

(2018) 02 CHH CK 0227

Chhattisgarh High Court

Case No: Criminal Appeal No. 811 Of 2001

Dwarika Prasad And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Feb. 13, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 304B, 306, 498A
- Code Of Criminal Procedure, 1973 - Section 161, 313, 437A
- Evidence Act, 1872 - Section 113B

Hon'ble Judges: Arvind Singh Chandel, J

Bench: Single Bench

Advocate: Indira Tripathi, Smita Ghai

Final Decision: Allowed

Judgement

Conviction,Sentence

Under Section 304B of the Indian Penal Code,"Rigorous Imprisonment for 7 years and fine of

Rs.2,000/- with default stipulation

met her in Sirpur Fair. At that time, the deceased had told him that she was being harassed by her in-laws for not bringing T.V., Almirah, Cooler etc.",

In paragraph 5, he has stated that after 6-7 months of the marriage of the deceased, when he visited the matrimonial house of the deceased, the",

deceased had complained him and 4-5 months thereafter, when he again visited the matrimonial house of the deceased, at that time also, the deceased",

had complained him. He has further stated that he was present at the time of preparation of the inquest. At that time, since he was sad, he did not",

make any complaint.,

12. Santram (PW6), another brother-in-law of the deceased is the witness before whom some burnt pieces of clothes were seized from the spot vide",

Ex.P4.,

13. Santosh Kumar (PW7), another brother-in-law of the deceased has stated that 2 years prior to her death, the deceased had attended the marriage",

ceremony of his daughter. At that time, the deceased had complained against her in-laws that they harass her for dowry.",

14. Dr. N.K. Mandape (PW8) examined the deceased on 22.2.1999. He has stated that she was burnt and was not able to make a statement. Dr.,

G.P. Dewangan (PW9), Medical College Hospital, Raipur has stated that on 22.2.1999, at about 3:00 p.m., the deceased died and an intimation of",

which he had sent to Police Station Maudahapara vide Ex.P7.,

15. Sub-Inspector G.S. Kuruwanshi (PW10) did the morgue inquiry. He prepared seizure memo against seizure of burnt pieces of clothes vide Ex.P4.,

He seized a stove made of brass, a match-stick and 50-60 ml. of kerosene vide Ex.P9.",

16. Head Constable Shoukilal (PW11) registered Ex.P11, the numbered morgue at Police Station Mahasamund. Inspector H.O. Gupta (PW12), on the",

basis of the morgue inquiry, registered FIR (Ex.P13). Tahsildar Ajay Yadav (PW14) prepared inquest (Ex.P1) on 22.2.1999. Dr. Sanjay Kumar Dadu",

(PW-15) has stated that he conducted post mortem examination of the dead body of the deceased and gave his report (Ex.P16) in which he stated,

that the scalp hair had smell of kerosene and the death was due to cardio-respiratory failure as a result of burns and its complications.,

17. From the evidence available on record, it is clear that the deceased died within 7 years of her marriage in unnatural circumstances due to burn",

injuries. As per the Court statement of Draupadi Bai (PW1), mother of the deceased that the deceased was living happily in her matrimonial house for",

about 5 years after the marriage. Though she has stated that when she had visited the matrimonial house of the deceased 1-2 times, at that time, the",

deceased had complained her about the harassment being done with her by the in-laws, but when did she go to the matrimonial house of the deceased",

and when did the deceased complained her has not been mentioned by her in her case diary statement. Though she has stated that 15 days prior to the, death of the deceased, when she met with the deceased in the Sirpur Fair, the deceased had told her about the demand of dowry by the Appellants.",

But, this statement of the witness is not acceptable because as per her own statement, after the marriage, the deceased was living happily for about 5", years. The deceased had never made her such complaint earlier and such complaint would have been made her in a fair is not acceptable.,

18. Laxman (PW5) has stated that after the marriage, the deceased had been living happily for about 6 months, but thereafter, the deceased started",

making complaints and he had been persuading and sending her back. 1 year prior to her death, when she met him, she complained him about the",

demand of dowry by the Appellants. Whereas, Draupadi Bai (PW1) has stated about meeting with the deceased 15 days prior to the death of the",

deceased. Draupadi Bai (PW1), mother of the deceased, Santram (PW6), brother-in-law of the deceased and Santosh Kumar (PW7), another",

brother-in-law of the deceased have categorically stated that Laxman (PW5), brother of the deceased was living separately from his family at Raipur",

for about 8-10 years. When Laxman (PW5) was living separately and was not living with his family, in such a situation, the deceased complained him,",

appears unreliable. Hariram (PW3), brother-in-law of the deceased has stated that 1 day prior to the death of the deceased, he and Bharat, brother of",

the deceased had stayed at the matrimonial house of the deceased in the night, but the deceased had not made them any complaint. At the time of",

preparation of inquest (Ex.P1), Laxman (PW5) was present. At that time also, no complaint was made by him or by any other witness.",

19. Necessary ingredients for invoking the provisions of Sections 302, 304B and 306 of the Indian Penal Code read with Section 113B of the Indian",

Evidence Act have been discussed by the Supreme Court in the case of (2008) 4 Supreme 228 (Narayanamurthy v. State of Karnataka). In,

paragraphs 17 and 18 of the said judgment, it has been observed thus:",

17. TheÂ Â basicÂ Â ingredientsÂ Â toÂ Â attractÂ Â the provisions of Section 304B, IPC, are as follows:Â Â ""(1) ThatÂ Â theÂ Â Â",

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."",

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, 304B and",

306 of the Penal Code. The distinction as regards commission of an offence under,

one or the other provisions as mentioned hereinbefore 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, a 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 304B,

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 the woman with a demand for dowry at,

some time, if Section 304B 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,

emphasise 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'. """,

20. In (2013) 14 SCC 678 (Indrajit Sureshprasad Bind v. State of Gujarat), the Supreme Court has observed thus:",

9. To establish the offence of dowry death under Section 304B IPC the prosecution has to prove beyond a

reasonable doubt that the husband or his relative has subjected the deceased to a

cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish a

the offence under Section 498A IPC the prosecution has to prove beyond a reasonable doubt that the husband,

or his relative has subjected the victim to cruelty as defined in clauses (a) and (b) of the Explanation,

to Section 498A IPC. In the present case, the prosecution has not been able to prove beyond a reasonable

doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed,

from Ext. 31 written by PW 3 to the deceased on 24/4/2004 that after talking to the deceased on telephone, he was satisfied that she was living,

happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to,

commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18/5/2004."",

21. In the light of above, in the present case, on minute examination of the evidence on record, it is clear that the deceased was married 5 years prior,

to her death. She had 2 children from her wedlock. Initially, after the marriage, she had not made any complaint regarding harassment. She made,

complaints on some occasions. It is stated that she complained to her mother Draupadi Bai (PW1) and brother Laxman (PW5), but statements of,

these two witnesses do not appear to be natural. They have exaggerated their version before the Court. Even if their testimony is taken as it is, there,

is no evidence on record to establish that the deceased was harassed by the Appellants soon before her death. Thus, the offence alleged against them,

under Section 304B IPC is not established beyond reasonable doubt.,

22. 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.,

23. It is reported that the Appellants are on bail. Their bail bonds shall continue for a further period of six months from today in terms of Section 437A, of the Code of Criminal Procedure.,

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