

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

**BEFORE
SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

CRIMINAL APPEAL NO. 3077 OF 1998

BETWEEN :-

**VAFAT MOHAMMAD SON OF SAFI
MOHAMMAD, AGED 22 YEARS,
RESIDENT OF GRAM LAKHWAR,
POLICE STATION – JANEH,
DISTRICT - REWA (M.P.)**

....APPELLANT

(BY SHRI ANKUR SHRIVASTAVA – ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION
JANEH, DISTRICT REWA (M.P.)**

....RESPONDENT

(BY SHRI C.M. TIWARI – GOVERNMENT ADVOCATE)

Reserved on	:	29/03/2023
Pronounced on	:	12/05/2023

*This Criminal Appeal having been heard and reserved for judgment, coming on for pronouncement this day, **Shri Justice Rajendra Kumar (Verma)** pronounced the following :*

J U D G M E N T

This Criminal Appeal under Section 374 (2) Cr.P.C. has been preferred by the appellant being aggrieved by the judgment of conviction

and sentence dated 09.12.1998 in S.T. No.141/1996 passed by learned IVth Additional Sessions Judge Rewa, District Rewa whereby the learned ASJ has convicted the appellant for the offence punishable under Section 498-A, 304-B of Indian Penal Code (hereinafter referred as 'IPC') and sentenced him to undergo R.I. for one years and seven years, respectively.

2. According to prosecution case, marriage of appellant/accused was solemnized with deceased in the month of April 1995 at village Lakhwar District Rewa where marriage of deceased's sister was also performed. As per prosecution, the appellant/accused had grievance that he did not get the same dowry as sister of deceased and owing to said reason he was torturing the deceased. Due to harassment said to have been committed by the appellant/accused, the deceased died of unnatural death by burn on 14.03.1996. During inquiry, police found that the deceased was subjected to harassment for demand of dowry by the appellant/accused and due to non fulfillment thereof, she died of unnatural death within seven years of her marriage, therefore, police registered the case for the offence punishable under Sections 498-A as well 304-B of IPC.

3. After completing the investigation, police filed the charge sheet. The appellant/accused abjured his guilt and claimed to be tried. In order to substantiate the prosecution case, the prosecution has produced 06 prosecution witnesses. The trial Court also examined the accused under Section 313 of Cr.P.C. The appellant/accused also examined 02 witnesses in his defence. After considering the evidence adduced by the parties, the learned trial Judge, came to conclusion that the appellant found guilty for the offence as mentioned in Para -1.

4. The learned counsel for the appellant submitted that the judgment passed by the learned trial Court is bad-in-law and contrary to facts and evidence of the case. The evidence led by the prosecution witnesses suffers from serious infirmity. The independent witness namely Indra Bahadur Singh (PW-1) has not supported the prosecution case, nevertheless, he has not been declared hostile by the prosecution, therefore, conviction can not be recorded to the appellant/accused. He submitted that the deceased never reported any cruelty to her sister who was married in same village. Indeed the deceased died of accidental death by stove and said defence of appellant is supported with evidence given by PW-3 Dr. who prepared the postmortem report and stated before the Court that no smell of kerosene was found over the body of deceased. In his cross examination, he opined that death may occur accidentally. He further submitted that the learned trial Court failed to consider that marriage of appellant's sister was performed with brother of deceased and in such circumstances it is impossible to say that any demand of dowry was in existence by the appellant/accused. The judgment of trial court is based upon the testimony of interested witnesses i.e. (PW-4) and (PW-5) whereas their statements are suffering from serious infirmities having major contradiction and omissions. Further, the appellant was not present during the incident. The prosecution failed to bring any cogent evidence against the appellant with regard to demand of dowry. The learned trial court ought to have seen that there is no independent witness who supported the prosecution case. No such prior report or complaint with regard to making demand of dowry and cruelty with the deceased, has ever been made by the deceased herself or by her relatives. The appellant

himself reported the incident to police. Indeed, the deceased died accidentally while using stove. No ingredient is present to constitute the offence under Section 304-B of IPC. In support of his contention, he has relied upon judgment passed by this High Court in **Cr.A. No. 1299/1997 (Dilip Vs. State of M.P.), Dated 22/01/2013.**

5. On the other hand, learned counsel for the respondent-State opposed the submission made by appellant's counsel submitting that the prosecution succeeded to prove its case beyond any reasonable doubt. There is specific allegation against the appellant for demand of dowry and cruelty soon before death of deceased. The deceased died of unnatural death within the period of seven years from her marriage, in fact within one year of marriage, thus, presumption of Section 113-B comes into play which is against the appellant. The appellant narrated false story of incident. The prosecution witnesses stated sufficient against the appellant to secure his conviction. They have duly supported the case of prosecution. The learned trial court has rightly considered the evidence of the case. With the aforesaid submissions, he prays for dismissal of the instant appeal.

6. Heard and perused the record.

7. While arguing the instant appeal, the learned counsel for the appellant has raised the following grounds :-

“(i) *That, the possibility of accidental burn has not been ruled out in the present case*

(ii) *That, the prosecution failed to prove that there was a demand of dowry as statement of*

important witnesses including family members of deceased is having material contradictions and omissions.

(iii) *Lastly, the prosecution also failed to prove that deceased was subjected to cruelty soon before her death.”*

8. Before dealing with the merits of the case, it would be appropriate to discuss the legal aspect first.

9. The offence involved in the case under the IPC are Sections 304-B & 498-A of IPC which are reproduced herein-under :-

“304-B. 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.”

498-A. 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 willful 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.”

10. Undisputedly, the deceased died of unnatural death within seven years of her marriage, as per Indian Evidence Act, 1872, there is presumption of Section 113-A & 113-B. These provision are also quoted herein-under :-

“113-A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband

Explanation.—For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code

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. Further, by passing the various decisions, the Hon’ble Supreme Court has summed up the principle to constitute the offence under Section 304-B IPC. In the case of **Kansraj Vs. State of Punjab, reported in (2000) 5 SCC 207**, the Hon’ble Supreme Court has elucidated the following ingredients to prove dowry death :-

“(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. ”

12. Further, in the case of **Suresh Kumar v. State of Haryana**, reported in **(2013) 16 SCC 353**, the Hon’ble Supreme Court also has held as under :-

“27. Importantly, Section 304-B IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring “otherwise than under normal circumstances” can, in a given case, be homicidal or

suicidal or accidental. Therefore, if all the other ingredients of Section 304-B IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman's husband or his relative “shall be deemed to have caused her death”. The section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death

28. The evidentiary value of the identification is stated in Section 113-B of the Evidence Act, 1872 (the Act). The key words in this section are “shall presume” leaving no option with a court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her.”

13. Further, in the case of *Bansi Lal v. State of Haryana*, reported in **(2011) 11 SCC 359**, the Hon’ble Supreme Court observed as under :-

“19. It may be mentioned herein that the legislature in its wisdom has used the word “shall” thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relating to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are

that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death.....”

14. On reading of the above mentioned provisions and verdicts given by the Hon’ble Supreme Court, it appears 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 be called as dowry death and the women’s husband or his relative shall be deemed to have caused her death. Section 304-B of IPC does not categorize death as homicidal or suicidal or accidental. 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, or harassment of the woman where such harassment is with a view to coercing her or her relative to meet any unlawful demand of any property or valuable security or is on account of failure by her or her relative to meet such demand, is offence under Section 498-A of IPC.

15. Further, two things has to be seen in respect of offence punishable under Section 304-B IPC, first to make sure whether the ingredients of the Section are made out against the accused and if the findings are affirmative then secondly to ascertain that the accused is deemed to have caused the death of the woman.

16. Further, when the married woman committed suicide within a period of seven years of her marriage on the instigation of her husband or relative of husband, then presumption of Section 113-A comes into role whereas when a married woman died of unnatural death either suicidal or homicidal due to harassment or cruelty was made in connection to any dowry demand soon before her death, by her husband or relative of husband, presumption of Section 113-B comes into effect and under the said circumstance, the Court shall presume that such person had caused the dowry death. Once the ingredients of Section 304-B IPC are fulfilled by the prosecution, 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.

17. Since, offence under Section 304-B of IPC covers the parameters which are necessary to constitute the offence under Section 498-A of IPC, therefore, no need to examine the evidence separately in relation thereof.

18. The learned trial court has given its affirmative finding with regard to dowry death of deceased by the appellant, therefore, this Court has to examine whether the findings of the learned trial court is correct or not?

19. Now I am embarking upon to examine the evidence available on record.

20. On perusal of record, it is undisputed that the marriage of deceased Ameena Khatun was solemnized with appellant on April 1995 and she died of unnatural death on 14.03.1996 within one year from date of her marriage.

21. As far as demand of dowry is concerned, the findings recorded by the trial Court suggests that learned trial Judge believed upon the testimony of Alimulla Khan (PW-4) and Jameela Khatun (PW-5), both are parents of deceased. On perusal of their statements, it appears that they are unanimous on the point of demand of dowry by the appellant. They deposed that the deceased had disclosed that the appellant used to harass her on account of bringing insufficient dowry. The appellant wanted dowry similar to sister of deceased who had been married at same village. The appellant maltreated her even they did not provide her bed-sheet for sleeping. Before happening of such misfortune, the deceased was living at her parental house and 15 days prior to incident, mother-in-law of deceased came to her, some negotiation was done regarding dowry between mother in law and father of deceased and thereafter she took deceased to matrimonial home, and thereafter the incident had taken place. Alimulla Khan (PW-4) also explained the reason of not lodging the any complaint regarding demand of dowry during life time of deceased. Jameela Khatun (PW-5) also narrated the facts regarding demand of dowry by the appellant/accused.

22. Credibility of aforesaid witness i.e. PW-4 and PW-5 has been doubted by the appellant's counsel because of their being close relative of deceased.

23. The principle relating to interested witnesses/close relatives has been laid down by the Hon'ble Supreme Court in the case of **Surinder Singh Vs. State of Haryana**, reported in **(2014) 4 SCC 129**, relevant para is reproduced as under:-

“33. Before closing, the most common place argument must be dealt with. In all cases of bride burning it is submitted that independent witnesses have not been examined. When harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, it is difficult to get independent witnesses to depose about it. Only the inmates of the house and the relatives of the husband, who cause the cruelty, witness it. Their servants, being under their obligation, would never depose against them. Proverbially, neighbours are slippery witnesses. Moreover, witnesses have a tendency to stay away from courts. This is more so with neighbours. **In bride burning cases who else will, therefore, depose about the misery of the deceased bride except her parents or her relatives?** It is time we accept this reality. We, therefore, reject this submission.”

24. Therefore, the evidence of witnesses cannot be discarded merely they were relatives of the deceased. Relationship is not a factor to ascertain the credibility of a witness. However, close scrutiny is required before accepting their evidence.

25. The learned counsel for the appellants has also argued that there is no evidence to show that any demand of dowry was made soon before the death. In this context, in the case of **Kans Raj (supra)**, the Hon'ble

Supreme Court has defined the meaning of phrase ‘soon after’ used in the provision of Section 304-B of IPC, relevant para is quoted as under :-

“15.It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term “soon before” is not synonymous with the term “immediately before” and is opposite of the expression “soon after” as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

26. Therefore, now it becomes clear that the phrase ‘soon before her death’ in Section 304B IPC does not mean ‘immediately prior to death of deceased’. However, the prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

27. In the instant case, as per PW-4 and PW-5, the incident was taken place within 15 days when deceased came to her matrimonial home from her parental house and some negotiation was done at parental house of deceased . Therefore, this is not a case where the allegation was leveled after lapse of more than enough time which would fatal the case of prosecution. The aforesaid chain of circumstances proves that there existed a live and proximate link between the instances of demand of dowry and the death of deceased.

28. As above noted, while relying upon the testimony of close relatives, close scrutiny is required, in my opinion, the scrutiny be done through corroboration of testimony of witness with the other evidence viz. medical report, statement of other witnesses, etc available on record.

29. On the point of examination of trustworthiness of PW-4 and PW-5, it appears from the record that in addition to examination of PW-4 and PW-5, the prosecution has examined Indra Bahadur Singh as PW-1 who was the independent witness and resident of same village. Indra Bahadur Singh did not support the prosecution case and surprisingly he had not been declared hostile by the prosecution. He deposed before the trial Court that while the incident had taken place, appellant and his father was not present over there, they went to farm. He further stated in his chief as

well cross examination that the he came to know that the deceased burnt accidentally while using stove.

30. Further, on perusal of statement of Dr. A.R. Maravi (PW-3), it appears that he opined that the deceased died of unnatural death due to burn injuries and shock, however, in his cross examination, he accepted the suggestion of death being accidental in nature saying that smell of kerosene was not found over the body of deceased.

31. The defence has also examined two defence witness namely Kamta Prasad (DW-1) and Siddhique Ahmad (DW-2). On perusal of statement DW-1, it appears that he deposed that after the incident, he reached on the spot when deceased told him that she burnt while using stove. Thereafter, he alongwith other took the deceased to police station subsequently proceeded to Alahabad for treatment while she died on the way. In his cross examination, he denied the suggestion of demand of dowry by the appellant/accused given by prosecution. Further, Siddhique Ahmad (DW-2) is the brother-in-law of deceased (Jeeja) who was resident of same village. He stated in his examination that, deceased never made any complaint to him regarding demand of dowry by the appellant/accused.

32. From the above analysis, it is clear that the prima facie, the prosecution was able to successfully prove that the death of deceased occurred due to burn injuries within seven years of her marriage under other than normal circumstances. It has further been proved that soon before her death she was subjected to harassment and cruelty pursuant to demand of dowry as some negotiation was done . Since, the ingredients of Section 304-B of IPC stand satisfied, the presumption under 113-B,

Evidence Act operates against the appellant, who are deemed to have caused the offence specified under Section 304-B of IPC, therefore, the burden shifts on the accused to rebut the aforesaid presumption.

