

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A.(J) No.41 of 2022

Sri Pranab Ranjan Roy Karmakar
S/O. Sri Pran Ballabh Roy Karmakar
Of Chanban, P.O & P.S:- R.K Pur
District:-Gomati Tripura

....Convict-Appellant.

Versus

The State of Tripura

.....Respondent.

For Appellant(s)	:	Mr. Rajib Saha, Adv, Mr. R. G. Chakraborty, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of hearing	:	29.01.2024
Date of delivery of Judgment & Order	:	06.02.2024
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

[Biswajit Palit, J]

The prosecution case, in short, is that on 18.07.2014 one Smt. Chanda Karmakar, wife of Sri Pralay Karmakar of Khilpara laid one FIR to OC, R.K. Pur Women PS alleging inter alia that about four years back, her elder daughter, Sharmistha was given marriage to accused Pranab Ranjan Roy Karmakar as per Hindu Marriage Rites and Customs. At the time of marriage, as per demand of the accused-appellant, they gave cash amount of Rs.40,000/-(Rupees Forty Thousand only) and

other articles. After the marriage, the accused-appellant started causing pressure upon her daughter to bring Rs.50,000/-(Rupees Fifty Thousand only) more and for that, he used to assault her. The informant, Smt. Chanda Karmakar, further stated that she worked as a maid in people's house and her husband was a rickshaw puller. When she expressed her inability to give the money, the accused-appellant pressurized her husband to give the said amount of Rs.50,000/-(Rupees Fifty Thousand only) and also beaten him severely. She further stated that her elder daughter used to bear the torture because she had an eleven months old baby and being hopeful that, in future, the accused will amend himself. On 17.07.2014, Thursday, at about 9:30 hours, the accused-appellant called her younger daughter Sushmita Karmakar over phone and informed that the grandson of the informant was admitted in the hospital. Accordingly, the informant rushed to the hospital and found that her daughter was lying dead in the hospital and she suspected that the accused-appellant killed her daughter. Hence, she laid the FIR.

2. On receipt of FIR/ejahar, OC, R.K. Pur Women PS registered R.K Pur Women PS case No.93/2014 dated 18.07.2014 under Sections 498-A/304-B of IPC and the case was endorsed to Ms. Mina Kumari Debbarma, Dy.S.P., for investigation and the I.O. on completion of investigation being *prima facie* satisfied, laid charge-sheet against the accused person namely Pranab Ranjan Roy Karmakar vide R.K. Pur Women P.S. Charge-sheet No.131 dated 17.12.2014 under Sections 498-A/302/304-B IPC and Section 4 of the Dowry Prohibition Act. Accordingly, on receipt of charge-sheet, cognizance of offence was

taken by Learned Chief Judicial Magistrate, Gomati, Udaipur under Sections 498-A/302/304-B of IPC along with Section 4 of the Dowry Prohibition Act and the case was committed to the Court of Sessions for holding trial of accused.

3. Before the Court of Learned Sessions Judge, formal charge was framed against the accused-appellant under Sections 498A/304B/302 of IPC and Section 4 of the Dowry Prohibition Act and the same was explained to the appellant in Bengali to which he pleaded not guilty and claimed to be tried.

4. To substantiate the charge, prosecution before the Learned Trial Court has adduced in total 17 nos. of witnesses and the prosecution also relied upon some documents which were marked as exhibits in this case.

The defence case was that of total denial and as such, during examination under Section 313 of Cr.P.C., the accused-appellant pleaded as innocent simplicitor and denied to adduce any witness in support of his defence and also denied the prosecution story.

5. Finally, Learned Court below on conclusion of trial, after hearing argument of both the sides found the appellant guilty and convicted him and also sentenced him to suffer RI for life and fine of Rs.10,000/- for the commission of offence punishable under Section 302 of IPC in default, to suffer RI for 6(six) months. The convict-appellant was further sentenced to RI for 3(three) years and fine of Rs.5000/- for the offence under Section 498-A of IPC in default of fine, to suffer RI for further 3(three) months. The convict was further sentenced to RI for 7(seven) years for the commission of offence

punishable under Section 304-B of IPC and was sentenced to RI for 1(one) year and a fine of Rs.5,000/- for the offence punishable under Section 4 of Dowry Prohibition Act in default of payment of fine to undergo further RI for more 3(three) months and it was ordered that all the sentences would run concurrently.

Challenging that judgment, the present appellant has preferred this appeal before the High Court.

6. Heard Mr. Rajib Saha, Learned Counsel and Mr. R. G. Chakraborty, Learned Counsel appearing for the accused-appellant and also heard Learned Additional P.P., Mr. S. Ghosh representing the respondent-State.

7. In course of hearing, Learned Counsel for the accused-appellant submitted that the prosecution has failed to prove the case beyond reasonable doubt against the appellant before the Learned Court below, but the Learned Court below without proper appreciation of the evidence on record convicted the appellant guilty for the offences charged. Learned Counsel firstly submitted that in this case, pillow was not produced although according to prosecution, the same was seized but during trial the same was not marked as material object. So, in absence of production of pillow, there is no scope to draw any adverse inference against the appellant showing his involvement with the offences alleged.

8. Learned Counsel further submitted that in every crime, there must be some motive but in the case at hand, prosecution could not prove any motive to sustain conviction against the accused-appellant. There was no specific evidence on record from the side of prosecution

that the deceased was subjected to cruelty for unlawful demand of dowry soon after the marriage or before her death, but the Learned Court below in absence of evidence on record convicted the appellant under Section 304-B and also under Section 498-A of IPC for which intervention of the Court is required for setting aside the judgment of conviction against the accused-appellant. Learned Counsel further submitted that from the evidence on record adduced by the prosecution, nowhere it will be found that no independent witness found the appellant to cause cruelty for demand of dowry upon the deceased-victim. So, just on the basis of such omnibus statements, there was no scope to convict the appellant by the Learned Trial Court. So, Learned Counsel finally urged for interference by this Court and for allowing the appeal, setting aside the judgment of the Learned Court below and referred some citations which will be discussed later on.

9. On the contrary, Learned Addl. P.P. for the respondent-State submitted that this is a case where the prosecution has been able to prove the charge levelled against the appellant. According to him, the evidence of PW-6 and PW-7 are so convincing and trustworthy that the appellant by the trend of cross-examination could not raise any doubt to disbelieve their evidence. He further submitted that there may be some contradictions in the FIR and the FIR is not a substantive piece of evidence. But the accused save and except contradiction of the FIR could not place any other materials before the Court regarding shaking credit of witnesses of the prosecution in respect to 161 statements recorded by I.O. during investigation. Furthermore, Learned Addl. P.P. submitted that from the evidence on record of the prosecution, it is

crystal clear that at the time of marriage, the appellant demanded dowry from the informant party and at the time of marriage, he took Rs.40,000/- as dowry from the informant party and also prior to 1 ½ month back of the death of the deceased, the victim was further subjected to cruelty for a further sum of Rs.50,000/- and this fact has been very clearly explained by the witnesses of prosecution in course of their examination before the Court. The appellant by the trend of cross-examination could not make any cloud to disbelieve their evidence. Learned Addl. P.P. also referred the definition of 'dowry' as provided in the Dowry Prohibition Act and also relied upon some citations and further submitted that from the act and conduct of the appellant, just prior to the death of the deceased that he was very much present to the place of occurrence along with his wife (deceased) at the time of occurrence and he caused the death of his wife i.e the deceased victim by asphyxia by using pillow or by any other means. Although, the pillow could not be produced and the post-mortem report of the deceased and the evidence of the Doctor who conducted post-mortem report clearly discloses that the cause of death was asphyxia due to suffocation which was homicidal in nature. Finally, Learned Addl. P.P. submitted that this is a very clear case of conviction and Learned Court below after elaborate discussions of the evidence on record rightly and reasonably delivered the judgment finding him guilty and convicted him accordingly and urged before this Court to uphold the judgment passed by the Learned Court below rejecting the appeal.

10. We have heard arguments of both the sides and gone through the evidence on record of the Learned Court below.

Before conclusion of the case, let us revisit the evidence on record of the prosecution adduced before the Learned Trial Court to substantiate the charges levelled against the accused-appellant. As already stated, to substantiate the charge, prosecution before the Learned Court below, has adduced in total 17 Nos. of witnesses.

11. PW-1, Tumpa Sen, is a seizure list witness. She is constable of Police. She deposed that in her presence on 06.08.2014, the I.O. at TSD Hospital, seized part of intestine, kidney and viscera by a seizure list and the witness identified her signature on the seizure list marked as Exhibit-P-2 series/1. During cross, nothing came out relevant.

12. PW-2, Smt. Binapani Debbarma also deposed in the same manner like PW-1. She stated that on 06.08.2014, as a constable of police of Women PS, Udaipur, she went to TSD hospital when darogababu seized part of intestine, kidney and viscera in her presence by a seizure list and the witness identified her signature marked as Exhibit-P-2series/2. During cross, nothing came out relevant.

13. PW-3, Smt. Sikha Deb, Women ASI of Police deposed that on 17.7.2014, she was posted as Women ASI at Women PS, Udaipur. On that day, at TSD Hospital, Udaipur, she prepared the inquest report on the dead body of Sharmistha Roy Karmakar and she had sent the letter to the SDM, Udaipur for preparation of separate inquest report. During cross, nothing came out relevant.

14. PW-4, Bablu Dutta deposed that on 18.07.2014, as an Advocate's Clerk on the request of one Chanda Karmakar, he had written a complaint petition of the informant addressed to OC, PS. After scribing of the FIR, he read over the same to the FIR maker and the

witness identified his signature in the FIR marked as Exhibit-P-1. During cross, save and except denial nothing came out relevant.

15. PW-5, Smt. Madhabi Debbarma, deposed that on 18.07.2014, she was posted as OC of Women P.S., Udaipur. On that day, she received written FIR of Smt. Chanda Karmakar and on the basis of that, she registered Women PS case No.93/14 under Sections 498-A/304-B of IPC and endorsed the case to Dy. S.P., Mina Kumari Debbarma for investigation. During cross, nothing came out relevant.

16. PW-6, Chanda Karmakar is the informant of this case. She deposed that Sharmistha was her daughter and the accused-appellant, Pranab Ranjan Roy Karmakar is the husband of Sharmistha. She identified the appellant in the dock. According to the informant, in the year 2010 A.D, on 21st Baishakh, marriage between her daughter and Pranab was solemnized according to Hindu Rites and Customs. At the time of marriage, there was demand from the side of Pranab for an amount of Rs.40,000/- in cash and 2 items of gold ornaments and accordingly, they gave Rs.40,000/- in cash and 2 items of gold ornaments such as earrings and bangles. She further stated that for about 2 years, Sharmistha resumed conjugal life peacefully at her matrimonial home but thereafter Pranab started assaulting her on demand of Rs.50,000/-. She could know the fact from Sharmistha when she used to visit her house. Further stated that Pranab also claimed money when he visited the residence of the informant but they could not meet up the payment due to their poverty as her husband was a rickshaw puller. Due to non-payment of amount, the accused-appellant used to assault her (victim) physically. Prior to 1 ½ and 2 months back

from the date of death of Sharmistha, she met her and on the last occasion i.e. 1 and ½ months/2 months back prior to the death of Sharmistha, when she came to their house, the appellant Pranab also came with her and on that day, Pranab assaulted her husband, Praloy Karmakar on demand of Rs.50,000/-. On that day, Sharmistha returned back to her matrimonial home and after 1 ½ or 2 months from that day, one day in the night at about 9:00 p.m., Pranab telephoned them and informed that the minor son of Sharmistha was admitted in the Hospital. That time, that boy was aged about 11 months. Hearing the news, she along with her sister, Bakul Karmakar, went to TSD Hospital, Udaipur and found the dead body of Sharmistha was lying in the hospital. On the following day, she laid the FIR. She further stated that the ejahar was written by one Babul Datta as per narration and she identified her signature in the ejahar which was marked as Exhibit-P-1/1.

During cross-examination, she deposed that in their house, her two brothers namely Krishna Karmakar and Nepal Karmakar are residing with their family members and their rooms are situated very contiguous to their room and all the huts in their house are made of GCI sheets fencing and they had good relation with her brothers and their family members and they shared their family problems with them. She further stated that she has got another daughter namely Sushmita, who is Madhyamik passed. She lodged the ejahar on the next day of death of Sharmistha at about 4:30 p.m. She further stated that she did not mention in her ejahar that going to her house, Sharmistha informed her about physical assault to her by Pranab on demand of money. She

further stated that the relationship between Sharmistha and Sushmita was very good and they used to share their problems with each other. She further stated that in the ejahar she mentioned that about 1 month back from the date of death of Sharmistha, Pranab assaulted her husband. She further stated that the distance between Women PS of Udaipur and her house would be a walking distance of less than half an hour and also stated that the dead body of Sharmistha was cremated by Pranab.

17. PW-7, Bakul Karmakar deposed that daughter of Chanda namely Sharmistha was given marriage with Pranab Ranjan Roy Karmakar in the year 2010 as per Hindu Rites and Customs. According to this witness, for about 2 years, Sharmistha was happy at her matrimonial home. Thereafter, Pranab started assaulting Sharmistha on demand of Rs.50,000/- and Sharmistha reported them the said fact of demand of Rs.50,000/- and physical assault on her by Pranab but they could not meet up the demand of Rs.50,000/- and for that, Pranab often on used to torture Sharmistha physically. She sometimes visited the house of Sharmistha found swelling on the face of Sharmistha and being asked Sharmistha told her that she was physically assaulted by fist and blows on her face by Pranab. One day about 1 year 5 months back, Pranab telephoned Sushmita and informed that the baby of Sharmistha was hospitalized. Knowing the same, the witness along with her sister, Chanda went to TSD Hospital and found the dead body of Sharmistha was lying in the veranda of the Hospital. She further stated that about 1 and ½ months back prior to the death of Sharmistha, Pranab assaulted father of Sharmistha on demand of Rs.50,000/-. She

also stated that in the room of Pranab, he himself, Sharmistha and their male child used to reside. She further stated that at the time of marriage, they gave Rs.40,000/- in cash, 2 items of gold ornaments and some furniture to Pranab for the use of the couple as there was demand from the side of Pranab. The witness has identified the accused-appellant in the dock.

During cross-examination, she stated that she did not say to I.O. about any demand from the side of Pranab regarding Rs.40,000/- and gold made ornaments at the time of marriage. She also did not say to I.O. that from Sharmistha, she came to know about the torture on her and that on visiting the house of Sharmistha, she found swelling on her face and that Sharmistha being asked told that due to assault by Pranab by fist and blows, the swelling occurred. Nothing more came out relevant.

18. PW-8, Shri Satyanarayan Bhowmik deposed that on 17.7.2014, he used to reside in house of Pranballav Roy Karmakar of Chanban as tenant. During that period, some other tenants including Rajkumar Jamatia also used to reside in that house. Elder son of Pranballav Roy Karmakar is Pranab Ranjan Roy Karmakar, who was also residing in that house during that period and name of Pranab's wife was Sharmistha. On that day at about 9:30 p.m. in the night suddenly Pranab called him stating that his wife, Sharmistha was not talking anything. Knowing the same, the witness with his wife went to his room and found that Sharmistha was in a sitting posture in a tilted position and she was senseless. Thereafter, they poured drop of water on her face but she did not regain her sense. Thereafter, they called fire

service and sent her to hospital and on the same night, he heard that Sharmistha expired. He also stated that when they entered in the room of Sharmistha, that time they found male baby of Sharmistha was sleeping in the cot.

During cross-examination, he stated that at present, he is not a tenant of Pranballav Roy Karmakar and he is residing in his own house at Rajarbag. House of Pranballav Roy Karmakar is situated on the adjacent southern side of Udaipur-Agartala road. Many vehicles passes through that road upto 10/10:30 p.m. in the night. He further stated that on that relevant point of time, it was summer season and generally, Sharmistha used to keep the door of her room open till return of her husband. This witness was declared hostile by the prosecution and his relevant portion of statement was marked as Exhibit-P-3, subject to proof by I.O.

19. PW-9, Birbal Roy Karmakar deposed that on 18.07.2014, police seized one pillow from the room of Pranab in his presence by preparing seizure list and obtained his signature on the seizure list. The witness identified his signature on the seizure list marked as Exhibit-P-4. During cross, nothing came out relevant.

20. PW-10, Paritosh Roy Karmakar is the brother of the appellant. He deposed that Sharmistha Roy Karmakar was the wife of his brother, Pranab. In the room of Pranab, he used to reside with Sharmistha and a male baby and the nick name of the baby is Prasun and their house is a double storied building. He further stated that he used to reside in the first floor and Pranab used to reside in the ground floor. About one year back, one day at about 9:30 p.m. in the night, he

returned to home and when he was in his room, that time, he heard hue and cry in the ground floor and thereafter, he came down to the ground floor and found that Sharmistha was lying on the floor of her room in senseless condition and his brother Pranab was pouring water on her head. Thereafter, Sharmistha was shifted to hospital by a fire service vehicle. On the same day in the night, Sharmistha died. He further stated that on the same day, at about 4:00 p.m. in the afternoon he saw Sharmistha was loitering in the courtyard with his wife. He further stated that on the following day of death of Sharmistha, police came to their house and seized one pillow from the room of his brother Pranab by preparing seizure list and he signed in the seizure list. The witness identified his signature on the seizure list and on identification of the same that was marked as Exhibit-P-4/1.

During cross-examination, he further deposed that on the death of Sharmistha, there was a tenant namely Rajkumar Jamatia who used to reside alone and after the incident, Rajkumar Jamatia left their house.

21. PW-11, Swarnali Chowdhury deposed that Pranab Ranjan Roy Karmakar is the elder brother of her husband. Sharmistha was the wife of Pranab Ranjan Roy Karmakar. About one and half year back, Sharmistha died. Both Sharmistha and the witness used to reside in the same house. Her room was in the first floor and the room of Sharmistha was in the ground floor. On the day of her death, she last met with her at about 6:00 p.m. in the evening when Sharmistha came to her room to collect milk for her baby and at about 9:30 p.m., she heard hue and cry of the Pranab Ranjan Roy Karmakar from the ground floor and

thereafter, she went to the room of Sharmistha and found her lying in senseless condition on the floor. Thereafter, she was shifted to hospital by a fire service vehicle and when the doctor declared her dead. During cross, she deposed that she herself and her husband, her brother-in-law, Pranab and her parents-in-law were used to reside in the same house.

22. PW-12, Pratima Bhowmik deposed that she used to reside in the house of Pranballav Roy Karmakar from the year 2013 to 2015 and she identified Pranab Ranjan Roy Karmakar in the Court. She further deposed that she knew the wife of Pranab namely Sharmistha Roy Karmakar. Sharmistha died on 17.06.2014 in the house of Pranab. Room of Sharmistha was contiguous to her room. On that day at about 9:30 p.m. in the night, Pranab suddenly called her to come to his room and on going there, she found that Sharmistha was lying on the sofa set in unconscious condition and thereafter, she herself, her husband and others gathered, poured water on the head of Sharmistha but she did not regain her sense and at about 1:00 a.m. in the night, police came and informed that Sharmistha had expired. During cross, nothing came out relevant.

23. PW-13, Sanjib Chakraborty deposed that he used to reside in the residence of Pranballav Roy Karmakar of Chanban from the year 1997 to 2015. He knew wife of Pranab namely Sharmistha. About 1 ½ year back, she died and on the date of her death in the night, he was doing the job of private tutor in the adjacent house at about 8:30 p.m. That time, his wife, Babli Chakraborty informed him that Sharmistha was ill and his wife asked him to go back to house. Accordingly, he

returned home and found that Pranab was pouring water on the head of Sharmistha in his room but he did not notice whether Sharmistha was conscious or not. Meanwhile, fire service came and brought Sharmistha to TSD Hospital and after sometime, he got the information that Sharmistha died. He further stated that he did not notice anything wrong in the character and habit of Pranab Ranjan Roy Karmakar. This witness was declared hostile by the prosecution and his portion of evidence was marked as Exhibit-P-5, subject to proof by I.O.

During cross-examination, he stated that he is not presently residing in the residence of Pranballav Roy Karmakar.

24. PW-15, Suman Kr. Chakraborty deposed that on 08.08.2014, he was posted as Deputy Director-cum-Asst. Chemical Examiner in the Tripura Forensic Science Laboratory. On that day, he received one sealed packet from DSP, Head Quarter, Udaipur, containing four exhibits marked as Exhibit-A to D. According to him, Exhibits A, B and C were found to contain preservative and viscera samples namely stomach, and proximal part of intestine, liver and kidney and Exhibit D was a pillow with blue white printed cover. The said exhibits were examined from 09.09.2014 to 26.09.2014 and on examination of Exhibits A to C, he found negative for the presence of Organo Chloro, Organo Phosphorus and Carbonate group of pesticide, Ethyl alcohol and opiate derivatives. Exhibit A was determined to be Sodiumchloride. Exhibit D was not examined in absence of any control blood sample of deceased for comparison. Exhibit D could not be examined as no sample of control blood sample of deceased was preserved and sent to them by the police authority. Thereafter, he prepared his report on

29.9.2014 which was forwarded by their Director by his letter dated 29.09.2014. He identified the report along with the forwarding of Director marked as Exhibit-P8 series and his signature in the report marked as Exhibit-P-8/1.

During cross-examination, he stated that he did not mention in his report for what purpose the samples were sent to him for examination or to ascertain which matter. He further volunteered that his opinion was on the basis of series of examinations.

25. PW-16, Sabyasachi Singh, deposed that on 18.07.2014, he was posted as DCM-cum-Executive Magistrate, Udaipur Sub-Division. On that day, as per requisition of R.K. Pur Women P.S and also as per instruction of SDM, Udaipur, he conducted inquest over the dead body of deceased Sharmistha Roy Karmakar in the morgue of TSD Hospital, Udaipur at about 2:19 p.m. on that day and on examination of the dead body, he found signs of bruises which was not however prominent. As such it was not possible to determine as to whether said bruises were recent or not. No ligature mark was visible. However, there was clotted blood in and around the right cheek. There was no sign of struggling or any violence mark. Apparently, it seems that it might be a case of homicidal death by suffocation caused with a pillow. However, the cause of death could be determined by post mortem examination. Some photographs of the dead body were taken and handed over to police. He further stated that Paritosh Roy Karmakar at the time of inquest stated him that at about 9:30p.m. when he returned home, he heard some screaming sound and found the deceased was lying on the floor and his brother was pouring water on the head of the deceased

and sensing something suspicious, he informed fire service and then the fire service came and took the deceased to Hospital where she was declared dead. He further stated that Bakul Karmakar, relative of the deceased, informed her that at about 10:30p.m., Pranab informed about serious illness of son of deceased and immediately she rushed to Hospital and found the dead body of deceased was lying. Praloy Karmakar (father of the deceased) stated him in the hospital that after being informed about the incident, he rushed to Hospital and found his daughter dead. He also informed him about the repeated incident of beating, torturing and demand of dowry and also alleged that his son-in-law killed his daughter thereafter he prepared his report and signed the same. He identified the report marked as Exhibit-P-9 and his signature on the report marked as Exhibit-P-9/1. During cross, nothing came out relevant.

26. PW-17, Dr. Debasish Pal deposed that on 18.07.2014, he was posted as medical officer of TSD Hospital, Udaipur. On that day, he conducted autopsy on the dead body of one Sharmistha Roy Karmakar aged about 20 years, wife of Pranab Ranjan Roy Karmakar of Chanban, Udaipur with reference to Udaipur Women PS case No.10 dated 17.07.2014. He further deposed that dead body was identified by Constable, Sunanda Chakraborty, Dr. Dhruba Das and Dr. Rituparna Dey also assisted him in doing the autopsy. After examination of the dead body, they found the followings –

"Rigor mortis was found and post mortem straining was seen and fixed. There was no external injury on the body. There was no foul smell found in the oral cavity. Congestion of the face and head area were found. Peticheal subconjunctival haemorrhage's were found in both eyes. Bluish discoloration of the extrimities were seen. Bluish discoloration of the lips, tongue, ear lobes

were seen. Laryngis was congested and edematous. All other body organs and bone structures were healthy and intact. Brain and lungs were congested and edematous. Heart, liver kidney, spleen were congested."

Thereafter, they opined that the death was due to asphyxia which was due to ante mortem suffocation and homicidal in nature. He further deposed that the probable age of the death was 10 to 18 hours from the time of holding postmortem examination. He prepared the inquest report and signed the same and his two other colleagues were also signed the same. The report was marked as Exhibit-P-10. His signature marked as Exhibit-P-10/1. Signature of Dr. Rituparna Dey marked as Exhibit-P-10/2. Signature of Dr. Dhruba Das marked as Exhibit-P-10/3. After that, they received the report from State Forensic Science Laboratory through Police and report of laboratory was negative and as such the opinion given by them remained unaltered. He further stated that receipt of the report was indicated by him in the post mortem report later on and again he signed on the report on 11.12.2014 marked as Exhibit-P-10/4. After post mortem, he gave requisition for chemical and histopathological examination of the said preserved stomach contents, etc and identified the requisition submitted by him marked as Exhibit-P-11 and his signature marked as Exhibit-P-11/1.

During cross-examination, he stated that they did not separately and specifically mentioned on what basis they came to the findings that it was a case of ante mortem suffocation but by their observation given in the report, they came to the said conclusion. He further deposed that at the time of post mortem examination, they maintained some note-sheets and after perusing the same, they

prepared the post mortem report and after preparation of post mortem report, they immediately sent the same to the I.O. He further deposed that the report was prepared on 18.07.2014 and at the time of final opinion, he signed in the post mortem report on 11.12.2014 sitting in the hospital. He further deposed that on 11.12.2014, the report was placed to him by IO along with the report of SFSL.

27. PW-14, Smti Mina Kumari Debbarma is the I.O. She deposed that on 18.7.2014, she was posted as DSP, Headquarter, Gomati District, Udaipur. On that day, WSI Madhabi Debbarma on receipt of FIR/ejaha laid by one Chanda Karmakar registered women police case No.93/14 under Section 498-A/304-B of IPC. He identified the endorsement and signature of Madhabi Debbarma in the ejaha marked as Exhibit-P-1/2. Thereafter, said Madhabi Debbarma filed up the printed form of FIR and then she herself took up the investigation of this case and identified the printed form of FIR marked as Exhibit-P-6. During investigation, she examined witnesses and recorded their statements caused arrest of the accused, visited place of occurrence, prepared hand sketch map with index and on identification marked as Exhibit-P-7 series. She also stated that in course of examination, she examined witnesses namely, Sanjib Chakraborty, Satyanarayan Bhowmik, Paritosh Roy Karmakar, Birbal Roy Karmakar and Swarnali Chowdhury under Section 161 of Cr.P.C. Thereafter she collected PM report from TSD Hospital. She also collected six numbers of jars containing stomach, liver, kidney, etc of the dead body of Sharmistha Roy Karmakar from the hospital and seized the same by preparing seizure list in presence of witnesses marked as Exhibit-P-2. She seized

one pillow by preparing seizure list in presence of witnesses and identified the said seizure list marked as Exhibit-P-4/2. She collected report of SFSL and after completion of investigation, she laid charge-sheet against the accused-appellant.

During cross, she stated that in the charge-sheet, she did not cite Dr. Debasish Pal as witness and further stated that by mistake, she did not cite him as witness. She did not cite Suman Kr. Chakraborty, Deputy Director-cum-Asst. Chemical Examiner as witness. She did not examine sister of the deceased namely Sushmita Karmakar. Father of the deceased, Pralay Karmakar was examined by her but his statement was not recorded. These are the sum and substance on record of the prosecution in respect of determination of the charge-sheet.

28. From the evidence on record of the prosecution, it appears to us that there is no dispute on record regarding the fact of death of the deceased on the alleged day. But we are to see how far the present appellant was responsible for the alleged offence and how far the prosecution has been able to prove the charges beyond reasonable doubt against the appellant before the Learned Court below. It is crystal clear that there is no dispute on record in respect of the fact of marriage of the appellant with the deceased victim and also the fact that out of their wedlock, a male issue was begotten to them who was eleven months old at the time of death of his mother. To substantiate the charges as already stated, 17 nos. of witnesses were produced in this case by the prosecution but the appellant by the trend of cross-examination could not discard the evidence on record of the prosecution

regarding death of the deceased on that day. Here in the case at hand, there is no direct eye witness to see that the present accused-appellant has committed murder of the deceased. So, this case is entirely based on circumstantial evidence.

29. Now, we are to see what sort of circumstances could be proved by the prosecution in this case. If we go through the evidence of the informant and her sister, it is clear that at the time of marriage as per demand of the appellant they gave Rs.40,000/- in cash and gold ornaments to the appellant. The appellant by way of cross-examination could not discard that part of evidence of the prosecution that the appellant at the time of marriage did not demand any dowry from the informant party. Now, we would like to refer herein below the relevant definition of 'dowry' as provided in Section 2 of the Dowry Prohibition Act 1961:

"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, 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 of persons to whom the Muslim Personal Law (*Shariat*) applies.

***Explanation I.*— For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties."**

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

30. In course of hearing, Learned Counsel for the appellant referred few citations in support of his arguments. In **Satvir Singh and Others vs. State of Punjab and Anr.** dated 27.09.2001 reported in **(2001) 8 SCC 633** Hon'ble the Apex Court in Para nos. 21 and 22 observed as under:

"21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

Learned Counsel for the appellant submitted that before the Learned Court below prosecution could not adduce any material evidence to substantiate the charge of demand of dowry

by the appellant and from the evidence of PW-6 and PW-7, it cannot be conclusively said that the appellant was held guilty to the charge of demand of dowry in connection with the marriage between the deceased and the appellant but the Learned Court below did not consider the matter in this respect.

31. In **Biswajit Halder Alias Babu Halder and Ors. vs. State of W.B.** dated 19.03.2007 reported in **(2008) 1 SCC 202**, Hon'ble the Apex Court in Para nos. 10 and 13 observed as under:

"10. The basic ingredients to attract the provisions of Section 304-B are as follows:-

- (1) the death of a woman should be caused by burns or fatal injury or otherwise than under normal circumstances;**
- (2) such death should have occurred within seven years of her marriage;**
- (3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and**
- (4) such cruelty or harassment should be for or in connection with demand for dowry.**

13. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in an unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives."

Referring the aforesaid citation, Learned Counsel for the appellant further submitted that to substantiate the charge under Section 304-B of IPC, the prosecution should prove that the death of the deceased was caused by burn or fatal injury or otherwise than under normal circumstances. Such death should have occurred within seven years of her marriage or she must have been subjected to cruelty or harassment by her husband or

any relative of her husband or such cruelty or harassment should be for or in connection with demand for dowry.

Referring the same Learned Counsel submitted that in the case at hand there is no evidence on record of the prosecution like that as mentioned above and in absence of such evidence, there was no scope to convict the appellant under Section 498-A of IPC read with Section 304-B of IPC.

32. In **Charan Singh alias Charanjit Singh vs. State of Uttarakhand** dated 20.04.2023 reported in **(2023) SCC OnLine SC 454**, Hon'ble the Supreme Court in Para nos. 10, 11, 12.29 and 12.31 observed as under:

"10. The conviction of the appellant is under Sections 304B and 498A IPC raising presumption regarding dowry death within seven years of marriage. To appreciate the arguments raised by the learned counsel for the parties, a perusal of Section 304B and 498A IPC and Section 113B of the Indian Evidence Act would be required. The same are extracted hereinbelow:-

"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 subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

498-A. Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes 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.

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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in Section 304-B of Penal Code, 1860 (45 of 1860)”.

11. The interpretation of Sections 304B and 498A IPC came up for consideration in *Baijnath's case* (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:-

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

- (i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and
- (ii) is within seven years of her marriage, and
- (iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis “cruelty” as:

- (i) 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), or
- (ii) 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.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or

in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression "dowry" is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression "cruelty", as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences."

12. As the aforesaid case was also pertaining to dowry death, presumption under Section 113B of the Indian Evidence Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:-

"29. Noticeably this presumption as well 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."

12.31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty."

Referring the above, Learned Counsel further submitted that prosecution before the Learned Court below could not adduce any material evidence to draw any adverse presumption or inference under Section 113B of the Indian Evidence Act to substantiate the charge against the appellant. Here, we would like

to refer hereinbelow the relevant provision of Section 113B of the Indian Evidence Act which reads as under:

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

33. Finally, Learned Counsel for the appellant submitted that prosecution before the Learned Court below could not produce the pillow for marking as exhibits. Secondly, prosecution could not prove as to how the deceased was killed or murdered and also could not prove the motive behind the crime. Prosecution also could not produce any cogent, coherent and persuasive material evidence on record that it is the present appellant who committed murder of the deceased and urged before the Court to allow this appeal and to grant benefit of doubt to the appellant.

34. Learned Addl. P.P. at the time of hearing, strongly countered the submission made by Learned Counsel for the appellant and submitted that the appellant before the Learned Trial Court below in course of trial could not raise any circumstance to disbelieve the evidence on record of the prosecution. He fairly submitted that although in the given case, there is no direct eye witness who had seen to commit murder of the deceased by the appellant but from the circumstances, right from the time of marriage till the death of the deceased, it is clear

that the present appellant committed murder of his wife i.e. the deceased and there is no room to disbelieve the evidence on record of the prosecution in this regard. Learned Addl. P.P. further submitted that from the evidence on record i.e. specifically the evidence of PW-6 and PW-7, it is clear that the appellant demanded money at the time of marriage which attracts Section 2 of the Dowry Prohibition Act and after the marriage, the appellant on several occasions, physically assaulted the deceased victim. Not only that he made further demand of Rs.50,000/-, but as the same could not be met up, so, he also assaulted his father-in-law, assaulted the deceased and finally committed murder of his wife. Learned Addl. P.P. also referred the evidence of PW-8, Satya Narayan Bhowmik, who used to reside in the house of the appellant on that relevant point of time. PW-10, Paritosh Roy Karmakar, PW-11, Smt. Swarnali Chowdhury, PW-12, Smt. Pratima Bhowmik and PW-13, Sanjib Chakraborty, who at the time of alleged occurrence, after hearing hue and cry of the accused-appellant, came to his room and found the victim in senseless condition. The appellant regarding the evidence of those witnesses could not explain as to how the deceased became senseless and furthermore, in course of his examination under Section 313 of Cr.P.C., he also could not say anything regarding those part of material evidence revealed against him during trial before the Learned Trial Court. Although PW-8 and PW-13 were declared hostile by the prosecution but except the part of their hostile evidence from the rest part of evidence, it is clear that the present

