

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR**

SB:- Hon'ble Shri Justice G. S. Ahluwalia

Cr.A. No.663/2003

Krishna Gopal
vs.
State of MP

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Shri V.K. Saxena, Senior Counsel with Shri JS Kushwah, counsel for the appellant.
Ms. Sangeeta Pachauri, Public Prosecutor for the respondent/State.

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JUDGMENT

(Delivered on 26 /04/2018)

This Criminal Appeal has been filed under Section 374 of CrPC against the judgment and sentence dated 16/10/2003, passed by Additional Sessions Judge, Seonda, District Datia in Sessions Trial No.99/2000, whereby the appellant has been convicted under Section 304-B of IPC and sentenced to undergo the rigorous imprisonment of ten years.

(2) The undisputed fact for disposal of the present appeal is that the appellant is the husband of the deceased Manju. The marriage of the appellant was performed with the deceased Manju about one year before her death. The prosecution story, in nutshell, is that an information was given by Bhagwan Singh Parihar (PW1) to the Police Station Pandokhar, to the effect that the deceased Manju, the wife of the appellant, has expired and on the basis of which an inquest enquiry was conducted. The enquiry was done by Sub-Inspector Hakim Singh Yadav and

during enquiry, it was found that the appellant (husband of the deceased), Bhagwan Das (father-in-law of the deceased), Devabai (mother-in-law of the deceased) and Vikram (brother-in-law of the deceased) were harassing the deceased by making demand of motorcycle and money. It was also alleged that the deceased died because of hanging. On 14/4/2000, the co-accused Bhagwan Das along with Chowkidar informed the police that appellant Krishna Goptal, Devabai and he went to their field for harvesting the crops and the deceased Manju was all alone in the house and at about 09:00 am, the appellant along with her parents came back and found that the house was locked from inside. On knocking of the door, the grand- daughter of Bhagwan Das opened the door and he found that the deceased was hanging. The appellant brought her down and found that she was already dead. Devabai started weeping, as a result of which the neighbours came there and they also noticed the dead body of the deceased Manju. After the inquest enquiry, as a case of dowry death was, prima facie, found against the accused persons, accordingly, FIR Ex.P3 was lodged on 15/04/2000. *Lash* Panchnama Ex.P2 was prepared. Certain injuries were found on the body of the deceased Maju. The spot map ExP4 was prepared and the dead body of the deceased was sent for postmortem and the postmortem report is Ex.P8. The statements of the witnesses were recorded. Seized articles were sent for chemical examination to FSL, Sagar through Superintendent of Police, Datia and FSL report is ExP7. After completing the

investigation, charge sheet was filed for offence under Section 304-B/34 of IPC against Bhagwan Das, Devabai, Vikram and the appellant. The trial Court by order dated 07/09/2000 framed charge under Section 304-B/34 of IPC.

(3) The accused persons including the appellant, abjured their guilt and pleaded not guilty.

(4) The prosecution, in order to prove its case, examined Bhagwan Singh Parihar (PW1), Kamlesh (PW2), Kallu (PW3), Usha (PW4), Kathule (PW5), Chiman(PW6), Mahendra Kumar (PW7), GC Sharma (PW8), Siroman Singh (PW9), Mukesh Kumar Shrivastava (PW10) and Dr. R.S. Dhengula (PW11). The appellant examined Parmanand (DW1), Mannulal (DW2) and Chhotelal (DW3), in their defence.

(5) The trial Court after recording the evidence of the parties and hearing both the parties, acquitted Bhagwan Das, Devabai and Vikram by judgment dated 16th October, 2003 passed in Sessions Trial No.99/2000, but convicted the appellant for offence under Section 304-B of IPC. Since the acquittal of Bhagwas Das, Devabai and Vikram has not been challenged, therefore, this appeal is being considered only against the judgment dated 16/10/2003 passed by trial Court in Sessions Trial No.99/2000 to the extent of conviction of the appellant.

(6) The primary question for determination is that whether deceased Smt. Maju died a homicidal death or a natural death?

(7) The undisputed fact is that the postmortem of the deceased was conducted by Dr.BK Shrivastava, Medical Officer, PHC,

Bhander, District Datia and it was co-signed by Dr.RS Dhengula, Block Medical Officer, PHC, Bhander, District Datia. Dr. BK Shrivastava could not be examined as he expired during pendency of the trial and accordingly, on 03/07/2002, a prayer was made by the Prosecution that as Dr.BK Shrivastava has expired, therefore, the Prosecution be permitted to prove the postmortem report by examining Dr. RS Dhengula, who was present at the time of postmortem. Since this prayer was not opposed by the accused, therefore, the application was allowed and Dr. RS Dhengula was allowed to be examined to prove the postmortem report. Dr.RS Dhengula (PW11) has stated that at the time of postmortem the dead body of the deceased was found under severe putrefaction. On external appearance, the face was swollen and eyes were forced out from the socket. Tongue was protruded between teeth and lips. Frothy reddish fluid was coming out from nostrils and mouth, which was due to putrefaction. Greenish spots were found on the abdomen and chest. Fecal matter is coming out from anus. The following injuries were found on the body of the deceased.

"(1) Abrasion on the right side of back of knee joint size 2"x2".

(2) Burn mark present on the left thigh 1" above the knee joint 1/4"x1/4".

(3) Burn mark present on the back of right scapula region 2"x1".

No ligature mark seen in the neck.

(4) Abrasion on the right side of neck."

Dr.BK Shrivastava had opined that the death is due to shock caused by poison and for confirmation of kind of poison, viscera

was sent for chemical analysis and all the injuries were found ante-mortem in nature and the duration of death was between 8-14 hours. Certain more internal organs were sent for chemical analysis and definite opinion was given by Autopsy Surgeon that the death of the deceased was due to shock caused by poison. The postmortem report is Exp8. This witness was cross-examined and he admitted that the entire postmortem report is in the handwriting of Dr. BK Shrivastava. He also admitted that whatever was found by Dr. BK Shrivastava at the time of postmortem, has been reflected in the postmortem report. This witness has further stated that he was merely present with Dr. BK Shrivastava. He further clarified that the postmortem was conducted by Dr. BK Shrivastava and he had merely signed the postmortem because of his presence. He further admitted that in the postmortem report Ex.P8, Dr. BK Shrivastava had not pointed out any symptom of poison. He could not point out as to how the ante-mortem burn injuries were found on the body of the deceased.

(8) By referring to FSL report Ex.P7, it is submitted by the learned Senior Counsel for the appellant, that since no poison was found in the viscera of the deceased, therefore, it is clear that the postmortem report Exp8 which indicates that the cause of death of the deceased was poison, is not correct. It is further submitted that under these circumstances, the prosecution has failed to prove beyond reasonable doubt that the deceased had died under suspicious circumstances within seven years from the

date of her marriage and when the prosecution has failed to prove that the deceased had died either homicidal death or suicidal death or under suspicious circumstances, then it is clear that the appellant cannot be convicted for offence under Section 304-B of IPC.

(9) The submissions made by the counsel for the appellant cannot be accepted for the following reasons:-

(i) The deceased died in suspicious circumstances in her matrimonial house and the dead body of the deceased was noticed by the appellant and his parents. According to the information which was given to Police Station by Bhagwan Das (Co-accused), when Bhagwan Das, the father-in-law of the deceased entered inside the house, he found that the deceased was hanging and the appellant brought her down. This information was factually incorrect and was suppression of fact from the police and it was misleading information because Dr.BK Shrivastava did not find any ligature mark on the neck of the deceased, which clearly shows that she never committed suicide by hanging herself. Thus, the fact that the father-in-law of the deceased Bhagwan Das found that the deceased was hanging and she was brought down by the appellant is misleading and incorrect information. Under these circumstances, one thing is clear that the appellant had suppressed the very scene of occurrence which he had noticed after coming back from the field. Even the appellant has failed to prove

that he had ever gone to field in the morning of the incident and when he came back, he found that his wife is dead. Ante-mortem injuries were found on the body of the deceased, which have not been explained by the appellant. Dr. BK Shrivastava had specifically opined that the cause of death of the deceased was due to shock and was due to poison. This finding of Dr. BK Shrivastava is being challenged by the appellant by submitting that since no poison was found as per FSL report Exp7 and since no symptom of poison was mentioned by Dr. BK Shrivastava in his postmortem report, therefore, it cannot be said that the deceased had died because of consumption of poison.