33. Before the trial Court as well as this Court, the appellant, the appellant took the defence that deceased burnt accidentally while using stove and it is a case of accidental death, and therefore, appellant cannot be fastened with criminal liability. In his statement recorded under Section 313 of Cr.P.C, he explained that during the incident he was not in the house and went to farm. Appellant also took the defence that he never demanded any dowry. On perusal of statement of Indra Bahadur (PW-1), Kamta Prasad (DW-1) and Siddhique Ahmad (DW-2), prima-facie, it is true that they all have supported the defence of appellant/accused. Further, deposition of Dr. A.R. Maravi (PW-3) made in his cross examination also supports the defence to some extent. Indra Bahadur (PW-1) and Kamta Prasad (DW-1) are found unanimous on the point that the deceased burnt accidentally while using stove and opinion given by Dr. A.R. Maravi (PW-3) supported the version of PW-1 and DW-1. Dr. A.R. Maravi (PW-03) deposed before the trial Court that he did not find smell of kerosene oil on the body of deceased and according to him possibility of accidental burn can not be ruled out.

34. The learned trial judge struck out the defence of appellant/accused regarding accidental burn while using the stove inter-alia on the ground of non-seizure of stove from the spot as well as absence of cross examination upon the investigation office i.e PW-2 (Abhiram Singh

Tiwari) and witness of seizure i.e PW-1 (Indra Bahadur Singh) in this regard.

35. On perusal of record, it clearly transpires that no stove was seized from the spot, rather, investigation officer seized one utensil(lauta) filled up with the smell of kerosene alongwith other articles from the spot. Indra Bahadur Singh (PW-1) was also the witness of seizure and he admitted his signature on the seizure memo. In his statement, he did not mention about availability of any stove. The investigation officer i.e. PW-2 also did not disclose the availability of stove on the incident place. The testimony of aforesaid witness regarding seizure is unchallenged and no question regarding availability of stove on the spot had ever been asked by the defence while performing cross examination upon aforesaid witness. As far as, opinion given by Dr. A.R. Maravi (PW-03) is concerned, it was just an opinion which helps the Court to reach at conclusion corroborating with the other evidences but at any condition it is not to Judge to consider it as gospel truth. Opinion evidence is only an inference drawn from the data and it would not get precedence over the direct evidence, to consider the opinion of any expert some cogent and uncontroversial reason is to be given necessary. The Judge while invoking his wisdom while accepting the opinion of an expert, has to satisfy himself that the opinion given by him is in consonance with material available on record. It is not a case where the allegation was that the entire body of the deceased was doused with kerosene oil, therefore, it is not necessary that body of deceased smelled with kerosene oil. Therefore, the learned trial judge did not commit any mistake while not considering

the suggestion given to Dr. Dr. A.R. Maravi (PW-03) relating to accidental burn.

36. As far as, credibility of Siddhique Ahmad (DW-2) is concerned, the learned trial judge written in judgment and it is found that some estrangement was going on between accused and wife of DW-2 who was also sister of deceased, and therefore, nothing unnatural seems if deceased did not disclose her trauma to her sister.

37. Therefore, the learned trial judge rightly disbelieved the testimony of PW-1 (Indra Bahadur Singh) as well as defence witness Kamta Prasad and Siddhique Ahmad. The the possibility of accident burn can be safely ruled out in the present case. Further, if presumed that deceased committed suicide by setting her ablaze, even then, ingredients of section 304-B are satisfied as death of deceased is subjected to demand of dowry which has been dully proved by the prosecution with the statement of parents of deceased . As far as defence relating to appellant being not present during the incident is concerned, the appellant failed to produce any satisfactory proof in this regard. Moreover, non-presence of appellant does not save him from criminal liability under Section 304-B of IPC as the death of deceased is the result of harassment by the appellant for demand of dowry and Section 304-B of IPC covers suicidal death too.

38. Therefore, the presumption given under Section 113-B of Evidence Act goes against the appellant and he failed to rebut the same herein. The finding given by the trial Court regarding conviction under Section 304-B as well as 498-A of IPC is hereby affirmed.

39. Consequently, the instant appeal is hereby **dismissed**. Appellant is on bail, his bail bonds stands cancelled. Appellant is directed to surrender forthwith before the trial Court to undergo his remaining jail sentence, failing which, trial Court shall be at liberty to take necessary steps against the appellant.

Copy of this judgment along with record of the learned trial court be sent to the learned trial court for information and compliance.

Certified copy, as per rules.

**(RAJENDRA KUMAR (VERMA))
JUDGE**