

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 391 of 2002**

Balit Ram, aged about 28 years S/o Vishnu Chouhan, R/o Village Amapal, P.S. Raigarh, Distt. Raigarh(C.G.)

----Appellant**Versus**

The State of Chhattisgarh Through Police Station City Kotwali, Raigarh, Distt. Raigarh(C.G.)

---- Respondent

For Appellant	:	Mrs. Indira Tripathi, Advocate.
For Respondent/State	:	Mr. H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****08/06/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 22/03/2002 passed in Sessions Trial No. 214/1997 by learned 2nd Additional Sessions Judge, Raigarh, District-Raigarh (C.G.) whereby the Appellant has been convicted under Section 304(B) of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 500/-, with default stipulation.
2. Facts of the case are that the Appellant is the husband of deceased Satyabhama, their marriage was solemnized 2-3 years prior to the date of incident. On 28.09.1997 at around 10:30 AM at the bank of pond near

village Amapal, the deceased committed suicide by pouring kerosene oil on her and set herself on fire. Immediately after the incident, the matter was reported by Rohit Kumar Chouhan (PW-1) neighbor of the Appellant. At the time of incident, the Appellant had gone for his work and not present in the village. Inquest proceedings was conducted by the Police vide (Ex.P-3). Postmortem of dead body was conducted by Dr. Lokesh Padgi (PW-6) postmortem report is (Ex. P-6). It has been alleged that after the marriage of the deceased, co-accused Janki Bai (Aunt mother-in-law) and the Appellant treated cruelty with the deceased on account of demand of dowry, due to which, she died in unnatural circumstances within seven years of her marriage. During investigation, a letter was also seized which was written by the Appellant to his wife/deceased. Statement of the witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed before Trial Court and the Trial Court has framed the charges. The prosecution has examined as many as 7 prosecution witnesses. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter. The Appellant has stated that since the deceased was suffering from jaundice, due to which she committed suicide.

3. After trial, the Trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that the Appellant has been wrongly convicted by the trial Court without there being any reliable evidence available on record. She further submits that the

essential ingredient of Section 304(B) of the Indian Penal Code, i.e., soon before her death the deceased was subjected to cruelty or harassment on account of demand of dowry is completely missing. Hence, it was claimed by Learned Counsel appearing for the Appellant that the conviction of the Appellant is not sustainable. The Counsel further submits that as defined in Section 107 of the IPC, there is also no evidence available on record which can show that the Appellant instigated or abated the deceased for committing suicide.

5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the Trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and perused the available record minutely. I have also perused the statements of the witnesses minutely.
7. It is not in dispute that death of Satyabhama occurred otherwise than under normal circumstances within seven years of her marriage. Her death took place due to burn.
8. Before appreciation of the evidence available on record, it is apt to reproduce Section 304(B) 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.”

9. 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).”

10. 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.”

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

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 herein before 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 emphasis 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 approximate 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.”

12. 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.
13. In this case, the prosecution has examined as many as seven witnesses. Rohit Kumar Chouhan (PW-1), Bodhram (Kotwar)(PW-2) and Bedaram (PW-3) respectively are the neighbors of the Appellant. In their Court statements, they have not stated anything against the Appellant. According to their statements, there was a cordial relationship between the Appellant and the deceased. Dr. Lokesh Padgi is the witness who conducted postmortem of dead body of the deceased, his postmortem report is (Ex. P-6). H.C. Gotiya (PW-7) is the investigating officer who investigated the entire case. According to this witness, during investigation, he seized a letter written by the Appellant from the possession of Nirmal (PW-4).
14. Nirmal (PW-4) is father of the deceased and Sukhlal (PW-5) is brother of the deceased. According to the Court statement of Nirmal, he stated that in the month of April, he along with his wife visited to house of the Appellant, at that time they saw that the Appellant was beating their daughter and Appellant told them to take their daughter back. Thereafter, parents of the deceased took her back along with them. Later on, father-

in-law of the deceased took the deceased with him telling that the Appellant would not cause any harm to her and after some days, an unnatural death of the deceased occurred. In paragraph 2 of examination in chief, this witness deposed that when the deceased came back to her maternal home, she told them about the demand of Television and Motorcycle by her husband and due to the said demand her husband used to quarrel with her. Sukhlal (PW-5) brother of the deceased also deposed that when his parents took his sister back to his home, she told them about the demand of Motorcycle and Television by her husband failing which her husband used to beat her. Relying upon the evidence of Nirmal (PW-4) and Sukhlal (PW-5) and also relying the contents of letter which has been seized from Nirmal (PW-4), it has been held by the Trial Court that the Appellant harassed and treated cruelty with the deceased on account of demand of dowry and the Trial Court has convicted the Appellant for the offence punishable under Section 304(B) of the IPC.

15. It was the defence of the Appellant that his wife was suffering from jaundice, due to which she committed suicide. In their cross examination Nirmal (PW-4) and Sukhlal (PW-5) both have admitted the fact that prior to death of the deceased, she was suffering from jaundice and her treatment was going on. Nirmal (PW-4) and Sukhlal (PW-5) both have admitted the fact that since 1 ½ years of marriage of the deceased, she had never complaint anything against the Appellant. They have also admitted the fact that when the deceased told them about the demand of dowry, even then neither they have conducted any social meeting nor reported in concerned Police Station. Nirmal (PW-4) has also admitted

the fact that in the house of the Appellant there was no electricity connection. I have also gone through the contents of letter which has been written by the Appellant to her wife wherein the Appellant admitted the quarrel taken place between them and apologized for the same, there are no contents appeared in the letter on account of demand of dowry.

16. On minute examination of above evidence, it becomes clear that after two years of marriage, the deceased committed suicide. Since 1 ½ years of marriage, she never complaint anything against the Appellant and lived happily with him. In the month of April when Nirmal (PW-4) and his wife visited to the house of the Appellant, then on first time they saw the quarrel which was taken place between the Appellant and the deceased. At that time also, the Appellant had not demanded any dowry to the parents of the deceased, if any such demand of dowry had been existed, the deceased would have complaint regarding such demand to her parents at that time itself. From the admissions made by Nirmal (PW-4) and Sukhlal (PW-5), it is clear that in the house of the Appellant, there was no electricity connection. In this condition, any such demand of Television by the Appellant seems to be unnatural. There is no any such complaint made by the deceased regarding demand of dowry by her husband. Neither any social meeting conducted nor any complaint lodged by the deceased or her family members regarding cruelty or harassment on account of demand of dowry by the husband of the deceased. From the contents of letter which was written by the Appellant to her wife it appears that a quarrel has taken place between them and the Appellant apologized for the same to his wife, there was no contents

of dowry mentioned in the letter.

17. From the evidence available on record and in my considered opinion, the prosecution has failed to prove that “soon before her death” the deceased was subjected to cruelty or harassment by the Appellant in connection with the demand of dowry. In these circumstances, the Appellant is entitled to get benefit of doubt. Therefore, the conviction of the Appellant is not sustainable. Thus, the impugned order dated 22/03/2002 passed in Sessions Trial No. 214/1997 by learned 2nd Additional Sessions Judge, Raigarh, District-Raigarh (C.G.) is set-aside.
18. Consequently, the Appeal is allowed. The Appellant is acquitted from the charges framed against him on the basis of benefit of doubt.
19. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge