

(2009) 01 MP CK 0018

Madhya Pradesh High Court (Indore Bench)

Case No: None

Chandan Ramesh Chandra
Choudhary and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: Jan. 22, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 304B, 498A

Citation: (2010) CriLJ 73

Hon'ble Judges: S.L. Kochar, J; Manjusha P. Namjoshi, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.L. Kochar, J.

Both the appeals are arising out of one common judgment, therefore, decided by this common judgment.

2. The appellants have challenged their conviction, by filing this appeal, u/s 304-B of the IPC and sentence of imprisonment for 10 years with fine of Rs. 5,000/-each, in default of payment of fine additional S.I. for two years each vide judgment passed by learned Special Sessions Judge, Mandleshwar, District West Nimad, in Sessions Trial No. 376/1996 dated 21-8-1998.

3. The prosecution case in nut-shell as put forth before the trial Court is that deceased Kirtibala was married with appellant No. 1 Chandan before 414 months from the date of her death i.e. on 13-9-1996. The father of deceased had given dowry according to their custom and his capacity. After some time of marriage Kirtibala was harassed because of dissatisfaction of the appellants regarding dowry. Kirtibala was being ill-treated by pointing out minor mistakes in household work and for her slightly dark complexion. Deceased disclosed the facts to her mother, father and sister-in-law (Bhabhi). P.W. 1 Moolchand, father of deceased had a talk on this

issue with appellant No. 3 Ramesh alias Rameshchandra. Rameshchandra told Moolchand that the family residing in Nandora was ready to give Maruti Car in marriage of appellant No. 1 Chandan but what you had given? Moolchand complained this issue to son-in-law appellant No. 1 Chandan and his elder brother/acquitted co-accused Vikram. Both had pacified the issue, even then deceased was being harassed by passing remark and taunt for bringing less dowry, inferior articles and her dark complexion as well as pointing out her minor mistakes. On 13-9-1996, the neighbours of appellants overheard some kind of sound regarding quarrel coming from the house of the appellants as well as cry of a woman seeking help. RW. 8 Ganesh reached in the house of the appellants and opened the door by giving two kicks, thereafter saw deceased Kirtibala hanging with ceiling fan by saree. She was brought down with the help of accused persons. Dr. S.K. Gupta and Anees Khan were called to examine deceased and on examination, they declared her dead. Dr. Gupta sent a written letter to police informing about the incident vide Ex. P/4.

4. Assistant Sub Inspector, Jasbir Singh received information from unknown person in Police Station that he heard cry from inside the house of Choudhary Vastralaya Ram Mandir and it appears that somebody had killed the member of the family. On this information, Assistant Sub-Inspector Jasbir Singh, Head Constable Pratapsingh and Gopalrao reached at the house of the appellants and after returning, made entry in daily diary at 6.10 p.m. Assistant Sub Inspector Jasbir Singh saw the dead body of deceased lying on bed (palang) but he could not know the cause of death and he made entry in the daily diary vide Ex. P./37 and registered merged report Ex. P/40. Intimation about the death of deceased was given by acquitted co-accused Vikram to her parents P.W. 1 Moolchand and P.W. 2 Sushilabai on telephone, which was received by Deepak, the son of Moolchand (Deepak had not been examined as witness). Moolchand and his wife Sushilabai reached at the house of appellants and acquitted co-accused Vikram told them that Kirtibala committed suicide by hanging. Moolchand saw the dead body lying on bed of Kirtibala, a Shal and a cloth hanging with a ceiling fan. He found suspicious circumstances. Police (SDOP not examined) prepared the inquest panchnama Ex. P/2 in presence of P.W. 1 and P.W. 2 Moolchand and Sushilabai. Moolchand submitted a written application Ex. P3 to police levelling allegation against 5 accused persons including appellants for committing murder of their daughter on account of demand of dowry. Dead body was sent for post-mortem examination, which was conducted by P.W. 11 Dr. Dhyansingh Solanki and P.W. 12 Dr. M.S. Bardie jointly vide Ex. P/25. No positive opinion was given for cause of death but they found that deceased died because of asphyxia and there was no sign of ligature mark of hanging. They also did not find any injury on the person of deceased which could be sufficient to cause death of deceased. Viscera of deceased was preserved and sent for examination in Forensic Science Laboratory and in the report no poison was found in viscera. The report was negative. P.W. 16 SHO, Dheryasheel Yevle recorded FIR on dictation by SDOP vide

Ex. P/45 signed by SDOP. On completion of investigation appellants and acquitted co-accused persons were charge-sheeted for offences under Sections 302, 304-B and 201 of the IPC.

5. Appellants refuted the charges and pleaded their false implication. They have not examined any witness in defence. Learned trial Court, after examining the prosecution witnesses and hearing both parties, while acquitting co-accused brother-in-law of deceased Vikram and his wife Sonam, convicted the appellants as described hereinabove. The appellants are acquitted from charges u/s 302 and 201 of the IPC against which the State has filed appeal vide Cr. A. No. 1370/98.

6. Learned Counsel for the appellants has submitted that prosecution has failed to prove homicidal and suicidal death beyond all reasonable doubt, therefore, possibility of natural death of deceased Kirtibala could not be ruled out and there is no dependable evidence for practising cruelty upon deceased by the appellants. In alternative, it is also argued that even if whole prosecution case is accepted, offence u/s 498-A of the IPC would be made out against the appellants.

7. On the other hand, learned Counsel for the State has supported the impugned judgment and finding arrived at by the learned trial Court.

8. The crucial point for us to decide is whether the prosecution has proved that deceased died otherwise than in normal circumstances. The prosecution is required to rule out the possibility of a natural or accidental death so as to bring it within the purview of "the death occurring otherwise than in normal circumstances". In the instant case, for constituting offence u/s 304-B the ingredients "soon before her death" is sufficiently proved by the prosecution because deceased died within 4 months of her marriage. For deciding issue whether deceased met with death otherwise than in normal circumstances and whether cruelty was practised soon before her death, the provision u/s 113-B of the Evidence Act and illustration (a) of Section 114 of the Evidence Act are relevant. In view of both the provisions Court may presume on the basis of the circumstances that deceased met death otherwise than in normal circumstances soon before her death.

9. Supreme Court in judgment rendered in case of [Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar](#), observed as under:

Para 10:

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 circumstances.
- (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 of the IPC and Section 113-B of the Evidence Act were inserted by the 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 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 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 21st Report dated 10th August, 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, legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B of the 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 concerned woman must have been "soon before her death" subjected to cruelty or harassment "for on in connection with the demand of dowry". Presumption u/s 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 a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304-B of the 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.

10. The Supreme Court has also elaborated Section 304-B of the IPC and 113-B of the Evidence Act in paragraph 11, is as follows:

Para 11:

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B, IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B, IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be Laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113-B of the Evidence Act, The expression "soon before her death" used in the substantive Section 304-B, IPC and Section 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 expression "soon before" used in Section 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 or 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 a proximate and live-link between the effects 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.



(Also see Supreme Court judgments passed in case of Thakkan Jha v. State of Bihar (2004) 13 SCC 348, [M. Srinivasulu Vs. State of A.P.](#), and [Devi Lal Vs. State of Rajasthan](#), .

11. In view of the aforesaid Supreme Court dicta, now we proceed to examine the prosecution evidence whether prosecution is able to rule out the possibility of a natural or accidental death so as to bring it within the purview of the death

occurring otherwise than in normal circumstances.

12. The prosecution has examined RW. 4 Dr. S.K. Gupta and P.W. 5 Dr. Anees Khan. They were called by the appellants to examine deceased. Dr. Gupta has deposed that he found the deceased lying on the bed and, one piece of cloth was hanging with ceiling fan. On examination, he found deceased dead and he sent a written letter (Ex. P/4) to the police, intimating about death of deceased.¹ In the letter Ex. P/4, there is no mention of fact that Dr. Gupta found a piece of cloth hanging with ceiling fan.

13. P.W. 5 Dr. Anees Khan has deposed that he was called by the appellants through their servant to examine wife of appellant No. 1 Chandan. He reached at their house and found her lying on the bed. On examination, he found her dead. He suggested them to consult some doctor of Govt. Hospital and came back. Dr. Anees Khan has not deposed any suspicious circumstances in the room where dead body of deceased was lying on a cot. The evidence of both doctors is not helpful to the prosecution to establish that the deceased died otherwise than, in normal circumstances.

