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HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 611 of 2015**

1. Kapil Barman, S/o Chhotku Barman, aged about 24 Years,
2. Chhotku Barman, S/o Soupat Barman, aged about 58 Years,
3. Smt. Sukhin Bai, W/o Chhotku Barman, aged about 55 Years,

All are R/o Mohra, P.S. Seepat, District Bilaspur, Chhattisgarh.

----Appellants

Versus

- State of Chhattisgarh, Through Incharge Station House Officer, P.S. Seepat, District Bilaspur, Chhattisgarh.

---- Respondent

CRA No. 628 of 2015

- Chhatram Khare, S/o Sunder Lal, aged about 38 Years, R/o Village Janji, Police Station Seepat, Civil and Revenue District Bilaspur, Chhattisgarh.

---Appellant

Versus

- State of Chhattisgarh, Through Station House Officer, Police Station Seepat, District Bilaspur, Chhattisgarh.

---- Respondent

For Appellants	Dr. Nirmal Shukla, Senior Advocate along with Ms. Rashika Soni, Advocate, Mr. Sourabh Sharma and Mr. Dharmesh Shrivastava, Advocates for the respective appellants.
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For State	Mr. Chitendra Singh, Panel Lawyer.
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Hon'ble Shri Justice Gautam Chourdiya 
Judgment on Board

18/10/2021

1. Since both these appeals filed under Section 374(2) of Cr.P.C. arise out of the judgment of conviction and order of sentence dated 13.05.2015 passed by the Second Additional Sessions Judge, Bilaspur, District Bilaspur, C.G. in Sessions Trial No.72/2014, they are being disposed by this common judgment. By the impugned judgment, the appellants are convicted and sentenced as under:-

CRA No.611 of 2015

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant No.1 Kapil Barman</u> <u>Appellant No.2 Chhotku Barman</u> <u>Appellant No.3 Smt. Sukhin Bai</u>	
Under Section 304-B read with 34 of Indian Penal Code	Rigorous Imprisonment for seven years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional R.I. for six months.

CRA No.628 of 2015

<u>Conviction</u>	<u>Sentence</u>
<u>Appellant- Chhatram Khare</u>	
Under Section 304-B of Indian Penal Code	Rigorous Imprisonment for seven years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional R.I. for

	six months.
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2. As per the prosecution case, after the marriage of the appellant Kapil Barman with Vinita Barman (deceased) in the year 2011, she was being harassed and ill-treated by the appellants in connection with demand of Rs.1 lakh, as a result of which she committed suicide by hanging herself on 05.07.2013. On the same day i.e. 05.07.2013, merg intimation (Ex.P-1) was lodged by PW-1 Ramavtar before the police station. After merg inquiry, on 07.10.2013, FIR (Ex.P-10) was registered against the appellants under Sections 304-B read with 34 of IPC. During investigation, inquest was performed over the dead body vide Ex.P-3. Postmortem (Ex.P-12) on the body of the deceased was conducted by PW-12 Dr. Rajendra Maravi who noticed no external or internal injury except the ligature mark over the neck which was antemortem in nature and opined that the cause of death is asphyxia as a result of hanging. Spot maps were prepared vide Exs. P-13 & P-14, certain articles were seized Ex.P-4 and the statements of the witnesses were recorded.
3. After completion of usual investigation, charge-sheet was filed against the appellants under Section 304-B read with 34 of IPC. The trial Court framed charge under Section 304-B read with 34 of IPC, in the alternative Section 302 read with 34 of IPC against the appellants, which was denied by them, they pleaded innocence and prayed for trial.

4. So as to hold the accused persons guilty, the prosecution examined as many as 19 witnesses i.e. PW-1 Ramavtar Suryavasni, PW-2 Durga, Prasad, PW-3 Harishankar Pandey, PW-4 Jay Uraon, PW-5 Ram Bai, PW-6 Ramesh Sharma, PW-7 Dharmendra Laxkar, PW-8 Kavita Banjare, PW-9 Uttara Bai, PW-10 Lakhan Laxkar, PW-11 K.P.S Painkara, PW-12 Dr. Rajendra Maravi, PW-13 Bedilal, PW-14 R.P. Vastrakar, PW-15 Pramod Kumar Bhargav, PW-16 Arun Dubey, PW-17 Virendra Shrivastava, PW-18 Dr. Rajendra Kumar and PW-19 Vijay Pandey. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the incriminating circumstances appearing against them in the prosecution case, pleaded innocence and false implication. However, no witness was examined by them in their defence.
5. 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 appellants as mentioned in para-1 of this judgment.
6. Learned counsel for the appellants submit as under:
 - that there is nothing on record on the basis of which it could be considered that Vinita Barman died in suspicious condition. The evidence on record does not reveal cause of death of the deceased. Therefore, it is not established that the deceased committed suicide.
 - that from the statement of the prosecution witnesses, it is

quite clear that there has never been any demand of dowry on the part of the appellants from the deceased or her family members at any point of time.

- that before the death of deceased, no report was made by the parental members of deceased to the police regarding cruelty or harassment by the appellants to the deceased nor any social meeting was ever convened in this regard.
- that as regards the offence under Section 304B of IPC, the basic ingredients for attracting this offence i.e. soon before her death she was subjected to cruelty, is missing in this case.
- that FIR was lodged after an inordinate delay of three months and explanation given by the complainant party regarding delay in lodging the FIR is not acceptable.
- that presumption as to dowry death would only get activated upon the proof of the fact that the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry by the accused and that too, in the reasonable contiguity of death.

7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. I have heard learned counsel for the parties and perused the material available on record.

9. In the present case, the deceased Vinita Barman died on 05.07.2013 in her matrimonial house and her funeral was done in presence of appellants and the parental family of the deceased along with villagers. On the same day i.e. 05.07.2013 merger intimation was lodged by PW-1 Ramavtar and thereafter on 07.10.2013, FIR (Ex.P-10) was registered alleging that after marriage and prior to death of the deceased, the deceased was being subjected to cruelty and harassment by the accused/appellants for demand of rupees one lakh, as a result of which she committed suicide by hanging herself. While funeral rites were going on relatives of the deceased were also present, but they had not raised any objection that the deceased died unnatural death, regarding any demand of dowry and that she was being subjected to cruelty and harassment by the accused/appellants.

10. In this case, it is not in dispute that marriage of the deceased Vinita Barman was solemnized with appellant Kapil Barman in the year 2011 and she died in her matrimonial home on 05.07.2013 and this fact is proved by PW-7 Dharmendra, PW-8 Kavita Banjare and PW-9 Uttara Bai. For bringing home offence under Section 304 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 expositis “cruelty” as:

(i) any willful 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. So far as offence under Section 304B of IPC is concerned, the first two ingredients i.e. death of the woman concerned by burn injury or by any cause other than in normal circumstances within seven years of her marriage have undoubtedly been proved by the prosecution. However, now it is to be seen from the evidence on record whether the third ingredients 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. Section 113B of the Evidence Act enjoins a statutory presumption as to dowry death in the following terms:

“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 has 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)”

Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

13. Keeping in view the above settled legal position, this Court proceeds to appreciate the evidence, oral and documentary, available on record.

14. In this case, appellants i.e. Kapil Barman (husband of the deceased), Chhotku Barman (father-in-law of the deceased), Smt. Sukhin Bai (mother-in-law of the deceased) and Chhatram Khare (*Nandoi* of the deceased) were reported to have committed cruelty against the deceased in connection with demand of dowry, thereby compelling her to commit suicide.

15. The prosecution case is mainly based on the evidence of PW-7 Dharmendra Laxkar, PW-8 Kavita Banjare, PW-9 Uttara Bai & PW-6 Ramesh Sharma.

16. PW-7 Dharmendra Laxkar is the brother of the deceased. He stated in his deposition that marriage of her sister (deceased) was solemnized with the appellant Kapil in the year 2011. He also stated that in the year 2013 when his sister came to his marriage she told her mother about the ill-treatment done by the appellants in connection with demand of rupees one lakh. He stated that after the funeral when he returned to his home, his mother told him about the demand of dowry and ill-treatment done by the appellants. He also stated in para 13 of his deposition that there is no dowry system in his society and at the time of his sister's marriage no demand of dowry was made by the appellants. He stated that appellant Kapil and deceased were living happily and peacefully and one child was born out of their wedlock and at that time some gifts of Rs.30,000/- were given by them without any demand. He stated that relations between the families were good.

17. PW-8 Kavita Banjare, friend of the deceased, has admitted in para 5 of her deposition that after the marriage the deceased was living happily and peacefully with the appellant Kapil Barman for two years. PW-8 Kavita has not stated anything regarding demand of rupees one lakh by the appellants specifically and only general allegation regarding demand of rupees one lakh has been made by her. No any specific date regarding demand of dowry or cruelty has been stated by this witness. Likewise, PW-9 Uttara Bai, mother of the deceased has also not made any specific allegation regarding demand of dowry or cruelty by the appellants. In para 5 she states that the marriage of the appellant Kapil with the

deceased was solemnized peacefully. She has also made general allegation of demand of rupees one lakh by appellant Kapil.

18. PW-6 Ramesh Sharma has admitted in para 10 of his deposition whatever statement is being made by him before the Court, is at the instance of PW-7 Dharmendra and he has no personal knowledge about the incident.

19. As per the evidence of PW-12 Dr. Rajendra Maravi and PW-18 Dr. Rajesh Kumar, who conducted postmortem (Ex.P-12) on the body of the deceased, no any external or internal injury was found on the body of the deceased except the ligature mark around the neck.

20. PW-1 Ramavtar Suryavanshi is the Panchayat Secretary. He stated in his deposition that one Kamal Prasad informed him about the incident on telephone then he immediately went to the spot and saw the dead body of deceased. Thereafter, he along with appellant Chhatram and other villagers went to the police station Seepat and lodged the merg intimation Ex.P-1.

21. PW-2 Durga Prasad stated in his deposition that in his presence police prepared inquest report Ex.P-3, seized the articles vide Ex.P-4 and arrested the accused persons vide Exs. P-5, 6, 7 & 8.

22. PW-3 Harishankar Pandey, Head Constable, stated in his deposition that on the basis of information given by PW-1 Ramavtar he lodged the merg intimation Ex.P-1.

23. PW-4 Ram Uraon is the Tehsildar. He stated in his deposition that in presence of family members of the deceased he prepared

inquest Ex.P-3.

24. PW-5 Ram Bai, PW-10 Lakhan Laxkar & PW-13 Bedilal have proved the notice Ex.P-2 and in their presence police prepared inquest Ex.P-3.

25. PW-11 K.P.S. Painkara, Inspector, lodged the FIR Ex.P-10 and duly proved the same. PW-14 R.P. Vastrakar, Patwari, prepared the spot map Ex.P-13 and duly proved the same.

26. PW-17 Virendra Shrivastava, Inspector, prepared the spot map Ex.P-14 and duly proved the same.

27. Looking to the evidence of PW-7 Dharmendra Laxkar, PW-8 Kavita Banjare and PW-9 Uttara Bai, family members of the deceased, they are not saying about the deceased being subjected to cruelty and harassment by the accused/appellants for demand of dowry. Only general and omnibus allegations regarding demand of dowry of rupees one lakh have been leveled by the family members of the deceased. No specific date, time or place has been mentioned by them in this regard. Prior to death of deceased, they admit that no report was made by them to the police against the accused persons regarding demand of dowry, no notice was ever given to them and also no social meeting was convened in this respect.

28. Though, in the instant case, the death of deceased Vinita Barman admittedly took place within seven years of the marriage, otherwise than under normal circumstances, i.e. by commission of suicide by Vinita Barman, but there appears to be no reliable

evidence that the accused/appellants had subjected her to cruelty or harassment in connection with demand for dowry or otherwise. As per medical evidence, no any bodily injury internal or external was noticed by the Doctors conducting postmortem except the ligature mark around the neck. In these circumstances, presumption under Section 113B of the Evidence Act cannot be invoked as there is nothing on record to show that soon before her death the deceased was subjected to cruelty/harassment in connection with demand of dowry. The evidence adduced on behalf of the prosecution is not sufficient for drawing inference that the appellants have committed torture and cruelty upon the deceased in connection with demand of rupees one lakh as dowry. This apart, no any allegation was made against the appellants by the family members of the deceased during the course of inquest and admittedly the report was lodged after 20 days of the incident. Though the manner in which the incident occurred raises suspicion against the appellants but it is a well settled principle of law that graver the offence is, higher is the degree of proof and the suspicion howsoever strong, cannot take the place of proof. In this case the prosecution has failed to prove guilt of the appellants beyond all reasonable doubt and being so, the benefit of doubt has to be credited to the appellants, thereby entitling them of acquittal of the charge.

29. In the matter of ***Baijnath and Others vs. 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”.

30. So far as abetment of suicide is concerned, in ***Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618***, it has been observed by the Supreme Court as under:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A

word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal*, (1994) 1 SCC 73, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. It transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

31. In the present case, during the period from 2011 to 2013, no allegation was made against the appellants regarding demand of rupees one lakh by any of the family members of the deceased. No any specific allegation as to the nature of cruelty being mental or physical caused to the deceased was made during the said period. There is no specific date and time has been mentioned by the witnesses regarding demand of dowry or cruelty by the appellants to the deceased. During the life time of the deceased, no social meeting was ever convened nor any report/complaint was made by the deceased or her family members to the police. Even after the death of the deceased no prompt report was made to the police against the appellants. This apart, the conduct of the appellants prior to the incident and after the incident also does not appear to be suspicious as they timely intimated the parents of the deceased about the death of their daughter and the funeral was

conducted in their presence.

32. In view of the discussion made above and keeping in view the above cited judgments of the Hon'ble Supreme Court, the conviction of the appellants under Section 304B read with 34 of IPC cannot be sustained in the absence of any evidence to show that the deceased committed suicide because of dowry harassment. Hence, the conviction of the appellants under Section 304B read with 34 of IPC is liable to be set-aside and they are entitled to be acquitted of the said charge.

33. In the result, both the appeals are allowed. Conviction and sentence imposed on the appellants under Section 304B read with 34 of IPC are set aside and they are acquitted of the said charge. The appellants are reported to be on bail, therefore, their bail bonds shall continue for a period of six months from today in view of the provisions of Section 437A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge

Akhilesh