

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)
CRIMINAL APPEAL No. 1646 of 1999

Between:-

**GOVIND S/O CHATURBHUIJ
AGED-54 YEARS
OCCUPATION-BUSINESS
R/O SUNDAR NAGAR,
BANGANGA, INDORE (MADHYA PRADESH)**

.....APPELLANT

(SHRI DEVENDRA SINGH , LEARNED COUNSEL FOR THE APPELLANT)

AND

**THE STATE OF M.P.
THROUGH POLICE STATION-BANGANGA
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

*(SHRI HEMANT SHARMA G.A. APPEARING ON BEHALF OF ADVOCATE
GENERAL/STATE)*

**HEARD ON 22.08.2022
JUDGEMENT PASSED ON 13.09.2022**

**THIS COURT, AFTER HEARING THE PARTIES,
PASSED THE FOLLOWING JUDGEMENT;**

Appellant has preferred this appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment dated 22.10.1999 passed by 14th Additional Sessions

Judge, District Indore in S.T. No.29/1999, whereby the appellant has been convicted for the offence punishable under Section 304-B of IPC and sentenced to undergo 10 years R.I. with fine of Rs.2000/- with default stipulations.

02. The prosecution story, on 20.10.1998, the deceased namely Jyoti was having burn injuries and she was admitted in the M.Y. Hospital, Indore on the same date of incident. One Shyam Chokse inform her parents about the incident and they immediately after receiving the information reach to the M.Y. Hospital Indore from Bhopal. Thereafter, the police station Banganga registered the FIR against the appellant appellant.

03. Thereafter, the police sent the seized articles for medical examination, prepared the spot map, taken the statements of the witnesses, arrested the accused person and after due investigation filed the charge-sheet against the appellant. The learned Court below after considering the statements of the witnesses framed the charges against the appellant under Section 304-B of IPC.

04. Appellant was charged for offence under Section 304-B of IPC. He abjured his guilt and took a plea that he is innocent and has been falsely implicated in the present crime and prays for trial.

05. In support of the case of prosecution, the prosecution has examined as many as 16 witnesses namely Devchand (PW-1),

Bhagwatibai (PW-2), Kundanlal (PW-3), Omprakash (PW-4), Kaluram (PW-5), KamalKishore (PW-6), Nathulal (PW-7), Shyam (PW-8), Rajue (PW-9), Suresh (PW-10), Virendra Gurjar (PW-11), Inayat Hussain (PW-12), Dr. Surendra Dube (PW-13), Jitendra Singh Panwar (PW-14), Rajesh Hingaonkar (PW-15) and Dr. Sudhir Sharma (PW-16) were examined. No witness was examined by the appellant in his defense.

06. Learned trial Court, on appreciation of the evidence adduced by the parties, pronounced the impugned judgment on 22.10.1999 and finally concluded the case and convicted the appellant, as stated above.

07. Learned counsel for the appellant submits that the the appellant is innocent and the learned trial Court has convicted the appellant wrongly without considering the evidence available on record. There are omissions and contradictions in the statements of the prosecution witnesses but the learned trial Court has not considered this fact in right aspect and convicted the appellant. It is further submitted that at the time of incident when the deceased was burning, the appellant was present and he has tried to calm the fire due to which he has also sustained the burn injuries on both the hands and thereafter, the appellant itself has taken her to the hospital for treatment, but unfortunately, the deceased was died. It is further submitted that the learned Court below has convicted the appellant

only on the basis of statements of PW-3 Omprakash, PW-4, Kundanlal, PW-5, Bhagwatibai and PW-6 Devendra & PW-7 Kamalkishore who are the relatives of the deceased i.e. the brothers and mother of the deceased. It is further submitted that PW-3 Omprakash, brother of the deceased in his statements has not made any allegations against the appellant neither for dowry nor for harassment.

8. It is further submitted that the deceased was living peacefully with the appellant at Indore and the amount which the relatives of the deceased has given to the deceased/appellant, was the amount of compensation of Bhopal Gas Tragedy and the said amount was being paying. It is further submitted except the omnibus allegations of the relatives, there is nothing on record to show that the appellant has and role in unnatural death of his wife. Learned counsel for the appellant has also submitted that to prove the ingredients of offence under Section 304-B of IPC, the prosecution has to establish the following ingredients;

- (a) that the death of a woman has been caused by any burns or bodily injury or occurred otherwise than under normal circumstances;
- (b) that the death of the woman has taken place within seven years of her marriage; and
- (c) that soon before her death, the woman was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with, any demand for dowry.

9. Hence, the the learned trial Court has not considered these aspect and convicted the appellant wrongly. Therefore, the appeal is liable to be allowed and the appellant may be acquitted. In support of his contentions, learned counsel for the appellant placed reliance over the judgement of Punjab and Haryana High Court passed in the case of **V.K. Bali vs. The State of Haryana passed in CRA No.266-DB of 1997 on 04.05.1998**, whereby the Hon'ble Court has in the same set of facts and circumstances has acquitted the appellant considering the fact that at the time of incident, the appellant has tried to save his wife and due to which he has also received the burn injuries. The hon'ble Court further observed that the relatives stated in their statements only after hearing from one another, further the Court has also observed that in doing so by the appellant, there is nothing unnatural can be spelled out from the same. In the present case, the circumstances are almost similar and the appellant has also taken the deceased to the hospital itself and received the burn injuries also. Hence, prays for acquittal.

10. Learned counsel for the appellant further place reliance over the judgment of **Hon'ble Punjanb and Haryana High Court passed in the case of Sewa Ram and Others vs. State of Punjab passed in Criminal Appeal No.577-DB of 2003 dated 22.01.2009 reported in**

2010 CRL.J.355 whereby the High Court has converted the sentence of the appellant therein from Section 304-B to Section 498-A of IPC and sentenced the appellant to the period already undergone because the death of the deceased therein could not be proved by the prosecution. Hence, relying upon the aforesaid judgement passed in the case of Sewa Ram (Supra), learned counsel for the appellant submits that at the most, the case of the appellant shall travel only upto the offence under Section 498-A of IPC, the appellant is now aged about 54 years, the appeal is pending since 1999, the appellant is facing the judicial proceedings since more than 25 years, he has already completed more than 02 years and 08 months behind the bar and he is presently also behind the bar in compliance of the order dated 03.03.2022 due to recalling of the suspension order dated 25.08.2000. Hence, in view of the aforesaid, the appellant may be convicted for the offence punishable under Section 498-A of IPC and prays for reduction of the sentence to the period already undergone or as the Hon'ble Court may deem fit.

11. Learned Public Prosecutor has opposed the prayer. Inviting my attention towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has submitted that the learned Court below has convicted the appellant rightly after considering each and every evidence produced on record by the prosecution. Counsel for the State further submits that earlier also,

complaints were made by the deceased to her parents and relatives and a report was also lodged regarding harassment and demand of dowry by the appellant in Bhopal. It is further submitted that all the allegations leveled against the appellant have been found proved by the learned trial Court. It is further submitted that the testimony of the PW-3 Omprakash is unchallenged and hence, the appellant is not entitled for any relief and prays for dismissal of the appeal.

12. I have considered rival contentions of the parties and have perused the record.

13. From the face of record, it is crystal clear that the deceased has died within the seven years of marriage. There are several allegations against the appellant in the statements of the witnesses i.e. relatives of the deceased. The factum of death of the deceased by burn injuries is also not disputed as well as the unchallenged testimony of the witnesses is still remain intact. However, looking to the other side of the case and considering the factum that the appellant has tried to save the deceased and he has also received the burn injuries, further, it is the appellant itself, who has taken the deceased to the hospital after the incident, it can not be assumed that the appellant itself has set ablazed the deceased on fire and it is also not the case of prosecution. As proved by prosecution and as admitted by the appellant, deceased had poured kerosene oil and set herself on fire. It is the case of unnatural death. Admittedly, deceased died unnaturally within seven

years of marriage.

14. PW-3 Omprakash, brother of the deceased specifically stated that within 3-4 years, accused has started to harass his sister Jyoti and demanded money and also beaten her. He asked Jyoti to bring Rs.25,000/- from her parents to buy a plot and Jyoti told him regarding this and on last Diwali, she died, this testimony is unchallenged/uncrossed. PW-4, Kundanlal, PW-5, Bhagwatibai and PW-6 Devendra & PW-7 Kamalkishore & PW-11 Nathulal have corroborated the statements of PW-3 Omprakash.

15. Learned counsel for the State submits that there is presumption of Section 113(b) of Indian Evidence Act against the appellant and contrary to this, counsel for the appellant submits that Section 113(b) of Indian Evidence Act does not provide for invoking the presumptions in every situation but only to prove all treatment with cruelty and harassment with respect to dowry.

Section 113(b) of Indian Evidence Act reads as under:-

113B. 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.

Section 498-A of IPC reads as under:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

16. Now, it is well settled that the presumption under Section 113(b) of Indian Evidence Act and Section 304-B of IPC can be raised only when the elements of cruelty and harassment have been established on record.

17. Presumption under Section 113-B of Evidence Act is presumption of law. On proof of the essentials of 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;

- (I) 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 to the offence under Section 304-B of IPC)
- (II) The woman was subjected to cruelty or harassment by her husband or his relatives;
- (III) Such cruelty or harassment was for, or in connection with any demand of dowry;
- (IV) Such cruelty or harassment was soon before her death.

18. Conjoint reading of Section 113(b) of Indian Evidence Act and Section 304-B of IPC shows that there must be material to show that soon before her death, the victim was subjected to by or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring other wise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of Evidence act and Section 304-B of IPC are pressed into service. The prosecution has to establish that “soon before” the occurrence there was cruelty or harassment and only in that case, presumption arises. Evidence in this regard has to be led in by the prosecution. “Soon before” is a relative

term as it would depend upon the 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 or dowry death as well as for raising a presumption under Section 113-B of Evidence Act. The expression “soon before her death” used in the substantive Section 304-B of IC and Section 113-B of Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined anywhere. There must be the existence of proximity and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

19. Presumption under Section 113-B of Evidence Act is only when there is cogent evidence on record establishing the ingredients of death under Section 304-B of IPC. It is a matter of right of the prosecution to invoke the presumption under the law.

20. In the present case, prior to 4-5 months of incident, a written application was given by the deceased herself at Mahila Police Station, Bhopal regarding cruelty and harassment for demand of dowry. The defense/applicant tried to establish that he did not

demanding any dowry and only compensation amount of Bhopal Gas Tragedy awarded to her wife/deceased Jyoti was demanded by him.

21. On perusal of statement of PW-4 Kundanlal stated in his cross-examination that prior to 15 days of the incident, he has gone to the house of appellant/accused and at the time also, the deceased complained him regarding demand of dowry and cruelty. It is unchallenged testimony. PW-3 Omprakash, PW-5 Bhagwatibai, and PW-6 Devendra & PW-7 Kamalkishore have specifically stated in their statements that after 2-3 years of marriage of the deceased, the appellant has started for demand of dowry. On 20.05.1998, a complaint was lodged by the deceased herself at Mahila Police Station. A cogent reading of the above precedents, it clearly indicates that there was demand of dowry and cruelty and the deceased was subjected to cruelty and harassment by the appellant. Unchallenged testimony of PW-3 Omprakash and unchallenged testimony of PW-4 Kundanlal lead to the conclusion that the deceased was harassed for demand of dowry and subjected to cruelty and harassment soon before her death. Hence, in the foregoing discussion, in my considered opinion, the learned Court below has not committed any error in convicting the appellant, therefore, the impugned judgment so far as it relates to the conviction is hereby affirmed.

22. However, so far as the sentence is concerned, in view of the fact that this appeal is pending since 1999 and the incident was happened

in 1998 and in view of the facts and circumstances of the case to meet the ends of justice, it would be appropriate if the sentence so awarded is reduced to minimum sentence prescribed under Section 304-B of IPC. Hence, the appeal is **partly allowed**. The sentence so awarded by the learned Court below is reduced to 07 years from 10 years R.I. with fine and default stipulation, as stipulated by the Court below.

23. The appellant shall be released from the jail after completion of seven years of his jail sentence.

24. The order of the learned trial Court is confirmed regarding the disposal of the seized property.

25. A copy of this order be sent to the trial Court concerned for necessary information.

26. Let the record be sent back to the Court below concerned immediately for information and necessary action.

Certified copy, as per rules.

(Rajendra Kumar Verma)
Judge

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