

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 491 of 1998

- Ramnath S/o Pancham Yadav, aged about 32 years, R/o Village- Pipraul, P.S. Ramnuganj, District Sarguja, M.P. (now C.G.)

---- Appellant

Versus

- State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellant	: Shri Anand Kumar Gupta, Advocate
For Respondent/State	: Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

26.09.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 10.02.1998 passed by the Second Additional Sessions Judge, Ambikapur, Sarguja in Sessions Trial No. 165/1991, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 304B of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for seven years and pay a fine of Rs.1000/-, in default of payment to further undergo rigorous imprisonment for two months
Under Section 498A of IPC	Rigorous imprisonment for two years and pay a fine of Rs.500/-, in default of payment to further undergo rigorous imprisonment for two months
Under Section 4 of Dowry Prohibition Act, 1961	Rigorous imprisonment for one year and pay a fine of Rs.500/-, in default of payment to further undergo rigorous imprisonment for two months
All sentences run concurrently	

2. Case of the prosecution is that marriage of the appellant Ramnath was solemnized with deceased Munni Kumari about four-five years prior to her death. As per Ex.-P/6 missing report lodged on 28.11.1990 by PW-1 Gopi Prasad, brother

of deceased, on the information given by appellant Ramnath that Munni Kumari left the home of appellant on 26.11.1990 at about 03:00 pm. On 01.12.1990, merger intimation (Ex.-P/4) was lodged by PW-8 Abdul Kareem, Chowkidar that one woman was found in hanging condition on a tree in a jungle. On the basis of merger intimation, the Investigating Officer gave notice (Ex.-P/1) to the *Panchas* and prepared inquest (Ex.-P/2) on the body of the deceased in presence of appellant, husband of the deceased, and PW-1 Gopi Prasad, brother of deceased, and body was identified by them. As per Ex.-P/3, one saree was seized. After merger inquiry, FIR (Ex.-P/8) was registered on 04.12.1990 under Sections 306 & 498A of IPC by Inspector of Police Station- Ramanujganj. During investigation, statements of the witnesses were recorded which revealed that after marriage and prior to death of the deceased, she was being subjected to cruelty and harassment by the accused/appellant and his family members for demand of she-buffalo as dowry as a result of which she committed suicide by hanging her on a tree in a jungle. Postmortem on the body of the deceased was conducted on 02.12.1990 vide Ex.-P/7A by PW-13 Dr. N.K. Saini and in his opinion, cause of death was asphyxia due to hanging and the death was suicidal in nature.

3. Initially the charge-sheet was filed against three accused persons i.e. present appellant (husband/A-3), accused Pancham (father-in-law/A-1) and accused Maanmati Bai (mother-in-law/A-2) under Sections 304B and 498-A of IPC. One of them Maanmati Bai expired on 12.02.1992 vide order-sheet dated 05.11.1992 and the proceeding abated in respect of her (A-2) and, thereafter, the proceedings continued against two accused persons i.e. present appellant (A-3) and accused Pancham (A-1). The trial Court framed charges under Sections 304B & 498A of IPC and Section 4 of Dowry Prohibition Act against appellant (A-3) and accused Pancham (A-1). Thereafter, accused Pancham (A-1) expired during trial vide order-sheet dated 01.08.1997 and the proceeding abated in respect of him and, thereafter, the proceedings continued against the present appellant only.

4. So as to hold the accused/appellant Ramnath guilty, the prosecution examined as many as 14 witnesses namely Gopi Prasad (PW-1), Sita Devi (PW-2), Jirmaniya (PW-3), Ramjanam (PW-4), Janki Yadav (PW-5), Hridaya Narayan Singh (PW-6), Jageshwar (PW-7), Abdul Kareem (PW-8), Chandan Ram (PW-9), P. Lakra (PW-10), R. Gopal Kumar (PW-11), Gopal Yadav (PW-12), Dr. N.K. Saini (PW-13) and M.L. Verma (PW-14). Statement of accused Ramnath was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in prosecution case, pleaded innocence and false implication and in his defence, no witness has been examined.

5. Learned counsel for the appellant submits under:

- that from the statement of the prosecution witnesses it is quite clear that there has never been any demand of dowry on the part of the appellant or his family members from the deceased or her family members at any point of time.
- that as regards the offence under Section 304B of IPC, the basic ingredient for attracting this offence i.e. soon before her death she was subjected to cruelty, is missing in this case.
- that presumption as to dowry death would only get activated upon the proof of the fact that the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry by the accused and that too, in the reasonable contiguity of death.

6. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant, which needs no interference by this Court.

7. Heard counsel for the respective parties and perused the material on record.

8. In this case, it is not in dispute that marriage of the deceased Munni Kumari

was solemnized with appellant Ramnath about four-five years prior to her death. Accused Pancham and accused Maanmati Bai (dead) were father and mother of appellant Ramnath. Deceased Munni Kumari had died unnatural death by committing suicide within four years of her marriage. For bringing home offence under Section 304 of IPC, the following ingredients are required to be proved beyond reasonable doubt:

- (i) death of the woman concerned is by any burns of 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 exposts “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 or any person related to her to meet such demand.

9. So far as offence under Section 304B of IPC is concerned, the first two ingredients i.e. death of the woman concerned by burn injury or by cause other than in normal circumstances within seven years of her marriage have undoubtedly been proved by the prosecution. However, now it is to be seen from the evidence on record whether the third ingredients i.e. 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, has been proved by the prosecution or not.

10. Section 113B of the Evidence 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)”

Noticeably this presumption as well is founded 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 prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

11. Keeping in view the above settled legal position, this Court proceeds to appreciate the evidence, oral and documentary, available on record.

12. As per inquest report (Ex.-P/2), deceased Munni Kumari committed suicide and her body was found in hanging condition on a tree in a jungle. Ex.-P/2 has been proved by PW-1 Gopi Prasad & PW-4 Ramjanam. PW-13 Dr. N.K. Saini also proved autopsy of the deceased vide Ex.-P/7A wherein he opined that the cause of death of deceased Munni Kumari was asphyxia due to hanging and the death was suicidal in nature. Before trial Court, inquest report (Ex.-P/2) and postmortem report (Ex.-P/7A) remained uncontroverted. Further, in the inquest report (Ex.-P/2) and postmortem report (Ex.-P/7A), no any bodily injury was found on the body of the deceased, except ligature mark found. Therefore, looking to Ex.-P/2 and Ex.-P/7A, it is clear that no physical assault was made on the body of deceased Munni

Kumari before her death.

13. In the present case, prior to death of deceased Munni Kumari, no any incident or dispute regarding demand of she-buffalo as dowry arose between the family members of the appellant and parental side of the deceased. No report was made by them to the police regarding cruelty or harassment by the appellant or his family members to the deceased, nor any social meeting was ever convened in this regard.

14. The prosecution case is mainly based on evidence of parental members of the deceased i.e. PW-1 Gopi Prasad (brother of deceased), PW-2 Sita Devi (mother of deceased), PW-12 Gopal Yadav (brother of deceased), PW-5 Janki Yadav (maternal uncle) of deceased and other independent witnesses i.e. PW-3 Jirmaniya Bai, PW-7 Jageshwar and PW-13 Dr. N.K. Saini, autopsy surgeon.

15. PW-1 Gopi Prasad, brother of the deceased, lodged missing report on information given by husband (present appellant) of the deceased. At the time of lodging of missing report (Ex.-P/6), appellant Ramnath was also with PW-1. Ramnath was also going to his father-in-law's house for searching the deceased as deposed by Gopi Prasad PW-1. Thereafter, when the deceased did not return home after 26.11.1990, missing report (Ex.-P/6) was lodged by PW-1 on 28.11.1990. In Ex.-P/6, there is no allegation regarding demand of dowry, cruelty or harassment against the appellant and his parents.

16. In this case, no FIR was lodged by parental member of the deceased. Only on the basis of merg enquiry after the incident when dead body was found on 01.12.1990, FIR (Ex.-P/8) was lodged on 04.12.1990 and the statements of the witnesses were recorded under Section 161 Cr.P.C by the Investigating Officer on different dates i.e. 02.12.1990, 05.12.1990 & 29.12.1990.

17. PW-1 Gopi Prasad, brother of the deceased Munni Kumari, stated that after the marriage of Munni Kumari with appellant Ramnath, he went to house of Ramnath (A-3) where Ramnath and their parents were demanding she-buffalo as

dowry and they were also telling that you are coming every time for taking meal in our home. He further stated that 3-4 years after her (deceased) marriage, many times deceased was complaining that since she-buffalo was not given to the appellant/accused, the family members of the appellant are using filthy language and abusing and beating her. PW-2 Sita Devi (mother of the deceased) and PW-12 Gopal Yadav (another brother of the deceased) have also supported the version of PW-1 Gopi Prasad.

