

Court No. - 75

Case :- CRIMINAL REVISION No. - 1484 of 1998

Revisionist :- Kharak Singh

Opposite Party :- Krishan Pal And Others

Counsel for Revisionist :- Dileep Kumar, Rajeev Gupta, Tarun Agarwal

Counsel for Opposite Party :-

Govt. Advocate, Ghanshyam Joshi, N.K. Sharma

Hon'ble Umesh Chandra Sharma, J.

1. This criminal revision has been preferred against the judgment and order of acquittal dated 12.06.1998 passed by the Additional Sessions Judge-IV, Meerut under Section 304B, 498A IPC and Section 3/4 of the DP Act.

2. The revisionist informant has taken ground that the judgment and order passed by the lower court is wholly illegal. The trial court has completely misread and misappreciated the evidence on record and recorded the finding of acquittal in favour of all the accused persons. The prosecution has proved this case beyond all reasonable doubts even then the trial court has acquitted the accused from all the charges on the basis of conjunctures and surmises. There is no delay in lodging the FIR and if there is any delay, the same has been explained by the complainant even though the trial court has acquitted all the accused persons holding that the FIR is an anti-timed document. The trial court has held without any material evidence that the FIR in question has been subsequently manipulated and changed. The finding given by the trial court in this respect is wholly illegal, perverse and is liable to be set aside.

3. It is well settled law that there is a presumption against the accused under Section 113B of the Indian Evidence Act, 1872 with regard to the offence committed under Section 304B IPC. In the present case, even though the accused persons have failed to revert the presumption drawn against them under Section 113B of the Evidence Act, the trial court without any basis or material has recorded the finding of acquittal, which is wholly illegal and is liable to be set aside. The prosecution has completely proved the charges under Sections 304B and 498A IPC by fulfilling all the ingredients of dowry death, even though the trial court has illegally recorded the finding of acquittal in favour of the accused persons.

4. The prosecution has proved beyond all the reasonable doubts that the deceased was killed by administering poison and the FSL report also corroborates the same but the trial court ignored this important fact in its judgment. Hence, this revision be allowed and the aforesaid judgment and order of acquittal dated 12.06.1998 passed by the ASJ-IV, Meerut be set aside and a suitable order be passed.

5. In brief, facts of the case are that Kharak Singh lodged an FIR Ex.Ka-1 at Police Station Baleni, District Meerut on 01.03.1994 at 09:30 p.m. with the allegations that his daughter Anita was married to Krishan Pal in the year of 1992. At the time of marriage sufficient dowry was given but Krishan Pal and his family members were not satisfied with the dowry, hence they started harassing

Anita for bringing more dowry. His son Pawan Kumar had gone to meet Anita at her in-laws' house two months prior to the festival of Sankranti where all the accused persons made a demand of scooter or Rs.21,000/- cash. Anita also repeated this version to his brother that accused persons are demanding the same. Thereafter the informant's another son Rajendra went to her in-laws' house on 14.01.1994. At that time also all the four accused persons repeated the same demand. After coming back Rajendra told that Anita is being harassed by the accused persons in respect of dowry. The informant and other villagers went to village Dolcha and they explained and pacified the matter regarding demand of dowry saying that the informant has already provided sufficient dowry as per his capacity. At that time the accused persons promised not to harass any more on account of dowry but they continued to repeat their demand. On 01.03.1994 Basanta son of informant's maternal uncle resident of Balena came to home at 06:00 p.m. and told that he had gone to village Dolcha in a marriage ceremony and informed that Anita has been murdered. Hearing this news the complainant and other villagers reached their and found Anita to be dead. The informant went to police station and submitted the written complaint on which basis chik FIR Ex.Ka-15 was prepared by Head Moharrir, Brijendra Singh and the same was entered into GD Rapat no.29 (Ex.Ka-16) for an offence under Section 304B IPC and Section 3/4 DP Act at Crime No.28 of 1994. The investigation was handed over to CO Faqir Chand Azad who started the investigation. He reached on the spot and recorded the statement of the

