

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.69 of 1993

AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED 10.03.1993, PASSED BY SHRI PRIYA SARAN, 2ND ADDITIONAL SESSIONS JUDGE, ROHTAS AT SASARAM, IN SESSIONS TRIAL NO. 339 OF 1989, ARISING OUT OF DEHRI (ANKORHI GOLA) POLICE STATION CASE NO. 43 OF 1989.

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1. Ram Bahadur Singh son of Kripa Singh
2. Jitendra Singh son of Ram Bahadur Singh
3. Murli Singh son of Late Sikandar Singh
All resident of Bank, P.S.-Ankorhi Gola, District-Rohtas.

.... Appellants

Versus

The State of Bihar Respondent

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With

Criminal Appeal (DB) No. 70 of 1993

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1. Ram Awadh Singh son of Suraj Singh
2. Ram Bachan Singh son of Ram Chandra Singh
All resident of Bank, P.S.-Ankorhi Gola, District-Rohtas.

.... Appellants

Versus

The State of Bihar Respondent

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With

Criminal Appeal (DB) No. 151 of 1993

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1. Mundrika Singh son of Sukhari Singh
2. Taluka Devi, wife of Ram Bahadur Singh
All resident of Bank, P.S.-Ankorhi Gola, District-Rohtas.

.... Appellants

Versus

The State of Bihar Respondent

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With

Criminal Appeal (DB) No. 155 of 1993

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Santosh Kumar Mehta son of Ram Bahadur Singh, resident of Bank, P.S.-Ankorhi Gola, District-Rohtas.

.... Appellant

Versus

The State of Bihar Respondent

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Appearance :
(In All Appeals)

For the Appellants : Mr. Kanhaiya Prasad Singh, Senior Advocate
Mr. Subhash Kumar, Advocate
Mr. Birendra Kumar Singh, Advocate
Mr. Alok Kumar, Advocate
For the Respondent : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 24-04-2015

Under challenge, in the present appeals, is the judgment and order, dated 10.03.1993, passed, in Sessions Trial No. 339 of 1989, by the learned 2nd Additional Sessions Judge, Rohtas, at Sasaram, whereby various sentences have been passed against the accused-appellants.

2. By the impugned judgment under appeal, the learned trial Court has convicted all the accused-appellants, namely, Ram Bahadur Singh, Taluka Devi, Santosh Kumar Mehta, Jitendra Kumar Singh, Mundrika Singh, Murli Singh, Ram Awadh Singh and Ram Bachan Singh, under Section 302 read with Section 34 of the Indian Penal Code and all the accused-appellants, except accused-appellant Taluka Devi, have been convicted under Section 201 of the Indian Penal Code, too. By the judgment under appeal, the accused-appellant, Santosh Kumar Mehta, stands further convicted under Section 4 of the Dowry Prohibition Act, 1961. While all the accused-appellants aforementioned stand sentenced, for their conviction under Section 302 read with 34 of the Indian



Penal Code, to suffer imprisonment for life, all the accused-appellants, except accused-appellant Taluka Devi, stand sentenced, for their conviction under Section 201 of the Indian Penal Code, to undergo rigorous imprisonment for a period of five years and accused-appellant, Santosh Kumar Mehta, further stands sentenced, for his conviction under Section 4 of the Dowry Prohibition Act, 1961, to undergo rigorous imprisonment for one year. All the sentences have been directed to run concurrently.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) Deceased Urmila Singh, married to accused Santosh Kumar Mehta, in the year 1982, was the daughter of PW 7 (Jawahar Lal Singh). While accused Jitendra Singh is younger brother of accused Santosh Kumar Mehta, accused Mundrika Singh is cousin of accused Santosh Kumar Mehta. While accused Ram Bahadur Singh is the father-in-law of the said deceased, accused Taluka Devi is the mother-in-law of the said deceased. The remaining accused, namely, Murli Singh, Ram Awadh Singh and Ram Bachan Singh, are the co-villagers of accused Santosh Kumar Mehta.

(ii) Deceased Urmila Singh's '*gauna*' (i.e., the ceremonial departure of the bride from the house of her parents to her matrimonial house) was performed, on 14.12.1988.

Following her '*gauna*', Urmila Singh was taken to her matrimonial house, at village Bank, by accused Santosh Kumar Mehta.

(iii) PW 3 (Shiv Kumar Singh) came, sometime in the month of February, 1989, to the house of his in-laws at village Bank and he also went to visit his cousin, Urmila Singh, at her matrimonial house. When PW 3 reached the matrimonial house of Urmila Singh, he did not find Urmila and her husband (i.e., accused Santosh Kumar Mehta) there, but he (PW 3) met Urmila's parents-in-law. While Taluka Devi, mother-in-law of Urmila Singh told PW 3 that Urmila's brother had taken her to Bhopal, PW 3 was informed by accused Ram Bahadur Singh, father-in-law of Urmila Singh, that Urmila Singh had been taken by her husband (i.e., accused Santosh Kumar Mehta), to Banaras. These contradictory information, which were given to PW 3 by the parents-in-law of Urmila Singh, made PW 3 suspicious and he expressed his suspicion to his father-in-law, Ram Muni Singh (PW 1), whereupon Ram Muni Singh (PW 1), accompanied by his wife, went to the house of accused Ram Bahadur Singh. On enquiry, Ram Bahadur Singh said that Urmila's brother had taken her to Bhopal, but when PW 1 made enquiry from accused Taluka Singh, she told that her son, accused Santosh Kumar Mehta, has taken Urmila Singh to Banaras.



(iv) On returning home, PW 1 asked PW 3 to send a telegram to Urmila's father, Jawahar Lal Singh (PW 7), who used to live in Bhopal. PW 3 accordingly sent a telegram to Jawahar Lal Singh (PW 7). The telegram was received by PW 7 (Jawahar Lal Singh), on 10.02.1989, informing him that Urmila Singh was ill. PW 7, therefore, came to village Bank and learnt from accused Ram Bahadur Singh and the members of his family that Urmila Singh had committed suicide on 04.02.1989 and her last rites had already been performed by them by the side of Sone river. Thereafter, when PW 7 happened to meet PW 1 (Ram Muni Singh), PW 1 told him (PW 7) that Urmila Singh had, in fact, been murdered and her dead body had been burnt.

(v) PW 7, therefore, lodged a *fardbayan* (Exhibit-2), at Akorhi Gola Police Station, alleging therein, *inter alia*, that he had given his daughter, Urmila Singh, in marriage to accused Santosh Kumar Mehta and on 14.12.1988, his son-in-law took Urmila Singh to her matrimonial home after her *gauna*, but on 10.02.1989, PW 7 received a telegram, at Bhopal, from PW 3 informing him (PW 7) that Urmila Singh was killed and that he (PW 7), thereafter, came to village Bank (i.e., the matrimonial home of his daughter, Urmila Singh) and, on making enquiry about his daughter, accused Ram Bahadur Singh and his family members told him that Urmila Singh had committed suicide, on



04.02.1989, and her dead body had already been cremated by the side of Sone river and that he (PW 7), then, went to the house of his relative, Ram Muni Singh (PW 1), who told him (PW 7) that accused Ram Bahadur Singh and his family members had killed Urmila Singh and burnt her dead body. It was also alleged in his *fardbeyan* (Exhibit-2) that his daughter, Urmila Singh, was hale and hearty and had not been suffering from any disease and he was, therefore, confident that accused Ram Bahadur Singh, father-in-law of deceased Urmila Singh, accused Santosh Kumar Mehta, husband of deceased Urmila Singh, accused Jitendra Kumar, brother-in-law of deceased Urmila Singh, Taluka Devi, mother-in-law of deceased Urmila Singh, accused Mundrika Singh and accused Murli Singh had killed Urmila Singh and disposed of her dead body.

(vi) The informant further alleged that the reason behind Urmila Singh's murder was that his son-in-law had demanded a colour television at the time of *gauna* of Urmila Singh and since the demand had not been fulfilled, the accused had killed Urmila Singh.

(vii) The *fardbeyan* (Exhibit 2) of the informant, Jawahar Lal Singh (PW 7), was recorded by the Officer-in-Charge, Akorhi Gola Police Station, Ashok Kumar Sinha (PW 10), at Akorhi Gola Police Station, on 12.02.1989, at 3:00 PM and, treating the said *fardbeyan* (Exhibit 2) as First Information

Report, Akorhi Gola Police Station Case No. 43 of 1989 was registered, under Sections 302/201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, 1961, against six (06) accused persons, namely, Ram Bahadur Singh, Santosh Kumar Mehta, Jitendra Kumar, Taluka Devi, Mundrika Singh and Murli Singh.

(viii) During investigation, the Investigating Officer (PW 10) took into custody accused Ram Bahadur Singh, Ram Bahadur Singh's wife, accused Taluka Singh, accused Santosh Kumar Mehta, accused Jitendra Singh, accused Mundrika Singh and accused Murli Singh and obtained their custody on police remand and, during investigation, a statement of Mundrika Singh, in the form of his judicial confession, was recorded under Section 164 of the Code of Criminal Procedure, on 21.02.1989, by a Judicial Magistrate (PW 11). On the basis of the confession so made by accused Mundrika Singh and the information received by the Investigating Officer on interrogation, accused Mundrika Singh was taken to the field of accused Ram Bahadur Singh and a place, pointed out by accused Mundrika Singh, was dug at the direction of the Investigating Officer, dead body of a female person was dug out, which was identified by PW 7 and PW 8, i.e., the father and the brother respectively of deceased Urmila Singh, as the dead body of Urmila Singh.



(ix) Inquest was, then, held over the said dead body, which was also subjected to the *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302/201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, 1961, against 08 (eight) accused persons, namely, Ram Bahadur Singh, Taluka Devi, Santosh Kumar Mehta, Jitendra Kumar Singh, Mundrika Singh, Murli Singh, Ram Awadh Singh and Ram Bachan Singh.

4. At the trial, however, while a charge, under Sections 302 read with Section 34 of the Indian Penal Code, was framed against all the 8 (eight) accused persons, namely, (1) Ram Bahadur Singh, (2) Taluka Devi, (3) Santosh Kumar Mehta, (4) Jitendra Kumar Singh, (5) Mundrika Singh, (6) Murli Singh, (7) Ram Awadh Singh and (8) Ram Bachan Singh, a substantive charge, under Section 201 of the Indian Penal Code, was also framed against all the accused-appellants except the accused-appellant Taluka Devi. To the charges so framed, they all pleaded not guilty. An additional charge was framed, under Section 3/4 of the Dowry Prohibition Act, 1961, against accused Santosh Kumar Mehta. To the charge so framed against him, accused Santosh Kumar Mehta pleaded not guilty.

5. In support of their case, prosecution examined



altogether 11 (eleven) witnesses including the doctor, who had conducted *post mortem* examination, and also the Judicial Magistrate (PW 11), who had recorded the judicial confession of accused Mundrika Singh. The accused persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, they denied that they had committed the offences, which were alleged to have been committed by them. The defence, too, adduced evidence by examining one witness.

6. Having, however, arrived at the finding that accused-appellants aforementioned had been proved guilty of the offences charged with. The learned trial Court convicted them as indicated hereinbefore. So far as the accused-appellant, Santosh Kumar Mahto, is concerned, he, having been found guilty of offence under Section 4 of the Dowry Prohibition Act, 1961, was accordingly convicted. Following their conviction, sentences have been passed against the accused persons as mentioned above.

7. Aggrieved by their conviction and the sentences passed against them, the accused aforementioned, as convicted persons, have preferred these appeals.

8. All these four appeals having, thus, arisen out of the impugned judgment and order of conviction and sentence, dated 10.02.1993, these appeals have been heard together and

are being disposed of by this common judgment and order.

9. It may be noted that accused Murli Singh died during the pendency of the appeal and no substitution has been sought for. Consequently, Criminal Appeal (DB) No. 69 of 1993, insofar as accused-appellant, Murli Singh, the co-villager of accused Santosh Kumar Mehta, i.e., the husband of the said deceased, is concerned, stands abated against him.

10. We have heard Mr. Kanhaiya Prasad Singh, learned Senior Counsel, appearing for the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing for the State.

11. While considering the present appeal, let us, first, take into account the evidence of doctor (PW 9), who had, on 21.02.1989, at 04:55 PM, held inquest over a female dead body and found as follows:

"(i) Foul smell coming out of the body. All the cloths of the body wet with soakage of water. Face, abdomen, upper and lower limbs swollen. Tongue was swollen and protruded. Abdomen distended. Cornea flattened and milky in colour. Scalp hairs separated with very slight traction. Nails of finger and toe separated. Skin of soles of feet separated in one sheet. Skin from majority of body surface peeling off. Lower limbs contaminated with moist clay. Part of the front and sides of the neck on the upper part of the neck showing reddish brown

colourisation. Underlying subcutaneous tissue and muscle showing soft reddish brown blood and thick liquid blood of same colour. Corner of the hyoid bone on right side is fractured and soft tissue around the fractured site showing soft reddish brown clot and thick liquid blood. Submucous clot in the larynx and thick liquid blood in larynx and upper part of trachea seen. Stomach, small and long intestine are excessively distended and on dissection air came out with force. Stomach is empty, containing only air.

(ii) *Small intestine containing only gas. Large gut containing faecal matter and gas. Liver is blackish, friable and soft.*

(iii) *Brain is soft and pulpy. Heart is empty, soft and flabby. Bladder is soft, containing one ounce urine. Uterus is dull red in colour and non gravid. Both kidneys and spleen dull red in colour."*

12. In the opinion of the doctor (PW 9), the injuries found, on the neck of the said dead body, were *ante mortem* in nature and the death was caused due to strangulation leading to *asphyxia*, time elapsed since death being 2 to 15 days.

13. In his cross-examination, the doctor (PW 9) has deposed thus,

"(i) *I studied the cadaveric charges. My study was based on necked eye observation. I appreciate that microscopic examination would have been more scientific*

in cadaveric study.

(ii) *The body was in a highly decomposed state. Softening start after 12 to 36 hours in summer season. In winter season 1 to 3 days. I have given the details in post mortem report for my opinion about the time of death.*

(iii) *I have not used the word adibceri in my post mortem report. I am acquainted with the word. Hydrolysis had set in the body. I did not find the fats and muscles coming out from the dead body. Signs, which I found on the neck, were not possible by hanging by rope. I have neither seen such a hanging nor held post mortem of such hanging.*

(iv) *I did not find froth from mouth or nose. Teeth was found intact. No sign of violence on wrist and palm. No blood was found in nostrils.*

(v) *I did not preserve nail. I did not use any intoxicological examination. I did not send serological. I was not told that dead body was kept buried in the earth. The parable of the dead body was learnt through inquest report. It is not a fact that my report is unscientific."*

14. From the medical evidence on record, we find that the said dead body was found, when subjected to *post mortem* examination, in a highly decomposed state so much so that the hair from the scalp has separated, nails of fingers and

toes stood separated, skin of sole of feet found separated in one sheet and that the skin from major part of the dead body had started peeling off.

15. In the circumstances indicated above, it would be frightfully difficult, in the absence of any specific and definite evidence, to hold, confidently, that the said dead body was of Urmila Singh.

16. In the light of the observations made above, when we revert to the evidence on record, we notice that according to the evidence on record, the informant (PW 7), father of the deceased Urmila Singh, and PW 8 (Anil Kumar Singh), brother of deceased Urmila Singh, were the ones, who had identified the said dead body as the dead body of Urmila Singh.

17. It needs to be pointed out that the defence had denied and disputed the veracity of identification of the said dead body as the dead body of Urmila Singh by PW 7 and PW 8. Nothing whatsoever was, however, elicited by the prosecution from PW 7 and PW 8 to show the basis of their identification.

18. In fact, it has also surfaced from the cross-examination of Investigating Officer (PW 10) that he had not recorded the statement of any witness with regard to Urmila Singh facial features, colour, height or physique. In fact, there

is nothing in the evidence, adduced by the prosecution, to show as to what was the basis of identification of the said dead body as the dead body of Urmila Singh.

19. Situated thus, what we find it frightfully difficult and well-nigh impossible to hold, boldly and confidently, that the said dead body was of Urmila Singh.

20. We, therefore, hold that the prosecution did not succeed in proving that the said dead body was of Urmila Singh. This impression gets reinforced from the fact that no previous statement of accused Mundrika Singh has been proved by the prosecution leading to the recovery of the said dead body. Merely because of the fact that accused Mundrika Singh had pointed out to the place from where the said dead body was dug out, it cannot make a Court hold, without any hesitation, that the said dead body was of Urmila Singh, particularly, when there is not a particle of admissible evidence to show that accused Mundrika Singh had said that the dead body, which he was going to point out, was of Urmila Singh.

21. Let us, however, for the present, proceed on the assumption that the said dead body was of Urmila Singh and she died due to asphyxia as a result of her being strangled and, then, determine if the evidence, adduced by the prosecution, warranted conviction of the accused appellants for the offence with which they stood charged with.



22. Bearing in mind what is indicated above, when we come to the evidence of PW 7, we notice that, according to his evidence, he received, on 10.02.1989, a telegram from Shiv Kumar Singh (PW 3) calling him to the matrimonial home of Urmila Singh and, on receiving the telegram, he came to the matrimonial house of Urmila Singh and when he (PW 7) made enquiries from Urmila's father-in-law, accused Ram Bahadur Singh, he (PW 7) was told that Urmila Singh had committed suicide and her funeral was done by the side of Sone river.

23. It is in the evidence of PW 7 that he asked other accused, namely, Urmila Singh's husband, accused Santosh Kumar Mehta, accused Jitendra Singh, accused Taluka Singh, accused Mundrika Singh, accused Murli Singh, accused Ram Awadh Singh and accused Ram Bachan Singh and he received the same information from all of them. It is also in the evidence of PW 7 that when he became suspicious on hearing what he had been told about by the accused aforementioned, he went to the house of father-in-law of his nephew, Shiv Kumar Singh (PW 3), and upon making enquiry from PW 1, father-in-law of Shiv Kumar Singh (PW 3), he (PW 7) learnt that Urmila Singh had been murdered. It is the further evidence of PW 7 that he, then, went to the Police Station and lodged there the First Information Report (Exhibit-6).

24. PW 7 has deposed that the police arrested all



the accused. The Investigating Officer (PW 9) took accused Mundrika Singh to the agricultural field of accused Ram Bahadur Singh and from a place, which had been pointed out by accused Mundrika Singh, police recovered a dead body, which was lying buried therein and the said dead body, according to the evidence of PW 7, was of Urmila Singh and, then, inquest was held on the said dead body.

25. PW 7 had also deposed that after *gauna*, Urmila Singh's husband and his other relatives had been demanding colour television, scooter and sewing machine. Two letters were produced by PW 7 at the trial and he claimed that while Exhibit-3 was a letter written to him (PW 7) by accused Santosh Kumar Mehta, Exhibit-3/1 was the letter written to him by accused Jitendra Singh, demanding colour television, scooter, etc.

26. Broadly in tune with the evidence of PW 7 is the evidence of PW 8, brother of deceased Urmila Singh, inasmuch as PW 8 has also deposed that on receiving the information that his father had gone to Urmila Singh's matrimonial home, he came to village Bank and met his father (PW 7) at the house of PW 1 and came to learn about Urmila Singh having been murdered. It is in the evidence of PW 8 that in his presence, Urmila Singh's dead body had been dug out and recovered from a place, which had been pointed out by accused Mundrika

Singh. It is also in the evidence of PW 8 that he, too, had identified the said body as dead body of Urmila Singh.

27. PW 8 has claimed, in his evidence, that before Urmila Singh's death, he had met Urmila Singh and she (Urmila Singh) had told that her husband and others in the family had been torturing her and, at times, she heard them planning to kill her and Urmila Singh had also told him (PW 8) that she was subjected to torture as scooter and colour television had not been given to her husband and, then, on returning to Bhopal, he had reported to his father (PW 7) whatever he had been told by the said deceased.

28. What, now, needs to be noted is that in the first information report (Exhibit-2), the informant has, nowhere, made any complain that anything other than colour television had been demanded by his son-in-law (accused Santosh Kumar Mehta). This apart, had the informant been aware of the fact that his daughter, Urmila Singh, was being subjected to torture by her husband and other members of the family of her husband, there was no reason as to why the said accusation had not been made in the First Information Report. This apart, neither PW 7 nor PW 8 nor anyone on their behalf or on behalf of their family had ever gone to the matrimonial home of Urmila Singh and expressed their concern with regard to the torture, which Urmila Singh was allegedly being subjected to.

29. Most importantly, what we cannot ignore is the fact that the first information report makes no mention at all that Urmila Singh had ever reported regarding her being tortured or her being subjected to cruelty by her husband and/or his relatives.

30. When it is the specific evidence of PW 8 that he (PW 8) had returned to Bhopal having met Urmila Singh on 26.01.1989, he (PW 8) had reported to his father (PW 7) whatever he had been told by Urmila Singh, noticeably, however, while lodging the first information report and making mention about the fact that a colour television had been demanded by the accused aforementioned, no mention was made of demand having been made for scooter, sewing machine and/or Urmila Singh having been subjected to cruelty by her husband and his relatives.

31. As regards Exhibit-3 and Exhibit-3/1, which had been produced and proved by PW 7, as the letters written by accused Santosh Kumar Mehta and accused Jitendra Singh respectively, the fact remains that these letters were not produced before the Investigating Officer during the period of investigation.

32. In fact, the letters, in original, were produced, for the first time, at the trial. While the informant (PW 7), who had produced the two letters aforementioned, has claimed, in

his evidence, that photocopies of the said letters had been furnished to the police, his son (i.e., PW 8) has clearly admitted, in his cross-examination, that no such letter was ever handed over to the police during investigation.

33. When the evidence, adduced by the prosecution, is considered in the light of the fact that the defence denied that the said letters were written by any of the accused, we are constrained to hold, and we do hold, that the said two letters could not have been held to have been convincingly proved as the letters having been written by the two accused aforementioned and had been received and/or been in possession of PW 7 when there is no corroborative evidence of any hand-writing expert or of anyone in this regard. In fact, even the First Information Report is completely silent with regard to any letter of demand having been received by the family of Urmila Singh. Though a first information report is not an encyclopedia of the prosecution's case, the basic facts ought to be mentioned in the First Information Report and, in its absence, convincing explanation has to be offered or must be discernible from the evidence on record.

34. In the case at hand, the material accusations, which are made by PW 7 and PW 8 in their evidence, as incriminating circumstances against the accused, were neither mentioned in the first information report nor were the letters



had been produced, during investigation, to the police. Logically extended, Exhibit-3 and Exhibit-3/1 could not have been treated as having been proved and, thus, no reliance could have been placed on Exhibit-3 and/or Exhibit-3/1, treating the same as the letters written by accused Santosh Kumar Mehta and accused Jitendra Singh respectively raising thereby any demand of dowry.

35. Let us, now, come to the judicial confession of accused-appellant Mundrika Singh and the recovery of a female dead body as the dead body of Urmila Singh. In this regard, the evidence of Investigating Officer (PW 10), we notice that according to him, he had obtained the custody of accused Ram Bahadur Singh, accused Santosh Kumar Mehta, accused Mundrika Singh and accused Murli Singh on police remand, on 20.02.1989, for two days, and, on interrogation, all the accused told him that they had buried the dead body in the agricultural field of Ram Bahadur Singh and, at the place of burial, onion had been sowed.

36. It is in the evidence of the Investigating Officer (PW 10) that he got judicial confession of accused Mundrika Singh recorded by a Magistrate. It is also in the evidence of the Investigating Officer (PW 10) that it was accused-appellant, Mundrika Singh, which pointed out the place from where the said dead body had been dug out as the dead body of Urmila

Singh.

37. Though the Investigating Officer, at one stage, claimed that all the accused had confessed their guilt, he had buckled, under pressure of the cross-examination, and conceded that he had not recorded in case diary that all the accused had made confession and that he had only recorded the statement of Mundrika Singh. In fact, he has also conceded, in his cross-examination, that except accused Mundrika Singh, no other accused had mentioned about the fact that the dead body had been buried in the agricultural field and onion had been sowed on the same.

38. Close on the heels of the evidence of Investigating Officer is the evidence of PW 11, a Judicial Magistrate, who recorded the judicial confession, under Section 164 of the Code of Criminal Procedure, of the accused Mundrika Singh. His judicial confession has been proved as Exhibit-7. This statement, proved as Exhibit-7, on being translated into English, reads as under:

"The occurrence is of third day of this month. I was sleeping after taking my meals.

Ram Bahadur Singh woke me up and told that his daughter-in-law has died by hanging her. If police will arrive, it will create trouble. We should bury her in the field. I told that we should not bury the dead body. I had participated in carrying the dead body. We

were altogether 6-7 persons, who carried the dead body. Myself, Ram Bahadur Singh, Santosh Kumar, Jitendra Singh, Murli Singh, Taluka Devi, Ram Awadh Singh and Ram Bachan Singh were amongst them. Dead Body was buried in my presence. Despite my resistance, they buried the dead body."

39. Before proceeding further, let us consider as to whether the judicial confession, which is said to have been made by the accused, was admissible at all in evidence as the confession of accused-appellant, Mundrika Singh.

40. With regard to the above, imperative it is to note that the Judicial Magistrate (PW 11) has conceded, in his cross-examination, that he had not, contrary to the requirement of Section 164(2) of the Code of Criminal Procedure, explained to the accused (i.e., accused Mundrika Singh) that he (i.e., accused Mundrika Singh) was not bound to make confession and that if he happened to make confession, the same might be used as evidence against him (i.e., accused Mundrika Singh).

41. Thus, the statutory requirement of informing the accused that he was not bound to make a confession and that the confession would, if made, be used as evidence against him, was not discharged in the present case. The judicial confession so regarded was clearly, therefore, not admissible in evidence.

42. It is also in the evidence of Judicial Magistrate (PW 11) that within 15-20 minutes of the production of accused Mundrika Singh before him, he (PW 11) recorded the confession of accused Mundrika Singh.

43. Without, therefore, giving any time for *reflection* on the confession, which accused Mundrika Singh had made, his so-called confession was recorded. In this regard, it is relevant to note that PW 11 did not put even one question to find out from accused Mundrika Singh as to how he had been treated, while in the police custody, and whether he had been induced or threatened or beaten or tortured to make the judicial confession or whether he had been promised of any benefit being received by him if he chose to make the confession. The Magistrate had not assured accused Mundrika Singh that he would not be handed over to police even if he would choose not to make confession. There was no such question put by the Magistrate to determine as to why accused Mundrika Singh was offering to make confession so as to determine if the confession was at the instance of accused Mundrika Singh or not. The Magistrate had not even told the accused, as already pointed out above, that he was not bound to make the confession.

44. Pointing out to the language of Section 164 of the Code of Criminal Procedure, as well as the rules and



guidelines, which had been framed by various High Courts, the Supreme Court has pointed out, in **Shivappa v. State of Karnataka (AIR 1995 SC 980)**, that from a plain language of Section 164 of the Code of Criminal Procedure and the rules and guidelines framed by the High Courts regarding the recording of confessional statements of an accused under Section 164 of the Code of Criminal Procedure is manifest that the said provisions emphasize an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 of the Code of Criminal Procedure. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form, but in essence with the provisions of Section 164 of the Code of Criminal Procedure and the rules framed by the High Courts is imperative and its non-compliance goes to the root of the Magistrates jurisdiction to record the confession and renders the confession unworthy of credence.

