



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Principal Seat at Guwahati

Case No. Crl.A./330/2023

Suman Sharma @ Chuman Kr. Sharma,
S/o Sri Rajdeo Sharma,
Vill.- Nijarapar, Jagiroad, P.S.- Jagiroad,
Dist.- Morigaon, Assam,
PIN- 782410.

.....Appellant

-Versus-

1. The State of Assam,
Represented by P.P. Assam.
2. Kamakhya Thakur,
S/o Gopal Thakur,
R/o Jail Road, Ward No. 8, North Lakhimpur,
P.S.- Sinatoll, Dist.- Lakhimpur, Assam,
PIN- 787001.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant : Mr. S.R. Gogoi;

Advocate for the respondents : Mr. P.S. Lahkar, for respondent No. 1;

Mr. N. Barman, for respondent No. 2.

Date of hearing : **13.08.2024**

Date of judgment : **30.09.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. S.R. Gogoi, learned counsel for the accused/appellant and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1. Also heard Mr. N. Barman, learned counsel for the respondent No. 2.

2. Judgment, dated 07.08.2023, and order of sentence, dated 08.08.2023, passed by the learned Sessions Judge, Morigaon, in Sessions Case No. 81/2017, is impugned in this appeal, under Section 374(2) Cr.P.C.

3. It is to be noted here that vide impugned Judgment dated 07.08.2023 and the order of sentence dated 08.08.2023, the learned Sessions Judge, Morigaon ('trial Court', for short) has convicted the accused/appellant Sri Suman Sharma @ Chuman Kr. Sharma, under Section 304B IPC and sentenced him to undergo rigorous imprisonment for 8 years.

4. The background facts, leading to filing of the present appeal, are briefly stated as under:

"Sri Suman Sharma @ Chuman Kr. Sharma, accused/appellant here in got married with one Nirmala Thakur (since deceased),

daughter of Kamakhya Thakur, respondent No.2 here in, on 14.07.2010. After a few days of their happy conjugal life, marital discord surfaced when the present accused/appellant started demanding dowry and subjected Nirmala Thakur to both physical and mental cruelty. She was taken to the native place of the accused/appellant at Bihar, and there the accused/appellant, along with his mother Smti Saradha Devi, Smti. Sangita Sharma, wife of Sri Chutan Sharma (the brother of the accused/appellant) subjected her to different kinds of tortures. Thereafter, she was taken back to Jagiroad where the accused/appellant has business and on 21.09.2015, the accused/appellant and his brother Chutan Sharma committed murder of Nirmala Thakur and thereafter, the father of the appellant informed the respondent No. 2 at about 12:30 p.m. that his daughter suffered demise on account of her illness.

On receipt of an FIR to this effect from the respondent No. 2 Kamakhya Thakur, the Officer In-Charge, Jagiroad P.S. registered a case, being Jagiroad P.S. Case No. 45/2015, under Sections 304B/34 IPC and endorsed WSI Sonmoni Begum to investigate the same. The I.O. then visited the place of occurrence, examined the witnesses, arrested the accused/appellant and his brother Chutan Sharma and forwarded them to jail hazot and then she held inquest over the dead body of the deceased and sent the same for autopsy and thereafter, collected the report and on completion of investigation, the I.O. laid charge-sheet against the present appellant Suman Sharma to stand trial in the Court, under

Section 304B IPC. The learned Sub-Divisional Judicial Magistrate, Morigaon then secured the presence of the appellant and complying with the provision of Section 207, Cr.P.C., committed the case to the Court of learned Sessions Judge, Morigaon, being the case exclusively triable by the Court of Sessions.

On appearance of the accused/appellant and after hearing the learned Advocates of both sides, the learned Sessions Judge, Morigaon, vide order dated 18.01.2018, had framed following charges against the accused/appellant under Sections 302/304B, IPC :-

- (i) That, you, on 21.09.2015, at about 11 am, at village Nijarapar, under jagiroad Police Station, committed dowry death by causing the death of your wife, namely, Ms. Nirmala Thakur and thereby committed an offence punishable under section 304-B IPC which is within the cognizance of this court and I hereby direct that you be tried by said court on the aforesaid charge;
- (ii) That you on 21.09.2015, at about 11 am, at village Nijarapar, under jagiroad Police Station, committed murder by intentionally or knowingly causing death of your wife, namely, Ms. Nirmala Thakur, and thereby committed an offence punishable under section 302 IPC, which is within the cognizance of this court and I hereby direct that you be tried by said court on the aforesaid charge;

The learned Sessions Judge, then read and explained over the charges to the accused/appellant, to which he pleaded not guilty and claimed to be tried.

Thereafter, the learned Sessions Judge had examined the following witnesses:

- (i) Sri Kamakhya Thakur as P.W.1.
- (ii) Smti. Meena Devi Thakur as P.W.2.
- (iii) Smti. Shanti Devi as P.W.3.
- (iv) Dr. Sailendra Bardhan Borah as P.W.4.
- (v) Sri Ranjan Thakur as P.W.5.
- (vi) Sri Anjan Gohain Baruah as P.W.6.
- (vii) The I.O. WSI Smti. Sunmoni Begum as P.W.7.

The prosecution side had also exhibited the following documents:

- (i) FIR as Ext.1.
- (ii) Post-Mortem Examination Report as Ext.2.
- (iii) Inquest Report as Ext.P-3.
- (iv) Sketch Map as Ext.P-4.
- (v) Seizure List as Ext.P-5.
- (vi) FSL Report as Ext.P-6.
- (vii) Charge-sheet as Ext.P-7.

After closing the prosecution evidence, the learned Sessions Judge had examined the accused/appellant under Section 313 Cr.P.C. Thereafter, hearing learned Advocates of

both sides, the learned Sessions Judge had acquitted the accused/appellant of the charge under Section 302 IPC, but convicted him under Section 304-B IPC and sentenced him as aforesaid."

5. Being highly aggrieved, the accused/appellant has approached this Court by filing the present appeal, to set aside and quash the impugned judgment and order of conviction, dated 07/08/2023 and order of conviction, dated 08.08.2023, on the following grounds:

- I. That, the learned Sessions Judge, Morigaon had failed to appreciate the evidence in its true perspective and came to an erroneous finding of guilt of the accused/appellant;
- II. That, the prosecution had failed to prove the guilt of the accused/ appellant by adducing cogent evidence and having ruled out every other possibility consistent with the innocence of the accused/appellant;
- III. That, serious infirmities have been found in the evidence on record and on the basis of such evidence involvement of the accused/appellant cannot be said to have been proved beyond reasonable doubt, which is the cardinal principle of criminal jurisprudence;
- IV. That, the learned Sessions Judge, Morigaon had failed to appreciate the fact that the prosecution witness No. 1, Sri Kamakhya Thakur had deposed in his examination in chief that his daughter Late Nirmala Sharma was frequently tortured, both physically and mentally by her husband i.e.

the accused/appellant, however, he had not stated about any specific date or time of any incident of torturing his daughter Late Nirmala Sharma and payment of Rs.50,000/- to the accused/appellant in his examination-in-chief;

V. That, the learned Sessions Judge, Morigaon had failed to appreciate the fact that the prosecution witness No. 1, Sri. Kamakhya Thakur had deposed in his examination-in-chief that on close scrutiny of the dead body of the deceased, Nirmala Sharma, he had seen a round strangulation mark on the neck of the deceased and had also noticed black spots on the abdomen and on the backside of the deceased, but, he made no such statement before police;

VI. That, the learned Sessions Judge, Morigaon had overlooked the fact that the prosecution witness No. 1, Sri. Kamakhya Thakur had deposed in his examination in chief that after his daughter's marriage, she was residing in her matrimonial home at Bihar and that she was subjected to torture at her matrimonial house at Bihar, but, he had specifically and categorically stated in his cross-examination that he had not lodged any case in Bihar with respect to the harassment and torture of his daughter by the accused/appellant and his family;

VII. That, the learned Sessions Judge, Morigaon had failed to appreciate the fact that there is material contradiction in the versions of P.W. 2, Smti Meena Devi Thakur, with her previous statement in respect of subjecting her daughter to

mental torture in respect of demanding dowry, and the same has been proved by the I.O./P.W.7 and she had exaggerated her statement during trial court and she is neither reliable nor trustworthy and as such the same is liable to be rejected;

VIII. That, the Learned Sessions Judge, Morigaon had failed to appreciate the fact that although the prosecution witness No. 3, Smti Shanti Devi had stated that sometimes after marriage, deceased Nirmala Sharma had telephonically informed her that the deceased Nirmala Sharma was subjected to assault and torture over demand of money, and on such occasions, Late Nirmala Sharma was beaten for demand of money and the informant had paid a amount of Rs.50,000/- to the accused/appellant, however, she had not specified any specific date, time and place with respect to the aforementioned incident. Moreover, she was not examined by police and her evidence is neither clear nor consistent and as such the same is liable to be rejected.

IX. That, it is very clearly stated in the post-mortem report of the deceased that there is no external wounds present in the dead body, thus, the allegation by the prosecution witness with respect to the injury marks in the neck, abdomen or back of the dead body of the deceased Nirmala Sharma is not substantiated by the post-mortem report. Despite, the learned trial court had clearly overlooked the fact that the death of the deceased had occurred due to an internal injury/bleeding which had occurred in the spleen of the

deceased due to splenic rupture as a result of an enlarged spleen (Splenomegaly) which occurs when blood cells accumulate in the spleen. The most common cause of spontaneous rupture of an enlarged spleen is infectious mononucleosis, a viral infection that is spread through saliva.

- X. That, the learned trial court had failed to appreciate the fact that there is material contradiction in the evidence of the P.W.5, Sri. Ranjan Thakur, who is the brother of the deceased and the same has been proved by the I.O./P.W.7. Further P.W.5, Sri Ranjan Thakur had exaggerated his statement in the trial court, and his testimony is neither reliable nor trustworthy and the same is liable to be rejected.
- XI. That, the learned trial court had failed to appreciate the fact that the prosecution witness No. 6, Sri Anjan Gohain Baruah, who is a neighbor of the accused/appellant, had deposed that on the day of the incident i.e. 21/9/2015, he had seen the deceased in her residence in good health and in the noon while he returned home then the elder brother of the accused/appellant had informed him that the deceased died of her ailments, but, the learned trial court had assumed that the death of the deceased is an unnatural death and abdominal injuries might have caused her death;
- XII. That, the prosecution side had failed to prove that the injuries found inside the dead body of the deceased, were caused by the accused/appellant. There is absolutely no evidence appearing on record to establish that it was the

accused/appellant who had inflicted the injuries to deceased, which resulted in her death and in the absence of any cogent, believable and satisfactory evidence the accused/appellant could not be held guilty;

XIII. That, a conjoint reading of Section 113-B of the Evidence Act and Section 304-B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution side has failed to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates and evidence in that regard has to be led by prosecution. In the present case, there is no evidence, whatsoever, to show that the deceased had made any grievance of cruelty or harassment to any of her relatives or neighbors prior to her untimely death.

XIV. That the learned trial court had failed to appreciate the fact that although P.W. 1, 2, 3, 4, 5 had spoken about dowry related harassment to the deceased, but they had not given any specific evidence that the demand of dowry was continuous and persistent and that such demand was made soon before her death;

XV. That, the finding of guilt of the accused/appellant by the learned trial court is based primarily on a presumption drawn under Section 113-B of the Evidence Act, which is impermissible in law in view of the failure of the prosecution

to prove the basic facts which was a pre condition precedent to the drawing of such a presumption.

XVI. That, the learned trial court had completely disregarded the statement of the accused/appellant under section 313 Cr.P.C. though he was duty bound to consider the same. And complete non consideration thereof has clearly caused prejudice to the accused/appellant.

XVII. That, to base a conviction on circumstantial evidence each and every piece of incriminating circumstance must be clearly established by reliable and cogent evidence and circumstances so proved must form a chain of events as would permit no conclusion other than that of the guilt of the accused and the circumstance cannot be explained on any hypothesis than that of the guilt of the accused. Further, the chain of events is not complete.

XVIII. That, the I/O/P.W.7 had not collected finger print, photograph of the dead body and had perfunctorily conducted the investigation of the case.

6. Mr. S.R. Gogoi, learned counsel for the accused/appellant, has submitted a synopsis of written argument and supplemented the same by oral argument. Mr. Gogoi submits that the learned trial court had ignored the case of the accused/appellant that the deceased was suffering from ailment for a long time and she was treated by her parents and by the accused/appellant and he had medical documents in support of the same, and he had taken such a plea in his statement under section 313 Cr.P.C., but the learned

trial court had failed to consider the same and complete non-consideration is fatal to the prosecution case. Mr. Gogoi had referred two case laws in (i) **Reena Hazarika vs. State of Assam**, reported in **AIR 2018 SC 5361** and (ii) **Parminder Kaur alias P.P. Kaur alias Soni vs. State of Punjab**, reported in **(2020) 8 SCC 811**, in support of his submission.

6.1. Mr. Gogoi also submits that the learned trial court had failed to consider the evidence of P.W.s 1, 2, 3, and 5, who could not state about the specific date or time of the incident of torturing the deceased by the accused/appellant and further, they had exaggerated their statements before the learned trial Court and improved their versions which they had made before I.O. during investigation.

6.2. Mr. Gogoi further submits that the prosecution side has failed to prove beyond reasonable doubt that soon before the death of the wife of the accused/appellant, she was subjected to cruelty or harassment by the accused/appellant in connection with demand of dowry which is one of the ingredient of the charge and condition precedent and unless such basic ingredient is established the accused/appellant cannot be held guilty. In support of his submission he has referred following decisions:- (i) **Baljeet Singh and Anr. vs. State of Haryana**, reported in **AIR 2004 SC 1714**, (ii) **Raman Kumar vs. State of Punjab**, reported in **AIR 2009 SC (Supp) 1530**, (iii) **Dwijen Das vs. State of Assam**, reported in **2009 (3) GLT 546**, (iv) **Hira Lal and Ors. vs. State (Govt. of NCT), Delhi**, reported in **AIR 2003 SC 2865**; (v) **Ashok Kumar vs. State of Haryana**,

reported in AIR 2010 SC 2839,(vi) Satyendra Kumar Gupta vs. State of Bihar, reported in 2006 CRI. L.J. 4548.

6.3. It is the further submission of Mr. Gogoi that unless said condition precedent is established by adducing cogent evidence the presumption under section 113-B of the Evidence Act cannot be pressed into service against the accused/appellant. In support of his contention, Mr. Gogoi has referred following case laws:- (i) Kailash vs. State of M.P., reported in AIR 2007 SC 107. (ii) Thakkan Jha and Ors. vs. State of Bihar, reported in 2004 (13) SCC 348; (iii) Keshab Chandra Panda vs. State of Orissa, reported in 1994 CRI. L.J. 174; (iv) Biswajit Halder alias Babu Halder and Ors. vs. State of West Bengal, reported in 2007 CRI. L.J.2800. (v) Sanjiv Kumar vs. State of Punjab, reported in AIR ONLINE 2006 SC 26; (vi) Bhakhar Ram and Anr. vs. State of Rajasthan, reported in 1995 CRI. L.J. 1345. Mr. Gogoi also submits that though a duty is cast upon the accused/appellant to rebut the presumption, he need not enter into witness box and from the evidence of the prosecution witnesses he can discharge the burden and in the instant case the accused/appellant had discharged the burden by taking a plea that the deceased was suffering from ailment of stomach and she died of the same and that the standard of proof is not beyond all reasonable doubt, but only preponderance of probability only.

6.4. Mr. Gogoi also submits that the sketch map shows that one Smt. Sangita Kakati resided in the same house with the

accused/appellant, and her residence is only separated by a wall and P.W.6 Sri Anjan Gohain Baruah had resided in the same campus and as such, there were other families residing with the accused/appellant in the same house and in the same campus. But, the prosecution side did not examine Smti. Sangita Kakati to prove the charge under Section 304B IPC.

6.5. Further, Mr. Gogoi submits that there is no direct evidence herein this case against the accused/appellant. The entire case rest on circumstantial evidences only but the circumstances so relied upon by the prosecution side had failed to establish the complete chain of event and to establish that except the guilt of the accused/appellant no other hypothesis is possible on the facts and circumstances on the record. In support of his submission Mr. Gogoi has relied upon following decision **(i) Ramanand @ Nandlal Bharati vs. State of Uttar Pradesh**, reported in **2022 0 AIR (SC) 5273**.

6.6. Lastly, Mr. Gogoi also submits that the wife of the accused/appellant suffered demise due to haemorrhage inside the abdomen cavity as a result of splenic injury and the same happened due to diseases and not an external wound was found on her person and as such, the prosecution side had failed to establish beyond reasonable doubt that the death of the wife was due to unnatural circumstances caused by burn or bodily injury or otherwise and as such, the explanation so forthcoming from the accused/appellant is reasonable and therefore, Mr. Gogoi has contended to allow this appeal.

7. Per contra, Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1 has supported the impugned judgment dated 07.08.2023 and order of sentence dated 08.08.2023, passed by the learned Sessions Judge, Morigaon. Mr. Lahkar, referring to the Post-Mortem Examination Report, submits that the victim suffered death due to shock and haemorrhage inside the abdominal cavity as a result of splenic injury, and that the spleen was found to be torn and lacerated and huge haematoma (clotted blood) found present in splenic area. Besides, a linear mark was also found on the neck and the same are consistent with the evidence of the Doctor (P.W.4), who had conducted the autopsy on the dead body of the deceased. Drawing the attention of this Court to the evidence of P.W.s 1, 2, 3 and 5, Mr. Lahkar submits that on examination of the dead body of the deceased, they found injury marks on abdomen, back and neck and the same stood corroborated from the evidence of P.W.4, the Doctor, who had ruled out splenic injury by falling.

7.1. Mr. Lahkar referring to the evidence of P.W.s 1, 2, 3 and 5, also submits that the accused/appellant had subjected the deceased to both physical and mental torture demanding dowry and that the death of the deceased took place within 7 years of their marriage in a suspicious circumstance and this satisfied the requirement of drawing a statutory presumption under section 113-B of the Evidence Act. Therefore, Mr. Lahkar submits that the impugned judgment and order of sentence suffers from no infirmity or illegality requiring interference of this Court.

7.2. It is the further submission of Mr. Lahkar that though the accused/appellant had taken a plea under Section 313 Cr.P.C. that the deceased was suffering from abdominal disease, yet the Post-Mortem Examination Report is silent on that point and no question was put to P.W.4, the Doctor who conducted autopsy and also he had not adduced any defence evidence though he stated that he had document of treatment of the deceased.

7.3. Mr. Lahkar has also referred two decisions of Hon'ble Supreme Court in (i) **Trimukh Maroti Kirkan vs. State of Maharashtra**, reported in (2006) 10 SCC 681 and (ii) **Premchand vs. State of Maharashtra**, reported in 2023 Live Law (SC) 168, to contend that the deceased and the accused/appellant were residing in the same house. There is no dispute about it. And P.W.6, who also resided in the same campus, had seen the deceased in the morning in a normal condition, but found her dead in the afternoon when he returned home from his duties. Mr. Lahkar further submits that when the husband and wife lived together in the same household and if the wife was found dead, then the husband owes an explanation under Section 106 of the Indian Evidence Act and failing to offer explanation to the satisfaction of the Court, provides an additional link to the chain of circumstances to make it complete. He has also referred to another decision of Hon'ble Supreme Court in the case of **Balvir Singh vs. State of Uttarakhand**, reported in 2023 Live Law (SC) 861, in support of said contention.

7.4. Mr. Lahkar further submits that though the accused/appellant had taken a plea that at the relevant time, he was not at home where the incident took place, yet he had adduced no evidence to that effect. Mr. Lahkar further submits that the contradictions, so brought on record here, were not proved in accordance with law and as such the same cannot be used to discredit them and that in fact P.W.3 was examined the I.O. and her statement was recorded under section 161 Cr.P.C. is available on the record of the learned trial court. Mr. Lahkar also submits that in this type of cases usually the family members are the most natural and probable witnesses and though P.W.1,2,3 and 5 are family members of the deceased, yet on account of being relatives their evidence cannot be discarded and they have fully corroborated the prosecution version. Under the aforementioned facts and circumstances Mr. Lahkar has contended to dismiss the appeal.

8. On the other hand, Mr. N. Barman, learned counsel for the respondent No. 2 has subscribed the submissions, so advanced by Mr. Lahkar, learned Additional Public Prosecutor for the State respondent No. 1. Mr. Barman has referred two decisions of Hon'ble Supreme Court as well as one decision of Tripura High Court in (i) **State of Madhya Pradesh vs. Jogendra and Anr.**, reported in (2022) 5 SCC 401; and (ii) **Ram Badan Sharma vs. State of Bihar**, reported in (2006) 10 SCC 115 and (iii) **Subrata Majumder vs. State of Tripura**, reported in 2019 (3) GLT (TR) 105, to contend that ingredients of the dowry death are established herein in this case and as such statutory presumption under section 113-B has to be drawn compulsorily and the

learned trial court had rightly drawn the same. Mr. Barman further submits that the accused/appellant had failed to rebut the same. Therefore, Mr. Barman contended to dismiss the appeal.

9. Having heard the submissions of learned Advocates of both the parties, I have carefully gone through the appeal and the documents placed on record and also perused the impugned judgment dated 07.08.2023 and order of sentence dated 08.08.2023.

10. The FIR (Ext.1) reveals that the occurrence took place on 21.09.2015, at about 11 a.m. in the morning in the house of the accused/appellant, situated at Nijarapar under Jagiroad P.S. While the occurrence took place on 21.09.2015, at about 11 a.m. in the morning, the FIR was lodged on 22.09.2015, at about 11:15 a.m. The distance between the place of occurrence and the police station is about 1 kilometer. Thus, there appears to be delay in lodging the FIR. This delay is not explained in express words.

10.1. But, it appears that the informant/respondent No. 2 resides at North Lakhimpur and he was informed by the father of the accused/appellant at about 12:30 p.m. that his daughter Nirmala had passed away on account of illness. Then, the respondent No. 2, along with his family members rushed to the place of occurrence from North Lakhimpur and having arrived at the place of occurrence i.e. the house of the accused/appellant, they checked the dead body of the deceased and found mark of injuries over her neck and back and also on her abdomen and the accused/appellant could not provide any proper answer, and sometimes, he told that the

deceased died of hanging by herself and sometimes, he told that he was absent when the incident occurred and then suspicion crept in his mind about the cause of death of his daughter and then he had reported the matter to police on 22.09.2015, at about 11:15 a.m.

10.2. Thus, though no explanation was forthcoming for the delay from the evidence of the respondent No. 2 (P.W.1), yet the same stands impliedly explained from his evidence. The cause of delay, thus, appears to be natural and reasonable explanation and as such, to the considered opinion of this Court, the delay of some hours in lodging the FIR has failed to spell inveracity into the prosecution version.

11. It is also noted here that while the date, time and place of occurrence had not been disputed by the accused/appellant. And the death of the deceased Nirmala was not also disputed by him. Now, let it be seen how the deceased suffered demise, whether it was suicidal or accidental or homicidal in nature.

12. In this regard, the evidence of P.W.4, the Doctor who conducted autopsy on the dead body of the deceased, is relevant. His evidence reveals that on 22.09.2015, he was working as Sub-Divisional Medical and Health Officer at Morigaon Civil Hospital and on that day, at about 2:15 p.m., he conducted autopsy on the dead body of the deceased Nirmala Thakur, aged 26 years, in connection with Jagiroad P.S. G.D. Entry No. 690, dated 22.09.2015, on being identified by UBC-241 Mukul Sharma and Kamakhya Thakur and Suresh Roy and on examination, he found the following:

A linear mark in front of the neck, not completely surrounded, with clotted blood on mouth and nostrils. He found huge haematoma inside the abdominal cavity near the spleen. The spleen was torn and lacerated.

External appearance-

A female dead body, rigormortis present, mouth and eyes closed.

The Doctor had opined that cause of death is due to shock and haemorrhage, as a result of haemorrhage inside the abdominal cavity, caused due to splenic injury, and for further evaluation, the viscera of the deceased was sent to the FSL for examination. He confirmed the Post-Mortem Examination Report (Ext.2). A perusal of Ext.2, the Post-Mortem Examination Report, reveals that the same is also consistent with his evidence.

13. It is to be noted here that the accused/appellant had stated in his examination under section 313 Cr.P.C. that deceased was suffering from stomach ailments. But he had not adduced any evidence to support the same, though he had stated that he had the medical documents. Moreover, he had not cross-examined the P.W.4 in respect of his opinion that death of the deceased was due to shock and haemorrhage as a result of haemorrhage inside the abdominal cavity due to splenic injury. Even not a single suggestion was put to him to the effect that the deceased died of stomach ailment.

14. Now, it is to be seen who caused the speelnic injury to the deceased. In this regard, the evidence of P.W.1, P.W.2, P.W.3, P.W.5 and P.W.6 are relevant.

15. It is to be noted here that P.W.1, Sri Kamakhya Thakur is the informant and respondent No. 2 herein this case. He is the father of the deceased and he had lodged the FIR (Ext.1) with the police station. His evidence reveals that his daughter Nirmala Thakur got married with the accused/appellant in the year 2010 and thereafter, she was living with the accused/appellant for five years and led their conjugal life. His evidence also reveals that after one and half years of their marriage, the accused/appellant started demanding money from her daughter and also from them and he used to torture the deceased for demand of money and on one occasion, he had paid a sum of Rs. 50,000/- to the accused/appellant so that he would not torture his daughter.

15.1. His evidence also reveals that after the marriage of his daughter, she was taken to Bihar. There, she was subjected to physical and mental torture. And a payment of Rs. 50,000/- was made to the accused/appellant, and thereafter he brought the deceased to Jagiroad, where he had a business of motor garage. And there also, he started subjecting her to torture and his daughter used to kept him informing about the cruelty meted out to her by the appellant and in that way, his daughter led conjugal life with the appellant for five years and they were blessed with one male child also.

15.2. His evidence also reveals that on one day, he received one phone call from the father of the appellant, who told him that his daughter died due to abdominal pain and they want to take the dead body to Bihar. Then, P.W.1 told him that he would not allow the dead body to be taken to Bihar without seeing her. Thereafter, along with his family members, he came to Jagiroad and on arriving Jagiroad, he found his daughter lying dead on a bed and found the accused/appellant in his house. And on close scrutiny, they found a round strangulation mark on the neck of the deceased and black injury spots on the abdomen and backside of the deceased and when asked, the accused/appellant could not properly give his answer and sometimes he told that the deceased died by way of hanging by herself and sometimes he told that he was absent when the incident occurred. And then suspicion crept his mind about the cause of death.

15.3. Thereafter, he had reported the matter to police by lodging the FIR (Ext.1). His evidence also reveals that at the relevant time, the son of the deceased was three years old and he found him crying in the house and the neighboring people also told them that the accused/appellant had subjected the deceased to torture on various occasions and on the day of incident one lady, who had seen the deceased working in the house of the accused/appellant, but, suddenly she came to know about her death.

15.4. The accused/appellant had cross-examined this witness at length and it is elicited that he reached Jagiroad at about 11 p.m. at night on the date of the incident. It is also elicited that after the

marriage, his daughter used to stay at Bihar in most of the time in the first few years and the accused/appellant used to visit Bihar from Jagiroad. He denied that his daughter was suffering from an abnormality and that she was given treatment for the same. He also denied that his daughter was worrying at the time of submitting NRC details. It is also elicited that he had not lodged any case at Bihar for the torture meted out to his daughter. He denied that he had not given a sum of Rs. 40,000/- to the accused/appellant at the time of marriage and Rs.50,000/- so that his daughter was not subjected to any physical and mental torture for demand of dowry. He also denied having not stated before police that he saw round strangulation mark on the neck of the deceased and also noticed black injury spots on the abdomen and backside of the deceased. However, the accused/appellant had confirmed through the I.O. that such statement was not made before him. But, at best, this can be termed as omission which cannot be treated as contradiction being not proved in accordance with law. And as such, it failed to spell inveracity into the version of P.W.1 which remained unimpeached in the cross-examination. His evidence that he found injury mark over the neck is corroborated by the evidence of P.W.4, the Doctor who had conducted autopsy and his report (Ext.2).

16. P.W.2 Smti. Meena Devi Thakur is the wife of P.W.1 and she also corroborated the version of P.W.1 in respect of the torture meted out to the deceased by the accused/appellant in demand of dowry. She further corroborated the version of P.W.1 that he had given a sum of Rs. 50,000/- out of Rs. 2,00,000/- demanded by the accused/appellant. Her evidence also reveals that her daughter told

her that the accused/appellant threatened to kill her and that if he marries elsewhere, he would have received more money and subsequently, he brought her daughter from Bihar to Jagiroad on payment of Rs. 50,000/- by her husband.

16.1. Nothing tangible could be elicited in cross-examination of this witness. She categorically denied that her daughter was suffering from any abnormality. She denied having not stated before the I.O. the statement given by her before the Court and the accused/appellant side confirmed the same through the I.O. that such statement was not made before him. But, this at best can be termed as omission and also it cannot be treated as contradiction being not proved in accordance with law. Thus, the accused/appellant had failed to impeach the veracity of her version, which, lent unstinting support to the version of P.W.1.

17. P.W.3 Smti. Shanti Devi is the sister-in-law of P.W.1. Her evidence reveals that Nirmala Thakur got married with the accused/appellant about five years back and after their marriage, she was subjected to assault and torture on demand of money and she used to tell the same to her over telephone. On one such occasion, when she was beaten for demand of money, then her brother-in-law/P.W.1 had given a sum of Rs. 50,000/- to him and thereafter, the accused/appellant had brought the deceased to Jagiroad from Bihar, and then on one day a phone call came that Nirmala died due to some stomach problem. Accordingly, she, along with Kamakhya Thakur (P.W.1) and his wife Meena Devi (P.W.2) came to Jagiroad and found the dead body of the deceased in the

house of the accused/appellant. Initially, the family members of the accused/appellant did not tell anything, but later on, they said that the deceased died by hanging herself. She had seen the dead body of the deceased with injury marks over her neck, abdomen and back and later on, police came and took away the dead body and the accused/appellant with them.

17.1. However, it is elicited in her cross-examination that she was examined by police. But, in fact she was examined by the I.O. during investigation and it is the categorical submission of Mr. Lahkar, the learned Addl. P.P. that her statement under section 161 is very much available on the record of the learned trial court. Moreover, her evidence in chief remained un-impeached in cross-examination. It also appears that Thus, this witness also lent ample corroboration to the versions of both P.W.1 and P.W.2 in respect of injuries sustained by the deceased and also in respect of the torture meted out to her by the accused/appellant in respect of demand of dowry and also in respect of payment of Rs. 50,000/- by the informant/P.W.1.

18. P.W.5, Sri Ranjan Thakur is the brother of the deceased. His evident also lent ample corroboration to the versions of P.W.1, P.W.2 and P.W.3. His evidence reveals that the deceased got married with the accused/appellant on 14.07.2010 and initially, their conjugal life was fine, but thereafter, the accused/appellant started beating her demanding money and his mother used to console her that things will become alright. Thereafter on 26.10.2012, her sister gave birth to a son and thereafter also, the accused/appellant

continued to assault the deceased. His evidence also reveals that till April, 2015 after their marriage, his sister was residing in the parental house of the accused/appellant at Bihar. But, the accused/appellant had a business in Jagiroad and he used to spend time in both in Bihar and Jagiroad and in the year 2015, his mother went to Bihar and took her back to Lakhimpur and then the accused/appellant was given a sum of Rs. 50,000/- and he assured that he would not subject the deceased to any torture and then took her to Jagiroad on 04.08.2015.

18.1. His evidence also reveals that on the occasion of Rakshabandhan, he had visited the house of the deceased at Jagiroad and he found that the accused/appellant came home in a drunken condition and was speaking very rudely to his sister and he reported the matter to his parents. Then on 21.09.2015, the father of the accused/appellant informed his father that his sister suffered demise due to stomach pain and that they want to take the dead body to Bihar. Then, they rushed to Jagiroad and found the dead body of his sister and on asking, the accused/appellant told that she died by stomach pain. Then removing the saree, by which her dead body was covered, he saw rope mark near her neck and also seen injuries in the nature of black spots on her back, neck and stomach, which indicated assault and when asked about these injuries, the accused/appellant had stated that she had committed suicide by hanging from the window, and when asked again, he stated that he was not present at that time. Thereafter, his father lodged the FIR with the police station.

18.2. The accused/appellant had cross-examined this witness at length, but nothing tangible could be elicited to discredit the same. His evidence that the accused/appellant subjected his sister to torture demanding dowry remained un-impeached in cross-examination. He denied that he had not made any statement before the police. But, the accused/appellant got the same confirmed through the I.O. (P.W.7) that such statement was not made before police. This, at best can be termed as omission, and also it cannot be treated as contradiction being not proved in accordance with law and the same, to considered opinion of this Court, could not spell inveracity into his version.

19. P.W.6 Sri Anjan Gohain Baruah is the neighbour of the accused/appellant. His evidence reveals that the accused/appellant lived as his next door neighbour and on 21.09.2015, while he went out of his home, he saw the deceased in her residence with good health and in the afternoon hours when he returned home, he found huge gathering in the house of the accused/appellant and there he saw that Nirmala was lying dead on her bed and the elder brother of the accused/appellant informed him that Nirmala died of her ailments.

19.1. Notably, this witness/P.W.6 was not cross-examined by the accused/appellant.

20. P.W.7, WSI Sunmoni Begum is the I.O. who had conducted investigation and submitted Charge-sheet, Ext.P-7, against the accused/appellant, to stand trial under Section 304B, IPC. Her evidence reveals that during investigation she had visited the place

of occurrence, examined the witnesses and drawn up a Sketch Map, Ext.P-4 and she got the inquest done on the dead body of the deceased by Executive Magistrate and Ext.P-3 is the said report. She had also seized one saree from the house of the accused/appellant, vides Seizure List (Ext.P-5). Thereafter, she had collected the Post-Mortem Examination Report and also sent the viscera of the deceased to FSL and collected the report, Ext.P-6.

21. Thus, from the evidence discussed above, no definite conclusion could be arrived at as to who caused the splenic injury to the deceased. There is no eyewitness as to who caused the said injury to the deceased.

21.1. But, it is evident from the evidence on the record that the accused/appellant and the deceased Nirmala were residing in the same household prior to her death as husband and wife. On the fateful day, in the morning hours P.W.6, who was the neighbor of the accused/appellant had seen Nirmala in good health. However, while he returned home in the afternoon he found her dead. Thus, as submitted by Mr. Lahkar, the learned Addl. P.P. the accused appellant owes an explanation under section 106 of the Evidence Act as to what had happened in view of ratio laid down by Hon'ble Supreme Court in the case of **Trimukh Maruti Kirkan (supra)**. In the said case it has been held as under:-

“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.* [(1972) 2 SCC 80], 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 *Ganesh Lal 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 was 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* [(1992) 3 SCC 300] 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 the 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.

21.2. Same proposition of law is laid down in the case of *Wazir Khan vs. State of Uttarakhand* reported in (2023)8 SCC 597, wherein it has been held by Hon'ble Supreme Court that –

“24. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show, like in the present case, that shortly before the commission of the crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been

consistently held that if the accused does not dispute his presence at home at the relevant time and 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.”

22. Indisputably, the only explanation put forwarded by the accused/appellant is that the deceased died of stomach ailment and that he had documents of her treatments. But, admittedly, no evidence was lead by him to establish such a plea and the documents which were allegedly with him also not been produced and exhibited before the court. Thus, the plea remained unsubstantiated. The consequence of such failure is that it has to be held that he is responsible for the death of his wife in view of the ratio laid down in the case of **Trimukh Maruti Kirkan (supra)** and in **Wazir Khan(supra)**.

22.1. But, unfortunately, the learned trial court had failed to go through much insight into this aspect. In paragraph No. 20 of the impugned judgment and order the learned trial court had clearly recorded a finding that the prosecution evidence does not establish a case of murder against the accused and as such it is a fit case where the accused should be acquitted of the charge of murder under section 302 IPC.

23. This finding, to the considered opinion of this court is not based upon proper appreciation of the evidence so tendered by the learned trial court as well as the proposition of law laid down by the

Hon'ble Supreme Court in the case of **Trimukh maruti Kirkan (supra)** and in **Wazir Khan (supra)**. Be that as it may, since the state has not preferred an appeal against such acquittal, this court is not inclined to delve a discussion into the same.

24. But, inspite of the acquittal of the accused of the charge under section 302 IPC, the fact remains that the death of the deceased Nirmala was not suicidal or accidental but homicidal in nature. And it was a death not under normal circumstances, but under unnatural circumstances. She met unnatural and untimely death.

25. Now, endeavor will be made to find out whether the prosecution side has been able to establish the charge under Section 304-B IPC against the accused/appellant.

26. It is to be noted here that Section 304-B is a special provision which was inserted by an amendment of 1986 to deal with a large number of dowry deaths taking place in the country. The section read as under:-

“304-B. 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.” (This section was inserted in the Penal Code by Act 43 of 1986 on 19-11-1986)

27. In this context, it is pertinent to discuss the provision of Section 113-B of the Evidence Act also, that has been inserted with regard to presumption of dowry death. The section reads as under:

“113-B. 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 purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

28. While dealing with the offence under Section 304-B IPC, in the case of *Ram Badan Sharma v. State of Bihar*, reported in (2006) 10 SCC 115, Hon’ble Supreme Court has held as under:-

“35. There are three main ingredients of this offence:

- (a) that, there is a demand of dowry and harassment by the accused on that count;**
- (b) that, the deceased died; and**
- (c) that, the death is under unnatural circumstances within seven years of the marriage.**

When these factors were proved by reliable and cogent evidence, then the presumption of dowry death under Section 113-B of the Evidence Act clearly arose. The aforementioned ingredients necessarily attract Section 304-B IPC.”

29. Again in the case of Mustafa Shahadal Shaikh v. State of Maharashtra reported in (2012) 11 SCC 397, Hon’ble Supreme Court has dealt with the ingredients of the section as under:

“9. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

- (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;**
- (ii) such death must have occurred within seven years of her marriage;**
- (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;**

- (iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the abovementioned ingredients are attracted in view of the special provision, the court shall presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of the prosecution witnesses or by adducing evidence on the defence side.

30. In the case of in Major Singh v. State of Punjab, (2015) 5 SCC 201, a three Judge Bench of Hon'ble Supreme Court held as follows:

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';
- (ii) such a death should have occurred within seven years of her marriage;

- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry; and
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

31. Now, adverting to the case in hand, I find that there is no dispute that the deceased Nirmala Thakur got married with the accused/appellant on **14.07.2010** and thereafter, she was living with the accused/appellant for five years, till her death on **21st September 2015**, in Jagiroad. Notably, her death is also not disputed by the accused/appellant. It is also not in dispute that Nirmala Thakur died within seven years of her marriage with the accused/appellant. As discussed and held in the forgoing paragraph deceased Nirmala Thakur suffered an unnatural death. She had not died out of any disease as contended by the accused/appellant. The evidence of the Doctor/P.W.4 and the report submitted by him i.e. Ext. 2, clearly shows that the cause of death is due to shock and haemorrhage, as a result of haemorrhage inside the abdominal cavity caused due to splenic injury. P.W.4 also found a **linear mark in front of the neck, not completely surrounded, with clotted blood on mouth and nostrils. He found huge haematoma inside the abdominal cavity near the spleen. The spleen was torn and lacerated.**

31.1. As already discussed in para No. 12 of this judgment, the accused/appellant has taken the plea that the deceased was

suffering from stomach ailments. But, he had not adduced any evidence to support the same, though it appears from his statement, recorded under Section 313 Cr.P.C. that she died of disease and that he had relevant documents with him, yet he made no effort to produce and prove the same in the court by appearing in witness box. Besides, he had not cross-examined P.W.4 in respect of his opinion that death of the deceased was due to shock and haemorrhage as a result of haemorrhage inside the abdominal cavity due to splenic injury. Not a single suggestion even put to P.W.4 that the splenic injury was on account of disease not of homicidal in nature.

31.2. Though it was fiercely argued that she suffered demise on account of disease of her spleen, which ruptured due to infection, yet the same is not supported by any tangible evidence. Over and above, the accused/appellant had given different account of the incident. From the evidence of P.W.1, 2, 3 and 5 it appears that sometimes he stated that he was not present in the house at the time of death of deceased and some time he stated that the deceased committed suicide by hanging from window. On the other hand, the father of the accused/appellant had reported P.W.1 that Nirmala died of abdominal pain. Further, P.W.1, 2, 3 and 5 had found round strangulation mark over the neck of the deceased and also found black injury spot over her abdomen and on her backside. Of these three injuries, injury No.1 is corroborated by medical evidence as discussed above. The factum of unnatural death is further fortified by the evidence of P.W.6, who is next door neighbour of the accused/appellant. His evidence that in the

morning, while he went out, he had seen the deceased in her residence in good health and on returning home at noon he found her lying dead on a bed and the brother of the accused/appellant told him that she died of her ailment. So, it can be logically concluded that the prosecution side has successfully established two of the ingredients of Section 304-B IPC.

31.3. It also appears that from the evidence of P.W.1, 2, 3 and 5 that one and half years after the marriage, the accused/appellant started demanding money from the deceased and also from them and subjected her to torture for the same and on one occasion, a sum of Rs. 50,000/- was paid to him so that he would not torture to the deceased. It also appears from their evidence that after the marriage, the deceased was taken to Bihar, where she was subjected to physical and mental torture and on payment of Rs. 50,000/- to the accused/appellant, he brought the deceased to Jagiroad, where he had a business of motor garage and there also, he started subjecting her to torture and the evidence of P.W.1 reveals that the deceased used to keep him informing about the cruelty meted out to her by the accused/appellant. It also appears that after one and half months of taking the deceased to Jagiroad from Bihar, the incident took place. The factum of torture at Jagiroad is not disputed by the accused/appellant which becomes *faith accompli* from the evidence of P.W.1 and 5. While P.W.1 was informed by the deceased, P.W.5 himself witnessed the same while he had visited the house of the accused/appellant on the occasion of Rakshyabandhan and he had reported the same to his

parents. He found the accused/appellant came home in a drunken condition and he was speaking to his sister very rudely.

31.4. It is however a fact that no case was lodged at Bihar for demand of dowry and subjecting the deceased to torture. But, the factum of demand and subjecting her to torture both physical and mental and also payment of a sum of Rs. 50,000/ to him remained un-impeached in cross-examination of the prosecution witnesses. The evidence of P.W.2 also indicates that payment of Rs.50,000/ is part of the demand of Rs.2,00,000/ by the accused/appellant.

31.5. There is another requirement of the section that it has to be 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 so as to bring it within the purview of Section 304-B IPC. From the evidence on the record it appears that on payment of a sum of Rs.50,000/, to the accused/appellant, the deceased was brought back and at first taken to the house of the informant at Lakhimpur from Bihar and that the accused/appellant had taken her to Jagiroad on 04.08.2015, where also the accused/appellant has subjected her to torture and the same was reported to P.W.1, the informant, by the deceased. Notably, she died on 21.09.2015. Now, what left to be seen is that can it be said that the demand and torture was made soon before death.

31.6. Hon'ble Supreme Court in the case of **Satvir Singh v. State of Punjab [(2001) 8 SCC 633]** had examined

the meaning of the words “soon before her death” and observed as under:-

“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”.

31.7. In the case of *Maya Devi v. State of Haryana*, reported in (2015) 17 SCC 405, while dealing with the phrase “soon before death” Hon’ble Supreme Court has held as under:-

23. To attract the provisions of Section 304-B, one of the main ingredients of the offence which

is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

31.8. In the case of *Bansi Lal v. State of Haryana*, reported in (2011) 11 SCC 359, Hon’ble Supreme Court has held as under:-

“17. While considering the case under Section 304-B, cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide.”

31.9. In paras 19 and 20 of the said judgment, Hon’ble Supreme Court has further held as follows: -

“19. It may be mentioned herein that the legislature in its wisdom has used the word ‘shall’ thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of Section 113-A of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression 'soon before her death' has not been defined in either of the statutes. Therefore, in each case, the court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death."

31.10. Thereafter, in the case of Mustafa Shahadal Shaikh (supra) Hon'ble Supreme Court has held as under:-

"11. To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that 'soon before her death' she was subjected to cruelty or harassment 'for, or in connection with the demand for dowry'. The expression 'soon before her death' used in Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned counsel appearing for the appellant submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to the same while considering the evidence led in by the prosecution. Though the language used is 'soon before her death', no definite period has been enacted and the expression 'soon before her death' has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term 'soon before her death' is

to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. These principles have been reiterated in *Kaliyaperumal v. State of T.N.*, reported in (2004) 9 SCC 157 and in *Yashoda v. State of M.P.*, (2004) 3 SCC 98.”

31.11. In the case of *Satbir Singh vs. The State Of Haryana* reported in 2021 AIR 2021 SUPREME COURT 2627, a three Judge Bench of Hon’ble Supreme Court, discussing the legislative history, has held as under:-

14. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase “soon before” entails. The aforesaid position was emphasized by this Court, in the

case of *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, wherein the three Judge Bench held that:

“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.” (emphasis supplied) A similar view was taken by this Court in *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477.

15. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim.

31.12. In the case of *Devender Singh vs. The State Of Uttarakhand*, decided on 21 April, 2022, Criminal Appeal No. 383 of 2018, another three Judge Bench of Hon’ble Supreme

Court has held that *“As to the phrase ‘soon before her death’, it is well-settled that the same ought to be interpreted to mean proximate and to be linked with but not to be understood to mean immediately prior to the death.”*

31.13. The proposition of law, that can be crystalised from the aforesaid decision in respect of soon before death is that the expression ‘soon before her death’ has not been defined in both the enactments. Therefore, the term ‘soon before her death’ is to be determined by the courts, on the basis of the facts and circumstances of the case. Normally, the expression implies that the interval should not be much between the cruelty or harassment concerned and the death in question. It should not however be understood to mean immediately prior to the death. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

31.14. In the case in hand, on consideration of the law, as crystallized herein above, and from the evidence on record, this court is of the considered opinion that the prosecution has successfully established all the ingredients of Section 304 -B IPC, that :-

- (i) the death of deceased Nirmala took place on 21.09.2015 was caused by bodily injury and

also it was otherwise than under a 'normal circumstance';

(ii) her death took place within seven years of her marriage; (Marriage took place on 14.07.2010 and she died on 21.09.2015);

(iii) she was subjected to cruelty by her husband and his relative;

(iv) such cruelty was in connection with demand of dowry;

(v) such cruelty was meted to her soon before her death.

31.15. Since all the ingredients of the charge under section 304-B IPC stands established herein this case, the statutory presumption, under Section 113-B of the Evidence Act, has to be pressed into service. And it appears that the learned trial court had rightly pressed the same into service here in this case.

32. Once the presumption under Section 113-B of the Evidence Act is pressed into service, now responsibility to rebut the same is shifted to the accused. But, it appears from the record that the accused/appellant had failed to rebut the same. I find the evidence of P.W.1, 2, 3 and 5 and also P.W.6 are worth believing and their evidence goes a long way to establish the charge beyond doubt. It is a fact that P.W.1, 2, 3 and 5 are relatives of the deceased. But on this court alone their evidence could not be brushed aside. Usually in this kind of cases the relatives and family members are the most probable and natural witness and this has rightly be highlighted by Lahkar, the learned Addl. P.P. at the time of hearing.

33. Though it is contended by the learned counsel for the accused/appellant that that whatever statement made by the accused under section 313 Cr.P.C. has not been taken into consideration by the learned trial court and that being so in view of the decision of Hon'ble Supreme Court in **Reena Hazarika (supra)**, the conviction and sentence is vitiated, yet, the said submission left this court unimpressed.

33.1. As already discussed and held the accused in his statement under Section 313 Cr.P.C. has taken a stand that his wife was ailing for abdominal pain and she was also treated by her parents and that he has medical documents with him. But, as discussed earlier he had not produced and exhibited said documents before the court even though the burden to establish the same lies upon him. As he had failed to adduce evidence and prove such plea before the court he cannot take a plea that non consideration of the plea causes prejudice to him. It is a fact that such plea has to be established not by the standard of proof beyond all reasonable doubt, but by preponderance of probability. As no evidence was lead by him to establish the said plea, this court is of the view that the ratio laid down in the case of **Reena Hazarika (supra)** would not advance his case anymore. There is vast difference between mere taking a plea and establishing the same before the court even by preponderance of probability. Therefore, this court is inclined to record concurrence with the finding so recorded by the learned trial court.

34. Though the learned counsel for the accused/appellant, referring to the evidence on the record and also some decisions of Hon'ble Supreme Court in **Kailash (supra)** and in **Hiralal and Ors.(supra)**, submits that in the case in hand no demand was made 'soon before death' of the deceased and as such the basic requirement of Section 304-B IPC stands established, yet, in view of the given facts and circumstances on the record and also in view of the decisions discussed herein above, this court is of the view that the submission of learned counsel for the accused/appellant is devoid of substance, and accordingly, the same stands overruled. I have considered the submission of Mr. Gogoi, learned counsel for the accused/appellant in respect of circumstantial evidence and defects in investigation. But, the same seems to have no bearing upon the veracity of the prosecution case.

35. On the other hand, I find the submission of learned Addl. P.P. as well as the learned counsel for the respondent No.2 well merited. The decision, so referred by Mr. Barman in **Ram Badan Sharma (supra)** also strengthened his submission and therefore, the same is accepted.

36. Thus, from the aforementioned discussion it can be logically concluded that the prosecution side has succeeded in bringing home the charge under section 304-B IPC against the accused/appellant beyond all reasonable doubt.

37. That being so, I find no just and acceptable reason to interfere with the impugned judgment and order of conviction.

38. It appears that while convicting the accused/appellant under section 304-B IPC the learned trial court had sentenced him to suffer rigorous imprisonment for a period of 8 years. Drawing a balance sheet of aggravating as well as mitigating factors this court is of the considered view that the sentence so handed down is commensurate with the nature and gravity of the charge. And as such the same warrants no interference of this court.

39. The learned trial court had not passed any order in respect of payment of compensation to the victim on the ground that circumstances of rehabilitation are found lacking in the case. But it appears from the evidence on the record that the deceased left behind one minor child who was three years old at the relevant point of time. The accused is his father and he has been serving out the sentence in jail. That being so, this court is unable to agree with the learned trial court that there is no requirement of payment of compensation. Accordingly, it is provided that the concerned District Legal Services Authority shall examine the issue and take decision in this regard within one month of receipt of a copy of this judgment. Registry shall forward a copy of this judgment to the Secretary, District Legal Services Authority, Morigaon.

40. In the result, the appeal stands dismissed. The parties have to bear their own cost. Send down the record of the learned trial court with a copy of this judgment and order.

J U D G E

Comparing Assistant