



Reserved on 17.01.2025

Pronounced on 15.04.2025

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1148 of 2002

1. Champa Lal Son Of Babu Lal Aged About 27 Years Resident Of Village Urmaal, P.S. Devhog, District - Raipur, Chhattisgarh.
2. (Deleted), Babu Lal As Per Honble Court Order Dated. 14/06/2024.
3. Om Prakash S/o Babu Lal Aged About 30 Years Resident Of Village Urmaal, P.S. Devhog, District - Raipur, Chhattisgarh.
4. Smt. Nakku Bai Wife Of Babu Lal Aged About 64 Years Resident Of Village Urmaal, P.S. Devhog, District - Raipur, Chhattisgarh.
5. Ku. Sarita D/o Babu Lal Aged About 19 Years Resident Of Village Urmaal, P.S. Devhog, District - Raipur, Chhattisgarh.
6. Jagdish S/o Babu Lal Aged About 25 Years Resident Of Village Urmaal, P.S. Devhog, District - Raipur, Chhattisgarh.

... Appellants

versus

1 - State Of Chhattisgarh Through The District Magistrate Raipur, Chhattisgarh.

... Respondent(s)

For Appellants	:	Mr. V. R. Tiwari, Sr. Advocate along with Mr. Atul Kumar Kesharwani, Advocate
For Respondent(s)	:	Mr. Kalpesh Ruparel, P. L.

{Hon'ble Shri Justice Sachin Singh Rajput}

C A V Judgment

This is an appeal preferred by the accused/appellants under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment impugned dated 31.10.2002 passed by learned 9th Additional Sessions Judge, Raipur (Fast Tract Court) in Sessions Trial No. 366/2001 convicting them under Sections 304-B, 306 & 498-A IPC, and imposing the sentence of 10 years and 7 years RI with fine of Rs.500/- on each count, plus default stipulations.

2. The facts of the case in nutshell are that the deceased namely Kusum @ Ganga was married to accused Champa Lal in the year 1998. Accused/appellants herein are the husband and in-laws of the deceased. On 29.12.2000 the deceased got burnt in the house of the accused/appellants and was first taken to Hospital at Devbhog where Dr. Uttam Singh (PW-12) medically examined her and gave his report Ex. P-33 stating that he found 90 to 100% burns on her body. He thereafter referred her to Hospital at Raipur for further treatment where she was admitted on 30.12.2000 at 12.15 pm, but succumbed to the burns at 8:05 PM on the same day. After inquest, the body was sent for postmortem examination which was conducted by Dr. Sanjay Dadu (PW-2). Seizure of certain articles including the half burnt papers and notebook, underwear etc. was made under Ex. P-27, P-28 & P-29. During investigation statements of witnesses were recorded, seizure of letters Ex. P-1 to P-3 allegedly written by the deceased to her sister and father were seized under Ex. P-4 and then on its completion the charge-sheet was filed against the accused/appellants under Sections 498-A & 304-B r/w 34 IPC. Charge however was framed against them under Section 304-B, 306 IPC and in the alternative 498-A IPC. The accused/appellants however, denied the charge framed against them and claimed trial.

3. So as to establish its case, the prosecution has examined as many as many 16 witnesses. The statements of the accused/appellants under Section 313 CrPC were recorded where they pleaded their innocence and false implication in the case.

4. By the judgment impugned learned trial Court has held the accused/appellants guilty and imposed the sentence as described above, which is challenged before this Court in this appeal.

5. Learned senior counsel for the accused/appellants submits that the findings recorded by the learned trial Court convicting the accused/appellants for the offences as referred to above, being not based on just and proper appreciation of the evidence of the witnesses cannot be made to stand and are liable to be set aside. He submits that learned trial Court has failed to consider the contradictions and omissions in the evidence of the witnesses examined by the prosecution and thus has committed an error of law while holding the accused/appellants guilty. He submits that the prosecution has not been able to prove by adducing cogent and clinching evidence that it is the appellants who are the author of crime in question. He further submits that though the three letters relied upon by the prosecution have been seized yet not even a single letter contains any overt act against the accused/appellants. They simply mention the well being of the sender and also that of the recipient and therefore, they are not of any help to the case of prosecution. He further submits that there is no evidence to show that the accused/appellants herein, who happen to be the husband and in-laws of the victim had abetted her to such an extent, which made her commit suicide by putting herself afire. In support of his submissions, reliance is placed on the decisions of Supreme Court in the matter of **Charan Singh @ Charanjit Singh v. State of Uttrakhand** reported in **2023 SCC OnLine SC 454**, in the matter of **Devinder @ Kala Ram and others v. State of Haryana** reported in **(2012) 10 SCC**

763, on the decision of this Court in the matter of **Narendra Soni and another v. State of Chhattisgarh** reported in **2024 SCC Online Chh. 3560**.

6. On the other hand, counsel for the respondent/state supports the judgment impugned to be just and proper and submits that there is ample material available on record to show the complicity of the accused/appellants in crime in question where on account of his tortuous attitude to an unbearable extent his wife put an end to her life by immolating herself. In support of his submissions, reliance is placed on the decisions of the Supreme Court in the matter of **State of Madhya Pradesh v. Jogendar and another** reported in **(2022) 5 SCC 401**, in the matter of **Bhupendra v. State of Madhya Pradesh** reported in **(2014) 2 SCC 106**, in the matter of **Karan Singh and another v. State of Haryana** reported in **(2014) 5 SCC 738** and in the matter of **Gurmeet Singh v. State of Punjab** reported in **(2021) 6 SCC 108**.

7. Heard counsel for the parties at length and perused the material available on record in depth.

8. Shivalal Shankla (PW-1) – the father of the deceased has stated that marriage of the deceased with accused/appellant No.1 was solemnized in the year 1998 where he had given Rs. 60,000/- cash, clothing, one pair of anklet and a gold necklace. Accused Babulal (now dead) had demanded Rs. 1,25,000/- at the time of marriage on which he told him to accept whatever amount he had and the remaining he would manage later on. After marriage when the deceased came to his house for the third time, she had told him to give Rs. 60-65 thousand to the accused/appellants as they were harassing her for that. This witness however had told her to give after Diwali festival. Thereafter, the deceased went back to her matrimonial home with her husband (Appellant No.1). When she again came to her house two months thereafter, the same demand for money was conveyed to him and it was also told that the accused/appellants were harassing her and because of that her mood was disturbed.

This witness even took the deceased to hospital at Bhilai where the doctor told that because of mental tension she was not keeping well. This led to the miscarriage and worsening of her health. After taking treatment at Bhilai for about a week, the deceased is stated to have gone to her matrimonial home. One month thereafter, accused Babulal came to his house, stayed there for a night and again asked him to arrange for the money, on which he expressed his inability to do so on account of there being famine. He however told him to give the money so demanded after one year. Thereafter, accused Babulal got back. Four-six months thereafter, he received a letter from the deceased asking him to take her back to his house, and that when he went there to take her, accused/appellants did not send her with him. After about fifteen days, another letter was received by him from the deceased asking for the same thing and this time they sent her with him. After staying in his house for about eight days, accused/appellant No.1 came and took her back in his absence. Eight days thereafter, yet another letter was received from the deceased asking him not to come to her matrimonial home in the wake of looming danger. Three days thereafter someone sent a letter to him mentioning about the extreme ill health of the deceased at Raipur. On receiving that letter he went to a hospital situated at Dhamtari Road where he came to know that his daughter was brought there in a burnt condition but hospital people did not admit her. Thereafter, he returned home. According to this witness, when his another daughter Jamuna called the accused/appellants up on phone, it was informed that Ganga died on account of burn injuries and last rites were going to be performed. This witness however did not go there on the same day on account of fever. Two days thereafter when he went there, the last rites were already over but accused/appellants were not found at home. This witness is then stated to have gone to the house of one Mishrimal – the uncle of accused/appellant No.1 where accused/appellants were also present. There they asked him to give in writing that his daughter had committed suicide by setting herself on fire, but for being entirely

