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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.251 of 2015

1. Bhuvneshwar Kumhar, S/o Shri Jadulal Kumhar, aged about 50 years,
2. Smt. Champa Bai, W/o Shri Bhuvneshwar Kumhar, aged about 40 years,

Both R/o Village Binjkot, Kumhardeepa, Police Station Bhupdevpur, Civil and Revenue District Raigarh, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through S.H.O. of the Police Station Bhupdevpur, District Raigarh, Chhattisgarh

--- Respondent

and

Criminal Appeal No.327 of 2015

Bikambar Kumhar @ Babu, S/o Shri Bhuvneshwar Kumhar, aged about 23 years, R/o Village Binjkot, Kumhardeepa, Police Station Bhupdevpur, Civil and Revenue District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through S.H.O. of the Police Station Bhupdevpur, District Raigarh, Chhattisgarh

--- Respondent

For Appellants	:	Shri Abhishek Saraf, Advocate
For Respondent	:	Ms. Shriya Mishra, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

17.9.2019

1. Both the appeals arise out of a common judgment, therefore, they are decided together.
2. The instant appeals have been preferred against the judgment dated 16.2.2015 passed by the Additional Sessions Judge (FTC), Raigarh in Sessions Trial No.44 of 2010, whereby the Appellants

have been convicted and sentenced as under:

Criminal Appeal No.251 of 2015

Appellants : (1) Bhuvneshwar Kumhar and (2) Smt. Champa Bai

<u>Conviction</u>	<u>Sentence</u>
Under Section 201 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.100/- with default stipulation

Criminal Appeal No.327 of 2015

Appellant : Bikambar Kumhar @ Babu

<u>Conviction</u>	<u>Sentence</u>
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.100/- with default stipulation
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 10 years and fine of Rs.100/- with default stipulation
Under Section 201 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.100/- with default stipulation

3. Prosecution case, in brief, is that Appellant Bikambar is husband of Sujata (deceased). Appellants Bhuvneshwar Kumhar and Smt. Champa Bai are father-in-law and mother-in-law of deceased Sujata. Marriage between Bikambar and Sujata was solemnised according to the Hindu customs on 2.4.2009. Allegedly, after few months of their marriage, all the present Appellants started harassing Sujata and treated her with cruelty and demanded Rs.15,000/- as dowry for purchase of a motorcycle. On 10.12.2009, Sujata committed suicide/killed by the Appellants by consuming/giving poisonous substance. On 12.12.2009, father of Sujata, namely, Harihar Prasad Rana (PW5) made a written

complaint (Ex.P7) on the basis of which First Information Report (Ex.P17) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. Charge-sheet was filed. Charges were framed.

4. In support of its case, the prosecution examined as many as 17 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellants denied the guilt and pleaded innocence. No witness has been examined in their defence.
5. On completion of the trial, vide the impugned judgment dated 16.2.2015, the Trial Court convicted and sentenced the Appellants as mentioned in the second paragraph of this judgment. Hence, these appeals.
6. Learned Counsel appearing for the Appellants submits that the Appellants have wrongly been convicted by the Trial Court without there being sufficient evidence against them on record. They have been convicted only on the basis of the statement of Harihar Prasad Rana (PW5) and Panch Kunwar (PW6), father and mother of the deceased, respectively. They have not stated anything on the basis of which it could be said that soon before her death, the deceased was subjected to cruelty for demand of dowry. It is further submitted that death of the deceased was unnatural is also not established. Therefore, no offence is made out against any of the Appellants.
7. Learned Counsel appearing for the State opposes the arguments advanced by Learned Counsel for the Appellants and supports the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and

perused the record minutely.

9. In **AIR 2014 SC 2555 (Manohar Lal v. State of Haryana)**, it was observed by the Supreme Court as under:

“19. The expression “soon before her death” used in the Section 304B IPC and Section 113B of the Evidence Act was considered by this Court in *Hira Lal & others v. State (Govt. of NCT), Delhi*, (2003) 8 SCC 80 : (*AIR 2003 SC 2865*), which reads as under:

“8. Section 304-B IPC which deals with dowry death, reads as follows:

“304-B. Dowry death.—(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.”

The provision has application when 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304-B, IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

“113-B. 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 had 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 purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10.8.1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature through it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a

presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

Similar observation was made by this Court in *Balwant Singh and another v. State of Punjab* (2004) 7 SCC 724 : (AIR 2005 SC 1504). In the said case this Court held:

"10. These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that "soon before" is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim."

20. In the present case, from the statement of PW.1 it appears that the death took place within seven years of marriage. Admittedly, death of the deceased was due to burning i.e. not in normal circumstances. We have to see now whether the remaining two ingredients are satisfied looking into the evidence on record."

10. In (2008) 1 SCC 202 (*Biswajit Halder v. State of W.B.*), it was further observed by the Supreme Court as under:

“13. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under “dowry death” and there shall be a presumption against the husband and the relatives.

14. In this case we find that there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. (See *Kanchy Komuramma v. State of A.P.*, 1995 Supp (4) SCC 118) Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained.”

- 11.** In **AIR 2016 SC 5313 (Bajinath v. State of Madhya Pradesh)**, the Supreme Court has observed thus:

“35. This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in *Shindo alias Sawinder Kaur and another v. State of Punjab* – (2011) 11 SCC 517 : (2011 AIR SCW 6556) and echoed in *Rajeev Kumar v. State of Haryana* – (2013) 16 SCC 640 : (AIR 2014 SC 227). In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to

cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in *K. Purna S. Rao v. Yadla Srinivasa Rao* - (2003) 1 SCC 217 : (AIR 2003 SC 11) to the effect that to attract the provision of Section 304B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connect with the demand for dowry".

12. In the light of above, I shall now examine the evidence available on record in the instant matter.
13. In his statement, Harihar Prasad Rana (PW5), father of deceased Sujata has stated that 3-4 months after the marriage, he brought the deceased to his house. She stayed at his house for about 1 month. During that period, she demanded Rs.15,000/- from him saying that his son-in-law/Appellant Bikambar wanted to buy a motorcycle. He told the deceased that he had no money at that time and after cutting of crop he will give her money as per his capacity. He has further deposed that 2-3 days thereafter he took the deceased to her matrimonial house. 3-4 days thereafter, some person came to him on a motorcycle and told him that the deceased had fallen ill. When they reached to the matrimonial house of the deceased, they saw that the deceased had died and her dead body was kept in the courtyard. During his cross-examination, this witness has admitted that the Appellants had not made any demand before the marriage at the time of *faldan*. They

had also not made any demand for dowry at the time of marriage. He has also admitted that his son-in-law/Appellant Bikambar had already a motorcycle. He has further admitted that with an interval of 1-1½ months, both the deceased and Appellant Bikambar used to visit his house. He has also admitted that the Appellants themselves had sent Ratan Kumhar for informing them regarding death of the deceased. Since they were taking food at that time, Ratan Kumhar had told them that the deceased had fallen ill seriously. He has also admitted that when they reached at the matrimonial house of the deceased along with Ratan Kumhar, all the persons present there were weeping. In paragraph 26, this witness has also admitted that the deceased had told her mother Panch Kunwar (PW6) about the demand of Rs.15,000/- made by Appellant Bikambar for purchase of a motorcycle.

14. Panch Kunwar (PW6), mother of the deceased has also deposed in similar fashion as stated by Harihar Prasad Rana (PW5), father of the deceased. During her cross-examination, she has further deposed that during stay of the deceased at their house for about 1 month, the deceased had told her about the demand of Rs.15,000/- made by their son-in-law/Appellant Bikambar for purchase of a motorcycle. This witness has stated that the deceased had told her about the demand after passing of about 15 days of her stay at the maternal house.

15. Chandan Bai Rana (PW7) is maternal aunt of the deceased. She has stated that whenever the deceased had been visiting her house, she had been telling her about demand of a vehicle. But, this fact is not mentioned in her case diary statement (Ex.P9). Shrawan Kumar Rana (PW8) is brother of the deceased. He has

also stated that when the deceased was brought to their house second time, she had told that the Appellants were making demand for a motorcycle or money in place thereof. But, this fact is also not mentioned in his case diary statement (Ex.D2).

16. Draupati Bai (PW4) is sister of the deceased. She has deposed that 3 months after the marriage, the deceased had told her telephonically that Appellant Bikambar was making demand for Rs.20,000/- for purchase of a motorcycle and was also beating her therefor. On this, she had called Appellant Bikambar and given him Rs.3,000/-. 1 week thereafter, the deceased died. But, this witness has admitted the fact that all these facts were not told by her to the police nor to anybody else and she had stated the same for the first time before the Court.
17. Harihar Prasad Rana (PW5), Panch Kunwar (PW6), Shrawan Kumar Rana (PW8), Natthulal Sidar (PW9) and Rupendra Kumar Rana (PW10) are residents of Village Usraut. They have stated that when they reached to the house of the Appellants, they saw that dead body of the deceased was kept in the courtyard of the house of the Appellants and at that time froth was coming out from the nose and mouth of the deceased and a reddish mark was also present on her neck. Out of all these witnesses, Harihar Prasad Rana (PW5), Panch Kunwar (PW6), Shrawan Kumar Rana (PW8) are father, mother and brother of the deceased, respectively. But, no objection was raised by any of these three witnesses or the other present witnesses of Village Usraut at the time of cremation of the dead body of the deceased. Later on, 3 days thereafter, the written complaint (Ex.P7) was made by Harihar Prasad Rana (PW5), father of the deceased regarding suspicious death of the

deceased.

18. Bhikham Prasad (PW2) and Tarni Prasad (PW3) are also residents of Village Usraut. They have deposed that when they saw the dead body of the deceased, at that time, they did not have any suspicion in their minds and they had returned after telling for cremation of the dead body.
19. Dr. S.K. Rathiya (PW12) has deposed that on 13.2.2010, ash and burnt bones of the dead body of the deceased were brought to him for examination. Therefore, he had reported that no definite opinion regarding the death was possible to be given by him.
20. Suresh Kumar Bhagat (PW16) is the Investigating Officer of the offence in question.
21. On a minute examination of the evidence available on record, it is established that death of the deceased took place within 7 years of her marriage. Since *post mortem* examination of her dead body was not done, no medical evidence is available on record to show that her death was an unnatural death. Though some of the witnesses of Village Usraut have stated that when they saw the dead body of the deceased, they found that froth was coming out from the nose and mouth of the deceased and a reddish mark was also present on her neck, no objection was raised by any of them before cremation of the dead body nor was the matter reported before 12.12.2009. Bhikham Prasad (PW2) and Tarni Prasad (PW3), the other residents of Village Usraut have deposed that they had no suspicion in their minds on seeing the dead body of the deceased and they had told for cremation of the dead body and had thereafter returned. From the statements of Harihar Prasad

Rana (PW5) and Panch Kunwar (PW6), father and mother of the deceased, respectively, it is only established that 3-4 months after the marriage, the deceased had stayed at their house for about 1 month. At that time, after passing of about 15 days of her stay, the deceased had told her mother Panch Kunwar that Appellant Bikambar was making demand for Rs.15,000/- for purchase of a motorcycle. The evidence on record shows that this demand was for purchase of a motorcycle and not a dowry demand because there is no evidence on record to show that Appellant Bikambar ever harassed or ill-treated the deceased for this demand. There is also no evidence on record to show that Appellant Bikambar ever made any direct demand from the parents of the deceased. From the evidence on record, it is well established that soon before her death, the deceased was subjected to cruelty for demand of dowry is totally missing in the instant case. Therefore, even if for the sake of argument, it is considered that the death of the deceased was unnatural then also no offence is made out against any of the Appellants.

- 22.** Consequently, both the appeals are allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges framed against them.
- 23.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge