



2024:CGHC:37609

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1123 of 2003

Judgment reserved on 31/07/2024

Judgment delivered on 24/09/2024

**1 – Arun Kumar Satnami aged about 25 years, S/o Chhabi Ram, R/o village
Bhinoda P. S. Sarsivan Distt. Raipur (C.G.)**

**2 –Samunda Bai aged about 55 years, W/o Chhabi Ram Satnami, R/o village
Bhinoda P. S. Sarsivan Distt. Raipur (C.G.)**

... Appellants

Versus

1 – State of C.G. through- P.S Sarsivan Distt. Raipur (C.G.)

... Respondent

For Appellants : Mr. Aishwary Diwan, on behalf of Mr. Vinod Lal
Chandani, Advocate.

For Respondent : Mr. Ritesh Giri, Panel Lawyer.

Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

1. This appeal is preferred under Section 374 (2) of the Code of

Criminal Procedure, 1973 against the judgment dated 13.10.2003 passed by the learned Second Additional Sessions Judge, Baloda Bazar in Sessions Trial No. 05/2003, whereby the learned trial Court convicted and sentenced the appellants as under:-

Conviction	Sentence
U/S 304 (B) of IPC	R.I. for 10 years each.
U/S 498 (A) of IPC	R.I for 03 years each with fine amount of Rs. 5000/-, in default of payment of fine to undergo additional R.I. for 06 months each.

(Both the substantive sentences are directed to run concurrently.)

2. The case of the prosecution, in brief, is that on 15.12.2002 at about 9:45 am, Vimla Bai in the house of the accused/appellant set herself ablaze by pouring kerosene on her body in her bedroom as she was being frequently subjected to cruelty and harassment by the appellants regarding demand of dowry. When smoke started spreading out of the house, the family members with the help of neighbours extinguished the fire and they brought her outside and laid her on the table and thereafter, a jeep was arranged and they took Vimla Bai to the Government hospital, Sarsivan. The said offence was reported to the police station Sarsivan at about 9:45 am on 15.12.2002 by Ghanshyam (PW-08), who stated that Vimla Bai was in burnt condition, as such she was taken to the Government hospital, Sarsivan and the police of Sarsivan registered the offence in Rojnamcha Sanha

No. 487 and Head Constable No. 210 was sent to the hospital for taking the dying declaration of the deceased, but he returned to the Police Station without recording the statement of the deceased and informed that those people who brought Vimla Bai to the hospital from Bhinoda, went back from the hospital as no doctor was present there and they took Vimla Bai to Sarangarh Hospital for her treatment, this information was also noted down by the Police Station Sarsivan as Ex. P/01 at about 10:00 am and the case was again registered in Sanha No. 491. As the deceased received 90 to 95% burn injuries, she was referred to K. G. Government Hospital, Raigarh and the Head Constable No. 1121 was sent from Police Station Sarsivan to the spot and he was being ordered to lock the bedroom in which Vimla Bai was burnt and this fact was registered in Rojnamcha No. 494 as Ex. P/04 on 15.12.2002 at Police Station Sarsivan. In K.G. Government Hospital, Raigarh Vimla Bai was admitted on 15.12.2002 at about 2:30 pm and died at about 3:20 pm on the same day and her death was intimated to city Kotwali, Raigarh which was forwarded to Police Station Sarsivan. The police of Sarsivan registered the F.I.R and started inquest.

3. After completion of due and necessary investigation, the charge-sheet was filed against the accused persons/appellants bearing Crime No. 119/2002 under Sections 498 (A), 304 (B) of IPC and in option Section 302/34 of IPC and submitted a challan which

was later committed to the Sessions Trial. Thereafter, the learned Second Additional Sessions Judge, Baloda Bazar has acquitted the accused persons/appellants of Section 302/34 of IPC, but convicted them under Sections 498 (A) and 304 (B) of IPC, to which the accused persons/appellants abjured their guilt and prayed for trial.