unaware of all that he refused to do that. He then returned home and after a day the report was lodged. On being produced by this witness the letters written by the deceased Ex. P-1, Ex. P-2 and Ex. P-3 were seized by the police under Ex. P-4. In cross examination this witness has stated that whenever he visited the house of the accused/appellants they used to behave normally. They are stated to have sent the deceased with this witness whenever he went to take her, and so also he used to do the same whenever they came to his house to take her. As regards his version in examination-in-chief as to the “danger to life” purportedly written by the deceased in the letters sent by her, same has been denied in the cross examination. This witness has stated that he did not lodge any report in any police station as to the demand of remaining amount made by the accused/appellants, nor did he inform about the same to anyone in the society. He has reiterated that the deceased did not mention anything in the letters sent by her as to the harassment by the accused/appellants for demand of dowry. This witness has admitted that entire expenditure of the treatment of the deceased at Bhilai was borne by the accused/appellants. In paragraph No. 28 this witness is stated to have voluntarily given money and household items at the time of engagement. Then he says to have given all this in marriage. He has stated that the accused/appellants also gave clothing and anklets. Then he states that he did not give any furniture, bed, TV, Cooler etc to the appellants as there was no such demand from them. In paragraph No. 29 of his deposition the demand of money made by the accused/appellants was disclosed to the police but he cannot tell the reason if they are mentioned in his police statement (Ex-D/9). He has admitted that the deceased did not write any other letter than the ones (Ex. P-1 to P-3) seized by the police under Ex. P-4. He has further admitted that while replying to those letters he mentioned to have “felt good after reading”. In paragraph No. 34 he has stated that the relations between the deceased and accused/appellant No.1 were not good and there was no harmony between them. He however has admitted that the deceased accompanied the

accused/appellant No.1 without any hesitation. He has stated that the accused/appellants themselves did not raise any demand of money from him. This witness has denied that he ever asked the accused/appellants to keep the deceased well and not to harass her for dowry.

9. Laxmi (PW-3) is the sister of the deceased. She has stated that marriage of her sister (deceased) took place in the year 1998 and her father had given the household items, cash of Rs. 60,000/- and ornaments as per his capacity. She has stated that accused/appellant No.1 had demanded Rs. 1,25,000/- from her father but the remaining amount of Rs. 65,000/- was told to be given later on. According to her, when the deceased came to her maternal home for the second time after marriage, during her 15 days stay she told her and her mother about the harassment by the accused/appellants for money saying that if money was not given, they would not keep her. On this, her father went to her uncle Sumermal (PW-9) for arranging money which he assured to give after returning from Pune. She has further stated that when her brother-in-law (accused/appellant No.1) came to take back the deceased, she refused to accompany him saying that the accused/appellants used to harass her for money. According to her, as the accused/appellants had stuffed chili powder in her mouth, she was not even able to eat food and that on account of her being made to do extra work, she had fallen ill. On account of the tortuous attitude meted out to the deceased at the hands of the accused/appellants the six months fetus also got aborted. Allegations of beating by the accused/appellants were also made by the deceased. This witness has specifically stated that the statement made by her was just to make the sole of the deceased rest in peace. She has reiterated that the accused/appellants used to harass the deceased making a demand of Rs. 1,25,000/-. Lastly she has stated that according to her it is the accused/appellants who were responsible for the death of the deceased. The statement made by PW-3 is fully corroborated by Sumermal (PW-9) to whom her father is stated to have gone for arranging the money to fulfill

the demand made by the accused/appellants. This witness has stated that when the deceased had come to his house, it was informed by her to his wife that the accused/appellants were harassing her raising demand for money. Even to this witness, the deceased is stated to have informed the same thing. He has specifically stated that the deceased had once requested him to arrange for the money to fulfill the demand of the accused/appellants as her father (PW-1) was not able to meet such demand. He has admitted that the deceased had once wept before him informing her plight at the hands of the accused/appellants or demand of money.

10. Omprakash Joshi (PW-5) has stated that the accused/appellants used to treat the daughters-in-law well and he has never heard about any ill treatment to the deceased. He has further stated that the deceased used to have the bouts of madness and for that she used to raise cries by going to the roof top. Lilar Singh (PW-10)- the neighbour of the accused/appellants has stated that to his knowledge the accused/appellants never harassed the deceased for dowry.

11. Rishabh Chand (PW-8) is a hearsay witness who has stated that he was informed by his brother PW-9 about the ill treatment of the deceased by the accused/appellants. He however has not made any specific allegation against the accused/appellants. Dr. Uttam Singh (PW-12) is the witness who medically examined the victim when she was alive, has stated that 90-100% burns were there on the body of the deceased but she was conscious. He however has denied that at that time she was able to speak. He has further denied that the deceased had disclosed to have suffered burn injuries on account of stove being burst. The report given by this witness is Ex. P-33.

