suggest any dowry being demanded by the accused/appellants.

5. Even the evidence of PW-10 – the mother of the deceased also shows that the deceased never complained to anyone regarding the so called demand made by the accused/appellants. Doctor (PW-16) who conducted the postmortem examination on the body of the deceased and gave his report Ex.P-11 shows that the cause of death of the deceased was asphyxia due to suspected insecticide poisoning. The sole defence witness examined by the accused/appellants is the doctor who used to give medical treatment to the deceased has stated that the deceased used to visit him complaining stomachache and for which several pathological tests were also recommended for her.

6. One of the most important ingredients for convicting the accused under Section 304-B IPC is that there must be evidence to show that the deceased was subjected to cruelty or harassment by her husband or any relatives of her husband or in connection with, any demand for dowry. However, if the facts of the case in hand are seen, it becomes crystal clear that on 21.05.2000 the deceased was brought to her matrimonial home after spending 14-15 days with her parents and the very next day i.e. on 22.05.2000 she ended her life by consuming some poisonous substance. There is nothing on record to show that in such a short interval any of the accused/appellants had subjected her to cruelty to such an extent which forced her to embrace death that too leaving behind her minor child. The possibility cannot be ruled out that on account of being embarrassed over her stomach ailment she decided to say goodbye from her mortal frame

otherwise there is nothing on record to show that after coming back from her parents' house she had any problem from any of the accused. Even the evidence of the witnesses examined by the prosecution hailing from the maternal side of the deceased carry number of contradictions and omissions making it extremely difficult for this Court to place implicit reliance thereon.

7. Thus in view of the factual discussion made in the light of relevant provision, this Court is of the considered opinion that the findings recorded by the Court below vide judgment impugned convicting the accused/ appellants under Section 304-B IPC are not in consonance with the evidence of the witnesses and therefore, they cannot be allowed to stand and are hereby set aside by allowing the appeal.

8. Since accused Rajkumar is already released from jail having completed the sentence on 24.09.2005 and the other one namely Champa Bai is already on bail as is clear from the jail report dated 07.12.2009, her bail bonds stand discharged.

Sd/-

(Vimla Singh Kapoor)
Judge

Jyotishi/ajay