

GAHC010006662011



**IN THE GAUHATI HIGH COURT  
(The High Court of Assam: Nagaland: Mizoram &  
Arunachal Pradesh)**

**Crl. Appeal No. 109/2011**

Giren Das and 2 Ors.  
S/O Sri Pitambar Das  
2. Pitambar Das  
S/O Late Nabin Das  
3. Smt. Ambabala Das  
W/O Sri Pitambar Das  
1 To 3 All Residents of Vill. Bhalla  
Karipara  
P.S. Palashbari  
Dist. Kamrup  
Assam

.....Appellants

**VERSUS**

The State of Assam  
Rep. By The PP, Assam

.....respondents.

**BEFORE  
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

Advocate for the Appellants : Mr. B. Chakraborty  
Advocate for the Respondent : Mr. K.K. Das, (Addl. P.P.)  
Date of Hearing : 24.11.2022

Date of Judgment : **28.03.2023.**

**JUDGMENT & ORDER (CAV)**

1. Heard Mr. B. Chakraborty, learned counsel appearing on behalf of the appellants. Also heard Mr. K.K. Das, learned Addl. P.P. for the State of Assam.
2. This appeal is preferred to set at naught the judgment and order dated 12.04.2011 passed by the learned Additional Sessions Judge (FTC No. 1) in Sessions Case No. 114(K)/2008, convicting Giren Das, Pitambar Das and Smt. Ambabala Das, under Section 498(A) of the Indian Penal Code (IPC for short) and sentencing them to undergo rigorous imprisonment for 1(one) year and to pay a fine of Rs. 2,000/- with default clause and convicting them under Section 304(B) IPC and sentencing them to undergo rigorous imprisonment for 10(ten) years, without fine. The sentences are to run concurrently.
3. The genesis of the case was that the deceased Bhanumati Das was subjected to cruelty by Giren Das and his family members to meet their illegal demand of dowry. On the night of 08.03.2006, Bhanumati Das committed suicide and when the informant learnt about the incident, he went to the matrimonial house of his sister and learnt that Giren Das, Pitambar Das and Smt. Aambabala Das, committed murder of his sister.
4. The brother of the deceased Sri Ratan Das (hereinafter referred to as informant) lodged the FIR with the police at Palashbari P.S, and the FIR was registered as Palashbari P.S. Case No. 39/2006, under Section 120(B)/304(B) IPC and the Investigating Officer (I/O in short) embarked upon the investigation. On completion of investigation, charge-sheet under Sections 120(B)/498(A)/304(B)/306 IPC was laid against the accused Sri Giren Das, Sri Pitambar Das and Smt. Aambabala Das. The accused Sri Giren Das will hereinafter be referred to as A-1, Sri Pitambar Das as A-2 and Smt. Aambabala Das as A-3. On the commencement of trial, charges were framed by the trial Court under Sections 498(A)/304(B) IPC and the appellants abjured their guilt and claimed innocence.
5. To connect the appellants with the crime, the prosecution adduced the evidence of 7(seven) witnesses and the defence adduced the evidence of 2(two) witnesses to refute the charges. On the incriminating circumstances arising against them, the statements of the

appellants were recorded under Section 313(1) (b) of the Code of Criminal Procedure (Cr.P.C for short) and their responses were recorded. Their answers were evasive.

6. The learned counsel for the appellant, Mr. U. Das, laid stress in his argument that the learned trial Court did not scrutinize the evidence carefully and the judgment and order is liable to be set aside. It has been conjectured that the victim was subjected to cruelty. The evidence of two defence witnesses Sri Pradip Kr. Das (DW-1) and Sri Bejoy Ch. Das (DW-2) were not taken into consideration while deciding the case. The judgment is erroneous because the trial Court observed that the accused did not tender any evidence in defence. This is a serious irregularity and the impugned judgment is liable to be set aside. The factum of cruelty is sine-qua-non to convict a person under Section 498(A)/304(B) IPC and the evidence is sans this essence of cruelty. The prosecution has failed to produce reliable independent witnesses and thus this case was not proved beyond reasonable doubt.

7. The question that falls for consideration is whether the trial Court erred in convicting the appellants under Section 304(B)/34 IPC. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in:- (i) ***Sanjiv Kumar Vs State of Punjab*** reported in ***(2009) 16 SCC 487***, and on the decisions of this Court in, (ii) ***Kanu Debnath Vs. State of Tripura*** reported in ***(2012) (5) GLT 322***, (iii) ***Gulzar Ali @ Gulzar Hussain Vs. State of Assam*** reported in ***2013 (3) 437***.

