

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 604 of 2015**

State of Chhattisgarh, Through the District Magistrate, Surguja, Ambikapur,
District Surguja, Chhattisgarh.

---- Applicant**Versus**

1. Asha Ram Yadav S/o Lalan Yadav, aged about 24 years.
 2. Lalan Yadav S/o Bhuneshwar Yadav, aged about 55 years.
 3. Smt. Narbadiya Yadav W/o Lalan Yadav, aged about 50 years.
- No. 1 to 3 all Resident of village Podi, Chowki Kunni, P.S. Lakhanpur, District Surguja, Chhattisgarh.

---- Non-Applicants

For Applicant/State	:	Shri Bhupendra Singh, Panel Lawyer.
For Respondents	:	Shri Anurag Dayal Shrivastava, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****04/09/2015**

1. The present application has been filed for leave to appeal against acquittal of the Respondents of the charge under Section 304-B/34 IPC dated 6.4.2015 by the 4th Additional Sessions Judge, Ambikapur, Surguja in Sessions Trial No. 106 of 2014.

2. Learned Counsel for the State submits that the deceased died in unnatural circumstances within seven years of the marriage by poison. PW-11, Subhadra and PW-15, Sudarshan Yadav, mother and brother of the deceased have deposed that the deceased had told them of harassment for dowry on more than one occasion and in the hospital also she had by sign language in presence of the Respondents indicated that she had been forced to consume poison by them. In cross-examination, no questions in this regard

have been asked on behalf of the Respondents. Under Section 304-B IPC read with Section 113A of the Evidence Act, there is a presumption of guilt and the onus lay on the Respondents to dispel the same. The Trial Court has committed an error by reversing the burden of proof.

3. Learned Counsel for the Respondents submits that the deceased was admitted in hospital on 27.4.2014 with symptoms of poisoning and she died on 4.5.2014. Both PW-11 and PW-15 were present all throughout. No FIR or police report was ever lodged by them. The FIR was lodged by the Police on 31.5.2014 after the death on 4.5.2014, based on the Merg intimation given from the hospital on 6.5.2014.

4. We have considered the submissions on behalf of the parties.

5. Before the presumption under Section 304-B/34 IPC can be attracted, the prosecution has to establish a *prima facie* case. The burden does not shift to the accused from the inception but only thereafter.

6. In the present case, according to the judgment, the deceased was admitted to the hospital with symptoms of poisoning on 27.4.2014. Both PW-11 and PW-15 were informed and came to the hospital, and remained throughout till she died on 4.5.2014. No police report was ever lodged by the two witnesses. On basis of Merg intimation given by the hospital on 6.5.2014, a formal FIR was registered by the police itself. The 161 CrPC statements of the witnesses were recorded on 23.7.2014. From the evidence discussed in the Trial Court, it does not appear that there was any cogent and convincing evidence for demand of dowry in proximity to the death.

7. There is no merit in the application for leave to appeal. It is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE