

GAHC010144022018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/66/2018

ABHIJIT PAUL
S/O. LT. ANIL CH. PAUL, R/O. GOBINDAPALLY, HOJAI TOWN, DIST. HOJAI,
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocates:

Appellant	:	Mr. M. Dutta, Amicus Curiae
Respondent	:	Ms. B. Bhuyan, Senior Advocate & Additional Public Prosecutor, Assam; Ms. M. Chakraborty, Advocate
Date of Hearing and Judgment & Order	:	02.05.2024

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT & ORDER

[M. Choudhury, J]

The instant appeal from jail is directed against a Judgment dated 16.03.2018 and an Order of Sentence dated 19.03.2018 passed by the Court of learned Additional District & Sessions Judge, FTC, Hojai at Sankardev Nagar [‘the trial court’, for short] in Sessions Case no. 25[N]/2016. By the said Judgment dated 16.03.2018, the accused-appellant has been found guilty of both the charges framed for the offences under Section 302 of the Indian Penal Code [‘IPC’, for short] and Section 304B[2], IPC. Thereafter, by the Order of Sentence dated 19.03.2018, the accused-appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-, in default of payment of fine, to undergo simple imprisonment for further 4 [four] months for the offence under Section 302, IPC. For the offence under Section 304B[2], IPC, the accused-appellant has been sentenced to undergo rigorous imprisonment for 10 [ten] years. Both the sentences are ordered to run concurrently.

2. The case of the prosecution, in brief, was that the investigation was set into motion on receipt of a First Information Report [‘FIR’, for short] from one Smti. Sathi Nag before the Officer In-Charge, Hojai Police Station on 17.01.2016. In the said FIR, three persons including the accused-appellant, were named as accused. The accused-appellant was the husband of one Jhuma Paul, who was the daughter of the informant, Smti. Sathi Nag. The other two accused persons named in the FIR were the mother and the sister-in-law respectively of the accused-appellant.

3. In the FIR, the informant had inter alia alleged that her daughter was leading her conjugal life with the accused-appellant in a tenanted room at Govindapalli, Hojai for about last two years. It was alleged that the accused-appellant used to torture the daughter of the informant, both physically and mentally, demanding dowry. Unable to bear the brunt of torture meted out to her by the accused-appellant, the daughter of the informant had to take

shelter in the house of the informant along with her 14 months old child about two months earlier. By specifically mentioning about the incident, the informant stated that at around 6-00 p.m. on 16.01.2016, the accused-appellant came to the house of the informant. Promising that he would not subject the daughter of the informant to any kind of torture, the accused-appellant stayed for that night in the house of the informant. But at around 12-30 a.m. on 17.01.2016, the accused-appellant strangled the daughter of the informant on bed and the informant witnessed the said incident. The informant further alleged that the other two accused persons named in the FIR were indirectly involved for the incident.

4. On receipt of the FIR, the Officer In-Charge, Hojai Police Station registered the same on 17.01.2016 as Hojai Police Station Case no. 15/2016 [corresponding G.R. Case no. 97/2016] for the offence under Sections 302, IPC read with Section 34, IPC and investigation of the case was entrusted to one Sri Nokul Phukan, a Sub-Inspector of Police attached to Hojai Police Station.

5. The Investigating Officer [I.O., for short] of the case during the course of the investigation, recorded the statements of the witnesses under Section 161, Code of Criminal Procedure [Cr.P.C. or 'the Code', for short]. The I.O. of the case also visited the place of occurrence; prepared a Sketch Map and seized certain items by a Memorandum of Seizure. The I.O. of the case through an Executive Magistrate conducted inquest on the dead body of the deceased, that is, the daughter of the informant on 17.01.2016 and thereafter, forwarded the dead body for post-mortem examination at the B.P. Civil Hospital, Nagaon wherein the post-mortem examination was performed on 17.01.2016. The accused-appellant was arrested on the date of the incident itself. The I.O. of the case after completing the investigation of the case, submitted a charge-sheet under Section 173[2], Cr.P.C. vide Charge-Sheet no. 5/2016 on 29.01.2016 in connection with Hojai Police Station Case no. 15/2016 finding a prima facie case for the offences under Section 302, IPC and Sections 3/4, Dowry Prohibition Act, 1961 well established against the accused-appellant.

6. On receipt of the charge-sheet, the Court of learned Sub-Divisional Judicial Magistrate, Hojai at Sankardev Nagar secured the production of the accused from jail custody

on 25.04.2016. After furnishing copies to the accused in compliance of the provisions of Section 207, Cr.P.C., the Court of learned Sub-Divisional Judicial Magistrate, Hojai at Sankardev Nagar committed the case records of G.R. Case no. 97/2016 to the Court of Sessions, Nagaon as the offence under Section 302, IPC is exclusively triable by the Court of Sessions and the Public Prosecutor was notified accordingly. On receipt of the case records of G.R. Case no. 97/2016, pursuant to the Order of Commitment dated 25.04.2016, the Court of Sessions registered the same as Sessions Case no. 25[N]/2016.

7. Upon securing the production of the accused from the jail custody; hearing the learned Public Prosecutor and the defence counsel; and perusal of the materials on record; the learned trial court on 27.05.2016 framed the following charges:

“First - That you, on or about the 17th day of January, 2016 at about 12-30 p.m. at night did commit murder by intentionally (or knowingly) causing the death of Jhuma Paul, and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within the cognizance of the Court of Session.

Secondly - That, on the same date and time you committed murder to the victim Jhuma Paul by hacking for dowry and you thereby committed an offence punishable Under Section 304 (B) of the Indian Penal Code and within the cognizance of this Court.”

