

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1201 of 1999**

- Rameshwar Das @ Gudda, Son of Jagannath Das, aged about 21 years, resident of Premnagar, P.S. Prem Nagar, District Sarguja, M.P. (Now C.G.)

---Appellant

Versus

- The State of Madhya Pradesh (Now C.G.)

---- Respondent

For Appellant
For Respondent

Smt. Usha Chandrakar, Advocate.
Smt. Seema Dixit, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****20/09/2019**

1. The appellant would call in question the legality, validity and propriety of the judgment of conviction and order of sentence dated 16.04.1999 passed by the Additional Sessions Judge, Surajpur, District Sarguja, M.P. (Now C.G.) in Sessions Trial No.108/98 whereby the appellant stands convicted under Sections 498A and 304B of IPC and the offence under Section 498A of IPC being a lesser cognate offence, he was sentenced under Section 304B of IPC to undergo R.I. for 10 years.
2. Case of the prosecution in brief is that deceased Seema was married to the accused/appellant around 10 months prior to the date of incident i.e. 14.05.1997. However, after a few days the

appellant started harassing the deceased in connection with demand of Suzuki motorcycle as dowry and also used to beat her. Upon coming to know about the said harassment, PW-2 Kedarnath, father of the deceased took the deceased to his house. Thereafter, co-accused Jaganath along with his wife brought the deceased back to their house. On 13.05.1997, the appellant came to his house in drunken condition at 12 o' clock in the night and slept without having dinner and in the next morning Seema Bai (deceased) was found hanging in another room. At the relevant time, Mahoba Das PW-4 and his wife PW-5 Ramkunwar, uncle and aunt of the deceased, were present in the house of the appellant. It is further case of the prosecution that despite being objected by Mahoba Das PW-4, both the accused persons after getting down the deceased were trying to bury her. Merg intimation Ex.P-5 was lodged by accused Jaganath at police station, Prem Nagar at 7:30 am. The dead body was sent for postmortem examination which was conducted by PW-1 Dr. Satyaket Gupta, who found the nature of death suicidal. After merg inquiry, FIR Ex.P-8 was registered on 25.05.1997. After completion of investigation, charge sheet was filed against the appellant and his father Jagannath under Sections 498A, 304B, 201 of IPC and Section 4 of Dowry Prohibition Act.

3. The trial Court framed charges under Sections 498A, 304B and 201 of IPC against the appellant herein whereas accused Jagannath was charged only under Section 201 of IPC.

4. In order to establish its case, the prosecution examined as many as eight witnesses i.e. PW-1 Dr. Satyaketu Gupta, PW-2 Kedarnath, PW-3 Smt. Razmen Bai, PW-4 Mahoba Das, PW-5 Smt. Ramkunwar, PW-6 Shiv Kumar, PW-7 Brijendra and PW-8 Narendra Bahadur Singh. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no defence witness was examined by them in their defence.
5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting accused Jagannath of the charge under Section 201 of IPC, convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.
6. Learned counsel for the appellant submits that true it is that the deceased died in her matrimonial house within seven years of her marriage and her death was suicidal in nature but there is no clinching and reliable evidence adduced by the prosecution to substantiate that soon before her death deceased was subjected to cruelty in connection with demand of dowry by the appellant or any of his relatives. From the inquest report Ex.P-3 as well as the postmortem Ex.P-1, it is quite apparent that no external injury was found on the person of the deceased which is suggestive of the fact that soon before her death she was not physically

assaulted by the appellant or any other person. He submits that though there used to be some quarrel between the appellant and the deceased over exchange of Scooty with Suzuki Motorcycle but it has also come in the evidence of the prosecution witnesses that after marriage for about 7-8 months the appellant and the deceased was living happily and even thereafter no report was ever made by any of the family members of the deceased to the police or any social meeting was convened for the purpose of resolving any such dispute regarding demand of dowry. Therefore, in the given facts and circumstances of the case, the oral and documentary evidence available on record including the medical evidence, it is clear that the appellant never subjected the deceased to cruelty or caused her dowry death making him liable for conviction under Sections 498A and 304B of IPC. Being so, the appellant deserves to be acquitted of the said charges.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. I have heard learned counsel for the parties and perused the material available on record.
9. PW-1 Dr. Satyaket Gupta conducted the postmortem on the body of the deceased vide Ex.P-1 and found the following symptoms/injuries:-

Lying down position of body, cold limbs, Eyes are closed, protrusion of tongue present and bitten by teeth congested, dribbling of saliva through right side of angle of mouth extends and stains to the right side of yellow coloured blouse slight petechiae are present over face and face is pale, ligature mark present above thyroid cartilage transverse encircling the neck 38 cm in length width of ligature mark is 3 cm underneath tissues are firm white and glistening, rigor mortis is present in lower limbs hands are clenched cyanosed, early decomposition of body has begun, discharges through vagina present, stool discharge per anal orifice present, six bangles on wrist, five green glass + one iron bangle present, two bangles on left wrist present, black holy thread around the waist present, no external injury is seen, duration of death is approximate 40 to 45 hrs.

