

Court No. - 82

Case :- CRIMINAL APPEAL No. - 668 of 2020

Appellant :- Ajay Kumar Maurya

Respondent :- State of U.P.

Counsel for Appellant :- Alok Kumar Kushwaha, Kunal Shah, Nabi Ullah, Pooja, R.C. Maurya, Saket Pandey, Sunil Kumar Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. The validity and sustainability of the judgment and order dated 16.12.2019 passed by Additional Sessions Judge / F.T.C. - I, Mirzapur in Sessions Trial No.162 of 2011 (State Vs. Ajay Kumar Maurya and others) arising out of Crime No.319 of 2011 under Sections 498-A, 304-B IPC and 3/4 Dowry Prohibition Act, Police Station Chunar, District Mirzapur has been challenged by way of instant criminal appeal, whereby the appellant Ajay Kumar Maurya was convicted and sentenced to undergo ten years imprisonment under Section 304-B IPC, to undergo two years imprisonment under Section 498-A IPC with a fine of Rs.3000/-, in default thereof, to further undergo one month additional imprisonment and to undergo two years imprisonment under Section 4 of Dowry Prohibition Act with a fine of Rs.3000/-, in default thereof, to further undergo one year additional imprisonment, All sentences were directed to run concurrently.

2. The prosecution version in brief, as unfolded in the F.I.R., is that Pooja Maurya, the sister of the informant Subhash Chandra Maurya was married with Ajay Kumar Maurya on 23.6.2010. Her in-laws were not satisfied with the dowry given in the marriage and she was demanded jewellery, Rs.50,000/- cash and a four wheeler by her in-laws and she was subjected to cruelty and harassment for the same. On 23.4.2011 at about 3:00 P.M., the informant received an information by accused Ajay Kumar Maurya regarding the incident of burning of his sister. In fact the sister of the informant was set-ablaze by her in-laws / accused persons for demand of dowry. F.I.R. was lodged against accused Ajay Kumar Maurya, Shambu Nath Maurya, Smt. Jhuna Devi, Arvind Maurya, Deepak Maurya and Smt. Chanda @ Chanda Devi, however, the named accused persons Arvind Maurya, Deepak Maurya and Smt. Chanda @ Chanda Devi were exonerated by the Investigating Officer and charge-sheet was submitted against accused Ajay Kumar Maurya, Shambhu Nath Maurya and Smt. Jhuna Devi and after initiation of prosecution, the accused Ajay Kumar Maurya was held guilty for the offence under Sections 304-B, 498-A IPC and 3/4 Dowry Prohibition Act and sentenced as mentioned here-in-above. However, co-accused Shambhu Nath Maurya and Juha Devi, the father-in-law and mother-in-law of the deceased were acquitted.
3. On appearance of the accused before the Court, the case being exclusively triable by the Sessions Court, was committed to the Court of Sessions. Charge under Sections 498-A, 304-B IPC and Section 3 read with 4 of the Dowry Prohibition Act and alternative charge under Section 302 IPC was framed against all

the three accused persons to which they denied and claimed for trial.

4. The prosecution, in order to prove its case, produced P.W.1 Subhash Maurya, the informant and brother of the deceased, P.W.2 Prabhawati Devi, the mother of the deceased, P.W.3 Mishri Singh Chauhan, Tehsildar, P.W.4 Dr. Vivek Awasthi, P.W.5 Constable Shyam Lal, the scribe and P.W.6 C.O. Sitaram, the Investigating Officer as oral evidence.

5. In support of the oral evidence the prosecution has relied upon the documentary evidence as well. Written report Ex.Ka-1, Inquest report Ex.Ka-2, Recovery Memo Ex.Ka-3, Letter to C.M.O. Ex.Ka-4, Letter to S.H.O. Ex.Ka-5, Police Form-13 Ex.Ka-6, Postmortem Report Ex.Ka.-7, Chik F.I.R. Ex.Ka.-8, G.D. Ex.Ka-9, Site Plan Ex.Ka.-10, Charge Sheet Ex.Ka.-11 are as documentary evidence.

