

RESERVED ON 22.11.2023

DELIVERED ON 15.3.2024

Court No. - 14

Case :- CRIMINAL APPEAL No. - 103 of 1997

Appellant :- Ram Ujer, Vinod Kumar alias Babbu and Smt. Shiv Pyari

Respondent :- State of U.P.

Counsel for Appellant :- R.Murtaza,Alok Singh,Ashok Kumar Singh,Mohd. Arif Khan,Shamim Raza

Counsel for Respondent :- Govt. Advocate

Hon'ble Karunesh Singh Pawar,J.

1. Present criminal appeal has been filed against the judgment of conviction and sentence dated 24.2.1997, passed by Additional District & Sessions Judge-IV in Sessions Trial No.206 of 1992 whereby the appellants have been convicted under sections 498-A I.P.C. and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/- and in default of fine to further undergo rigorous imprisonment for one year and they have been convicted under section 304-B I.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years.

During pendency of the appeal, appellant No.3 Smt. Shiv Pyari has passed away and the appeal stood abated for appellant No.3.

2. Heard learned counsel for the appellants and learned Additional Government Advocate for the State and perused the record.

3. A written report was given by informant Ram Sunder Pandey on 26.6.1992 alleging therein that the marriage of the informant's daughter Rajesh Kumari alias Bitto was solemnised with Vinod Kumar son of Ram Ujer resident of Pure Ganga Deen, hamlet of Raee, P.S. Naseerabad, district Raebareli about three years ago and on 25.6.1992, the informant's ten year old son Santosh Kumar along with one Jageshwar had gone to her matrimonial home but returned at 5.00p.m. and stated that he has been scolded by Ram Ujer who refused to send Rajesh Kumari alias Bitto with him and Ram Ujer also threatened Rajesh Kumari that she will not leave the house. After about half an hour, the informant came to know that his daughter has been poisoned to death and he along with his brother Ram Naresh and nephew Kaushlendra reached Pure Ganga Deen and found his daughter dead. He was not allowed to see the dead body of his daughter in the night and on the next morning, in presence of villagers, he saw the dead body of his

daughter.

It is further alleged that his daughter was subjected to cruelty due to demand of buffalo and Rs.10,000/- cash which the informant could not give. Consequently, the first information report was registered.

4.The matter was investigated and charge sheet was submitted. Charges were framed under sections 304-B, 302/34, 498-A I.P.C.

5.During course of the trial, the prosecution has examined P.W.1 Ram Sundar (first informant), P.W.2 Kaushlendra, nephew of informant, P.W.3 Dr. C.K. Chaturvedi, Doctor, P.W.4 S.I. Abhimannyu Singh, P.W.5 Constable Shree Ram and P.W.6 Deputy Superintendent of Police Bhagwan Singh, I.O.

6.The accused persons were examined under section 313 CrPC. Their defence was that they have been falsely implicated in the present case.

7.The appellant Ram Ujer has stated that the marriage of his son Vinod Kumar was solemnised about 10-11 years prior and 'Gauna' ceremony took place after three years of marriage. There was no demand of any dowry and his daughter-

in-law was happy with the marriage. Ram Ujer further stated that on the date of incident, his daughter-in-law's 6-7 years old brother came along with 20-22 years old person who stayed at the home all the day, had meals and in the evening Ram Ujer told them that after few days he can send his father to accompany the daughter as on that date the mother-in-law of Ram Ujer was not well.

Thereafter Ram Ujer and his son Vinod Kumar went to their field where they came to know that his daughter-in-law was unwell and was vomitting and they rushed to the home. Ram Ujer further stated that he has sent Raj Narayan to inform the first informant and he himself went to Pure Raee to arrange for a Doctor and he returned along with Doctor but his daughter-in-law has expired by that time. He further stated that after 4-5 days his mother also expired.

The appellant No.2 Vinod Kumar has stated in his statement under Section 313 Cr. P.C. that he had never demanded buffalo and he and his wife were living in the Village.

