

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 16/01/2020****Judgment delivered on : 05/03/2020****CRA No. 241 of 2003**

1. Ishamlal, son of Ishwar Lal Sahu, aged about 44 years,
2. Smt. Sarita Bai, wife of Ishamlal Sahu, aged about 43 years,
3. Dushyant Kumar, son of Ishamlal Sahu, aged about 26 years,

All residents of Village-Khertha, Police Station-Jamul, Tehsil and
Distt. Durg (CG)

---- Appellants**Versus**

- State of Chhattisgarh, through District Magistrate, Durg, Distt.
Durg (CG)

---- Respondent

For Appellants	:	Shri Anuroop Panda on behalf of Shri B.D. Guru, Advocates.
For Respondent/State	:	Shri Pawan Kesharwani, P.L.

Hon'ble Shri Gautam Chourdiya, J**C A V Judgment**

The appellants are challenging the legality, validity and propriety of the judgment of conviction and order of sentence dated 13th February, 2003 passed by 1st Additional Sessions Judge, Durg (CG) in ST No.209/2002 whereby appellant No.1 has been convicted under Section 304B of IPC and appellants No. 2 & 3 under Section 304B/34 of IPC and each of them has been sentenced to undergo RI for seven

years.

02. Brief facts necessary for adjudication of this appeal are that marriage of Bhojbati (since deceased) was solemnized with Accused No.3 Dushyant Kumar on 21.4.2001 and in the marriage certain gifts/articles were given to the deceased by her parents and other family members. In the month of September, 2001, A-3 Dushyant Kumar reached the home of PW-5 Sunderlal, father of the deceased and demanded Rs.20,000/- for purchasing computer. When Sunderlal expressed his inability to give Rs.20,000/-, A-3 Dushyant started harassing and ill-treating the deceased. On 24th February, 2002 the deceased was blessed with a girl child and on 1st March, 2002 rituals of *Chhatti* function (6th day ceremony after birth of child) were done which were attended by parental family members of the deceased. On 1st March, 2002 on the request of A-1 Ishamlal, father of the deceased Sunderlal Sahu stayed at his home. Due to some quarrel between the children, A-3 Dushyant used filthy language and misbehaved with father of the deceased. Thereafter, they returned to their home. On 27th May, 2002 A-3 Dushyant left the deceased at her parental home. On 3rd June, 2002 again A-3 Dushyant Kumar along with his friend came to the home of Sunderlal and hurled filthy language at the deceased and told that his mother is ill and why his wife/deceased did not return to her matrimonial home. Again on 5th June, 2002 A-3 Dushyant along with A-1 Ishamlal and PW-6 Rajulal Sahu came to the home of Sunderlal Sahu and hot talk over demand of Rs.20,000/- by A-3 Dushyant took place. However, on the request of A-1 Ishamlal Sahu,

the deceased returned to her matrimonial home along with Ishamlal and next day i.e. 6th June, 2002 she committed suicide due to harassment and ill-treatment meted out to her by her husband A-3 Dushyant and A-1 Ishamlal Sahu and A-2 Smt. Sarita Bai taking favour of A-3 Dushyant.

03. Merg intimation Ex.P/6 was lodged on the same day i.e. 6th June, 2002 by Ganguram Sahu. FIR (Ex.P/15) was registered against the accused/appellants under Section 304B/34 of IPC after merg enquiry on 10.6.2002. During investigation, spot map Ex.P/4 and inquest Ex.P/3 were prepared in presence of witnesses. Postmortem on the body of the deceased was conducted on 7.6.2002 by PW-1 Dr. AP Sawant vide Ex.P/1 wherein he noticed that rigor mortis was present all over the body, there was 97% burn of total body which was antemortem in nature and duration of burn was within six hours. In his opinion, the cause of death was excessive burn and inhalation injuries.

04. As per Ex.P/5, one letter written by the deceased (Ex.P/5A) was seized. Two burnt matchsticks and burnt clothes of the deceased were seized vide Ex.P/7. From A-1 Ishamlal, suicide note (Ex.P/8A) was also seized vide Ex.P/8. After completing investigation, charge sheet was filed against the accused/appellants under Section 304B/34 of IPC. The trial Court framed charge under Section 304B of IPC against A-3 Dushyant Kumar whereas A-1 Ishamlal and A-2 Smt. Sarita Bai Sahu were charged under Section 304B/34 of IPC, which was denied by them and they prayed for trial.

05. So as to hold the accused persons guilty, the prosecution

examined as many as 11 witnesses. Statements of the accused 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. In their defence, they stated that for some days after marriage the deceased was living happily at her matrimonial home but when she returned from her parental home, she started quarrelling saying that her marriage has been done against her will, she loves some other boy and when she was persuaded by the accused persons that she is pregnant, she should not behave like this or else it would defame their family, she told that before marriage she had attempted to commit suicide because her marriage was not being done with the boy whom she loves but after a lot of request by her parents, she agreed for this marriage. The accused persons stated that on the date of incident A-1 Ishamlal had gone for his duties to another village, A-2 Smt. Saritabai had gone to another *Basti* for searching labourers and A-3 Dushyant Kumar had gone to the house of Lalaram Patel for wire fitting. They stated that they have been falsely implicated by Sunderlal and his family members in collusion with the police whereas they never demanded any money or dowry. In their defence, they examined five witnesses.

06. 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 accused/appellants as mentioned in para-1 of this judgment.

07. Learned counsel for the appellants submits as under:

- that in this case the prosecution has failed to prove any harassment, torture or cruelty on the part of the appellants to the deceased. In fact, when deceased Bhojbati was at her parental home, mother of A-3 fell ill and as Bhojbati did not return to her matrimonial home, some dispute arose between the deceased and A-3. No any demand of dowry as defined under Section 4 of the Dowry Prohibition Act was made by the appellants either at the time of marriage or thereafter. Allegation made against A-3 is that he was pressurizing his wife/deceased and her father for giving him Rs.20,000/- for purchase of computer but the said allegation is false and frivolous. When such allegation was made by PW-5 Sunderlal, A-3 vehemently denied the same as is evident from the deposition of PW-5.
- that only one letter is seized from father of the deceased Sunderlal vide Ex.P/5 wherein no allegation regarding demand of dowry is there and only general allegation of taunting by her in-laws has been leveled. The said letter is written on 20th April, 2002 and received on 24th April, 2002 as per post office seal affixed on the same. On 24th April, 2002 itself the deceased along with family members of her matrimonial home was going to pilgrim Jagannathpuri and there was no any dispute on the said date between the appellants and the deceased.
- that many other letters were also written by the deceased to her parents but since those letters did not contain any allegations regarding demand of dowry, the same have been deliberately suppressed by the parents of the deceased and not filed by the

prosecution.

- that normally in matrimonial life there are certain disputes between the husband and wife but that cannot be construed as harassment or cruelty against the wife.
- that only PW-5 Sunderlal, father of the deceased; PW-6 Rajulal, brother-in-law of PW-5 and PW-8 Sushila Bai, sister of PW-5, have made general allegations regarding demand of dowry against the appellants after death of the deceased. The deceased had written a suicide note (Ex.P/8A) and that document is seized by the investigating officer during investigation from A-1 Ishamlal Sahu.
- that diary statements of PW-5 Sunderlal Sahu and PW-6 Rajulal were recorded on 10.6.2002 whereas statement of PW-8 Sushila Bai was recorded on 26.7.2002. No any complaint was made to the police or any neighbour or social organization soon after the incident against the appellants by the family members of the deceased whereas at the time of inquest and postmortem they were present.
- that PW-5 Sunderlal admits this fact in para-11 of his deposition that after marriage, the deceased came to her parental home for 4-6 times but never complained against any member of her matrimonial home. He also admits in para-3 that when demand of Rs.20,000/- by A-3 Dushyant was told by him to A-1 Ishamlal, then A-3 got angry and vehemently denied to have made such demand.
- that PW-6 Rajulal appears to be an interested witness as he was

giving statement before the Court after making preparation for the same as to what is to be stated before the Court. In para-7 this witness admits that he has noted down on a piece of paper, which is kept in his pocket, as to what statement is to be given in the Court and that he was giving statement as per Ex.D/3. Therefore, PW-6 Rajulal is not a reliable witness as he is trying to falsely implicate the appellants. Further, PW-8 Smt. Sushila Bai, sister of PW-5, admits in para-1 of her examination-in-chief that her brother PW-5 never informed her about any demand by the appellants. She also admits that no incident of cruelty took place in her presence.

08. 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 appellants, which needs no interference by this Court.

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

10. For bringing home offence under Section 304B of IPC, the following ingredients are required to be proved beyond reasonable doubt:

(i) death of the woman concerned is by any burns or 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 exposit "cruelty" as:

- (i) any wilful 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.