6. The incriminating evidence and circumstances were put to the accused persons in their statement under Section 313 Cr.P.C. Appellant submitted his written submission in the matter and stated that on the date of incident, Kamlesh, the brother-in-law of the informant, came to his house at 9:00 A.M. and invited them for a family marriage function and asked for immediate vidai of the deceased, to which the present appellant refused and offered to go together to attend the marriage ceremony which caused annoyance to the deceased and under frustration and distress, she committed suicide by burning. She was immediately rushed to hospital by the appellant and his family members but she could not be saved. The informant started bargaining with the appellant and when he refused to pay any

amount, a false F.I.R. was lodged. He further states that it was a marriage of no dowry and both the parties are poor persons having no capacity to give or to maintain a four wheeler. Other co-accused persons also denied the incident and claimed the prosecution evidence to be false and fabricated.

7. The defence also relied upon the statement of D.W.1 as oral evidence.

8. D.W.1 Brij Kumar, the neighbour of the informant was produced as defence witness.

9. P.W.1 Subhash Maurya is the informant and the real brother of deceased Pooja. In his examination-in-chief he has stated that her sister was married with Ajay Kumar Maurya on 23.6.2010 and since marriage she was tortured by her in-laws for a demand of Rs.50,000/- cash, car and jewellery as additional dowry. She used to disclose the aforesaid facts to her family members and lastly she visited her parental house 2 - 2½ months before her death. Panchayat was also performed to settle down the dispute on 23.4.2011. The accused Ajay Kumar Maurya informed them on phone that due to burning, the deceased has been admitted in Popular Hospital. When the informant visited there, she was found unconscious and none of her in-laws was present there. She has been under treatment for two days in the Popular Hospital and ultimately she died on 26.4.2011. He prepared a written report and F.I.R. was lodged on the basis of the same. Inquest of the deceased was also performed to which he was also one of the panchas. The written report and inquest report have been proved by this witness as Ex.Ka.-1 and Ex.Ka.-2. He further states that on his pointing

out, site plan was prepared by the Investigating Officer of this case, who also took into possession some clothings and a match box and the memo thereof has been proved by this witness as Ex.Ka.-3.

10. P.W.2 Prabhawati Devi is the mother of the deceased who also narrates the same story in her evidence as P.W.1 states.

11. P.W.3 Mishri Singh Chauhan, Tehsildar conducted the inquest proceedings and he proved Naksha Nash, Report C.M.O., Report S.O., Police Form 13 as Ex.Ka.-3 to Ex.Ka.-6 respectively and also affirmed his signature over the Inquest Report Ex.Ka.-2.

12. P.W.4 Dr. Vivek Awasthi performed the autopsy on the body of the deceased. In his deposition P.W.4 states that the postmortem on the dead body of the deceased Pooja Maurya was performed by him on 26.4.2011 at 4:00 P.M. Further he states that he found burn injuries over the body except top and back of head and the cause of death was found shock as a result of extensive burn injury. P.W.4 proved the postmortem report as Ex.Ka.-7.

13. P.W.5 Constable Shyam Lal is the scribe, who proves Chik F.I.R. as Ex.Ka.-8. He also proves as secondary witness for Constable C.B. Singh the Registration G.D. as Ex.Ka.-9.

14. P.W.6 C.O. Sita Ram is the Investigating Officer of the case. In his deposition, he affirms the proceedings of investigation and also proves that the statements of all the relevant witnesses were recorded by him. He also proves the site plan as Ex.Ka.-10 and also took into possession some articles like bedsheet, pillow, match box and some clothings and one

bucket from the spot and the memo thereof was prepared which is on record as Ex.Ka.-3. Further he proves the original charge-sheet on record as Ex.Ka.-11.

15. D.W.1 Brij Kumar has been produced by the defence who is the neighbour of accused Shambhu Nath Maurya. He further states that no demand of dowry was ever made with the deceased and she herself never made any complaint to him in respect of demand of dowry and causing harassment to her by her in-laws. He also explains that when Munnu and Kamlesh came to the house of the deceased to invite her in the marriage ceremony of sister of Kamlesh, the deceased Pooja repeatedly insisted to send her immediately with them and when it was denied by her in-laws, this caused anguish and dejection to the deceased and she committed suicide by burning herself.