4. In order to bring home the charge, the prosecution has examined as many as 14 witnesses. The statements of the accused persons/appellants were also recorded under Section 313 of CrPC in which they denied all the incriminating circumstances appearing against them in the prosecution case and pleaded their innocence and false implication in the case. In their defence, the appellants examined one witness.
5. The learned trial Court after appreciation of oral and documentary evidence convicted the appellants under Section 304-B and 498-A of IPC and sentenced them as mentioned in the opening paragraph of this judgment. Hence, this appeal filed by the appellants.
6. Learned counsel for the appellants submits that the impugned judgment of the learned trial Court is bad-in-law as well as facts on record and hence it deserves to be set aside. The prosecution story is untrustworthy and inconsistent which doesn't at all inspire confidence. The learned trial Court has gravely erred in completely

discarding the dying declaration in which the deceased has clearly stated that she caught fire while she was cooking food. The dying declaration is Ex.P/08 and it is in question-answer form, where the deceased on being asked whether somebody has set fire on her, she answered in negative and did not hold anybody responsible for burning. The learned trial Court did not appreciate the oral and documentary evidence properly. The learned trial Court has failed to appreciate that there is no evidence that the deceased was subjected to cruelty or harassment in connection with dowry demand soon before her death. So, conviction under Section 498A and Section 304-B of IPC is erroneous and contrary to the evidence on record. So, the impugned judgment of conviction and order of sentence is liable to be set aside.

7. Reliance has been placed on this Court's order dated 12.12.2022 on the decision of ***Rakesh Parde V. State of Chhattisgarh*** passed in CRA No. 1142 of 2015.
8. *Ex adverso*, learned counsel for the respondent/State supporting the impugned judgment submits that the prosecution has proved this fact that cause of death of the deceased is unnatural and within 07 years of marriage and all witnesses had clearly stated against the accused and the learned trial Court properly appreciated the oral and documentary evidence on record. So, this appeal is being devoid of any merit is liable to be dismissed.

9. Heard both the counsel for the parties and perused the material available on record including the impugned judgment.
10. It is clear from material available on record of the learned trial Court that the learned trial Court has framed charges under Section 498-A and 304-B read with Section 34 of IPC and in alternate Section 302 read with Section 34 of IPC against the accused persons/appellants. The prosecution has examined as many as 14 witnesses and after appreciation of oral and documentary evidence, the learned trial Court convicted both the accused persons/appellants under Section 498-A and 304-B of IPC. The learned trial Court finds that the deceased committed suicide on the ground of being subjected to cruelty on demand of dowry, so it convicted the accused persons/appellants under Section 304-B of IPC, but acquitted the appellants under Section 302/34 of IPC. The prosecution recorded dying declaration of the deceased which is (Ex. P/08) and as per Ex. P/08 when it was asked that how she was burnt, she answered that she was lighting the stove to cook food and at that time, suddenly her saree caught fire.
11. Dr. R. L. Siddar (PW-07), who admitted the deceased in hospital stated that he examined the deceased and the deceased told him that at the time of preparing food, her clothes caught fire and examination report of Vimla Bai is Ex. P/07 in which he admitted his signature from A to A part. He further recorded the dying

declaration Ex. P/08 of the deceased in which he admitted his signature from A to A part in which the deceased stated that at the time of preparing food, her saree caught fire and further stated that he took thumb impression of the deceased. In cross-examination, he admitted that she was being brought to the hospital by her husband/appellant Arun Kumar. Mahatma (PW-01) father of the deceased, Mehatareen Bai (PW-02) mother of the deceased stated that deceased used to tell about the quarrels between her and her husband and regarding her ill-treatment from both the appellants, but in cross-examination they have admitted that after seeing their daughter, the appellant/husband became adamant that he would marry her and at the time of marriage no dowry demand was made by the appellant and his parents and they had also admitted that her mother-in-law and father-in-law live separately. Bal Singh (PW-03) stated that deceased is her cousin and deceased stated about the quarrels. Dr. Smt. J. Ekka (PW-12) conducted postmortem of the deceased and opined that death was due to burn and gave her report (Ex. P/18). The learned trial Court opined that Dr. Siddar recorded dying declaration on his own and finds that the dying declaration is not given by the deceased and finds that the deceased committed suicide. The dying declaration (Ex. P/08) was recorded by the treating Doctor on the same day when the deceased was admitted in the hospital.

12. This Court in the matter of **Rakesh Parde (supra)** held in paragraphs 15, 16, 17 and 20 as under:-

“15. In a recent judgment rendered by their Lordships of the Supreme Court in the matter of Makhan Singh v. State of Haryana while considering the issue of multiple dying declarations, their Lordships have held as under:-

“9. It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any 3 (1993) 1 SCC 14 AIR 1982 SC 839 5 AIR 2022 SC 3793: 2022 SCC Online SC 1019 other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.