(ii) For holding a person guilty under Section 304-B of IPC the requirement of law is that the deceased must have expired in suspicious circumstances otherwise than under normal circumstances within a period of seven years from the date of her marriage. This Court cannot lose sight of the fact that sometimes, because of nature of poison consumed or administered by or to the deceased, the same may not be noticed in the chemical analysis. Further, where the evidence is clinching and clear, then the same cannot be ignored or rejected merely on the basis of medical evidence or the report of chemical analyst.

(iii) Therefore, merely because no poison was found in the FSL report Exp7, it cannot be said that all other circumstances should be ignored and it should be held that

the deceased had died natural death. If the deceased had died natural death, then there was no reason for the co-accused to give false and misleading information to the police that when the father-in-law of the deceased Bhagwan Das entered inside the house, he found that the deceased was hanging. Thus, the information which was given by co-accused Bhagwan Das that he had seen the dead body of the deceased for the first time and had found the dead body was hanging is not correct, as that claim is not supported by postmortem report, which specifically says that no ligature mark was found on the neck of the deceased. Thus, one thing is clear that the deceased did not commit suicide by hanging herself.

(iv) This Court again cannot go in deep with regard to the manner in which the deceased has died because neither a charge under Section 302 of IPC was framed nor the acquittal of Bhagwan Das, Devabai and Vikrant has been challenged. Therefore, one thing is clear that the deceased had never committed suicide by hanging herself. Had Bhagwan Das noticed that the deceased was lying on the ground or cot or anywhere because of natural death, then there was no need for him to give false information to the police that when he entered inside the house, he found the dead body of the deceased was hanging and the same was brought down by the appellant. Since the deceased was residing along with the

appellant and undisputedly she expired in her matrimonial house and only the appellant and his family members were present who had noticed the dead body of the deceased for the first time in the house, therefore, burden was on them to explain as to what was noticed by them when they entered inside the house? When the information given by Bhagwan Das with regard to the position of the dead body is false, it is clear that the appellant and his family members had suppressed the very genesis of the death of the deceased. Unfortunately, Dr. BK Shrivastava who had conducted the postmortem of the deceased, has expired during the pendency of the trial and, therefore, he could not be examined. Under the facts and circumstances of the case, this Court is of the considered opinion that the deceased had died in her matrimonial house in suspicious circumstances other than the normal circumstances within seven years from the date of her marriage and she had sustained antemortem injuries on her body, which have not been explained by the accused and no ligature mark has been found on the neck of the deceased which clearly, negates the claim of the appellant and his father that when they came back to the house and entered inside the house, they found that the deceased was hanging and she was brought down by the appellant. Thus, it is held that deceased Manju had died in suspicious circumstances other than normal circumstances within a period of seven

years from the date of her marriage.

(10) The next question for consideration is that whether the appellant has committed an offence under Section 304-B of IPC or not ?

Bhagwan Singh (PW1) has stated that he is Chowkidar of the village and he was called by the uncle of the appellant, namely, Dhobilal, who had informed that the deceased has committed suicide by hanging herself. He found that the deceased had expired and one rope was hanging from the roof of house. An information was given by this witness to the police that the wife of the appellant has expired, which is Ex.P1. Since eyes and mouth of the deceased were open, therefore, he came to a conclusion that the deceased has expired. In cross-examination, this witness admitted that the parental relatives of the deceased had reached the village on the same day on the information given by Manoj Yogi, resident of the village. This witness has further stated that he had never heard any confrontation between the deceased, the appellant and her mother-in-law. There are several houses surrounding the house of the appellant.

