

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.127 of 2015

Arising Out of PS.Case No. -77 Year- 2008 Thana -DUMRAUN District- BUXAR

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1. Dwarika Singh @ Bhuli Yadav S/o Late Baleshwar Yadav,
2. Lalmuni Devi w/o Dwarika Singh @ Bhuli Yadav Both residents of village-
Kamkarwa Tiwary Tola, P.S.- Dumraon, District- Buxar

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Digvijay Kumar Ojha, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 31-10-2017

Dwarika Singh @ Bhuli Yadav and Lalmuni Devi have been found guilty for an offence punishable under Section 304B/34 of the IPC and each one has been sentence to undergo RI for 7 years vide judgment of conviction dated 12.02.2015, order of sentence dated 18.02.2015 passed by Additional Sessions Judge-IV, Buxar in Sessions Trial No. 407/2008.

2. Kamla Singh, PW-5 filed a written report on 30.07.2008 disclosing thereunder that his daughter Sunita Devi aged about 22 years was married with Om Prakash Yadav son of Dwarika Singh @ Bhuli Yadav in the month of March 2006 and on that very moment, they had gifted according to their means. After marriage, his daughter had gone to her Sasural wherefrom, after staying for some time, was taken on Bidai. When his daughter came at his place, she disclosed



that her mother-in-law, Lalmuni Devi, father-in-law, Dwarika Singh @ Bhuli Yadav, husband, Om Prakash Yadav and brother-in-law, (Devar) Gunjan Yadav had advanced demand of a golden chain, TV and VCD. They have also directed that whenever Bidai is going to be effected, you have to carry the aforesaid items. During course of stay of his daughter at his place, his son-in-law used to visit frequently and was enjoying his marital life, as a result of which, his daughter begotten a son, Golu who is presently, 1 year 6 months old. During his visit, his son-in-law had demanded some money on the ground of purchase of truck and on that very pretext, he had donated Rs. 25,000/-. About 1 and ½ months ago, they insisted for Bidai whereupon, he said that after presence of his son in law Bidai will be effected whereupon they have said that now there happens to be no misunderstanding so, Bidai be effected. Furthermore, it has also been disclosed that his son-in-law will come within ten days as he was staying at Korba where he was doing his business. Accordingly, he allowed Bidai. After spending some time, his daughter informed him that they have revived their demand and for that, they began to torture her. It has further been disclosed that on getting information, he had rushed to the Sasural of his daughter and tried to pacify the matter. It has also been disclosed that his son-in-law, after Bidai of his daughter had not visited. Whenever he was contacted on telephone by his



daughter, he always disclosed that he had remarried and so, will not allow continuance of relationship with her. Today, he had received information that in the previous night his daughter has been murdered out of burnt whereupon he along with family members and villagers rushed to the place. None was present. Dead body of his daughter was lying inside the house in burnt condition.

3. After registration of Dumraon PS Case No. 77/2008 investigation was taken up and after completing the same, charge sheet was submitted against the husband, Om Prakash Yadav, father-in-law, Dwarika Singh @ Bhuli Yadav, mother-in-law, Lalmuni Devi and brother-in-law, Gunjan Yadav out of whom trial of Gunjan Yadav has been bifurcated being juvenile while husband, Om Prakash Yadav died during course of trial and on account thereof, the trial abated against him vide order dated 16.10.2014 and so far remaining two accused are concerned, they have faced trial meeting with conviction and sentence, 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 CrPC is that of complete denial. Though, neither any DW has been examined nor any document has been adduced, nay any PW has been suggested, more particularly, parents, however, in the latter part of the trial the mode of cross-examination suggests commission of suicide by the



victim in the background of having been neglected by her husband.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs out of whom PW-1, Rajendra Singh Tyagi, PW-2, Gena Yadav, PW-3, Kesho Yadav, PW-4, Jag Bahadur Singh, PW-5, Kamla Singh, PW-6, Chandan Singh, PW-7, Ravindra Prasad, PW-8, DilipKumar, PW-9, Dr. Anil Kumar Singh, PW-10, Subhash Chandra Tiwari, and PW-11, Nirmal Kumar. Side by side had also exhibited Ext-1, written report, Ext-1/1, endorsement over written report, Ext-2, Postmortem report, Ext-3, Inquest report, Ext-4, Seizure list, Ext-5, Charge-sheet. As stated above nothing has been adduced on behalf of defence.

