

Neutral Citation No. - 2024:AHC-LKO:22973

Reserved on 13.12.2023

Delivered on 15.03.2024

Court No. - 14

Case :- CRIMINAL APPEAL No. - 101 of 1999

Appellant :- Sunder and two others

Respondent :- State of U.P.

Counsel for Appellant :- J.N.Chaudhary,Amit Chaudhary

Counsel for Respondent :- Government Advocate

Hon'ble Karunesh Singh Pawar,J.

1. Present criminal appeal has been filed against the judgment of conviction and sentence dated 08.03.1999 passed in S.T. No. 365 of 1997, arising out of crime No. 241/1997 whereby the appellants have been convicted under Section 3/4 D.P. Act for six months rigorous imprisonment with a fine of Rs. 5000/-, under Section 498A IPC for two years rigorous imprisonment, with a fine of Rs. 5000/- and under Section 304(B) IPC for ten years of rigorous imprisonment, with the default provisions in each of the offences.
2. During pendency of the appeal, appellant no. 1 Sundar (father-in-law of the deceased) died and appeal with respect to appellant no. 1 Sundar was abated on 30.11.2023.
3. In the written report, it is alleged by the informant that the deceased was married with co-accused Sundar five years ago. On 29.06.1997 at about 4:00 pm through a relative, the informant came to know that her daughter has been burnt. Upon this information, she went to the village of the applicants along with 10-15 persons where the dead body of her daughter was lying on the door of Sundar. The other daughter of the informant Rameshwari wife of Bihari told that Laxmi has been done to death by the accused persons by pouring kerosene oil upon her. She told the informant that at 9:00 am, one Ashok son

of Master has informed about the incident. She further told the informant that when she reached at the village, she found Laxmi yearning in the burnt state and thereafter Laxmi told Rameshwari regarding the fact of her being burnt. Laxmi told that when she returned from her maika (parents' house) ten days ago, she was beaten for not bringing a golden chain and she was burnt. After reaching at the spot, Rameshwari took her into bullock-kart and while going for her treatment to Purwa hospital, on the way Laxmi died.

4. Prosecution to prove its case has examined following witnesses:-

- (i) PW-1 Phool Kumari (mother of the deceased).*
- (ii) PW-2 Rameseshwari (sister of the deceased).*
- (iii) PW-3 Rakesh Kumar Gupta (Naib Tehsildar).*
- (iv) PW-4 Constable Ram Khelawan who took the body for postmortem.*
- (v) PW-5 Dr. S.K. Gupta who conducted the postmortem of the victim.*
- (vi) PW-6 Constable Rajesh Kumar Bajpai who prepared the chick report.*
- (vii) PW-7 Ram Chandra Yadav (Circle Officer) (Investigating Officer).*

5. There are two defence witnesses in the case who appeared in defence of the applicants. Details of the defence witnesses are as under:-

- (i) DW-1 Bihari Lal*
- (ii) DW-2 Sahdev*

6. The statements of the accused were taken under Section 313 Cr.P.C. Appellant No. 2 (husband of the deceased) in his statement has stated he had no information about the exact time of the incident. He was on his field at the time of incident. After hearing noise when he went there, Laxmi had already died. She caught fire while cooking food. Appellant no. 3 in his statement has stated that Jageshwar (husband

of the deceased) lived away from him. At the time of the incident, he was ploughing his field. When he received information, he came at the house and found Laxmi dead. She died in her kitchen. Both the accused have stated in their statements that they have been falsely implicated due to enmity.

7. In support of its case, the prosecution has produced two fact witnesses i.e. PW-1 mother of the deceased and PW-2 sister of the deceased. PW-1 is the informant of the incident. PW-1 in her chief has repeated the prosecution story as written in the written report. She has stated that she married her daughter five years ago to Jageshwar (accused-applicant no. 2) before her death. She further stated that her relative Ashok gave information about her daughter and when she reached at the village of Jageshwar she found her daughter dead. She further stated that when she reached her another daughter Rameshwari was there who told her that when she reached there Laxmi was alive and she told her that Jageshwar, Nanhey and Sundar after pouring kerosene oil upon her have burnt her. While Sunder (father-in-law of the deceased) was going for the treatment of the deceased, on the way Rameshwari met them and along with them Rameshwari also went along with the deceased. Unfortunately, the deceased died on the way and thereafter she was taken back. When she reached at the spot, Jageshwar, Sundar and Nanhe were not present at their home. She got the written report written by Paras and proved it as Ka-1. She further stated that the accused persons have killed her daughter due to demand of a golden chain in dowry. In the cross, she has stated that she does not remember the date of the

marriage of her daughter. She found her daughter dead at the door of the house of Jageshwar. Near the body of her daughter, she found her another daughter Rameshwari. No other person was found by her except the villagers. Laxmi used to tell her and Rameshwari that the accused persons demanded a golden chain and due to that she was subjected to cruelty. She denied the suggestion that the demand of golden chain was not made by the accused persons. She further denied the suggestion that her daughter Laxmi caught fire while cooking food and died in an accident. Laxmi was married in Phagun month (February and March). At the time of death of the deceased, she was five month's pregnant. In the cross she admitted that golden chain was not demanded by any of the accused from her.

8. PW-2 Rameshwari is sister of the deceased who in her statement has stated that six months and fourteen days back, Laxmi died in her matrimonial home. She was burnt in the matrimonial home. Jageshwar used to demand golden chain from her brother and due to poverty they could not give and i.e. why she was burnt alive. She was given information by one Ashok who was son of the daughter of the maternal aunt. Upon that information, she along with her Jethani (sister-in-law) went to Ajaipur (village of the applicants). When she reached there, Laxmi was alive in a burnt state and was yearning. Upon asking from Laxmi how she was burnt, she told that she went in the mundan (tonsure) and when she returned in her matrimonial home, firstly Jageshwar beaten her on Saturday and then after locking the house, Sundar, Jageshwar and Nanhe beaten her and poured kerosene oil upon her and burnt her. She did not find any of

the accused persons at home. She put her sister on the vehicle and went towards Purwa Hospital, however, on the way she died. In the cross, she could not tell that as to how many years before the marriage of Laxmi, she was married. She has three children. The elder son is six years old. She is the eldest in her brothers and sisters. Ram Khelawan is younger than her. Ram Sajivan is younger than Ram Khelawan. Pappu is younger than Ram Sajivan, Raju is younger than Pappu and Laxmi was younger than Raju. She participated in the marriage of Laxmi, however, she could not tell date, month and year of the marriage. She denied the suggestion that Laxmi was married eight years prior to her death. From her village, the village of the accused Ajaipur is 2 kos (6 km) away. She got the information regarding the death of Laxmi at 11:00 am. She with her Jethani came to Ajaipur by walking 2-3 hours. Sundar (co-accused) was not present at the place of incident. She stayed there for one hour. She did not give any information to the police station and when she gave information to her mother, Laxmi had already died. When her mother came then it was 5:00 pm. The food was cooked in the angan at her sister's place. The deceased told her that kerosene oil was poured upon her and she was set on fire. When she was talking to her sister, there was no one else. She further stated that along with her mother, her brother also went to the police station.

9. DW-1 Bihari Lal has stated that he is a resident village Ajaipur; Laxmi died while cooking food at Chulha; the accused persons were not at home at that time; she was married 9-10 years ago with Jageshwar; two children were born out of the wedlock; Rameshwari

sister of the deceased came at 4:00 pm and by that time Laxmi had died. After four months of the marriage Jageswar started living separately from the other accused persons with Laxmi. The deceased was his sister-in-law and he had no knowledge about the demand of dowry and a golden chain. No quarrel took place between the deceased and family members of Jageswar. No statement was given by Laxmi prior to her death. His son Sripal gave information about the incident to the maternal parents of the deceased and sister of the deceased Rameshwari. His house is adjoining to the house of Jageswar. The accused persons Sundar and Jageswar have not reported the incident to the police station.