8. On the anvil of these submissions, I proceed to decide this appeal by re-appreciating the evidence.

9. The informant Sri Ratan Das testified as PW-1 that about 3/4 years ago, his sister Bhanumati eloped with A-1. Thereafter, after 15/20 days the villagers arranged their marriage at Karipara Temple and they started their marital life. After 2/3 months of her marriage, the appellants subjected the deceased to cruelty to meet their demand of dowry. As the deceased had eloped, she was not provided with any gifts at the time of her marriage, but he (PW-1), was planning to gift her some articles. A-1 was a bus conductor of a city bus. In the year, 2006, one day his (PW-1's) aunt came to his residence and informed him that Bhanumati is no more as she had committed suicide by hanging inside the house. He (PW-1) immediately rushed to the spot. He found his sister's neck fastened to a scarf which was slung around a

bamboo beam, and found her in a kneeling position. He met the appellants in the house but he, without talking to them straight away went to the Palashbari P.S. and lodged the FIR. He proved the FIR as Exhibit-1 and Exhibit-1(1) as is his signature. The FIR was written by a clerk according to his narration. A few days prior to the incident he held a public meeting in the accused person's village because his sister informed him about the cruelty meted out to her by her husband and her in laws to meet their illegal demand of dowry. Sri Kamini Kaiborta, Gaonburah was present in the meeting. The dispute was settled between both the parties and thereafter, after 2/3 months, the incident occurred. His sister was subjected to cruelty. The appellants even harassed the deceased in front of her family members. He also requested A-1, not to harass his sister when he met A-1 on the road. The police held inquest in his presence. He proved his signature on the inquest report as Exhibit-2(2). His sister's body was brought to Mirza police station, and after autopsy her body was handed over to the co-villagers of the appellants but as nobody was present for cremation, her body was handed over to them and they cremated the body.

10. In his cross-examination PW-1 has testified that the FIR was written by a clerk present at the police station. The neighbours of the appellant Bharat and Suklo were present in the place of occurrence. Other people were also present at the place of occurrence but he did not know their names but he knew them by their appearance. He also stated that Bharat and Suklo informed him about the cruelty meted out to his sister because their residences are opposite to the appellants' residence. However, he has admitted that he has not mentioned before the police that Bharat and Suklo had informed him about the cruelty meted out to his sister. He also had a discussion with the appellant's co-villagers about the cruelty meted out to his sister, but he did not know the names of the co-villagers. He has also testified in his cross-examination that his neighbours were also aware of the cruelty meted out to his sister by the appellants. He has also stated in his cross-examination that Kamini Koiborta (Gaonburah) and Manju Koiborta were aware of the cruelty meted out to his sister by the appellant's family. His sister was 17/18 years of age at the time of the incident. His sister visited her parental home twice after her marriage. They received the information about his sister's death from his cousin. He did not meet any villagers in the appellants' courtyard when he reached the place of occurrence. He did not know whether on the previous night,

Pitambor and Giren were present in their house. He also stated that Robin Kalita, Kamini Koiborta, Jibon Rava and his uncle Jogen Thakuria were present in the meeting which was held because his sister was subjected to cruelty by A-1 and his family members. When the trial Court queried about the height of the house wherein his sister committed suicide, PW-1 replied that the height of the house was about 10 feet and the knot of the scarf was about 5 feet from the ground.

11. Kamini Koiborta is an important witness and he has stated as PW-2 that he is the Gaonburah of the village where the appellants reside. The deceased was married to the appellant Girin Das and after a year of her marriage, she died. On 09.03.2006 at about 10 am, A1's younger brother came and informed him that the deceased had committed suicide by hanging. He promptly went to the place of occurrence and saw the deceased hanging under a bamboo beam. Both the legs of the deceased were in a kneeling position. The knot tied by the scarf forming the noose was about 5/6 feet above the ground. He met the appellants and thereafter he informed the Palashbari police station about the incident over phone. The police came along with a Magistrate and the noose was untied and the body was lowered. Inquest was held in his presence, vide Ext.-2 and he identified his signature on the inquest report as Ext.-2(2). The scarf was seized vide Ext.-3 and he identified his signature as Ext.-3(1).

PW-2's evidence further proceeds that the marriage between A1 and the deceased was solemnised at the temple after 15 days. After their marriage there were quarrels between the deceased and A1. The villagers informed him that A1 quarreled with the deceased. He did not know the reason behind those quarrels and squabbles. Initially A1 fled away. At this stage this witness was declared a hostile witness and this witness denied the suggestion by the learned Addl. P.P. that sometimes A1 used to quarrel with the deceased and A2 and A3 used to rebuke the deceased for the household chores. He along with the help of the villagers settled the dispute between the appellants and the deceased.

12. Thus, it is apparent, that PW-2's evidence corroborates the evidence of PW-1 that he (PW-2) was present in the village meeting where the dispute between the appellant and the deceased was discussed. Despite the fact that he is a hostile witness, his examination-in-chief clearly reveals that the appellants had a strained relationship with the deceased. His cross-

examination by the prosecution is however not taken into account.