Smt. Shiv Pyari, appellant No.3 (since dead)

stated that she is adopting whatever her husband Ram Ujer has stated.

8. The defence has examined D.W.1 Raj Narayan Tripathi. He went to inform the father of the deceased.

D.W.2 Dr. J.P. Mishra was also examined. He was the doctor brought by Ram Ujer to provide medical treatment to his daughter in law.

9. Mr. Rishad Murtaza, learned counsel for the appellant submits that marriage was solemnised about 10-11 years back and Gauna ceremony had taken place after three years of marriage and therefore, no offence under Section 304-B IPC was made out as marriage was solemnized more than seven years prior to the date of incident. It is further submitted that no dowry was demanded from the deceased or her family members and the deceased was living peacefully at her matrimonial home. It is submitted that information of the death of the deceased was sent to father of the deceased through one Raj Narayan, D.W.1. Ram Ujer himself rushed to bring doctor to save the life of his daughter-in-law. Doctor J.P. Misra was examined as DW-2 on

behalf of defence.

Information was also sent to village Choukidar on the basis of which inquest and post mortem were performed. It is submitted that both the prosecution and defence version is that the victim has consumed poison voluntarily, however, in the post mortem examination report, cause of death is mentioned as strangulation and it is strange that the doctor did not preserve viscera to find out actual cause of death. He further submits that the medical evidence is not cogent and reliable. The prosecution has failed to prove that the deceased was subjected to cruelty or harassment soon before her death in connection with any demand for dowry. He has placed reliance on the judgments Devender Singh Versus State of Uttarakhand, Criminal Appeal No.383 of 2018, Sher Singh Versus State of Haryana (2015) 3 SCC 724, Satvir Singh Versus State of Punjab (2001) 8 SCC 633, State of Haryana Versus Angoori Devi (2020) 18 SCC 773, Baijnath & Others Versus state of Madhya Pradesh AIR (2016) SCC 5313, Bhaskar Nath Mishra Versus State of U.P. Criminal Appeal No.849 of 2001.

It is submitted that the appellant Ram Ujer is old

and infirm person and he is barely able to get up from his bed. The appellant Vinod was a boy of tender age at the time of incident. During trial, Vinod had served more than two years in jail. There is absence of cruelty soon before the death. Thus, no offence of dowry death under section 304-B I.P.C. is made out. During trial, offence under section 302 I.P.C. was not proved and the accused persons were acquitted by the trial court for the offence under section 302 I.P.C. It is submitted that the appellants have been convicted under section 304-B I.P.C. in absence of essential ingredients of the offences.

10. Per contra, learned A.G.A. has opposed the appeal and submitted that the prosecution by the two fact witnesses has successfully proved that the deceased was subjected to cruelty soon before her death. The deceased died in unnatural circumstance in close proximity of the death. The appeal is liable to be dismissed.

11. P.W.1 in his examination-in-chief has stated that when he sent Santosh Kumar to bid farewell of his daughter from her matrimonial home on 25.6.1992, she was not allowed to go with Santosh. On the contrary, he was scolded and

Ram Ujer said that he will not send her. His son told that Ram Ujer was sitting with an axe in his hand and stated that if the daughter goes out, he will chop her legs. After half an hour, one person from the village of the matrimonial home of the deceased came and told that his daughter has been done to death by poisoning. After receiving this information, P.W.1 Ram Sunder, his brother Ram Naresh and Kaushlendra, nephew of the informant went to the matrimonial home of the deceased. It was dark in the morning. On the saying of the villagers, he was shown the dead body and while returning, he gave written report of the incident. He has proved Kagaj Sankhya 3/2 dated 26.6.1992. He submitted that in the backdrop of this incident, there was a demand of dowry. He further stated that there was no demand of dowry prior to marriage. After one year of marriage, gauna took place and the accused started demanding dowry. Rs.10,000/- was demanded for purchasing buffalo which he could not provide. His daughter was subjected to cruelty because of non-payment of dowry. Whenever she used to come from her matrimonial home, she used to weep and tell

about dowry. He came to know later on that his daughter was done to death by throttling.

He further stated that no dowry was fixed in the marriage. After gauna, his daughter stayed for eight days in her matrimonial home and thereafter, she was brought in bidai by his nephew Kaushlendra. She stayed for 4-5 months at home and thereafter, she went to her matrimonial home with Ram Ujer, Raj Narayan and also younger son of Ram Ujer.

He further stated that Jageshwar is of Aheer caste who is presently 12-13 years old and he was sent with his son to bid farewell of his daughter. No letter was given by him. It takes half an hour to reach from his home to the home of accused persons. Then it is stated that after his son and Jageshwar returned, half an hour after that, one person came by cycle and told that his daughter has been done to death by poisoning. The name of the person who came to tell this is not known to him, nor he asked his name. He has also not asked from that person who sent him.

He denied the suggestion that he is deliberately giving a false statement. It is further stated that

none of the persons along with P.W.1 went to give information to the police station on that day. During night, they stayed at the house of Ram Ujer. Neither Pradhan or Chaukidar or any other person of the village was called in the night. It took half an hour to reach the police station from home. When the villagers gathered on the next day, P.W.1 and two others as well as other persons did not find any mark of injury on the body of the deceased.

He denied the suggestion that Ram Ujer has told his son Santosh Kumar that he will not bid farewell to his daughter because mother in law of Ram Ujer is very ill and wife of Ram Ujer is also sick and along with him, person of other caste has come. Therefore, instead of today, he will bid farewell on some other day. He further denied the suggestion that Raj Narayan was sent to his home and Ram Ujer went to call doctor himself. He further denied that Ram Ujer brought the doctor and the doctor said that she is dead. He showed ignorance that when Ram Ujer and Vinod came home, Rajesh Kumari was omitting. He further showed ignorance that Ram Ujer has given information to village Chowkidar. He denied that

in connivance with police, he has falsely implicated the accused persons. He further denied the suggestion that in connivance with doctor who conducted post mortem report, wrong post mortem report has been written.

P.W.2 Kaushlendra Kumar Pandey who is cousin brother of P.W.1 has stated that whenever Rajesh Kumari came to her parental home from her matrimonial home, she used to tell that dowry is being demanded and due to that, she was subjected to cruelty. Rs.10,000/- cash was demanded for purchasing buffalo. Four days prior to the incident when his uncle Ram Sunder Pandey went to bid farewell of Rajesh Kumari, her in-laws returned them while saying that blouse of Rajesh Kumari has been sent for stitching and bangles are broken and after four days, she will be sent to her parents home. Upon this, his uncle Ram Sunder Pandey has said that his wife is ill and he cannot come again and again. He will send his son with some person(s). He does not remember whether this statement was given to him to the investigating officer or not. If these facts are not in his statement, he cannot tell any reason.

On 25.6.1992, his uncle Ram Sunder Pandey sent his son Santosh Kumar with another boy Jageshwar to bid farewell of Rajesh Kumari. When Rajesh Kumari alias Bitto was ready, Ram Ujer sat on the door of the house with axe in his hand and said that he would chop out the feet of Rajesh Kumari alias Bitto and no farewell took place on that day and Santosh Kumar and Jageshwar returned. In the evening when he reached home, he came to know that one person from the matrimonial home of Rajesh Kumari alias Bitto has come. It was told that Rajesh Kumari has been done to death by poisoning by father in law, mother in law and husband.

He further stated that after lodging the report when they were returning home, on the way, 3-4 persons of the their village met. They asked us about the death of Rajesh Kumari alias Bitto. Then they said that she has been poisoned. Upon that, they said that Rajesh Kumari has been done to death by throttling.

In the cross, he has stated that no dowry was fixed in the marriage. Within a year of marriage, gauna took place. As long as she was alive, she used to come and go to her matrimonial home.

She stated that in the dowry, buffalo is being demanded. He further stated that after lodging the first information report while returning, 3-4 persons of the village of Ram Ujer met. He does not know their names. They told that she has been done to death by throttling and she has not been poisoned. If these things have not been written by the investigating officer, he cannot tell any reason therefor. He denied that all these things, above stated by him, are just to strengthen the prosecution case and he did not go to bid farewell of the deceased.

He stated that when he and his uncle went to their home, in the way, they stopped to the shop of Binda Prasad Dwivedi for lodging the report. Binda Prasad did not tell them regarding the fact that Pradhan of the village has already taken report (inquest) and sent it through Chowkidar. He denied the suggestion regarding the incident that already report (inquest) was given to the police. No one told at the police station that the police has already gone to the place of incident.

He denied the suggestion that because he is cousin nephew of the informant, he has given false statement and report of the incident has

been given after consultation with the police and after calling Binda Prasad, scribe at the police station.

P.W.3 Dr. C.K. Chaturvedi who conducted post mortem has stated that when he received the papers prior to post mortem, there was no copy of first information report. Copy of the inquest report was sent along with dead body. It was mentioned in the inquest that the deceased Rajesh Kumari alias Bitto appears to have died due to consuming poison substance. He stated that when he opened the body, he found the cause of death which was strangulation and therefore, he did not preserve viscera. He denied that he deliberately did not preserve viscera because he wanted to give a false report in this case.

He further stated that in the living condition, haemorrhage of blood occurs at the edge of the fracture site. He stated that in the condition which he found on the neck during post mortem, he has not mentioned anywhere about sub cutaneous tissues. In the inquest, there was no mention about any injury on the body. He denied the suggestion that in connivance with informant and his family members, he has prepared a false

report. He has mentioned fracture in the report but did not mention about haemorrhage. He did not find the need of mentioning haemorrhage around the fractured corners of rib. He stated that in the ante mortem fracture, on the corners of the broken bone, haemorrhage marks will be found. It will not be found in the post mortem fracture.

He has further admitted that he has not mentioned any mark of blood on the coruna of hyoid bone. He has stated that it is not necessary that in the case of fracture of coruna of hyoid bone, there is also fracture of tracheal ring, cerycoid process, thyroid, larynx. He dissected and observed these organs. No hemorrhage was found in these organs also. He did not feel it necessary to mention separately regarding opening of tracheal ring.

It is further stated that due to reaction in the tissues in the decomposed body, gases are produced which can also be poisonous. In living condition, when such gases mix with water, a gas is formed which can cause death. But such changes do not occur after death. He has denied the suggestion that he did not try to find out about the vital changes in the body. He further denied

the suggestion that he has prepared a false report. He has further denied that false testimony has been given by him.

P.W.4, P.W.5 and P.W.6 are the formal witnesses.

12.D.W.1 Raj Narayan Tripathi in his examination-in-chief has stated that he knows Ram Ujer. He is a resident of his village. He also knows Vinod and mother of Vinod. About 4 ½ years ago, in the evening, he heard that wife of Vinod consumed poison. He went to the house of Vinod. He found that the wife of Vinod was lying on the cot and vomiting. Ram Ujer and Vinod told him to go to the house of the complainant and inform him that his daughter has consumed poison. He went by bicycle to the house of the informant and informed him. Thereafter, Ram Sunder, his brother and nephew came along with him to the house of Vinod. At that time, it was 6.00p.m. By the time we returned, the wife of Vinod already died. He went to inform and Ram Ujer said that he is going to call doctor. He was told by his parents and other persons that the doctor came and wife of Vinod died.