- 10.** DW-2 in his statement has stated that while cooking food, Laxmi died. She was married 9-10 years ago to Jageswar. At the time of the incident, all the accused persons were at field. When he reached at the place of incident, Laxmi had already died. Laxmi's sister Rameshwari came at 4:00 pm and by that time, she had died. After the marriage Jageswar was residing away from his father Sundar and brother Nanhe due to partition. He never heard any whisper of beating the deceased Laxmi for demand of golden chain as dowry. He denied the suggestion that the marriage of Laxmi took place 4-5 years ago.
- 11.** Heard Sri Amit Chaudhary, learned counsel for the applicant as well as learned AGA for the State.
- 12.** Learned counsel for the applicant submits that PW-1 Phoolmati is the informant of the incident and mother of the deceased. She did not remember date, month and year of the marriage of the deceased.

13. Learned counsel for the applicant submits that the prosecution has conclusively failed to prove the duration of marriage before the death of the deceased, hence, offence under section 304-B IPC is not made out. He further submits that demand of golden chain has also not been proved. The presence of the accused at the place of occurrence at the relevant time has not been proved.

14. It has been further submitted that no dying declaration had been made by the deceased to PW-2 Rameshwari. Source of information about death of the deceased has also not been proved. Place of occurrence has not been proved. No incriminating article has been recovered from the accused persons. The independent witnesses of the local team has not been brought by the prosecution.

Learned counsel for the applicant has placed reliance on the following judgments:-

(i) ***Gurdip Singh Vs. State of Punjab, (2013) 10 SCC 406.***

(ii) ***Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406.***

(iii) ***Ranjit Singh Vs. State of Punjab, (2011) 15 SCC 285.***

15. Per contra, learned AGA has opposed the appeal submitting that the deceased died in unnatural circumstances due to burn injuries relating to demand of dowry. It is heinous offence and hence, the appeal is liable to be rejected. Learned AGA has placed reliance on the judgment of the ***Balvir Singh v. State of Uttarakhand, 2023 SCC OnLine SC 1261.***

16. Perused the record.

The incident is of 29.06.1997 at about 9:00 am in the morning. FIR has been lodged on 29.06.1997 at 21:15 hours under Sections

498A/304B IPC read with Section 3/4 of DP Act, P.S. Purwa, District Unnao. The informant is Smt. Phoolmati Kumari who is mother of the deceased Laxmi.

According to the prosecution case marriage took place five years prior to the death of the deceased. Inquest took place on 30.06.1997. PW-3 is Rakesh Kumar Gupta. Postmortem was conducted by Sri S.K. Gupta on 30.06.1997 where 1st to 3rd degree burn injury was found on the body of the deceased. The defence witnesses were the first persons who reached at the place of occurrence and their presence or testimony cannot be discarded by the prosecution.

From perusal of statement of PW-1 and PW-2, it is evident that the prosecution could not conclusively prove that the death of the deceased took place within 7 years of marriage as neither PW-1 Phoolmati (mother of the deceased) nor PW-2 Rameshwari (sister of the deceased) were well aware about the date, month and year of the marriage of Laxmi (deceased). PW-2 Rameshwari could not remember as to how many years after her marriage, the deceased got married although she claims to be the real sister of the deceased.

DW-1 Bihari Lal relative of the deceased and DW-2 Sahdev, both of the same village, have specifically stated that marriage of the deceased took place 9-10 years before the date of occurrence and they never heard of any demand of golden chain.

PW-1 in her statement has admitted that no direct demand of golden chain was made from her by the accused persons. PW-1 Phoolmati's source of information about dowry demand is disclosure of PW-2 Rameshwari who alleged that the deceased had told her about the

demand of golden chain. The demand of golden chain was made to the brother of the deceased who had also gone to lodge FIR, but, he has been withheld by the prosecution and has not been produced before the trial court to substantiate the allegations. The non-production of the brother of the deceased during trial gives rise to adverse inference as envisaged under Section 114 illustration (g) of the Evidence Act as perhaps he was not ready to support the false story of demand of dowry put forth by the prosecution.

DW-1 and DW-2 both have stated that they never heard about any demand for golden chain or ill treatment of the deceased by them. They were cross-examined by the prosecution but nothing could elicit from them to discredit their testimony.

So far as the presence of the accused at the time of occurrence is concerned, it is admitted that when PW-1 and PW-2 reached at the place of occurrence, none of the accused persons were there. DW-1 Biharilal and DW-2 Sahdev have also stated that at the time of occurrence, the accused were not at their home rather they were at field.

The story of dying declaration narrated by PW-2 Rameshwari also appears to be improbable for the reason that PW-2 had alleged that she had received information at about 11:00 am that the deceased died due to burn injuries and upon hearing about the incident, she proceeded to the house of the deceased on foot which was 2 kos away from her house along with her sister-in-law (Jethani). She reached at the house of the deceased 2-3 hours later and by that time

she found her sister alive withering in pain on account of burn injuries.

17. The statement of PW-2 and statement of PW-1 do not inspire confidence for the following reasons:-

(i) The whole body of the deceased was burnt and the burn injuries were of 1st to 3rd degree and it appears highly improbable that she would remain alive by the time PW-2 heard about the incident. DW-1 Biharilal and Sahdev of the same village were the first persons who reached at the place of occurrence. Both have deposed that by the time PW-2 reached at the place of occurrence, the deceased had already died. DW-1 and DW-2 both have stated that no disclosure was made to PW-2 by the deceased. During cross examination of both the defence witnesses, nothing was elicited to discredit their evidence. DW-1 also covered the dead body with a piece of cloth (kathri). Both the defence witnesses were cross-examined by the State, however, these part of the statement has not been challenged by the State Counsel during cross examination. So far as the source of information is concerned, PW-2 has stated that she was informed about the incident by one Ashok a close relative of the deceased which appears to be unreliable.

(ii) It has not been disclosed as to how Ashok came to know about the incident.

(iii) DW-1 Biharilal had stated that the information about the death of the deceased was conveyed to her maternal family and PW-2 Rameshwari through his son Sripal. This statement of DW-1 has not been contradicted by the prosecution and therefore, it appears that the

prosecution has not been able to prove regarding the source of information about the death of the deceased. Although as per the prosecution story, the deceased has been burnt after sprinkling kerosene oil, however, there is no evidence of any smell of kerosene oil or any can having been found at the place of occurrence. Nothing has been recovered from the place of occurrence or any other smell of kerosene oil emanating from the body of the deceased. No independent witness of the local team has been produced by the prosecution.

- 18.** In the case of "*Gurdip Singh Vs. State of Punjab, (2013) 10 SCC 406*", it was held by the Supreme Court that in order to give rise to mandatory presumption of law under Section 304-B IPC/113-B of the Evidence Act, the prosecution to first show the existence of all the ingredients of offence under Section 304-B IPC so as to shift the burden of proof to the accused in terms of 113 B Evidence Act. Para 11 to 14 of the judgment is extracted below:-

11. Having carefully gone through the entire evidence as appreciated by both the Sessions Court as well as the High Court, we are not inclined to take a different view except on one aspect viz. the date of marriage. As far as other aspects regarding cruelty or harassment are concerned, it has clearly been proved in the evidence of PW 1 and PW 2 that the appellant-accused was also taunting the deceased demanding dowry. They were all staying in the same premises. The issue had also been brought before the Village Panchayat many times. The deceased was even sent out from her matrimonial home on this account. There is also evidence that the deceased had been harassed by both the accused before two weeks of her death. Yet with all these, for conviction under Section 304-B IPC, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Sans the requirement of seven years, in this case, the offence would fall only under Section 498-A IPC. And for that matter, sans any of the five ingredients discussed at paragraph 5 above herein, the offence will fall out of Section 304-B IPC. The Sessions Court, unfortunately,

has not addressed this crucial aspect and has gone only on assumptions with regard to the date of marriage.

12. It has to be noted that the deceased had two children, the son had died earlier and there is a surviving daughter who is stated to be around seven years. Whether the said age of the daughter is at the time of evidence or at the time of the death of the deceased, is not clear. Neither PW 1, father of the deceased nor PW 2, Sarpanch or any other witness has given any evidence with regard to the date of marriage. No document whatsoever has been produced with regard to the marriage. There is no evidence even with regard to the date of birth of the children. Also, according to PW 1, father of the deceased, the marriage had taken place five to seven years back. It has to be noted that DW 1, elder devrani/ sister-in-law of the deceased had stated in her evidence that the marriage had taken place around eleven years back. Nobody has even spoken on the exact date of marriage. The death reportedly took place on 6-4-1990. The evidence was recorded in 1996. The High Court counted the eleven years from the date of recording of the evidence. However, on going through the evidence, it is not at all clear as to whether the same is with respect to the date of tendering evidence or with respect to the date of the incident.

13. In view of the mandatory presumption of law under Section 304-B IPC/113-B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304-B IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume. In the instant case, the prosecution has failed to establish the crucial fact on the death occurring within seven years of marriage.

14. Hence, we set aside the conviction of the appellant under Section 304-B of the Penal Code. The conviction under Section 498-A of the Penal Code is confirmed. However, taking note of the late evening age of the appellant, the substantive sentence is limited to the period undergone by him during the investigation/trial.

19. In the case of **Sujit Biswas Vs. State of Assam, (2013) 12 SCC 406**, the Supreme Court held that suspicion cannot be formed a basis of guilt. Clear, cogent and unimpeachable evidence is required to be produced by the prosecution. In the same case it was also held that mere abscondance only cannot be a prove of guilt. Para 13 to 17 and 19 and para 22, 23 and 25 of the judgment is extracted below:-

13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide *Hanumant Govind Nargundkar v. State of M.P.* [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] , *State v. Mahender Singh Dahiya* [(2011) 3 SCC 109 : (2011) 1 SCC (Cri) 821 : AIR 2011 SC 1017] and *Ramesh Harijan v. State of U.P.* [(2012) 5 SCC 777 : (2012) 2 SCC (Cri) 905])

14. In *Kali Ram v. State of H.P.* [(1973) 2 SCC 808 : 1973 SCC (Cri) 1048 : AIR 1973 SC 2773] this Court observed as under : (SCC p. 820, para 25)

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence.”

15. In *Sharad Birdhichand Sarda v. State of Maharashtra* [*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court held as under : (SCC p. 185, para 153)

“153. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused ... they should not be explainable on any other hypothesis except that the accused is guilty,
(3) the circumstances should be of a conclusive nature and tendency,

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

16. In *M.G. Agarwal v. State of Maharashtra* [AIR 1963 SC 200 : (1963) 1 Cri LJ 235] this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.

17. Similarly, in *Sharad Birdhichand Sarda* [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] this Court held as under : (SCC pp. 127-28)

Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.

19. This Court in *Babu v. State of Kerala* [(2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] has dealt with the doctrine of innocence elaborately, and held as under : (SCC p. 201, paras 27-28)

“27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like the Negotiable Instruments Act, 1881; the Prevention of Corruption Act, 1988; and the Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden of proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution.”

22. Whether the abscondence of an accused can be taken as a circumstance against him has been considered by this Court in *Bipin Kumar Mondal v. State*

of W.B. [(2010) 12 SCC 91 : (2011) 2 SCC (Cri) 150 : AIR 2010 SC 3638] wherein the Court observed : (SCC pp. 98-99, paras 27-28)

“27. In Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under : (SCC p. 84, para 19)

‘19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.’

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee that mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.”

While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including Matru [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] and State of M.P. v. Paltan Mallah [(2005) 3 SCC 169 : 2005 SCC (Cri) 674] .

23. Thus, in a case of this nature, the mere abscondence of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondence is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See Paramjeet Singh v. State of Uttarakhand [(2010) 10 SCC 439 : (2011) 1 SCC (Cri) 98 : AIR 2011 SC 200] and Sk. Yusuf v. State of W.B. [(2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620 : AIR 2011 SC 2283])

25. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself.

20. In the case of ***Ranjit Singh Vs. State of Punjab, (2011) 15 SCC 285***, the Supreme Court held that though the incident has happened in a matrimonial home, still, the basic onus is on the prosecution to prove its case and the onus does not shift merely because the victim is wife of the accused-husband and the incident happened in matrimonial home. Para 8 of the judgment is extracted below:-

8. *We have heard the learned counsel for the parties very carefully and had gone through the record. The trial court had gone into the evidence and observed that there was no evidence to connect the appellant with the crime. It is true that the incident happened in the matrimonial home and some presumption regarding the special knowledge, etc. could be raised in such a situation. But the basic onus on the prosecution is to prove its case and the onus does not change merely because the victim is the wife and the accused the husband and the incident happened in the matrimonial home.*

21. So far as the judgment of ***Balvir Singh v. State of Uttarakhand, 2023 SCC OnLine SC 1261*** relied by the learned AGA wherein the prosecution was able to prove that Maheshwari Devi herself harassed the deceased for dowry and demanded Rs. 1,00,000/- from the deceased is concerned, the fact of the present case is distinguishable than that of Balbir Singh (supra). In the present case, the prosecution has been failed to prove that golden chain as dowry was demanded by the accused persons and soon before her death she was subjected to cruelty.

22. Thus, the prosecution has failed to prove that the deceased was subjected to cruelty or harassment soon before her death in connection with any demand of dowry. The entire prosecution case is based on the improbable story of the sister of Rameshwari who told the alleged incident to the informant. As per the statement of the

defence witnesses, Rameshwari reached at the place of occurrence at 4:00 pm and Rameshwari alleged that by that time Laxmi was alive and she told the entire incident to Rameshwari is quite improbable as Laxmi was burnt 1st to 3rd degree and in such a burning stage, it is very difficult to believe the she might have been alive by 4:00 pm.

23. PW-1 and PW-2 are the only fact witnesses and none of them have adduced any evidence that the deceased was subjected to cruelty or harassment soon before her death. Rather the defence witnesses who reached first at the place of occurrence have deposed that the marriage of the deceased was taken place 9-10 years before her death. They further adduced that the deceased never gave any statement to anybody else. Absence of evidence of cruelty soon before death proves that the essential ingredients of offence of dowry death as contained in section 304-B 1.P.C. are lacking and failure to prove all the four ingredients is a serious infirmity on the part of the prosecution and hence it can easily be said that the prosecution has failed in proving the case of dowry death and therefore, once the prosecution has failed to show that soon before her death, the victim was subjected to cruelty or harassment in connection with any demand for dowry, presumption of dowry death as provided in section 113-B Indian Evidence Act is not attracted.
24. In view of the discussions made herein above, I am of the opinion that the judgment and order of conviction dated 08.03.1999 passed in S.T. No. 365 of 1997, arising out of crime No. 241/1997 suffers from serious infirmity and illegality and as such it requires to be set aside.

25. In view of the above, the judgment of the order dated 08.03.1999 is set aside. Appellant no. 2 and 3 are acquitted of all the charges levelled against them. Their bail bonds are discharged.

Let a copy of this order be sent to the trial court along with the lower court record forthwith.

(Karunesh Singh Pawar,J.)

Order Date 15.03.2024:- /R.C.