13. The evidence of PW-1 regarding the cruelty meted out to his sister by the appellants to meet their illegal demand of dowry has not been contradicted by his cross-examination or the cross examination of the I/O, Sri Kulendra Mondol, PW-7 as per Section 145 of the Indian Evidence Act, 1872 (Evidence Act for short) qua Section 162 Cr.P.C.

14. This statement of PW-2 under Section 161 Cr.P.C stands affirmed by the IO. The IO Sri Kukendra Mondol who testified as PW-6 has affirmed the statement of PW-2 under Section 161 Cr.PC that he (PW-2) has stated before him that after a few days of their marriage there were frequent quarrels and squabbles as the in-laws of the deceased used to demand dowry and as they used to scold her and he along with the help of villagers have conciliated them.

15. PW-2 has also admitted in his cross-examination that he saw the body of the deceased hanging at about 9 O' Clock. A large number of villagers had already assembled. Aghona Das, Baloram Das, Nabin Kalita, Gunuram Das were present amongst the villagers. He also met Ratan Das (PW-1). The height of the deceased was approximately 5 feet but the knot of the noose formed by the scarf was about 5 feet. He has admitted in his cross-examination of his omission to mention under Section 161 Cr.PC that the body was in a kneeling position. He has also admitted in his cross-examination that he did not know the reasons why there were frequent quarrels between the deceased and the appellants. He did not know why the deceased had committed suicide.

16. The father of the deceased Sri Deben Das testified as PW-3 that A1 married his daughter. His daughter and A1 had eloped and thereafter the marriage between his daughter and A1 was solemnized in the temple. The family members of A1 subjected his daughter to cruelty as she was not provided with dowry at the time of her marriage. They egged on her to provide dowry. When he heard about the cruelty meted out to his daughter, he went and met her and she expressed her reluctance to stay in her matrimonial home. She told him that she would return to her parental home after 3 days. PW-3 further testified that his neighbour Khiroda Das was sent to his daughter's matrimonial home, but Khiroda returned and informed him that A3 (mother-in-law) did not allow Khiroda inside her house. He (PW-3) had to go to Meghalaya for some work. On 09.03.2006, one boy from his village came on a motorcycle to

bring him back and the boy informed him that his daughter had passed away. He immediately went to the appellants' house and saw his daughter's body lying on a bed. His daughter died by hanging. Police was present, and the body was taken to the police station. Thereafter they cremated the body. Cremation at the appellants' village was not permitted.

17. In his cross-examination PW-3 has testified that he was aware that A1 was not present in his house on the day of the incident, but the other appellants were present. He stated in his cross-examination that a woman named Nabindi from Karipara village and her husband informed him about the cruelty meted out to his daughter. Kalaram Das also informed him that his daughter was subjected to cruelty. He informed him that once his daughter Bhanumati took shelter in his house while she was subjected to cruelty by the appellants but this was not stated before the police.

18. It is pertinent to mention at this juncture that no contradictions could be elicited through his cross-examination against his evidence that his daughter was subjected to cruelty by the appellants to meet their illegal demand of dowry. It is not contradicted that the deceased was reluctant to stay in her matrimonial home. The Gaonbura's (PW-2's) evidence also reveals that outsiders had to settle the marital disputes of the deceased.

19. Smt Ruhuni Das stated as PW-4 that the deceased Bhanumati was married to A1. They had a love affair and the marriage was solemnised at the village Namghar. A1 works as a Conductor of a vehicle. The deceased occasionally used to visit them. Once the deceased came to her house after a quarrel with her mother-in-law (A3) and then she narrated about the incident to them. After consoling her, she also provided her shelter in her house and thereafter she accompanied her back to her matrimonial home. She also heard about the quarrel between the deceased and the appellants. She used to hear the quarrels and she had also settled the disputes between them. The deceased committed suicide about 3 years ago (from 02.04.2009). When she received the information, she promptly went to the place of occurrence. She saw the deceased hanging inside the house under a pole.

20. In her cross-examination PW-4 has stated that there are 6/7 houses between her house and the appellants' house. The residences of Tuaram, Jashoda and Biren Haloi are adjacent to the appellants' house. On reaching the place of occurrence, she noticed about

20/25 people gathered at the place of occurrence. On that day A2 was not present at home and Giren went out for work. On the previous night A2 stayed at Palashbari. She also admitted in her cross-examination that she did not witness the appellants torturing the deceased. A3 (mother-in-law) used to scold the deceased but father-in-law (A2) is not a quarrelsome person and Giren is a sober person.

21. A close scrutiny of PW-4's evidence proves the fact that A-3 used to scold the deceased. It is proved beyond reasonable doubt that the neighbours like PW-4 had to settle the quarrels and squabbles between the family. The deceased even took shelter in PW-4's house. Even PW-2 had once intervened in such a dispute involving the appellants and the deceased. The evidence of PW-1, PW-2, PW-3 and PW-4 regarding their role in settling the family dispute between the deceased and the appellants, has remained uncontradicted and uncontroverted. No minutes of meeting has been exhibited, but there is overwhelming evidence that even the Gaonbura and the neighbours were wary of the fact that the deceased was scolded and rebuked by the appellants. I would like to emphasise on the overwhelming and uncontradicted evidence in this regard.

22. Smt. Manjubala Das has testified as PW-6 that the marriage of the deceased and A1 was solemnised after they had eloped. After their marriage there were quarrels between A1 and the deceased. A few years ago, the deceased passed away but she did not know the reason behind her death. She used to visit Bhanumati (deceased) occasionally.

23. This witness was also declared as a hostile witness and the prosecution was allowed cross-examine this witness. The witness denied that she stated before the police that occasionally she used to visit the appellants' house. She witnessed A3 (mother-in-law) and other persons scolding the deceased and the deceased also disclosed her miseries. It has been affirmed by PW-7 that PW-6 has stated under Section 161 Cr.PC that she used to visit Bhanumati and whenever she was in Bhanumati's house she had noticed A1 and the others in the house scolding Bhanumati. It is apparent that the evidence-in-chief of PW-6 depicts that there were quarrels between A-1 and the deceased. Her cross-examination by the prosecution is not accepted as evidence in this case.

24. Sri Kukendra Mondol is the IO of this case and he has testified as PW-7 that on

09.03.2006, he was posted as the attached Officer of Palashbari PS. He was entrusted with the investigation of this case registered under Sections 120(B)/304(B) IPC. On the basis of an FIR lodged by Ratan Das at 10 O' Clock, he proceeded to Bhalla Karipara village. He made preparations for inquest and requested the Circle Officer, Omar Ali Badshah to hold inquest. He along with the Circle Officer went to the place of occurrence and he saw the body of the deceased in a hanging position. The body was hanging under a pole. A noose around her neck was noticed. The pole was 7 feet 5 inches and the knees of the deceased were touching the ground. The husband of the deceased untied the knot and lowered the body. The Circle Officer held inquest vide Ext.-2. Vide Ext.-5, he forwarded the body for post-mortem. The cloth with the help of which the noose was formed was seized vide Ext.-3 and he, PW-7 proved his signature on the seizure list as Ext-3(2). PW-7 further testified that he prepared the sketch map of the place of occurrence. He proved the sketch map as Ext-6 and Ext.-6(2) as his signature. He recorded the statements of the witnesses who stated that the deceased was subjected to cruelty by the appellants who egged on her for dowry and so he arrested the appellants and forwarded them to Court. Meanwhile, he was transferred and he handed over the Case Diary to the Officer In-charge, Heramba Goswami who had completed the investigation and submitted charge-sheet against the appellants under Sections 120(B)/498-A/304(B)/306 read with Section 4 of the Dowry Prohibition Act. He identified the signature of the OC as Ext.-7(1), as he is familiar with the signature.

25. Pradip Kumar Das stated as DW-1 that the appellants are his neighbours. A1 was married to Bhanu (deceased), who committed suicide about 2/3 years ago. The incident occurred in the year 2006. At about 6 AM, he learnt that Bhanu committed suicide. He along with the other co-villagers went to the place of occurrence and he noticed Bhanu hanging under a bamboo bar. At that time, her legs were not touching the ground and her legs were 6 inches above the ground. Bhanu's brother started crying and when he embraced her legs, the body slipped downward. Police arrived at 11 A.M, and the village Headman (Gaonburah) had also arrived. Giren and his father were not present at the place of occurrence but they arrived later. Giren's (A1's) mother was present. Giren, A1 was a driver by profession and Pritambor, A2 used to work as a helper. On many occasions there were quarrels and squabbles between the appellants with Bhanu. A meeting was held at their village due to the quarrels between

appellants and Bhanu and they settled the dispute between them.

26. In his cross-examination, he has admitted that he did not know whether Giren and Pritambar were present in their residence on the preceding night of the incident. He also admitted that there have been altercations between Amba (A3) and Bhanu regarding separation, about 2 months or so.

27. Shri Bijoy Ch. Das testified as DW2 that the appellants are known to him. A1 was married to Bhanu. His house is adjacent to the appellants' house. The incident occurred on 09.03.2006. He did not go for work on that morning. At about 5:30 AM, he learnt that Bhanu had passed away. Initially he went to the place of occurrence and the villagers had also arrived. He saw Bhanu's body hanging with the help of a *gamocha* from a bamboo post. Thereafter he returned to his house at 8:30 AM. Bhanu's elder brother arrived and started crying by holding her legs and her body slipped downwards to a kneeling position. On that day A1 and A2 were not present at home. A2 works at Palashbari on a monthly basis. He seldom stays at home. A1 also does not stay in his house and occasionally he used to come and pay for the household expenses. The police did not record his statement despite the fact that he is the next door neighbour of the appellant. He never heard of any quarrel between the appellants and Bhanumati (deceased).