appellant committed murder of his wife and the post-mortem examination report supported the case of the prosecution. PW-9, Birbal Roy Karmakar deposed that in his presence, Police seized the pillow. But that pillow could not be produced during the trial. Although, the same was sent to SFSL for examination but for lack of any control blood sample of the deceased, the same could not be examined by the SFSL. But Learned Addl. P.P. fairly submitted that PW-16, Sabyasachi Singh, DCM, who in his inquest report (Exhibit P-9/1) in column No.14 stated that "It might be a case of homicidal death by suffocation caused with pillow however, the exact cause of death could be determined by post-mortem examination." The appellant regarding that entry could not explain anything before the Learned Trial Court, nor tested anything by cross-examination to the said witness. Post-mortem report also disclosed as to how the deceased was murdered. To substantiate his submissions, Learned Addl. P.P. referred the following citations.

35. In **Trimukh Maroti Kirkan vs State of Maharashtra** dated 11.10.2006, reported in **(2006) 10 SCC 681**, Hon'ble the Supreme Court in para nos. 20, 21 and 22 observed as under:

"20. In *Ram Gulam Chaudhary v. State of Bihar*:(2001) 8 SCC 311 the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond

reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference.

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See *State of Tamil Nadu v. Rajendran* :(1999) 8 SCC 679 (SCC para 6); *State of U.P. v. Dr. Ravindra Prakash Mittal* :AIR 1992 SC 2045 (SCC para 39 : AIR para 40); *State of Maharashtra v. Suresh* :(2000) 1 SCC 471 (SCC para 27); *Ganesh Lal v. State of Rajasthan* :(2002) 1 SCC 731 (SCC para 15) and *Gulab Chand v. State of M.P.* :(1995) 3 SCC 574 (SCC para 4)].

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of H.P.* :AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khukhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* :(1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* :AIR 1992 SC 2045 the medical evidence disclosed that

the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In *State of T.N. v. Rajendran* : (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime."

Referring the same, Learned Addl. P.P. drawn the attention of this Court that from the evidence of the witnesses of the prosecution, it is clear that when the victim was found in senseless condition in the room during night, that time the appellant was very much present and on his hue and cry, the witnesses appeared and before the Learned Court below those witnesses also whispered that they assembled to the room of appellant after hearing the cry of the appellant but the appellant could not explain anything as to how the deceased became senseless. Even during examination under Section 313 Cr.P.C. the appellant remained silent which shows his involvement with the alleged crime.

36. In **State of Uttar Pradesh vs. Krishna Master and Others** dated 03.08.2010, reported in **(2010) 12 SCC 324**

Hon'ble the Apex Court in para no.29 observed as under:

"29. At this stage, it would be well to recall to the memory the weighty observations made by this Court as early as in the year 1988 relating to appreciation of evidence and the duties expected of a Judge presiding over a criminal trial. In *State of U.P. v. Anil singh*, :AIR 1988 SC 1998, it is observed as under :

"...in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public is generally reluctant to come forward to depose before the court. It is, therefore, not correct to reject the prosecution version only on ground that all witnesses to occurrence have not been examined. It is also not proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

Referring the same, Learned Addl. P.P. submitted that although the prosecution could not adduce the father and sister of the deceased for their examination before the Court but since from the evidence of the mother and aunt of the deceased it was

established that the appellant was responsible for the murder of his wife, so, for non-production of those witnesses there is no scope to disbelieve the evidence on record of the prosecution.

37. In **Rajkumar vs. State of Madhya Pradesh** dated 25.02.2014, reported in **(2014) 5 SCC 353**, Hon'ble the Apex Court in para no. 24 observed as under:

"24. In *Prithipal Singh v. State of Punjab*, :(2012) 1 SCC 10, this Court relying on its earlier judgment in *State of W.B. v. Mir Mohammad Omar* :(2000) 8 SCC 382, held as under:

"53..... if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. *Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.*" "

Referring the same Learned Addl. P.P. submitted that it is the appellant who committed murder of his wife i.e. the deceased and that fact was within his knowledge but just to make a got up story he called the witnesses raising hue and cry. But at the same time, the prosecution by the evidence on record of other witnesses had already established the charges levelled against the accused-appellant. The appellant could not give any account as to how the victim became senseless in his presence.

38. In **Ashok Kumar vs. State of Haryana** dated 08.07.2010, reported in **(2010) 12 SCC 350**, Hon'ble the

Supreme Court in para Nos. 17, 18, 19 and 20 further observed as under:

"17. This Court, in the case of *Madhu Sudan Malhotra v. Kishore Chand Bhandari* :(1988) SCC(Cri) 854], held that furnishing of a list of ornaments and other household articles such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the Act. The definition of "dowry" is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in *State of A.P. v. Raj Gopal Asawa* :(2004) 4 SCC 470.

18. The Courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of "dowry" under the Act. Section 4 of the Act is the penal section and demanding a "dowry", as defined under Section 2 of the Act, is punishable under this section. As already noticed, we need not deliberate on this aspect, as the accused before us has neither been charged nor punished for that offence. We have examined the provisions of Section 2 of the Act in a very limited sphere to deal with the contentions raised in regard to the applicability of the provisions of Section 304-B of the Code.

19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the Section is "soon before her death". In our view, the expressions "soon before her death" cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other."

20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in the case of *Tarsem Singh v. State of Punjab* :(2008) 16 SCC 155, held that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasize the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her

death and the dowry-related cruelty or harassment inflicted on her.”

Learned Addl. P.P. submitted that since at the time of marriage, the appellant demanded dowry from the informant party which was punishable under Section 2 of the Dowry Prohibition Act and since the appellant by the art of his cross-examination could not shaken the evidence on record of the prosecution. So, there is/was no scope to presume the appellant to be innocent in the case at hand for the charge of demand of dowry.

39. In Alagupandi alias Alagupandian vs. State of Tamil Nadu dated 08.05.2012, reported in **(2012) 10 SCC 451** the Apex Court in Para No. 26.26 observed as under:

“26.26. This Court, in the said judgment, held as under: (Namadeo case :(2007) 14 SCC 150

‘28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on *value, weight and quality* of evidence rather than on *quantity, multiplicity or plurality* of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated.

29. It was then contended that the only eyewitness, PW 6 Sopan was none other than the son of the deceased. He was, therefore, “highly interested” witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as “interested”. The term “interested” postulates that the witness has some direct or indirect “interest” in having the accused somehow or the other convicted due to animus or for some other oblique motive.’

27. It will be useful to make a reference of another judgment of this Court, in *Satbir Singh v. State of U.P.*, :(2009) 13 SCC 790, where this Court held as under:

'26. It is now a well-settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon. Furthermore, as noticed hereinbefore, at least Dhum Singh (PW 7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established.'

28. Again in a very recent judgment in the case of *Balraje v. State of Maharashtra* :(2010) 6 SCC 673, this Court stated that:

'30. ...when the eyewitnesses are stated to be interested and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they would shield the real culprit and rope in innocent persons. The truth or otherwise of the evidence has to be weighed pragmatically. The court would be required to analyse the evidence of the related witnesses and those witnesses who are inimically disposed towards the accused. But if after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to discard the same.' "

Referring the same, Learned Addl. P.P. submitted that the Court should lay emphasis on value, weight and quality of evidence rather than quantity. In the given case the witnesses of the prosecution in a chain deposed against the appellant. So, there was no room to discard their evidence in toto and urged for upholding the conviction imposed upon the appellant by the Learned Trial Court.

40. We have gone through the evidence on record very carefully and also the citations as referred by Learned Counsel for the appellant as well as for the prosecution.

41. It appears to us that there is no dispute on record in respect of death of the deceased on the alleged day. From the evidence of the PW-6 and PW-7, it is very much clear that the appellant at the time of marriage, demanded dowry from the informant party and accordingly, dowry was given to him. Not only that after the marriage, he further demanded sum of Rs.50,000/- and as the same could not be meet up, so, the victim was subjected to mental and physical torture by the accused-appellant. The appellant by the art of cross-examination could not discard their evidences. Furthermore, it appears that the alleged incident took place within seven years of marriage of the parties and from the evidence on record of the prosecution, it is also clear that the appellant at the time of marriage and after the marriage demanded dowry and caused cruelty upon the victim for illegal demand of dowry, so, the Learned Court below reasonably and rightly convicted him under Sections 498-A, 304-B of IPC read with Section 4 of the Dowry Prohibition Act, 1961. Regarding applicability of Section 304-B, there is no direct eye witness of the alleged occurrence of offence but as already stated, from the evidence of PWs-8, 10, 11, 12 and 13, it appears that prior to the death of the deceased, on hearing the hue and cry of the appellant, they came to the room of the accused-appellant and found the deceased in senseless condition and also found the appellant to pour water to his wife. The appellant could not give any explanation in this regard as to how she became senseless. As already stated, from the post-mortem examination report it has

been found that "the death was due to asphyxia which was due to ante-mortem suffocation and homicidal in nature." In the inquest report also the DCM, PW-16 Sabyasachi Chowdhury stated that "homicidal death by suffocation caused with pillow". Although pillow could not be produced for marking as material object but that was seized during investigation and during trial, there was no denial from the side of the appellant in this regard.

Meaning of 'asphyxia' in medical jurisprudence:

In medical jurisprudence. A morbid condition of swooning, suffocation, or suspended animation, resulting in death if not relieved, produced by any serious interference with normal respiration (as. the inhalation of poisonous gases or too rarified air, choking, drowning, obstruction of the air passages, or paralysis of the respiratory muscles) with a consequent deficiency of oxygen in the blood.

From the evidence on record, it appears that the cause of death of the deceased was ante-mortem suffocation which might be caused by pillow resulting death of the deceased. Further, it appears that it is the appellant who committed murder of his deceased wife. So, for non-production of pillow for marking exhibit by the prosecution, there is no scope to disbelieve the evidence on record of the prosecution. The citations as referred by Learned Counsel for the appellant cannot be applied for decision of this case, rather the citations referred by Learned Counsel for the respondent-State are very much applicable and we have taken the principles of the said citations in deciding this case and in our considered view, the present appellant subjected cruelty to the victim for illegal demand of dowry and ultimately, committed murder of his wife within 7 years of marriage and it appears to us

that Learned Court below after detailed discussions, reasonably and rightly delivered the judgment finding the appellant guilty and sentenced him accordingly, which needs no interference by this Court at this stage.

42. In the result, the appeal filed by the appellant is dismissed on contest and stands bereft of merit. The judgment and order with the sentence of conviction passed by the Learned Sessions Judge, Udaipur, Gomati Tripura Judicial District in Case No. S.T.28 (GT/U) of 2015 is hereby upheld and accordingly, it is affirmed.

Pending application, if any, also stands disposed of.

A Copy of this judgment be transmitted to the Learned Court below along with the LCR.

JUDGE

JUDGE



**MOUMITA
DATTA**

Purnita/Deepshikha

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