

THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.695 of 2015

Arising Out of PS.Case No. -10 Year- 2013 Thana -KUCHILA District- BHABHUA (KAIMUR)

=====

1. Sarafat Ahmed Son of Sohrab Ahmad Resident of Village - Garra, P.S. -
Kuchila, District - Kaimur (Bihar).

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Manoj Kumar, Adv.
Mr. Raj Narayan Mishra, Adv.
For the Respondent/s : Mrs. Abha Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 12-09-2017

Appellant, Sarafat Ahmad has been found guilty for an offence punishable under Section 304B/34 of the IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 25,000/- in default thereof, to undergo SI for 1 year additionally, vide judgment of conviction dated 01.09.2015 and order of sentence dated 10.09.2015 passed by learned Additional Sessions Judge-1st, Bhabhua, Kaimur in Sessions Trial No. 05/2014/03/2014.

2. Israr Mohammad (PW 7) filed a written report on 17.07.2013 alleging *inter alia* that his daughter Shahnaz Bibi was married with Md. Sarafat Ahmad son of Sohrab Ahmad of village-Garra on 15.05.2012 About a month ago, he had gifted one TV even then his daughter was subjected to torture and cruelty on account of non fulfillment of demand of dowry, a motorcycle. Yesterday, i.e. on 16.07.2013 at about 7:00 PM, she had dialed over his mobile and



disclosed that on account of non providing of motorcycle, she was being assaulted. He consoled her. Just after about an hour, at about 8:00 PM , he was informed that she was burnt. Just after receiving the information, he along with others proceeded and reached at Village-Garra, Sasural of his daughter at about 2:00 AM and found her in burnt condition. She was being treated by the local quack. His daughter disclosed that Sarafat Ahmad, Asma Bibi, Rukhsana Bibi and Rizwana Khatoon conjointly burnt her. About half an hour thereafter, she succumbed.

3. On the basis of the aforesaid written report, Kuchila PS Case No. 10/2013 was registered followed with an investigation. Because of the fact that Sarafat was apprehended during course of investigation, on account thereof, charge-sheet was submitted against him keeping the investigation pending against remaining accused on the basis of which, cognizance of an offence was taken and then, thereafter, the trial commenced before the court of sessions on commitment which ultimately met with result adverse to the appellant, subject matter of this appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is of complete denial. It has also been pleaded that the deceased caught fire accidentally during course of cooking. Seeing the



same the appellant and his family members got the fire extinguished, provided available medical facility, during midst thereof, members of the prosecution party came and had filed the instant case without any basis, foundation. However, neither any DW nor any documentary evidence has been adduced on behalf of accused.

5. In order to substantiate its case, prosecution had examined altogether 8 PWs out of whom PW-1, Aslam Ansari, PW-2, Sirajuddin Ansari, PW-3, Ishteyak Ansari, PW-4, Vahida Begam, PW-5, Intezar Ali, PW-6, Dr. Kameshwar Nath Tiwari, PW-7, Israj Mohammad, informant and PW-8, Sandeep Kumar, Investigating Officer. Side by side, had also exhibited Ext-1 series, signature of witnesses over inquest report, Ext-2 series, signature of doctor over postmortem report, Ext-3, postmortem report, Ext-4, written report, Ext-5, inquest report.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that the learned lower court while recording the judgment of conviction and sentence against the appellant had acted under pre-occupied mind without appreciating the evidence in legal way nor appreciated the bona fide conduct of the appellant which, if taken in right perspective, would not have warranted conviction. In order to substantiate the same, it has been submitted that from the written report itself, it is evident deceased was



being treated while members of the prosecution party arrived at his place. Furthermore, it is also evident therefrom that prosecution party was informed regarding the misfortune by the appellant himself. Had there been an offence committed at the hands of the appellant and his family members, he would not have allowed treatment of the deceased nor would have informed the prosecution party. That part is sufficient to exonerate the appellant from culpability whereunder, he has been convicted and sentenced. Furthermore, it has also been submitted that none of the prosecution witness happens to be an eyewitness to occurrence nor they have deposed that during intervening period, there was demand of dowry and for fulfillment of the same, the deceased was regularly treated with torture, cruelty. For the first time, it has been introduced by way stating that on 16.07.2013 the deceased had dialed and informed PW-7 that she was being manhandled for procurement of a motorcycle in lieu of demand of dowry, however, during course of trial the prosecution had not produced call details in order to affirm the discloser that on 16.07.2013, the deceased had dialed to PW-7. In absence thereof, the source of information which could form one of the major ingredients for attracting Section 304B IPC is not at all found duly substantiated.

7. Apart from this, it has also been submitted that prosecution had, with mala fide intention, introduced the theme of



oral dying declaration which, in the facts and circumstances of the case, did not justify, more particularly, in the background of severity of burn sustained by the deceased. The real fact is that the deceased had died much prior to arrival of the prosecution party. Even if considering, it did not speak with regard to aforesaid activity on account of non fulfillment of dowry and so, again on account of deficiency of evidence in order to substantiate Section 304 B of the IPC, the offence could not be said to be duly proved. In any view of the matter, the paucity of the evidence did not justify conviction and sentence of the appellant.

8. It has also been submitted that doctor, who conducted autopsy, has not been examined whereupon, neither the evidence of PW-6 could be held admissible in the eye of law nor the postmortem report could be admitted in the evidence. The learned lower court while relying upon the aforesaid document by way of admitting the postmortem report and in likewise manner the evidence of PW-6 gone against the settled principle of law. Apart from this, it has also been submitted that the evidence of PW-8, the Investigating Officer and the objective finding relating to the place of occurrence, completely ruins the prosecution version and so, the cumulative effect nullify the finding recorded by the learned lower court.

9. While refuting the submissions made on behalf of



the appellant, it has been submitted by the learned APP that the evidences having been adduced on behalf of prosecution happens to be consistent as well as satisfy the ingredients of Section 304 B of the IPC which the learned lower court perceived after minutely observing, analyzing the evidences and that being so, the judgment impugned did not attract interference. In likewise manner, it has also been submitted that the evidence of PW-6 is admissible in the eye of law as he was one of the members of the Medical Board who conducted postmortem. So, it was mere a paraphernalia whereunder Dr. Mahtab Khan (not examined) had scribed the postmortem report and so, the learned lower court rightly admitted the evidence and was fully justified in relying thereupon. In likewise manner, it has also been submitted that PW-8, Investigating Officer had fully corroborated by way of his objective finding relating to the place of occurrence.

10. In usual phenomena the witnesses being co-villagers of the appellant have turned hostile and that happens to be the status of the PWs-1, 2 and 3. Moreover, they consistently deposed with regard to solemnization of marriage in between deceased and the appellant, held 1 year and 3 months prior to the alleged date of occurrence. It is also apparent from their evidence that on hue and cry, they reached at the place of occurrence, they found the deceased in burnt condition and as per PW-2, her family members were searching



for doctor while as per evidence of PW-3, doctor was made available. During cross-examination, they have stated that there was no demand of dowry, more particularly, motorcycle, no torture, rather the deceased caught fire during course of cooking, accidentally.

11. PW-4 is the mother of the deceased. She had deposed that her daughter was married about a year ago. On the following day, her *Rukhsati* effected. About 9 months ago, she died. Her daughter had dialed on the same day at about 6:00 PM and disclosed that her husband, Sarafat Ahmad, Asma Bibi, Rukhsana Bibi and her younger sister-in-law, Rizwana Khatoon were insisting upon procurement of a motorcycle as well as TV. She had give a TV but due to financial constraint motorcycle was not given. Deyadin of her daughter, namely, Rukhsana had threatened that in case motorcycle is not provided by the evening time, she will be given a lesson. She had talked with her Deyadin and requested her not to torture her daughter as she is coming to meet the demand of the motorcycle by arranging money. At about 8:00 PM, Chaukidar, Babban had informed that her daughter has been burnt whereupon, all the family members reached at the house at 2:00 AM. She found her daughter lying in the courtyard. She was alive. She talked with her. During course of which, her daughter disclosed that all the accused persons poured acid in her mouth. Whole body was burnt of acid.



Soon thereafter, her daughter died. She identified the accused. During cross-examination, she had stated at para-2 that on the following day of Nikah, her daughter had gone to her Sasural. When she came at her place after an interval of 7 months, she met with the deceased. They used to visit Sasural of her daughter during intervening period. She stayed at her house for three months and then Bidai effected for which her son-in-law, Sarafat had come. She had further stated that during course of her stay at her place, her Sasuralwala including husband used to visit and were properly cared. Nikah was also performed in a harmonious atmosphere. In para-3, she had stated that her daughter had gone to her Sasural in pleasant manner. At the time of marriage, her son-in-law was working at Hyderabad. In para-4, she had stated that she had provided one mobile to her daughter and used to talk every fortnight though, the accused persons have forbidden the same. Till stay of her daughter at her Sasural, she had not visited. She had further stated that her daughter visited only once to her place after Nikah to her death. Her daughter was pregnant. When she reached, she found her daughter in a semi conscious condition on account of burnt. So many persons have accompanied her. At para-5, she had stated that when they reached at Sasural of her daughter, none of the family members save and except Asma Bibi was present. They began to take step for treatment during midst thereof, she died. She had



informed local Mukhiya who said that they have committed wrong but no case should be registered and for that, she will be duly compensated monetarily. They remained there while some of the members had gone to PS, informed the police. Police came and recorded her statement on the basis of which instant case has been registered. In her presence, the Investigating Officer had not taken statement of any other person. Her daughter was naked. Whole body was burnt. Her both teeth were broken. Lips were protruded. In para-6, she had stated that she had not, at an earlier occasion, complained regarding torture having been meted out to the deceased nor any Panchayati was convened. She received information from Choukidar. But she is not remembering his phone number. She denied the suggestion that there was no demand of dowry nor there was torture at the end of accused. Unfortunately, there was accidental fire as a result of which she died. In para-8, she had stated that her husband has compromised the case.