20. We therefore find that in the facts and circumstances of the present case, the first dying declaration (Ex. DO/C) will have to be considered to be more reliable and trustworthy as against the second one (Ex. PE). In any case, the benefit of doubt which has been given to the other accused by the trial court, ought to have been equally given to the present appellant when the evidence was totally identical against all the three accused.”

“16. In the matter of Khushal Rao v. State of Bombay, it has

been held that dying declaration can form the sole basis of conviction provided that it is free from infirmities and satisfies various tests. Relying upon the decision of the Supreme Court in Khushal Rao (surpa, it has been held by the Supreme Court in the matter of Smt. Kamla v. State of Punjab that the statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. It has been further held that if a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without even any corroboration. It has also been held that in a case where there are more than one dying declarations if some inconsistencies are noticed between one and the other, the court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various 6 AIR 1958 SC 22 AIR 1993 SC 374 dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.

“17. Similarly, in the matter of Kishan Lal v. State of Rajasthan, the Supreme Court held as under:-

“17. Examining these two dying declarations, we find not only that they gave two conflicting versions but there are inter se discrepancies in the depositions of the witnesses given in support of the other dying declaration dated 6-11-1976. Finally, in the dying declaration before a Magistrate on which possibly more reliance could

have been placed the deceased did not name any of the accused. Thus, we have no hesitation to hold that these two dying declarations do not bring home the guilt of the appellant. The High Court, therefore, erred in placing reliance on them by erroneously evaluating them.”

“20. In the matter of Sharda v. State of Rajasthan, the Supreme Court while dealing with three dying declarations and noticing inconsistencies between the dying declarations, set aside the sentence ordered by the Sessions Judge as well as the High Court and held as under:-

“25. Though a dying declaration is entitled and is still recognized by law to be given greater weightage but it has also to be kept in mind that the accused had no chance of cross-examination. Such a right of cross-examination is essential for eliciting the truth as an obligation of oath. This is the reason, generally, the court insists that the dying declaration should be such which inspires full confidence of the court of its correctness. The court has to be on guard that such statement of the deceased was not as a result of either tutoring, prompting or product of imagination. The court must be further satisfied that deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the court is satisfied that the aforesaid requirement and also to the fact that declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration.”

13. In the present case also it is clear that the dying declaration Ex. P/08 is filed by the prosecution which is recorded by the treating doctor on the same day when the deceased was admitted in the hospital and bed-head-ticket (Ex. P/09) history was recorded as

alleged case of burnt at 10:00 am on 15.12.2002 as she accidentally caught fire her Saree while cooking food by chulha (stove) and she received burns all over her body and on the same day i.e., on 15.12.2002 the treating doctor recorded her statement. However, parents of the deceased and other witnesses had also not stated about this fact that the deceased was tortured by the appellants soon before her death on demand of dowry.

14. Hon'ble Apex Court in the matter of ***Charan Singh alias Charanjit Singh Versus State of Uttarakhand*** reported in **2023 SCC OnLine SC 454** held in paragraph 13 which read as under:-

"13. A conjoint reading of Section 304B IPC and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:-

"32. *This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B 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 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517: (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640: (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B 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 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217: 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

15. Looking to the facts and circumstances of the case, it is clear that the prosecution has utterly failed to prove that the deceased committed suicide and she was subjected to any physical or mental cruelty by the appellant. So, the prosecution has failed to prove its case beyond reasonable doubt.

16. In the light of above, it is clear that there is no evidence as to the demand of dowry or cruelty and the deceased Vimla Bai was subjected to dowry harassment soon before her death. All the witnesses stated about submitting her complaint, but in cross-examination they admitted that at the time of marriage, no demand regarding dowry was made by the accused persons/appellants. In the absence of any evidence, that deceased was treated with cruelty or harassment in connection with the demand of dowry soon before her death, the conviction of the accused persons /appellants under Section 304-B and Section 498-A of IPC cannot be sustained. The learned trial Court did not appreciate the evidence in the light of the essential ingredients of Sections 304-B and 498A of IPC.

17. In view of the aforesaid discussion and considering the facts and circumstances of the case, this appeal is **allowed**. The impugned judgment is set aside and appellants are acquitted of the charges under Sections 304-B and 498A of IPC.
18. The appellants are reported to be on bail, therefore, their bail bond shall remain in operation for a period of six months from today in view of provision of Section 437-A of CrPC.
19. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Rajani Dubey)

JUDGE