

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1263 of 2002

Judgment Reserved on : 28.1.2020

Judgment Delivered on : 16.6.2020

Raj Kumar, son of Shri Baldau Prasad Shrivastava, aged about 26 years, resident of Bhadracharya, Police Station Balco, Tahsil and District Korba, Chhattisgarh

--- Appellant

versus

State of Chhattisgarh acting through District Magistrate, Korba

--- Respondent

For Appellant	:	Shri K.A. Ansari, Senior Advocate with Ms. Meera Ansari, Advocate
For Respondent	:	Shri Amit Verma, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred against the judgment dated 5.12.2002 passed by the Additional Sessions Judge, Korba in Sessions Trial No.378 of 2000, 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 8 years and fine of Rs.8,000/- with default stipulation
Under Section 498A of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.1,000/- with default stipulation

2. Prosecution case, in brief, is that name of the deceased is Urmilabai. The Appellant is husband of the deceased. Their marriage was solemnised in the year 1998. It is alleged that the

deceased was tortured by the Appellant and other co-accused persons (acquitted) for the reason that she had not brought sufficient dowry. It is further alleged that the Appellant had demanded a sum of Rs.5,000/- on which cash of Rs.3,000/- and 2 bags of paddy were given to him by his father-in-law. On 22.7.2000, dead body of the deceased was found in a well. Morgue (Ex.P6) was lodged by Nand Kumar (PW7), brother of the Appellant. Inquest proceeding (Ex.P4) was conducted. Post mortem examination over the dead body of the deceased was conducted by Dr. Smt. N.D. Ram (PW9). Post mortem report is Ex.P10. After morgue inquiry, on the basis of the inquiry report, First Information Report (Ex.P8) was registered. 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 and the other co-accused persons (acquitted), namely, Baldau Prasad and Vimlabai, father-in-law and mother-in-law of the deceased, respectively.

3. In support of its case, the prosecution examined as many as 13 witnesses. In examination under Section 313 of the Code of Criminal Procedure, the Appellant and the co-accused persons denied the guilt and pleaded innocence. 2 witnesses have been examined in defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court acquitted co-accused persons Baldau Prasad and Vimlabai of all the charges, but convicted and sentenced Appellant Raj Kumar as mentioned in first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellant submitted that despite there being no sufficient evidence on record against the Appellant, the Trial Court has convicted him. Though death of the deceased occurred otherwise than under normal circumstances within 7 years of her marriage, it is not established that she committed suicide. From the evidence led by the prosecution, it seems that she was not having a good stomach. A toilet of the matrimonial house of the deceased was situated adjacent to the well where dead body of the deceased was found. Therefore, possibility of her fall into the well accidentally cannot be ruled out. It was further submitted that from the evidence adduced by the prosecution, it is also not established that soon before her death the deceased was subjected to cruelty by the Appellant on account of dowry. Though as stated by Salikram (PW1) and Shakuntala (PW2), father and mother of the deceased, respectively they had given cash of Rs.3,000/- and 2 bags of paddy to the Appellant on his demand, both these witnesses have admitted the fact that they had given the same to the Appellant to grow-up business of his shop. Meaning thereby, the money and the paddy were given as a domestic help. There is nothing on record to show that at the time of marriage or thereafter the Appellant ever made demand for dowry.
6. Learned Counsel appearing for the State opposed the above submission and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.

8. It is not in dispute that death of Urmilabai occurred otherwise than under normal circumstances within 7 years of her marriage.
9. Before appreciation of the evidence available on record, it is apt to reproduce Section 304B of the Indian Penal Code, which deals with dowry death and reads as follows:

“304B. 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.”

10. In AIR 2008 SC 2377 (Narayanamurthy v. State of Karnataka), the Supreme Court has observed thus:

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

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16. The legislature has also introduced Section 113-B of the Evidence Act alongside insertion of Section 304-B, IPC.

“113B. 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 purpose of this Section “dowry death” shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).”

17. The basic ingredients to attract the provisions of Section 304-B, IPC, are as follows:-

“(1) That the death of the woman was caused by any burns or bodily injury or in some circumstances which were not normal;

(2) such death occurs within 7 years from the date of her marriage;

(3) that the victim was subjected to cruelty or harassment by her husband

or any relative of her husband;

(4) such cruelty or harassment should be for or in connection with the demand of dowry; and

(5) it is established that such cruelty and harassment was made soon before her death."

18. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Sections 302, 304-B and 306 of the Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of this Court in *Satvir Singh v. State of Punjab*, [(2001) 8 SCC 633] wherein it was held : (SCC p. 643, paras 21-22)

"21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to be woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened

'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'."

19. In *Hira Lal v. State (Govt. of NCT), Delhi*, [(2003) 8 SCC 80], this Court observed that: (SCC pp. 86-87, para 9]

"The expression 'soon before her death' used in the substantive S. 304-B, I.P.C. and S. 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to express 'soon before' used in S. 114, Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession.' The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that

the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

11. In light of the above-quoted provision of law and observation of the Supreme Court, I shall now examine the evidence available on record of the instant case.
12. According to the case of the prosecution, deceased Urmilabai was subjected to cruelty for fulfilling demand of dowry made by the Appellant and soon before her death also she was subjected to cruelty for the same reason.
13. Salikram (PW1), father of the deceased has deposed that after her marriage when the deceased visited her maternal house for the first time, she did not disclose anything. On her next visit to her maternal house on the occasion of *Tija* festival, she told that her in-laws and husband subjected her to harassment. They told her that she did not bring T.V. in dowry and she also did not bring dowry as per the standard of the marriage ceremony.
14. Shakuntala (PW2), mother of the deceased and Netra Kamal Shrivastava (PW3), brother of the deceased have also deposed in similar fashion, but they have not stated so in their police

statement.

15. Salikram (PW1) has further deposed that after the *Tija* festival, when the Appellant visited his house, he asked him why did he harass the deceased. The Appellant told him that he had asked the deceased to bring a sum of Rs.5,000/-. According to this witness, at that time, he had given cash of Rs.3,000/- and 2 bags of paddy to the Appellant. During cross-examination, this witness has admitted that he had asked the Appellant about the reason for demand of money and the Appellant had told him that he had asked for the money for growing-up business of his shop. Shankuntala (PW2) has also admitted this fact. She has further admitted that the deceased had been visiting her maternal house with an interval of 1-2 months and the Appellant had been coming to take her back and after staying for 1-2 days he had been taking her back. Shakuntala (PW2) has further admitted that in the month of *Baisakh* also, the Appellant had left the deceased at her maternal house and thereafter he had gone to Mungeli for learning some work. 20 days thereafter, the Appellant returned after learning of the work. At that time, the deceased had gone to Ambikapur at the house of her elder sister. At that time, the Appellant stayed at the maternal house of the deceased for 1 day and thereafter returned saying that on coming of the deceased to her maternal house she be sent back to him. This witness has further admitted that the Appellant sent a letter 8 days thereafter that if the deceased had returned to her maternal house, she be sent to him. This witness has further deposed that since the deceased had not returned, the Appellant had again come to her maternal house and on her return to her maternal house, he took

her back with him. According to this witness, that was the last visit of the deceased to her maternal house. Thereafter, her death took place.

16. Netra Kamal Shrivastava (PW3), brother of the deceased has also admitted that they never made any complaint in their society. He has further admitted that the deceased was an educated woman and she used to write letters. This witness has further admitted that whenever the deceased visited her maternal house, the Appellant came there and after his stay for 1-2 days there, he took her back with him.
17. Kedarnath Yadav (PW5), Bharatlal (PW6), Tulsiram (DW1) and Bhagirathi (DW2) are neighbours of the Appellant and Nand Kumar (PW7) is brother of the Appellant. According to these witnesses, relation between the deceased and the Appellant and his family members was cordial. Dr. Smt. N.D. Ram (PW9) and Dr. R.K. Divya (PW10) are the witnesses who conducted post mortem examination over the dead body of the deceased. Their report is Ex.P10. S.D.O. (Police) M.K. Shukla (PW12) is the witness who investigated into the offence in question.
18. On a minute examination of the above evidence, it is clear that death of the deceased occurred otherwise than under normal circumstances within 7 years of her marriage. From the evidence, it is also established that before or at the time of marriage, there was no demand for dowry. After the marriage, on one occasion, cash of Rs.3,000/- and 2 bags of paddy were given to the Appellant, but as admitted by Salikram (PW1) and Shakuntala

(PW2), father and mother of the deceased, respectively, the said money and the paddy were given to him as a domestic help not as fulfillment of any demand for dowry. From the admissions made by Shakuntala (PW2) and Netra Kamal Shrivastava (PW3), it is also established that relation between the deceased and the Appellant was cordial. With an interval of 1-2 months, the deceased had been visiting her maternal house and the Appellant had been coming and taking her back after staying at her maternal house for 1-2 days. As stated by Shakuntala (PW2), last time also, the Appellant, after leaving the deceased at her maternal house, had gone to Mungeli for learning some work. 20 days thereafter, he had returned to the maternal house of the deceased, but, at that time, the deceased had gone to Ambikapur at the house of her elder sister. He had waited for the deceased at her maternal house for 1 day. Thereafter, he had returned. 8 days thereafter, he had also sent a letter to send the deceased back to him. Thereafter, he himself had again come to the maternal house of the deceased and taken her back with him. From the statement of Netra Kamal Shrivastava (PW3), it is also established that the deceased was an educated woman and she also used to write letters to her parents. If the alleged cruelty had taken place with her, she would have informed about the cruelty to her parents through her letters. But, no such letter has been seized by the prosecution. Contrary to this, 4 letters written by the Appellant to his father-in-law have been seized vide Ex.P1. I have gone through the said 4 letters. In none of his said 4 letters, the Appellant has made any demand. Virtually, from the contents of the letters, it appears that the deceased herself did not want to live at her matrimonial house and she wanted to return to her maternal

house. This fact is mentioned in the said 4 letters written by the Appellant and through these letters themselves the Appellant, as desired by the deceased, had made a request to his father-in-law to take her back to her maternal house. On appreciation of the entire evidence, I find that the main ingredients of the offence in question, i.e., making of demand of dowry and that too soon before death of the deceased, are missing. Therefore, in my considered view, the offence alleged against the Appellant under Sections 304B and 498A of the Indian Penal Code is not duly proved. The finding of conviction arrived at by the Trial Court is contrary to the evidence available on record.

19. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellant is acquitted of the charges framed against him.
20. 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