16. D.W.1, in his evidence has stated that on noise when he reached the house of Ajay Kumar Maurya, the door of the room was closed from inside wherein the deceased was burning. Then the door was broken and the deceased was found in bitterly injured condition. Shambhu Nath Maurya, the father-in-law, took her to the hospital where she had been admitted for three days and all the expenses were borne by the accused persons. He has further stated that the deceased was a short tempered lady and at one occasion, prior to the present incident, she had also tried to commit suicide.

17. Trial Court, having heard learned counsels for parties and going through entire record, vide impugned judgment and order, convicted and sentenced the accused appellant as above. Hence,

feeling aggrieved with said judgment and order, accused-appellant has filed this appeal.

18. Heard Sri Saket Pandey, learned counsel for the appellant and Sri Nitesh Kumar Srivastava, learned A.G.A. for the State and perused the entire record.

19. Assailing the findings, learned counsel appearing for appellant argued that the prosecution case is totally baseless and from the evidence available on record, no case is made out as against the convict / appellant. The impugned judgment is based on surmises and conjectures. There was no eye-witness or even any circumstantial evidence to connect the convict / appellant with the crime alleged against him. It has been further submitted that the learned trial court has misinterpreted the evidence available on record and has not given any weightage to the defence evidence which was against the norms of the established legal principles. It has also been submitted that no ingredient to bring home the guilt of the accused under section 304-B IPC was proved by the prosecution. In support of his contention, learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in **Charan Singh @ Charanjit Singh Vs. The State of Uttarakhand, 2023 LiveLaw SC 341**.

20. Per contra, the learned A.G.A. has contended that the impugned judgment suffers with no lacuna or error and the appeal, being devoid of merit, is liable to be dismissed.

21. Before appreciating the rival submissions made by both the sides, we have to put a glance upon relevant provisions of law.

Section 304-B IPC - Dowry death.—“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation.— For the purpose of this sub-section, ‘dowry’ shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

22. In a catena of decisions, the ingredients to be proved in order to convict an accused for the offence punishable under Section 304-B IPC are promulgated. In **Maya Devi and Another Versus State of Haryana (2015) 17 Supreme Court Cases 405**, it has been reiterated that the following essentials must be satisfied to successfully prove the charge under section 304-B IPC :

(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.

23. Admittedly, the marriage between the deceased Pooja and accused Ajay Kumar Maurya was solemnised on 23.6.2010 and the death of the deceased wife was caused on 25.4.2011. All the prosecution witnesses who belong to the family of the deceased have also affirmed the factum of marriage between the two alongwith the date and the Investigating Officer has also collected evidence with regard to the date of marriage and date of death of the deceased. The aforesaid evidence is explicitly clear on this point that the death of the deceased was caused within seven years of her marriage.

24. The prosecution alleges that the accused-persons, to fulfill their demand of dowry, caused the dowry death of the deceased and a specific defence has been taken by the accused-persons that the family members of the deceased in the unfortunate morning when the deceased committed attempt to suicide, came to the house of her in-laws and requested for her immediate *vidai* which was refused by the accused persons and being an obstinate lady, in a state of depression and dejection, the deceased committed suicide by burning herself in her closed room, but however after being hospitalized, she remained alive for about three days. It is argued that in such circumstances, one has no hesitation to say that the death of the deceased may be called as unnatural death.

25. This Court has to examine as to whether the deceased was subjected to cruelty and harassment for demand of additional

dowry by her in-laws and her dowry death was caused otherwise than in normal circumstances being a dowry death.

26. The demand of dowry is the primary criteria to find out the fact behind the death of the deceased. No doubt, suicide committed by the deceased, as claimed by the defence, falls in the category of unnatural death but there should be a series of harassment and cruel acts on the part of the in-laws of the deceased continued till soon before her death.

27. P.W.1, the informant and brother of the deceased in his evidence narrates that the marriage between the deceased and her husband Ajay Kumar Maurya was solemnized in normal conditions but when she went to her matrimonial house, after some days a demand of Rs.50,000/- cash, some jewels and car was made by her in-laws from the deceased and her family members and for the same she was even assaulted and put to distress by her in-laws and whenever she used to visit her parental house, she informed of such incident to her family members. He further states that about two or two and half months before she had visited to her matrimonial house last time and at that time also she disclosed the story of harassment by her in-laws and that is why her *vidai* was performed through a Panchayat. He further states that on 23.4.2011, accused Ajay Kumar Maurya informed on mobile at about 3:00 P.M. that Pooja has burnt and she was admitted in Popular Hospital. When the informant and his family members reached there, none of the accused was present there and they were not found present even at their residence. During treatment, his sister died in the Popular Hospital after two days of the burning incident.

Then he moved a written report to the police station. He proves this report as Ex.Ka.-1. P.W.1 has also been a witness of inquest proceedings and has been a Panch and further proves the inquest report as Ex.Ka.-2. He further states that on his pointing out the Investigating Officer inspected the place of occurrence and prepared the site plan. Several burnt clothings and articles were found in her room and the memo thereof was prepared by S.I. Gopal Singh which also bears his own signature and the said memo has been proved by him as Ex.Ka.-3.

28. P.W.2 Prabhawati Devi, the mother of the deceased, in her examination-in-chief states in the same tone as P.W.1 states.

29. The learned counsel for the appellant has submitted that the prosecution witnesses, who are the family members of the deceased, have made many unnatural statements in their deposition and from the perusal of the entire evidence, it becomes clear that no demand of dowry was made from the deceased nor she was ever tortured for that and further the issue of 'soon before' is never proved by the prosecution. It is further submitted that in the cross-examination of P.W.1 and P.W.2, several contradictory statements have been made. It is also submitted that the essential ingredients to establish an offence under Section 304-B IPC are completely missing in this case and in the light of the entire facts and circumstances of the case and the evidence rendered by the prosecution as well, no offence is proved against the appellant. He further relied upon the evidence of D.W.1 and it was firmly stated that evidence of defence witness is entitled to get the same respect and evidentiary value as prosecution witnesses are given.

30. Replying to that the learned A.G.A. submitted submitted that dowry death of a young lady was caused in her own matrimonial house. All the ingredients to establish an offence under Section 304-B IPC have been properly and sufficiently proved by the prosecution. The investigation is fair and does not suffer from any material irregularity. The accused appellant is the husband of the deceased and he can never escape from his liability to keep her wife safe and secure but in the instant bride burning case he failed to observe his social and moral duty and is a guilty of the offence of dowry death.

31. This Court has to examine whether the deceased was subjected to cruelty and harassment for demand of additional dowry after her marriage and it continued soon before her death. On the parallel side, the defence taken by the appellant is also to be examined as to whether the deceased committed suicide for certain reasons not connected with the harassment and cruelty subjected to her for demand of dowry by her in-laws.

32. On the aforesaid issues, it is desirable to evaluate the entire testimony of P.W.1 and P.W.2.

33. P.W.2 Prabhawati Devi, the mother of the deceased, although in her examination-in-chief supports the prosecution version but when her credibility was checked in her cross-examination, it appears that all the story narrated by her in her examination-in-chief is an afterthought. She states that in total three times the deceased had visited her parental house. On the first and second occasion, she did not make any complaint regarding her harassment or cruelty by her in-laws for want of

additional dowry but however she made a complaint of her in-laws for their demand of dowry only on the third occasion. The learned counsel for the appellant has submitted that it is not natural that after marriage of the deceased, no demand for additional dowry was made by any of her in-laws for a long span of time but suddenly they started demanding dowry. Further P.W.2 states that they had received the telephone call from the present appellant that after burning, the deceased was hospitalized in Popular Hospital and when she went there she found her daughter alive in the hospital. Further she makes a significant statement that her daughter died on the third day after burning. She also states that it was only for the third time when her daughter visited her parental house, she complained of her in-laws. She has fairly conceded that the incident of burning of her daughter was informed to them by accused Ajay, his son-in-law himself. Further, she states that during the period of three days when her daughter was admitted in the hospital, none of her in-laws was present there but however she further admits that for all the three days when her daughter was admitted in the hospital, all the expenses of treatment were borne by in-laws of her daughter and the receipt thereof is also kept with them. She herself did not provide any receipt to the Investigating Officer.

34. P.W.1, the informant and the brother of the deceased although in his examination-in-chief corroborates the prosecution version but he has uttered some contradictory statements in comparison to the statement of P.W.2. He further states that whenever his sister came to his house, every time she used to complain of her in-laws for subjecting her cruelty and

harassment whereas P.W.2, the mother of the deceased, specifically states that the complaint of cruelty, harassment and demand of dowry was made by the deceased to her family members only for the third time when she visited her home. P.W.1 also states that when she was lastly sent to her matrimonial house, the vidai was made through a Panchayat, however, no date, place or time of such Panchayat has been disclosed by P.W.1 and P.W.2. and further the name of the members of Panchayat is also not clear from the testimony of P.W.1 and P.W.2. P.W.1 further admits that the information regarding injuries of the deceased was given to her family members by the present appellant himself. P.W.1 also states that the in-laws of his sister remained absconding during the period the deceased was admitted in the Popular Hospital, whereas on the same issue P.W.2 states that in-laws of her deceased daughter had been bearing the medical expenses during the said period.

35. P.W.1, who has been one of the panchas in the inquest report Ex.Ka.-2, states that no F.I.R. was lodged by him at the time of inquest proceedings which took place in Popular Hospital. It is relevant to note here that at the time of inquest proceedings the informant Subhash made no complaint to the police that her sister was set-ablaze / committed suicide by way of burning herself. It is quite unnatural that the informant himself being a Panch could very well disclose the factum of cruelty and harassment caused to his sister by her in-laws but as such nothing was uttered by him.

36. Further, P.W.1 makes significant statement in his cross-examination. He states that the accused persons never demanded for any four-wheeler before the marriage. Rs.50,000/- were given by him but no demand of four-wheeler vehicle was made by the accused persons. He further states that they (family members of the deceased) themselves accepted to gift the golden ring and *sikdi*. Further, he states that in the marriage, a motorcycle was given by him by his own free will. The vidai of his sister was performed in a pleasant mood and no demand of any four-wheeler or Rs.50,000/- cash or jewellery was made by her in-laws. Further, he states that for the first time when his sister stayed in her matrimonial house for one week, no demand was made by the accused persons and when they went to the house of the accused persons in *chauthi*, his sister was sent happily with them and they were welcomed in a happy mood. Further, he utters that on subsequent occasion Arvind, the younger brother of Ajay came for *vidai* and on this occasion also no dispute took place. However, when after two weeks his brother Sunil went for vidai of the deceased, the accused persons made a demand of dowry. For himself he further admits that he visited the matrimonial house of his sister twice and no demand of dowry was made from him. It was for the third time when he went there, a demand of maruti car was made. This witness failed to explain as to why the F.I.R. was lodged so belatedly by him whereas he was well informed of the burning of his sister on 23.4.2011. Contradicting to the statement of his mother P.W.2, he denies to work in the Court as clerk.

37. The legal presumption as to the medical evidence has always been taken only as an opinion given by a medical expert but it need not be the last word on the subject. From the co-joint reading of the decisions in **Sadhu Saran Singh Vs. State of U.P. and Anr. (2016) 4 SCC 357** and **State of Haryana Vs. Bhagirath and Ors. (1999) 5 SCC 96** over this issue the conclusion which is arrived at is that the evidence of a doctor is only of an advisory character which should be tested by the Court and if the opinion is bereft of logic or objectivity or not consistent with the probabilities of the case, the Court is not obliged to go by that opinion. The Court has no liability to go by that opinion merely because it is said by a medical expert although due weight must be given to opinion given by persons who are expert in the particular subject.