14. P.W. 11 Dr. Dhyan Singh Solanki and P.W. 12 Dr. M.S. Barche performed autopsy of the dead body of Kirtibala and proved post-mortem report (Ex.P/25). On examination, they found passing of rigor mortis, dilated pupils and tongue was inside the mouth. There was no ligature mark and one abrasion 1 cm.   cm. was found on mandible region. There was sign of brown staining on neck. No other injuries were found on the person of deceased. The female organs were healthy and normal. All the external orifices of the body were healthy and normal. In the opinion of Dr. Solanki, cause of death could not be detected, therefore, viscera was preserved. The post-mortem was performed by him as well as P.W. 12 Dr. M.S. Barche and third doctor (not examined) Kanoongo. Sub-Divisional Police Officer sent a query vide Ex. P/26 and Dr. Solanki answered the said query, according to him mode of death was asphyxia but there was no sign of hanging. He suggested for examination of wind pipe and trachea. There was no sign of poisoning but viscera was preserved for examination. The presence of brown staining on neck was because of abrasion on the face and this injury could be caused by hard and blunt object. He also opined that ligature mark could not occur by cloth like bed-sheet because of thickness of bed-sheet. The answer given to query Ex. P/27 was proved by this witness. He also opined in paragraph 12 of his deposition that if mouth is pressed by pillow asphyxia could occur because of suffocation and same could result into death. Death could also occur in normal circumstances. In cross-examination, in paragraph 19, he admitted that for the first time in Court he stated about cause of suffocation by pressing pillow on the mouth and this alone could not be the cause of death. On the basis of the evidence of both the doctors, we cannot give finding that deceased died otherwise than in normal circumstances. Viscera report (FSL report) is not disclosing any abnormality and presence of poison.

15. P.W. 10 Dr. D.S. Badkur examined trachea and larynx and proved report Ex. P/24. According to him, he did not find any ecchymosis or fracture except post-mortem sharp cuts on trachea and larynx and there was no bleeding. He did not find any kind of injury and trachea and larynx were not sufficient to know or detect cause of death. The evidence of this doctor is also not sufficient to establish that deceased died otherwise than in normal circumstance. We are satisfied on the basis of the medical evidence that prosecution has failed to rule out natural or accidental death of deceased Kirtibala. In this view of the matter the necessary and important ingredient of Section 304-B of the IPC is not established by the prosecution beyond all reasonable doubt, therefore, in our considered view the offence u/s 304-B of the IPC is not proved beyond reasonable doubt against the appellants.

16. Now we proceed to examine the statement of P.W. Moolchand and P.W. 2 Sushilabai as well as P.W. 3 Saroj, father, mother and Bhabhi (sister-in-law) respectively of the deceased.

P.W. 1 Moolchand has stated that before 4 months of the death of Kirtibala, she was married with appellant No. 1 Chandan. He received telephonic message of acquitted co-accused through his son Deepak about serious condition of Kirtibala. Thereafter, he with his wife P.W. 2 Sushilabai reached at the house of the appellants and they were told by acquitted co-accused yikram that Kirtibala committed suicide by hanging. After hearing this news he had giddiness and fell on the ground, after regaining consciousness he saw the dead body of Kirtibala. Shal and piece of cloth hanging with ceiling fan. In his opinion, room was so small to commit suicide by hanging by the deceased and deceased was a literate woman could not commit suicide by hanging. He saw sign of abrasion on neck and started weeping saying that for Maruti car his daughter was killed. He was brought to ground floor, police was already present there. In their presence SDOP took signature on Ex. P/1, Intimation for preparation of Inquest Report and prepared Inquest Report Ex. P/2 containing his signature at "A to A" portion. He stated specifically that he was not knowing what was written on documents Ex. P/1 and P/2 in paragraph 9. The say of this witness is that the in-laws of deceased Kirtibala also gave her another name i.e. Roshan and after 15 days of marriage Kirtibala came to his house and told him that there was everything ok but members of her in-laws family were saying that inferior quality of articles were given in dowry and since she was dark in complexion they were hoping for good articles in dowry and appellant Ramesh Chandra Choudhry and Vimla Choudhry were harassing her. Mother-in-law Vimla Choudhry was pointing mistake in her work and acquitted co-accused Sonam was supporting her. After one month this witness came to the house of the appellants. At that moment, appellant Ramesh Chandra (Biyaji/Samadhi in local parlance) sitting with other accused persons told him that the family residing in Nandora were giving car but whether he gave car to them? and he gave articles of inferior quality. On this, he annoyed and replied that there was no settlement on this count. It is also stated by this witness that he was told by his wife that deceased Kirtibala was saying that if

she would not get Maruti, her-in-laws will murder her. He proved written report Ex. P/3 lodged by him. He has been cross-examined in detail, but in our considered view there is sufficient material in his statement to establish that the cruelty was practised upon deceased by the appellants because they were not satisfied with the gift articles given or dowry given without demand by father Moolchand (P.W. 1), to his daughter and son-in-law.

17. The statement of Moolchand is fully corroborated by statement of P.W. 2 Sushilabai before whom deceased complained about ill-treatment with her by the appellants on account of dissatisfaction of gift articles or dowry given to her and ill-treatment. P.W. 2 Sushilabai exaggerated the fact that she saw the contusions caused by iron rod (Sarlya) on the person of deceased and injury on neck, the piece of rod and pestle (Musli) were lying in the room. These facts have not been stated by P.W. 1 Moolchand. P.W. 3 Saroj, sister-in-law (Bhab"Hi) also deposed about complaint by the deceased regarding ill-treatment on dissatisfaction of dowry given to deceased and hope of receiving Maruti Car in dowry. On the basis of evidence of all these three witnesses, we are fully satisfied that deceased was ill-treated for demand of dowry and dissatisfaction of the appellants by not getting Maruti Car and articles of their choice.

18. The contents of inquest report (Ex. P/2) prepared by SDOP was not proved by SDO Police and exhibit was marked on this document in the statement of P.W. 1 Moolchand to prove his signature but he stated specifically in paragraph 6 that he was not knowing what was written in inquest report Ex. P/2. Signature of SDOP on inquest report Ex. P/2 was proved by P.W. 16 the then Station House Officer of Police Station Mengaon, but he has nowhere stated that inquest report was written or prepared by SDOP. The handwriting of inquest report was not got proved by the prosecution by any witness which is the requirement of Section 67 of the Evidence Act which reads as under:

Section 67 of the Evidence Act-- Proof of signature and handwriting of person alleged to have signed or written document produced -- If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so, much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

19. Mere marking of exhibit and proving signature of witness on inquest report, its contents, would not become admissible in evidence, First of all prosecution should have examined SDOP Anil Maheshwari and if he could not be examined for some valid reason/reasons, his handwriting and signature must have been proved by a witness acquainted with his handwriting and signature. P.W. 16 Dheryasheel in paragraph 2 proved the signature of SDOP Anil Maheshwari and at the same time in paragraph 3 he has deposed that he had no occasion to see the writing of Anil Maheshwari. In this view of the matter, contents of inquest report Ex. P/2 cannot be looked into. P.W. 13 Dr. Sudheer Sharma, Scientific Officer of Forensic Science

Laboratory Unit, Indore has proved Ex. P/28 Spot Inspection Report and according to him, he found doubt/suspicion about death of deceased. His opinion is not sufficient to establish that deceased met with death otherwise than in normal circumstance. It is well established legal proposition that doubt/suspicion however strong shall not take place of proof.

20. In view of the aforesaid discussion of legal and factual discussion, we do not agree with the finding of the Trial Court that deceased died otherwise than in normal circumstances and prosecution is able to rule out the possibility of a natural or accidental death of the deceased, but we are satisfied that the cruelty was practised by the appellants upon deceased because of dissatisfaction of dowry and she was having little bit black complexion.

21. In the result, this appeal is allowed in part, conviction and sentence of the appellants u/s 304-B of the IPC are hereby set aside instead thereof the appellants are convicted u/s 498-A of the IPC. They were not charged for this offence but it is lesser offence than 304-B of the IPC, and cruelty as defined u/s 498-A of the IPC is part of Section 304-B, therefore, no prejudice is caused to the appellants and they were fully aware of prosecution allegation regarding demand of dowry and cruel behaviour.

22. u/s 464 of Cr.P.C. no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed for a particular offence, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. In the opinion of this Court, no failure of justice has in fact occasioned by non-framing of charge u/s 498-A of the IPC, therefore, appellants are convicted u/s 498-A of the IPC and sentenced to R.I. for 3 years and fine of Rs. 5,000/- to each appellant. Out of fine amount, compensation of Rs. 10,000/- be paid to P.W. 1 Moolchand. Appellants are on bail, they are directed to surrender before the Trial Court on 31st March, 2009 for undergoing the remainder part of jail sentence and deposit the fine amount, if not deposited. On failure of the appellants to appear before the Trial Court on a given date, the learned trial Court is directed to take suitable action against them and their surety in accordance with law, under intimation to this Court. Office is directed to send the copy of this judgment along with the record of the trial Court.

22A. In the light of aforesaid discussion and decision in appeal filed by the appellants, we do not find any merit in the appeal filed by the State vide Cr. A. No. 1370/98, therefore, same is hereby dismissed.

23. The office is directed to send the copy of this judgment along with the record to the trial Court.

24. The original judgment be placed in the record of Cr. A. 1033/1998 and a copy thereof be placed in the record of Cr. A. 1370/1998.