28. It was held by the learned trial Court that evidence of PW-1 and PW-4 clearly depicts that the appellants used to subject Bhanumati to cruelty to meet their illegal demand of dowry, as no dowry was provided to her at the time of her marriage as the deceased eloped with Girin Das (A-1) and after a gap of the some days the marriage between the deceased and A1 was solemnized in the local Namghar. The victim was found hanging in her house and she has committed suicide and the circumstances which prompted her to commit suicide has been clearly spelt out by the witnesses. During her life time, the deceased informed about the cruelty meted out to her by the appellants to her father as well as her brother. The deceased died within a period of seven months from the date of her marriage and so her statement before her father and brother is relevant in this case. It was held that –

**“For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4**

**months, the statement may be admissible under Section 32."**

29. The ingredients required to prove Section 304B IPC was held to be proved and the appellants were held guilty of offence under Sections 494(A)/304(B) IPC.

30. The learned counsel for the appellants has emphasized that a myriad of contradictions casts a shadow of doubt over the veracity of the evidence. The trial court after banking heavily on the statements of the near relatives of the deceased convicted the appellants. PW-1 is brother of the deceased and his evidence cannot be relied upon as he is an interested witness. He stated that his aunt's daughter informed him that Bhanumati committed suicide but his aunt's daughter i.e. his cousin was not examined as a witness. It is submitted that Robin Kalita, Jibon Rava, Jogen Thakuria to name a few, were present in the meeting. It was stated that the villagers gathered after a quarrel between Bhanumati and the appellants. PW-1 has mentioned that they were present in the meeting. PW-2 has also stated in his cross-examination that Aghona Das, Baloram Das, Nabin Kalita, Gunuram Das had assembled in the place of occurrence after the incident but they were not produced as witnesses. PW-3 has stated that Nabindi and her husband Kalaram Das heard about the cruelty meted out to his daughter, but they were not examined as witnesses. PW-4 has stated that Tuaram, Jashoda and Biren Haloi are the neighbours of the appellants but they were not examined as witnesses.

31. In the case at hand, it is apparent from the evidence of PW-1 and PW-3 that the deceased had informed her father, PW-1 and her brother, PW-3 about the cruelty meted out to her and a meeting was held. The appellant, A1 has admitted when his statement was

recorded under Section 313 Cr.PC that a village meeting was held and PW-1 was present in the meeting and the villagers negotiated a settlement. However, he has denied that Bhanumati was tortured.

32. A1's father, Pritambar Das, A2, straightway denied in his statement under Section 313 Cr.P.C. that in a village meeting the dispute between them and the deceased was settled by the villagers. When questions were asked to A3 under Section 313 Cr.P.C, about the cruelty meted out to the deceased and the meeting held by the villagers to resolve the dispute, A3's reply was that she never tortured her daughter-in-law.

33. It is pertinent to mention at this juncture that the evidence of PW-1, PW-2 and PW-4 regarding the village meeting pursuant to a quarrel between the appellants and the deceased has not been refuted by their cross-examination vis-à-vis the cross-examination of the IO, PW-7. It is pertinent mention that PW-2 and PW-4 are independent witnesses. Usually in cases of dowry death and domestic violence, independent witnesses are seldom aware of the domestic violence prevalent in the household but in the instant case, a village meeting was held when the deceased was harassed by her husband and her in-laws and this has been admitted by A1 himself when his statement under Section 313 Cr.PC was recorded. A1 who has admitted about the village meeting has however denied that the deceased was subjected to cruelty but he has admitted about the prevalent dispute between his family members (which includes himself) with the deceased.

34. The learned counsel for the appellants emphasized through his argument that the evidence of DW-1 and DW-2 was ignored by the learned trial Court.

35. A close scrutiny of even the evidence of DW-1 clearly depicts that there used to be

frequent quarrels and squabbles between the accused-persons with Bhanu and a village meeting was held to resolve this issue. Thus it appears that even the evidence of DW-1 has not exonerated the appellants. The evidence of DW-2 however was in favour of the appellants. DW-2 has stated that the appellants are his neighbours and he never saw or heard of any quarrel between the appellants and the deceased. He has also stated that A1 and A3 seldom stayed in their house, because they have to travel for their work. A1 is a bus Conductor and A2 was a domestic helper. Occasionally they used to return home.

36. The evidence of PW-1 and PW-3 clearly depicts that the deceased was subjected to cruelty by the appellants. The evidence of PW-2 depicts that the appellants used to quarrel with the deceased. However, he did not know the reason behind these skirmishes and squabbles between the appellants and the deceased. Another independent witness, Ruhini Das, PW-4 testified that the deceased occasionally used to visit her house. She came to her house once, after a quarrel with her mother-in-law. She consoled the deceased and then she accompanied her back to her matrimonial home. She used to hear the quarrels between the deceased and the appellants and she used to and settle their disputes.

37. Two witnesses were declared as hostile witnesses. Their statements under Section 161 Cr.PC will not be taken into account but, the evidence-in-chief of the hostile witnesses P-2 and PW-6 clearly depicts that there were frequent quarrels between the deceased and the accused.

1. Section 304B IPC reads:

**“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."**

2. Section 113B of the Indian Evidence Act, 1872 (the Evidence Act for short) reads presumption as to dowry death:

**"113B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.**

***Explanation.*-For the purpose of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."**

38. To prove a case under Section 304B IPC, it has to be proved that immediately before the incident, the victim was subjected to cruelty or harassment to meet the illegal demand of dowry. The uncontroverted evidence of PW-1 and PW-3 depicts that the victim was subjected to cruelty to meet the illegal demand of dowry made by the appellants. PW-1 has categorically stated that a village meeting was held after his sister was subjected to cruelty and 2/3 months after the meeting, his sister died. After the meeting, cruelty to his sister intensified. The appellants even quarrelled with the family members of the deceased when her family members went to Bhanumati's matrimonial home. PW-1 even requested A1 not to torture his sister.

39. The evidence of PW-3 also clearly depicts that when he heard about the cruelty meted out to his daughter from the villagers, he went and met his daughter. His daughter informed him about the cruelty meted out to her by her husband and her in-laws and she expressed her reluctance to stay in her matrimonial home and she even told him that she would return to her parental home after three days. His neighbour Khiroda Das was also sent to Bhanumati's matrimonial home but Khiroda returned from Bhanumati's matrimonial home and informed him that Bhanumati's mother-in-law did not allow her to return to her parental home. Then he went for Meghalaya and on 09.03.2006, one boy from the village came by motorbike to take him back to his village and that boy informed him that Bhanumati has passed away.

40. The evidence of the independent witnesses including DW-1 also reveals quarrels between the deceased and the appellants. Can these family skirmishes be termed as mental harassment? There is no evidence of physical assault. The evidence of all witnesses also depicts that the incident of suicide occurred within a year of Bhanumati's marriage to A1.

3. The learned counsel for the appellants has submitted that *in Sanjib Kumar's case (supra)* the Hon'ble Supreme Court has held that –

**“20. We cannot lose sight of the principle that while the prosecution has to prove its case beyond reasonable doubt, the defence of the accused has to be tested on the touchstone of probability. The burden of proof lies on the prosecution in all criminal trials, though the onus may shift to the accused in given circumstances, and if so provided by law. Therefore, the evidence has to be appreciated to find out whether the defence set up by the appellant is probable and true.”**

27. In *Kanu Debnath's case (supra)* this Court has held that –

**“A bare reading of the above statements, makes it clear that all the witnesses, who are the parents, brother, sister and close relatives of the**

**deceased, made parrot like statements, saying physical and mental torture on the deceased Nabanita by accused Kanu alone, for the reason that the demand of Kanu for Rs. 40,000/- for purchasing a motor cycle was not fulfilled. Nothing stated about the manner and nature of physical and mental torture, alleged to have inflicted on Nabanita by the accused. The statements are reproduced above make it patently clear that those are omnibus statements made by the witnesses with a view to make out a case. No such story of demand of dowry was stated in the FIR. No independent witness examined by the prosecution to show that actually such a demand was made by the accused and for non-fulfillment of the demand Nabanita was subjected to cruelty, both mentally and physically. The witnesses, however, stated nothing that any demand of dowry was made at the time of marriage. Therefore, it is very difficult to rely on such omnibus statements made by the relatives alone regarding the alleged demand and torture."**

41. Reverting back to this case, it is held that there was indeed a strained relationship between Bhanumati and her in-laws. A village meeting was also held to reconcile the family dispute. It is not clear whether the incident of harassment alleged by PW-1 and PW-3 occurred in the proximate past, which led to the death of the deceased. On the other hand, the evidence of the independent witnesses including DW-1 depicts a quarrel between both the parties. Doubt creeps into one's mind when the evidence is not specific. The evidence of DW-1 also depicts that A1 and A2 stayed away from the house most of the time as A1 is a Conductor and A2 works as a helper. PW-3 has stated that A-1 was not at home on the day of the incident. PW-4 has stated that A-1 was not at home and A-2 went out for work at the time of the incident. On the previous night A-stayed at Palashbari. It is trite law that the evidence of defence witnesses can be proved on the touchstone of preponderance and probability. The time span which indicates "soon before her death" to be presumed under Section 113B of the Evidence Act has to be decided considering the facts and circumstances of the case. In the instant case the evidence is not clear if the deceased was subjected to cruelty to meet the demand of dowry of the appellants soon before her death. There is not an iota of doubt that death occurred within 7 years of marriage which is also an ingredient to

prove an offence under Section 304B IPC. It is clear from the evidence of the witnesses, that the victim died within a year of her marriage.

