

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.300 of 2015

Arising Out of PS. Case No. -182 Year- 2011 Thana -CHAINPUR District- BHABHUA (KAIMUR)

- =====
1. KAMLI DEVI W/O KHARRAM @ KHARDEV RAM
 2. SARITA KUMARI @ SARITA DEVI D/O KHAR RAM @ KHARDEV RAM
 3. BHAGIRATHI DEVI W/O RAJESH RAM
ALL RESIDENT OF VILLAGE - BAURAI, P.S.- CHAINPUR, DISTRICT-KAIMUR (BHABUA).

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

WITH

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Criminal Appeal (SJ) No. 321 of 2015

Arising Out of PS. Case No. -182 Year- 2011 Thana -CHAINPUR District- BHABHUA (KAIMUR)

- =====
1. MUKESH RAM S/O KHAR RAM@KHARDEO RAM
 2. KHARDEO RAM@KHAR RAM S/O LATE JIV NANDAN RAM
BOTH ARE RESIDENT OF VILLAGE BAURAI, P.S CHAINPUR,
DISTRICT KAIMUR(BHABUA)

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

(In CR. APP (SJ) No.300 of 2015)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhay Kumar, APP

(In CR. APP (SJ) No.321 of 2015)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP
Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 22-06-2017

Cr. Appeal (SJ) No.300 of 2015 wherein Kamli Devi,

Sarita Kumari @ Sarita Devi and Bhagirathi Devi are the appellants,

Cr. Appeal (SJ) No.321 of 2015 wherein Mukesh Ram, Khardeo

Ram@Khar Ram are the appellants originate commonly against the



judgments of conviction dated 28.04.2015 and order of sentence dated 05.05.2015 passed by Second Additional Sessions Judge, Kaimur at Bhabhua in Sessions Trial No.207 of 2012 / 88 of 2014 whereby and whereunder they all have been found guilty for an offence punishable under Section 304(B) IPC and each one has been sentenced to undergo R.I. for seven years, under Section 201 IPC whereunder each has been directed to undergo R.I. for three years as well as to pay fine Rs.5000/- each and in default thereof, each to undergo S.I. for six months, additionally with a further direction to run the sentences concurrently while no separate sentence has been prescribed for an offence punishable under Section 4 of the Dowry Prohibition Act, on account thereof, both the appeals have been heard together and are being decided by a common judgment.

2. Prabhawati Devi (PW.5) filed written report on 16.08.2011 disclosing therein that her daughter Nilam Kumari was married with Mukesh Ram, son of Khar Ram @ Khardeo Ram of village-Baurai about six years ago. About three years ago, Gauna was effected. Because of the fact that she was issueless on account thereof, her Sasuralwala were regularly torturing her. Times without number they have gone and requested not to torture her as well as for getting proper medical treatment so that, she could conceive but, they have not paid heed to it. On 14.08.2011, her brother Sunil Ram (PW.6) had informed that her daughter Nilam had talked with him over mobile who disclosed that today her husband, father-in-law, mother-in-law,



sister-in-law and brother-in-law (*Bahnoi*), *Debar* have quarreled and further, coerced her to leave the place as she happens to be '*Banjhin*' otherwise they will kill her. Furthermore, she had also disclosed that they have directed that if she wants to stay at her Sasural then, she will have to procure a she-buffalo from her father. Nilam, after saying so began to weep whereupon, Sunil had consoled her and disclosed that they will come tomorrow as, her husband was away. As, some delay has caused in getting presence of her husband during midst thereof, she along with Sunil has come to meet with Nilam where they came to know with regard to death of her daughter. When they demanded dead body of Nilam, they (*Sasuralwala of Nilam*) shown inability as, dead body had already been burnt. So she claimed that her daughter has been murdered by her husband, *Debar*, *Nanad*, father-in-law, mother-in-law and brother-in-law (*Bahnoi*) and her dead body has been disposed of.

3. On the basis of the aforesaid written report Chainpur P.S. Case No.182 of 2011 was registered under Sections 302,201,120(B),34 of the IPC whereupon investigation taken up and after concluding the same, first charge sheet was submitted against Kamli Devi as well as Mukesh Ram while supplementary charge sheet was submitted against Rajesh Ram , Sarita Kumari, Khar Ram, Bhaghirthi Devi, Kameshwar Ram whereupon the trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from the 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 submitted that deceased died of natural death which was informed to the prosecution party and after their arrival, funeral had taken place in their presence. Subsequently thereof, as prosecution party began to exploit by advancing unreasonable demands which they have declined to honour as a result of which, instant case has been filed with ulterior motive. To support the same, also examined DWs as well as exhibited some documents.

5. In order to substantiate its case prosecution had examined altogether eight PWs who are, PW.1 – Tapeshwar Ram, PW.2-Jamuna Ram, PW.3-Kameshwar Ram, PW.4-Rameshwar Ram, PW.5-Prabhawati Devi (Informant), PW.6-Sunil Ram, PW.7- Manoj Kumar-I, and PW.8-Bhudeo Das. No document has been exhibited at the end of prosecution.

6. Four witnesses have been examined on behalf of defence who are Manan Ram, Dhananjay Prasad, Munna Ram, Subhash Ram. Side by side had also exhibited Ext.A- and A/1-Medical Examination Prescription, Ext.B-Certificate relating to accused Rajesh Kumar (since acquitted).

7. The learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that the finding recorded by the learned lower court happens to be based upon conjecture and surmises irrespective of the material available on the



record sufficient to deplume the case of the prosecution. To substantiate such plea, it has been submitted that deceased being wife of appellant Mukesh is not at all denied. The death is also not denied. The controversy remains over the date of marriage which, as per prosecution version happens to be within six years from death of deceased while the plea of the defence happens to be 12 to 13 years. The prosecution, with ulterior motive had disclosed that deceased was done to death and her dead body was disposed of without informing the prosecution party which, the appellants stoutly refused and for that, it has been submitted that deceased, who was suffering from ailment since before was under regular treatment and for that, Ext.A, A/1, Prescription issued by the doctor have been brought up on record, unfortunately, died of her ailment and for that, prosecution party was informed who came and participated in the funeral. Therefore, the learned lower court should have accepted the version having advanced on behalf of defence which has got truthfulness as, somehow or other, prosecution also admits. Furthermore, it has also been submitted that demand of she buffalo has purposely been introduced without any substance, as the witnesses are inconsistent with each other, on that score, hence, none of the ingredients of Section 304B IPC is made out along with Section 4 of the Dowry Prohibition Act. Furthermore, as funeral had taken place in presence of prosecution party, hence no offence under Section 201 IPC is made out.

8. Then it has been submitted that Investigating Officer,



during course of objective finding relating to place of occurrence did not find anything adverse which could have a supportive link to the prosecution case and so, the evidence of the Investigating Officer is not going to support the case of the prosecution.

9. Furthermore, it has also been submitted that all the prosecution witnesses belongs to *Naiharwala* of the deceased Nilam Devi and further, none of them happens to be eyewitness to occurrence. Apart from the fact that they have even failed to substantiate the case through circumstantial evidence.

10. In its continuity, it has been submitted that at an initial stage, charge under Section 302/34 IPC and in an alternative under Section 304B/34 of the IPC were framed along with 201 IPC out of which during course of scrutiny of the evidences available on the record, the learned lower court did not find it a case under Section 302/34 of the IPC. At the other end though, no positive evidence happens to be at the end of prosecution party coupled with contradiction as well as exaggeration, entrammelled the basic version whereupon would not support the case under Section 304B/34 of the IPC, 201 IPC as well as Section 4 of Dowry Prohibition Act and consequent thereupon, the finding recorded by the learned lower court convicting the appellants under Section under Section 304B/34 of the IPC along with 201 of the IPC, 4 of Dowry Prohibition Act is not at all appreciable.

11. Furthermore, it has also been submitted that for the



purpose of substantiating the offence under Section 304B of IPC, apart from others, there should have been an allegation of torturing and cruelty for procurement of dowry and for that Section 498A would have been applied by way of framing of charge thereunder which is lacking in the present case and that being so, is found to give severe jolt in the prosecution case as, the major ingredient is found lacking. The learned lower court did not consider the aforesaid aspect while recording conviction and sentence against the appellant and in likewise manner prosecution is found deficient one relating to ancillary offence. That being so, the judgment of conviction and sentence is fit to be set aside.

12. On the other hand, the learned Additional Public Prosecutor vehemently refuted the submission made on behalf of appellant and submitted that from perusal of the judgment impugned it is evident that learned lower court had meticulously examined pros and cons of the case along with the materials adduced on behalf of respective parties consequent thereupon, needs no interference.

13. From the written report, though happens to be conclusively held would not contain minute to minute detail however, major allegation should not escape, that too when it has filed after so many days, having sufficient time to reinvigorate. After going through the same, it is apparent that there happens to be no discloser at the end of informant to have received on her own any sort of complaint from the deceased over demand of she-buffalo to allow her stay at her Sasural



along with the fact that deceased was ever tortured on that score contrary to it, it has been alleged that being issueless, Nilam was subjected to torture. Furthermore, it looks ridiculous that deceased would surpass the mother to complain who was herself possessing mobile, to inform her maternal uncle (Mama) and so, for the first time, the theme of demand has been introduced through Sunil, (PW.6) who had disclosed to informant that Nilam had disclosed to him that her Sasuralwala had led a condition to allow her stay by way of procurement of she-buffalo. Therefore, the evidence of PW.6, Sunil Ram is to be taken at first instance.

14. PW.6 Sunil Ram deposed that deceased Nilam Kumari was his *Bhagini* (sister's daughter) who was married with Mukesh Ram about six years ago. She was issueless. Mukesh Ram, Rajesh Ram, mother-in-law, Gotini, Nanad and Kameshwar were coaxing Nilam by saying that her father had not given she-buffalo and further, she happens to be issueless on account thereof, she would be murdered otherwise procure a she-buffalo. He had informed his sister, Prabhawati Devi and disclosed the same and further said that he will go to Sasural of Nilam on the next morning for getting the matter properly sorted out. Nilam had disclosed the aforesaid theme over mobile. On 15.08.2011 he received information that Nilam has been murdered. Then he reached at the Sasural of Nilam at about 08:00 AM where he did not find Nilam. Villagers have disclosed that accused persons have burnt the dead body. Parents of Nilam were present since



before who have indulged in an altercation with the accused who were saying to go and see where their daughter had gone. During cross-examination at para-4 he had stated that on 14.08.2011 at about 04:00 PM he received call from Nilam. He had also received similar kind of call from Nilam about a month ago. He had further stated that after getting complain at the end of Nilam, he had informed his sister as well as brother-in-law. He had also gone to the place of his sister. At that very time, they have not disclosed that they had gone to Sasural of Nilam, but had gone. In para-5 he had stated that he had gone to Sasural of Nilam one day after Gauna which was effected three years after marriage. Then thereafter, he had gone after death of the Nilam. In para-6 he had stated that Nilam frequently visited her Naihar after Gauna while staying at her Sasural. At para-10 he had stated that after receiving call from Nilam on 14.08.2011 at about 04:00 PM, he informed his sister soon thereafter. In para-11 he had stated that he received information regarding death of Nilam on 15.08.2011 at about 06:00 AM. He had further named Chawinath who had informed. He had simply informed that his father-in-law had disclosed that Nilam has been murdered. Then had called his brother-in-law as well as sister wherefrom he gathered information that his brother-in-law and sister had already gone to place of Nilam. Then thereafter, he directly proceeded towards Sasural of Nilam. In para-13 he had stated when he reached at Sasural of Nilam he saw his sister and brother-in-law sitting at the Baithka of the accused where Tapeswar, Bateswar and



others were present. In para-14, he had stated that he stayed there for an hour and during course thereof, an altercation took place. Then thereafter, they have gone in village and gathered information regarding commission of murder of Nilam. Then they returned to village-Deora over tractor. Then thereafter, they returned back. In para-15 he had stated that he along with his sister had gone to Chainpur P.S. for registration of the case. His brother-in-law remained at village. He had not accompanied them for institution of the case. Why not he gone, he is unable to say. Case was instituted at about 03:30 PM and then, they returned back to Naihar of Nilam. Then there happens to be contradiction, which he admitted that those facts were not stated before the police.

15. PW.5 is the Prabhawati Devi, informant, mother of deceased Nilam. She had deposed that Nilam was married with Mukesh Ram about six years ago. Her Gauna took place about 3 years ago. After Gauna, she (Nilam) remained at her Sasural. She was issuess and on account thereof, her mother-in-law, father-in-law, Gotani, Nanad, Husband, Bhaisur and Kameshwar used to torture her. They have had demanded she-buffalo at the time of Gauna itself and were so adamant that they were not inclined to effect Gauna without she-buffalo, any how the matter was amicably sorted out. Subsequent event of torture and cruelty was for procurement of she-buffalo which they had demanded. Nilam had disclosed the aforesaid event to her maternal uncle (mama), namely, Sunil. Sunil had informed her



whereupon, she along with Sunil had gone to Sasural of Nilam as her husband was away. Nilam was not present at her Sasural place. All the family members were absconding save and except mother-in-law of Nilam. She began to weep seeing absence of Nilam. What had happened to Nilam, she does not know. Then thereafter, she had gone to police station along with her brother where, on her dictation brother had written down the application which was submitted to police. During cross-examination at para-4 she had disclosed that Nilam was staying at her Sasural for the last two years. When her daughter came to her place on Bidai after a month of Gauna, her husband came to accompany her. When her brother phoned her, then she came to know that Nilam was being tortured for fulfillment of demand of dowry. Her brother had informed her from his village. In para-5 she had stated that her brother had informed her from his village to remain at her house as, he was coming. Sunil had come but till then, it was night. Sunil stayed. On following day, she along with Sunil proceeded after midday meal. In para-6 she had stated that she along with Sunil had gone to the house of Nilam barefoot which lies at a distance of one and half '*Kosh*'. They reached at her house at 03:00 AM in the morning. At that very time, the house of Sasural of Nilam was closed from inside. They knocked but none opened the door. Then she returned back along with her brother. None was known to her in the village. She met with persons but unable to recognize. She reached at her house at 10:00 AM. She remained at her house whole day. Her



husband came after two days having been informed by Sunil. At that very time, her husband was employed at Bangalore. She had not launched case before arrival of her husband. She had disclosed regarding incident coming from Sasural of Nilam to her husband. In para-7 she had stated that after getting instruction from her husband, she launched case. Her husband had not instituted case. However, he had accompanied her to P.S. Case was instituted on the same day on which date her husband came. Her husband arrived at morning hour. At that very time she was cooking. They have not taken meal. They straight way gone to police station. After staying for half an hour at police station she returned back to her house.

16. PW.3 is husband of the informant namely, Kameshwar Ram who, in examination-in-chief had deposed that his daughter Nilam Kumari was married with Mukesh about six years ago. Gauna effected three years after marriage. At the time of Gauna accused persons were not inclined for Gauna as they were insisting upon she-buffalo. Anyhow, Gauna was effected. When she (Nilam) gone to her *Sasural* her husband, in-laws, Kameshwar Ram insistent upon she-buffalo and for that, they began to quarrel. sometimes she was assaulted. Nilam used to disclose the event to her mother on phone whereupon mother of Nilam had informed him over which, he along with 2-3 co-villagers gone to the Sasural of Nilam and further tried to pacify the matter. Then, thereafter, he returned back. At an interval of ten days, Nilam telephoned that all the accused are quarreling as well



as assaulting for she-buffalo, over which they have gone to the place of Nilam where, he shown his inability due to poverty even then they stick over demand. Thereafter, they returned back. Then, one person informed that Nilam has been murdered. He is unable to disclose his identity, over which Prabhawati, Tapeswar, Jamuna gone to place of Nilam. Subsequently, he also gone there. On query, the Sasuralwala of Nilam did not explain. Thereafter they returned back. Mukesh and his Bahnoi entered into an altercation and during course thereof, they began to abuse as well as also became adamant to assault. From the villagers he came to know that Nilam has been murdered for she-buffalo by Mukesh Ram, his Bahnoi Kameshwar Ram, brother, father, mother and sister.

17. During cross-examination at para-9 he had stated that both the parties are landless. In para-12 he had further stated that Nilam stayed for 3 to 4 months after Gauna at her Sasural. Thereafter, she came to his place where stayed for 5-6 months. Then, thereafter, the accused persons effected Vidai. In para-13 he had stated that about 5-6 times Nilam came to her place and returned back to her Sasural before her death. In para-14 he had further stated that Nilam was staying at her Sasural for the last one year during midst thereof, he had visited 3-4 times. In para-16 he had stated that he was at Ganeshwar Banaras when he received call regarding murder of his daughter. Then had said that just a day prior to receiving of information, he came from Banarash. In para-17 he had stated that he received telephonic



information over his mobile. He was informed that your daughter died. Come soon. Then he disclosed to his villagers as well as family member regarding death of his daughter. Then he proceeded towards Sasural of his daughter about 02:30-03:00 AM. He along with Tapeswar had gone to Sasural of his daughter. They reached at 07:00 AM. At that very time house was closed. They knocked. Door was opened by mother-in-law of Nilam. They gone inside the house where they saw Gotani, Nanad, husband, brother of husband, father of husband and Bahnoi in a room. They remained there for 15-20 minutes. They inquired how Nilam died but they have not answered. They have not disclosed that victim was suffering from vomiting and dysentery. Then they returned back. Then they have gone to the house of one Sagar Ram. They stayed there where they inquired from villagers who disclosed that victim died at midnight and then she was burnt. They had gone to funeral ground. Then they gone to P.S. where they informed regarding the occurrence. In para-18 he had stated that they remained along with Darogaji for an hour. In para-23 had said that he is unaware with the fact who done 'Shardh' of the deceased.

18. PW.1 is Tapeswar Ram who during his examination-in-chief had stated that Nilam was married with Mukesh Ram about six years ago. Gauna was effected three years ago. Occurrence is about 19 months ago, on which date they received telephonic information that Nilam has been murdered on account of non delivery of she-buffalo over which he along with Jamuna, Kameswar, mother of Nilam



along with others have gone to Sasural of Nilam where they have not found Nilam. On query, they came to know that husband, brother of husband, mother-in-law, sister-in-law, father-in-law and brother-in-law of son-in-law murdered Nilam and then burnt the dead body on account of non-providing of she-buffalo.

19. During cross-examination at para-3 he had stated that he received call. Kameshwar is his full brother in whose name the mobile stood. In para-5 he had stated that he had gone to the place of Nilam before receiving of news of death. About twenty days prior to her death he had gone along with Kameshwar. In para-6 he had stated that mother of Nilam had received call. At that very time Kameshwar was present. In para-7 he had stated that they proceeded from his house at 03:00 AM. They received information at 02:00 AM. In para-8 he had stated that they reached at the Sasural of Nilam at 07:00 AM. At that very time accused persons had already awakened, some were washing their mouth while some were going to latrine. They have talked with accused persons. They inquired from the accused how victim died. They have not spoken anything. Thereafter, they inquired in village and came to know regarding murder of Nilam. At para-12 he had stated that they have gone to police station from Sasural of Nilam. They disclosed the event and then thereafter they returned back to their house.

20. PW.2 is Jamuna Ram who had stated that deceased Nilam was married with Mukesh Ram about six years ago before the



marriage. Gauna was effected about three years ago. At the time of Gauna the accused persons have advanced demand of she-buffalo. Then thereafter Nilam had gone to Sasural where she was subjected to torture by the accused persons for procurement of she-buffalo and in the aforesaid background, they murdered Nilam and burnt her dead body. After receiving information they gone to Daurai, Sasural of Nilam where they came to know that she was done to death, burnt. After this information, Kameshwar and Tapeswar along with 2-4 persons have gone to Sasural of Nilam. They have not found Nilam whereupon they inquired and during course thereof, they came to know that on account of non-providing of she-buffalo deceased was done to death and then, her dead body was disposed of. During course of query, Mukesh Ram became adamant to assault. During cross-examination at para-7 had deposed that he along with Kameshwar and Tapeswar gone to Sasural of Nilam at 01:00 AM and reached at the Sasural of Nilam at 07:00 AM. When they reached, they inquired from family members regarding cause of death of Nilam. They have talked with Mukesh about 10 minutes. During midst thereof, 4-5 persons assembled there who were brother-in-law of Mukesh and others. They have not disclosed anything. They got information from the villagers. Then thereafter they gone to police station and informed the police official. In para-10 he had further stated that about ten days ago they have gone to Sasural of Nilam for getting the matter properly sorted out. Panchayati was convened. In para-13 he had stated that he



had not talked with the deceased after the Gauna.

21. PW.4 is Rameshwar Ram, who had stated that Nilam was married with Mukesh Ram about six years ago, followed with Gauna whereupon, she had gone to her Sasural. Nilam used to say that for she-buffalo she was being tortured. Nilam had disclosed aforesaid event to her parents over phone. About 15 days ago, parents have gone to Sasural of Nilam on that very score. Then thereafter they received information that Nilam has been murdered by her husband, mother-in-law, father-in-law, sister-in-law and brother-in-law of husband of the Nilam. They have gone to the Sasrual of Nilam but could not found dead body. The accused persons became adamant to quarrel on query. During cross-examination, had admitted that Kameshwar happens to be his full brother. Nilam happens to be his (Kameshwar) daughter. At the time of occurrence, Kameshwar was at his house. After Gauna Nilam came to her Naihar so many times and in likewise manner, her Sasuralwala took Bidai. In para-6 he had stated that whenever Nilam used to come at her Sasural he talked with her.

22. PW.7 is part Investigating Officer who had simply submitted charge sheet against the accused persons. PW.8 is another Investigating Officer who had conducted major part of investigation. He had deposed that after registration of the case, he took up investigation whereupon, recorded further statement of the informant, statement of other witnesses and then visited the place of occurrence which happens to be Sasrual of Nilam Kumari lying at village Daurai.



He had further detailed the topography of the house of the accused but he had not detailed any objective finding regarding commission of the occurrence. He recorded statement of other witnesses. As he was transferred, handed over the investigation. During cross-examination at para-3 he had stated that informant came to P.S. on 16.08.2011 at 04:00 PM she was not at all accompanied by her husband. Her further statement was recorded at the same place. In para-5 he had stated that P.O. was inspected by him at the instance of informant as well as Sunil Ram. At para-7 he had further stated that he also visited the P.O. on 17.08.2011 but did not go inside the house, as it was closed.

23. As disclosed above, the accused had also examined four DWs in their defence and for proper consideration of the lis, their evidences are also taken together. DW-1 Manan Das had deposed that Mukesh was married with Nilam Devi 12-13 years ago. Nilam had died about three years nine month ago at her Sasural. She was suffering from stomach ache for which, she was being taken to Bhabhua during midst thereof, she died. She was suffering from ailment since before. Then thereafter, they returned back along with dead body of Nilam. Then information was given at Naihar of deceased whereupon her maternal uncle, mother, uncle and others came, funeral took place in their presence. Brother of Mukesh namely Rajesh was at Hyderabad. After getting information he came after five days of occurrence. In para-4 he had deposed that Nilam was residing at her sasural in cordial manner. No demand of dowry was ever made.



She was never tortured. During cross-examination at para-5 he had disclosed the name of persons residing in the boundary of the accused. He had further disclosed his place intervened by 10-15 houses. In para-8, he had disclosed that he was present at the time of death of Nilam. He had further disclosed that he is not aware whether parents of Nilam was informed or not. He had further stated at para-9 that he had no proof with regard to presence of mother, and maternal uncle of deceased at the time of funeral. In para-10 he had stated that there was no strain relationship in between husband of Nilam with her family relating to demand of dowry.

24. DW.2 is formal who had simply exhibited prescriptions. DW.3 is Munna Ram who had deposed that Nilam was married with Mukesh Ram about 12-13 years ago. Gauna effected three years thereafter and since thereafter, she was staying at her sasural, during course of which, about three years and nine months ago, she died. She died of stomach ache. She was suffering from ailment since before. She died while she was being carried to hospital. Parents of Nilam was informed after her death whereupon mother of Nilam along with maternal uncle and co-villagers came and in their presence, funeral was effected. In para-3 she had stated that Nilam was at her Sasural. She was never tortured by her Sasuralwala. He had further stated that Kameshwar is not at all related with father-in-law of deceased. Rajesh was at Hyderabad at the time of death, who came after being informed. During course of cross-examination, in para- 7 he said that he has



got no personal knowledge with regard to ailment of Nilam since before nor with regard to stomach ache. He simply heard about the same. In para-8 he had stated that they have not taken deceased to Chainpur Hospital rather they were carrying to Bhabhua Hospital. He heard with regard to information having conveyed to the Naihar of Nilam. Mother of deceased along with maternal uncle came in his presence. There was no strain relationship in between the Naiharwala of deceased as well as Sasuralwala. DW.4 is Subhash Ram also happens to be formal in nature as, he deposed with regard to absence of Rajesh co-accused (since acquitted) and further, substantiated the plea of ailment.

25. After scrutiny of evidence of PWs as well as DWs it is apparent that marriage of deceased with Mukesh Ram is admitted one. In likewise manner there happens to be admission over death of deceased in unnatural circumstance. In the aforesaid background, now it has to be seen whether the prosecution has substantiated the case relating to dowry death for which, five ingredients are to be satisfied. (a) The death should be otherwise than normal circumstance, (b) Death should be within seven years of marriage, (c) There should be demand of dowry, (d) There should be torture soon before death of deceased relating to demand of dowry, (e) the torture should be meted out by the husband as well as relative of the husband.

26. Now coming to the main issue, it is evident that initially, prosecution had not claimed that there was any sort of hitch at the



time of Gauna over demand of she-buffalo as well as deceased had talked with her parents regarding demand of she-buffalo as dowry and further, persistent event of torture on that very score. Contrary to it, the initial version happens to be that deceased had talked with Sunil, PW.6 who in due course of time had informed informant, PW.4 and with whom, he had gone to Sasural of Nilam. Subsequently thereof, During course of evidence it has been introduced that at the time of Gauna, the accused were insisting upon a she-buffalo and for that, they were torturing the deceased. Furthermore, though informant, PW.4 as well as PW.6 her brother are silent over intervening action but PW.1, PW.2 and PW.3 have stated that during intervening period, they have gone to Sasural of deceased Nilam to prevent her from further abuse on account of non-fulfillment of demand of dowry. However, initial version exposes on account of being issueless she was tortured and further, was directed to leave the place otherwise she has to provide a she-buffalo though, the defence failed to draw attention on that very score, and on account of lapses of defence the aforesaid deficiencies have got no relevance in the eye of law.

27. It is further evident from the evidence of PW.3, father that PW.5, mother of deceased had received telephonic information at the end of deceased regarding maltreatment on account of non-fulfillment of demand of dowry, which PW.5 had not corroborated. In likewise manner, evidence of PW.5 contradicted the evidence of PW.1, PW.2, PW.3 and PW.4, regarding receipt of information over



demand of dowry followed with torture, and further having their presence at the Sasural of deceased during intervening period to pacify the matter. That means to say, parents of deceased are themselves inconsistent to each other, on the score of demand of dowry as well as torture, what to take about other PWs.

28. Now coming to conduct of the prosecution, it is evident that PW.6 Sunil had claimed that he was informed by deceased Nilam that she was being tortured for procurement of she-buffalo whereupon Sunil informed his sister PW.4, informant. It is surprising feature that when PW.4, mother of deceased was herself possessing mobile phone then why deceased had not disclosed to her regarding the maltreatment which she faced at that very moment on the score of demand of dowry instead of informing her maternal uncle. If the evidence of PW.4 is taken together with the evidence of PW.6, it is apparent that neither PW.3, father of Nilam was present at her house which might be one of the reason but subsequent conduct of PW.4 and PW.6 happens to be unrealistic whereunder, though they claimed to have reached at the Sasural of Nilam at early morning, knocked the door, but as door was not opened, they returned back more particularly when they have gone to see the Nilam and further, without awaiting for getting access they left the place. If those evidences are to be considered, the evidence of PW.1, PW.2, PW.3, PW.5 became unreliable as, PW.4 and PW.6 have not shown their presence along with them. Apart from this, from evidence of PW.4, it is apparent that



her husband PW.3 was not at all present at that very moment who came subsequently and at his instance, she lodged this case. If, the evidence of PW.1, PW.2, PW.3 and PW.5 are taken together in its entirety, they did not admit presence of PW.6, Sunil, and in likewise manner, presence of PW.4 along with them also became doubtful. Apart from this, at one place PW.4 had stated that after visiting Sasural of deceased they returned back to their house, while PW.1, PW.2 and PW.5 have deposed that from Sasural of Nilam they have gone to police station and disclosed regarding the occurrence, which is not at all supported by the Investigating Officer, PW.8. Then in that event, presence of present written report would not justify their evidence on this score. In the aforesaid background, delay in institution of present case, is found un-explained and has got bearing upon the prosecution version. Moreover, at this juncture, the evidence of PW.6 is also to be taken note of where under he had stated that parents of the deceased were already present since before his arrival at the Sasural of Nilam. This part of disclosure contradict the evidence of PW.4, who narrated that she along with her brother (PW.6) had gone to Sasural of Nilam. That means to say, when the evidence of all the PWs are taken into consideration independently as well as conjointly it is evident that neither they stood as reliable witness even independently. Therefore the prosecution version is found capricious one.



29. After having appreciation of the evidences of PWs, in its entirety, are found suffering from severe infirmities on account thereof, their reliability became dissonant ultimately dislodging the prosecution case in its entirety. Consequent thereupon, the conviction and sentence recorded under Section 304B/34 IPC as well as Section 201 IPC is found unsustainable in the eye of law. Consequent thereupon, same is set aside. Appeal is allowed. All the appellants are on bail, hence they are discharged from their liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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