38. **Sahebrao Mohan Berad Vs. State of Maharashtra 2011 Cr.LJ. 2157 (SC)** is another authority wherein it has been pronounced that if the cause of death as opined by the doctor is inherently defective it can be rejected in that case only otherwise doctor is the only competent person to opine about the cause of death.

39. Explaining the manner and scope of the term ‘soon before’ her death the Hon’ble Apex Court in **Satveer Singh Vs. State of Punjab (2001) 8 SCC 633** clarified that this expression indicates that there must be a perceptible nexus between the infliction of dowry related harassment and cruelty on the woman and her death. Further, in **Satbir Singh Vs. State of Haryana (2021) 6 SCC 1** the Hon’ble Apex Court reiterated the principle of ‘soon before’ like this:

“Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to resolve such ambiguities. 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". Thus, held, phrase "soon before" cannot be construed to mean "immediately before". Prosecution must establish existence of "proximate and live link" between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives”

40. In fact the expression ‘soon before’ never means immediately before and no definite period has been indicated in the provision itself and it is left open for the Courts to define the said expression dependent upon facts and circumstances of each case. It is reiterated in **Kunhiabdulla and Anr. Vs. State of Kerala (2004) 4 SCC 13** that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If 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.

41. Learned A.G.A. appearing for the prosecution has vehemently argued that a presumption under Section 113-B of the Evidence Act arises against the appellant of this case, which means that burden of proof is now shifted to the defence side.

Pleading the innocence of the appellant, the said plea was heavily opposed by the learned counsel for the appellant.

42. Learned counsel appearing on behalf of the appellant has drawn the attention of the Court to the concept of the burden of proof particularly in a case relating to dowry death. It has been submitted that the case relating to dowry death rests upon circumstantial evidence and there can be no ocular evidence in a dowry death case but the surrounding circumstances which play a vital role in establishing the offence of dowry death should also be taken into account while dealing with such a matter.

43. The Evidence Act, 1872 consists of a peculiar provision under Section 113-B which provides like this:

“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”.

44. It is vehemently submitted that a presumption for dowry death arises only in case the essential components to establish an offence of dowry death are found established on the basis of the evidence on record and in that case the theory of burden of proof is to be looked into with a different angle and in case the prosecution succeeds to establish the essential ingredients in respect of an offence of dowry death, particularly the element of ‘soon before’, the corresponding burden of proof shifts upon the accused and a legal presumption arises against him to show that the dowry death was not caused by him.

45. In **Sher Singh Vs. State of Haryana (2015) 3 SCC 724** the Hon'ble Apex Court in a wide perspective made an interpretation of the word 'shown' and 'deemed' in connection with Section 113-B of Evidence Act and it has been held that

"Shown" should be read as "proved" and "deemed" should be read as "presumed". Initial burden is on prosecution to prove by preponderance of probabilities the ingredients of Section 304-B. Requiring prosecution to prove these ingredients beyond reasonable doubt would defeat purpose of Section 304-B. Once such initial burden is discharged by prosecution, initial presumption of innocence of accused would get replaced by deemed presumption of guilt of accused. Burden would then be shifted on accused to rebut that deemed presumption of guilt by proving beyond reasonable doubt his innocence. Right to life and liberty of accused cannot be jeopardised without providing accused opportunity to prove his innocence".

46. In a recent pronouncement **Primila Vs. State of U.P. (2023) 2 SCC (Cri) 223**, the Hon'ble Apex Court over the subject held as below:

"7. It has repeatedly been held that the procedure under Section 313 CrPC is but a facet of the principles of natural justice giving an opportunity to an accused to present the defence. The burden of proof on an accused in support of the defence taken under Section 313 CrPC is not beyond all reasonable doubt as it lies on the prosecution to prove the charge. The accused has merely to create a doubt. It will be for the prosecution then to establish beyond reasonable doubt that no benefit can flow from the same to the accused."

47. Similarly in **Anand Ramchandra Chougule Vs. Sidarai Laxaman Chougala and Ors. (2019) 8 SCC 50** the same principle was reiterated by the Hon'ble Apex Court in following paragraphs which are extracted as herein under:

“10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt.