42. At the time of marriage, there was no demand of dowry. The deceased eloped with A-1 and after a few days, their marriage was solemnised as per customary rites. The appellants have argued that on this ground alone, dowry death has to be ruled out. It is true that the deceased was accepted in her matrimonial home, but it is also true that the neighbours were privy to the quarrels and squabbles in the appellants household.

43. The defence made a feeble attempt to shift the blame on the deceased by stating that the family skirmishes were the result of the obstinacy of the deceased to stay separately with her husband as a nuclear family. No cross-examination regarding this plea was carried out when the witnesses were examined. The DW-1 gave such a hint when his evidence was recorded at the fag end of the trial. Even, when the statements of the appellants were recorded under Section 313 Cr.P.C., they failed to mention that the deceased tried to disintegrate their joint family. The statements of the prosecution witnesses as well as the statement of a defence witness, i.e. DW-1, reveals that A-3 used to hurl abuses at the deceased. It has not surfaced through the cross-examination or through the statements of the appellants under Section 313 Cr.P.C that the deceased was to be a blamed for the quarrels and the squabbles. A mere denial regarding the cruelty meted out to the deceased has surfaced through the statements of the appellants under Section 313 Cr.P.C.

44. This case relates to an unfortunate incident that of a young lady in her late teens. Domestic violence was indeed prevalent in the household. The uncontroverted evidence of PW-1 and PW-2 clearly depicts that the deceased was subjected to cruelty by the appellants

to meet their illegal demand of dowry. The appellants have been identified and incriminated by the witnesses. Irony is that even though the deceased died within a year of her marriage, yet it is not clear from the evidence of the witnesses that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband. It is not clear from the evidence of the witnesses, if the cruelty meted out to the deceased was proximate to her death. However, the evidence of the witnesses clearly depicts that the deceased was subjected to cruelty. She had to withstand and endure the verbal abuses and the harassment meted out to her by the appellants. The evidence regarding the harassment meted out to the deceased by the appellants is overwhelming.

45. However, PW-3 and PW-4's evidence regarding the proximity of cruelty subjected to the deceased vis a vis her death has not been substantiated by the evidence of the other witnesses. It will be perilous to conjecture the death of the deceased to a recent incident of cruelty on vague and opaque statements of the witnesses.

46. Regarding proximity of time "soon before her death," this Court in ***Alim Uddin and Others Vs. State of Assam and Others*** reported in **2017 (4) GLT 418** has observed that:-

***"31. In Mustafa Shahadal Shaikh vs State of Maharashtra, reported in (2012) 11 SCC 397, the Hon'ble Supreme Court while outlining the ingredients of Section 304B IPC held as under:-***

***9. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:***  
***(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;***

***(ii) such death must have occurred within seven years of her marriage;***

*(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; (iv) such cruelty or harassment must be for, or in connection with, demand for dowry". When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.*

*32. It was further held in Mustafa (supra), that to attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. It was also held that though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.*

**33. In Bansi Lal vs. State of Haryana, reported in (2011) 11 SCC 359 the Hon'ble Supreme Court held that while considering the case under Section 304-B, cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. The Supreme Court further held that where the cruelty has been proved during the close proximity of the time of death then the provisions of Section 113B of the Indian Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed into service.**

**34. In paras 19 and 20 of the judgment, the Supreme Court has further held as follows:-**

**"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 relatable to Section 304- BIPC, 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. It may also be pertinent to mention herein that the expression "soon before her death" has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.**

***35. In Baijnath v. State of M.P., reported in (2017) 1 SCC 101 the Hon'ble Supreme Court, while referring to presumptions under Section 113B of Evidence Act, held that the presumption is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith."***

47. Reverting back to the instant case, it is held that the evidence of PW-3, PW-4 and DW-1 depicts that perhaps A-1 and A-2 were not present at home, on the day of the incident. A-3 was present at home on the day of the incident. It is not clear if there is an immediate link of the harassment exercised on the deceased to her death. It is not clear from the evidence if the deceased was harassed by the appellants "soon before her death". It is held that the prosecution has failed to prove beyond reasonable doubt that the cruelty meted out to the deceased "soon before her death" led to the death of the deceased. There must be existence, of a approximate and live link between the effect of cruelty based on dowry demand and the death concerned. "Soon before her death" does not define any particular time of period and must be applied on a case to case basis. Section 304B IPC read in conjunction with Section 113B of the Evidence Act leaves no manner of doubt that once prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection

with any demand for dowry, the Court shall proceed on a presumption that the accused are complicit. The presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of section 304B IPC have not been satisfied. The elementary requirement of proof is to prove the ingredients of Section 304 B IPC beyond reasonable doubt.

