

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.698 of 2015**

Arising Out of PS.Case No. -30 Year- 2013 Thana -SHAMBHUGANJ District- BANKA

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1. Dhiraj Chouhan son of Anuplal Chouhan Resident of village- Kiranpur, P.S.-
Shambhuganj, District- Banka Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
Mr. Najmul Hoda, Advocate.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 27-07-2017**

Appellant Dhiraj Chouhan has been found guilty for an offence punishable under Sections 304B/34 of the IPC and has been directed to undergo RI for 10 years vide judgment of conviction dated 28.09.2015 and order of sentence dated 30.09.2015 passed by Additional Sessions Judge-4th, Banka in Sessions Trial No. 712 of 2013/52 of 2014/357 of 2015.

2. PW-8, Jamun Chouhan gave his Fard-e-beyan on 15.02.2013 at about 5.30. AM at Sasural of his daughter Bindo Devi (Since deceased), in front of dead body of Bindo Devi alleging inter alia that he married his daughter with Dhiraj Chouhan son of Anuplal Chouhan as per Hindu rites and customs last year and at the time of marriage, he had gifted dowry according to his means including motorcycle. After staying at her Sasural, she returned back to her place where she remained for some time and then thereafter on last



Dashahra occasion, his son-in-law Dhiraj Chouhan took away his daughter to his place. Because of the fact that he was unable to provide ear-ring which he had promised at the time of marriage on account of financial crunch, his son-in-law, brother-in-law, father of son-in-law, mother of son-in-law and *Bhaujai* of son-in-law began to torture his daughter for procurement of aforesaid ear-ring. His daughter used to inform him over mobile. He repeatedly requested his son-in-law as well as Samadhi not to torture her but, they were completely deaf over his request. Furthermore, it has also been incorporated that they were insisting upon to the effect that ear-ring should be provided to them in the same months. During aforesaid skirmish, his son-in-law had informed his son Ram Kumar on 14.02.2013 at 3:00 PM that please come and see your sister otherwise you would not be in a position to see her. His daughter had also informed his son, Ram Kumar that her Sasuralwala are adamant to kill. They are bent upon to throttle her. Then thereafter, the mobile was switched off. On that very information, he along with his brother, Jhupar Chouhan, nephew, Jitendra, son, Ram Kumar along with other villagers rushed to Sasural of his daughter. After arrival, they saw dead body of his daughter lying in the Angan. None of Sasuralwala was present. So, it has been alleged by him that on account of non fulfillment of demand of dowry, his daughter was murdered.



3. After registration of Shambhuganj PS Case No. 30/2013, investigation commenced and during course thereof, as father-in-law, Anuplal Chouhan was apprehended on account thereof, charge-sheet was submitted only against him keeping the investigation pending against the other co-accused. Accordingly, cognizance of offence was taken, the case was committed whereupon Sessions Trial proceeded only against Anuplal Chouhan. During midst thereof, as is evident, the appellant Dhiraj Chouhan was also apprehended whereupon supplementary charge-sheet was submitted against him identifying other accused to be absconder and so, the case came up before the same court on commitment and even though, after framing of charge, two witnesses have also been examined relating to Anuplal Chouhan, the trial was allowed to amalgamate whereupon charge was framed against both the accused afresh and in likewise manner witnesses were also directed to be examined afresh abrogating the earlier examination.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence as alleged.

5. Furthermore, there happens to be specific plea at the end of defence that victim was very much depressed as she was not at all ready to accept appellant as her husband and so, she



committed suicide after consuming poison. To substantiate the same, apart from Ext-A, certificate allegedly issued by the local Mukhiya, one DWs have also been named.

6. In order to substantiate its case prosecution had examined altogether eight witnesses out of whom PW-1, Parwati Devi, PW-2, Lalit Mandal, PW-3, Kannu Mandal, PW-4, Ram Kumar, PW-5, Shobha Devi, PW-6, Dr. Ejaz, PW-7, Santosh Kumar and PW-8 Jamun Chouhan. Side by side had also exhibited Ext-1, Fard-e-beyan,

7. As stated above defence had also examined DW-1, Gajhadar Chauhan, DW-2, Nakul Mandal, DW-3, Magaru Mandal.

8. While challenging the judgment of conviction and sentence impugned, the first and foremost argument having been advanced on behalf of appellant is that while accepting the submissions made on behalf of appellant that witnesses are unreliable leading to acquittal for the charge under Section 302/34 IPC, should have been accepted relating to 304B/34 IPC also relating to appellant, same has been observed while acquitting the co-accused Anuplal Chouhan, which has not been challenged on behalf of prosecution, hence there was ample material available before the learned lower court to discredit the allegation whereupon appellant is to be clean



acquitted. Furthermore, it has also been submitted that once the evidence of witnesses have been found unreliable, uncreditworthy, unacceptable relating to co-accused, then similar treatment should have been allowed in favour of appellant also, as there was no special circumstance is visualizing therefor, and to substantiate the same, it has been submitted that for attracting conviction under Section 304B/34 IPC, there should be positive evidence over the demand of dowry and for that, deceased was maltreated at the hand of appellant soon before her death which should be within seven years of marriage. In the present case, though, death has occurred within seven years of marriage otherwise than normal circumstance or burnt injury, whichever may be, the cause of death is not at all found substantiated at the end of prosecution because of the absence of FSL report in the background of the fact that the Doctor who conducted postmortem report failed to divulge the cause of death. In likewise manner, it has also been submitted that there happens to be paucity of the evidence on the score of demand of dowry and in likewise manner, torture or cruelty meted out to the deceased soon before her death.

9. In order to substantiate such plea, it has also been submitted that accepting the allegation of the prosecution for argument's sake, not admitted that there was some sort of illegal activity at the end of Sasuralwala including the appellant against the



deceased for procurement of golden ear-ring, then in that circumstance, it was incumbent upon the prosecution party to have rushed to the place of deceased to get the matter calm down failing which would have reported the concerned officials or would have convened a Panchayati at the social level to deprecate such action which, the prosecution failed and that happens to be the sufficient ground to discredit the version of the prosecution that the deceased was subjected to cruelty or torture with regard to fulfillment of demand of dowry that too only a golden ear-ring.

10. Furthermore, it has also been submitted that exaggeration having in the evidence of the respective witnesses have been duly perceived by the learned lower court and considering the same, acquittal has been recorded relating to Section 302 of the IPC as well as acquittal of co-accused relating to Section 304B/34 IPC and so, the evidence of those witnesses would have out rightly been rejected as unfit for even the present purpose being intermingled with falsehood. Apart from this, it has also been urged that from the facts and circumstances of the case, no offence under Section 306 IPC is also made out apart from the fact that no charge under Section 306 IPC has been framed. That being so, the judgment of conviction and sentence is fit to be set aside.



11. Learned APP while refuting the submissions advanced on behalf of appellant, has submitted that it is not the sound principle of law to reject the evidence of the witnesses outrightly rather the court has to find out truth from falsehood like separating the grain from the chaff. Even if disbelieving part evidence of a witness, remaining will be sufficient to attract conviction, and no impediment is found over the same. Furthermore, it has also been submitted that for the purpose of conviction relating to Section 304 B of the IPC, there happens to be obligation on the part of the prosecution to prove that death occurred within seven years of marriage, it was other than normal circumstance, during intermediary period, there was demand of dowry and for that, deceased was tortured soon before her death and the aforesaid activities should be by the husband or relative of the husband. From the evidence on the record it is evident that prosecution had fulfilled the aforesaid criteria and on account thereof, in terms of Section 113B of the Evidence Act, presumption though rebuttable will be against an accused whereupon the accused is to explain. So far, the case in hand is concerned, it is evident that the appellant failed. Consequent thereupon, the judgment of conviction and sentence is fit to be confirmed.

12. It has been settled at rest that *falsus in uno falsus in omnibus*, is not at all applicable in the Indian social panorama. Side



by side, an obligation has been put over the shoulder of the court to pick up truthfulness from the evidence separating the falsehood and during such exercise, the court has to form an opinion on the basis of the aforesaid evidence whether the guilt of the accused is found duly exposed or not. If so, would record the conviction and if not would acquit the appellant. It is also act of controversy that being family members the evidence of witness could not be rejected unless it is found completely soaked with falsehood, improbability.

13. In the backdrop of settled proposition of law, now the other aspect is to be seen which happens to be relating to the present controversy over adjudication of applicability of Section 304 B of the IPC and for that, certainly prosecution has got obligation to prove that the death has occurred within seven years of marriage. There happens to be death in abnormal circumstance. During intermediary period there should be demand of dowry and for that, deceased was tortured soon before her death and the same would have been at the end of the husband or relative of the husband. It is also to be considered that the Hon'ble Apex Court has further explained that nature of death should not be classified as homicidal only rather if other ingredients are fulfilled then in that event, it may be suicidal or accidental apart from homicidal.



14. Now coming to the facts of the case, it is apparent that there happens to be no resistance at the end of the appellant over time of marriage being one year. Death is also admitted. Although, cause of death is not at all found in the postmortem report but, not only defence admitted death rather on its own, suggested and further, exhibited Ext-A as well as also examined DWs to say that deceased died as she consumed poison due to depression from which she was suffering on account of disliking of appellant as her husband. Therefore, irrespective of the fact that cause of death has not been disclosed by the doctor, the appellant being husband of the deceased and further, deceased died while staying at her Sasural was fully competent to explain the cause of death which he has discharged by way of suggesting that she died of consumption of poison, be it homicidal, suicidal as the case may be. So, death within seven years of marriage, otherwise than normal circumstance is also found properly substantiated.

15. Now remaining ingredients have to be seen. That means to say, the demand of dowry, the torture soon before her death by the husband as father-in-law had already been acquitted while others are still absconding. To ascertain the aforesaid remaining ingredients, first of all, Fard-e-beyan is to be taken into consideration which happens to be Ext-1. In the Fard-e-beyan, it has specifically



been incorporated that for the ear-ring which they could not fulfill on account of financial crunch, though was undertaken at their end at the time of marriage to be provided was the reason for persistent demand as well as torture having meted out to the deceased after Gauna and in likewise manner, the conversation in between the appellant, deceased with Ram Kumar (brother) whereupon, they all had proceeded and found dead body of deceased in the Angan of her Sasural.

16. Informant is PW-8. During course of his evidence he had stated that his son Ram Kumar had gone to effect Bidaee for his daughter, Bindo which the accused persons were not allowing. They were demanding ornaments, ear-ring. His son-in-law began to assault his wife (deceased) whereupon, his son had informed that the deceased is being assaulted. Ornament is being demanded by the accused. Then thereafter, his wife had gone there who was also assaulted. Thereafter, at 8 PM in the night on getting information from his son, he had gone there and found the dead body of his daughter. It has also been disclosed that accused persons chased him whereupon, he reached at the police station and narrated the occurrence and then thereafter returned back along with officer Incharge. He had given his Fard-e-beyan at the place. Identified the accused. During course of cross-examination at para-2, he had stated that his son-in-law was very much liked by her daughter. There was no grievance on that very



score. They have also got no grievance but, as their son-in-law was insisting upon with demand of ornaments so, they were aggrieved. He had further stated that he is not remembering phone number through which his son had informed. He had not shown the mobile set. In para-3, he had stated that he met with police. Police had recorded his Fard-e-beyan at the Sasural of his daughter. Fard-e-beyan was recorded at 5:00 A.M.. At that very time, he was along with his brother-in-law, brother, wife and others. Police remained there for an hour. Then thereafter, there happens to be contradiction. In para-4, he had stated that he had not informed the police with regard to demand. His daughter had not sent letter to him. He had not convened Panchayati over the demand. Accused persons had also instituted case over his Bhagina, Bhatija and others. He has been suggested that the accused persons have not committed any offence rather as the deceased was not liking her husband, on account thereof, she committed suicide by consuming poison. It has also been suggested that at that very time none of the accused persons were present.

17. PW-1 is the co-villager of the appellant who had stated that the spouse quarreled whereupon wife of Dhiraj consumed poison, as a result of which, she died. During cross-examination, he had stated that at that very time, Dhiraj was at Delhi. Dhiraj had not demanded dowry either from his wife or from her family members. His wife was



mentally ill whereupon, she took suicidal steps thrice at an earlier occasion.

18. PW-2 is also a co-villager who had stated that on account of quarrel having amongst the spouse, she consumed poison, as a result of which she died. During cross-examination he had stated that no demand of dowry was ever made. The deceased possessed weak mental condition.

19. PW-3 had deposed that the occurrence is about a year ago which took place on account of demand of dowry. Dhiraj, Kapil, wife of Kapil, Asma Devi and Anuplal Chouhan were demanding ear-ring. As the same was not fulfilled, Bindo Devi was murdered by them. During cross-examination he had stated that he happens to be Phupha of deceased, Bindo. He had gone to the place of Dhiraj at the time of Tilak. Since thereafter, he had not visited the place. Then had stated that he met with Bindo at her Naihar about a year ago but talk was over the issue. In para-3, he had stated that at the time of marriage, Dhiraj was working at Delhi whereupon marriage was solemnized. Bindo was residing at her Sasural. In para-4, he had stated that no case was instituted with regard to ear-ring. This case has been instituted by his Sala. Then there happens to be suggestion that on account of insanity, Bindo had committed suicide by consuming



poison.

20. PW-4 is the brother of deceased who had stated that the occurrence is about one year ago. At that very time, he was at the place Bindo, he inquired from wife of Kapil regarding his brother-in-law over which, Dhiraj came out from his house. On query, Dhiraj said that he had not seen his sister. During midst thereof, he heard the sound of his sister whereupon he went inside the house and found mouth of this sister gagged. She was assaulted. He sister had said that she cannot stand as has been assaulted. Her hand sustained fracture. She further stated that she has been assaulted by Dhiraj, Kapil, Anuplal, Asma. Then thereafter, he informed his parents after escaping therefrom to the place of his Nani. His brother-in-law Dhiraj had also informed at his house. His parents along with 2-4 persons came to the place. He also came and then saw dead body of Bindo lying over a cot. All the accused persons chased them. Thereafter, the dead body was sent for postmortem. None of the family members were present. They received death body and done the funeral. Sasuralwala of his sister were demanding ear-ring as the same was not fulfilled, so she was murdered. During cross-examination, he said that he is unable to disclose the date on which he had gone to the place of his sister but his sister died on the same day. He along with his parents when came to the place of his sister, they had conversation with the



deceased. He had further stated that he had seen assault having over the person of the deceased. He tried to save her. He had not raised alarm. He had not gone to the police station. In para-3, he had further stated that on the date of occurrence, he had not talked with the accused persons. When he came along with his parents at the place of deceased, none of the family members were present. They were chased by the villagers as well as Gotia who have not been arrayed as accused. In para-4, he had stated that his father had gone to P.S. He is unable to say exact time when the police came. After arrival of the police they took away the dead body for postmortem. In para-5, he had stated that no case was instituted for dowry demand. Then there happens to be contradiction. In para-7, he had denied the suggestion that at an earlier occasion also, his sister had attempted to commit suicide by consuming poison and for that, Panchayati was convened. He also denied the suggestion that she was insane. He also denied the suggestion that no demand of dowry was ever made nor she was ever tortured or harassed on that very score.

21. PW-5 is the mother of the deceased who had deposed that the occurrence his about a year ago. Her daughter Bindo Devi was married with Dhiraj on account thereof, she was staying at her Sasural. She had given motorcycle, cash but she could not be able to give ear-ring whereupon, Dhiraj, Asma, Anuplal, Kapil and wife of



Kapil used to demand and, for that, Bindo was regularly assaulted. Her son had inquired why they are assaulting his sister whereupon they said that when they undertook to give ornament, the same be given. Bhaisur of her daughter had scolded her son and further directed to leave whereupon, her son returned back. Her son had informed whereupon they had gone to the place of her daughter and saw, accused persons were assaulting her daughter. They were also chased. Then thereafter, the accused persons murdered her daughter. During cross-examination at para-3, she had stated that she had gone to the place of her daughter before marriage. She stayed there whole night. Her husband, son had gone to inquire about the status of the accused and after being satisfied, marriage was solemnized. She had further stated that Dhiraj came to her place once or twice. Her family members also used to visit that place. In para-4, she had stated that she had visited the place of her daughter along with her husband after 4-5 months of marriage. In para-5, she had stated that she had not lodged Sanha against the accused persons. She had not made complaint before Mukhiya. She had not met with police Then had stated that for the first time, she is deposing in the court. Again corrected that her statement was recorded by the police at an earlier occasion. Then there happens to be contradiction at para-6. She had denied the suggestion at para-7, that her daughter committed suicide.



She also denied the suggestion that no demand of dowry was ever made.

22. PW-7 is the I.O. He had deposed that on 15.02.2013, he heard rumour that on account of non fulfillment of dowry a woman has been murdered. Whereupon, they had gone to village, Kiranpur. Chaoukidar guided them to the place of Anuplal where a dead body was kept over a cot in his new house. He also came to know that Kapil and Dhiraj who were residing in the said house fled away. They had gone to his old house also and did not find Dhiraj, Anuplal, Kapil. Parents of deceased came. Inquest report was prepared. Fard-e-beyan of Jamun Chouhan was recorded . He was entrusted with the investigation. During course thereof, he recorded further statement of the informant. Also recorded statement of Ram Kumar, mother of informant as well as others. Then inspected the place of occurrence and detailed the same. Case was supervised and then, charge-sheet was submitted against Anuplal. Subsequently thereof, supplementary charge-sheet was also submitted against Dhiraj Kumar. During cross-examination, at para-2, he had stated that he was taken away by the Choukidar whose name he is not remembering. He had not put signature over the Fard-e-beyan of Jamun Chouhan as well as inquest report. He has got personal knowledge with regard thereto. Because of the fact that the persons of the boundary had not come to made



statement on account thereof, they were not examined. The persons who were present at the place of occurrence were examined. He had not found any objectionable item from the P.O. He is not remembering whether any injury was over the person of deceased. In para-4, he had stated that he was not informed regarding accused persons by the villagers. Then he denied the suggestion that his investigation was collusive one.

23. PW-6 is the doctor who had conducted postmortem over the death body of the deceased on 15.02.2013 and found the following ante-mortem injuries.

1. Multiple nail bite on both cheek.
2. Multiple elongated bruise on both lower leg.
3. Bruise 2" x ½" on left thigh.
4. Bruise 6" x 4" on back (right side)

24. On dissection blood clot 2" x 1" over sptrnum.

Stomach, digested food, hamaecuna congested.

25. Opinion reserved till information comes from FSL.
Time elapsed is 18-22 hours.

26. During cross-examination, it is evident that he had stated that he had not mentioned the colour of any injury. Nature of injury was simple. Blood clot usually occurs due to injury.



27. Defence had also examined witnesses out of whom DW-1, Gajadhar Chouhan who had deposed that occurrence is about two years ago. House of accused Anuplal lies after five houses. He used to visit the place of accused. Daughter-in-law of Anuplal used to say him that she does not like her husband. If her father did not take her away, then in that circumstance, she will commit suicide. There was good relationship amongst the son, daughter-in-law of Anuplal. Accused persons were keeping deceased in good, congenial atmosphere. Accused persons never demanded anything from the family of the deceased. His wife had also died on the same day. Anuplal had participated in her funeral procession to Sultanganj. Elder son of Anuplal had gone to his Sasural along with his wife 4-5 days prior to the occurrence. Dhiraj had gone to graze his she-buffalo. He came back at 10.00 PM, then he came to know that wife of Dhiraj died after consuming poison. During cross-examination, he had admitted that family members of Dhiraj used to consult him before initiation of any work. He had got no personal information regarding demand of dowry. He had further stated that he came to deposed at the request of Anuplal. He further stated that whatever Anuplal had instructed him, he had stated. When this DW had gone in funeral of his wife, then deposing over absence of Dhiraj at the time of occurrence is a circumstance which cast doubt over his conduct.



28. DW-2, is Nakul Mandal who had deposed that he knew the accused persons with whom, he was on visiting term. He had seen the wife of Dhiraj but he had not talked to her. There was good relation in between the spouses. He had received complaint against the deceased that she was not liking her husband. She would not stay there. On the day of occurrence, he was grazing she-buffalo. Anuplal had gone to attend funeral procession of wife of Rajiv Beldar. Kapil had gone outside for earning his livelihood. His wife was at her Maika. Dhiraj was grazing she-buffalo. He came to know that wife of Dhiraj died at her house. Anuplal came in the night. He had heard that wife of Dhiraj consumed poison. She had consumed poison at an earlier occasion also. During cross-examination he had stated that he had come to depose at the instant of Anuplal.

29. DW-3, Mangru Mandal had stated that the occurrence is about more than 2 years. He knew Anuplal and his family members. His house lies 200 yards away from Anuplal. He occasionally visited his house. He had got no friendship with him. On the day of occurrence, Anuplal had gone in funeral procession of wife of Rajiv Beldar. He returned back at 6.30 P.M.. His elder son was at Delhi. His wife was at her Maika. Dhiraj was with him with his she-buffalo. None was present at their house. Only wife of Dhiraj was there. She died after consuming poison as Dhiraj was not liked by her. She was



also not satisfied with Dhiraj. During cross-examination, he had stated that he came to depose at his own.

30. A certificate addressed “to whom it may concerned”, has been marked as Ext-A containing signature of Shankar Bhagat, one Mukhiya as well as nine persons. How it has been exhibited is a matter of concerned because of the fact that none of the DWs as referred above had exhibited the same, nor it happens to be a public document. Therefore, this document happens to be legally not admissible in the eye of law.

31. The accused persons during their statement recorded under Section 313 CrPC were confronted with the incriminating article and so far appellant, Dhiraj is concerned, questionnaire so formulated reads as follows:-

Q. Aapke virudha aarop evam sakchhya hai ki aap dinank 14 February 2013 ko din ke 3.00 baje, Gram-Kiranpur, Thana-Shambhuganj, Jila-Banka mein aapne ghar par waadi ki putri Bindu Devi ko dahej ke liye hatya kar diye. Kya kahna hai?

Ans. Ji Nahi, Galat Hai.

Q. Safai mein aapko kya kahna hai?

Ans. Gawahi denge.

32. From the evidence available on the record, it is apparent that death of Bindu Devi is out of controversy. Though PW-6 had not stated the cause of death, at the other end, viscera was sent to the FSL but, for want of report at the end of FSL, cause is still



awaiting. On the other hand, there happens to be consistent defence version that she died of poison, which she consumed under suicidal event. However, ante-mortem injuries have been found over the dead body during course of postmortem and apparently appellant has not been able to explain the same either by way of cross-examining PW-6 or through DWs, who have been examined on his behalf nay during course of statement recorded under Section 313 CrPC. Apart from this, it is needless to say that the deceased died while she was staying at her Sasural under the guardianship of appellant who happens to be her husband and so the activity having taken place inside the house was to be explained at his end under Section 106 of the Evidence Act. That happens to be the circumstance which could be taken into consideration during course of appreciation of remaining evidence. So far evidence of PWs 4 and 5 are concerned, they happen to be mother as well as brother of deceased and from their evidences, it is evident that they have had developed their initial version and on that very score, their attention has been drawn up but surprisingly, while cross-examining PW-7, I.O. his attention has not been drawn up to that extent. Therefore, that has gone worthless.

33. Be that as it may, PW-8, informant was very much consistent with regard to demand of ear-ring and for that, the torture and cruelty having at the end of accused persons and on that very



score, his evidence has not been properly tested save and except that for that purpose no legal prosecution has been drawn up at his end at an earlier occasion. This theme is also to be taken into consideration in the background of the fact that deceased was married last year only and so, span of time since after marriage could really provoke them to that extent that by such activity they could transform the relationship to be gutted down or should wait for getting the matter calm down. Furthermore, PWs-4 and 5 though had exaggerated their versions misutilized by appellant himself by not drawing attention to the I.O., PW-7 but again, the demand happens to be there and on that very score, again both the witnesses have not been properly cross-examined. However, the manner whereunder they presented themselves cast suspicion over veracity of their evidence relating to demand and torture though some slackness is at the end of appellant while cross-examining them.

34. Now coming to the evidence of remaining witnesses, it is apparent that the co-villagers of appellant being PW-1 as well as PW-2 and in likewise manner all the DWs have stated that there was cordial relation but, the deceased was not liking her husband and on account thereof, she was threatening that if she is not cared by her family members, she will consume poison, gone unheeded as none of the witnesses had ever stated that her *Naiherwala* was informed by the



accused persons on that very pretext, they were called upon on to get the matter properly sorted out.

35. Considering overall situation, evidence available on the record, it is evident that though on the basis of demand of dowry followed with torture happens to be shaky one but, the activity of the appellant is found exposed from the postmortem report which, the appellant failed to explain and so, being a husband even accepting the defence version that the deceased might have had consumed poisonous substance in a way to suicide, happens to be on account of physical torture at the end of appellant on account of presence of non-explained ante-mortem injuries and so, the appellant could be held guilty for an offence punishable under Section 306 IPC.

36. During course of statement of accused under Section 313 CrPC, it is evident that appellant had made evasive reply. The purpose for recording statement of accused is to have proper reply with regard to the incriminating material having at the end of prosecution during course of conduction of trial. This obligation is found much more meaningful when an occurrence took place inside the house within the exclusive knowledge of the accused. Therefore, when deceased died at the house and even at his end, it has been admitted by way of examination of three DWs that she died of



consuming poison in order to commit suicide then in that circumstance, it was incumbent upon him to have properly explained, at least regarding the eventuality coupled with proper explanation as required under Section 113 of the Evidence Act. The aforesaid event has been taken into consideration in the case of *Ashok Kumar v. State of Haryana* as reported in (2010) 12 SCC 350 which is as follows:-

“29. Now we may proceed to discuss the evidence led by the prosecution in the present case. In order to bring the issues raised within a narrow compass we may refer to the statement of the accused made under [Section 313, Cr.PC](#). It is a settled principle of law that dual purpose is sought to be achieved when the Courts comply with the mandatory requirement of recording the statement of an accused under this provision. Firstly, every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms and secondly, the accused should have a fair chance to give his explanation in relation to that evidence as well as his own versions with regard to alleged involvement in the crime. This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of the [Cr.P.C](#). Furthermore, the statement under [Section 313](#) of the Cr.PC can be used by the Court in so far as it corroborates the case of the prosecution. Of course, conviction per se cannot be based upon the statement under [Section 313](#) of the Cr.PC.



30. Let us examine the essential features of this section and the principles of law as enunciated by judgments of this Court, which are the guiding factor for proper application and consequences which shall flow from the provisions of [Section 313](#) of the Cr.PC. As already noticed, the object of recording the statement of the accused under [Section 313](#) of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime.

31. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important



incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

32. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any, enquiry or trial but still it is not strictly an evidence in the case. The provisions of [Section 313](#) (4) of the [Cr.PC](#) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or against the accused in any other enquiry or trial for any other offence for which, such answers may tend to show he has committed. In other words, the use of a statement under [Section 313](#) of Cr.PC as an evidence is permissible as per the provisions [of the Code](#) but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

33. Another important caution that Courts have declared in the pronouncements is that conviction of the accused



cannot be based merely on the statement made under [Section 313](#) of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of [Vijendrajit Ayodhya Prasad Goel v. State of Bombay](#) [AIR 1953 SC 247], the Court held as under:

"3.As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under [Section 342](#) as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under [Section 342](#) did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

34. From various answers given by the accused to the Court in his statement recorded under [Section 313](#) of the Cr.P.C., it appears that the death of the deceased is not disputed. The allegation with regard to cruelty was denied. However, besides denying the case of the prosecution, the appellant took the stand that he was



falsely implicated in the crime. According to him, the deceased was not happy with the marriage inasmuch as she was in love with some other boy and wanted to marry him which was not permitted by her family and that is why she committed suicide. As would be evident from this admitted position, the death of the deceased by burning is not an issue. The limited question was whether the deceased committed suicide simplicitor for the reasons given by the accused or in the alternative, the prosecution story, that it was a dowry death relatable to the harassment and cruelty inflicted upon her by the accused and his family members, is correct.”

37. Now the question arose whether in absence of framing of charge under Section 306 of the IPC, accused could be convicted and the same has been properly answered in *Ramesh Vithal Patil v. State of Karnataka* as reported in (2014) 11 SCC 516

“18. It is true that the appellant was not charged under [Section 306](#) of the IPC. The charge was under [Section 304-B](#) of the IPC. It was, however, perfectly legal for the High Court to convict him for offence punishable under [Section 306](#) of the IPC. In this connection, we may usefully refer to *Narwinder Singh*. In that case the accused was charged under [Section 304-B](#) of the IPC. The death had occurred within seven years of the marriage. The trial court convicted the accused for an offence punishable under [Section 304-B](#) of the IPC. Upon reconsideration of the



entire evidence, the High Court came to the conclusion that the deceased had not committed suicide on account of demand for dowry, but, due to harassment caused by the husband in particular. The High Court acquitted the parents of the accused and converted the conviction of the accused from one under [Section 304-B](#) of the IPC to [Section 306](#) of the IPC. This Court dismissed the appeal filed by the accused. It was observed that it is a settled proposition of law that mere omission or defect in framing charge would not disable the court from convicting the accused for the offence which has been found to be proved on the basis of the evidence on record. In such circumstances, the matter would fall within the purview of [Sections 221\(1\) and \(2\) of the Code](#) of Criminal Procedure, 1973.

19. The relevant observations of this Court could be quoted:

“21. The High Court upon meticulous scrutiny of the entire evidence on record rightly concluded that there was no evidence to indicate the commission of offence under [Section 304-B](#) IPC. It was also observed that the deceased had committed suicide due to harassment meted out to her by the appellant but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands. Thus, cruelty or harassment sans any dowry demands which drives the wife to commit suicide attracts the offence of “abetment of suicide” under [Section 306](#) IPC and not [Section 304-B](#) IPC which defines the offence and punishment for “dowry death”.”



20. Moreover, admittedly the deceased committed suicide within a period of seven years from the date of her marriage. [Section 113-A](#) of the Evidence Act is, therefore, clearly attracted to this case. Presumption contemplated therein must spring in action. This provision was introduced by [Criminal Law Second Amendment Act, 1983](#) to resolve the difficulty of proof where married women are forced to commit suicide but incriminating evidence is difficult to get as it is usually available within the four walls of the matrimonial home. [Section 113-A](#) reads as under:

“113A- Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.-- For the purposes of this section, “cruelty” shall have the same meaning as in [section 498A](#) of the Indian Penal Code (45 of 1860).” In this case the prosecution has led evidence to establish cruelty or harassment caused to the deceased, which is rightly taken into account by the High Court. Thus, the foundation for the presumption exists. The appellant, however, has led no evidence to rebut the presumption. Therefore, it can be



safely concluded in the facts of this case that the appellant abetted the suicide of the deceased.

21. There is also another angle to this case. The prosecution has succeeded in proving facts from which a reasonable inference can be drawn that the deceased committed suicide by jumping in the river along with her daughter. The deceased was in the custody of the appellant. She left the appellant's house with the small child. Admittedly, neither the appellant nor any member of his family lodged any missing complaint. The appellant straightway went to the house of the deceased to enquire about her. This conduct is strange. When his wife and small child had left the house and were not traceable the appellant was expected to move heaven and earth to trace them. As to when and why the deceased left the house and how she died in suspicious circumstances was within the special knowledge of the appellant. When the prosecution established facts from which reasonable inference can be drawn that the deceased committed suicide, the appellant should have, by virtue of his special knowledge regarding those facts, offered an explanation which might drive the court to draw a different inference. The burden of proving those facts was on the appellant as per [Section 106](#) of the Evidence Act but the appellant has not discharged the same leading to an adverse inference being drawn against him (See: [Tulshiram Sahadu Suryawanshi & Anr. v. State of Maharashtra](#)[(2012) 10 SCC 373] and [Babu alias Balasubramaniam](#) [(2013) 8 SCC 60]).

38. That being so, the conviction of the appellant recorded



by the learned lower court under Section 304B of the IPC is allowed as well as modified and is held guilty for an offence punishable under Section 306 IPC and in likewise manner the sentence having been inflicted by the learned lower court, RI for 10 years is reduced to RI for 7 years. With the aforesaid modification, the appeal is dismissed.

39. Appellant is on bail, hence his bail bond is hereby, cancelled directing him to surrender before the learned lower court to serve out the remaining part of sentence failing which the learned lower court will be at liberty to take proper legal recourse to procure his attendance.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	01.08.2017
Transmission Date	01.08.2017

