

CRA-717-1998

(SURESH KUMAR & ORS. Vs THE STATE OF M.P.)

02-12-2016

Shri D.S.Chouhan with Shri R.K.Shukla, advocates for the appellants. .
Smt. Shobhna Sharma, panel lawyer for respondent;/State.

JUDGMENT
(Pronounced on 2 /12/2016)

- 1.** By this appeal filed under Section 374 of the Cr.P.C., the appellants have challenged their conviction and sentence recorded in a judgment passed by Fifth Additional Sessions Judge, Rewa on 7.3.1998 in Sessions Trial no.183/1997, whereby each appellant under Section 304-B/34 of the IPC has been sentenced to undergo rigorous imprisonment for seven years and under Section 498-A of the IPC to undergo R.I. for three years with a fine of Rs.200/-. In default of payment of fine, each appellant has been ordered to suffer simple imprisonment for one month and both the substantive jail sentences of each appellant have been directed to run concurrently.
- 2.** It is not disputed that Rotan, the wife of appellant no.1 Suresh had died within seven years of marriage. It would be significant to mention here that during the pendency of this appeal on 31.8.2015, it has been ordered by this Court that due to death of the other appellant Ramavtar, (who was father of appellant No.1 and husband of another appellant) his appeal has been abated.
- 3.** As per prosecution story, on 28/5/1997 in the morning at police station Garh, District Rewa a marg report (Ex.P-5) was lodged by the watchman Babulal (P.W-4) that yesterday in the village Kankar about totally burnt wife of appellant no.1 Suresh expired in the evening at

4:00 P.M. in the house of appellants. Marg report was registered by S.O. Rajendra Prasad Tripathi (P.W-8), its intimation was sent to SDM Sirmor. S.O. Mangawan S.P. Singh (P.W-1) on 28/5/1997 by notice (Ex.P-1) called the witnesses to remained present for preparing Panchnama of corpus (Ex.P-2). He prepared spot map (Ex.P-3) in relation to house of the appellants. On the same day he seized from the kitchen of the appellant's house a chimney made of large bottle and a matchbox through seizure memo (Ex.P-4). The dead body of Rotan Bai aged about 20 years was sent for autopsy to PHC Theonthar, where Dr. A.R. Maravi (P.W-9) started postmortem on 29/5/1997 at 9:00 A.M. and found that the body of deceased was burnt upto 90% and except burn injury on the body there was no any other injury and in his opinion the death of deceased caused within 24-30 hours from starting of postmortem due to shock caused by ante-mortem burn. He recorded postmortem report (Ex.P-11). In inquest inquiry, statements of witnesses were recorded by Shri S.P. Singh Station Office of Police Station Mangawan. On the basis of inquest enquiry it was found that the offences punishable under Section 304-B, 498-A and 34 of the IPC were committed by the appellants and deceased appellant Ramavtar. FIR (Ex.P-8) was recorded on 4/7/1997 at police station Garh by Rajendra Prasad Tripathi (P.W-8).

4. During investigation, police statements were recorded and after arrest of the appellants and Ramavtar and completing the investigation, the charge-sheet was filed in the Court of J.M.F.C., Rewa, who on 3.9.1997 committed the case to the Court of Sessions Judge, Rewa who transferred the sessions trial to Fifth A.S.J., Rewa.

5. Each appellant and deceased accused Ramavtar denied the charges framed by the trial Judge under Section 498-A/34 and 304-B/34 of the IPC. During trial, ten prosecution witnesses were examined. It was the defence of the appellants and Ramavtar that appellant No.1 Suresh with

his wife Ratan was living separately after his marriage from his parents and they never treated the deceased with cruelty in her life time and never demanded a bicycle in dowry after marriage, because appellant No.1 Suresh was already having a bicycle. In defence, Matukdhari (D.W.1), Govind Prasad (D.W.2) and Vishram (D.W.3) were examined for the appellants. The trial Judge relying on prosecution evidence convicted and sentenced each appellant and Ramavtar as stated aforesaid.

6. The learned counsel for the appellants contended that from the evidence of reporter Babulal (P.W-4) and defence witnesses it was established that the deceased had accidentally burnt working in the kitchen and the father and uncle of the deceased had reached to the house of appellants in the night of date of incident before postmortem, but no any prompt FIR was lodged by them, thus the story of alleged cruelty with the deceased due to demand of a bicycle only is apparently after thought and the evidence of the relating witnesses on the point of dowry demand and cruelty was contradictory and unbelievable, the learned trial Judge has erred in taking assistance of presumption of Section 113-B of the Evidence Act. Thus, acquittal of the present appellant is prayed.

7. On the other hand, the learned panel lawyer for the State contended that just after the incident of burning, Ratan was not taken to hospital for treatment , in such situation the trial Court has rightly relied on the evidence of father, mother, uncle and other witnesses relating to demand of a bicycle in dowry after the marriage and for cruel treatment with the deceased, as she had died due to unnatural death within a year from the marriage.

