

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.299 of 2015

Arising Out of PS.Case No. -21 Year- 2012 Thana -SARE District- NALANDA (BIHARSHARIFF)

Kapil Paswan, son of late Maheshwar Paswan, resident of village Onda , P.S. Sare District- Nalanda.

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s
with

Criminal Appeal (SJ) No. 449 of 2015

Arising Out of PS.Case No. -21 Year- 2012 Thana -SARE District- NALANDA (BIHARSHARIFF)

Shambhu Paswan, son of Kapil Paswan, resident of village- Onda P.S.- Sare, Dist- Nalanda.

..... Appellant/s
Versus
The State of Bihar
..... Respondent/s

Appearance :
(In CR. APP (SJ) No.299 of 2015)
For the Appellant/s : Mr. Sudish Kumar-Advocate
For the Respondent/s : Mrs. Abha Singh-A.P.P.
(In CR. APP (SJ) No.449 of 2015)
For the Appellant/s : Mr. Sudish Kumar-Advocate
For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 17-05-2017

Cr. Appeal (S.J.) No.299 of 2015 wherein Kapil Paswan is the appellant and Cr. Appeal (S.J.) No.449 of 2015 wherein Shambhu Paswan is the appellant commonly originate against the judgment of conviction dated 13.05.2015 and order of sentence dated



14.05.2015 passed by the Additional Sessions Judge-6th, Nalanda at Bihar Sharif in Sessions Trial No.592 of 2012 whereby and whereunder both the appellants have been found guilty for an offence punishable under Section 304B of the I.P.C. and further, appellant Shambhu Paswan has been directed to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- in default thereof, to undergo simple imprisonment for one year, additionally. While Kapil Paswan has been directed to undergo 07 years rigorous imprisonment as well as to pay a fine of Rs.5,000/- in default thereof, to undergo simple imprisonment for six months, additionally with a further direction to pay 70 per cent of fine if deposited to the father of the deceased Seema Kumari namely Bijendra Paswan.

2. Bijendra Paswan (PW-8) filed written report on 12.03.2012 before the O/c Sare P. S. carrying the dead body of his daughter Seema Kumari disclosing therein that his daughter was married in the month of May, 2011 with Shambhu Paswan, son of Kapil Paswan of village-Onda, P. S.-Sare, District-Nalanda. At the time of marriage, he had gifted according to his means. No sooner than his daughter had gone to her sasural, there was demand at the end of father-in-law, Kapil Paswan, mother-in-law Savitri Devi, Bhainsur Shrawan Paswan, wife of Shrawan Paswan and husband Shambhu Paswan to procure cash as well as other articles which he could not



fulfilled and on account thereof, she was subjected to torture. She used to disclose the aforesaid event whenever she came at her Naihar and for that, they were providing due hospitality to the members of her sasuralwala to get the matter pacified. However, due to poverty, he was not at all competent enough to fulfil their demand and in the aforesaid background, the father-in-law Kapil Paswan, husband Shambhu Paswan, mother-in-law Savitri, Bhainsur Shrawan Paswan, wife of Shrawan Paswan caused murder of his daughter Seema Devi by way of throttling and then, after locking the door, all fled away. Villagers informed whereupon he along with family members have come and going inside the house of the deceased, he found her lying over earth having support of a wall whereupon, lifted the dead body over tempo no.BR-21C-3484 to the Police Station, Shyam Paswan and Sunil Kumar stood as a witness over the aforesaid written report.

3. On the basis of the aforesaid written report, Sare P. S. Case No.21 of 2012 was registered followed with an investigation and after completing the same, chargesheet was submitted against Kapil Paswan, Savitri Devi and Shambhu Paswan exonerating Shrawan Paswan and wife of Shrawan Paswan whereupon cognizance was taken and accordingly, trial commenced after commitment during course of which, one of the accused Savitri Devi died and so, trial relating to her was dropped. The remaining two that means to say,