8. When the charges were read over and explained to the accused, he pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined 11 [eleven] numbers of witnesses and exhibited 6 [six] numbers of documents to bring home the charges against the accused. After closure of the evidence from the prosecution side, the accused was examined under Section 313, Cr.P.C. and his plea was that of denial. When the accused was asked whether he would adduce any evidence, he declined to adduce any evidence in defence. After appreciation of the evidence on record and hearing the learned counsel for the parties, the learned trial court convicted the accused for the offences, mentioned above, and he has been sentenced in the manner, indicated above.

9. We have heard Mr. M. Dutta, learned Amicus Curiae for the accused-appellant and Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, assisted by Ms. M. Chakraborty, learned counsel for the respondent State of Assam.

10. Mr. Dutta, learned Amicus Curiae appearing for the accused-appellant has submitted that conviction of the accused-appellant is not sustainable either under Section 302, IPC or under Section 304B, IPC, as ingredients of either of the said two offences are found absent. Drawing attention to the definition provided in Section 300, IPC, it is submitted by him that none of the four situations mentioned in Section 300, IPC is present in the case in hand. According to him, as there was no wound and no ligature mark on the neck of the deceased, it cannot be said that the death of the deceased was homicidal. He has contended that since the Post-Mortem Examination Report did not refer to anything as to the underlying cause of ecchymosis [discolouration of the skin] and the prosecution had failed to prove the commission of murder by the accused beyond all reasonable doubts, there was possibility that the death might be natural also. In such situation, the conviction of the accused-appellant under Section 302, IPC is not sustainable as in such a case, the benefit of doubt should go to the accused. As regards the charge under Section 304B, IPC, he has submitted that there should be proximity of any act of demanding dowry or harassment demanding dowry to the incident of death, which must be for reasons otherwise than normal circumstances. He has contended that the informant [P.W.2] had alleged that ten days prior to the death of the deceased, the accused-appellant had visited his matrimonial house and after he met the deceased, demanded dowry. Such an act cannot, according to the learned Amicus Curiae, be considered to be proximate to the death of the deceased to come within the phrase, 'soon before her death' appearing in Section 304B, IPC. He has further contended that the presumption under Section 113B of the Indian Evidence Act, 1872 [the Evidence Act, for short] would not be resorted to as there was no evidence to show that 'soon before her death', the deceased was subjected to cruelty or harassment by the accused-appellant. To buttress his submissions, Mr. Dutta has referred to the decisions of the Hon'ble Supreme Court in Tarsem Singh vs. State of Punjab, reported in [2008] 16 SCC 155; and Vijay Pal Singh and others vs. State of Uttarakhand, reported in [2014] 15 SCC 163.

11. Ms. Bhuyan, learned Additional Public Prosecutor for the State has supported the Judgment and Order of conviction and sentence passed by the learned trial court. It has been contended by Ms. Bhuyan that the ingredients required to be fulfilled for a case of 'dowry death', defined under Section 304B, IPC, had been proved by the prosecution beyond all reasonable doubts, as the requirement in such a case for the prosecution is to probabalize the case for the presumption under Section 113B of the Evidence Act to get operational. On the expression, 'soon before her death' appearing in Section 304B, IPC, Ms. Bhuyan has submitted that the requirement is existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. The incident which occurred ten days prior to the death of the deceased and the death of the deceased on 17.01.2016, by no stretch, can be said to be not proximate. It fulfills the idea of proximity as the Legislature has not laid down any definite period for the same and the expression, 'soon before her death' is not defined. The determination of period on the point of proximity is dependent on the facts and circumstances of a given case. In the case in hand, as the interval between the concerned act of cruelty or harassment and the date of death was hardly ten days and there is evidence that even prior to ten days of the incident there used to be constant demands for dowry and consequent harassment, as a result of which the deceased had to leave the company of the accused-appellant and was forced to live in her paternal house, is the clear evidence that there was constant demands for dowry and harassment for demands of dowry. Ms. Bhuyan has further contended that if the death of the deceased is due to any of the situations defined in Section 300, IPC, then the accused can be convicted both under Section 304B, IPC and Section 302, IPC. As the ingredients of both the offences under Section 304B, IPC and Section 302, IPC were, present, the learned trial court has rightly convicted the accused-appellant for both the offences and as such, no interference with the impugned Judgment and Order of conviction and sentence is called for. Ms. Bhuyan has relied in the decision of the Hon'ble Supreme Court in Tarsem Singh [supra], wherein the expression, 'soon before her death' has been explained.

12. We have given due consideration to the submissions of learned counsel for the parties and have also perused the materials/evidence available in the case records of

Sessions Case no. 25[N]/2016, in original. We have also gone through the decisions cited at the Bar.

13. At the inception, it would be appropriate to refer to the testimonies of the witnesses recorded during the trial.

14. The informant who was the mother of the deceased [Jhuma Paul], was examined as P.W.2. In her testimony, P.W.2 deposed to the effect that the marriage between the deceased and the accused was solemnized three years earlier. After the marriage, the deceased and the accused stayed in Shillong for about a year and thereafter, they started staying in a tenanted house in Govindapalli, Hojai. P.W.2 further stated that the accused used to pressurize her daughter to bring Rs. 2,00,000/- from her parents and her daughter, that is, the deceased informed her about the same by coming to her parental house. P.W.2 further stated that the amount demanded from them could not be paid to the accused due to their poverty. The accused used to assault and torture his wife as her parents could not meet his demand. As a result of assault and torture, her daughter had to come back to her parental house with her child. P.W.2 further stated that the accused had visited their house ten days prior to the incident and demanded Rs. 2,00,000/- from them. Since she could not meet his demand, he made a nuisance and left their house. It was on 16.01.2016, the accused came to the house of the informant again and said that he would not subject her daughter to torture demanding money. Then, P.W.2 told the accused to stay in their house. On 16.01.2016, the accused went out for a walk in the evening hours after taking evening tea and after returning home from the evening walk, he took his meal. Thereafter, P.W.2 told the accused to stay in a room along with her daughter. It was at around 12-30 a.m., P.W.2 heard the cry of the child of her daughter. Hearing the cry, she entered the room wherein she saw the accused strangulating her daughter by sitting upon her chest. Then, she removed the hands of the accused and sounded an alarm. Then her husband [P.W.3] of P.W.2 got up and came to the room. Thereafter, other people also gathered at the spot. P.W.2 further deposed that the accused tried to flee, but he could not do so. As her daughter, at that time, experienced difficulty to breathe, she was taken to the Hojai Civil Hospital in an auto-rickshaw. As her daughter was not kept at the Hojai Civil Hospital, they took her to another hospital, HAMM Hospital, where

she was declared dead. The accused was apprehended by the Police on that very night. The dead body of the deceased was taken away by the Police and the FIR was lodged on the following day. P.W.2 exhibited the FIR as Ext.-2 with her signature thereon as Ext.-2[1].

14.1. In her cross-examination, P.W.2 stated that the marriage of the deceased and the accused was solemnized at Kamakhya and the accused was a driver by profession. P.W.2 also stated that the door of the room in which the deceased and the accused slept, was open. It was deposed by P.W.2 that on the date of the incident, a festival was going on near their house and music was played there. P.W.2 denied suggestions to the effect that the door of the room wherein the accused had slept was closed; that she did not remove the hand of the accused from the neck of the deceased; that the accused was massaging her daughter as she was unwell; and that the accused did not squeeze the neck of the deceased. P.W.2 also denied the suggestion to the effect that she did not state to the Police that she had removed the hands of the accused. The presence of persons, namely, Monika Mandal [P.W.8] and Tapashi Das [P.W.6] at the house of the informant after the incident was acknowledged.

15. The husband of the informant [P.W.2] and the father of the deceased testified as P.W.3. P.W.3 like P.W.2, deposed that the marriage between the deceased and the accused was solemnized about three years earlier. He corroborated the testimony of P.W.2 by deposing that initially, the couple stayed at Shillong and thereafter, they shifted to Hojai and started staying in a tenanted house at Govindapalli. P.W.3 also supported the testimony of P.W.2 by stating that the accused used to assault the deceased demanding money and as a result, the deceased had to return to her paternal house. Like P.W.2, P.W.3 also stated that the deceased was staying in their house for about two months and during that time, the accused came to their house and said that he would not assault the deceased any more by demanding money. As regards the incident, P.W.3 stated that on that day, after taking tea, the accused went out for a walk. After returning from walk, he had his meal and was sleeping in their house. P.W.3 testified that the deceased and the accused were in one room. At night, finding their granddaughter crying, his wife [P.W.2] entered their room and saw the accused squeezing the neck of their daughter by sitting upon her chest. Then, his wife [P.W.2] sounded alarm and he got up. Getting up, he went to that room. He stated that other people also arrived there and

the accused was kept apprehended. P.W.3 supported the version of P.W.2 that their daughter was first taken to the Civil Hospital and as she was not admitted there, she had to be taken to another hospital, HAMM Hospital, where she was declared dead.

15.1. When P.W.3 was cross-examined, P.W.3 also stated that the marriage was solemnized at Kamakhya. He denied a suggestion that he did not know about the incident. He admitted that he stated before the Police that they had got the deceased and the accused shifted to Hojai from Shillong and made them stay at Hojai in a tenanted house wherein their granddaughter was born. P.W.3 clarified that the accused had visited their house once during the period of two months. He further stated that the deceased was not in a position to speak when he saw her. The deceased appeared to have breathed just 2/3 times. He denied the suggestion that the accused did not commit any assault on their daughter demanding money and he did not see the accused squeezing the neck of his daughter.

16. P.W.4 was the elder brother of the informant [P.W.2] and was an uncle of the deceased. P.W.4 testified that at around 1-00 a.m. in the night intervening 16.01.2016 and 17.01.2016, he was at his house. Rathindra Dey [P.W.9] called one of his brothers, Sanjit Dey [P.W.5] and informed Sanjit Dey [P.W.5] that the deceased was seriously unwell. Accordingly, P.W.5 informed him about the same and he along with his younger brother, Bijit Dey went to the house of the deceased. Finding the condition of his niece, Jhuma Paul very critical and seeing his younger sister, that is, the informant [P.W.2] wailing and weeping, he took Jhuma Paul to the Civil Hospital, Hojai. According to him, the informant [P.W.2] and the accused also accompanied them. The doctor there declared Jhuma Paul dead. Later on, he was told by P.W.2 that the accused used to torture the deceased demanding Rs. 2,00,000/- and the accused had strangled the deceased by sitting upon her chest. He found a black mark present on the neck of the deceased.

16.1. In his cross-examination, P.W.4 stated that he was not present at the time of the incident. The house of the informant [P.W.2] is situated about 3 kilometers from his house. When he reached the place of occurrence, a lot of people had already gathered there. He stated that he did not state to the Police that when they were taking Jhuma Paul to the

hospital, they were accompanied by the informant [P.W.2] and the accused. He denied the suggestion that P.W.2 did not tell him that the accused had strangled Jhuma Paul by sitting upon her chest. He also denied the suggestion that he did not state before the Police that there was a black mark found on the neck of Jhuma Paul.

17. P.W.5 is a younger brother of the informant [P.W.2] and an uncle of the deceased. Narrating about the incident, P.W.5 testified to the effect that he was informed by Rathindra Dey [P.W.9], a neighbour of P.W.2, at around 1-00 a.m. in the night intervening 16.01.2016 and 17.01.2016, over phone that the condition of Jhuma Paul became very critical and he should be at her house immediately. Then, he informed his elder brother, Ashish Dey [P.W.4] whereupon P.W.4 accompanied by a younger brother went to the house of Jhuma Paul. P.W.5 stated that his elder brother, P.W.4 took Jhuma Paul to hospital where the doctor declared Jhuma Paul dead. P.W.4 informed him about the same and he then rushed to the Civil Hospital, Hojai to take stock of the situation. Then, he was told by P.W.2 that the accused had strangled Jhuma Paul and he had been torturing Jhuma Paul demanding Rs. 2,00,000/- from her since a couple of months prior to the incident. P.W.5 also stated that his niece, that is, the deceased also intimated about the same. P.W.5 stated that unable to bear the brunt of torture meted out to his niece, Jhuma Paul by the accused, she had to take shelter at the house of her mother [P.W.2], that is, his elder sister. P.W.5 further stated that the accused tortured Jhuma Paul about ten days prior to the incident of death by visiting the house of his elder sister [P.W.2]. He exhibited the Inquest Report [Ext.-1] with his signature therein as Ext.-1[2] stating that the inquest was performed by an Executive Magistrate.

17.1. In cross-examination, he denied the suggestions that he did not state before the Police that Rathindra Dey [P.W.9] made any phone call to him; that on getting information that Jhuma Paul was unwell, he had sent his elder brother; and that he noticed a black mark on the neck of the deceased. He also denied the suggestions that P.W.2 did not tell him that the accused had strangled Jhuma Paul; and that Jhuma Paul did not inform him about the demand of Rs. 2,00,000/- by the accused.

18. P.W.6 is a neighbour of P.W.2 and he stated that he knew the accused. He deposed

that the incident took place at around 1-00 a.m. in the night intervening 16.01.2016 and 17.01.2016. Hearing hue and cry from the house of the informant [P.W.2], he went there and found Jhuma dead. Jhuma was found not breathing and the accused was standing nearby Jhuma. He found the informant [P.W.2] also weeping and he was told by P.W.2 that the accused had strangled her daughter, Jhuma. P.W.2 told him that she came there hearing the sound of foot thumping of her daughter against the bed Jhuma's maternal uncle came and took her to doctor and the doctor declared Jhuma dead. P.W.6 stated to have heard that there used to be quarrel between the accused and the deceased and the deceased said that there was a demand for Rs. 2,00,000/-. According to him, there was a red mark on the neck of Jhuma Paul.

18.1. In his cross-examination, P.W.6 stated that at the time of the incident, music was being played over a loud speaker at a short distance from the place of occurrence and when he reached the place of occurrence, he found the parents of Jhuma Paul at the place of occurrence. He denied the suggestion that the informant [P.W.2] did not tell him that the accused had strangled her daughter; and that Jhuma Paul did not tell him that the accused had demanded Rs. 2,00,000/-. He further denied the suggestion that he did not tell before the Police that he had informed the maternal uncle of Jhuma Paul about the incident; and that he had noticed a red mark on the neck of Jhuma Paul.

19. P.W.7, a neighbour of the informant [P.W.2], deposed to the effect that it was at around 1-00 a.m. on the date of the incident, he went to the house of the informant [P.W.2] hearing commotion. Reaching there, he saw Jhuma Paul lying on a bed and by the time he reached the place of occurrence, a lot of people had already assembled there. Later on, Jhuma Paul was taken to the doctor and the doctor declared her dead. He stated to have heard that the accused had assaulted Jhuma Paul demanding Rs. 2,00,000/- prior to ten days prior to the incident and that the accused had strangled her.

19.1. When P.W.7 was cross-examined, he stated that when he reached the house of the informant [P.W.2], he found about 15/20 people present there. He stated that he had witnessed the accused assaulting the deceased ten days prior to the incident. He denied the

suggestion that the deceased did not tell him that the accused had demanded Rs. 2,00,000/- from her. He stated that at the place of occurrence, the accused was sitting on the bed.

20. P.W.8 is another neighbour of the informant [P.W.2]. P.W.8 testified that she went to the house of the informant [P.W.2] hearing commotion from there at around 1-00 a.m. on the date of the incident. Going there, P.W.8 found P.W.2 wailing. When P.W.2 was asked, P.W.2 told her that Jhuma Paul had been strangled by the accused. P.W.8 also stated that she saw Jhuma Paul lying on the bed and was not taking her breath. P.W.8 noticed a mark on the neck of Jhuma Paul. P.W.8 also stated that the accused had a quarrel with Jhuma Paul prior to the incident. Then, seeing Jhuma Paul weeping, she asked her as to what had happened. Then Jhuma Paul replied that the accused had assaulted her demanding Rs. 2,00,000/-.

20.1. In her cross-examination, P.W.8 stated that at the time of occurrence, music was played over a loud speaker at a little distance from the place of occurrence. At the place of occurrence, she found presence of 15/16 persons there. P.W.8 denied the suggestions that she did not state before the Police that she had noticed a black mark on the neck of the deceased; and that when she had asked the deceased ten days prior to the incident, Jhuma Paul replied that the accused had assaulted her demanding Rs. 2,00,000/-.

21. P.W.9 is another neighbour of the informant [P.W.2], who knew the accused as the son-in-law of the informant. P.W.9 in her testimony-in-chief, stated that at around 12-30/1-00 a.m., on the date of the incident, she went to the house of the informant hearing commotion and going there, she found Jhuma Paul lying on the bed and her parents weeping by sitting near her. When he asked, P.W.2 replied that the accused had strangled Jhuma Paul. P.W.9 stated that it was then he informed the maternal uncle of Jhuma Paul about the matter over phone. The maternal uncle of Jhuma Paul then came and took her to the hospital. But Jhuma Paul had expired in the meantime. P.W.9 stated that the accused attempted to flee from the scene, but he was kept apprehended at the place of the incident. P.W.9 also stated that ten days prior to the incident, the accused had assaulted Jhuma Paul demanding Rs. 2,00,000/- from her and he witnessed the incident.

21.1. In his cross-examination, P.W.9 stated that when he reached the place of occurrence, that is, the house of the informant, he found the accused inside the room. He denied the suggestion that he did not state before the Police that he made a phone call to the maternal uncle of Jhuma Paul; and that the accused had attempted to flee from the scene.

22. P.W.9 was working as the Senior Medical Officer at the B.P. Civil Hospital on 17.01.2016, when he performed post-mortem examination on the dead body of the deceased, who, according to him, was about 21 years old. He stated that the post-mortem examination was performed on the basis of a Police requisition and in reference to Hojai Police Station G.D. Entry no. 370/2016 dated 17.01.2016. On performing autopsy on the dead body, he saw ecchymosis approximately 5 c.m. length x ½ c.m. breadth on right side of neck, reddish in colour. The face of the deceased was found pale and lips were cyanosed. As per his opinion, the death was due to throttling or mechanical obstruction of air passage [asphyxia due to throttling]. He exhibited the Post-Mortem Examination Report as Ext.-3 with his signature therein as Ext.-3[1].

22.1. In cross-examination, P.W.10 stated that the dead body was examined at 1-30 p.m. on 17.01.2016. He stated that he did not specifically mention as to how and by what substance the mechanical obstruction was caused. He did not mention the time of death of the victim. He further stated that death could be caused immediately within a second after obstruction or throttling. He denied the suggestion that he did not properly examine the dead body.

23. P.W.11 was the Investigating Officer of the case. He stated that after registration of Hojai Police Station Case no. 15/2016, on receipt of the FIR at around 1-00 p.m. on 17.01.2016, he went to the Hojai F.R.O. to see the dead body of the victim. The dead body of the victim and the accused were thereafter taken to the Police Station and inquest over the dead body was conducted. He stated that he visited the place of occurrence and drew a Sketch Map. He exhibited the Inquest Report, which was done by the Circle Officer, Hojai, as Ext.-5. He stated that the post-mortem examination on the dead body was performed at the B.P. Civil Hospital, Nagaon. The mobile phone of the accused was seized vide a Seizure List

[Ext.-6]. P.W.11 stated that after arrest, the accused was forwarded to the jurisdictional Magistrate on 18.01.2016.

23.1. In his cross-examination, P.W.11 stated that one Dhirendra Nag [P.W.3] informed at the Police Station by making a telephone call that his daughter was killed by the accused. The investigation of the case was entrusted to him by the Officer In-Charge at around 2-40 p.m. on 17.01.2016, whereas the occurrence took place at around 12-30 a.m. on that day. He deposed that in the previous statement, the informant [P.W.2] did not tell him that the door of the room where the deceased and the accused were sleeping was open; and that music was being played nearby at the time of the incident. P.W.11 stated that P.W.2 did not tell him that the hand of the accused was not removed; and that P.W.6 and P.W.8 did not come to the place of occurrence. He further stated that when he visited the place of occurrence, the door was found open. P.W.11 stated that P.W.4 told him that the informant and the accused were taken to the hospital, but P.W.4 did not tell him that the victim had a mark on her neck. P.W.11 further stated that P.W.5 did not tell him that the accused demanded Rs. 2,00,000/- from the deceased. As regards the previous statement of P.W.6, P.W.11 stated that P.W.6 did not state that the accused was sitting nearby and there was a red mark on the neck of the victim.

24. P.W.1, who was serving as the Circle Officer, Hojai Revenue Circle on 17.01.2016, conducted inquest on the dead body of the deceased on the basis of Police requisition and in reference to Hojai Police Station G.D. Entry no. 370/2016 dated 17.01.2016. In her testimony, P.W.1 stated that during the inquest, she found some marks around the neck of the dead body. Later on, the dead body was sent to the B.P. Civil Hospital for post-mortem examination. P.W.1 testified that as per the report received from the Police and the witnesses, the deceased was strangled by her husband. P.W.1 exhibited the Inquest Report as Ext.-1 with her signature therein as Ext.-1[1]. P.W.1 further stated that the witnesses signed on the inquest report in her presence, after completion of the Inquest Report.

24.1. In her cross-examination, P.W.1 stated that she did not submit the Police requisition along with the Inquest Report and she did not mention any identification mark on the dead body. P.W.1 stated to have found the dead body in a stiff condition.

25. At this stage, it is apposite to refer to the provisions of Section 304B, IPC. For ready reference, Section 304B, IPC is quoted hereinbelow:

Section 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 purposes 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.

26. Section 304B, IPC has been inserted in the Indian Penal Code in the year 1986 along with Section 113B in the Indian Evidence Act, 1872. As such, the provisions of Section 113B of the Evidence Act is also relevant and the same is quoted hereinbelow:

Section 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 304B of the Indian Penal Code [45 of 1860].

27. A three-Judge Bench of the Hon'ble Supreme Court in Devender Singh & Ors. vs. State of Uttarakhand, reported in [2022] 13 SCC 82, has culled out the main ingredients of the offence under Section 304B, IPC in the following manner :

10. A perusal of the above provision would indicate that the main ingredients of the offence required to be established are :

10.1. That soon before the death, the deceased was subjected to cruelty and harassment in connection with the demand of dowry.

10.2. The death of the deceased was caused by any burn or bodily injury or some other circumstance which was not normal.

10.3. Such a death has occurred within 7 years from the date of her marriage.

10.4. That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

10.5. Such a cruelty or harassment should be for, or in connection with the demand of dowry.

10.6. It should be established that such cruelty and harassment were made soon before her death.

28. In Devender Singh [supra], the interplay between the provisions of Section 304B, IPC vis-à-vis Section 113B of the Evidence Act is interpreted in the following manner :

12. Section 304-B IPC read along with Section 113-B of the Evidence Act, 1872 makes it clear that once the prosecution has succeeded in demonstrating that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry soon before her death, a presumption shall be drawn against the said persons that they have caused dowry death as contemplated under Section 304-B IPC. The said presumption comes with a rider inasmuch as this presumption can be rebutted by the accused on demonstrating during the trial that all the ingredients of Section 304-B IPC have not been satisfied. [Ref. : *Bansi Lal v. State of Haryana*, [2011] 11 SCC 359; *Maya Devi v. State of Haryana*, [2015] 17 SCC 405; *G.V. Siddaramesh v. State of Karnataka*, [2010] 3 SCC 152; and *Ashok Kumar v. State of Haryana*, [2010] 12 SCC 350.]

29. When a charge is framed under Section 304B, IPC in a trial, one of the crucial issues required to be determined is whether the victim was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry,

'soon before her death'. The expression, 'soon before her death' has come for consideration of the Hon'ble Supreme Court in Tarsem Singh [supra]. In Tarsem Singh [supra], the Hon'ble Court has referred to the following excerpts of the Harjit Singh vs. State of Punjab, reported in [2006] 1 SCC 463 :-

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'.' [*Harjit Singh case* [(2006) 1 SCC 463; SCC pp. 469-70, paras 17 & 19].

29.1. A three-Judge Bench in Kans Raj vs. State of Punjab, reported in [2000] 5 SCC 207, has observed as under :-

15. ... 'Soon before' is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the

prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.

30. From the observations made in Harjit Singh [supra], it is evident that the expression, 'soon before her death' is an elastic concept and does not refer to a specific time period. It is left for the court to decide, on the facts and circumstances of each case, whether the interval in a particular case is sufficient to bring in the concept, 'soon before her death' or not. The crucial issue for determination is the establishment of a proximate and live link between the cruelty or harassment and the consequential death of the victim. The time-period between the two events can be either immediately within few days or within few weeks. Noticeably, the presumption under Section 113B of the Evidence Act is a presumption of law. Thus, it is evident that once the prosecution discharges its initial burden of proof, on the three aspects that the death of the woman is caused, *firstly*, by any burns or bodily injury or otherwise than under normal circumstances; *secondly*, within seven years of her marriage; and *thirdly*, 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, the presumption of law in Section 113B of the Evidence Act is activated. It has been observed in Sher Singh alias Partapa vs. State of Haryana, reported in [2015] 3 SCC 724, that once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon, transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It has been further observed that what the Parliament has intended by using the word 'deemed' is that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt and such interpretation provides the accused a chance of proving their innocence, which is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113B of the Evidence Act and Section 304B, IPC is to counter what is commonly encountered as the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage.

31. Reverting back to the facts of this case in hand, it has emerged from the evidence that the incident of death had occurred in the night intervening 16.01.2016 and 17.01.2016. The marriage between the deceased and the accused was solemnized about three years earlier to the date of the incident, which led to the death of the wife of the accused. It is not the case of the defence that the marriage was not solemnized within a period of seven years from the date of the death of the deceased as the defence did not cross-examine any of the witnesses on the said aspect. In the Post-Mortem Examination Report [Ext.-3], it has been reported that the cause of death was due to asphyxia or mechanical obstruction of air passage [asphyxia due to throttling]. The autopsy doctor, who as P.W.10, had testified to the same effect. Without going into the testimonies of the other prosecution witnesses, it can be safely held that the death of the deceased was not natural. The third aspect which requires consideration is as to whether the victim was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry soon before her death. As per the Explanation to sub-section [1] of Section 304B, IPC, 'dowry' has the same meaning as defined in Section 2 of the Dowry Prohibition Act, 1961. The parents of the victim, P.W.2 and P.W.3 were categorical and consistent in their testimonies that since the deceased and the accused started residing in a tenanted at Govindapalli, Hojai, the accused used to pressurize their daughter to bring Rs. 2,00,000/- from them. The reason for returning of the deceased to her paternal house, evidently, was their failure to meet the demand of dowry of the accused due to their poverty. The parents of the deceased, in their testimonies, deposed that since two months prior to the date of the incident, their daughter started residing in their house along with her infant child. They had made specific reference to an incident which occurred ten days prior to the death of their deceased daughter. P.W.2 had deposed that the accused came to their house ten days prior to the incident and demanded Rs. 2,00,000/- from them and since they as the parents of the wife of the accused could not meet his demand, the accused made nuisance on that day and left their house. When P.W.3 was cross-examined, he stated that that accused visited their house during the period of two months. The version of P.W.2 as regards the visit of the accused ten days prior to the incident and his demand of Rs. 2,00,000/- was not challenged in the cross-examination or in any other manner by the defence. P.W.4, the uncle of the deceased, testified that his niece, that is, the deceased, informed him about the demand of Rs. 2,00,000/- made by the accused.

P.W.4 was not confronted on the said aspect when he was cross-examined by the defence. P.W.5 had corroborated the version of P.W.2 by deposing that the accused tortured his niece, that is, the deceased, by going to the house of her parents ten days prior to the incident. It is the version of the prosecution that in the incident which occurred in the night intervening 16.01.2016 and 17.01.2016, the accused was present inside the parental house of the deceased, that is, the house of P.W.2 and P.W.3. It is not the case of the defence that the accused was not present in the house with the deceased in the night intervening 16.01.2016 and 17.01.2016.

32. From the above discussion, we are of the considered view that the evidence adduced by the prosecution on the three essential aspects was sufficient to establish the ingredients of Section 304B, IPC with regard to the demand for dowry and perpetration of cruelty or harassment in relation to such demand. The incident which occurred ten days prior to the death of the deceased is found to be a proximate and live link to come within the expression, 'soon before her death', which ultimately led to the death of the deceased, the reason for death being throttling or mechanical obstruction of air passage [asphyxia due to throttling]. In view of all the three essential aspects prescribed in Section 304B, IPC, it was become obligatory on the part of the learned trial court to raise a presumption that the accused had caused the dowry death. The onus to rebut got shifted to the accused due to activation of the presumption of law under Section 113B of the Evidence Act. Save and except a feeble plea that he did not commit any such offence, there was no explanation from the accused when he was examined under Section 313, Cr.P.C. by putting the incriminating evidence led against him where he was asked to explain any circumstances appearing in the evidence against him, as emerged from the testimonies of the prosecution witnesses and documentary evidence like Post-Mortem Examination Report. When the accused was asked whether he would want to adduce evidence for his defence, he declined to adduce any evidence. Thus, in view of failure to lead any rebuttal evidence by the accused, we are of the unhesitant view that the learned trial court has correctly recorded the finding on the charge framed under Section 304B, IPC by holding that the offence of dowry death is proved against the accused. Thus, no interference in respect of the said finding is called for.

33. The other aspect which requires consideration is whether the accused can be held guilty for the offence of murder under Section 300, IPC, which is punishable under Section 302, IPC. An offence under Section 304B, IPC covers the death of a woman when such death is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, subject to other conditions mentioned therein. Like the offence defined as dowry death under Section 304B, IPC, an offence of murder cannot be proved with the presumption drawable under Section 113B of the Evidence Act. In other words, an offence of murder defined under Section 300, IPC is required to be proved by the prosecution without the aid of any presumption. In respect of an accused who is called upon to defend a charge of offence of murder, the onus of proof never shifts to him and the burden of proof is always on the prosecution.

34. The Law Commission of India in its 202nd Report on Proposal to Amend Section 304B of Indian Penal Code, submitted in October, 2007, after discussing a large number of precedents, has observed inter alia that dowry death is different from the offence of murder. Dowry death per se does not involve the direct connection between the accused and the offence because of its presumptive character. Where the evidence in a given case clearly shows that the accused wilfully put human life to peril, the case will attract the provisions of Section 300, IPC read with Section 302, IPC and it will no longer be a case of dowry death simpliciter. It is, thus, evident that in a case of dowry death, there may or may not be direct involvement of the accused in the death of the woman. In case there is direct act of the accused which attributed to the death of the woman, then such an accused can also be tried for the offence under Section 302, IPC.

35. The offence of murder is defined in Section 300, IPC as under:

300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or —

Secondly. — If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to

whom the harm is caused, or—

Thirdly. — If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly. — If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

36. As per Section 299, IPC, whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. All culpable homicides are not murders, but all murders are culpable homicides. An act of culpable homicide is to be considered as murder if an act of culpable homicide comes under any of the four categories defined in Section 300, IPC, subject to the five exceptions mentioned therein.

37. A death of a woman within seven years of marriage can either be homicidal or the cause of death may be not natural, that is, other than homicidal. In view of the ingredients for the offence of murder, defined in Section 300, IPC, and for the offence of dowry death, defined in Section 304B, IPC, a charge under Section 304B, IPC cannot be said to be a substitute for a charge of murder, defined in Section 300, IPC and punishable under Section 302, IPC. However, a death is involved in every case of murder and also in a case of dowry death. The issue whether the case is of murder or of a dowry death depends upon the facts and circumstances and the evidence of the case. It has been held in *Vijay Pal Singh* [supra] that if there is evidence available on homicide in a case of dowry death, it is the duty of the Investigating Officer [I.O.] to investigate the case under Section 302, IPC and the prosecution to proceed in that regard and the Court to approach the case in that perspective. Merely because the victim is a married woman suffering an unnatural death within seven years of marriage and there is evidence that she was subjected to cruelty or harassment on account of demand for dowry, the prosecution and the Court cannot close its eyes on the culpable

homicide and refrain from punishing its author, if there is evidence in that regard, direct or substantial.

38. P.W.2, the mother of the deceased, in her testimony deposed to the effect that she witnessed the incident of strangulation in the night intervening 16.01.2016 and 17.01.2016. P.W.2 testified to the effect that on 16.01.2016, the accused came to their house again after the incident which occurred ten days earlier and assured that he would not subject his wife to torture demanding dowry. The accused was allowed to stay in the house of P.W.2 and P.W.3 where their daughter had been staying since last two months. P.W.2 stated that the accused in the evening hours of 16.01.2016 went for a walk after taking evening tea and after returning home, he took his meal. The accused was staying with his wife in a room in the parental house of his wife. It was at around 12-30 a.m., P.W.2 heard the cry of her grandchild, that is, the child of the deceased and the accused. Having heard the cry, P.W.2 entered the room where the deceased and the accused were staying together. Entering the room, she saw that the accused was strangulating her daughter by sitting upon her chest. Witnessing the same, she sounded an alarm. Having heard the alarm, her husband [P.W.3] got awake and came to the room. Thereafter, other people also assembled there. Though P.W.3 was not a direct witness to the incident of strangulation like his wife [P.W.2], he came to the room immediately after hearing the alarm of his wife [P.W.2] who witnessed the incident of strangulation. As the incident occurred in the house of P.W.2 and P.W.3, it is not unnatural for P.W.2 to witness the incident and for P.W.3 to reach the room, where the incident took place, immediately thereafter. As emerged from the Sketch Map [Ext.-5], the houses of P.W.6 and P.W.7, were in the near vicinity and their arrival at the place of occurrence, that is, the house of P.W.2 and P.W.3 immediately after hearing the alarm raised by P.W.2, appeared natural. When P.W.6 reached the place of occurrence, she was told by P.W.2 that it was the accused who had strangled her daughter. The time gap between the incident of strangulation and arrival of the two neighbours [P.W.6 and P.W.7] was small.

39. The ocular evidence of the prosecution witnesses that the death of the deceased was caused due to strangulation has found corroboration in the medical evidence. The Senior Medical Officer at the B.P. Civil Hospital, [P.W.10], who performed the post-mortem

examination on the dead body of the deceased on 17.01.2016, had reported that the death was caused due to throttling or mechanical stoppage of air passage [throttling due to asphyxia]. The Post-Mortem Examination Report [Ext.-3] has reported an injury on neck. P.W.1, the Circle Officer, Hojai Revenue Circle, who conducted the inquest, also reported in the Inquest Report [Ext.-1] that some marks were seen around the neck of the deceased. P.W.4, P.W.6 and P.W.8 in their testimonies had stated that they noticed a mark in the neck. The Post-Mortem Examination Report [Ext.-3] further reported about ecchymosis, reddish, pale face, cyanosed lips, etc. It further reported that there was no ligature mark. Thus, the medical evidence is found consistent with an act of strangulation by bare hands. In medical terminology, asphyxia is a generic term that indicates a condition resulting from an interference with respiration due to the lack of oxygen in the air or in the blood, a failure of cells to utilize oxygen or a failure of the body to eliminate carbon-dioxide. It occurs when the body does not receive or utilize an adequate amount of oxygen and there is impairment of oxygen and carbon dioxide exchange. As a result, there occurs loss of consciousness and death results from progressive hypoxia/anoxia. Asphyxia can also occur due to external compression of the neck using the body's own weight or a force other than the body's weight [hanging, ligature strangulation, manual strangulation]. As per the Oxford Dictionary of English, Third Edition, 'strangle' means squeeze or constrict the neck of a person, especially so as to cause death, and 'throttle' means attack or kill [someone] by choking or strangling them.

40. From the testimonies of the prosecution witnesses, it has emerged that the victim was immediately taken to the hospital and she was declared brought dead by the doctors. When the eye-witness, P.W.2 saw the victim, the victim was found having difficulty to breathe. The eye-witness account of the P.W.2 is found credible and trustworthy and the defence has not been able to shake such direct testimony in any manner whatsoever. The defence did not bring anything on record, which is suggestive of even remotely indicating presence of any other person, other than the accused, inside the room, where the incident had occurred.

41. A meticulous analysis of the entire evidence from record unerringly goes to indicate

that it was the accused only who committed the act of strangulation of the victim and it was the said act of strangulation of the accused by which death of the victim had been caused. The only conclusion which can be drawn is that the act of strangulation resulting into immediate death of the victim is done with the intention of causing death which comes within the ambit of Section 300, IPC and such an act being murder, is punishable under Section 302, IPC.

42. In view of the discussion made above, we find no reason, not to speak of good and sufficient reason, to take a view other than the view reached by the learned trial court on the charges of murder under Section 300, IPC and of dowry death under Section 304B, IPC. Consequently, the instant criminal appeal is found devoid of any merits. Thus, no interference is called for to the Judgment dated 16.03.2018 and the Order of Sentence dated 19.03.2018 passed by the learned trial court in Sessions Case no. 25[N]/2016. Accordingly, the instant criminal appeal is dismissed affirming the Judgment and Order of conviction and sentence passed by the learned trial court.

43. As the deceased has left behind a minor child, the District Legal Services Authority, Hojai is to provide appropriate compensation as per the provisions of Assam Victim Compensation Scheme, 2012 as amended, in exercise of powers conferred by Section 357A, Cr.P.C.

44. Before parting with the record, we wish to place our appreciation on record as regards the services rendered by Mr. M. Dutta, learned Amicus Curiae appearing for the accused-appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

45. The Registry to send back the records of the learned trial court forthwith.

JUDGE

JUDGE

Comparing Assistant