8. According to evidence of Dr. A.R. Maravi (P.W-9) and his postmortem report (Ex.P-11), on 29/5/1997 at 9:00 A.M., he found the body of

deceased Rotam aged 20 years upto 90% burnt and only feet were not burnt and except burn injury there was no any other injury on the body and in his opinion, the death of Rotan had caused within 24 to 36 hours from postmortem due to shock of ante-mortem burn. In cross-examination, he deposed that it was not possible to state that she was accidentally burnt or voluntarily burnt herself. S.P. Singh (PW1), who conducted inquest enquiry, also deposed that in his enquiry, nothing was brought to his knowledge on the points that whether Rotan burnt herself or she was accidentally burnt or burnt by other persons.

9. Babulal (P.W-4) deposed that on 27/5/1997 at 13-00 hours he was informed by a boy that the wife of appellant no.1 Suresh had burnt inside their house, then he reached to the village Kankar and found that she was sighing and demanding water and on his asking she replied that when she was pouring kerosene in Chulha to spark fire, her dhoti caught fire and thus she had burnt. Babulal deposed that he did not go to the police station and appellant no.1 Suresh also did not go to the police station, thereafter he intimated to the brother of deceased appellant Ramavtar and informed the father of deceased to reach village Kankar as his daughter had burnt and despite his asking, Ramavtar did not went to the police station for reporting, thus in next morning he reached to police station Garh and reported the matter. He proved his signature on marg report (Ex.P-5), but the fact that burnt Rotan had intimated him that she had accidentally burnt at the time of sparking the Chulha is missing in Ex.P-5. Thus, he was declared hostile by the prosecution. He deposed in cross-examination that Rotan had worn the *dhoti* of terrycot which had stuck to her body and deceased appellant had sent anyone to call for a taxi to Katra.

10. Sukhlal (P.W-2) and Smt. Madhu (P.W-3) and Lalman (P.W-7), father, step-mother and uncle of deceased respectively, deposed that Rotan

was married to appellant no.1 Suresh S/o Ramavtar in the summer of 1996. Sukhlal (P.W-2) deposed that he had given a radio, wrist watch and other material at the time of marriage in dowry to the in-laws' of his daughter, but could not give bicycle. These witnesses deposed that Rotan was sent to the house of appellants after the marriage and after 15 days, when she returned to the parents house, she intimated that her husband, mother-in-law, father-in-law gave her beating, harassed her, scolded her for getting a bicycle in dowry.

11. Madhu (P.W-3) deposed that Rotan had intimated that in appellants' house she was dragged with her hairs and was subjected to beating and it was also stated that if a cycle in dowry would not be given by her parents then she would be murdered. But Sukhlal (P.W-2) and Lalman (P.W-7) had not deposed this fact. Sukhlal (P.W-2) deposed that at the time of festival of Dashehra at his home, in-laws of Rotan had come for taking her back, then father-in-law Ramavtar and his companions have complained that the bicycle of dowry had not been given yet, then he had replied that bicycle would be supplied within 2-4 months. Sukhlal (P.W-2) and his second wife Madhu (P.W-3) had denied the suggestion that after the death of mother of deceased, she was brought-up by her uncle Lalman (P.W-7), but Lalman (P.W-7) has admitted in para no.4 and 15 of his cross-examination that after the death of natural mother of Rotan, she was brought-up by her wife and him as Sukhlal had married again.

12. In the cases of dowry death and dowry demand, the fact of any demand made prior to the marriage gains importance. Lalman (P.W-7) clearly deposed in para no.5 of his cross-examination that before marriage of Rotan no any dowry was fixed and before marriage it was not settled that a bicycle would be given. In para no.5, Lalman deposed that after marriage, when her brother Sukhlal had gone to village

Kankar for taking her daughter to parents house, then for the first time, a bicycle was demanded by the appellant no.1 Suresh and this fact was intimated to him by his brother Sukhlal (para 6). Contrary to it, Sukhlal (P.W-2) deposed in para 7 of his cross-examination that before marriage mediation was conducted by Matukdhari (D.W-1) and at the time of marriage bicycle, wrist watch and radio were demanded and wrist-watch and radio were given by him at the time of marriage, but he remained unable in giving bicycle. Thus it is clear that on the point of dowry demand at the time of marriage, the evidence of the father of deceased is contradicted by his real brother Lalman (P.W-7). When for the first time bicycle was demanded, on this point the evidence of these two brothers is not mutually supportive and complimentary. Sukhlal admitted in para 16 of his cross-examination that at the time of marriage bicycle, transistor were not fixed as dowry items, he explained in para 16 that bicycle was demanded at the time of performing of a custom named *Kaleva*. He also admitted that before cross-examination, he had never told to the police officials or any neighbourer about demand of bicycle by the appellant no.1 Suresh and his father Ramavtar.

13. Step-mother of deceased Madhu (P.W-3) deposed in para no.5 of her cross-examination that at the time of festival of Holi, Rotan had informed her about harassment only by her husband Suresh. Thus, the possibility of false implication of appellant no.2 and her husband could not be ruled out. Lalman (P.W-7) deposed in para no.8 of his cross-examination that despite after receiving information about harassment of Rotan at appellants' house they sent her to appellants' house and before her death, no any report was lodged in this respect.

14. Sukhlal (P.W-2) and Lalman (P.W-7) have deposed that on the date of incident, after receiving the information of incident, Lalman reached

to Allahabad to intimate his brother Sukhlal and before the postmortem of the deceased both of them have reached to village Kankar, where they stayed at a house of any Kachhi. Lalman (P.W-7) deposed in examination-in-chief that they have asked to the people of village, who have informed them that the deceased was asked by the in-laws for plucking the Tendu leaves and before one day to the incident, Rotan had gone for plucking leaves in the hills, but in next morning when she was going to pluck the leaves then she was not permitted to leave the house. Lalman (P.W-7) deposed in para 10 that neighbours have informed that when Rotan was preparing food, then at the time of pouring kerosene in Chulha (burner), then the flame caught her body. Contrary to his evidence, his brother Sukhlal (P.W-2) deposed in para 12 that after reaching to the village Kankar, they did not inquire from neighbours of the appellants how his daughter caught fire, though he stayed the whole night at village Kankar and on 29/5/1997 he had reached to the Teonthar hospital, where portmortem was to be conducted, but the dead body was not shown to him. Thus, it is clear that the evidence given by each brother is contrary to the evidence given by the another and thus, appears to full of exaggerations and imaginations.

15. Sukhlal (P.W-2) deposed in para 12 that from Teonthar, he reached to police station Garh, where he lodged the report, but its copy was not supplied to him. In this para no.12, he clearly denied the suggestion given by defence that he never reported to Police, otherwise its copy would have been supplied to him. In next breath, he deposed that on fifth day after the incident police had intimated him that he should not worry thus, thereafter he never went to police station and his statement was not taken by anyone and he had only lodged the report in police station. During cross-examination, he has been contradicted with his

police statement (Ex.D-1) recorded on 4/7/1997. There is no any report of any relative of the deceased on the record. Thus, it is clear that to inspire confidence, Sukhlal (P.W-2), Madhu (P.W-3) and Lalman (P.W-7) have introduced and amalgamated clear falsehood in their depositions.

16. Madhu (P.W-3) deposed in para 5 of her cross-examination that on tenth day after the death of Rotan, she had lodged report at police station Garh and she had gone to police station, as her husband had not reported the matter. Lalman (P.W-7) did not remain behind from his brother and Bhabhi. Lalman deposed in para 12 of his cross-examination that on 30/5/1997, he had gone to police station Garh with his wife, his Bhabhi Madhu and mother Chameli and on that day they all have made report at police station, but copy of their report was not supplied. In para 14 Lalman deposed that on second occasion, after about one month he had reached to police station with brother Sukhlal and his wife and at that time their statements were recorded.

17. Some material contradictions and omissions have been established in cross-examination of Sukhlal (P.W-2), Madhu (P.W-3) and Lalman (P.W-7) in relation to their Court's depositions and their police statements recorded on 4/7/1997. Their statements recorded during inquest inquiry are not on record. Investigator Rajendra Prasad Tripathi (P.W-8) deposed in para 11 of his cross-examination that he had not received any report lodged by the parents or relatives of deceased and description of the harassment was not intimated to him, thus it was not recorded by him in police statements of above mentioned three witnesses. In para no.12 he deposed that he received copy of a complaint made by Lalman to the S.P., but he had taken back that complaint to S.P. Office, because marg had been registered. Thus, the statements given by each of Sukhlal (P.W-2) Madhu (P.W-3) and Lalman (P.W-7) regarding lodging of report by each of them at police station

Garh is falsified by the evidence of Rajendra Prasad Tripathi (P.W-8), who was S.O. of relating police station at that time.

18. It is understandable that during the lifetime of harassed daughter at her in-laws' house, such harassment is not timely reported to the police, as the parents try to pacify the demands of the in-laws, but in such cases, the conduct of the parents and their other relatives after the death of concerned deceased, gains much importance. If parents were informed by their daughter about her physical and mental harassment at in-laws' house, then delay in reporting the matter to the police or others would adversely affect the veracity of their depositions. In all of the above mentioned facts and circumstances, the mutual contradictory evidence on material points of Sukhlal (P.W-2), Madhu (P.W-3) and Lalman (P.W-7) do not inspire confidence in relation to the alleged dowry demand and alleged harassment in relation to it.