informant; prepared site plan Ex.Ka-2 and collected the broken pieces of bangles and prepared recovery memo Ex.Ka-3. He recorded the statement of the witnesses Kripal, Chander Pandit, Jaipal, Satyapal, Roop Chand, Mangeram and Khajan Singh under Section 161 CrPC. On 02.03.1994 the SDM Hargyan Singh Pundir got prepared panchayatnama (Ex.Ka-8) of the dead body of the deceased in the hand writing of Sub-Inspector. The allied papers namely Form-13 Ex.Ka-9, sketch of the dead body of the deceased Ex.Ka-10 and 11, letter to CMO Ex.Ka-12 and letter to RI, Police Line, Meerut Ex.Ka-13 were also got prepared. The dead body was sealed and was handed over to the Constable Vijai Bahadur and Constable Chunnu Lal for being taken to Head Quarter, Meerut for postmortem. Accused Krishan Pal and Smt. Omwati were arrested and brought to police station and relevant entries were made in the GD under rapat no.21 Ex.Ka-17 at 05:35 p.m. The investigating officer (IO) recorded the statement of Mool Chandra, Ramesh, Smt Radha, Rajindra Singh, Pawan, Basanta, Satyavir and Krishan Pal under Section 161 CrPC on 06.03.1994. He collected the postmortem report Ex.Ka-14 and sent the viscera for chemical examination. The autopsy of the dead body of the deceased was conducted by Dr. SP Jindal on 02.03.1994 at 05:00 p.m. with the help of Dr. OP Chaddha at PL Sharma Hospital, Meerut and following injuries were found:-

(i) on external examination of the dead body of the deceased the doctor found that the lips, nails, tongue and

face were cyanosed. There was one abrasion in an area of 6cm x 1cm on left side front of the upper part of the neck.

(ii) on internal examination the brain, lungs, mucus, membrane, liver, spleen and kidneys were found congested. The viscera was preserved for chemical examination as the cause of death could not be ascertained. The doctor prepared the postmortem examination report Ex.Ka-4.

6. The IO after completion of the investigation, submitted the charge-sheet against all the accused persons. Subsequent to filing of charge-sheet in the court, the Dy. SP Sri Inder Deo Singh wrote the additional parcha of case diary (Ex.Ka-6) and sent with the FSL report (Ex.Ka-7) to the court. The accused persons were charged under the aforesaid sections from which they denied and sought trial.

7. Following witnesses had been examined in support of the prosecution:-

1	PW-1	Ramesh
2	PW-2	Kharak Singh
3	PW-3	Pawan Kumar, son of informant
4	PW-4	IO, Dy. SP, Fakeer Singh Azad
5	PW-5	Hargyan Singh Pundir, the then SDM, Baghpat
6	PW-6	Dr. SP Jindal
7	PW-7	Brajendra Singh, HCP

8. The statement of the accused persons were recorded under Section 313 CrPC on 14.03.1997 in which they denied the charges and alleged that no demand of dowry was made by them and they have been falsely implicated in the case.

9. Dr. SP Jindal was recalled on oath by the court on 21.04.1998 in respect of FSL report submitted later on in the court. The court also examined Dr. Suresh Chand, the Chemical Examiner, Agra as CW-1 who proved it. After these two evidences the additional statement of the accused persons were recorded under Section 313 CrPC on 28.05.1998 in which the accused persons again denied the charges.

10. Defence witness - DW-1, Satyavir, the evidence of this witness is discussed later on.

11. The description of the accused persons is that the accused Krishan Pal was the husband; accused Ompal was the brother-in-law (devar); accused Omwati was the mother-in-law; and accused Bhure was the father-in-law of the deceased.

12. In brief, the statements of the witnesses are reproduced herein below:

(i) PW-1, Ramesh has deposed that the marriage was solemnized as the marriage of a farmer's daughter. After departure of the deceased, accused persons started demanding dowry. When they went for her send off, they

started demanding scooter or in place of scooter cash of Rs.21,000/-. They insisted that they are capable of providing scooter. After few days of the marriage when son of Khadag Singh visited Aneeta, they again demanded dowry. Aneeta also stated to provide scooter otherwise, the accused persons would kill her and when they went there to pacify the matter, Pooran Singh assured not to demand scooter in future. But after few days when son of Khadag Singh went with Sakrant (Khichadi), the accused persons threatened to provide them scooter. After few days, they came to know that the accused persons have killed the deceased. When Basana was informed about the death of the deceased, they alongwith villagers went to her in-laws house and found that Aneeta was lying dead. Thereafter, F.I.R. was lodged. This witness has given similar statement in his cross-examination.

(ii) PW-2, Khadag Singh, father of the deceased, has deposed that marriage of Aneeta was solemnized with Krishna Pal Singh of village Dolcha. He had provided sufficient dowry. He had also provided sufficient ornaments. The accused persons were demanding a scooter or Rs.21,000/- cash which was conveyed to her by the deceased when after 10 days of the marriage, the deceased came to the house. After getting information of her death at 06:00 P.M. by Basanta, they reached the spot and found that Aneeta was lying dead in the house of Pooran. The accused persons had killed the deceased for dowry. The report was reduced in writing by Kishan Pal on

his dictation and he had signed it. He proved his signature on it and deposed that police had recorded his statement.

This witnesses has also given similar statement in his cross-examination. He has further deposed in his cross-examination that accused persons were not present at the house. It is wrong to say that the mother-in-law Smt. Omwati was there and remained till morning. There were injuries on the person of the deceased. There were contusion on her neck. Fearing that the relationship would get spoiled, he had not lodged the F.I.R. earlier. This witness denied that the accused persons had informed about the death of the deceased to him. He had also denied that the deceased died a natural death.

(iii) PW-3, son of the informant has deposed that his father spent more than his capacity in the marriage of the deceased. When he had gone to bring her sister back, the accused persons had demanded scooter or Rs.21,000/- cash. The deceased had informed that they used to beat her on account of demand of scooter. He had informed this fact to his father who said that he will talk about this. When his elder brother went with Sakrant (Khichadi), the deceased had also informed him that accused persons used to demand scooter. When his father, Khadag Singh, and Ramesh went Doleha to pacify this matter, they assured not to repeat the same and for this a Panchayat was also held, thereafter accused persons kept her sister for 16-17 days. After 5-6 days of the incident, the police had come to his house and had interrogated him. The

witness has given similar statements in his cross-examination and reiterated that Aneeta had complained him about the beating by the accused persons, she also used to show her injuries. When it was complained to Krishna Pal, he said that they will not beat the deceased anymore if Rs.21,000/- cash is provided. As it was a matter of relationship, therefore, no complaint was made anywhere. This witness denied that the deceased had died of an unnatural death and that the accused persons had not demanded dowry.

(iv) PW-4, Fakeer Chand Azad, the then C.O, has deposed that he had started an investigation after receiving related papers from the police station. He reached on the spot and inquired about the informant, Khadag Singh and recorded his statement in which he supported the prosecution case. On his pointing a site plan was prepared. The witness proved the site plan, Ex.Ka-2. He also collected broken pieces of bangles and prepared a recovery memo, Ex.Ka-3, in the handwriting of S.I. Charan Singh Tomar and proved it. He also recorded the statements of witnesses Krishna Pal, Jai Pal, Mangeram and Khajan Singh, who supported the version of the prosecution. On 03.03.1994 on his direction/order, the accused, Krishna Pal and Smt. Omwati were arrested and it was entered in G.D. On 6.3.1994. The statements of witnesses Mool Chand, Pawan, Basanta and Kishan Pal were recorded. On 7.3.1994 the accused Ompal, Pooran surrendered in the Court which was entered in the case-diary. After receiving the inquest and postmortem report,

he entered it in the G.D. Viscera was sent for chemical examination by his order, Ex Ka-4. On 22.3.1994, he recorded the statements of witnesses to the inquest and after completion of investigation, he submitted charge-sheet Ex.ka-4, on 22.4.1994. After his transfer, his successor, Dy. S.P. Indra Pal Singh had received the F.S.L. report and entered it in C.D. The witness proved it as secondary evidence which is exhibited as Ex. Ka-6. The F.S.L. report was also exhibited as Ex. Ka-7. In cross-examination this witness admitted that there was no eye witness of the death. This witness deposed that he had not seen the ornaments on the person of the deceased.

