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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA
ON THE 5th OF JANUARY, 2023
CRIMINAL APPEAL No. 369 of 1999**

BETWEEN:-

**SANTOSH S/O SHRI SHOBHARAM DESHWALI, AGE: 24
YEARS, VILLAGE: JANSUR, POLICE STATION:
KANTAPHOD, TEHSIL: KANNOD, DIST. DEWAS
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI ASHISH GUPTA, LEARNED COUNSEL)

AND

**THE STATE OF M.P. THROUGH POLICE STATION
KANTAPHOD, DIST. DEWAS (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI RAGHVENDRA SINGH BAIS - GOVERNMENT ADVOCATE)

*This appeal coming on for hearing this day, the court passed the
following:*

ORDER

The present appeal is filed under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment of conviction and sentence dated 06.03.1999 passed by Additional Sessions Judge, Kannod, Dist. Dewas in Sessions Trial No. 122/1998 whereby the appellant has been convicted under Section 304-B of IPC and sentenced to RI for 10 years.

2) The prosecution case is that on 05.06.1998, one Babulal had given intimation to Police Station - Kantaphod that Gulab Bai wife of Santosh had consumed poisonous substance. She died on the way when she was being

taken to Indore. On the said intimation, a *Merg* No. 12/1998 under Section 174 of Cr.P.C. was registered. After recording the statement of mother, father and brother of the deceased, a case was registered against the husband Santosh and 2 other persons: mother-in-law and brother-in-law of the deceased. Since the deceased died because of unnatural death within a period of 5 years of her marriage for demand of dowry and, therefore, offence under Section 304-B of IPC was registered in Crime No.95/1998. After the investigation, the charge-sheet was filed and the case was committed for the trial.

3) The accused persons abjured their guilt and submitted that they have been falsely implicated. After the trial, 2 persons were acquitted and the appellant, who is husband of the deceased, has been convicted and sentenced as mentioned above. So far death of the deceased is concerned, the prosecution examined Dr. K.M. Jain (PW-4), who stated that he was posted on the post of Medical Officer in Primary Health Center - Kantaphod, had examined the deceased. The postmortem was carried out by Dr. R.K. Jain and Dr. Bulbul Sen. The cause of death was found to be asphyxia due to ingestion of some pesticidal drug. The postmortem report is Ex.P/1 which was proved by Dr. K.M. Jain (PW-4).

4) Dr. K.M. Jain (PW-4) deposed that the death of the deceased was unnatural and because of consumption of poisonous substance. Thus, the prosecution proved that the death of the deceased was other than the normal circumstances. The prosecution examined the mother of the prosecutrix namely, Narmadabai. In her statement, she stated that the deceased was married with the appellant. In marriage, they had given the dowry. She stayed in in-laws house about one year. Thereafter when she came to her parents house, she refused to go to the in-laws house and made a complaint that she was being

harassed by the appellant, mother-in-law and brother-in-law because of non-giving of dowry. She was also not being provided bed, food etc. Since she did not went to the house of the in-laws, Santosh made an application before the Sub-Divisional Officer, the deceased along with the parents was called and the statement of appellant was recorded that he will maintain good relations with the deceased and will not harass her. She stated that before the death of her daughter, her husband had gone to the house of the deceased. The father of the deceased namely, Ram Avtar (PW-15) stated that the deceased was married with the appellant 6 years before and after one year, *Gauna* was performed. After 15 days, her daughter had come to their house. She made a complaint that she was being tortured by the appellant, mother-in-law and brother-in-law. She was being tortured because of not bringing dowry. The accused persons were asking her to bring dowry. When the deceased was not sent to the in-laws house, the husband approached the Sub-Divisional Officer and the statement of the appellant was recorded and on his assurance that he will not harass the deceased, she was sent to the in-laws house. In para-3 of his deposition, he stated that the deceased had made a complaint that she was being harassed for not bringing dowry.

5) Shantu Bai (PW-1), who is aunt of the deceased has also stated that in para-3 of her statement, the deceased had stated that her husband, mother-in-law and brother-in-law were harassing her for the dowry. They were also not providing bed and food.

6) Jagdish (PW-2), who is brother of the deceased had also stated in para-2 of the statement that the deceased had informed him that the appellant, her mother-in-law and brother-in-law were harassing her for not bringing dowry.

They used to say that she has not brought any dowry from her house.

7) Counsel for the appellant argued that the witnesses have not made specific allegation of demand of dowry by the appellant and, therefore, no case under Section 304-B of IPC will be made out. At the most, case under Section 498-A of IPC shall be made out. To bolster his submissions, learned counsel for the appellant placed reliance on a judgment passed by the Apex Court in the case of *Biswajit Halder alias Babu Halder & Ors. vs. State of West Bengal*, 2007 CRI.L.J. 2300.