Kamlesh (PW2) is the maternal uncle of deceased Manju. He has stated that the deceased was married to the appellant on 11th May, 1999 and she was brought up by this witness. He further stated that within one year of her marriage the deceased expired. Prior to her marriage, the deceased had visited the house of her relative in Village Pali and this witness had also gone there, where the deceased had informed that the appellant

used to beat her and the injuries were also shown by the deceased to this witness. This witness was also informed by the deceased that the appellant is demanding Rs.1,50,000/- for procuring a job and also a vehicle. The information regarding the death of the deceased was given by son of the uncle of the appellant and when he went to the Village, he found that the deceased was lying dead. This witness was cross-examined and in cross-examination, he admitted that in his Case Diary statement Ex.D1 he had not stated to the police that when the deceased came to her house, then he had seen the injuries. *[In case diary statement, the information given by the deceased about the harassment by the appellant as well as demand of Rs.1,50,000/- and a vehicle is mentioned. In the case diary statement, it was mentioned in detail that on 8th March, the deceased had come to attend a marriage of the nephew of this witness, namely, Virendra and from there, she came to the house of this witness and at that time, she informed this witness about harassment and demand of dowry].*

Thus, it cannot be said that there is a material omission in the case diary statement of this witness, except that, there is an omission that this witness had seen the injuries. It is further stated by this witness that fifteen days thereafter, the deceased died. It is further admitted that even after noticing the injuries, they did not lodge the FIR. He further admitted that prior to death of the deceased no report was made. He denied the suggestion that the appellant had never demanded money and

demanded the vehicle only. He further admitted that the accused are poor persons and are agriculturists only. He further admitted that the deceased committed suicide in the morning of 14/04/2000 and the postmortem and cremation of the deceased was done on 15th. He further denied that they had informed the police that the deceased has been killed by administering poison. He further denied that the deceased did not have any problem in her matrimonial house and she was never beaten. He further admitted that when they reached the village, the dead body of the deceased was lying in the house itself and her dead body was sent for postmortem only thereafter. He further admitted that for the postmortem, husband of the deceased and his friends as well as father of the deceased had gone. He further admitted that the deceased had sustained injuries on her body.

Kallu (PW3) is the father of the deceased, who has stated that the deceased was married to the appellant in the year 1999. On 14/04/2000, he was informed that the deceased has expired and when he reached the village, he found that the dead body of his daughter was lying on the ground and the police had already reached there before him. The Dead Body Panchnama Ex.P2 was prepared. This witness has further stated that when the deceased had come for third time, then she informed that her in-laws are insisting that she should bring any vehicle, otherwise she would be killed. This witness has further stated that he was not willing to send his daughter but in spite of his objection her in-laws took her back. In cross-examination, he admitted that he

got the information in the afternoon of 14th and reached the village in the evening of 14th at about 07:00-08:00 pm. He further stated that he does not know as to why the dead body of the deceased was kept in the house even for such a long period after her death. The dead body was taken for postmortem in the morning of 15th. He denied that he had suggested the Doctor to give an opinion that the deceased had died due to poison. He further stated that when the deceased had come for the third time, then she had informed about the demand of vehicle. He further admitted that this information was given by the deceased to her mother from whom he got the information. He further stated that the deceased was residing at the house of her maternal uncle at Jhansi and his daughter is more beautiful than that of the appellant. He further denied that the deceased was willing to open a beauty parlor at Jhansi. He further stated that he does not know that whether his daughter had done any beauty parlor course or not. He further denied that he does not know that whether his daughter had pressurized the appellant to shift to Jhansi for doing business and the appellant had refused to do so, as the appellant wanted to serve his father by residing with him. He further admitted that when his daughter came for the first time, then he was not willing to send her back as the accused persons were demanding vehicle. He denied that the deceased was saying that she would go back only after the appellant shifts to Jhansi. He also denied that the appellant was not liked by the deceased. He further admitted that the marriage

was settled by him. He further denied that his relatives had scolded him that he has chosen a very unfit boy and he should have looked for a good boy. He also denied that he does not know that whether the appellant is doing any work except the agriculture or not. He further stated that as he was very upset because of death of his daughter, therefore, he could not give information to the police about certain things.