According to the Autopsy Surgeon, the cause of death was Asphyxia due to hanging and the nature of death was suicidal.

10.PW-2 Kedarnath, father of the deceased, states that after marriage of his daughter/deceased with the appellant, everything was normal for about 7 months and the appellant started raising quarrel with the deceased thereafter. He states that appellant was habitual to liquor. He states that the appellant had once pressed the neck of the deceased for not fulfilling his demand of Suzuki motorcycle. He states that after the said incident he brought the deceased to his house and got her treated and thereafter on the assurance of Jagannath, father of the appellant, that the deceased would be kept well in her matrimonial house, the deceased was sent to her matrimonial house. He states that on 10th May, 1997, the appellant came to house in the night and told that he should be given Suzuki motorcycle in place of Scooter or else he would kill the Seema (deceased) by pressing her neck. When this witness expressed his inability to fulfill the said demand, the appellant got annoyed and slept without taking the dinner. He states that four days after the said incident on 14th

May, 1997, one person from the village of the accused persons informed him that his daughter is very serious, upon which he along with his wife went to the house of the appellant where they came to know that the deceased has committed suicide. In cross-examination, he admits that he did not lodge any report against the appellant for pressing neck of his daughter 2-3 times. He also admits that he did not inform the police at the time of giving statement that he had got his daughter treated by a private doctor at Chirmiri.

11. PW-3 Smt. Rajmen Bai, mother of the deceased, has also made similar statement as has been made by PW-2 Kedarnath. In cross-examination, she states that the deceased had informed her about a month prior to her death that the appellant had pressed her neck but they did not complain about the same to her in-laws. She admits that after marriage the deceased used to visit her parental house after every 1-2 week.

12. PW-4 Mahoba Das, uncle of the deceased, who was in the house of the appellant at the time of incident has also stated that the appellant used to harass and press her neck for the said purpose. He states that on the date of incident he along with his wife was in the house of the appellant. At around 12 o' clock in the night, the appellant came in drunken condition, he heard the cries of someone calling for help which was emanating from the room of the appellant on which he went towards the said room and knocked at the door. However, the appellant who was playing

tape recorder in his room at high sound increased the volume and, therefore, he came back and slept. However, this fact is not mentioned in his case diary statement Ex.D-3. In the next morning, he found the dead body of the deceased hanging and the appellant was getting the dead body down which was objected by him. In cross-examination, he admits that everything was normal between the appellant and the deceased six months after the marriage. He states that last time when the deceased came to her parental house she informed about the demand of motorcycle and pressing of her neck. He admits that on the date of incident, the deceased did not complain anything to them, she offered them food and thereafter they went to sleep.

13. PW-5 Smt. RamKunwar, aunt of the deceased, has made similar statement as has been made by PW-4 Mahoba Das. She states that on the date of incident, the appellant came to his house at around 11 o' clock in the night in drunken condition, he did not have any talk with them, the deceased offered water to the appellant but the appellant neither took water nor did have dinner. Thereafter, she (this witness) slept and in the next morning she found the dead body of the deceased hanging which was being taken down by the appellant.

14. PW-8 Narendra Bhadur Singh is the Investigating Officer, who has supported the prosecution case.

15. Heard learned counsel for the parties and perused the material available on record.

16. Admittedly, in this case the mere intimation Ex.P-5 has been lodged by accused Jagannath (acquitted) and based on the mere inquiry, FIR Ex.8 was lodged after one month and ten days of the incident. It is also not disputed that the deceased suffered unnatural death i.e. suicide within seven years of her marriage in her matrimonial house. For bringing home the charge under Section 304B of IPC, the prosecution is required to prove that the deceased had unnatural death within seven years of marriage and that soon before her death she was subjected to cruelty by her husband or any of his relatives in connection with demand of dowry.