Kapil Paswan and Shambhu Paswan faced the trial which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Furthermore, it has been pleaded that the deceased was not at all liking her husband Shambhu Paswan and so, she committed suicide whereupon, family members of deceased were informed, who came participated in funeral and subsequently thereof, got this case filed levelling false and frivolous allegation as, the appellants did not satisfy the illegal demand having made on behalf of prosecution party. To substantiate such plea, two DWs have also been examined. However, no document has been adduced on their behalf.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 Vinay Kumar Paswan, PW-2 Binda Chaudhary, PW-3 Dukhharan Paswan, PW-4 Champa Devi, PW-5 Balo Paswan, PW-6 Sunil Kumar, PW-7 Dr. Manoj Kumar, PW-8 Bijendra Paswan and PW-9 Rajiv Kumar. Side by side, had also exhibited as Exhibit-1 series of signature of respective witnesses over written report, Exhibit-2 post mortem report, Exhibit-3 endorsement over written report, Exhibit-4 formal F.I.R., Exhibit-5 inquest report. As stated above, defence had



examined two DWs, DW-1 Adalat Dhadhi, DW-2 Kaleshwar Paswan.

6. While assailing the judgment of conviction and sentence, it has been argued on behalf of appellants that the judgment impugned happens to be perverse, cryptic on account of non-appreciation of the material facts coming out from the evidences of the PWs, which completely nullify the prosecution version. In order to support the aforesaid plea, it has been submitted that two kinds of witnesses have been produced by the prosecution, the first one being co-villager of the appellants and the second one, the family members of the deceased. So far co-villagers are concerned, they have categorically deposed negativiting the allegation levelled by the prosecution while the family members, by their own conduct shown to be unreliable in the background of the fact that they have failed to properly place the demand of dowry, coupled with incidence of cruelty as well as torture, apart from having their status worst than hearsay.

7. Furthermore, it has also been submitted that during cross-examination, none of the PWs have disclosed the name of the person from whom, they received information, contrary to it, there happens to be specific plea as well as for that DWs have also been examined that after commission of suicide by the deceased, the appellant, Shambhu Paswan himself had informed his father-in-law



and so, there happens to be natural conduct and in the aforesaid background, the learned lower Court should have considered that the appellants have fallen victim of circumstance as they became unsuccessful during event of bargain having at the end of the informant.

8. It has also been submitted that on account of failure on the part of the prosecution to substantiate the allegation regarding demand of dowry and further, the deceased having been tortured on that pretext soon before her death, the major limb of the prosecution is found completely fractured and that being so, neither the offence under Section 304B of the I.P.C. nor the presumption in terms of Section 113B of the Evidence Act is found perceptible. That being so, the judgment of conviction and sentence recorded by the learned lower Court is found contrary to the materials available on the record whereupon is fit to be set aside.

9. On the other hand, the learned Additional Public Prosecutor while refuting the submission made on behalf of learned counsel for the appellants has submitted that PWs-1 and 2, co-villager of the appellants have deposed in expected manner and so, having been declared hostile will not cause any sort of infirmity in the prosecution case. Furthermore, it has also been submitted that so far remaining witnesses are concerned, they happen to be consistent over



demand of dowry as well as torture meted out to the deceased soon before her death. Consequent thereupon, the judgment impugned is fit to be confirmed.

10. PW-7 is the Dr. Manoj Kumar, who had conducted autopsy over the dead body of deceased Seema Devi and found the following injuries:-

Rigour mortis was present in lower limbs and absent in upper limbs.

External examination:- A mark of ligature measuring 5" x ½" present in front of neck. No other injuries were found.

On dissection:- Head-All cranial bones intact. Brains and its meninges intact and congested.

Neck:- Underneath the ligature mark structure was hyperinflated trachea. Ring was fractured hyoid bone was fractured.

Chest:- Thoracic cage was normal, both lungs intact and congested.

Heart:- All chamber filled with blood.

Abdomen:- Stomach contents about 3 ounce undigested food material. Urinary bladder full with urine uterus small and non gravid. All other abdomen viscera intact and congested.

Cause of death:- death occurred due to asphyxia followed after strangulation. Time elapsed since death:- within 12 to 36 hours.



During cross-examination as is evident, the aforesaid finding has not been tested, more particularly, whether it happens to be suicidal or homicidal. During course of cross-examination at Para-3, the doctor had answered that the injury may be caused by hanging from fan, but in that circumstance, there will be changed in nature direction of ligature mark as in case of suicide, there will be longitudinal direction of the ligature mark. So, the death of deceased in abnormal circumstance is found duly proved by way of examination of PW-7, the doctor and further, during course of cross-examination, the defence could not be able to make it a case of suicide.

11. Now, coming to other aspect, as is evident from the evidence of PW-1 and 2, being co-villager have gone hostile to the prosecution, even though they have had admitted death of wife of appellant Shambhu Paswan that means to say, the deceased.

12. PW-3 is the brother of deceased, who had deposed that his sister Seema Devi was married with Shambhu Paswan, who was murdered at her sasural about 2 years, two months ago. One of the co-villager had informed his father regarding the occurrence whereupon, he along with his mother, brother, villagers, father had gone there. They had found the door locked by chain which they opened and gone inside the house where they found the dead body of his sister lying in the courtyard. They lifted the dead body and took to



P.S. where his father had filed written report. Application was scribed by one of the police officials at the Sare P.S. whereupon, his father put his signature. Police official had prepared inquest report and then, the dead body was sent to mortuary. The motive for occurrence has been shown as accused persons were demanding Rs.50,000/- as dowry which they were incapable to give and on account thereof, she was subjected to torture which, his sister used to disclose whenever she came to his place. Then thereafter, while she was staying at her sasural, she was done to death by her husband, father in-law, mother-in-law, brother-in-law and sister-in-law, who after commission of the occurrence escaped from the house. During cross-examination at Para-4, he had stated that after marriage, Duragawan also effected on the same day. His sister remained at her sasural for one year. During midst thereof, he had also visited her place. In Para-5, he had stated after coming to know about the occurrence, all the family members rushed to the sasural of his sister. In Para-6, he had stated that door was closed, which was opened upon by his father. Just after entering inside the house, dead body of his sister was lying. In Para-7, he had stated that while they were going to police station, met with police covering two kilometers from the place of occurrence. In Para-11, he had stated that he is not remembering the actual date, but from today it happens to be two years, two months. He had accompanied his



sister at the time of Bidai. At that very time, there was no ill-treatment to her. Subsequently thereof, he had gone to the place of her sasural after two months and at that very time also, she had not complained regarding ill-treatment. In Para-14, he had admitted that he received phone from Shambhu Paswan that his sister is ill whereupon, they rushed to the place where they found his sister dead. In Para-15, he had stated that they had not instituted any kind of complaint against the torture meted out to deceased. He had further denied that his sister died out of natural death. He had further denied that there was no demand of dowry at the end of the Sasuralwala of deceased.

13. PW-4 is the mother of the deceased, who had deposed that about three years ago, her daughter was murdered by her Sasuralwala while she was staying there. As, their demand of Rs.50,000/-, fan, television were not at all fulfilled by them. It has also been disclosed that even during her stay, she was tortured by her sasuralwala namely father-in-law, mother-in-law, brother in-law, sister-in-law and husband. The aforesaid incident were disclosed by deceased whenever she used to come to her Maika whereupon, after consoling her she was returned back. About 10-15 days ago, she was sent from her Maika. All of a sudden, villagers had informed that her daughter is in serious condition whereupon they rushed. After arrival at the place of her daughter, they found the house closed and all the



family members have absconded. After opening the door, when they gone inside the house, they found dead body of Seema in the courtyard. Thereafter, the dead body was lifted and taken to Sare Police Station where her husband filed written report. Subsequently thereof, I.O. completed formalities and sent the dead body for post mortem. I. O. had recorded his statement, identified the accused in dock. During cross-examination at Para-3, she had stated that who had informed regarding death of her daughter, she is not remembering. She along with her husband, son and others have gone there. In Para-4, she had stated that after opening the door, first of all, her husband gone inside the house where he saw the dead body. Then thereafter, police was informed, who came at 8.00 p.m. Police took away dead body of her daughter over tempo. In Para-5, she had stated that her statement was recorded by the police. In Para-6, her attention has been drawn towards her previous statement, but the same is found worthless as I.O. has not been cross-examined on that very score. In Para-8, she had disclosed that even after marriage, deceased was regularly visiting at due interval from her sasural, when she used to come, Shambhu Paswan followed her for Bidai. In Para-8, she had stated that her daughter used to complain regarding assault. About a month earlier to the present occurrence, when she came, she had complained and at that very time, Shambhu was there. Her husband



had consoled her and then, Bidai was effected. In Para-9, she had denied the suggestion that as she was not liking Shambhu, so, she committed suicide. Although, she was kept at her sasural in good congenial, harmonious atmosphere.

14. PW-5 is uncle of the deceased, who had deposed that deceased was married with Shambhu Paswan about a year ago, from the date of her murder. Her murder was committed at her sasural. She was ruthlessly treated by her sasuralwala on account of non-fulfilment of demand of dowry. They were demanding cash. Then, they received telephonic information regarding her murder whereupon, he along with other family members gone to the place of deceased where they saw house locked. All the persons were absconding. When they have gone inside the house after opening the door, seen the dead body of Seema in courtyard. Thereafter, they lifted the dead body to police station where father of Seema namely Bijendra Paswan had instituted a case. Thereafter, dead body was sent for post mortem. He had further stated that whenever Seema used to come to her Maika, she always disclosed regarding ill-treatment at the hands of her sasuralwala over non-fulfilment of demand of dowry. Her last visit materialized 10-15 days prior to the occurrence. At that very time also she had disclosed the ill-treatment meted out to her for dowry whereupon they had consoled. Identified the accused in dock. During



cross-examination at Para-3, he had stated that deceased had met with him twice before her Bidai, but he is unable to disclose the exact date. In likewise manner, he had also stated that he had visited the place of deceased one's during her lifetime and the another after her death. In Para-4, he had stated that co-villager had informed regarding murder of Seema Devi. In Para-5, he had stated that he met with police. In Para-6, he had stated that informant happens to be his cousin brother. When informant got information, he was at his house. He was informed and then, he joined with the informant's family to proceed towards deceased's place. At that very time, they were separate having their independent house. In Para-7, he had stated that he was informed at 12.00-1.00 p.m. and then, thereafter, he had gone along with informant, informant's wife and others. They reached when darkening had fallen. In Para-9, he had stated that the sasuralwala of Seema never demanded money from him nor he had talked with them.

15. PW-6 is Sunil Kumar, co-villager of informant, who had deposed that Seema Devi happens to be daughter of Bijendra Paswan, who was married with Shambhu Paswan. She was murdered on 12.03.2012 at her sasural. She was married in the Year 2011. On getting information regarding murder, they have gone to the place of deceased, where found door locked. After opening the door, they have gone inside and found the dead body of deceased. Then thereafter,



they gone to police station carrying the dead body where Bijendra Paswan lodged F.I.R. During cross-examination, he had admitted that Seema Kumari happens to be her Mameri sister. In Para-5, he had stated that he had visited the place of Seema only one's after the marriage, after the death of Seema. He had no talk with Seema while she was staying at her sasural. In Para-8, he had disclosed that Seema had not complained with him regarding illegal activity of her sasuralwala.

16. PW-8 is the informant, father of deceased namely Bijendra Paswan, who had deposed that deceased was his daughter, who was married about 3 and half years ago with Shambhu Paswan of village Onda. At the time of marriage, Gauna was also effected. During course thereof, all the articles according to his means were given to them. After Bidai, she gone to her sasural and stayed there. Later on, she said that she was being badly treated by her father-in-law, mother-in-law, husband, brother-in-law, wife of brother-in-law. They used to abuse and assault her and sometimes stopped to give food. Occasionally, she was ousted from her sasural. All those activites were followed by her sasuralwala in order to coarse her to bring Rs.50,000/- from Maika. They have also threatened that in case of non-fulfilment of demand of dowry, she will be eliminated. Whenever his daughter visited his place, she used to say, but after



consoling her, she was sent back to her sasural. About 15 days ago since before her death, she had come and on that very moment also, she had categorically stated that she was badly treated by them on that very pretext, whereupon he stated that just after getting the money, he will pay, sent her back. Thereafter, he was informed telephonically regarding death of his daughter whereupon he along with his family members rushed after hiring a tempo. After arrival at her sasural, they found door closed and none of the family members were present. After opening the door, they had gone inside and found the dead body of Seema. Then thereafter, they lifted the dead body to the police station where he filed written report. In his presence, Shyam Paswan and Sunil Kumar put their signatures (exhibited). Police also recorded his further statement. He had further stated that his daughter has been murdered by her sasuralwala for non-fulfilment of dowry amount. During cross-examination at Para-9, he had stated that he had scribed the fact of demanding of Rs.50,000/- in the written report. He had further stated in Para-18 that he married his daughter after verifying, satisfying himself. In Para-21, he had further stated that he had visited sasural of his daughter thrice before marriage. In Para-22, he had admitted that he had not seen sign of assault over her daughter and in likewise manner, demand, torture, abuse, but he got information from his daughter. In Para-23, he had stated that his daughter had visited