11. The fact that a defence may not have been taken by an accused under Section 313 CrPC again cannot absolve the prosecution from proving its case beyond all reasonable doubt. If there are materials which the prosecution is unable to answer, the weakness in the defence taken cannot become the strength of the prosecution to claim that in the circumstances it was not required to prove anything. In Sunil Kundu v. State of Jharkhand, this Court observed: (SCC pp. 433-34, para 28)

"28.... When the prosecution is not able to prove its case beyond reasonable doubt it cannot take advantage of the fact that the accused have not been able to probabilise their defence. It is well settled that the prosecution must stand or fall on its own feet. It cannot draw support from the weakness of the case of the accused, if it has not proved its case beyond reasonable doubt."

48. In the said law the Hon'ble Apex Court referring the notion of law promulgated in **Pratap Vs. State of U.P. (1976) 2 SCC 798** clarified that it is well settled that the burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability.

49. It is trite law that in a criminal trial the defence evidence stands on the same footing as that of the prosecution and the law is settled in a catena of decisions of the Hon'ble Apex Court. In **Munshi Prasad vs. State of Bihar, (2002) 1 SCC 351**, it has been held that :

"3... Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution....."

50. The issue of applicability of the provisions of Section 106 of the Evidence Act has also been laid emphasis upon by the learned State counsel. It is vehemently argued that since the death of the deceased has been occurred in the house of the appellant, he is under obligation to prove as to how the death of the deceased was caused. The said submission has been heavily contended by the learned counsel for the appellant.

51. To appreciate the aforesaid plea, it is expedient to have a glance over Section 106 of the Evidence Act, which is reproduced as hereunder :

"106. Burden of proving fact especially within knowledge.-- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

52. The scope and applicability of Section 106 of the Evidence Act has been discussed by the Hon'ble Supreme Court in the **State of Rajasthan Vs. Kashi Ram, (2006) 12 SCC 254**

and it was held that the provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act.

53. In fact, the burden of proof in a criminal trial is always on the prosecution and the legal principle which has been developed by a plethora of judgments of the Hon'ble Supreme Court and this Court as well is that Section 106 of the Evidence Act does not create any exception to the burden of the prosecution to prove its case beyond reasonable doubt. Since some facts may be of such nature to which only the accused may have special knowledge, the prosecution is exempted to prove such facts but it is always to be kept into the mind that the said provisions does not absolve the prosecution of its primary burden at all. If the accused succeeds to throw light on the fact which is especially within his knowledge and succeeds to offer any explanation in this regard, the burden of proof shall still exist on the shoulders of the prosecution. In other words, the prosecution cannot be exempted at all to prove its case to some extent.

54. So far as the case in hand is concerned, the defence has made an effort to put its case and to prove it to some extent by way of testimony of D.W.1 and before discussing the evidence of D.W.1, it is also to be established that the prosecution has succeeded to prove its case to some extent.

55. As discussed above, the elements of demand of dowry and cruelty and harassment caused to the deceased on account of such demand by her in-laws and the continuation of such events soon before her death are the essential ingredients which in the case in hand the prosecution has failed to establish and prove and that is why the presumption under Section 113-B of the Evidence Act does not shift upon the shoulders of the defence and in the same manner, Section 106 of the Evidence Act also does not offer any help to the prosecution. The conduct of the accused appellant during and after the occurrence is a significant fact to be taken note of. It is an admitted case between the parties that the information of burning of the deceased was given by the husband / appellant himself to his in-laws. It was he who got the deceased admitted in a reputed hospital after her sustaining the burn injuries. Further more, for the entire period of three days when she was admitted in the hospital, all the expenses were borne by the accused appellant and his family members, as admitted by P.W.2 himself. These are the strong circumstances which led this Court to a direction whether bonafide of the appellant is found and in this way Section 106 of the Evidence Act is of no help of the prosecution.