12. Dr. Sanjay Kumar Dadu (PW-2) is the witness who conducted *post mortem* examination on the body of the deceased has stated that the smell of kerosene was emanating from the hair of the deceased and the cause of death has been opined to be

cardio respiratory failure as a result of burns and its complications. The report given by this witness is Ex. P-5.

13. S.P. Singh (PW-11) and Vijay Kothariya (PW-13) are the investigation related witnesses and they have supported the case of prosecution. Dr. M. L. Jain (PW-14)- Senior Surgeon (plastic Surgery) has stated that the deceased was brought to him with 98% burns and during treatment she succumbed to the burn injuries and the information regarding her death was given to the concerned Police Station from his hospital. He has admitted that when the deceased was brought, she was conscious and was able to speak. According to this witness the deceased had told him that she had suffered burn injuries with the stove. He has further admitted that the deceased had disclosed to him regarding her old mental ailment.

14. Having thus discussed the factual aspect of the case, this Court now thinks it apposite to have a look of the ingredients essential for conviction of the accused under Section 304-B IPC. Those essentials for doing so are (I) death of a woman must be caused by any burns or bodily injury or it occurs otherwise than under normal circumstances (ii) it should be within seven years of marriage (iii) cruelty to her by the husband or any of his relatives should be soon before death, and (iv) such cruelty must be in connection with demand of dowry.

15. There is no dispute that in the present case the deceased died as a result of burns at her matrimonial home within seven years of marriage. However, not even a single witness has been in a position to graphically state as to at what point of time or in which month the deceased was subjected to cruelty last. According to her father, whenever he visited the house of the accused/appellants they used to behave normally and that they sent the deceased with him whenever he went to take her, and so also he used to do the same whenever they came to his house to take her. He has denied that any of the letters (Ex.P-1 to P-3) sent by the deceased mentioned of any danger to her. He is stated to have never lodged any report in any police station as to the

demand made by the accused/appellants, nor did he inform about the same to anyone in the society. He has also admitted that entire expenditure of the treatment of the deceased at Bhilai was borne by the accused/appellants. What is important to mention here is that the deceased wrote two letters to her parents but there is no allegation as to any demand or resultant harassment by the accused/appellants, on the contrary they just mention about her well being. One letter (Ex.P-3) however says that her father was not required to come to her matrimonial home, but for what reason it was, is not explicit from that. Response letter (Ex.P-2) written by Laxmi – the sister of the deceased also does not reflect any affliction to the deceased. Now if the testimony of Laxmi is seen, though she has made number of allegations against the accused/appellants as to the cruelty for dowry yet even her deposition does not go to show as what was the last occasion when such an overt act was done to her at the hands of the accused/appellants. She has also stated that as her father was not having finances to meet the demand of the accused/appellants, he approached her uncle Sumermal (PW-9) to arrange the same. This version of PW-3 has been corroborated by PW-9 but the principal requirement as to how long before the death it was made, is not gatherable from his deposition as well. This witness while giving the description of the behaviour of the appellants towards the deceased has stated about her being beaten with slippers, stick etc and of stuffing chilly powder in her mouth appears to be highly exaggerated and it has not been corroborated by any of the witnesses. Other important witnesses happen to be Omprakash Joshi (PW-5) and Lilar Singh (PW-10) who have stated that the accused/appellants used to treat the daughters-in-law well and they have never heard about any ill treatment to the deceased, and to their knowledge the accused/appellants never harassed the deceased for dowry. Thus from the version of PW-1, PW-3 and PW-9 it does not appear as to when the deceased was subjected to cruelty by the accused/appellants for demand of dowry to arrive at a conclusion of meeting the requirement of “cruelty soon before death” to

bring the case within the presumption encapsulated in Section 113-B of the Evidence Act. The term “soon before death” has been interpreted by the Supreme Court in catena of decisions one being in the matter of **Satbir Singh v. State of Haryana** reported in (2021) SCC 1 where it has been held that this term cannot be taken to be “immediately before”, rather the prosecution has to show that there existed a “proximate and live link” between the cruelty and the consequential death of the victim. In the case in hand, none of the witnesses has given a specific instance as to what was the last occasion when a complaint of harassment was made by the deceased against the accused/appellants so that there would have been some clue for this Court to connect the dots and ascertain whether there was even a proximate and live link between the cruelty and the consequential death of the victim. The time lag between the alleged cruelty and the death should not be too remote also, lest the intention of the legislature in curbing the menace of dowry death turns to be counter productive.