45. Before proceeding to record the confessional statement, a searching enquiry must be made from the

accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition, he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of the influence of police. An accused should, particularly, be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial even if he contrives subsequently to retract the confession. Besides administering the caution or warning specifically provided for in the first part of sub-section (2) of Section 164 of the Code of Criminal Procedure, namely, that the accused is not bound to make a statement and that if he makes one, it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents, as the police, or the like, in case, he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be

remanded to police custody. [See **Shivappa v. State of Karnataka (AIR 1995 SC 980)**].

46. The Magistrate, who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody, must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a '*voluntary*' statement within the meaning of the provisions of Section 164 of the Code of Criminal Procedure and the rules framed by the High Courts for the guidance of the subordinate Courts. Moreover, the Magistrate must only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the Court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and statutory provision were strictly complied with. [See **Shivappa v. State of Karnataka (AIR 1995 SC 980)**].

47. In the case at hand, the Magistrate (PW 11) did not even inform the accused Mundrika Singh that he (PW 11) was not a police officer, but a Magistrate and the accused was, therefore, free not to make confession unless he was



himself willing to make the confession. In fact, the Magistrate has made no real effort to satisfy his judicial conscience that the confession, offered to be made by the accused, was voluntary and not on account of any extraneous influence. The failure, on the part of PW 11 to put such questions to the accused from which he could have ascertained if the confession offered to be made was voluntary, makes it unsafe for the court, which sits on the judgment of the case, to act upon such confession.

48. The putting of questions to an accused before recording his confessional statement is not merely a formality, but a solemn duty of a Magistrate and it has to be discharged not as a mere formality, but as a solemn act. This appeal make us re-call the decision in **Dhanajaya Reddy v. State of Karnataka reported in MANU/SC/0168/2001 : (2001) 4 SCC 9**, wherein the Supreme Court held and observed thus,

"The function of the Magistrate in recording confession under Section 164 of the Code is a very solemn act which he is obliged to perform by taking due care to ensure that all the requirements of Section 164 are fully satisfied. The Magistrate recording such a statement should not adopt a casual approach."

49. What a Magistrate must, in the minimum, do to ascertain if the confession made is voluntary has ' been

succinctly described in **Shivappa v. State of Karnataka : 1992 (2) SCC 76**, in the following words:

“Besides administering the caution, warning, specifically provided for in the first part of Sub-section (2) of Section 164, namely, that the accused is not bound make a statement and that if he makes one, it may be used against him as evidence in relation to his complicity in, the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declines to make the confession, he shall not be remanded to the Police custody.”

(Emphasis is supplied by us)

50. Situated thus, it becomes, in the light of the law discussed above, clear that accused Mundrika Singh's confession, recorded by PW 11, was wholly inadmissible in evidence inasmuch as it could not have been held to have been made by accused Mundrika Singh voluntarily.

51. Assuming for the moment that the said dead body was of Urmila Singh, who had been strangled to death, and, on this assumption, let us, now, determine if the materials on record were sufficient to bring home the charge framed

against the accused-appellants under Section 302 read with Section 34 of the Indian Penal Code.

52. While considering the question posed above, it may be noted that the learned trial Court has pointed out, in the judgment under appeal, at paragraph 7, that the prosecution's case is entirely based on circumstantial evidence inasmuch as there is no one, who saw Urmila Singh being killed by any of the accused persons.

53. The circumstances, which appear against the accused-appellants, as the incriminating circumstances, may be summarized as follows:

(i) Urmila Singh was given in marriage to accused-appellant, Santosh Kumar Mehta, in the year 1982, and her dead body was recovered on 21.02.1989.

(ii) Urmila Singh's dead body was recovered from the paddy field on being pointed out by accused Mundrika Singh.

(iii) The oral testimony that colour television, scooter and sewing machine had been demanded by accused-appellant, Santosh Kumar Mehta, and his brother Jitendra Singh.

(iv) The accused-appellant, Santosh Kumar Mehta, as well as accused-appellant, Jitendra Singh, had written letters addressed to the informant (PW 7), the letters being Exhibit-3

and Exhibit-3/1 respectively.

(v) By the letter, dated 17.01.1987, Exhibit-3, said to have been written by accused-appellant, Santosh Kumar Mehta, this accused had demanded scooter at the time of *gauna*.

(vi) According to the contents of Exhibit-3/1, which is said to have been written by accused-appellant Jitendra Singh, he had demanded colour television and sewing machine.

(vii) Both the above letters were received by the informant (PW 7) before deceased Urmila Singh's departure from her parental house to her matrimonial house.

(viii) *Post mortem* examination, which was conducted on the said dead body, revealed that the cause of death was *asphyxia* resulting from strangulation so much so that hyoid bone of the neck was broken.

(ix) Urmila Singh's dead body was recovered, on 21.02.1989, in the manner as claimed by the prosecution from a field.

54. Learned trial Court's observation that there was, admittedly, no eyewitness to the occurrence of assault on the said deceased is wholly correct. The entire case of the prosecution is based on circumstantial evidence. When a case is based on circumstantial evidence, every incriminating circumstance must be independently proved beyond any pale of

doubt. The convincingly proved circumstances must form a complete chain pointing unerringly to the accused as the guilty one. The evidence, adduced by the prosecution, in a case, which is based on circumstantial evidence, must be consistent with the hypothesis of guilt of the accused and must also be inconsistent with the hypothesis of innocence of the accused.

55. In the backdrop of the position of law relating to a case based on circumstantial evidence, it needs to be noted that apart from the fact that in the present case, there is no eyewitness to the occurrence, no weapon has been recovered from the house of the appellants, which could go to prove that none but the accused were the ones, who had put to death Urmila Singh.

56. Before the incriminating circumstances are taken into account, what is necessary to bear in mind is that there is nothing in the evidence on record even faintly indicating as to when Urmila Singh died and/or whether at the time of her death, any of the accused-appellants was present at their house or not.

57. In the face of complete absence of any such evidence as indicated above, it is not only difficult, but wholly impossible to hold confidently that accused-appellant, Santosh Kumar Mehta, and/or accused-appellant, Jitendra Singh, was/were present in the house at the time, when Urmila Singh

had died. There is also not even a particle of evidence on record indicating that any of the other accused-appellants was present at the matrimonial house of Urmila Singh at the time, when Urmila Singh is alleged to have been killed. In fact, there is no evidence at all to show, far less prove, as to whether Urmila Singh had been done to death at her matrimonial house or not.

58. Situated thus, it becomes clear that there is not even an iota of evidence on record indicating that all or any of the accused-appellants was present at the place, where Urmila Singh happened to be murdered if she was murdered.

59. In the backdrop of what have been indicated above, there is no escape from the conclusion that the charge, framed under Section 302 read with Section 34 of the Indian Penal Code, could not have been treated to have been brought home against the accused-appellants beyond all reasonable doubt.

60. Coupled with the above, we have already held that the judicial confession, which accused Mundrika Singh had made, was inadmissible in evidence, because of the reasons assigned above and as there is no evidence preceding this evidence and since no specific statement is attributable to accused, Mundrika Singh, there was nothing to apply Section 27 of the Evidence Act.



61. If pointing out of the dead body by the accused-appellant, Mundrika Singh, is assumed to be true, the fact remains that it would not make the Court hold, and could not have made the Court hold, that accused Mundrika Singh was the one, who had buried the dead body or was present at the time of burial of the said dead body. At best, the evidence of pointing out the said dead body would be admissible as conduct and this circumstance, considered alone or in conjunction with other circumstances, does not bring home the charge of Section 201 of the Indian Penal Code against the accused-appellant, Mundrika Singh.

62. So far as the conviction of the remaining accused-appellants, under Section 201 of the Indian Penal Code, is concerned, there is no legally admissible evidence to show that any of the accused-appellants had knowledge that Urmila Singh had been killed and yet helped in disposal of the dead body by burying the same in order to screen the offender from receiving punishment.

63. Coming to the conviction of the accused-appellant, Santosh Kumar Mehta, under Section 4 of the Dowry Prohibition Act, 1961, it is worth pointing out, as we have already held above, that the evidence, given by the informant (PW 7), father of deceased Urmila Singh, and PW 8, brother of Urmila Singh, to the effect that demand for cash, colour

television, sewing machine, had been made by accused-appellants cannot be safely believed.

64. Let us, now, determine if the evidence, given by Urmila Singh's brother, Anil Kumar Singh (PW 8), that Urmila Singh had told him (PW 8) that she was being tortured for non-fulfilment of demand of colour television, etc., was admissible for the purpose of determination of the question that whether demand for dowry had or had not been raised.

65. While considering the question posed above, what needs to be noted is that oral evidence shall, in all cases, be direct, under Section 60 of the Evidence Act. Section 60 of the Evidence Act reads as follows:

"60. Oral evidence must be direct.- Oral evidence must, in all cases whatever, be direct; that is to say-

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner."

66. In the case at hand, the evidence given by PW 8 is to the effect that his sister, Urmila Singh, had disclosed to

him that she was being subjected to cruelty, because of non-fulfillment of *dowry* does not relate to the cause of death or the circumstance of the transaction, which resulted into the death of Urmila Singh.

67. Moreover, when the charge, under Section 302 of the Indian Penal Code, has not been proved against the accused-appellants, can the statement of the said deceased, which PW 8 claims to have been made by the said deceased, be admissible for the purpose of determining the guilt or otherwise of the accused-appellants *vis-a-vis* the charge under Section 4 of the Dowry Prohibition Act, 1961, or should such evidence be discarded as wholly hearsay?

68. The answer to the question, raised above, can be found in ***Gananath Patnaik Vs. State of Orissa***, reported in **(2002) 2 SCC 619**, wherein the Supreme Court, at para 10, observed thus:-

"10. Another circumstance of cruelty is with respect to taking away of the child from the deceased. To arrive at such a conclusion, the trial court has referred to the statement of PW5, who is the sister of the deceased. In her deposition recorded in the Court on 04-05-1990 PW 5 had stated:

"Whenever I had gone to my sister, all the times she was complaining that she is not well treated by her husband and in-laws for non-fulfillment of balance dowry amount of a scooter and a two-in-one. "

"On 3-6-1987 for the last time I had been to the house of the deceased i. e. to her separate residence. Sworna, Snigdha, Sima Apa, Baby Apa accompanied me to her house on that day. At that time the deceased complained before us as usual and added to that she said that she

is being assaulted by the accused now-a-days. She further complained before us that the accused is taking away the child from her, and that her mother-in law has come and some conspiracy is going against her (the deceased). She further told that 'mate au banchei debenahin'. "

*Such a statement appears to have been taken on record with the aid of Section 32 of the Indian Evidence Act at a time when the appellant was being tried for the offence under Section 304B and such statement was admissible under Clause(1) of the said section as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498-A of the Indian Penal Code and has to be termed as being only hearsay evidence. **Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused."***

(Emphasis is supplied)

69. What emerges from the decision, in Gananath

Patnaik (supra), is that Section 32(1) of the Evidence Act is an exception to *hearsay* rule and if a statement, covered, otherwise, by *hearsay* rule, does not fall within the exceptions of Section 32(1) of the Evidence Act, such a statement will not be admissible in evidence and cannot be relied upon. In other words, a statement, said to have been made by a deceased, which does not relate to cause of death of the deceased or to any of the circumstances of the transaction, which resulted in his death, is *hearsay* and must be kept excluded from

consideration if the cause of death is not in question for commission of an offence, such as, Section 498A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, 1961.

70. In short, in the present appeal, when the charge, framed under Section 302 of the Indian Penal Code, has failed, the statement, attributed to the deceased, as to what had been the conduct of her husband or the relatives of her husband, cannot be treated as admissible evidence against the accused to sustain a charge under Section 498A of the Indian Penal Code, for, in a charge under Section 498A of the Indian Penal Code, the *cause of death* is not in question and the aid of Section 32 (1) of the Evidence Act being not available, the statement, made by the woman as to how she had been treated by her husband or the relatives of her husband, would be nothing, but hearsay and inadmissible in evidence.

71. We may point out that when the conduct of the husband or relative of the husband of a woman is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical), the offence, under Section 498A of the Indian Penal Code, will be made out.

72. Considered thus, it is clear that the death of suicide of a person is not a condition precedent for attracting the penal provisions of Section 498A of the Indian Penal Code. If



the conduct of a husband, or his relative, is willful and is of such a nature that it is likely to drive the wife to commit suicide, offence, under Section 498A of the Indian Penal Code, is made out. In a charge under Section 498A of the Indian Penal Code, the question, as to whether the woman has or has not been murdered or committed suicide, is not material. What is material is whether the nature of the conduct of the accused is or was such as is likely to drive a woman, ordinarily, to commit suicide. In no way, therefore, *cause of death* falls for determination in an offence under Section 498A of the Indian Penal Code.

73. In the case at hand too, when the charge under Section 302 of the Indian Penal Code has failed and cause of death of Urmila Singh was no longer relevant in order to determine if the charge framed against the accused-appellants was proved under Section 4 of the Dowry Prohibition Act, 1961, the statement — attributed to the said deceased by PW 8 to the effect that the accused-appellants had subjected her to cruelty — is nothing, but *hearsay* and ought not to have been treated as admissible evidence against the accused-appellants by the learned trial Court, while determining the guilt of the accused-appellants on a charge framed under Section 4 of the Dowry Prohibition Act, 1961.

74. The question as to whether the evidence given



by the parents of a deceased woman that they had been reported by the deceased that she had been subjected to cruelty is or is not admissible in evidence can be viewed from yet another angle. Assume, for a moment, that a woman, '**A**', has instituted a complaint case, in a Judicial Magistrate's Court, making accusations that she has been subjected to cruelty by her husband, and a charge, in such a trial, is framed against the accused husband under Sections 498A of the Indian Penal Code. If the complainant chooses not to give evidence, the evidence, if any, given by her parents to the effect that they were reported by '**A**' that she had been subjected to cruelty would be nothing, but hearsay, if the Court is required to determine whether or not '**A**' was, as a matter of fact, subjected to cruelty or not.

75. Now, let us assume, for a moment, that after instituting the complaint case, '**A**' dies; can the evidence given by her parents to the effect that '**A**', when alive, had reported to them that she had been subjected to cruelty by her husband would be admissible in evidence? The answer to this question has to be an emphatic 'no', for, merely because of the fact that '**A**' has died after instituting the complaint case, the evidence, which is, otherwise, hearsay, cannot become admissible in evidence inasmuch as the cause of death of '**A**' is not in question in a trial under Section 4 of the Dowry Prohibition Act, 1961.

76. Thus, the statement made by 'A' to her parents as to what was the nature of conduct of her husband or her parents in-law towards her is nothing, but *hearsay* if the charge, which the accused-husband faces, is a charge under Section 4 of the Dowry Prohibition Act, 1961.

77. Unless, therefore, the cause of death or the circumstances of the transaction, which resulted into death, is in question as envisaged under Section 32(1) of the Evidence Act, the evidence given by any person as to what the deceased woman had reported to him or her would be nothing, but *hearsay*.

78. Viewed thus, it is clear that the evidence given, in the present case, claiming as to what Urmila Singh had told her brother (PW 8), as regards the manner in which she used to be treated by her husband or in-laws, would be nothing, but *hearsay* in a charge under Section 4 of the Dowry Prohibition Act, 1961, for, the aid of Section 32(1) of the Evidence Act would not be available to the prosecution to bring such reported statements on record as admissible pieces of evidence, when the charge, framed under Section 302 of the Indian Penal Code, had failed. It is in this light that the decision in **Gananath Patnaik** (supra) needs to be read.

79. In short, when the charge, under Section 302 of the Indian Penal Code, has failed, in the present case, the

statement, attributed to deceased Urmila Singh by the prosecution witnesses, is nothing, but hearsay *vis-à-vis* the charge framed against the accused-appellants under Section 4 of the Dowry Prohibition Act, 1961.

80. What emerges from the above discussion of the evidence of PW 1, PW 3, PW 7 and PW 8 is that the evidence given by these witnesses as regards the fact that Urmila Singh was subjected to cruelty is nothing, but *hearsay*, for, none of these witnesses had any personal knowledge if Urmila Singh had really been subjected to cruelty or not.

81. What crystallizes from the above discussion is that though there may be some evidence on record indicating that demand for dowry was raised by the accused-appellants, there is no admissible oral evidence on record to show that in consequence of the failure of the father (PW 7) of the said deceased to fulfill the demand so made by the accused-appellants, Urmila Singh was subjected to cruelty by the accused-appellants.

82. At any rate, in the light of the nature of the evidence on record, the prosecution could not have been held, and ought not to be held, to have proved their case beyond reasonable doubt against the accused appellants. Consequently, the accused- appellants deserved to be accorded, at least, benefit of doubt.

83. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

84. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

85. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

A.F.R./Pawan/

(Nilu Agrawal, J.)

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