56. Defence has come with a specific case that the deceased had committed suicide as she was a stubborn lady and when her

in-laws refused for her *vidai* immediately with her family members, she due to her obstinate nature in a state of anger committed suicide by way of burning herself. D.W.1, who is the neighbour of the appellant and is aware of the facts and circumstances of the case, vehemently says that the door of the room of the deceased wherein she set-ablaze herself was closed from inside which was broken and she was found in a state of extreme burning. The aforesaid facts and circumstances of the case show that although suicide was committed by the deceased which may be termed as her death under otherwise than normal circumstances, still it was not due to the cruelty and harassment caused to her by her in-laws for demand of additional dowry. Therefore, the explanation offered by the defence as gathered from the statement under section 313 Cr.P.C. and deposition of D.W.1 seems to be genuine and probable.

57. In **Neel Kumar alias Anil Kumar Versus State of Haryana (2012) 5 Supreme Court Cases 766** (paragraph-30), the Hon'ble Apex Court has held - "It is the duty of the accused to explain the incriminating circumstance proved against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him."

58. In **Janak Yadav and Others Versus State of Bihar, 1999 SCC (Criminal) 558 (559)**, it was held that Section 313 Cr.P.C. prescribes a procedural safeguard for an accused facing the trial to be granted an opportunity to explain the facts and circumstances appearing against him in the prosecution's

evidence. That opportunity is a valuable one and cannot be ignored.

59. The learned counsel for the appellant has submitted that to support their version in the statement under Section 313 Cr.P.C., oral and documentary evidence has also been adduced from the defence side. He has relied upon the decision of the Hon'ble Apex Court in **Munshi Prasad Versus State of Bihar (2002) 1 SCC 351** wherein it has been held that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. A lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses. The said dictum of law was reiterated in **Adam Bhai Suleman Bhai Ajmeri Versus State of Gujarat (2014) 7 SCC 716**.

60. In the facts and circumstances of the case, the essential ingredients to establish the offence of dowry death, as defined under Section 304-B IPC, have not been established in the instance case.

61. The conduct of the appellant and his family members in immediately reporting the incident to the informant / brother of the deceased and rushing her to the hospital otherwise supports the inference that the family of the accused acted bona fide and their conduct was natural. This Court otherwise finds that

the factum of demand of dowry as per the prosecution witnesses suffers various contradictions.

62. Upon evaluation of the evidence placed on record, we are of the considered opinion that the prosecution has not been able to establish the guilt of the appellant beyond reasonable doubt, particularly as ingredients of the offence with regard to the demand of dowry immediately before the incident of her unnatural death are not proved.

63. So far as the judgement of the Court below is concerned, I find that the testimony of prosecution witnesses has not been scrutinized in proper manner by the Court concerned. The contradictions in the version of the prosecution witnesses with regard to the contents of demand of dowry and the fact that such allegations otherwise were not substantiated by furnishing details in respect thereof have completely been omitted from consideration. In such circumstances the conclusion and findings recorded by the Trial Court that the prosecution has established its case against the accused appellant beyond reasonable doubt cannot be sustained.

64. The Court also takes notice of the fact that on the same set of evidence the trial Court has acquitted the co-accused, who were the mother-in-law and father-in-law of the deceased. So far as two devar and nanad of the deceased are concerned, a closure report was submitted against them at the stage of submission of charge sheet and they were exonerated. These facts also demonstrate that the evidence to implicate the entire family of

the accused for demand of dowry etc. and their accusation for the same was not well founded at any stage of the matter.

65. This Court, therefore, is of the view in such circumstances and in view of the fact that other family members have been acquitted of the charges levelled against them, it was not prudent for the trial Court to have convicted and sentenced the accused appellant on same set of evidence.

66. Accordingly, the present appeal succeeds and is allowed. The impugned judgement and order of conviction and sentence dated 16.12.2019 is hereby set aside. The accused appellant Ajay Kumar Maurya, who is reported to be in jail, is hereby acquitted of all the charges levelled against him and resultantly he shall be set free, forthwith, unless he is wanted in any other case subject to compliance of section 437-A Cr.P.C.

67. A copy of this order alongwith trial court record be transmitted to the Court concerned for necessary compliance.

Order Date :- 28.11.2024

SS