6. Before coming to deal with evidences, it is apparent that main Investigating Officer has not been examined. The subsequent Investigating Officer (PW 11) who, after performing other paraphernalia, had submitted charge-sheet and in the similar way had exhibited the relevant documents including inquest report, Ext-3 wherefrom it is evident that dead body of the deceased Sunita Devi was found over a cot woven by plastic wire having half burnt sousing over which the dead body of the deceased was lying. The dead body was sent for postmortem examination and as per evidence of PW-9, the following findings are as given under:-

External Examination. Average built, eyes closed, mouth



opened, rigour mortis present in all four limbs. K-oil smell present on the body. Burn injury present on whole body. No other injury present on the body, red line present, only some part of body left unburn.

Internal Examination. Brain & remainings— Congested, extra vascation of thick red blood. Heart— Full of blood, blood in cherry red in colour. Lungs— Congested. Stomach— Unicons with rice undigested only present, unicons of membrane reddened and tiny erosions present. Liver— Cloudy swelling present, congested, Spleen— Enlarged and soften and congested. Kidney— Congested filled with debris of blood corpuscles. Uterus— Normal, Urinary Bladder— Empty, Cause of Death— Shock due to burn, Time elapsed since death— 24 hours.

7. During cross-examination, the doctor at para-8 had stated that he was unable to distinguish whether it was suicidal or homicidal event. However, it is manifestly clear that the deceased died of burn injury and during course of postmortem smell of K-Oil was coming from the dead body. Though the doctor negated presence of other injury, but had not found shoot in the respiratory track, who could have suggested, at least deceased being alive during course of incident. Furthermore, the postmortem did not reveal whether neck of the deceased was seen by the doctor during course of conduction of the postmortem, nor anything has been suggested at the end of



prosecution on that very score.

8. Now coming over ocular evidence, the same is found bifurcated under two categories. The first category represents the witnesses belonging to Naiharwala of the deceased and the second one belongs to co-villagers of the appellants. PWs 6, 7, 8 and 10 are the witnesses belonging to later category being co-villagers of the appellants.

9. PW-6 had stated that on 29.07.2008 at about 8 :00 PM, there was rumour in the village that wife of Om Prakash Yadav died on account of burn whereupon he had gone there and had seen her dead body kept over a cot. He is unable to disclose the cause and was declared hostile. During cross-examination, he had stated that Dwarika Singh @ Bhuli Yadav happens to be flour mill owner. When he proceeded from his house he saw Dwarika Singh @ Bhuli Yadav as well as his son Gunjan grinding flour. He further stated that he is unable to say whether the deceased had committed suicide or not.

10. PW-7 had stated that on the alleged date and time occurrence, he after hearing uproar rushed to the place and saw wife of Om Prakash Yadav lying dead in burnt condition. He further stated that he was not knowing whether accused persons quarreled with her relating to fulfillment of demand of dowry and so, was declared hostile. During cross-examination, he had stated that the flour mill of



Om Prakash happens to be 400-500 Yards away from his house. Mother of Gunjan shouted that smoke is coming out from the room which is closed. Gunjan and his father came from flour mill and then thereafter, the door was broken. At that very time, Om Prakash was not present at his house. He had not heard that the deceased was done to death on account of non fulfillment of demand of dowry. Though feud was going on amongst the family members.

11. PW-8 had stated that on the alleged date and time of occurrence while he was at the roof of his house, heard uproar and reached at the Darwaza of Dwarika Singh @ Bhuli Yadav where he found presence of mob and people were breaking door. Then thereafter, was declared hostile. During cross-examination, he had stated that he had not heard with regard to family feud at the house of Dwarika Singh @ Bhuli Yadav. When he reached at the house of Dwarika Singh @ Bhuli Yadav, mob was breaking the door. Police had not arrived till then. Dwarika Singh @ Bhuli Yadav and his son came 10 minutes after his arrival at their house from his mill. The mill is at the distance of 500-600 yards from his house.

12. PW-10 had stated that on the alleged dated and time of occurrence he was at his house. When he reached at the house of Dwarika Singh @ Bhuli Yadav, he had seen his daughter-in-law dead out of burn. Police came and prepared inquest report (exhibited).



Police prepared seizure list (exhibited). Identified the accused. He had further stated that he had not heard with regard to differences in between deceased and her Sasuralawala and so was declared hostile. During cross-examination, he had stated at para-8 that when he gone inside house there was smoke. Room was closed from inside. After breaking the door, deceased was taken out from the room. She was alone. He had further stated that he had not seen the couple quarrelling. He had further stated that at that very moment parents of Om Prakash were at four mill. Om Prakash was outside. In para-10 he had further stated that Devar of deceased, namely, Gunjan had informed parents of the deceased.

13. Now coming to the evidence of Naiharwala of deceased. PW-1 is the uncle of the deceased who had stated that she was married with Om Prakash Yadav in the year 2006. After marriage, she had gone to her Sasural and during her stay, she was tortured by her father-in-law, mother-in-law, husband and brother-in-law on the pretext of demand of VCD, TV and chain. Then thereafter, they brought back the victim from her Sasural. As her Sasuralwala was not inclined to effect Bidai whereupon his elder brother negotiated. Then thereafter, son-in-law came and disclosed that he has to purchase truck and for that money be provided. His elder brother provided the money. After same time, Bidai was effected. Again, they



have indulged in torturing the victim. Husband of his niece was repeatedly saying that as he had remarried so he is not inclined to avail her company. He was also saying that without chain, TV, VCP why she had come. On being informed, his elder brother again rushed to her Sasural and got the matter pacified. After some time, on 29th of July 2008, they had murdered his niece by way of burning her whereupon they all rushed and found the dead body of his niece in burnt condition. None of her Sasuralwala was present. Then thereafter, the matter was reported to the police. During cross-examination at para-5, he had stated that no letter was addressed by his niece divulging the event of torture for procurement of dowry. He had also stated that his niece used to telephonically inform but he is unable to say the exact date and time as well as the mobile number. He had further stated that he had only one occasion to talk with his niece. In para-6 he had further stated that he had not informed any authority regarding demand as well as torture. In para-7, he had stated that his son-in-law Om Prakash was residing at Korba. He had no occasion to talk with him. In para-8, he had stated that he had got no proof to substantiate handing over of Rs. 25,000/-. In similar way he had stated that he is not aware whether Om Prakash had remarried or not. On 29.07.2008, his brother had received information from whom, he is unable to say. He had further stated that he is not knowing



whether any case was instituted before the occurrence. He had further stated that he had seen dead body of the deceased. It was in burnt condition. Her dead body was lying in the house. Then there happens to be contradiction.

14. PW-2, is maternal grand father of the deceased. He had stated that deceased Sunita was married with Om Prakash Yadav in the year 2006. After marriage while deceased was staying at her Sasural, Om Prakash Yadav (husband), Dwarika Singh @ Bhuli Yadav (father-in-law), mother-in-law, Lalmuni Devi and brother-in-law, Gunjan Yadav began to advance grievances for providing TV, Chain, VCP and for that the deceased was being scolded. After some time, his son-in-law, Kamla Singh brought Sunita to his place. As her Sasuralwal was not ready to effect Bidai, during midst thereof, Om Prakash came and demanded Rs. 25, 000/- to purchase truck whereupon, Kamla Singh handed over Rs. 25,000/-. In 2008, Bidai of Sunita was effected. Dwarika Singh @ Bhuli Yadav accompanied her. During course of stay at her Sasural, her Sasuralwala re-agitated the demand of TV, VCP, chain and further, began to threaten that in case of non fulfillment of the same she will be murdered. Then thereafter, they received information that Sunita is dead. On the following day, they rushed to Sasural of Sunita. None was present there. Dead body of Sunita was lying in the house in burnt condition. During cross-



examination, he had stated that he had not met with Om Prakash after marriage. He had further stated in para-6 that after marriage in the year 2006, he had talked with accused persons twice at different occasions. He had further stated that victim had not written letter disclosing the fact of torture relating to demand of dowry. In para-7, he had stated that money was paid in the year 2008. He had further stated that he is unable to say day, date and month of the Bidai. He had further stated that Om Prakash only once had come to his Sasural after marriage that too for procurement of money. He had further stated that he had not seen the occurrence. He had further stated that Sunita was sole daughter-in-law of accused, Dwarika Singh @ Bhuli Yadav. She was the only person who was engaged in cooking food for the family. Her mother-in-law used to assist her during course thereof. He had further stated that his daughter's daughter was suffering from anguish and frustration on account of activity of her husband.

15. PW-3 had stated that Sunita was daughter of Kamla Singh whose marriage was solemnized in the year 2006 with Om Prakash. After marriage, Sunita had gone to her Sasural where Dwarika Singh @ Bhuli Yadav, mother-in-law, Lalmuni Devi and brother-in-law, Gunjan Yadav advanced demand of TV, VCP and chain. Then thereafter, Kamla Singh brought Sunita to his place. None of the family member of her Sasural was coming for Bidai whereupon



Kamla Singh had gone and negotiated with them. Thereafter, Om Prakash came and took away Rs. 25,000/- . Then thereafter, Bidai was effected. As soon as she came at her Sasural, her Sasuralwala re-agitated the demand. While she was staying at her Sasural, she was done to death. He accompanied Kamla Singh on being informed and after arrival at Sasural of Sunita, he saw her dead on account of burn. During cross-examination, he had disowned to identify persons. He had further stated that he was informed by telegram but he is unable to file the same.

16. PW-4 had stated that Kamala Singh happens to be resident of his adjoining village. His daughter Sunita was married with Om Prakash in the year 2006. After marriage when Sunita had gone to her Sasural and was staying there, her father-in-law, mother-in-law, husband and Devar advanced demand of chain, TV, VCP and for that, they began to torture her. Then thereafter, Sunita was brought to her Naihar where she had disclosed the event. He had also gone to the Naihar of Sunita, who on query also disclosed the event to him. Then thereafter, the Bidai was effected and then on 29.07.2008, she was murdered as informed by Kamla Singh whereupon, he along with Kamla Singh and others had gone to her Sasural where found dead body of Sunita lying over a cot in burnt condition. None of her Sasuralwala was present there. Police came. During cross-



examination at para-6, he had stated that he is unable to say the exact date on which he received information, exact date on which Sunita came to her Naihar and exact day on which Sunita had gone to her Sasural. He had further stated that he had gone to the place of occurrence and seen. Then thereafter, he had detailed the condition of the dead body while he had visited the Sasural of Sunita. He had further stated that he is unable to say on which date demand of dowry was made.

17. PW-5 is Kamla Singh who deposed that Sunita was his daughter who was married with Om Prakash on 01.03.2006. After marriage she had gone to her Sasural where her husband, father-in-law, mother-in-law and brother-in-law began to demand VCP, Chain and TV and for that they began to torture her daughter. On getting information, he rushed and tried to pacify the matter. Then thereafter, he took his daughter to his place and at that very time, the accused persons had said that she would come along with the aforesaid items otherwise, as stated by Om Prakash, will not be accepted. After coming to Maika, she had disclosed that her husband was saying that he had remarried and so he will not keep any relationship with her. During midst thereof, his son-in-law came and demanded Rs. 25,000/- for doing business which he handed over. Then thereafter, her Bidai was effected in the year 2008. Soon thereafter, the demand revived



