

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 80 of 2003**

1. Rakesh @ Baba, S/o Indramani Upadhyay, aged about 24 years, Occupation Student
2. Indramani Upadhyay, S/o Late Hari Narayan Upadhyay, aged about 60 years (Dead),
3. Sushil Upadhyay, S/o Indramani Upadhyay, aged about 34 years,

All are residents of Police Quarter Durg and Dalli Road, District Durg, C.G.

----Appellants

Versus

- State of Chhattisgarh, Through Police Station Durg, District Durg, C.G.

---- Respondent

For Appellants	Shri B.P. Singh, Advocate.
For Respondent/State	Shri Ashish Gupta, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

28/11/2019

1. Heard on I.A. No.1/19, application for deleting the name of appellant No.2 Indramani from the array of appellants as appellant No.2 Indramani has died.
2. Learned State counsel, upon due verification, confirms the fact regarding death of appellant No.2 Indramani. He has no objection to deleting the name of the said appellant from the array of the appellants.
3. On due consideration, the application is allowed and the counsel

for the appellant is permitted to delete the name of appellant No.2 Indramani from the cause title today itself.

4. With the consent of the parties, the matter is heard finally.
5. This appeal arises out of the judgment of conviction and order of sentence dated 04.01.2003 passed by the Additional Sessions Judge, Durg, C.G. in Sessions Trial No.177/99 convicting the accused/appellants under Section 306 of Indian Penal Code (for short 'the IPC') and sentencing them to undergo rigorous imprisonment for 3 years each and fine of Rs.3,000/- each, in default of payment of fine additional rigorous imprisonment for one year.
6. Case of the prosecution in brief is that deceased Ranjana got married with Sushil on 02.06.1996. Accused Rakesh is the brother-in-law of the deceased and accused Indramani is the father-in-law of the deceased. Appellants continuously harassed deceased for dowry and were also demanding Rs.10,000/- for bus fare. At the time of marriage, dowry was also given to her in-laws. Appellants always scolded the deceased for dowry and threatened to kill. On 26.11.97, at Balod, Deceased Ranjana was beaten up for dowry and driven out of the house by the accused. Thereafter, she went to her brother-in-law's house. Looking to the behaviour of her in-laws, her father namely Ramesh Prasad Pandey (PW-2) refused to send the deceased with them but after the request of her husband, her father agreed and sent her with her husband Sushil. After that her father went to take her many

times but her husband refused to let her go and drove her father away. Thereafter, Ranjana wrote five-six letters to her father in which she informed him about the cruelty or harassment committed by her in-laws to her. On 11.08.98, deceased Ranjana set herself on fire. After that she was shifted to medical hospital for treatment and during treatment she died. Thereafter, merger intimation was recorded, notice was given for autopsy vide Ex.P-4 and postmortem report was prepared vide Ex.P-5. Spot map was prepared vide Exs. P-6 and P-7. On 13.08.98, written complaint Ex.P-1 was lodged by father of the deceased namely Ramesh Prasad Pandey to concerned SHO. From the spot, burnt clothes of deceased from which smell of kerosene oil was coming out, matchstick, one jerrykan and broken bangles were seized vide Ex.P-2. During investigation, articles 1 to 9, letters of deceased were seized vide Ex.P-3. For comparing the handwriting of the deceased her note books were seized as per Ex.P-8. Autopsy was conducted by PW-8 Dr. R.N. Pandey where he found that the deceased died due to shock as a result of extensive antemortem burn (Ex.P-14). As per Ex.P-16, the deceased was found to have sustained 100% burn. FIR Ex.P-17 was lodged against Indramani, Rakesh, Rajesh, Sushil, Mother-in-law Ishwari Bai and Sister-in-law Gudiya @ Sandhya under Section 304/34 IPC. During Investigation, the case diary statements of PW-1 Ramesh Prasad Pandey, PW-2 Kamlesh Tiwari, PW-3 Sheela Rajput & PW-4 Usha Rajput were recorded. As per FSL Ex.P-19, Kerosene was found in articles A, B and D

i.e. the burnt clothes of the deceased, soil seized from the spot and one plastic jerrycan container having 10 gm kerosene oil seized from the spot as per Ex.P-2. After due investigation, charge sheet was filed against the accused namely Rakesh, Rajesh, Indramani, Sushil, Ishwari Bai and Gudiya @ Sandhya under Sections 304B and 498A read with 34 of IPC. The trial Court framed the charges under Sections 304B and 498A of IPC against the accused persons which were denied by them and they prayed for trial.

7. So as to hold the accused persons guilty, the prosecution examined as many as 15 witnesses i.e. PW-1 Ramesh Prasad Pandey, PW-2 Kamlesh Tiwari, PW-3 Sheela Rajpur, PW-4 Smt. Usha Rajput, PW-5 Ashwani Kumar Verma, PW-6 Dr. Uday Kumar, PW-7 Om Prakash Rajput, PW-8 Dr. R.N. Pandey, PW-9 Shyamlal, PW-10 Dr. V.K. Sao, PW-11 K.R. Kanwar, PW-12 A.K. Sakhariya, PW-13 Balram Prasad Chandrawanshi, PW-14 Kuleshwar Singh Patel and PW-15 O.P. Bilgaiya. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in their defence.
8. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellants as mentioned in para-1 of this judgment while acquitting the other

accused of the charges under Sections 498A and 304B of IPC. Since, appellant No.2 Indramani has died during the pendency of this appeal, the appeal against him is abated.

9. Learned counsel for the appellants submits that in this case there is no charge framed against the accused appellants for the offence under Section 306 of IPC for abetment to commit suicide. Therefore, without any specific charge, accused/appellants have wrongly been convicted by the trial Court. He also submits that as per the judgment of the trial Court all the accused persons were acquitted of the charge levelled against them under Sections 498A and 304B of IPC, therefore, prosecution has absolutely failed to prove that the deceased was subjected to cruelty in connection with demand of dowry by the husband or any of his relatives. He further submits that without any specific charge regarding abetment or any evidence adduced by the prosecution in this regard, the accused/appellants were convicted for the offence under Section 306 of IPC which is unsustainable in law.
10. He also submits that as per the seized articles A-1 to A-9 letters written by the deceased to her parents, no allegation was made by the deceased regarding demand of dowry from marriage till her last letter was written. As per article A-9, no allegation was made by the deceased against the appellants regarding any cruelty. Looking to the entire evidence and the finding given by the trial Court, it is clear that no demand of dowry was made by the husband or his relatives. He submits that though as per letters written by the deceased Exs.A-1 to A-9

there used to be quarrel/dispute between the deceased and her in laws and they were alleging her illicit relation with three persons namely Gaya Prasad, Thakur Ram and Budhe Nai but there is no evidence on record to show that she was harassed or tortured to such an extent that she was left with no other option but to commit suicide. Only looking to the statements of PW-1 Ramesh Prasad Pandey & PW-2 Kamlesh Tiwari, it cannot be said that appellants committed any type of cruelty or harassment to the deceased amounting to abetment which compelled the deceased to commit suicide. Therefore, the appellants deserve to be acquitted of the charge under Section 306 of IPC also.

11. On the other hand, learned counsel for the State supports the impugned judgment.
12. Heard learned counsel for the parties and perused the material available on record.
13. It is not disputed by both the parties that deceased died within seven years of her marriage under unnatural circumstances due to 100% burn as per Ex.P-16 & PM Report i.e. Ex.P-14 and these reports are duly proved by PW-8 Dr. R.N. Pandey and PW-10 Dr. V.K. Sao respectively. As per Ex.P-6 and Ex.P-7 i.e. spot maps, it stands proved that the deceased suffered burn injuries at her matrimonial home. It is also not disputed by both the counsel that letters of articles A-1 to A-9 were written by the deceased which were seized from PW-1 Ramesh Prasad Pandey as per Ex.P-3.
14. The First question which arises for consideration of this Court is whether without charge being framed against the appellants under

Section 306 of IPC, they can be convicted for the said offence on the basis of material available on record. It is a well settled principle of law laid down by the Hon'ble Supreme Court that if charges are framed under Sections 498 and 304B of IPC and the material/evidence available on record proves the offence under Section 306 of IPC, the accused can be convicted under Section 306 of IPC even in absence of framing of charge under the said Section. Therefore, the argument advanced by learned counsel for the appellants in this regard being without any substance is rejected.

15. In order to bring home the charge under Section 306 of IPC against the accused, the prosecution is first required to prove that there was abetment on the part of the accused as defined under Section 107 of IPC which compelled the deceased to commit suicide. Section 107 of IPC reads as under:-

“107. **Abetment of a thing**- A person abets the doing of a thing, who-

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.”

16. PW-1 Ramesh Prasad Pandey is the father of the deceased and PW-2 Kamlesh Tiwari is the brother-in-law of the deceased and

both have absolutely failed to prove the allegation against the appellants regarding demand of dowry and as per detailed finding given by the trial Court from paras 12 to 16 based on the evidence available on record including articles A-1 to A-9 produced and proved by the prosecution itself, it is clearly proved that no demand of dowry was made by the appellants.

17. As per articles A-2 to A-4, A-6, A-7 and A-9, no specific allegation was made against the appellants. Looking to the entire letters written by the deceased the main allegation was made only against her mother-in-law, sister-in-law and father-in-law but no appeal was filed by the State or complainant party against their acquittal of the charges under Sections 498A and 304B of IPC by the trial Court. In Articles A-1 to A-9, deceased had only made allegation against her mother-in-law and sister-in-law by saying that both of them committed cruelty to her. As per evidence of PW-1 Ramesh Prasad Pandey and PW-2 Kamlesh Tiwari, three persons of village Kanhar namely Thakur Ram, Gaya Prasad and Budhe Nai had written love letters to the deceased, for which village meeting was convened and the matter was enquired. Thereafter, report was lodged at police station, Nainpur and offence under Section 509 IPC was registered. According to them, the said incident took place prior to marriage of the deceased.

18. PW-3 Shila Raiput has stated in her para 1 of her statement that about 15-20 days before the death of deceased Ranjana, the deceased met her and informed about dispute/quarrel with her sister-in-law. Sister-in-law of the deceased has been acquitted in

this case by the trial Court and no appeal was filed by the prosecution against her.

19. In the letters, articles A-1 to A-9 seized and proved by the prosecution, it is specifically mentioned by the deceased that her mother-in-law namely Ishwari Bai and sister-in-law namely Gudiya @ Sandhya were committing cruelty to her. It is also mentioned in these letters by the deceased that her mother-in-law, sister-in-law and father-in-law used to have quarrel with the deceased and beat her by alleging her illicit relation with three persons namely Thakur Ram, Gaya Prasad and Budhe Nai of Kanhar village and ask her to leave the matrimonial home and live with them. She has written in the letters that whenever she used to complain about the said act of her in-laws to her husband namely Sushil, he used to keep mum. PW-1 Ramesh Prasad Pandey and PW-2 Kamlesh Tiwari have admitted in their court statements that three persons namely Thakur Ram, Gaya Prasad and Budhe Nai of village Kanhar used to write love letters before her marriage for which a village meeting was convened and the matter was enquired and thereafter report was lodged at police station, Nainpur under Section 509 of IPC. was conducted. They have also admitted that after marriage also they used to write letters to the deceased. Thus, from the above, it is clear that there used to be quarrel between the deceased and her in-laws on account of letters being written by the aforesaid three persons to the deceased and there was no demand of dowry on the part of the accused persons.

20. PW-4 Smt. Usha Rajput has stated that on the date of incident

she heard the sound of weeping of Ranjana and that she is not aware as to whether there was any dispute between Rakesh and Ranjana on the date of incident. In para 4 she states that she cannot tell as to why Ranjana was weeping in her home.

21. PW-7 Omprakash Rajput, Head Constable, who is neighbour of the accused/appellants has stated that on the date of incident he saw Indramani standing near his house with a child and that he heard the sound of beating and weeping. After some time, he came to know that the daughter-in-law of Indramani (deceased) was taken to hospital. In cross-examination, he states that at the relevant time the elder son of Indramani had gone to duty and Papu @ Rajesh was also not present at home. He further states that at the time of incident his wife and Gudiya were not present.
22. The Hon'ble Supreme Court in the matter of ***M. Mohan vs. State*** (represented by the Deputy Superintendent of Police) reported in **(2011) 3 SCC 626**, observed as under:-

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens-rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

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48. In the instant case, what to talk of instances of instigation, there are even no allegations against the appellants. There is also no proximate link between the incident of 14.01.2005 when the deceased was denied permission to use the Qualis car with the factum of suicide which had taken place on 18.01.2005. Undoubtedly, the deceased had died because of hanging. The deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. In a joint family, instances of this kind are not very uncommon. Human sensitivity of each individual differs from

person to person. Each individual has his own ideal of self-esteem and self-respect. Different people behave differently in the same situation. It is unfortunate that such an episode of suicide had taken place in the family. But the question that remains to be answered is whether the appellants can be connected with that unfortunate incident in any manner?

49. On a careful perusal of the entire material on record and the law, which has been declared by this Court, we can safely arrive at the conclusion that the appellants are not even remotely connected with the offence under Section 306 IPC. It may be relevant to mention that criminal proceedings against the husband of the deceased Anandraj (A-1) and Easwari (A-3) are pending adjudication."

23. This Court in the matter of ***Ashok Kumar vs. State of Chhattisgarh*** vide judgment dated 21.11.2019 passed in CRA No.805 of 2002 while dealing with the identical issue, referring to judgments of the Hon'ble Supreme Court in the matters of ***Bajinath and Others vs. State of Madhya Pradesh, (2017) 1 SCC 101, Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618, Gangula Mohan Reddy vs. State of Andhra Pradesh, AIR 2010 SC 327 and M. Mohan vs. State (represented by the Deputy Superintendent of Police, (2011) 3 SCC 626***, allowed the appeal with the following observations:-

"33. It is clear that the dead body of Laxmin Bai had already been cremated and, therefore, postmortem examination on her body could not be conducted. Though burnt soil and ash of the dead body were seized from the spot where the body was cremated and was sent to the FSL for chemical examination, no FSL report is available on record. While the funeral of the deceased was going on, none of the relatives of the deceased including PW-4 Sumitra (mother of the deceased), PW-5 Balram (father of the deceased) and PW-7 Vishram Prasad (brother of the deceased) had raised any suspicion about the death of the deceased and there are material omissions and contradiction in the statements of PW-4, PW-5 & PW-7. From the evidence adduced by the prosecution, mode of death of the deceased is not established. It was a suicidal death or was natural death is not established. The deceased had consumed poisonous substance has also not been established. There is nothing on record on the basis of which it could be established that the deceased was continuously instigated to commit suicide as defined in Section 107 of IPC.

34. The deceased died on 07.03.2001 and it has come in evidence of PW-5 Balram in para-14 that the written report (Ex.-P/6) was made on 09.03.2001 to SHO Champa i.e. after 2 or 3 days. If the deceased was being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry as a result of which she committed suicide by consuming poisonous substance, as to why PW-4 Sumitra Bai (mother), PW-5 (father) and PW-7 (brother) of the deceased kept silence for 2 or 3 days. It has also come in the evidence of PW-5 and PW-7 that one girl Jamuna Bai (daughter of PW-9) also went to village Kosmanda after her marriage, but, Jamuna Bai has not been examined by the prosecution for the reasons best known to it. If we look into the evidence of PW-1 Chhatram, PW-2 Manharan and PW-3 Komod Kumar, who are residents of village Kosmanda where the deceased and her husband (appellant) were residing, they are not saying about the deceased being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry. Only general and omnibus allegations regarding demand of dowry have been leveled by the father, mother and brother of the deceased. No specific date, time or place has been mentioned by them in this regard. Prior to death of deceased, they admit that no report was made by them to the police against the accused persons regarding demand of dowry, no notice was ever given to them and also no social meeting was convened in this respect.

35. Though, in the instant case, the death of deceased Laxmin Bai admittedly took place within seven years of the marriage, otherwise than under normal circumstances, i.e. by commission of suicide by Laxmin Bai, 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 motorcycle, TV & cooler as dowry.

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37. In view of the discussion made above and keeping in view of the above cited judgments of the Hon'ble Supreme Court, the conviction of the appellant under Sections 304B, 306 & 201 of IPC 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, 306 & 201 of IPC is liable to be set-aside and he is entitled to be acquitted of the said charges."

24. Keeping in view the principles of law laid down by the Hon'ble

Supreme Court in the afore-cited judgments, the nature and quality

of evidence adduced by the prosecution, in particular the statements of PW-1 Ramesh Prasad Pandey, PW-2 Kamlesh Tiwari, PW-3 Sheela Rajput, PW-4 Usha Rajput and PW-7 Omprakash Rajput, the letters articles A-2 to A-4, A-6, A-7 and A-9 written by the deceased, it is clear that there is no specific allegation made against the appellants that they subjected the deceased to harassment or cruelty or in any manner abetted her to commit suicide. It has come in the evidence of prosecution witnesses that at the time of incident the accused Indramani was outside the house and accused/appellant Rakesh @ Baba and Sushil Upadhyay were not present in the house. The basic ingredients for attracting the offence under Section 306 of IPC are missing in this case. The prosecution has not proved its case against the appellants beyond all reasonable doubt and, therefore, they deserve to be acquitted of the charge under Section 306 of IPC by giving them benefit of doubt.

25. In the result, the appeal is allowed. The impugned judgment is hereby set aside, acquitting the appellants of the charge under Section 306 of IPC. The appellants are reported to be on bail, therefore, their 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