47. The argument of the learned counsel for the appellants that the person who informed PW-1 about the suicide was not examined as a witness, holds no water. The unrebutted evidence of the related witnesses as well as the evidence of the independent witnesses clearly depicts that the deceased was subjected to cruelty. Non-examination of the neighbours, Robin Kalita, Jibon Rava, Jogen Thakuria, Aghona Das, Baloram Das, Gunuram Das does not cause and dent in the evidence.

48. There is not even iota of doubt, that the deceased committed suicide. However, which incident prompted the deceased committed suicide could not be culled out through the evidence of the prosecution witnesses.

49. Dr. R. Chaliha, has testified as PW-5 that he conducted the post-mortem examination of the deceased in connection with this case and he found the following:-

“Ligature mark:- A non continuous oblique ligature mark of size 28 X 4 cms found around the neck high above the thyroid cartilage. The non continuity is found on left side of neck below the left ear in between the angle of mandible and mastoid process. The ligature mark is dry, depressed and parchmented. On dissection, the tissue underlying the ligature mark is pale and glistening.

Thorax: Organs are congested. Peritichial haemorrhage found at places over the surface of both lungs.

Abdomen Peritoneum is congested. Mucosa of all are congested. Stomach is healthy and it contains semi digested rice food.

Cranium and Spinal Cord: Scalp, skull and Vertebrae all are healthy. Membrane is congested. Brain is congested and Spinal cord is not examined Organs are healthy.”

The Medical Officer has opined that, death was due to ante mortem suicidal hanging. Time since death was 12 to 14 hours (Approximate).

This witness has proved the Post mortem report as Ext No. 4. Although, the prosecution witnesses insinuated that the deceased was killed and hanged, the evidence of the MO, PW-5 clearly reveals that the deceased committed suicide.

50. Although, death occurred otherwise than under normal circumstances within 7(seven) years of marriage-within one year in this case, yet this case cannot be termed as a case of dowry death, for the reasons as discussed above. However, the conviction under 498A IPC stands.

51. It has been held in my foregoing discussions that the prosecution could prove beyond a reasonable doubt that the victim was subjected to cruelty. The village meeting that was held and the evidence of related witnesses as well as the evidence of independent witnesses clearly depicts that the victim was harassed by all the appellants. A-1 has admitted about a village meeting despite the fact that he denied harassing his wife. The evidence of independent witnesses PW-2, PW-4 and PW-6 clearly depicts that the deceased was harassed by the appellants. Although, all the appellants were incriminated in an omnibus manner of subjecting the deceased to cruelty to meet illegal demand of dowry, yet there is overwhelming and clinching evidence that the deceased was meted out with cruelty. It is true that although no instance of specific demand of dowry is mentioned by the witnesses, yet it can be safely held that the evidence of all the witnesses that the deceased was subjected to cruelty remained uncontradicted and uncontroverted. Even though, it is submitted by the learned counsel for the appellants that no instance of specific demand of dowry could be culled out, yet truth cannot be dispelled that the deceased was subjected to cruelty to the extent which endangered her life and limb and she was harassed to such an extent that the deceased was prompted to take her own life. This was the state of the mental health of the

deceased at the time of her death.

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

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

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

51. I would like to reiterate that it has already been held in my foregoing discussions that there is overwhelming evidence that the victim was subjected to cruelty by the appellants. Although, no date or specific demand of dowry has been mentioned by the witnesses i.e. PW-1 and PW-3 regarding the demand of dowry, yet the evidence that cruelty was meted out to the victim to meet the appellants’ illegal demand of dowry has remain uncontroverted and uncontradicted through the cross-examination of the witnesses PW-1, PW-3 and the cross-examination of the I/O, as per Section 162 Cr.P.C qua section 145 of the Evidence Act. The victim has committed suicide and indeed there is overwhelming evidence that cruelty was to such an extent which endangered the life of the victim and which drove her to commit suicide. The decision of the learned Trial Court, convicting the appellants under Section 498A IPC was in order.

52. The conviction of the appellants under Section 304B IPC and is set aside, but the conviction for the offence under Section 498A is hereby maintained. However, the sentence of 1(one) year of imprisonment under Section 498A IPC is hereby scaled down to the period of imprisonment already undergone by the appellants, while maintaining the order of fine. The appellants have already been behind bars for more than 6(six) months during investigation

and trial. The appellants are directed to appear immediately before the trial Court and deposit the fine amount.

53. Send back the LCR.

**JUDGE**

**Comparing Assistant**