8) It would be appropriate to discuss the legal aspects of Section 304-B of IPC.

"304B. 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."

9) Section 304-B of IPC does not categorize death as homicidal or suicidal or accidental. On careful reading of the Section, it appears that any death occurring 'otherwise than under normal circumstances be called as dowry death' and the women's husband or his relative shall be deemed to have caused her death. Likely Section 498-A of IPC provides that any willful conduct of the husband or the relatives of the husband of a woman is of such in nature as is likely to drive the women to commit suicide or to cause grave injury or danger

to life, limb or health whether mental or physical of the woman, is offence under Section 498-A of IPC. The evidentiary value of the aforesaid sections is provided under Sections 113-A & 113-B of Indian Evidence Act, 1872.

10) On reading of the above mentioned Sections, it appears that when the married woman has committed suicide within a period of seven years of her marriage, then presumption of Section 113-A comes into role whereas when a person has committed the dowry death of a woman and soon before the death such woman has been subjected by such person to cruelty or harassment for any demand of dowry, presumption of Section 113-B comes into effect. The Section 113-B of Indian Evidence Act is also quoted as under:-

"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 304B, of the Indian Penal Code, (45 of 1860)."

11) By passing various decision, the Hon'ble Apex Court has described the ingredients of Section 304-B IPC. One of it *Kansraj Vs. State of Punjab*, (2005) 5 SCC 207, the Hon'ble Apex Court has held as under:-

".....In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have

been subjected to soon before her death. As and when the aforesaid circumstances are established, a presumption of dowry death shall be drawn against the accused under Section 113B of the Evidence Act."

13) A two stage process is required to be followed in respect of an offence punishable under Section 304-B IPC, first to make sure whether the ingredients of the Section have been made out against the accused and if the findings are affirmative then secondly to ascertain that the accused is deemed to have caused to death of the woman.

14) In *Shamnsaheb M. Multtani v. State of Karnataka*, (2001) 2 SCC 577, a Bench of three Judges of the Hon'ble Apex Court explained the requirements of Section 304-B IPC read with Section 113-B of the Act. Paras 27 and 28 are important in this context and are reproduced below:

"27. The postulates needed to establish the said offence are: (1) Death of a wife should have occurred otherwise than under normal death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Section 113-B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the court shall presume that such person had caused dowry death'."

28. Under Section 4 of the Evidence Act "whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved". So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both."

15) In another case *Yashoda Vs. State of M.P.* , reported in (2004) 3 SCC 98, the Hon'ble Apex Court held that once the ingredients of Section 304-B IPC are fulfilled, the onus shifts to the defence to produce evidence to rebut the statutory presumption and to prove that the death was in the normal course and the accused were not connected. Relevant para No. 13 is quoted as under :

"13.....Once the prosecution proves the facts which give rise to the presumption under Section 304-B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in the normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304-B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment."

16) Thus, on careful reading of above cited provisions and principles, I sum up the principle mentioning that when the death of a woman is caused by burns or bodily injury or occurred otherwise than under normal circumstances within a period of seven years of her marriage and the woman was subjected to cruelty or harassment by her husband or any relative of her husband and such cruelty of her husband should be for or in connection with the demand of dowry and such cruelty or harassment, the deceased should have been subjected to soon before her death. In such circumstances, court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is open to the accused to adduce such evidence for disproving

the said compulsory presumption, as the burden lies upon him. The appellant has not examined any defence witness to dislodge the presumption under Section 304-B of IPC.

17) The learned trial Court has given its finding with regard to the nature of the death of the deceased occurred other than the normal circumstances and on consideration of the testimony of Ram Avtar (PW-15) and PW-16 Narmadabai, mother of the deceased, PW-2 Jagdish, brother of deceased and PW1 Shantubai, aunt of deceased, it is clearly proved that the deceased was harassed for non-fulfillment of dowry demand. She was subjected to harassment soon before the death.

18) The judgment relied by the appellant in the case of *Biswajit Halder* (supra) would not apply to the facts of the present case. In the said case, there was no evidence to show that there was any harassment in connection with the demand of dowry and there was no finding in that regard by the trial Court. In the present case, the trial Court has recorded a finding that on the assimilation of testimony of PW-15 Ram Avtar, PW-16 Narmadabai, PW-2 Jagdish and PW-1 Shantubai that there was a demand of dowry and the deceased was subjected to cruelty.

19) I do not find any merit in the appeal. Accordingly, the appeal is dismissed. The appellant be taken into custody to undergo the remaining jail sentence. The bail bond stands discharged.

(VIJAY KUMAR SHUKLA)
JUDGE