18. PW-5 Janki Yadav (maternal uncle of deceased) has also supported the version of PW-1 Gopi Prasad. PW-5 stated, in para-3, that four persons i.e. Shivprasad, Ramnath, Gopi and Kanaiya Yadav were sent by him to village Piproul at the home of Ramnath, where Pancham, father-in-law of deceased, said that you have not given she-buffalo, therefore, for this reason Munni Kumari was missing. PW-5 is not an eye-witness to the incident, and that fact is not mentioned in his police statement (Ex.-D/4).

19. PW-7 Jageshwar is resident of village Piproul and not a person who went to the house of Pancham (A-1). He stated, in para-1, that Ramnath, Janki and Gopi came to village Piproul and they stayed nearby his house. He stated that all three persons called Pancham in his (PW-7) presence and asked about Munni Kumari, then Pancham told that you had promised to give she-buffalo but till now not given the same and for this reason quarrel took place. Looking to the evidence of PW-5 and PW-7, their court evidence is contrary to each other regarding demand of she-buffalo by Pancham (A-1).

20. As per court evidence of PW-5 Janki Yadav, four persons i.e. Shivprasad, Ramnath, Gopi and Kanaiya Yadav were sent by him to village Piproul and as per court evidence of PW-7, Ramnath, Janki and Gopi came to village Piproul and asked about Pancham (A-1). Therefore, the allegation of demand of she-buffalo comes against accused Pancham (A-1) not against the present appellant (A-3). In this case, accused Pancham died during trial and the proceeding abated against

him. Only in the statements of PW-1, PW-2 and PW-12, it has come that she-buffalo was not given to the accused persons, therefore, all the accused persons were abusing the deceased.

21. In three-four years of matrimonial life of deceased, no complaint was made by them (PW-1, PW-2 and PW-12), nor any effort made to pacify the dispute between the husband and deceased till death of the deceased. As per statement of Gopi Prasad (PW-1), he admits in para-17 of his deposition that after the marriage of deceased and till her death, the deceased was subjected to cruelty on demand of she-buffalo, but no any complaint was made before the police, nor any social meeting was ever convened in this regard. No any specific date, time, month or place has been mentioned by PW-1, PW-2 and PW-12 in their court statements or police statements, only general allegations made against the appellant and his parents that they were demanding she-buffalo as dowry and were abusing the deceased. No physical cruelty within four years of marriage of the deceased with accused was proved by the prosecution. As per postmortem report (Ex.-P/7A), no physical assault was found on the body of the deceased prior to her death. Therefore, soon before her death any demand was made by the appellant regarding she-buffalo and cruelty caused by the appellant was not proved by the prosecution.

22. PW-1 Gopi Prasad in para 13 has admitted that after marriage of deceased and prior to her death, deceased Munni Kumari visited her parental home only for 7-8 times occasionally and only one or two times, she complained that the accused persons were demanding she-buffalo and thereafter she never narrated regarding demand of she-buffalo and cruelty or harassment. PW-1 also admitted in para-15 that no report was made by him to the police regarding cruelty or harassment against the appellant or his parents. PW-1 admitted in para-11 that his family are having 8-9 buffalos and the accused family are having 10-12 buffalos and he further admitted that after one & half years of marriage of his sister (deceased) with

accused, the family members of accused were abusing the deceased. This fact is contrary to his police statement (Ex.-D/1).

23. As per evidence of PW-1, he states in para-3 that while PW-3 Jirmaniya Bai was cutting paddy crop, at that time the deceased was also cutting paddy crop and the deceased told PW-3 that on account of she-buffalo, the family members of accused were abusing her filthily. But PW-3 Jirmaniya Bai in her police statement (Ex.-D/3) states that deceased Munni Kumar told her (PW-3) the on account of shawl and tumbler (*lota*), her father-in-law and mother-in-law were abusing her filthily and this message was sent to parental member of the deceased by PW-3. As per court evidence of PW-3 and her police statement (Ex.-D/3), no any demand of she-buffalo was mentioned.

24. Further, PW-1 Gopi Prasad admits in para-12 that prior to the month of *sawan*, the accused persons did not demand she-buffalo from his (PW-1) family.

25. PW-12 Gopal Yadav states in para-6 that his sister (deceased) informed that her husband and his parents will kill her, and if this was not mentioned in his (PW-12) police statement (Ex.-D/6), he cannot tell the reason. He further states in para-7 that his sister also informed that her husband told that if she-buffalo & cycle were not given, then he (husband of the deceased) would kill her. She also informed him that the appellant also threatened to kill or get her killed for being black.

26. In ***Banambar Misra and another v. State of Orissa, 2000 CRI.L.J. 3260***, the accused were charged under Sections 304B & 498A of I.P.C. and Section 4 of Dowry Prohibition Act for causing the death of the deceased. The prosecution charge was that deceased was harassed for non-fulfillment of demand of dowry but none of the prosecution witnesses had whispered a word relating to harassment or torture to the deceased by the appellant during the relevant five months stay in their house. Hence, finding of guilt of the accused under the aforesaid Sections was held to be erroneous and he was acquitted of the said charge.

27. In ***Major Singh and Another v. State of Punjab, (2015) 5 SCC 201***, the

Hon'ble Supreme observed that *the prosecution has not examined any independent witness or panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill-treatment. The fact that the deceased was subjected to harassment or cruelty in connection with the demand of dowry by the appellant parents-in-law is not proved by the prosecution. Also, the courts below acquitted all the accused under Section 498-A IPC. Further, subsequent conduct of PWs 1 and 3, raises serious doubts about their presence in the house of the accused at the time of occurrence and witnessing the accused dragging the deceased. They did not raise any alarm nor tried to chase the accused and that PW 1 did not inform anyone in the village of the accused, is quite unnatural conduct. Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, it can only be attributed to the husband of the deceased, who in all probability, could have demanded the same for his use. In absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellants, their conviction under Section 304-B IPC cannot be sustained. The courts below have not analysed the evidence in the light of the essential ingredients of Section 304-B IPC. Hence, the conviction of the appellants under Section 304-B IPC is reversed.*

28. Likewise, in ***Bajjnath and Others v. State of Madhya Pradesh, (2017) 1 SCC 101***, the Hon'ble Supreme Court held that *mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Ss. 304-B and 498-A and only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under S. 113-B can be invoked. In the cited case, the prosecution failed to prove beyond reasonable doubt cruelty or harassment meted out to deceased for dowry demand soon before her death. Alleged demand centred around motorcycle which admittedly did not surface at*

time of finalisation of marriage, and which demand allegedly lingered on for about two years but no complaint in respect thereof was made to anyone. On the contrary, testimonies of DWs were consistent to the effect that no demand as imputed was ever made nor was there any quarrel over the issue, which was also corroborated by PWs 3 and 7. Besides, benefit in deficiency of proof as to precise cause of death i.e. whether it was homicidal/suicidal, and origin and cause of external injuries would enure to benefit of accused. Prosecution failed to prove crucial ingredient of cruelty and harassment by direct and cogent evidence thereby disentitling itself to benefit of statutory presumption under S. 113-B. In this view of the matter, the impugned judgment convicting the appellants was set aside.

29. As per Ex.-P/6 missing report was lodged on 28.11.1990 by PW-1 Gopi Prasad, brother of deceased, there were no allegations made by PW-1 during lodging of missing report Ex.P/6 against the appellant and his family member regarding the deceased being harassed or ill-treated by the appellant or his family members for dowry. Only general and omnibus allegations regarding demand of dowry have been leveled by the parental members of the deceased. No report was ever made by them to the police against the appellant and his family members regarding demand of dowry, no notice was ever given to them and also no social meeting was convened in this respect.

30. Though, in the instant case, the death of deceased Munni Kumari admittedly took place within seven years of the marriage, otherwise than under normal circumstances, i.e. by commission of suicide by Munni Kumari, but there appears to be no reliable evidence that the accused/appellant had subjected her to cruelty or harassment in connection with demand for dowry or otherwise. In these circumstances, presumption under Section 113B of the Evidence Act cannot be invoked as there is nothing on record to show that soon before her death the deceased was subjected to cruelty/harassment in connection with demand of dowry. The evidence adduced on behalf of the prosecution is not sufficient for

drawing inference that the appellant has committed torture and cruelty upon the deceased in connection with demand of she-buffalo as dowry.

31. In view of the discussions made above and keeping in view of the above judgment in *Banambar Misra* (supra), the conviction of the appellant under Sections 304B and 498A of IPC and Section 4 of the Dowry Prohibition Act cannot be sustained in the absence of any evidence to show that the deceased committed suicide because of dowry harassment. Hence, the conviction of the appellant under Sections 304B and 498A of IPC and Section 4 of the Dowry Prohibition Act is liable to be set aside and he is entitled to be acquitted of the said charge by giving him benefit of doubt.

32. In the result, the appeal is allowed. Conviction and sentence imposed on the appellant under Sections 304B & 498A of IPC and Section 4 of the Dowry Prohibition Act are set aside and he is acquitted of the said charge. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge