

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.782 of 2017

Judgment Reserved on : 1.12.2021

Judgment Delivered on : 20.12.2021

Krishna Sahu, son of Jogiram Sahu, aged 25 years, resident of Village Danout, Police Station Chakradhar Nagar, Tahsil and District Raigarh, Chhattisgarh

---- Appellant

versus

State of Chhattisgarh through the District Magistrate, Raigarh, Chhattisgarh

--- Respondent

For Appellant : Shri Vineet Kumar Pandey, Advocate
For Respondent/State : Shri Sudeep Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This appeal is directed against the judgment dated 2.5.2017 passed in Sessions Trial No.10 of 2017 by the First Additional Sessions Judge to the Court of First Additional Sessions Judge, Raigarh, 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. Name of deceased is Rajkumari alias Padma. The Appellant is her

husband. 3 years prior to the incident, their marriage was solemnised. On 17.10.2016, Rajkumari died due to catching of fire at her matrimonial house. It is the case of the prosecution that after the marriage, quarrels took place between the Appellant and Rajkumari two times. Therefore, Rajkumari returned to her paternal house where her family members mediated the matter and, therefore, she returned to her matrimonial house. In the month of July, 2016, again the Appellant left her at the house of Hridayram Sahu (PW10), maternal uncle of Rajkumari at Village Tundri. When the father of Rajkumari came to know that Rajkumari has been left by the Appellant, he took her to his house. At that point of time, she told him that the Appellant used to harass her for demand of dowry and cash of Rupees Two Lakhs for purchase of a pick up vehicle. Thereafter, at the time of *Navratri* festival, the Appellant came to the house of father of Rajkumari and took her back with him. Thereafter, on 17.10.2016, the incident of burn of Rajkumari at her matrimonial house took place. Morgue intimation (Ex.P11) was lodged by ward boy Reshamlal Kurrey (PW17). Inquest proceeding (Ex.P4) was conducted. Post mortem examination on dead body of Rajkumari was conducted by Dr. Nityanand Kumar (PW23). His report is Ex.P18. Cause of death was found to be complications arisen out of burn injuries. After morgue inquiry, First Information Report (Ex.P10) 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. Charges were framed against him by the Trial Court.

3. To rope in the Appellant, the prosecution examined as many as 23 witnesses. Statement of the Appellant was recorded under Section 313 of the Cr.P.C. in which he denied the guilt, pleaded innocence and false implication. 2 witnesses were examined in his defence.
4. On completion of the trial, vide the impugned judgment, the Trial Court convicted and sentenced the Appellant as mentioned in first paragraph of this judgment. Hence, this appeal.
5. Learned Counsel appearing for the Appellant argued that the Appellant has been wrongly convicted by the Trial Court without there being any clinching and sufficient evidence on record. There is nothing on record on the basis of which it could be said that the Appellant ever demanded dowry from Rajkumari or harassed her therefor. There is also no evidence on record to show that soon before her death she was subjected to cruelty for demand of dowry. Though as stated by the witnesses the Appellant had demanded Rupees Two Lakhs for purchase of a pick up vehicle, from the admissions made by the witnesses, it is well established that the Appellant was unemployed and the demand was made by him for purchase of a vehicle for earning his livelihood and that too that was as a domestic help. Therefore, the conviction of the Appellant is not sustainable.
6. On the contrary, Learned Counsel appearing for the State supported the impugned judgment.
7. I have heard Learned Counsel appearing for the parties and

perused the material available on record with utmost circumspection.

8. Necessary ingredients for invoking the provisions of Sections 302, 304B and 306 of the Indian Penal Code read with Section 113B of the Indian Evidence Act have been discussed by the Supreme Court in the case of **(2008) 4 Supreme 228 (Narayanamurthy v. State of Karnataka)**. In paragraphs 17 and 18 of the said judgment, it has been observed thus:

“17. The basic ingredients to attract the provisions of Section 304B, 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 the 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'.”

9. In the light of above, I shall now discuss the evidence adduced by the prosecution in the case in hand.

10. There is no dispute on the point that marriage of Rajkumari and the Appellant was performed 3 years prior to the incident. The incident took place on 17.10.2016. From the statement of Dr. Nityanand Kumar (PW23) and the post mortem report (Ex.P18), it is well established that death of Rajkumari took place due to complications arisen out of the burn injuries. Thus, it is quite clear that she died within 7 years of her marriage in an unnatural circumstance at her matrimonial house.
11. Now, the question for consideration remains that whether the demand of dowry was being made from Rajkumari by the Appellant and soon before her death she was subjected to cruelty for demand of dowry or not.
12. Narsingh (PW8) is brother of the Appellant. He deposed that on the date of incident, he was sleeping along with his family at his house. At that time, he heard shouts of Rajkumari. He went to her and saw that she had caught fire on her body and the Appellant was drying to extinguish the fire. According to this witness, he also tried to help the Appellant in extinguishing fire. He further deposed that when he asked Rajkumari about the reason of her catching fire, she told him that she caught fire while boiling milk on the chimney. This witness has not further supported the case of the prosecution in any manner and turned hostile.
13. Kalaram Sahu (PW9) is uncle of Rajkumari. He also deposed that he came to know about the incident from the brother of Appellant, namely, Narsingh (PW8). Kalaram Sahu also admitted that relation

between Rajkumari and the Appellant was cordial.

14. Hridayram Sahu (PW10) is maternal uncle of Rajkumari. He deposed that at the time of *Rakhi* festival, the Appellant and Rajkumari had visited his house. 15 days thereafter, Shyamlal (PW11), father of Rajkumari took Rajkumari along with him. 15 days thereafter, Shyamlal told him that the Appellant was making demand of Rupees Two Lakhs for purchase of a vehicle. According to this witness, thereafter, he went to the house of Shyamlal where the Appellant had also come at that time and after apologising the Appellant took Rajkumari along with him. This witness admitted the fact that upbringing of Rajkumari was done by him from her childhood. He further admitted that when the Appellant had left Rajkumari at his house, at that time, she did not tell him anything about demand of any dowry or money for purchase of a vehicle nor the Appellant made any demand from this witness.
15. Shyamlal (PW11), father of Rajkumari, deposed that the Appellant was unemployed and he was a simple boy. After the marriage, Rajkumari did not make any complaint for about 3 years. According to this witness, for the first time, when the Appellant left Rajkumari at the house of her maternal uncle Hridayram Sahu (PW10), at that time, when he went there to take her along with him, she told him that the Appellant was making demand of Rupees Two Lakhs for purchase of a vehicle. This witness further deposed that when he talked with the Appellant on phone, he told him that the demand of Rupees Two Lakhs was for purchase of a vehicle. According to

this witness, thereafter, he called a village meeting in which the Appellant was called. In the meeting, the Appellant was inculcated upon which he took Rajkumari along with him. This witness further deposed that 10-12 days thereafter he came to know that Rajkumari had telephonically informed his son-in-law Fagulal that the Appellant was committing marpeet with her. However, he admitted the fact that he did not disclose this fact in his case diary statement. During cross-examination, in paragraph 4, this witness admitted the fact that when he had gone to the house of Hridayram Sahu (PW10), at that time itself, Rajkumari herself had told him that the Appellant had no employment for earning livelihood and if he gives him Rupees Two Lakhs, he could be able to purchase a vehicle. In paragraph 5 of cross-examination, he further admitted that when in the village meeting the Appellant was called and scolded then he apologised for taking Rajkumari belatedly.

16. Deosingh (PW12), Ved Prakash (PW13) and Dularam (PW14), all residents of Village Thangan, where the paternal house of Rajkumari was situated, deposed that when Rajkumari had come to Village Thangan at the time of *Rakhi* festival, she had told that the Appellant was making demand of Rupees Two Lakhs for purchase of a vehicle. Deosingh (PW12), in paragraph 3, admitted that Rajkumari had told that the Appellant was unemployed and if her father will give him Rupees Two Lakhs, he could be able to purchase a vehicle. Dularam (PW14) also admitted that Shyamlal (PW11), father of Rajkumari had also told him that Rajkumari herself had told that the Appellant should be given Rupees Two

Lakhs for purchase of a vehicle.

17. On a minute examination of the statements of the above witnesses, it is clear that after the marriage, relation between the Appellant and Rajkumari was cordial. After the marriage, for about 3 years, Rajkumari never complained about any demand from her or from her father. From the admissions made by the witnesses, it is also established that the Appellant was unemployed. Though there is evidence on record to show that a demand of Rupees Two Lakhs was made by the Appellant from Rajkumari, from the admissions made by the witnesses, it is also established that Rajkumari herself told that her father should give Rupees Two Lakhs to the Appellant for purchase of a vehicle for earning livelihood. Therefore, if the Appellant had made any demand of Rupees Two Lakhs, that was not a demand as a dowry but was a demand as a domestic help. Though Shyamlal (PW11), father of Rajkumari deposed that 10-12 days prior to the death of Rajkumari, she had complained to her brother-in-law Fagulal that the Appellant was committing marpeet with her, this fact is not stated by him in his case diary statement and he has developed his statement on this point before the Court and the statement of Fagulal has also not been recorded in this regard before the Court. Therefore, soon before her death, Rajkumari was subjected to any kind of cruelty by the Appellant is also not established. Therefore, material ingredients of the offence, i.e., (i) demand of dowry from the deceased by the Appellant and (ii) her subjection by the Appellant to cruelty for the alleged demand soon before her death are missing in this case. Hence, the

conviction of the Appellant under Section 304B of the Indian Penal Code is not sustainable.

18. Consequently, the appeal is allowed. The judgment under challenge is set aside. The Appellant is acquitted of the charge framed against him. He is in jail. He be set at liberty forthwith, if not required in any other case.

Sd/-
(Arvind Singh Chandel)
JUDGE