12. PW-5 is Md. Intezar Ali, cousin brother of the deceased. He had deposed that his cousin sister, the deceased was married with Sarafat Ahmad about one year 9 months ago. About 1 year ago, she died. They had received telephone from his sister about 2 hours before the occurrence and during course of conversation, she disclosed that Sarafat Ahmad, Asma Bibi, Rukhsana Bibi and



Rizwana Khatoon are assaulting her for procurement of a motorcycle as well as TV. His uncle had provided a small TV but the accused persons were insisting upon big TV as well as motorcycle. Her Gotni, Rukhsana had threatened of dire consequences in case of non fulfillment of demand of dowry. At about 9.45 PM, they received another call by which they were informed regarding the occurrence whereupon, he along with his aunt, uncle and others proceeded to the Sasural of deceased and reached. They found the deceased alive. She was in the courtyard lying over a cot. His aunt talked with the deceased who disclosed that all the accused persons had assaulted and then put her on fire. They were to remove the deceased for medical treatment during midst thereof, she died. Police had come and prepared inquest report in his presence over which he had put his signature. During cross-examination, he had stated that he had not visited Sasural of the deceased during midst of her stay. However, her uncle and other family members as well as Sasuralwala of the deceased were on visiting terms. He had talked with Shanaz, when she came to her Maika. In para-5, he had stated that he is not remembering as to how many times the deceased had come to her Naiher. At one occasion, her husband, Sarafat took her away while at other occasion, father of Sarafat took her away. During course of their presence at the place, they offered good hospitality. He had further



stated that the deceased had not communicated with regard to demand by letter but had informed her mother orally. In para-6, he had stated that Gotni of deceased had talked on the date of occurrence, before the occurrence. They had gone there. When they reached at the Sasural of deceased they saw her whole body was burnt. They have not seen the sign of assault. Police came in the morning till then, Shahnaz was in the Angan. They were also in the Angan. None of the Sasuralwala of deceased was present. When they reached, even at that very time, neither her husband nor her mother-in-law was present. He had shown ignorance with regard to cause of death in the background of prevailing illicit relationship of her husband with Rukhsana. He was not at all intimated by his sister, uncle, aunt relating to the same. Then had stated that when they reached they found the villagers as well as Mukhiyaji. In para-7, he had stated that Shahnaz was pregnant. Hair was burnt. Her face was burnt. Whole body was burnt. Sari as well as lower part of the body was completely burnt. Shanaz had died before arrival of the police. Shahnaz died half an hour after their arrival. They have not inquired from Shahnaz rather her mother inquired whereupon, she disclosed as to how she was set ablazed. He had further stated that mother of Shahnaz had disclosed that she was burnt in the same room wherein she was residing. Accused persons also shown the room wherein she was burnt. In para-8, he had further



stated that mother of Shahnaz had not disclosed that Shahnaz was hanged. Mother of Shahnaz had not disclosed as to how Shahnaz was set ablaze. When police came, they took the police to the room also. There was no blood. However, the room was washed. Police had recovered one rod wherein some clothes were wrapped. In para-10, there happens to be some sort of contradiction. He had denied the suggestion that none had put the deceased on fire rather she caught fire accidentally.

13. PW-7 is the informant who had deposed that her daughter (deceased) Shahnaz was married with Sarafat Ahmad. Her marriage was solemnized about two and half years ago and she died at her Sasural about one and half years ago while she was staying at her Sasural. Her murder was committed by Sarafat, mother of Sarafat, Asma Bibi, Rizwana, Imrana and Rukhsana. On the date of death, he received a call that on account of non fulfilment of dowry items, namely, motorcycle as well as TV, she will be murdered. At the time of marriage, he had given a small TV. He consoled his daughter. At about 10.00 AM, again he received a call that his daughter died, whereupon, he, his wife along with others had gone to the Sasural of his daughter where he saw his daughter in burnt condition. She was breathing. On query made by his wife, she disclosed that accused persons set her ablaze for motorcycle. After about 1 and ½ hours,



they had gone to PS and lodged a case. On his dictation, Ejaz had scribed the same which he read and then thereafter put his signature (exhibited). Also exhibited his signature over inquest report. Identified the accused. During cross-examination at para-4, he had stated that both the families were known to each other since before the marriage of his daughter. At the time of marriage, Sarafat was engaged at Hyderabad in a Rolling Mill. There was no hurdle in marriage. After marriage, his daughter had gone to her Sasural. After staying 5-6 months, she came to his place. During her stay at her Sasural, he used to visit her place. His son also used to go there. On the day of Bidai, Sarafat was present. In para-4, he had stated that his daughter came to his place only once. After staying for two months, her Bhainsur took her away. His daughter was not inclined to go there. After consoling her, Bidai was effected. His daughter had disclosed at that very time that she will not be left alive. This happens to be her last Bidai. His daughter complained against her Sasuralwala, for that, he had not complained anywhere. In para-6, he stated that after receiving information when he reached at the place of his daughter, he had not found any doctor. He had denied in para-7 with regard to averment having made in the written report regarding presence of the local doctor. In para-8, he had stated that when he reached there, he found his daughter to be alive. Her head was not



burnt but the lower part of the body was completely burnt. Clothe was put over her body. She was burnt. In para-9, he had stated that his daughter was illiterate. No letter was at her end with regard to demand of dowry as well as torture but, she used to complain over mobile. He had provided a mobile phone. In para-10, he has stated that his son-in-law had visited his place at an earlier occasion. After staying for a day, he returned back. He had also stated that on pressure he filed a compromise petition. In para-12, he had stated that his daughter died soon after the occurrence. When police came, he was present at the place of occurrence. Police had gone inside the house. Police had gone in the room. His daughter was put on fire in a hut which was seen by the police. He had also disclosed before Dy. S.P. that his daughter was murdered. He had also made written complaint. He had denied suggestion that the accused persons never demanded dowry. No occurrence as alleged, had taken place. The deceased during course of cooking caught fire accidentally which was extinguished by the accused persons and even having provided treatment, she died.

14. PW-8 is the I.O. He had deposed that on 17.07.2013, he was O/C of Kuchila PS. On the written report of Israj Mohammad, he registered Kuchila PS Case No. 10/2013 under Section 304B/34 of the IPC against the accused persons, then took up



investigation. He had visited the place of occurrence. During course of inspection of the place of occurrence, he had found one empty gallon as well as one small lamp which was seized by him in presence of Israj as well as Gauri Shankar Chaudhary (Exhibited). He also prepared inquest report in carbon process in presence of witnesses (exhibited). Dead body Chalan was issued and sent the dead body for postmortem along with Chaukidar. Then he had inspected the place of occurrence which happens to be the house of accused persons. Then had given topography of the house. The house happens to be of mud as well as having tiled roof. At the southern flank there happens to be open courtyard as well as cow-shed. Western side of courtyard is open having thatched roof, hut. One room having eastern front and two rooms having southern fronts with pucca roof. One room having eastern front is also pucca. One handpipe is installed in the middle of the Angan. A room having western front which happens to be adjacent to the passage as well as tiled roof, its floor has been found cleaned. Smell of K-oil was coming therefrom. He had not found sign of flame over the wall. Northern wall happens to be that of brick wherein rack is present. Then had detailed the other constructions having found there. Then has disclosed the boundary of the house. North-Kiyamuddin, South-Kiyamuddin, East-passage and then house of Jannat Ansari and West-Imam Ansari. He took further statement of



informant and then, thereafter, statement of Vahida Begam, Aslam, Ishteyak, Intezar, and Serajuddin. Then there happens to be contradiction relating to hostile witnesses, Aslam, Serajuddin, Ishteyak and Intezar Ansari. After completing the investigation, he had submitted the charge-sheet against the appellant. During cross-examination, at para-2, he had deposed that when he reached at the place of occurrence, he found the deceased dead. Her dead body was in the court yard. Accused persons were not present. Villagers were there. He took their statements. He had gone inside the room whereunder the deceased was residing. The place of occurrence happens to be that room. He had not mentioned the length and breadth of the room. He had found floor of the room sleeked and smell of K-oil was coming therefrom. He had not mentioned the name of the person who had shown the place of occurrence. He had not found burnt article inside that room. In para-3, he had stated that when he reached at the place of occurrence, deceased was lying over cot in the courtyard. She was wrapped in a Sari of red colour. He had not seized that Sari. He had seized the empty gallon as well as one lamp. He had not seized the cot. In para-4, he had stated that he had found the whole body of the deceased in burnt condition. Neither the informant nor his family members had handed over mobile claiming that the same was along with the deceased. They had not disclosed the mobile number of



deceased. He had reached at the place of occurrence at 6.50 AM. He had not investigated on the point of mobile being possessed by the deceased. The informant had disclosed in the written report regarding treatment being provided to the deceased by a doctor. Informant during course of his statement has divulged regarding demand of dowry since after marriage.

15. PW-6 is Dr. Kameshwar Nath Tiwari who had deposed that Medical Board was constituted for conduction of postmortem. In his supervision, postmortem was done by Dr. Mahtab Khan and in his presence finding was recorded by him over which he had also put his signature. He along with Dr. Mahtab Khan found the following ante-mortem injuries over the dead body of the deceased:-

“Dead body claw in position, mouth closed, teeth visible, tongue in right position, extensive burn injury all over the body, smell of K-oil coming from the dead body. On dissection, skull bone intact, brain matter pale, neck NAD, Thoroacic intact, both pleura and lungs intact and congested, pericardium and heart intact, right chamber contained dark blood. Left chamber empty. Stomach contained semi digested food material. Intestine contained gas, liquid and fascies. Liver, spleen and both kidney are intact and slightly congested. Uterus non gravy. Urinary bladder contained 30 ML of urine.



Opinion:-1. Above mentioned burn injury is ante-mortem in nature and caused by dry heat by means of K-oil.

2. Death is due to severe shock and dehydration resulting to C.R. failure due to above mentioned extension burn injury.

3. Time elapsed since death in approx within 24 hours.

16. Then had exhibited the same stating that this postmortem report was scribed in his presence by Dr. Mahtab Khan which bears his signature as well as signature of Dr. Mahtab Khan. During cross-examination he has stated that he was observer and in his presence PM was conducted. However, he had also stated that he personally does not know what has been written in the PM report.

17. After going through the evidence adduced on behalf of the prosecution, as discussed above, it is evidently clear that the deceased died at her Sasural within one year of marriage that means to say within seven years of marriage. Furthermore, she died of burn injuries, smell of K-oil was coming from the dead body. Smell of K-oil was also perceived during inspection of P.O. by the Investigating Officer, who had also seized gallon as well as lamp. It is also evident that none of the family members were present when the prosecution party as well as police arrived at the place of occurrence.



Furthermore, the status of the appellant being husband of the deceased is also not denied. In the background of the aforesaid admitted fact, now the further task is to search out whether there was demand of dowry at the end of Sasuralwala as well as soon before her death, she was tortured on that very score. From the evidence on record, it is apparent that all the witnesses namely, PWs, 4, 5 and 7 had reiterated the same and on that very score there happens to be no contradiction, embellishment, development as is evident from the evidence of Investigating Officer PW-8, nor there happens to be proper cross-examination in order to infidelise.

18. Learned counsel for the appellant drew attention towards the initial version having at the end of PW-7, informant, father of deceased that there happens to be discloser that at the time of their arrival at the place of deceased, she was in burnt condition but was being treated by a local doctor. However, this part has been completely gone by the prosecution during course of evidence, though attention has been drawn to the informant as well as Investigating Officer on that very score. On the other hand, the learned APP submitted that it might be possible that some of the villagers, whose presence has been, might have cared and, perhaps shown as local doctor by the prosecution, otherwise during course of inspection of P.O. supportive evidences might have been collected or those would



have been proper activity at the end of defence whereunder that doctor must have been examined by the Investigating Officer and in likewise manner, during cross-examination his name would have been disclosed, at least would have been examined in defence, so the assertion is not going to have any kind of adverse impact upon the prosecution case.

19. From the trend of the cross-examination having on behalf of appellant, it is apparent that neither PWs-4, 5, 7 were cross-examined on the point of demand of motorcycle as well as big TV as they were not satisfied with small TV which was given at an earlier occasion nor they have challenged the version of the prosecution that when they reached, they found the deceased breathing, they made query over which, the deceased had disclosed the event as to how she was put under fire and by whom. The defence also kept silence over mobile phone, at least, by way of suggestion that deceased was not at all possessing any mobile. Though, it happens to be oral dying declaration but, neither law prohibits the same nor there happens to be any kind of impediment in accepting the same once it is found that same happens to be free from any kind of embellishment, tutoring, influence as well as in a fit mental condition. Moreover, presence of prosecution party had already been admitted by PWs-1, 2, and 3, co-villagers of the appellant who also affirmed the



incidence of deceased being burnt.

20. Taking no step to inform the police officials at an earlier occasion regarding torture, cruelty having exhorted upon the deceased relating to demand of dowry should not be considered as an abnormal activity because of the fact that marriage was solemnized just a few months ago and so far Indian culture is concerned, people wait and watch to maintain relationship which could mature by efflux of time.

21. In *Suresh Kumar v. State of Haryana reported in 2-14 Cr.L.J. 551*, it has been observed as follows:-

25. Learned counsel for Suresh Kumar made two submissions. It was firstly contended on the merits of the case that there was nothing to suggest that his client was guilty of an offence punishable under Section 304-B of the IPC. Secondly it was contended that the High Court ought not to have lightly interfered against an order of acquittal.

26. The actual words used in Section 304-B of the IPC are of importance. This section reads as under :-
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.
 Explanation.- For the purpose of this sub-section, dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
 (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.

27. In a large number of decisions, this Court has indicated the ingredients of Section 304-B of the IPC, which are now broadly accepted. In *Pawan Kumar v. State of Haryana* [JT 1998 (1) SC 565 : 1998 (3) SCC 309] the ingredients were identified as:

- (a) When the death of a woman is caused by any burns or bodily injury, or
- (b) occurs otherwise than under normal circumstances
- (c) and the aforesaid two facts spring within 7 years of girls marriage
- (d) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative,
- (e) this is in connection with the demand of dowry.

28. The ingredients of Section 304-B of the IPC were rephrased in *Kans Raj v. State of Punjab* [JT 2000 (5) SC 223 : 2000 (5) SCC 207] in the following words :

- (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) such death should have occurred within 7 years of her marriage;
- (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her marriage;
- (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
- (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

29. The expression otherwise than under normal circumstances was explained to mean death not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury.

30. A somewhat recent exposition is to be found in *Hira Lal v. State (Govt. of NCT), Delhi* [JT 2003 (6) SC 195 : 2003 (8) SCC 80] wherein this Court held that to attract the application of Section 304-B of the IPC, the essential ingredients are as follows:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.



- (ii) Such a death should have occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

31. More recently the ingredients of Section 304-B of the IPC have been abbreviated in *Bakshish Ram v. State of Punjab* [JT 2013 (9) SC 129: 2013 (4) SCC 131] in the following words :

- (a) that a married woman had died otherwise than under normal circumstances;
- (b) such death was within seven years of her marriage; and
- (c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.

32. This formula, though framed in different words by this Court, from time to time, conveys the same meaning of the essential ingredients of an offence punishable under Section 304-B of the IPC.

33. Importantly, Section 304-B of the IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring otherwise than under normal circumstances can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B of the IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a dowry death and the woman's husband or his relative shall be deemed to have caused her death. The Section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.



34. The evidentiary value of the identification is stated in Section 113-B of the Evidence Act, 1872 (the Act). The key words in this Section are shall presume leaving no option with a Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her.

35. Section 113-B of the Act reads as follows:-
 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.
 Explanation For the purposes of this section dowry death shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).

36. That the presumption under Section 113-B of the Act is mandatory may be contrasted with Section 113-B of the Act which was introduced contemporaneously. Section 113-A of the Act, dealing with abetment to suicide, uses the expression may presume. This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B of the IPC: it is necessary to first ascertain whether the ingredients of the Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. Some key decisions

37. In Pawan Kumar this Court adverted to the reason for amending the IPC by Act 43 of 1986 to introduce Section 304-B therein and the difficulty in curbing the menace of dowry related deaths. This Court said in paragraph 11 of the Report: It is true, as argued by learned counsel for the appellants, that in criminal jurisprudence benefit of doubt is extendable to the accused. But that benefit of doubt would arise in the



context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws. Since the cause of death of a married woman was to occur not in normal circumstances but as a dowry death, for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed dowry death by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of deemed dowry death.

38. This Court then observed that: The objective is that men committing such crimes should not escape punishment. Hence stringent provisions were brought in by shifting the burden onto the accused by bringing in the deemed clause.

39. On the question of burden of proof, this Court referred to Section 113-B of the Act and held in paragraph 19 of the Report: We find that according to Section 8-A of the aforesaid 1961 Act [Dowry Prohibition Act, 1961] which came into force w.e.f. 2-10-1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under Explanation to Section 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act 43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise.

40. In *Shamnsaheb M. Multtani v. State of Karnataka* [JT 2001 (2) SC 92 : 2001 (2) SCC 577] a Bench of three judges of this Court elucidated the requirements of Section 304-B of the IPC read with Section 113-B of the Act and contrasted it with Section 113-A of the Act. Paragraphs 27 to 30 are extremely important in this context



and are reproduced below:

27. The postulates needed to establish the said offence [Section 304B of the IPC] are: (1) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Section 113-B of the Evidence Act, as a part of the said offence, the position in this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances the court shall presume that such person had caused the dowry death.

28. Under Section 4 of the Evidence Act whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can



persuade the court against drawing a presumption adverse to him.

30. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.

41. In *Yashoda v. State of Madhya Pradesh* [JT 2004 (2) SC 318 : (2004) 3 SCC 98] this Court held that once the ingredients of Section 304-B of the IPC are fulfilled, the onus shifts to the defence to produce evidence to rebut the statutory presumption and to show that the death was in the normal course with which the accused were not connected. This is what was said: Once the prosecution proves the facts which give rise to the presumption under Section 304-B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in the normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304-B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment.

42. In *Nallam Veera Stayanandam v. Public Prosecutor, High Court of A.P.* [JT 2004 (3) SC 18 : 2004 (10) SCC 769] this Court specifically adverted to an accidental death and the applicability of Section 304-B of the IPC as well as the presumption under Section 113-B of



the Act and held:
 It is true from the evidence led by the prosecution it has been able to establish that the appellants were demanding dowry which was a harassment to the deceased. It is also true that the death of the deceased occurred within 7 years of the marriage, therefore, a presumption under Section 113-B of the Evidence Act is available to the prosecution, therefore, it is for the defence in this case to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death.

43. Similarly, in *Sharad v. State of Maharashtra* [JT 2012 (2) SC 26 : (2012) 5 SCC 548] this Court was again concerned with an accidental death. This Court referred to Section 113-B of the Act to conclude that the burden of proving that it was an accidental death was upon the accused. It was held: The counsel for the appellant next tried to advance the plea that it was in fact a case of accidental burn and Savita caught fire by falling down on the chulha. It is seen above that Savita died from burn injuries within two-and-a-half years of her marriage with the appellant. It is also established that soon before her death she was subjected to cruelty or harassment by the appellant in connection with the demand for the unpaid amount of the dowry. All the three facts and circumstances put together clearly attract the provisions of Section 113-B of the Evidence Act and the burden lay upon the appellant to prove the defence plea that it was a case of accidental burning. There is, however, no evidence on record even to remotely support the plea of accidental burn.

44. Finally, in *Pathan Hussain Basha v. State of A.P.*, [JT 2012 (7) SC 432 : 2012 (8) SCC 594] this Court reiterated that the burden of proving the innocence of the accused or rebutting the statutory presumption is on him and not on the prosecution which has only to prove that the ingredients of an offence of dowry death are made out. It was held: Applying these principles to the facts of the present case, it is clear that the ingredients of Section 304-B read with Section 498-A IPC are completely satisfied in the present case. By a deeming fiction in law, the onus shifts on to the



accused to prove as to how the deceased died. It is for the accused to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons. The accused did not care to explain as to how the death of his wife occurred. Denial cannot be treated to be the discharge of onus. Onus has to be discharged by leading proper and cogent evidence. It was expected of the accused to explain as to how and why his wife died, as well as his conduct immediately prior and subsequent to the death of the deceased. Maintaining silence cannot be equated to discharge of onus by the accused. In the present case, the prosecution by reliable and cogent evidence has established the guilt of the accused. There being no rebuttal thereto, there is no occasion to interfere in the judgments of the courts under appeal.

45. A discordant note on the issue of burden of proof in an accidental death was struck in Hira Lal wherein this Court conjointly read Section 304-B of the IPC and Section 113-B of the Act. It was held that the onus is on the prosecution to rule out the possibility of a natural or accidental death. It was held in paragraph 9 of the Report as follows:

A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances.

46. These very words were repeated, almost in identical terms, in Kunhiabdulla v. State of Kerala [JT 2004 (3) SC 206 : 2004 (4) SCC 13], State of Andhra Pradesh v. Raj Gopal Asawa [JT 2004 (3) SC 560 : 2004 (4) SCC 470] and in Kamesh Panjiyar v. State of Bihar [JT 2005 (2) SC 218 : 2005 (2) SCC 388] that it is for the prosecution to show that the dowry death was not natural or that it was accidental.

47. This view has recently been followed in Bakshish Ram wherein it was held that: [A] perusal of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to



show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates.

48. We are, of course, bound by the decision of a larger Bench of this Court in *Multani*. Following that decision, we must hold that the initial burden of proving the death of a woman within seven years of her marriage in circumstances that are not normal is on the prosecution; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that eventually leads to the woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the prosecution, a reverse onus is put on the accused to prove his innocence by showing, inter alia, that the death was accidental.

22. In *Basisth Narayan Yadav v. Kailash Rai*

reported in *2015 Cr.L.J. 3792*, it has been held as follows:-

9. We have analysed the evidence produced in this case. We find that although the case of the prosecution suffers from many infirmities and there has been unexplained reluctance in bringing the relevant witnesses on record, apart from parents of the deceased, the doctor and the Investigating Officer, even Triloki Sharma and the Chowkidar who saw the accused persons disposing of the body of the deceased, have also not been examined. Yet we may not lose sight of the fact that this is the case of dowry death. Even with the limited evidence brought on record certain things have been established. It is undisputed that the deceased had died during the night of 30.07.1989 due to burn injuries inside her matrimonial house. It further appears that when PW-5 informant arrived at the house on the day of the incident, the house was deserted except that her sister's dead body was lying. These two are extremely incriminating circumstances; as in normal course the dead



body would not have been abandoned like this. Further, there are ante mortem injuries found on the body of the deceased which shows that there was some physical assault on her before she died. This is further established by the fact that her knees were tied with an iron wire even after death. We find this indicates that the deceased was not only physically assaulted which caused her three ribs to fracture but she was also tied up with iron wire so as to make her immobile and thereafter she was set on fire. The demands of dowry are proved sufficiently by PW-5 and the letter that the deceased had written to PW-5, clearly shows that the demands of dowry were not only made but even cruelty in relation to those demands was committed. The deceased had expressed in the letter her apprehension of being killed. The complaint to the Chief Judicial Magistrate under [Sections 494, 498A](#) of IPC and [Sections 3](#) and [4](#) of Dowry Prohibition Act, goes on to further indicate that dowry related cruelty was committed against the deceased. The deceased was married to accused Ranjit Kumar on 26.06.1987 which means the death of the deceased occurred within a little over 2 years of the marriage. We find that the three main ingredients of [Section 304B](#) of IPC have been proved to trigger the presumption under [Section 113B](#) of the Evidence Act, 1872. The death has occurred within 7 years of the marriage due to burn injuries and there were demands of dowry accompanied with the physical and mental cruelty against the deceased prior to her death. The post-mortem report has revealed the physical assault on her just before her death. Therefore, we find that the burden of proof must shift on the accused persons to explain the death of the deceased. The defence has made a cursory statement that the deceased caught fire from stove while cooking food. There is no explanation as to why the deceased was not taken to hospital or why was the dead body left unattended to in the morning. The entire conduct of the accused persons is very suspicious and non-explanation of same means they have not discharged their burden of proof.

10. However, we must focus our attention to the fact that there are ten accused persons in this case (one of them died during the pendency of trial) and it has not been proved conclusively or even sufficiently that all of the accused were present in the house when the deceased died. Since we are proceeding on a presumption we must be cautious in attaching the guilt to the accused persons whose



presence itself can be doubted at the place of incident. In the present case, Sarita Kumari, her father Bishnudeo Rai and Binda Rai are not members of this family and they had no reason to be present at the house of Ranjit Kumar when the deceased died due to burn injuries. Similar is the case of Dholan Devi and Deobanti Devi (sisters of Ranjit Kumar) and their husbands Kailash Rai and Ram Shrestha Rai. Those persons did not use to live in the house of Ranjit Kumar and they used to stay in a different village. There is no evidence to the effect that these accused persons were in that house when the incident occurred. Therefore, we do not find it prudent to attach guilt to them in absence of any such evidence.

23. Now coming over dying declaration, it is apparent that none of the prosecution witness has been cross-examined in order to discredit the same, nor they have been suggested to the effect that when they reached at the place of occurrence, deceased was already dead. In likewise manner, neither the prosecution witnesses were suggested that due to severe burn, deceased was not in a position to make any kind of statement nor doctor was cross-examined/suggested that due to such nature of burn, the victim would not be in a position to make any statement.

24. However, the Apex Court had considered the issue in detail in *Vijay Pal v. State (Govt. of NCT of Delhi)* reported in (2015)4 SCC 749 and held as follows:-

“17. The submission of the learned counsel for the appellant is that the oral dying declaration lacks intrinsic truth and it does not deserve acceptance. At this juncture we think it appropriate to refer to certain authorities how an oral dying declaration is to be scrutinized.



18. In the case of [Laxman v. State of Maharashtra](#)[(2002)6 SCC 710], the Constitution Bench has held thus:

"The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive [pic]and definite."

19. The aforesaid judgment makes it absolutely clear that the dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice, provided the communication is positive and definite. There cannot be any cavil over the proposition that a dying declaration cannot be mechanically relied upon. In fact, it is the duty of



the Court to examine a dying declaration with studied scrutiny to find out whether the same is voluntary, truthful and made in a conscious state of mind and further it is without any influence.

20. At this juncture, we may quote a passage from [Babulal v. State of M.P.](#) [(2003)12 SCC 490], wherein the value of dying declaration in evidence has been stated:-

"7. ... A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his Maker with a lie in his mouth" (nemo moriturus praesumitur mentiri). Mathew Arnold said, "truth sits on the lips of a dying man". The general principle on which the species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and mind induced by the most powerful consideration to speak the truth; situation so solemn that law considers the same as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

21. Dealing with the oral dying declaration, a two-Judge Bench in [Prakash V. State of M.P](#) [(1992)4 SCC 225], has stated thus:

"11. ... In the ordinary course, the members of the family including the father were expected to ask the victim the names of the assailants at the first opportunity and if the victim was in a position to communicate, it is reasonably expected that he would give the names of the assailants if he had recognised the assailants. In the instant case there is no occasion to hold that the deceased was not in a position to identify the assailants because it is nobody's case that the deceased did not know the accused [pic]persons. It is therefore quite likely that on being asked the deceased would name the assailants. In the facts and circumstances of the case the High Court has accepted the dying declaration and we do not think that such a finding is



perverse and requires to be interfered with."

22. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same. In the instant case, PW-1 had immediately rushed to the house of the deceased and she had told him that her husband had poured kerosene on her. The plea taken by the appellant that he has been falsely implicated because his money was deposited with the in-laws and they were not inclined to return, does not also really breathe the truth, for there is even no suggestion to that effect.

23. It is contended by the learned counsel for the appellant when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in [Mafabhai Nagarbhai Raval v. State of Gujarat](#)[(1992)4 SCC 69], wherein it has been held a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial Court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. [In State of Madhya Pradesh v. Dal Singh and Others](#)[(2013)14 SCC 159], a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible."

25. In *Gangabhavani v. Rayapati Venkat Reddy reported in 2013 Cr.L.J. 4618*, it has been held:-

17. This Court in *Laxmibai (Dead) Thr. [L.Rs. & Anr. v. Bhagwanthuva \(Dead\) Thr. L.Rs. & Ors.](#)*, AIR 2013 SC 1204 examined the effect of non- cross examination of witness on a particular fact/circumstance and held as under:

"31. Furthermore, there cannot be any dispute



with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in [Section 138](#) of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by [Section 146](#) of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied) (See also: *Rohtash Kumar v. State of Haryana*, JT 2013 (8) SC 181; and *Gian Chand & Ors. v. State of Haryana*, JT 2013 (10) SC 515).

18. Thus, it becomes crystal clear that the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in- chief and the defence has not cross examined him on the said aspect of the matter.

26. After having been duly substantiated at the end of the prosecution that the deceased died of burn injuries within one year of her marriage at her Sasural by way of pouring K-oil, smell found coming from dead body as well as at place of occurrence and during



intervening period demand of dowry (motorcycle as well as big TV) continued and for that she was tortured by her *Sasuralwala* attracts presumption in terms of 113 B of the Evidence Act, though rebuttable was to be taken up by the defence/appellant and it was expected at his end to have properly discharged the same by way of explaining the same. It is evident from the record that neither any DW nor any chit of paper has been adduced on behalf of defence, at least should have examined the doctor who had attended the deceased to suggest that the oral dying declaration having at the end of the deceased was not at all plausible, probable, possible and so, the aforesaid theme should be disbelieved while appreciating the same and in likewise manner, over demand as well as torture having inflicted over deceased.

27. Consequent thereupon, this appeal lacks merit and is, accordingly, dismissed.

28. Appellant is under custody which he will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	25.07.2017
Uploading Date	12.09.2017
Transmission Date	12.09.2017