his place 2-3 times after the marriage. Whenever, she came, she narrated her woe, but he had not seen sign of assault over her body. In Para-21, he had further stated that after death of his daughter, he came to know that Shambhu Paswan was already married since before. In Para-22, he had denied the suggestion that his daughter was annoyed with her husband. In Para-27, he had admitted that he had not convened Panchayat over instance of torture and in likewise manner, had not informed the police. In Para-28, he had admitted that for the first time, during course of evidence, he had disclosed regarding demand of Rs.50,000/- from his daughter. Then had denied the suggestion. In Para-30, he had further disclosed that he is unable to disclose the name of the person, who had telephoned him. He had further disclosed that phone was received over his mobile, it was 12 O' clock. In Para-38, he had disclosed that blood was coming out from mouth of his daughter, his apparels were soaked with blood. He had not found lathi, danda near the place of occurrence. He had not handed over his cloth to the police. In Para-40, he had stated that there was black spot over stomach, back of his daughter. There was ornament over the dead body. In Para-41, he had denied his suggestion that his daughter had committed suicide at his place. In Para-42, again denied the suggestion that as she was married with a man who was already married since before on account thereof, she



became very much depressed and committed suicide. In Para-43, his attention has been drawn towards earlier statement relating to payment of Rs.50,000/- that has gone worthless, as the same has not been confronted with the I.O., the P.W.-9.

17. PW-9 is the Investigating Officer, who had deposed that he was entrusted with the investigation of Sare P.S. Case No.21 of 2012. Accordingly, he proceeded therewith. Then completing the paraphernalia, he entered written report, inquest report in the case diary, exhibited the same, recorded further statement of informant, statement of wife of informant, son of informant, Balo Paswan, Sunil Kumar. Arrested Savitri Devi, inspected the place of occurrence which happens to be the house of Shambhu Paswan lying at village-Onda, then had given the typography of the house, properly identified by boundary. Recorded statement of Vinay Paswan, Binda Chaudhary, received post mortem report, received supervision note, recorded statement of Ram Singhasan Singh, Bhola Yadav, Ishwar Ravidas, Rajesh Paswan, Guddu Chaudhary and then thereafter, completing investigation submitted chargesheet. During cross-examination at Para-2, he had admitted that he had not seen the dead body while he was entrusted with the investigation. He had further stated that in whose pen the written report happens to be, he cannot say. He is unable to say, who had produced at the police station. He



had further stated that he had not seen deceased in bridal apparel rather she had worn red sari, red blouse, light sky colour petticoat, payal, ear ring, bichhiya, nose-pin and Dholna. He had not seen any sign of assault nor clothes were torn. In Para-3, he had stated that he had not found blood over any part of body, more particularly, nose, ear, mouth. He had recorded statement of persons lying in the boundary. He had not found any sign over the place of occurrence nor he had found the blood. He had not found any kind of weapon. He had not found tongue protruded. He had not found scratch over hand, toe, nose. He denied the suggestion that his investigation happens to be unscientific.

18. Before scrutiny of the relevant materials, it looks desirable to deal with the evidence of DWs. DW-1 is Adalat Dhadhi, who happens to be co-villager of the appellants. He had stated that deceased was second wife of Shambhu, who committed suicide by hanging as, Seema was not liking Shambhu Paswan. Seema was not inclined to live along with Shambhu, so she committed suicide. He happens to be neighbour of Shambhu. He had seen Shambhu keeping Seema with due care. She was never tortured. After hearing hue and cry, he rushed and found that after closing door, she had committed suicide by hanging. Then thereafter, her family members as well as villagers got down her. Then, Kapil Paswan telephonically informed



the parents of the deceased, who came and took away the dead body to police station. During cross-examination at Para-2, he had stated that Seema died one and half month after her marriage at her sasural. He heard rumour at 10 O' clock. When he reached, 30-40 persons have assembled there. Villagers have taken the dead body on ground. Rope was untied by him. He had not informed the police. Shambhu Paswan and Kapil Paswan also not informed the police. He had informed parents of deceased. However, he had stated that Seema had not spoken to him that she does not like Shambhu, but she used to say with other women. He is unable to disclose her name.

19. DW-2 is Kaleshwar Paswan, he had stated that Seema was not liking Shambhu. Seema was never tortured at the end of Shambhu. He had gone along with Adalat on the date of occurrence to the place of Shambhu and seen, deceased was hanging from ceiling fan. Then, he along with Adalat got down her after cutting rope. After two hours, Kapil Paswan informed parents of Seema, who came on tempo and took away dead body to police station. During cross-examination at Para-4, first of all, he had stated that what he was instructed, deposed, but again corrected it. He had further stated that at Para-5 that marriage was solemnized in formal way. When she came on Bidai, she returned back to her Maika wherefrom she was not adamant to come, but Shambhu forcibly effected Bidai. Deceased



came one day before her death. In Para-6, he had stated that 5-10 minutes after the occurrence, he had gone at that very time, they were not present.

20. Because of the fact that instant case happens to be relating to dowry death and that too, at the place of her husband and further, as the husband and father-in-law (appellants) had entered into defence on account thereof, whatever been deposed by the defence witnesses, is to be borne by the appellants and further, will additionally support the prosecution case, in case, is found favouring the same.

21. Though during course of statement recorded under Section 313 of the Cr.P.C., both the appellants have not spoken a single word on the score of suicide, which they suggested in contradictory manner to the prosecution witness, and on that very score, examined two DWs, however, from the evidence of both the witnesses, it is evident that death occurred within seven years of marriage at the place of appellants. Though DW-1 and DW-2 have tried to suggest it a case of suicide, but same is found completely washed away by the doctor, PW-7, who ruled out to be case of suicide. Furthermore, the activity of appellants have also to be seen who during cross-examination of I.O., PW-9, had not cross-examined whether there was ceiling fan in the room, whether any article was



found under the fan whereupon one could climb to arrive at that place, whether any rope was found. Non-cross-examination of the I.O. on the aforesaid score was with a purpose, so that their plea would not get ruined. Moreover, DW-2 had admitted that when he reached, he had not found the appellants and so, their absence soon after the occurrence, is a conduct relevant one, admissible in the eye of law.

22. In the aforesaid background, the evidence of the prosecution witnesses have to be seen. From the deposition of PW-3, the brother PW-4, mother and PW-8, father, there happens to be consistency in their evidence with regard to demand of Rs.50,000/- and further, torture having meted out to the deceased on that very pretext which she always used to speak having her presence at her Maika. It is true that during course of written report though allegation happens to be, but Rs.50,000/- in specific term has not been used though found under further statement. It is needless to say that F.I.R. is not an encyclopedia and on account thereof, any omission on that very score will not cause prejudice unless and until, it happens to be such in nature which shows deliberate action of the prosecution. Furthermore, non-complaining before the police regarding demand of Rs.50,000/- as well as torture on that very pretext is of no avail, as the elders try to neutralize the situation in its own way by efflux of time, which, unfortunately could not happen in the present case.



23. Section 304B I.P.C. has been introduced to meet out the menace of the society, perceiving the ill, whereunder life of a woman, who just now been married has to sacrifice her life on account of non-fulfilment of demand of dowry by her parents with a presumption in terms of Section 113B of the Evidence Act. However, considering the presumption against an accused, it has been classified with rigor clause and those are:-

a) the death has caused in otherwise than normal circumstance.

b) the death occurred within seven years of marriage.

c) there was demand of dowry.

d) soon before her death, deceased was subjected to torture under the pretext of demand of dowry.

e) by her husband her relative of her husband.

In case, the aforesaid ingredients are found duly satisfied, then in terms of Section 113B of the Evidence Act, a presumption will go against the accused, though rebuttable.

24. From the evidence as discussed hereinabove, it is evident that prosecution had clearly substantiated its case that deceased died in otherwise than normal circumstance, within seven years of marriage and before death, there was demand of dowry and soon before her death, though the time gap in between marriage and death happens to be within close proximity, she was subjected to



torture and cruelty at the end of the husband and his father and other family members, on account thereof, the ingredients of Section 304B of the I.P.C. is found duly satisfied. Now, in rebuttal in terms of Section 113B of the Evidence Act, the appellants have adduced two DWs and their evidences, as discussed hereinabove, did not discharge of the burden and on account thereof, the judgment of conviction and sentence recorded by the learned lower Court did not attract interference. Consequent thereupon, both the appeals are dismissed. Appellants Shambhu Paswan and Kapil Paswan are on bail. Hence, their bail bonds are cancelled with a direction to surrender before the learned lower Court within fortnight to serve out the remaining part of sentence inflicted upon them, failing which the learned lower Court will proceed against them in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N. A.
Uploading Date	22.05.2017
Transmission Date	22.05.2017

