

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.455 of 2011

Judgment Reserved on : 17.3.2021

Judgment Delivered on : 10.6.2021

1. Sheshuraj Marian, S/o E.J. Marian, age 35 years,

2. E.J. Marian, S/o Late A. Marian, age 63 years,

--- Their names are deleted vide order dated 25.11.2019

3. Smt. Elisabeth Merry Marian, W/o E.J. Marian, age 60 years,

4. Ku. Velankanni Merry Marian, D/o E.J. Marian, age 31 years,

All R/o Panchsheel Nagar (East), Charoda, Police Station Bhilai,
District Durg, Chhattisgarh

---- Appellants

versus

State of Chhattisgarh through the Arakshi Kendra Purani Bhilai, District
Durg, Chhattisgarh

--- Respondent

For Appellants	:	Ms. Sharmila Singhai, Advocate
For Respondent/State	:	Shri Roshan Dubey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. During pendency of this appeal, Appellants No.1 and 2 died. Vide order of this Court dated 25.11.2019, their names have been deleted from the array of cause-title and the instant appeal, so far as it relates to them, has abated.
2. The appeal is directed against judgment dated 14.6.2011 passed

by 4th Additional Sessions Judge, Durg in Sessions Trial No.39 of 2010, whereby each of the Appellants have been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 304B of the Indian Penal Code	Rigorous Imprisonment for 7 years

3. Facts of the case, in brief, are that name of the deceased is Smt. Celistina. Her marriage was performed with Appellant No.1 (dead) on 8.10.2008. Appellant No.2 (dead), Appellant No.3 and Appellant No.4 are father-in-law, mother-in-law and sister-in-law (*Nanad*) of the deceased, respectively. In the intervening night of 26th and 27th of July, 2009, Celistina died due to fire burn at her matrimonial house. Morgue (Ex.P15) was lodged by Appellant No.1. Inquest proceeding (Ex.P2) was conducted. Post mortem examination over the dead body of Celistina was conducted by Dr. Badri Narayan Dewangan (PW3). His report is Ex.P4 in which he opined that she died as a result of shock due to 100% burn. During morgue inquiry, S. Roseline Rao (PW5), sister of the deceased made a written complaint (Ex.P5) on the basis of which First Information Report (Ex.P8) was registered. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure. It is alleged that after a few days of the marriage, the deceased was subjected to cruelty by the Appellants for demand of Rs.1,00,000 for purchase of a car. On completion of the investigation, a charge-sheet was filed. The Trial Court framed charges.
4. To rope in the accused/Appellants, the prosecution examined as

many as 9 witnesses. Statements of the accused/Appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the guilt, pleaded innocence and false implication. 2 witnesses were examined in defence.

5. On completion of the trial, the Trial Court convicted and sentenced the Appellants as mentioned in 2nd paragraph of this judgment. Hence, this appeal.
6. Learned Counsel appearing for the Appellants submitted that the Trial Court convicted the Appellants without there being clinching and sufficient evidence on record. It was further submitted that at the time of inquest proceeding, the family members of the deceased, i.e., her father and sister were present, but at that time and thereafter also, they did not make any complaint regarding subjection of the deceased to harassment for demand of dowry. After 5 months of the incident, the written complaint (Ex.P5) was lodged by the sister of the deceased. Delay in lodging the First Information Report has not been properly explained. It was further submitted that S. Babu Rao (PW4), father of the deceased categorically admitted the fact that after the marriage, the deceased was happy and there was no demand for dowry. S. Roseline Rao (PW5), sister of the deceased has also admitted that since January, 2009 the deceased never complained of any demand for dowry. Suddenly, in the month of May, 2009, the deceased would have complained of any harassment for demand of dowry is suspicious. It was further submitted that on 28.7.2009 S. Babu Rao (PW4),

father of the deceased made a written submission (Ex.D3) to the concerned Station House Officer which does not contain any complaint that the deceased was ever subjected to cruelty for demand of dowry. But, the Trial Court has not appreciated this fact and convicted the Appellants. According to Learned Counsel appearing for the Appellants since “soon before her death” the deceased was subjected to cruelty is not established, the conviction of the Appellants is not sustainable.

7. On the contrary, Learned Counsel appearing for the State, supported the impugned judgment of conviction and sentence.
8. I have heard Learned Counsel appearing for the parties and perused the entire record of the Trial Court with utmost circumspection.
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 subsection, '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 thus:

“**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. Further, in (2017) 1 SCC 101 (*Baijnath v. State of Madhya Pradesh*), it was observed by the Supreme Court as follows:

“**32.** 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 v. State of Punjab*, (2011) 11 SCC 517 and echoed in *Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640. 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. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC 217 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 as that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”.”

12. Now, I shall consider the evidence of the instant case in the light of above view taken by the Supreme Court. In the case in hand, it is not in dispute that the deceased was married with Appellant No.1 on 8.10.2008 and she died at her matrimonial house due to burn injuries, i.e., in an unnatural circumstance in the intervening night of 26th and 27th of July, 2009. Her death was within 7 years of the marriage. Now, it needs to be considered whether “soon before her death” she was subjected to cruelty or harassment by the Appellants for demand of dowry. In this regard, the statements of S. Babu Rao (PW4) and S. Roseline Rao (PW5), father and sister of the deceased, respectively are required to be appreciated.
13. In their Court statements, S. Babu Rao (PW4) and S. Roseline Rao (PW5) deposed that in the month of May, 2009, they along with the wife of S. Babu Rao (PW4) had gone to Chennai to visit (*darshan*) Mother Merry where the deceased had also come along with her husband/Appellant No.1. S. Roseline Rao (PW5) further deposed

that there the deceased had told her that Appellant No.1 had a love relationship with a girl and on being asked in this regard he used to beat her. She further deposed that the deceased was being subjected to cruelty for demand of Rs.1,00,000 for purchase of a car. She further deposed that she had heard that Appellant No.1 was impotent. S. Babu Rao (PW4) deposed that he had met with the deceased at Chennai in the evening of that day. At that time, the deceased had complained him of her mother-in-law/Appellant No.3 that she was not good at her and she used to harass her. This witness also deposed that he had come to know that Appellant No.1 had a love relationship with a girl and on being asked in this regard, he used to beat the deceased. This witness further deposed that he had also come to know that Appellant No.1 was impotent. In paragraph 13, this witness admitted that till the deceased resided at her matrimonial house, this witness was in contact with her on mobile phone. He further admitted that in the month of January, 2009, the deceased had come to his house for about 15 days and at that time she had told him that she was happy at her matrimonial house and all the family members of her matrimonial house were good at her. This witness further admitted the fact that the application (Ex.D3) was signed by him. From perusal of Ex.D3, it appears that the fact relating to subjection of the deceased to cruelty or harassment for demand of dowry is not mentioned therein. Though this witness deposed that no such application was given by him to police, he has not explained why, how and when he signed the application (Ex.D3). This witness also admitted the fact that on 5.11.2009, he had gone to Durg along with

one Ramesh (Advocate) for bringing the belongings of the deceased, but on 5.11.2009 or before that no complaint was made against the Appellants in police station. S. Roseline Rao (PW5), in paragraph 12 of her cross-examination, deposed that in the month of January, 2009, when the deceased had come to their house, at that time, she had not made any complaint regarding demand of dowry. In paragraph 16, she further admitted that she had also gone to Durg along with her father and Advocate Ramesh for bringing the belongings of the deceased. But, on that day or prior to that, they had not made any report against the Appellants. The written complaint (Ex.P5), which was lodged by S. Roseline Rao (PW5) bears the date of 21.12.2009 and this complaint was typed and printed out from a computer. In paragraph 16 of her cross-examination, S. Roseline Rao (PW5) admitted the fact that the written complaint (Ex.P5) was prepared by whom was not known to her.

14. On a minute examination of the above statements of S. Babu Rao (PW4) and S. Roseline Rao (PW5), father and sister of the deceased, respectively, it is clear that after 5 months of the death of the deceased, the written complaint (Ex.P5) dated 21.12.2009 was lodged by S. Roseline Rao (PW5). From the admissions made by S. Babu Rao (PW4) and S. Roseline Rao (PW5), it is also clear that at the time of inquest proceeding both were present, but no complaint was made by any of them at that time nor even thereafter against the Appellants for subjecting the deceased to cruelty or harassment for demand of dowry. Instead, S. Babu Rao (PW4),

father of the deceased made the application (Ex.D3) addressing the same to Station House Officer, but even in Ex.D3 he did not mention any fact regarding subjection of the deceased to cruelty or harassment for demand of dowry. Though S. Babu Rao (PW4) deposed that he had not given any such application to police, why, how and when he signed the application (Ex.D3) has not been explained by him. From the admissions made by both these witnesses, it is also clear that they had gone to Durg along with Advocate Ramesh on 5.11.2009 for bringing the belongings of the deceased, but on that day also, none of them made any complaint against the Appellants. Had there been really a complaint of subjection of the deceased to cruelty or harassment for demand of dowry, they would have raised a complaint in this regard on 5.11.2009 or prior to that. But, the complaint was made on 21.12.2009 vide Ex.P5. From the admissions made by the above two witnesses, it is also clear that in the month of January, 2009, when the deceased had visited their house, till that time, no complaint was made by the deceased regarding demand of dowry. It is the admission of S. Babu Rao (PW4), father of the deceased that he was in contact with the deceased on mobile phone, but he never raised any complaint regarding any demand of dowry. In the month of May, 2009, at Chennai also, the deceased did not make any complaint to his father regarding her subjection to cruelty or harassment by the Appellants. Therefore, "soon before her death", the deceased was subjected to cruelty or harassment for demand of dowry is suspicious. In the circumstances, conviction of the Appellants under Section 304B of the Indian Penal Code is not

sustainable and they are entitled to get benefit of doubt.

- 15.** Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charge framed against them.

Sd/-
(Arvind Singh Chandel)
JUDGE