

(2019) 09 CHH CK 0180

Chhattisgarh High Court

Case No: Criminal Appeal No. 1337 Of 2014

Mahesh Kumar Gond And Ors

APPELLANT

Vs

State Of Chhattisgarh Through
District Collector

RESPONDENT

Date of Decision: Sept. 30, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 304B, 498A
- Code Of Criminal Procedure, 1973 - Section 161, 313
- Evidence Act, 1872 - Section 113B
- Dowry Prohibition Act, 1961 - Section 2

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Akhil Mishra, Anand Shukla, Smriti Shrivastava

Final Decision: Allowed

Judgement

Arvind Singh Chandel, J

1. This appeal is directed against the judgment dated 8.12.2014 passed by the Sessions Judge, Kabirdham in Sessions Trial No.37 of 2014 convicting

and sentencing each of the accused/Appellants as under:

Conviction Sentence Under Section 498A read Rigorous Imprisonment for 2 with Section 34 of the Indian years and fine of Rs.1,000/- with Penal

Code default stipulation Under Section 304B read Rigorous Imprisonment for 7 with Section 34 of the Indian years and fine of Rs.1,000/- with Penal

Code default stipulation

2. Facts of the case, in brief, are that Appellant No.1 is husband of deceased Neelu Singh. Appellant No.2 is father-in-law and Appellant No.3 is

mother-in-law of the deceased. On 5.6.2014, Neelu Singh was found dead due to hanging herself in her matrimonial house at Village Saraisat within 7

years of her marriage with Appellant No.1. Morgue (Ex.P6) was lodged by Appellant No.1. Inquest (Ex.P2) of the dead body was prepared. Post

mortem examination on the dead body was conducted by Dr. Balram Jaiswal (PW8). His report is Ex.P4. As opined by him, cause of death was

asphyxia and nature of death was homicidal. During morgue inquiry, statements of witnesses were recorded under Section 161 of the Code of

Criminal Procedure. On the basis of morgue inquiry report, First Information Report (Ex.P9) was registered. On completion of the investigation, a

charge-sheet was filed against the accused/Appellants and other acquitted accused Manisha Gond, sister-in-law of the deceased. Charges were

framed against all the accused persons under Section 498A read with Section 34 and Section 304B read with Section 34 of the Indian Penal Code.

3. To rope in the accused/Appellants, the prosecution examined as many as 13 witnesses. Statements of the accused/Appellants were also recorded

under Section 313 of the Code of Criminal Procedure in which they denied the guilt. The accused persons examined their 2 neighbours as witnesses in

defence, namely, Neerabai (DW1) and Ramesh (DW2).

4. After trial, vide the impugned judgment dated 8.12.2014, the Trial Court acquitted accused Manisha Gond, but convicted and sentenced rest of the

accused persons, i.e. the Appellants as mentioned in the first paragraph of this judgment. Hence, this appeal.

5. Learned Counsel appearing for the Appellants submitted that without there being any evidence on record the Appellants have been convicted by the

Trial Court. It was submitted that the conviction is based only on the statements of Smt. Rajni Gond (PW1), Smt. Ramkali (PW2), Santosh Gond

(PW3), Ramsujan Singh (PW4) and Pradeep Kumar Kaushik (PW5). In their statements, no fact has been stated on the basis of which it could be

established that the deceased was subjected to cruelty for demand of dowry soon before her death. From the admission made by Smt. Rajni (PW1),

mother of the deceased and other witnesses, it is clear that allegedly money was demanded as a financial help for construction of a house with solid roof (lenter chhat). There is no evidence on record to show that the deceased was ever harassed for demand of dowry or for any other reason.

6. On the contrary, Learned Counsel appearing for the State, supported the impugned judgment of conviction and sentence.

7. I have heard Learned Counsel appearing for the parties and perused the record with due care.

8. It is not in dispute that deceased Neelu Singh was found dead in an unnatural condition at her matrimonial house within 7 years of her marriage. In

her statement recorded before the Court, Smt. Rajni (PW1), mother of the deceased has stated that after the marriage, the deceased was happy for

about 1 year. Thereafter, whenever she visited her maternal house, she made complaints that she was being beaten at her matrimonial house for doing

work and also for demand of money. She has further deposed that once the deceased had stayed at her maternal house for about 15 days. Thereafter,

she was taken back by the Appellants to her matrimonial house. 3 months thereafter, the deceased telephonically informed this witness that husband

and father-in-law of the deceased were demanding money for the purpose of construction of a house with solid roof. Next day, in the morning, this

witness received a telephonic call that the deceased was in serious condition. On this, they went to the matrimonial house of the deceased, but, by that

time, she had died. In her cross- examination, this witness has admitted the fact that when the deceased had been making complaints of her grief

being given by the Appellants, at that time, no social meeting was convened by them. She has also admitted that marriage of the deceased was

performed happily and at that time no dispute had taken place. Both the families were engaged in doing labour work. Both the deceased and her

husband/Appellant No.1 had gone to Korba to earn livelihood and they had returned from their and thereafter disputes started taking place. She has

also admitted that 3 months before the incident, when the deceased had come to her maternal house, at that time, Appellant No.1 had come and taken

the deceased back saying that a house was to be constructed. In paragraph 10, she has further admitted that whatever disputes had been taking place

at the matrimonial house of the deceased in Village Saraisat were regarding work. She has further admitted that after the incident when they reached

Village Saraisat, they were told that a dispute had taken place in the night for cooking food.

9. Smt. Ramkali (PW2), who is grand mother (Nani) of the deceased, has stated that whenever the deceased had been visiting her maternal house,

she had been making complaints that she was being harassed by the Appellants. Why and how the deceased was being harassed by the Appellants

has not been stated by this witness. This witness has also admitted that on visiting Village Saraisat, she had come to know that in the night before the

the date of incident a dispute regarding cooking of food had taken place between the deceased and her mother-in-law and no food was cooked in that

night.

10. Santosh Gond (PW3), father of the deceased, has deposed that whenever the deceased visited her maternal house, she told him that she does not

go to work and therefore the Appellants used to quarrel with her. He has further stated that a telephonic call was received by him from the deceased

that the Appellants were quarreling with her for bringing money from her parents for the purpose of construction of a house with bricks. During cross-

examination, this witness has also admitted that after the marriage the deceased used to visit her maternal house on the occasions of festivals and on

being sent back to her matrimonial house she had been going back with her husband happily. She never objected to return to her matrimonial house

and went happily.

11. Ramsujan Singh (PW4), a relative of the deceased, has stated that he had received a telephonic call from the deceased in the night in which she

had asked him to arrange a talk with her parents. Thereafter, he called Smt. Rajni (PW1), mother of the deceased and arranged a talk between the

deceased and her mother Smt. Rajni (PW1), but this witness has stated that he does not know what talks had taken place between them.

12. Pradeep Kumar Kaushik (PW5), a neighbour of Santosh Gond (PW3), father of the deceased, has stated that he was sitting in the house of father

of the deceased. At that time, Ramsujan Singh (PW4) had come to the house of father of the deceased and given his mobile phone to Smt. Rajni

(PW1), mother of the deceased. At that time, speaker of the mobile phone was switched on. The deceased was saying on the phone that the

Appellants were quarreling with her for bringing money for construction of a house. But, as stated by Ramsujan (PW4), on being received by him a

telephonic call from the deceased, he had called Smt. Rajni (PW1), mother of the deceased at his house and arranged a talk of the deceased with her

mother Smt. Rajni.

13. Lalit Dhurve (PW7) is the witness before whom the inquest proceeding was done. Dr. Balram Jaiswal (PW8) conducted post mortem

examination on the dead body of the deceased. His report is Ex.P4 in which he opined that cause of death was asphyxia and nature of death was

homicidal. He has admitted that there was no mark of struggle or injury over the dead body of the deceased.

14. Inspector S.R. Pathare (PW10) recorded morgue intimation (Ex.P6) and prepared spot-map (Ex.P3). Patwari Bhagbali (PW11) prepared spot-

map (Ex.P10). S.D.O. (P.) Sachin Dev Shukla (PW12) conducted investigation into the offence in question and also recorded statements of witnesses

under Section 161 of the Code of Criminal Procedure. Tahsildar T.S. Thakur (PW13) prepared inquest (Ex.P2). He has admitted the fact that during

the preparation of inquest (Ex.P2), the witnesses told him that a dispute had taken place between the husband and wife in the night due to not cooking

food and in the morning at about 7:30 a.m. the deceased was found hanged with a saree. He has further stated that at the time of the inquest

proceeding (Ex.P2), both mother and father of the deceased were also present there, but they did not make him any complaint.

15. Before scrutinising the evidence available on record, it would be appropriate to go through the observations of the Supreme Court on the subject

issue.

16. 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 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.

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 21 st 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.

17. In (2008) 1 SCC 202 (*Biswajit Halder v. State of W.B.*), it was further observed by the Supreme Court as under:

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.

18. In AIR 2016 SC 5313 (Bajinath v. State of Madhya Pradesh), the Supreme Court has observed thus:

35. 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 alias Sawinder

Kaur and another v. State of Punjab - (2011) 11 SCC 517 : (2011 AIR SCW 6556) and echoed in Rajeev Kumar v. State of Haryana - (2013) 16

SCC 640 : (AIR 2014 SC 227). 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. Prerna S. Rao v. Yadla

Srinivasa Rao - (2003) 1 SCC 217 : (AIR 2003 SC 11) 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 is that ""soon before her death"" she was subjected to cruelty and harassment ""in connect

with the demand for dowry"".

19. In the light of above, I shall now examine the evidence available on record in the instant case.

20. On a minute examination of the evidence available on record, it is clear that it is not in dispute that death of the deceased occurred in an unnatural

condition within 7 years of her marriage. As stated by her mother Smt. Rajni (PW1), father Santosh (PW3) and grand mother (Nani) Smt. Ramkali

(PW2), both the families were engaged in doing labour work. No demand was made at the time of marriage. As stated by Smt. Rajni (PW1), after 1

year of the marriage, when the deceased visited her maternal house, she told her that the Appellants used to quarrel with her and beat her for doing

work and for demand of money. But, they never convened any social meeting in this regard. From the statements of above witnesses, it is also clear

that the deceased and her husband/Appellant No.1 had also gone to Korba to earn livelihood and till then no dispute had taken place between them.

From the statement of Santosh (PW3), father of the deceased, it is also clear that complaint of the deceased was only with regard to do work by her.

This witness has also admitted that visiting of the deceased to her maternal house was continued and whenever she was sent back to her matrimonial

house, she went happily. Smt. Rajni (PW1) and Santosh (PW3) have also stated that one day prior to the date of incident a telephonic call was

received from the deceased that the Appellants were quarreling with her and she was being beaten by them for demand of money for the purpose of

construction of a house with solid roof. There is no specific statement given by any of these witnesses that any such demand was made from them.

Apart from this, it has also not been disclosed that how much money was being demanded from the deceased. Even if the statements of these two

witnesses are taken as they are, it appears that the money was being demanded as a financial help for construction of a house and not as a dowry.

Therefore, it is not established that the deceased was subjected to cruelty for demand of dowry or she was subjected to cruelty soon before her death

for the alleged demand. There is also evidence on record to the effect that in the night prior to the date of incident a dispute had taken place between

the deceased and her mother-in-law due to not cooking food by the deceased. Thereafter, in the next morning, the deceased was found dead. Thus,

there can be a possibility of commission of suicide by the deceased due to that dispute.

21. Consequently, the appeal is allowed. The impugned judgment of conviction and sentence is set aside. The Appellants are acquitted of the charges

framed against them.

22. Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.