16. Moreover, there are three doctors who have stated as to how the condition of the deceased was when brought before them. The first doctor is PW-12 whom the deceased was taken while being alive for treatment, who has stated that there was 90-100% burns on her body and then he referred the deceased to Raipur for better treatment. According to him, the deceased at that time was conscious but he has denied that she was speaking and told him about being burnt on account of bursting of stove. The second doctor is PW-14 whom she was taken being alive has given the percentage of burns as 98% and was declared dead during treatment. He however has stated that the deceased being in conscious state had spoken about being burnt because of bursting of stove. He is also stated to have been told by the deceased that she was suffering from some chronic mental ailment, which was also there at the time of her pregnancy. Another doctor is PW-2 who conducted postmortem examination on the body of the deceased has stated that the cause of death was cardio respiratory

failure as a result of burns and its complications. Smell of kerosene was also emanating from her hair which could be on account of stove burst also.

17. Deceased is stated to have suffered burns on 29.12.2000 at 2 PM and succumbed to the same on 30.12.2000 at 8.5 PM. It is highly surprising that though the deceased remained alive for about 30 hours after suffering burn injuries yet the prosecution did not bother to have ensured the recording of dying declaration of the deceased before the Magistrate, which in the considered opinion of this Court, is a serious lacuna on the part of the prosecution. Another important fact which gets crystallized from the evidence of the father of the deceased (PW-1), neighbour (PW-5) and the doctor (PW-14) that the deceased was having some mental problem as well and for that even the medical treatment was going on. PW-5 - neighbour of the accused/appellants has even gone on to state that the deceased sometimes used to have the bouts of madness and for that she used to raise cries by going to the roof top. This circumstance as has been pointed out by PW-1, PW-5 and PW-14 can be taken as a mitigating one leading to draw a safe inference that being fed up with the mental stress, she took this extreme step of ending her life.

18. Another significant facet of the case in hand is the statement of the doctor at MMI Hospital Raipur (PW-14) before whom the victim was taken for treatment. He has stated that at that time the victim was conscious and had told him that she suffered burns as a result of stove being burst when she was cooking food. In one of the decisions of the Apex Court in the matter of *Devinder alias Kala Ram and others (supra)* it has taken such a statement of the deceased made in hospital that she suffered burns while cooking meals on stove, to be relevant under Section 32 of the Evidence Act. Thus the possibility of the death being accidental in this case can also not be ruled out.

19. Having thus seen the factual background of the case in the light of the judicial pronouncements of the Supreme Court, this Court is of the opinion that the

conviction of the accused/appellants under Section 304-B is not based on the correct analysis of the evidence of the witnesses, and being so, it is liable to be set aside.

20. As regards conviction of the accused/appellants under Section 306 IPC, in order to sustain this charge it must necessarily be proved that the accused person has contributed to the suicide by the deceased by some direct or indirect act. To prove such contribution or involvement, one of the three conditions outlined in Section 107 of the IPC has to be satisfied. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well-established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear *mens rea* to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide. The law on abetment has been crystallized by a plethora of decisions of the Supreme Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such *mens rea* on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide. So far as the case in hand is concerned, not even a single instance of directly or indirectly instigating, inciting or goading on the part of the accused/appellants in close proximity to the commission of suicide by the deceased and further revealing a clear *mens rea* to abet the commission of suicide putting the victim in such a position that he/she would have no other option but to commit suicide, is decipherable from the record. With due respect, since the decisions

sought to be cited by learned State counsel are not based on the same set of facts, rather they hold in their fold the persistent cruelty, are not squarely applicable in the case in hand.

21. Summing up, this Court holds that the prosecution has not been able to establish its case beyond all reasonable doubts and so also the trial Court has not taken the evidence of the witnesses in its proper perspective. Judgment based on such erroneous appraisal of the facts and the evidence is not worthy of sustenance. It is therefore set aside and the appeal stands allowed. Accused/appellants are acquitted of the charges levelled against them. Since they are already on bail, their bail bonds will remain in force for six months in view of section 481 of BNSS, 2023.

22. Record of the trial Court alongwith the copy of this judgment be sent back for information and necessary compliance.

Sd/-

(Sachin Singh Rajput)

Judge

Jyotishi/Pawan