D.W.2 Dr. J.P. Mishra has stated that he works in

government hospital. He has been working since 1991 in this hospital. He knows Ram Ujer. Ram Ujer came to him in June, 1992 in the evening and requested him to see his daughter in law as her condition was very serious. He went along with Ram Ujer to his home at Gangadeen ka purwa. He saw his daughter in law. She was dead. After telling this, he returned.

13. In order to prove the case of dowry death, the following ingredients are essential:-

(1) Death of a woman is caused by any burn or bodily injury or occurs otherwise than under normal situation.

(2) The death must have taken place within seven years

(3) It must be shown that 'soon before her death' she was subjected to cruelty or harassment by her husband or any relative of her husband.

(4) There is a demand for dowry.

14. A perusal of the statement of P.W.1 and P.W. 2 shows that none of these two witnesses have given in their evidence that the victim was subjected to cruelty or harassment 'soon before her death' or in close proximity with death, in

connection with any demand for dowry. The statements of P.W.1, P.W. 2 and the allegations are sweeping and general in nature.

15. Before proceeding further, it would be appropriate to consider section 304-B I.P.C. and section 113-B of Indian Evidence Act which are extracted below :

“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.

(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."

“Section 113-B of Indian Evidence Act :

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

16. In the instant case, there is no evidence adduced by the prosecution to show that soon before her death the victim was subjected to cruelty or harassment in connection with any

demand for dory.

17.The Supreme Court in the case of Devender Singh (supra) (para 12) while interpreting the phrase ‘soon before death’, has settled the law 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. Relevant para 12 is extracted below :

“12. Having taken note of the relevant provision and the ingredients thereof, the facts of the instant case would disclose that the deceased and the appellant No.1 had got married on 20th October, 2007. Sushila, wife of the appellant No.1 had gone missing from the matrimonial home from 24 th April, 2008 and her dead body was fished out on the 10th day from river Alakhnanda near Naragasu. From the basic facts noted above, the basic ingredients of Section 304B IPC such as the death not being normal and such a death having occurred within 7 years from the date of her marriage would stand fully established. The question, therefore, is as to whether the evidence tendered by the prosecution would be sufficient to establish the remaining ingredients of Section 304B IPC with regard to the demand for dowry and perpetration of cruelty and harassment in connection with such a demand. Further, whether such cruelty and harassment were suffered by the deceased soon before her death so as to constitute a dowry death. 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.

In the case of Sher Singh (supra), while interpreting the word ‘soon’ which finds place in section 304-B I.P.C., the Supreme Court has held that the demand of dowry should not be stale or an aberration of the past but should be the continuing cause for the death under section 304-B I.P.C. or the suicide under section 306 I.P.C.

Relevant portion of para 16 is extracted below :

“.....It is after deep cogitation that we consider it imperative to construe the word 'shown' in Section 304B I.P.C. as to, in fact, connote 'prove'. In other words, it is for the prosecution to prove that a 'dowry death' has occurred, namely,

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) within seven years of a marriage,

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry and

(v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry. We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt.....

In the case of Angoori Devi (supra) (relevant para 16), it has been held that the prosecution has to show that the victim was subjected to cruelty or harassment soon before her death in connection with any demand for dowry.

In the case of Baijnath (supra), it was held that presumption as to dowry death would get activated only upon the proof of the fact that the deceased had been subjected to cruelty or harassment for or in connection with any demand

for dowry by the accused and that too in the reasonable contiguity of death. Relevant paras 32 and 33 are extracted below :

“32. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death.

33. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.”

In *Satvir Singh versus State of Punjab* (2001)8 SCC 633 (para 22), the Supreme Court while interpreting ‘soon before death’ has held 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 304B 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 death 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.”

18.Learned A.G.A. while opposing the appeal has relied on Deen Dayal and others versus State of U.P. 2009(1) Crimes 243 (SC).

The facts in the case of Deen Dayal (supra) are distinguishable as in that case, there was specific reference to the month and year as well as date when the dowry was demanded. However, in the present case, there is no specific date or time given regarding demand of dowry in close proximity to the death. Therefore, the said case is distinguishable on facts.

In Bansi Lal versus State of Haryana AIR 2011 SC 691, it was held that demand of scooter was in close proximity with death which is not the case here. This case is also distinguishable on facts. In that case, conduct of the accused husband forced the deceased to leave her matrimonial home just after one year of marriage and stay with her parents for 14 months continuously. It is not the case here.

In Kashmir Kaur and another versus State of Punjab AIR 2013 SC 1039, the deceased died within 11 months of her marriage. Demand of

dowry was made three days prior to the death of the deceased. However, in the present case, there are general and sweeping allegations regarding demand for dowry without any demand being raised by the accused persons in close proximity to the death of the deceased and therefore, this case is also distinguishable on facts.

19. A conjoint reading of sections 304-B I.P.C. and 113-B Indian Evidence Act in the given facts of the case of the prosecution, there is no evidence to show that the deceased actually died within seven years of her marriage. The prosecution has also not been able to prove that the cruelty or harassment meted out to the deceased was relating to demand for dowry in close proximity to her death. Statement of D.W.1 and D.W.2 shows the bona fide conduct of the accused persons. Immediately, an information was sent to the father of the deceased through Raj Narayan D.W.1. Ram Ujer himself rushed to bring doctor to save life of his daughter-in-law. Information was also sent to village chowkidar on the basis of which, the inquest and post mortem were performed. The conduct of the accused persons shows that they are innocent and

no offence has been committed by them.

Further, the post mortem report is very strange. Although, it is the case of the prosecution as well as the defence both that the victim has consumed poison, still no viscera was preserved. Cause of death is mentioned as strangulation which runs contrary to the prosecution case. In the first information report and the inquest memo and even the defence case is that of voluntarily consuming poison by the deceased. However, the doctor has not preserved the viscera.

The medical evidence does not appear to be cogent and reliable. Though, the finding of ante mortem strangulation has been given. However, the post mortem report clearly shows the sign of consuming poison and no sign of strangulation as hyoid bone was not fractured and foam was oozing out from other parts of the face. Although fracture has been shown in the rib, however, there is no haemorrhage around that which sign is only the injury received post mortem. If the rib is broken after death, there is no haemorrhage as per Modi Jurisprudence. The doctor in his statement has not been able to give any convincing reply as to why there is no

haemorrhage on the corners of the broken rib. Therefore, it is evident that the post mortem has been done in a casual and careless manner. Modi in this regard is very clear that hyoid bone fracture is usually the result of direct trauma to the neck because of manual strangulation, hanging, blunt trauma or projectiles. However, hyoid bone fracture caused by a fall is seldom reported.

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 for dowry. The appellants have made every effort to save her life. They even called the doctor D.W.2. Immediately information was given to her father by Raj Narayan Tripathi. In the first information report, it was mentioned that the victim has died due to poison. In the inquest memo also, it is clearly mentioned that the death had taken place as the victim had consumed poison. Even at the time of post mortem examination, foaming fluid was coming out and there was cyanosis. Both these features indicate poisoning. The doctor did not preserve viscera to obtain the expert report of a toxicologist.

20.P.W.1 and P.W. 2 are the only witnesses of fact and none of them adduced any evidence that the victim was subjected to cruelty or harassment soon before her death. Absence of evidence of cruelty soon before death proves that the essential ingredients of offence of dowry death as contained in section 304-B I.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.

21.In view of the above, the judgment of conviction suffers from serious infirmity and warrants interference by this Court in its appellate jurisdiction.

22. In the light of what has been discussed herein above, the appeal is liable to be and is hereby allowed and the judgment and order dated

24.2.1997 (supra) is set aside. The appellants are acquitted of the charges levbelled against them. The bail bonds are discharged.

Pending application, if any stands disposed of.

23. Let a copy of the order be sent to the trial Court as also the lower court records, forthwith.

Order Date :- 15.3.2024

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