11. It is not disputed by both the counsel for the parties that marriage of Bhojbati was solemnized with A-3 Dushyant Kumar on 21st April, 2001 and she died on 6th June, 2002 at her matrimonial home due to burn injuries. This fact is also proved by PW-5 Sunderlal and PW-6 Rajulal. Even as per postmortem report Ex.P/1 this fact is also proved that she died due to 97% burn which was antemortem in nature and her cause of death was excessive burn and inhalation injuries. Thus, from the evidence on record it stands proved beyond all reasonable doubt that death of Bhojbati was due to burn injuries within seven years of her marriage. Now it is to be seen from the evidence on record whether the third ingredient 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.

12. Case of the prosecution is based mainly on the evidence of three witnesses i.e. PW-5 Sunderlal Sahu (father of deceased), PW-6 Rajulal (brother-in-law of PW-5) and PW-8 Smt. Sushila Bai (sister of PW-5). Diary statement of PW-8 was recorded on 26th July, 2002 whereas statements of PW-5 & PW-6 were recorded on 10th June, 2002. Prior to these statements, no allegation was made to any social organization or

neighbour or to the police regarding demand of dowry or cruelty or harassment by the appellants against the deceased. No prompt FIR was lodged after death of the deceased.

13. One letter Ex.P/5A is written by the deceased prior to 24th April, 2002 which does not contain any allegation of demand of dowry by the appellants. She has only mentioned in the said letter that her in-laws were taunting her over trivial issues. The said letter is seized from PW-5 Sunderlal and it is not disputed that the said letter is written by the deceased. On 24th April, 2002 the deceased along with all the family members of her matrimonial home had gone to Jagannathpuri. No any single word was mentioned in the said letter regarding demand of dowry or Rs.20,000/- for purchase of computer or mixi. In the above admitted position, the evidence of the prosecution witnesses, particularly the evidence of PW-5, PW-6 & PW-8, needs to be scrutinized to ascertain the complicity of the appellants in the crime.

14. PW-2 GR Nagesh, Naib Tehsildar, who prepared inquest report Ex.P/3 on 6.6.2002 has stated in cross-examination that on the same day when he prepared the inquest report, PW-5 Sunderlal was present but no allegation regarding demand of dowry was made by PW-5.

15. PW-7 Ganguram Sahu who lodged merg intimation Ex.P/6 and was also present at the time of inquest has also stated the same thing as stated by PW-2 that no any complaint was made by PW-5 Sunderlal or his family members regarding any demand of dowry or cruelty against the appellants. He specifically admits this fact in para-9 that when PW-2 prepared inquest, PW-5 and other relatives were present

and that when PW-2 and police officers asked PW-5 and his relatives whether they have any complaint against the accused persons, they replied that there is no complaint against the appellants. PW-7 is a resident of Village-Thertha where the accused/appellants were residing and he is Village Sarpanch. He states in para-6 that the appellants and the deceased were living together happily and there was no complaint regarding behaviour of the appellants. PW-7 also states that he used to visit the home of the appellants as they resided in the same locality. There is no reason to disbelieve the statement of PW-7.

16. In para-18, PW-5 Sunderlal also admits that he was present at the time of postmortem and at that time the police was also present. Date of incident is 6th June, 2002 and postmortem was conducted on 7th June, 2002 but PW-5 did not disclose the police officer either on 6th June or 7th June regarding any cruelty or harassment by the accused against the deceased or regarding demand of Rs.20,000/- by A-3 Dushyant Kumar.

17. PW-5 Sunderlal in para-11 admits that after marriage and prior to her death, the deceased visited her parental home only for 4-6 times and she never came alone but came along with her husband A-3 Dushyant Kumar. During these visits the deceased never complained against her husband or his family members. He admits that A-3 used to always come with the deceased and take her back to her matrimonial home. He states that they also celebrated the birth of a girl child delivered by the deceased. At the time of marriage, no demand of dowry was made by the appellants. No allegation was made by PW-5,

PW-6 and PW-8 regarding any kind of cruelty by the appellants to the deceased.

18. PW-8 Smt. Sushila Bai admits in para-7 that PW-5 engaged a counsel in this case and she also admits that whatever incidents she has stated about in examination-in-chief did not take place in her presence but the same were informed to her by her brother PW-5 Sunderlal. Therefore, it would not be safe to rely upon the evidence of this witness (PW-8).

19. If the entire evidence of PW-5 is considered, who is father of the deceased, only Rs.20,000/- was demanded by A-3 Dushyant Kumar in the month of September, 2001 and thereafter, dispute arose between the deceased and A-3 and some abusive words were uttered by A-3 due to his hot temperament. But no incident of cruelty, mental or physical, is mentioned by PW-5 that it was of such a nature which compelled Bhojbati to commit suicide.

20. PW-6 Rajulal also does not seem to be a reliable witness because he was giving statement before the Court after making preparation for the same as to what is to be stated before the Court. In para-7 this witness admits that he has noted down on a piece of paper, which is kept in his pocket, as to what statement is to be given in the Court and that he was giving statement as per Ex.D/3. The said piece of paper was taken out from the pocket of this witness in the trial court.

21. In the matter of ***Biswajit Halder Vs. State of West Bengal, (2008) 1 SCC 202***, the Hon'ble Supreme while dealing with the offence

under Section 304B of IPC, upon close scrutiny of the evidence found that there is practically no evidence to show that there was any cruelty or harassment for or in connection with 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 304B of IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand of dowry. Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained.

22. In the matter of ***Nepal Singh Vs. State of Haryana, (2009) 12 SCC 351***, the Hon'ble Supreme Court held as under:

“Dowry death – Suicide by wife – Acquittal by trial Court – Interference by High Court – On facts, held, not justified – Deceased committed suicide within seven years of marriage – At the time of marriage appellant husband was studying – Few days before the death, deceased met and told her parents that the accused had completed his course and wanted her to bring Rs. One Lakh from them and that if she failed to do so accused would turn her out of the house – Fact that while going back to the village of her in-laws she told her father to arrange for the money otherwise her in-laws would not allow her to live, and many other vital things not stated during investigation by PWs – DW 1, who settled the marriage stated that there was no demand of dowry at the time of marriage and the deceased or her parents never complained to him for any such demands – No amount was sent to the appellant while he was prosecuting studies – Father of the appellant promptly sent intimation of death to her parents – Held, it was

rightly noted by trial court that there was no evidence towards the claim regarding any demand of dowry – Reasoning of High Court that something must have happened otherwise deceased would not have committed suicide, is clearly indefensible – That certainly could not have been a reason to set aside trial court's well-reasoned judgment of acquittal.”

23. So far as dowry death by husband or relative of husband of a woman subjecting her to cruelty are concerned, 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”.

24. Likewise, in ***Baijnath 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”.

25. In the present case, looking to the entire evidence of the prosecution, it is clear that the prosecution has utterly failed to prove its case beyond reasonable doubt that soon before her death, the deceased was subjected to cruelty or harassment for, or in connection with, any demand for dowry by her husband (A-3) or her father-in-law (A-1) or mother-in-law (A-2). PW-5 Sunderlal Sahu has only stated that A-3 was demanding Rs.20,000/- from him for purchase of computer and other witnesses have stated that they were informed about the same by PW-5. No direct demand was made by A-3 in presence of other witnesses. The said demand of Rs.20,000/- was made by A-3 in September, 2001 according to PW-5 but till death of deceased which took place on 6th June, 2002, such demand was not fulfilled. PW-8 Smt. Sushila Bai, in para-1 of her examination-in-chief admits that PW-5 Sunderlal never informed her about any demand by the accused persons. She has been declared hostile and when her case diary statement was read over to her, then she states about demand of Rs.20,000/- by A-3 from PW-5 Sunderlal. No any specific incident regarding any beating or cruelty as mentioned under Section 498A of IPC is proved by the prosecution against the appellants.

26. It is settled principle of law that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to bring home charge under Section 304B and 498A of IPC and

presumption u/s 113B of Evidence Act can be invoked only when the prosecution proves beyond all reasonable doubt that soon before her death the deceased was subjected to cruelty or harassment in connection with dowry demand. The prosecution has though successfully proved the first two ingredients of the offence i.e. death of deceased by burn injury other than in normal circumstances and within seven years of her marriage but has not been able to prove the third necessary ingredient of offence under Section 304B of IPC i.e. subjection of the deceased soon before her death to cruelty or harassment for or in connection with demand of dowry by the appellants. Thus, in the given facts and circumstances of the case and the evidence on record, keeping in view the principles of law laid down in the above cited judgments, the appellants' conviction under Section 304B or 304B/34 of IPC is not sustainable and they deserve to be acquitted of the said charge.

27. In the result, the appeal is allowed. Impugned judgment of the trial Court is hereby set aside acquitting the appellants of the charge under Section 304B & 304B/34 of IPC. The appellants are on bail, therefore, their bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC for their appearance before the higher forum as and when required.

Sd/

(Gautam Chourdiya)
Judge