(v) PW-5, Hargyan Singh, the then S.D.M., deposed that on 12.03.1994 he had prepared an inquest report and had prepared Form-13, two papers of photo lash, a letter to C.M.O. and a letter to R.I., which are exhibited as Ex.Ka-8 to Ex.Ka-13. He further deposed that the dead body was sealed on the spot and was sent for postmortem through constable Vijay Bahadur and constable Chunni.

In the cross-examination, the witness admitted that he had signed on the last page of the inquest as it was prepared by sub inspector on his dictation. He further deposed that he had received information in the morning of 2.3.1994. He could not say whether Omwati was there or not. He had seen the injury on the extreme side of the neck. This witness denied that there was any injury on the thigh of the deceased.

(vi) PW-6, Dr. S.P. Jindal, has deposed that in the evening of 02.03.1994 at 05:00 P.M. he conducted an autopsy of the dead body in the presence of Dr. O.P. Chadda and with the assistance of P.C. Sharma and found that there was *rigor mortis* on the whole body. Lip, eye membrane and face were bluish with ecchymosis. Eyes were open and there was contusion in an area of 6 cm. x 1 cm. on the front-left side of neck and on the outer left side of the neck. In the internal examination, it was found that the brain was congested and reddish, both the lungs were congested. There was 200 ml. of semi digested food in her intestine, the surface was reddish. Liver and spleen were also reddish and congested. The uterus was empty. Since the cause of death could not be ascertained, hence, viscera was preserved. This witness proved the postmortem report, Ex. Ka7 to be in his own handwriting and signature.

The witness was recalled and re examined after receipt of the F.S.L. report in which he deposed that the brain, liver, spleen and lungs were congested due to organochloro insecticides poison and alcohol. This witness has given similar statement in his cross-examination and has supported the prosecution version.

(vii) PW-7, Head Constable, Brijendra Singh, has deposed that on 1.3.1994, he lodged the F.I.R. at crime no. 29 of 1994 u/s 304-B, I.P.C. and section 3/4 D.P. Act and had prepared chick F.I.R. Ex. Ka-15 which is in his handwriting and signature. He had also entered it in G.D.

in his handwriting and signature and proved its carbon copy Ex. Ka-16. He further deposed that on 2.3.1994 when accused Krishan Pal and Smt. Omwati were arrested, it was entered by report no. 21 at 5:35 P.M. and sealed truss of broken pieces of bangles of the deceased, which contains 17 pieces was also proved as material Ex.1.

This witness has further deposed that the concerned G.D. is in his handwriting and signature. It also contains signature of S.O. He has proved certified copy as Ex. Ka-17. In his cross-examination this witness has supported the prosecution version.

13. After the conclusion of prosecution evidence, the statements of the accused persons were recorded, wherein all the accused persons denied the demand of dowry and also the allegation of the prosecution and have deposed that the husband of the deceased Krishna Pal had informed the police about the death of the deceased.

14. From the side of the defence, D.W.-1, Satyaveer Singh has been examined, who deposed that on 12.3.1994 the marriage of his daughter was solemnized with Krishna Pal Singh in village Dalohi, to which he had invited his relatives. He does not know Basanta s/o Lobi was invited or not.

15. In cross-examination, this witness expressed ignorance that the daughter of Basanta has been married in his village. He admitted that Krishna Pal belongs to

Yadav community. He had not participated in the marriage of Krishna Pal. He expressed ignorance about whether Basanta participated in the marriage or not.

16. Dr. Suresh Chandra, Scientist at F.S.L. Agra, C.W.-1, has proved that Kamal Singh Khatri, an employee of F.S.L. Agra, had received the sealed bundle from constable Om Pal. He had proved the signature of Kamal Singh Khatri as Ex. C.1. The witness further deposed that he had examined the material and had prepared his report Ex. Ka-7 in his hand writing and signature and he had found organochloro insecticide poison and alcohol in the sample which was sent to ascertain the cause of death.

17. The witness has given similar statement in his cross-examination.

18. After deposition of C.W.-1, the statements u/s 313 Cr.P.C. of the accused persons were recorded, in which all the accused persons stated that no material was sealed before them and no examination was conducted before them.

19. According to this Court, the accused persons were not present at the postmortem house. This plea can not be taken that the sample for chemical examination was not sealed before them. Similarly, the examination was conducted in Agra and there is no rule or law that examination should be conducted before the accused persons.

20. After the conclusion of the trial and after hearing the arguments, the learned IV Addl. Sessions Judge recorded the judgment and order of acquittal. Being aggrieved, the informant has preferred this revision.

21. This revision is being decided as under:

22. In this case, the incident occurred on 01.03.1994 at about 04:00 p.m. and after receiving information about the incident, the informant with family members and villagers reached on the spot and thereafter lodged the FIR same day at 09:30 p.m. which is reduced in the handwriting of Brijpal Yadav, son of Sri Raghuvir Singh, which has also been signed by the informant PW-2.

23. The learned trial court has expressed doubt about it, stating that Basanta who had informed the informant about the incident has not been examined. As per prosecution story, Basanta son of maternal uncle of the informant visited village Dolcha on 01.03.1994 in connection of marriage and when he came to know about the incident he went to the house of the informant at about 06:00 p.m. and informed about the incident, that the accused persons had killed Anita. Thereafter informant, his family members and villagers proceeded there where they found Anita was lying dead. Therefore, there is no delay in lodging the FIR.

24. The Additional Sessions Judge has opined that one written complaint had also been written by one Krishnapal. Certainly, in the statement of the informant,

the name of Krishnapal has been mentioned as a scribe, but it is also noteworthy that he has said himself to be the son of Raghuvir Singh, therefore, it appears that the name of the scribed has been written in the statement wrongly. Krishnapal is the accused and his father's name is Pooran Ahir, he cannot be a scribe. Thus, it appears that the learned Additional Sessions Judge has given the benefit of doubt only on account of wrong name of the scribe, which is insignificant in the aforesaid circumstances.

25. Another ground has been taken by the learned ASJ to discredit the FIR that PW-1, Ramesh has deposed in cross-examination that next day on 02.03.1994 the report had been written in the village by the government officials. Several persons were sitting and one person was writing. According to this Court, this witness was a rustic, uneducated villager. The inquest report was prepared on the spot next day on 02.03.1994. Virtually, he is giving statement about preparation of the inquest report and not about writing of the written complaint on behalf of the informant. It is very clear from the examination-in-chief of PW-1 that when they reached her in-law's house, they found Anita lying dead. He remained there, Kharak Singh and one other person went to the concerned police station to inform them about the incident where Kharak Singh got the FIR registered. Thus, it is very clear that the first and only one FIR has been lodged by the informant, PW-2 same day and this witness has given statement in cross-examination in misconception of the inquest report that the FIR had been written next day in the village.

26. Another ground has been taken by the learned ASJ to record the judgment of acquittal that the scribe has not been examined. According to this Court, there is no law that the scribe must be examined. In certain cases where the informant would have died, there might be need of examination of scribe. Here, when the informant PW-2 has already proved his signature on the written complaint, there was no need to examine the scribe. Hence, the ground taken by the learned ASJ that two FIRs were written and one was concealed and the FIR was not written and lodged on 01.03.1994 is incorrect and such findings have been given only for the purpose to acquit the accused persons.

27. The inquest had started at 08:00 a.m. on 02.03.1994, injuries were noted on the left side of the neck and on both the thighs contusions were found on which no explanation has been given by the defence. Hence, it cannot be said that soon before the death the deceased was not tortured. So far as postmortem report is concerned an abrasion in an area of 6cm x 1cm on the left side of the neck was noted, which was on the upper part of the neck. Since the cause of death could not be ascertained, hence the viscera was preserved and later on as per FSL report it was found that there was alcohol and organochloro insecticide poison which caused death of the deceased. According to this Court, if the poison would have administered by the deceased herself, the empty bottle or pouch would have been there. Since it was not found there, therefore, it can easily be presumed that it

would have been administered by the accused persons, which was later on removed from the place of occurrence or from the entire house.

28. At the very outset it is also noteworthy that it is not the case of the defence that the deceased had herself administered the poison due to some reason but the defence is that she died of natural death. According to this Court, when contusions were found on the person of the deceased and the deceased had died due to alcohol and organochloro insecticide poison and when the deceased was only 22 years old and a healthy lady and was not suffering from any disease, it cannot be said that she died of natural death. It is noteworthy that the marriage of the deceased had been solemnized with the accused Krishnapal in the year of 1992 and she died an unnatural death within two years of her marriage, therefore, the presumption under Section 113B of the Indian Evidence Act, 1872 would arise in favour of the prosecution. The deceased had died in the house of the accused persons and it has also been proved from the evidence that accused persons had left their house and fled away. Hence, a burden under section 106 of the Evidence Act would also arise upon the accused persons to explain the facts especially in their knowledge as to how only a 22 years young and healthy bride died of unnatural death.

29. According to the defence, the deceased's mother-in-law, Omwati, was in the house though it is also denied by

the prosecution but running away leaving the dead body of the deceased by the rest of the accused persons also creates doubt when the incident was not reported by them to the concerned police station. There is no evidence that the accused persons had informed about the incident at the concerned police station. It has also not been proved that the accused persons or any of their family members or collaterals participated in the last rituals of the deceased.

30. Another ground has been taken by the learned Additional Sessions Judge that the inquest was not conducted by the concerned DSP (investigating officer) but by SDM. According to this Court, generally in cases of dowry death, SDM or Tehsildar or Naib-Tehsildar or any Executive officer gets the inquest conducted in presence of the police. If the inquest report was prepared by the concerned SDM, it is not going to disprove the inquest report or its procedure.

31. From the above discussion, it has been proved that the deceased Anita died of unnatural death on account of injury and poison while she was a healthy lady of 22 years and was not suffering from any disease which may have caused her death. Hence, the presumption under Section 113B of the Indian Evidence Act arises which reads as under:-

"113-B. 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 had been subjected by such person to cruelty or harassment for, or

in connection with, any demand to 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 304-B of Indian Penal Code."

32. At this juncture it would be appropriate to reproduce Section 304 B IPC which is as under :-

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.

33. In ***Pawan Kumar Vs. State of Haryana, (1998) CrLJ 1144 SC***, there was a demand of scooter and fridge after the marriage which were not made by the parents of the bride, lead to her harassment and ill treatment by husband and his relatives. It was held that such demand constitutes a "dowry demand" which is punishable under Section 2 of the Dowry Prohibition Act, 1961 and Section 304B IPC.

34. In ***State of Punjab Vs. Iqbal Singh and others, AIR 1991 SC 1532***, the Apex Court held that since the dowry deaths are generally committed in the privacy of

residential homes, it is not easy to get direct evidence in such cases.

35. In ***Sher Singh Vs. State of Haryana, 2015 (1) Scale 250***, the Apex Court observed “we would prefer to interpret the word 'soon' which finds place in Section 304B, not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, instead it should be a continuing cause for the death under Section 304B IPC or the suicide under Section 306 IPC. Once the presence of these concomitant are proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by guilt of the accused, thereby transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt beyond reasonable doubt”.

36. It has been proved from the prosecution evidence that the accused persons used to demand scooter or Rs.21,000/- in lieu of a scooter as dowry and for which she had been subjected to physical and mental cruelty. It is not necessary that just soon before death, the deceased should have been subjected to physical or mental cruelty, but here, soon before her death, the prosecution has been successful in proving the physical and mental cruelty with the deceased causing injuries and administering poison to the deceased, is an apparent and direct example of physical and mental torture by the accused persons soon before her death.

37. Another ground has been taken by the learned Additional Sessions Judge that no demand of dowry would have been made as no demand of dowry was made at the time of marriage. According to this Court it is a wrong notion. A dowry can be demanded before the marriage, at the time of marriage or after the marriage. In this regard, Sections 2, 3, 4 and 8A of the Dowry Prohibition Act can be looked into which read as under:-

"2. Definition of 'dowry'.—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, either, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include] dower or mahr in the case or persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II—The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

3. Penalty for giving or taking dowry.—(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than [(Note: Subs. by Act 43 of 1986, Sec.3) five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for an adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment of a term of less than [(Note: Subs. by Act 43 of 1986, Sec.3) five years.

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act.

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given."

4. Penalty for demanding dowry.—*If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:*

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

8-A. Burden of proof in certain cases.—*Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him.*

38. In this regard following judicial pronouncements are relevant in which it has been held that any demand of dowry after the marriage is also a demand of dowry punishable under Section 3 of the Act.

39. In ***Vidya Devi Vs. State of Haryana, (2004) 9 SCC 476*** it has been held that any demand subsequent to marriage is also covered under "Dowry".

40. In ***State of Andhra Pradesh Vs. Raj Gopal Asawa, (2004) 4 SCC 470*** it has been held that since the definition of dowry in section 2 of the Act by Amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. Hence, the same would be punishable.

41. In ***M. Narayan Vs. State of Karnataka, (2015) 6 SCC 465*** it has been held that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Act, at or before or at any time after the marriage which is reasonably connected to the death of a married women, would necessarily be in connection with or in relation to the marriage unless the facts of a given clearly and unequivocally point otherwise.

42. In ***Bachni Devi Vs. State of Haryana, AIR 2011 SC 1098*** it is held that the definition of “Dowry” given in Section 2 of the Act would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold “any property or valuable security” given or agreed to be given in connection with marriage either directly or indirectly.

43. From the perusal of Section 8A it is very much clear that if death of a wife is within 7 years of marriage in abnormal circumstances and demand of dowry and cruelty is established the onus to revert the presumption

to demand of dowry shifts to the defence which has not been discharged by the accused persons in this case.

44. The Additional Sessions Judge has also acquitted the accused persons due to non-examination of Basanta. In this regard, DW-1 has also been examined who has deposed that he does not know Basanta and he had not invited him in the marriage of his daughter. According to this Court, it is not the case of the prosecution that Basanta was invited by DW-1, Satyavir, in his daughter's marriage. He may have participated in the marriage of Satyavir from the side of her in-laws or any other marriage held at the concerned village. In the cross-examination, DW-1, Satyavir has deposed that he does not know whether Basanta had participated in barat or not. In such a situation, on the basis of the evidence of DW-1, Satyavir it cannot be concluded that Basanta had not participated in the marriage of DW-1, Satyavir's daughter and after knowing about death of the deceased he had not informed the informant about death of the deceased. There might be another marriage in village Dolcha on 01.03.1994 as the marriage of the daughter of DW-1, Satyavir was solemnized on 02.03.1994. When it has not been proved by any evidence from the side of the defence that they informed the family members of the deceased about the incident and they reached on the spot same day just after few hours of the incident, it is immaterial as to how the informant came to know about death of his daughter. The accused persons were arrested next day.

They had left the dead body of the deceased unclaimed in an unsafe position.

45. In view of the above discussion, this Court is of the view that the learned Additional Sessions Judge has misread the evidence and has given an incorrect finding when it is proved beyond the reasonable doubt that an unnatural death within two years of marriage had taken place and when the initial burden had already been discharged by the prosecution and the presumption under Section 113B of the Evidence Act could not be removed by the defence and when there is also burden upon the defence to explain the circumstances under Section 106 of the Evidence Act, there was no occasion to record the finding of acquittal by the trial court. Section 106 casts duty to discharge the burden and explain the facts especially within the knowledge of the in-laws as to how the bride died. If the accused does not throw light on a fact which is within his knowledge his failure to offer any explanation would become a strong militating circumstance against him.

46. In ***Balram Prasad Agrawal Vs. State of Bihar, (1997) 9 SCC 338*** a housewife was drowned to death in the well, in the court-yard of the house of her in-laws who were the only people present in the house at that time. Cruelty by the in-laws for over years was also an established fact. The Supreme Court held that the burden lies upon the accused in-laws to show what happened during the night which brought about her death.

47. On the basis of the above discussion, this Court is of the view that the revision deserves to be allowed and a fresh judgment and order should be passed after affording the opportunity of hearing to both the parties.

48. The revision is, accordingly, allowed.

49. The impugned judgment and order of acquittal dated 12.06.1998 passed by the Additional Sessions Judge-IV, Meerut is hereby set aside. The Additional Sessions Judge-IV, Meerut, is directed to hear both the parties and again pass appropriate orders in accordance with law within three months on the basis of evidence available on the record and in light of the observations made in this judgment.

45. Let a copy of this judgment alongwith the original record be sent back to the court concerned forthwith for necessary compliance.

Order Date :- 07.12.2023

Vinod/Shahroz/S.Verma

(Umesh Chandra Sharma, J.)