Usha (PW4) is the mother of the deceased, who has specifically stated that the appellant was demanding Rs.1 lac and a motorcycle. In cross-examination, she has stated that in the month of *Ashadh* (June-July), the deceased had informed that the appellant is demanding money and vehicle. This witness further clarified that Rs.1,50,000/- was demanded. She further admitted that maternal uncle of the deceased has been considered as a rich person in the society. She further denied that the financial condition of the appellant is better than that of the family of the deceased. She further stated that she is still upset because of death of the deceased. She further admitted that the marriage of her daughter was settled by her and her husband. However, she denied that she was ever scolded by her brother that they had not chosen a good boy and they ought to have married their daughter in some good family. She further admitted that the deceased was usually staying with her maternal uncle as she was brought up by her maternal uncle only. She further denied that the deceased had done any course of beauty parlor and the deceased wanted to open a beauty

parlor at Jhansi and she was insisting the appellant to shift to Jhansi and the appellant had refused to do so and had clarified that the appellant would stay at Talgaon itself.

Kathule (PW5) is the maternal grand-father of the deceased. He stated that after receiving the information, he went to the matrimonial house of the deceased and found certain injuries on her body. The deceased used to say that the appellant was demanding a motorcycle and had threatened that otherwise she would be killed. A specific suggestion was given to this witness, which was replied that when the deceased had shown her back to this witness and there were injuries, then he had requested the co-accused Bhagwan Das who took the responsibility of the deceased.

Chiman (PW6) is the uncle of the deceased. He has stated that the deceased was married to the appellant about 11 months prior to her death. He further stated that he does not know as to how the deceased has expired. It was further stated that the accused persons had come to take back the deceased and at that time, she was in Jhansi, therefore, the accused persons became aggressive and alleged that now in case, if she comes to her matrimonial house, then she would go back in a dead condition. However, this witness further stated that he does not know as to what had transpired prior to her death.

Mahendra Kumar (PW7) is the maternal uncle of the deceased. He has stated that the deceased used to inform that the appellant was demanding of Rs.1 lac for procuring a job. This

witness has further stated that when he reached the village, he did not find any ligature mark on the neck of the deceased and further denied such part in his case diary statement Ex.D5. He further stated that he does not know as to how the police had written that question. He further could not clarify as to why the allegation of demand of Rs.1 lac was not mentioned in his case diary statement Ex.D5. He further clarified that he came to know about the demand of dowry after the death of the deceased through mother of the deceased.

On behalf of accused, Chhotelal has been examined as DW3. Chhotelal (PW3) has stated that since the deceased Manju was more beautiful than that of the appellant, therefore, she was not happy with her marriage with the appellant. The deceased was not willing to reside in the house of the appellant which is a *pucca* house of thatched roof (khapra). Even at the time of marriage, she had not garlanded the appellant and only with great difficulty and persuasion, she exchanged the garland (*Varmala*). She was insisting the appellant that she would shift to Jhansi. The deceased had also written some incomplete letters, addressed to her parents in which she had expressed that she has been married by them with an unfit boy. This witness has proved an inland letter Ex.D6. Although this letter is not signed by anybody and there is nothing on record that this letter was ever written by the deceased or this letter is in the handwriting of the deceased, but one thing is clear that the appellant himself has relied upon this letter, therefore, even for the sake of

argument, if the contents of this letter are read, then it is clear that the deceased was not comfortable in her matrimonial house. When the appellant had already received this incomplete inland letter, on which even the address of the recipient was not mentioned, then the burden was on him to explain as to what was done by the appellant for redressal of grievance of the deceased. Even the appellant in his statement under Section 313 of CrPC has not taken a stand as the deceased was not satisfied with her marriage, therefore, she committed suicide. As this Court has already come to a conclusion that the deceased never committed suicide because it is the case of the appellant that when he reached the house, he found that the deceased was hanging, whereas no ligature mark was found on her neck, therefore, when the appellant himself has not taken a defence that the deceased was not happy with her marriage because the deceased was more beautiful than that of the appellant and secondly, that the deceased was pressurizing the appellant to shift to Jhansi so that she can open a beauty parlor, therefore, it cannot be said that she was not happy with her marriage. If the deceased had pressurized the appellant to shift to Jhansi, it is for the appellant to take a specific defence in that regard, but that has not been done. Although maintaining silence by the accused, may not be a circumstance against him, but where the accused fails to explain the incriminating circumstance or even fails to bring certain facts which are in his personal knowledge, then it can be said that in absence of any defence, by the appellant in

his statement under Section 313 of CrPC, the appellant has failed to prove his defence that since the deceased was not happy, therefore, she committed suicide.

From the evidence of Kamlesh (PW3) Usha (PW4) and Kathule (PW5), it is clear that the deceased had informed these witnesses about the demand of motorcycle and an amount of Rs.1,50,000/-. The evidence of Usha (PW4) is supported by the evidence of Kathule (PW5) and Mahendra Kumar (PW7) who have stated that they were informed by Usha, that Maju has informed them about the demand of dowry and harassment. Although these witnesses have been cross-examined in detail by the defence, but nothing could be elicited from their evidence which may make the allegation of demand of dowry and harassment by the appellant, as unreliable. Thus, it is clear that the appellant had demanded Rs.1,50,000/- and a vehicle from the deceased and when the said demand could not be fulfilled by the deceased and her parents, then she was continuously harassed and beaten by the appellant. Beating at the hands of the appellant is fully corroborated by ante-mortem injuries found on the body of the deceased. Even some burn marks were found on the body of the deceased which indicate the extent of cruelty committed by the appellant.

Under these circumstances, this Court is of the considered view that the prosecution has succeeded in establishing beyond reasonable doubt that the appellant had demanded Rs.1,50,000/- and a vehicle and because of non-fulfillment of the said demand,

the deceased was harassed, beaten and treated with cruelty and the deceased died in suspicious circumstances other than normal circumstances within seven years of marriage. Accordingly, it is held that the appellant is guilty of committing an offence under Section 304-B of IPC.

(11) So far as the question of sentence is concerned, the trial Court has awarded a jail sentence of ten years to the appellant. It is submitted by the counsel for the appellant that the incident took place in the year 2000 and the appellant was convicted in the year 2003 and more than 18 years have passed from the death of the deceased, therefore, a lenient view may be adopted while awarding the jail sentence. Merely because the appeal remained pending for fourteen long years would not *ipso facto* make the appellant entitle for a lenient view while determining the question of sentence.

(12) In the present case, the deceased died within one year of her marriage. Although the appellant had claimed that when he reached his house he found that the deceased was hanging and he brought her down but the doctor did not find any ligature mark on the neck of the deceased which clearly shows that the appellant has suppressed the information. Even Bhagwan Singh Parihar (PW1), who is Chowkidar of the village, had found that the deceased was lying in a dead condition and one rope was hanging from the roof, that means Bhagwan Singh Parihar, who is an independent witness, had reached the place of incident did not notice that the deceased was hanging and only one rope was

hanging. Thus, under these facts and circumstances of the case, this Court is of the considered opinion that the trial Court has not committed any mistake in awarding the jail sentence of ten years.

(13) Accordingly, the judgment and sentence dated 16/10/2003 passed by Additional Sessions Judge, Seonda, District Datia in Sessions Trial No.99/2000 is hereby affirmed.

(14) The appellant is on bail. His bail bonds and surety bonds are immediately cancelled. He is directed to surrender before the trial Court for undergoing the remaining jail sentence.

(15) This appeal fails and is hereby **dismissed**.

(G. S. Ahluwalia)
Judge