17. Now this Court has to see whether there is any evidence to show that soon before her death the deceased was subjected to cruelty by the appellant or any of his relatives for dowry.

18. As per postmortem Ex.P-1, the cause of death of the deceased was asphyxia due to hanging and it was suicidal in nature. The Autopsy Surgeon did not notice any injury on the person of the deceased except the ligature mark on her neck. At the time of preparing of inquest Ex.P-3, PW-4 Mahoba Das and PW-5 Ramkunwar, uncle and aunt of the deceased, were present but no complaint was made by them against the appellant regarding cruelty being committed by him to the deceased. After the incident which took place on 14th May, 1997, no FIR was lodged by the family members of the deceased.

19. As per the statements of PW-2 Kedarnath, PW-3 Rajmen Bai,

PW-4 Mahoba Das and PW-5 Smt. Ramkunwar prior to death of the deceased, the appellant used to demand motorcycle in place of Scooty. These witnesses have disclosed this fact only after two months and 10 days of the incident on 24th July, 1997 when their statements under Section 161 of Cr.P.C. were recorded by the police and prior to this time, no report was made by any of them to the police. As per the statements of PW-4 Mahoba Das and PW-5 Smt. Ramkunwar, on the date of incident they were present in the house of the appellant, at around 11-12 o' clock in the night, the appellant came to his house in drunken condition, despite being offered water and food by the deceased to the appellant, he did not have the same and went to sleep in his room and was playing tape recorder in high pitch. According to PW-4 Mahoba Das, after hearing the cries of someone calling for help when he went towards the room of the appellant and knocked at the door, the appellant increased the volume of tape recorder and thereafter he (this witness) came back and slept. However, the said fact has not been mentioned by this witness in his diary statement Ex.D-3. Likewise, there are material omissions and improvements in the statements of PW-4 Mahoba Das and PW-5 Smt. Ramkunwar as compared to their diary statements. From perusal of the statements of PW-4 Mahoba Das and PW-5 Smt. Ramkunwar, one thing which emerges is that both of them did not witness any quarrel or dispute between the appellant and the deceased on the fateful night.

20. According to the prosecution witnesses (PW-2 Kedarnath, PW-3

Rajmen Bai, PW-4 Mahoba Das and PW-5 Smt. Ramkunwar) after about 7-8 months of the marriage, everything was normal between the appellant and the deceased and it is only thereafter the appellant started raising quarrel with the deceased in drunken condition in connection with demand of motorcycle. These witnesses have also stated that the appellant used to press the neck of the deceased and upon coming to know about the said incident, the deceased was brought back to her parental house and got treated by a private Doctor. However, the witnesses have admitted that no such fact was disclosed to the police while recording their diary statements and further no medical document is there on record to show that the deceased was ever treated by the private Doctor as stated by PW-2 Kedarnath. Though, the witnesses have stated that the appellant was continuously harassing and torturing the deceased in connection with demand of motorcycle, however, no report was ever lodged by any of the family members of the deceased to the police and further there is nothing on record to show that any social meeting was ever convened in this regard by them.

21. Even if the incident of pressing of neck of the deceased by the appellant is taken to be true, the said incident is said to have taken place 2-3 months prior to the death of the deceased and as such it would not amount to cruelty soon before her death.

22. In *Bajinath 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 the 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 & 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.

23. Thus, considering the overall facts and circumstances of the case, the judgment in the matter of Baijnath and others (supra), the omission and contradiction in the statements of prosecution witnesses as compared to their diary statements, the nature and

quality of evidence adduced by the prosecution and the medical evidence, it is seen that though there used to be some quarrel or dispute between the appellant and the deceased over exchange of Scooty with a motorcycle but if the entire evidence are taken together it does not suggest that there was willful conduct on the part of the appellant of such a nature which drove the deceased to commit suicide or caused grave injury or danger to her life, limb or health. Being so, the offence under Section 498A of IPC is not made out against the appellant.

24. Similarly, though the deceased died within seven years of her marriage in her matrimonial house under other than the normal circumstances but the most important ingredient for bringing home the charge under Section 304B of IPC i.e. soon before her death she was subjected to cruelty by her husband or any of his relatives, is missing as discussed in the preceding paragraphs.

25. Accordingly, the appeal is allowed and the impugned judgment of conviction and sentence is hereby set aside. The appellant is acquitted of the charges under Sections 498A and 304B of IPC. 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 provisions of Section 437A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge