

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.650 of 2014

Judgment Reserved on : 4.7.2019

Judgment Delivered on : 28.8.2019

Pushpendra Suryavanshi, S/o Manbodhan Suryavanshi, aged about 27 years, R/o Village Kurda, Police Station Baradwar, District Janjgir-Champa, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through Police Station Baradwar, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Appellant : Shri Yogeshwar Sharma, Advocate
For Respondent : Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against judgment dated 5.7.2014 passed by 1st Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Trial No.116 of 2013, whereby the Appellant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 10 years

2. Facts of the case, in brief, are that Kanteshwaribai died on 4.2.2013 within 7 years of her marriage with the Appellant. She was found dead due to fire burns at her matrimonial house in suspicious condition. According to the prosecution case, first

marriage of the deceased was performed with one Anil 3 years prior to her death. 6 months thereafter, Anil left her. In April, 2012, the Appellant married her as per *churi* customs. She lived with the Appellant happily for 2-3 months. Thereafter, the Appellant started beating her for demand of money. He tortured her physically and mentally. He did not understand even after being inculcated by her parents and continued to torture and harass her. On 4.2.2013 at about 9:00 a.m., when the Appellant was not at home, she poured kerosene over her and set herself on fire. The Appellant took her to hospital at Sakti, but she died in the hospital during treatment. On receiving intimation from the hospital, a morgue (Ex.P11) was recorded on zero in Police Station Sakti. Inquest (Ex.P4) of the dead body was done. Post mortem examination of the dead body was conducted by Dr. R.L. Thakur (PW12) and his team. Their report is Ex.P17 in which it is opined that the deceased had received 96% burn injuries and cause of death was asphyxia and shock. On the basis of the morgue (Ex.P11) recorded on zero, numbered morgue (Ex.P7) was recorded in Police Station Baradwar. On the basis of morgue inquiry, First Information Report (Ex.P8) was registered in Police Station Baradwar. During the course of investigation, a container of kerosene having filling capacity of 5 litres, a match box having 2 sticks and some burnt pieces of saree of the deceased were seized vide Ex.P6. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. On completion of the investigation, a charge-sheet was filed against the Appellant for offence punishable under Section 304B of the Indian Penal Code. Charges under Section 304B, in alternative under Section 306, in alternative under Section 302 of the Indian Penal Code were framed against him.

3. To rope in the Appellant, the prosecution examined as many as 13 witnesses. Statement of the Appellant was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the guilt. No witness was examined in his defence.
4. After completion of the trial, the Trial Court, vide the impugned judgment dated 5.7.2014, acquitted the Appellant of the charges under Sections 306 and 302 of the Indian Penal Code, but convicted him for the offence punishable under Section 304B of the Indian Penal Code and sentenced him as mentioned in the first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that without there being any clinching evidence on record, the Trial Court has wrongly convicted the Appellant. It was further argued that the Trial Court has convicted the Appellant only on the basis of statements of Ghanshyam (PW2), father of the deceased, Dukalabai (PW3), mother of the deceased and Dorelal (PW4), uncle of the deceased, but none of these three witnesses has stated anything on the basis of which it could be said that the Appellant had ever tortured or harassed the deceased for demand of dowry. It was submitted that there is no evidence on record to show that soon before her death the deceased was subjected to cruelty by the Appellant for demand of dowry. Thus, no offence under Section 304B of the Indian Penal Code is made out against the Appellant.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and

perused the record with utmost circumspection.

8. 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 thought 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.”

9. In (2008) 1 SCC 202 (*Biswajit Halder v. State of W.B.*) also, it was observed 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.”

- 10.** Now, I shall examine the facts of the present case in the light of above observations.
- 11.** From the statements of Ghanshyam (PW2), Dukalabai (PW3) and Dorelal (PW4), who are father, mother and uncle of the deceased, respectively, it is established that first marriage of the deceased was performed with Anil 3 years prior to her death. She lived with Anil for about 6 months. Thereafter, in April, 2012, her marriage was performed with the Appellant as per *churi* customs. Thereafter, on 4.2.2013, she was found dead due to burn injuries at her matrimonial house in suspicious condition. Thus, it is established that the deceased died in suspicious condition due to burn injuries within 7 years of her marriage.
- 12.** Ghanshyam (PW2), father of the deceased has stated that after marriage of the deceased with the Appellant, he maintained her

well for about 2-3 months, but thereafter, he started harassing her. He used to ask her to bring money from her maternal house. This witness has further stated that both the deceased and the Appellant had come to his house and stayed there for about 1½ months during the period of cutting of paddy crop and thereafter they had returned. He has further stated that he had gone to Gaziabad for earning livelihood. Few days thereafter, the deceased told him that the Appellant was not giving her food and was harassing her. In his cross-examination, this witness has admitted the fact that the Appellant was residing separately from his parents and was engaged in selling vegetables in other village. The deceased used to ask the Appellant to leave the business of selling vegetables and go out for earning livelihood. He has also admitted that when the Appellant and the deceased had stayed at his house for about 1½ months, during that period, the deceased had made him complaints that the Appellant used to scold her. This witness has further admitted that the deceased had told him that some tension was going on between her and the Appellant.

13. Dukalabai (PW3), mother of the deceased has also stated in similar fashion. She has also admitted that the deceased, after returning from her stay with the Appellant at her maternal house, had telephonically informed her that the Appellant had beaten her in the night and had not given her food. Next day, she came to know that the deceased committed suicide. This witness has also admitted that during the aforesaid stay of the deceased and the Appellant at the maternal house of the deceased for about 1½ months, they had lived happily.

14. Dorelal (PW4), uncle of the deceased has deposed that the

deceased had told him that the Appellant used to quarrel with the deceased and beat her for demand of money. As further stated by this witness, 1 day prior to the incident also, a telephonic talk had taken place between him and the deceased. But, at that time, the deceased had made him any complaint against the Appellant regarding his behaviour and demand of money has not been stated by this witness. This witness has also admitted the fact that the disputes had taken place between the deceased and the Appellant with some intervals during their stay at the maternal house of the deceased situated at Village Jharra.

15. Parents of the deceased, i.e., Ghanshyam (PW2) and Dukalabai (PW3), during their cross-examination, have also admitted the fact that when the deceased was living with her first husband Anil, at that time also, Anil had lodged a report that the deceased had poured kerosene over her. Both these witnesses have also admitted that thereafter Anil had called a panchayat meeting and on his refusal in the said meeting to keep the deceased with him, they (parents of the deceased) had taken the deceased back with them. Ghanshyam (PW2) has also admitted that in the said panchayat meeting, the villagers had told that the deceased can implicate Anil and his family members, therefore, she should be taken back by her parents and, therefore, they had taken the deceased back with them.

16. On a minute examination of the above evidence on record, it is clear that though death of the deceased took place in a suspicious condition within 7 years of her marriage with the Appellant, soon before her death she was subjected to cruelty for demand of dowry is not established. There is nothing on record to show that the

deceased was ever harassed for demand of dowry. From the statements of Ghanshyam (PW2), Dukalabai (PW3) and Dorelal (PW4), it is also clear that the disputes, which took place between the deceased and the Appellant, were of day to day routine. From the statements of Ghanshyam (PW2) and Dukalabai (PW3), it is also established that earlier also, during her living with her first husband Anil, the deceased had once tried to commit suicide by pouring kerosene over her. This reflects her suicidal tendency. Merely because she committed suicide within 7 years of her marriage, it does not establish that she did so on account of demand of dowry. As a consequence of the aforesaid discussion, I find that the offence punishable under Section 304B of the Indian Penal Code is not made out.

17. Resultantly, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charge framed against him.
18. 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