19. Matukdhari (D.W-1), who was mediator before the marriage, according to the testimony of father of deceased, deposed that his daughter has been married in the family of uncle of Sukhlal (P.W-2) and both parties are his relatives and dowry was not demanded before the marriage of Rotan with appellant no.1 and after marriage appellant no.1 Suresh had started living separately with his father and mother and Suresh was already having and using a bicycle and after the incident Sukhlal and Lalman have never made any complaint to him about appellants. Govind Prasad (D.W-2) and Vishram (D.W-3) have also deposed that appellant no.1 Suresh was doing the work of making *pattal* and *douna* and they have attended the marriage of Suresh with Rotan. Govind Prasad (D.W-2) deposed that Sukhlal (P.W-2) and Lalman (P.W-7) are sons of his mamiya sasur and appellants are also his relatives and before marriage no dowry was demanded and no any dowry item was given. Vishram (D.W-3) deposed that on the date of

incident, the father-in-law of appellant no.1 Suresh and his brother were stayed in village Kankar near to his house and in the cremation ceremony also they were present and at that time also it was not intimated that the deceased was being harassed by the appellants. Thus, the evidence of Sukhlal (P.W-2), Madhu (P.W-3) and Lalman (P.W-7) do not appear to be natural and believable.

20. The allegation of demand of a bicycle only in dowry after marriage, is indicative of economic status of parents and in-laws' of the deceased. In the case of **Ashok Kumar vs. State of Rajasthan (AIR 1990 SC 2134)**, it has been observed in para no.4 of the judgment as follows:-

“Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously, because it is basically an economic problem of a class which suffers both from ego and complex.”

21. In relation to Section 113-B of the Evidence Act and Section 304-B of the IPC, it has been observed by the Hon'ble Apex Court in the case of **Kamlesh Panjiayar vs. State of Bihar, (AIR 2005 SC 785)** in para no.11 as follows:-

“A conjoint reading of Section 113-B of the Evidence Act and section 304-B of the 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 are pressed in to 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.”

22. In the present case there is no definite evidence about the time gap

between the incident and death of deceased. It is clear from the evidence of this case that the village watchman was intimated about the incident and the parents and other relatives of the deceased were intimated and called for and the appellants did not try for early cremation of the dead body of the deceased. Such conduct of the appellants would not have been possible after the incident, if the deceased was being treated with cruelty in relation to dowry demand of a bicycle. It is clear from the evidence of the case that the prosecution remained unsuccessful to rule out the possibility of an accidental death of deceased. According to the evidence of Babulal (P.W-4), who is a resident of other village Dadh, the deceased had intimated him about her accidental burn. His evidence on this point is supported by Maniklal (P.W-5), Dhirendra Singh (P.W-6) and Vishram (D.W-3). In the light of citation of **Arun vs. State of M.P. (ILR 2015 M.P. 1825)**, it is clear that in this case also the matter was never referred to Panchayat and no FIR was lodged in her lifetime, thus the omnibus allegation that the present appellants and Ramavtar were demanding a bicycle in dowry do not inspire confidence. The father of the deceased Sukhlal (P.W-2) in his cross-examination in para 10 had stated that the appellant No.1 Suresh was having a bicycle. In the light of citation of **Dilip vs. State of M.P. (ILR 2015 M.P. 3036)**, it is clear that in this case also father and other relatives of deceased were present at the time of autopsy, but did not allege anything against appellants at that time.

23. In light of the above mentioned citations, I am of the considered view that in this case, the prosecution evidence failed to prove beyond reasonable doubt that soon before the death of Rotan alias Rutan or after the marriage she was subjected to cruelty or harassment in relation to demand of bicycle in dowry by the present appellants and deceased appellant, thus the learned trial Court erred in taking resort of

Section 113-B of the Evidence Act. It is also clear that the learned trial Court remained unable to properly and legally analyze the prosecution evidence available on record, and totally overlooked the material contradictions among the depositions of Sukhlal (P.W-2), Madhu (P.W-3) and Lalman (P.W-7) and material improvements and exaggerations introduced for the first time in their Court's evidence.

24. On the basis of the aforesaid discussion the appellants cannot be convicted of offences under Section 304-B and 498-A of the IPC, and therefore, appeal filed by the appellants appears to be acceptable

25. In the result, the appeal filed by the appellants is allowed and the conviction and sentence recorded by the above mentioned trial Court of each appellant under Section 304-B/34 and 498-A of IPC is set aside and each appellant is acquitted from the charge of Section 304-B/34 and 498-A of the IPC. Both appellants have been released on bail after suspending their jail sentence. Their bail bonds are discharged. The order of the trial Court relating to disposal of the property relating to the case is confirmed.

(ASHOK KUMAR JOSHI)
JUDGE