and for that, again she was subjected to torture. In the evening of 29.07.2008, he received information regarding commission of murder of Sunita whereupon he along with Gena Yadav, Keshav Yadav, Rajendra Singh Tyagi, Jang Bahadur Singh, Suman Kumar rushed and reached on 30.07.2008. None of her Sasuralwal was present. The dead body of her daughter was lying. Then thereafter, police was informed who came and before whom he filed a written report. During cross-examination, he had stated that Om Prakash was residing at Chhattisgarh where he was doing business. He had not gone there. In para-5, he had stated that after Bidai, his daughter remained at his place for near about 2 years. In para-6, he had stated that after marriage, his daughter had gone to her Sasural where she stayed for two and a half months. She stayed there from 01.03.2006 to 08.05.2006. During midst thereof, there was no correspondence amongst them rather was connected with telephone. Then had shown ignorance regarding mobile number but disclosed his own mobile number. However during course of conversation, his daughter had disclosed that she happens to be in good condition. Then had disclosed that subsequently thereof, in the year 2006 itself, demand of Chain, TV and VCP was made and for that, he had not made any complaint before any authority. In para-7, he had said that he had got no information with regard to remarriage with his son-in-law. His



daughter also not disclosed regarding the same. He had further stated that Rs. 25,000/- was paid to Om Prakash after withdrawing the same from his account. This amount was paid in December 2007. He had further stated that his account stands at SBI, Brahampur Branch. In para-8, he had stated that he is unable to disclose the name of person who had informed regarding the occurrence. He had further stated that soon after marriage, demand was not advanced. He had further stated that he had not met with anybody at Sasural of Sunita on the alleged date. In para-9, he had stated that he met with his son-in-law lastly at the time when he had paid Rs. 25,000/-. He had further stated that he had visited the place of his daughter twice in the year 2006 and once in the year 2008. He had further stated that flour mill of his daughter lies 200-250 yard away from her house. He had stated in para-11 that he had no information regarding arrival and departure of his son-in-law from Korba. He had further stated that his daughter was very much depressed on account of absence of her husband. He had advised his son-in-law to take her away along with him. His daughter was not inclined to stay at Dumrao. In para-12, he had stated that his daughter had gone to her Sasural in the month of June 2008. He had further stated that he met with his son-in-law twice after the marriage.

18. From the evidence as stated above, there happens to be no controversy with regard to death of the deceased on account of



burn injuries. There happens to be no controversy that having been informed, members of prosecution party reached at the Sasural of Sunita where found the dead body of Sunita having over a cot. The defence had also not controverted the date of marriage i.e. 01.03.2006. From the nature of cross-examination as incorporated hereinabove, they have not challenged the prosecution version rather from the evidence of PW-5, informant, it is crystal clear that after marriage, the victim had gone to her Sasural where she remained only for 2 and a half months and then thereafter, she came back to her Maika and in the month of June 2008 her Bidai was effected. From the nature of cross-examination, more particularly, the informant (PW 5) it is evident that he had not been cross-examined over demand of dowry as well as torture having been meted out to her on that very pretext. It is also evident from the suggestions having been given to the prosecution witnesses more particularly, informant that they have simply denied the occurrence. No specific suggestion has been given at least to controvert the allegation and explaining the incident to be accidental or suicidal.

19. Now the second part of evidence as is evident happens to be that of co-villagers of the appellants wherefrom it is evident that incident of burn has not been denied. In specific term they have not deposed over demand which they rightly deposed were not



connected with the family of appellants. PW-7 during cross-examination at para-8 had admitted that there was always quarrel in the family. From the evidence of the witnesses, it is apparent that plea of alibi has been advanced by way of having presence of father-in-law, mother-in-law as well as brother-in-law of the deceased at the flour mill and that happens to be unreasonable and in likewise manner, the reliability of the witnesses on that very score found shaken one as PW-6 had stated that when he reached at the place of occurrence, he found wife of Om Prakash dead and her dead body was lying over a cot. During cross-examination at para-5, he had stated that when he proceeded from his house, Dwarika and Gunjan were grinding flour. PW-7 had stated that when he reached at the place of occurrence, he found dead body of the wife of Om Prakash lying dead in burnt condition. During cross-examination, he had stated that when he reached at the place of occurrence after hearing alarm of mother of Gunjan that door is closed and smoke is coming out from the house, then Gunjan and his father came from flour mill, then door was broken and dead body was taken out. PW-8 had stated that on hearing alarm, he rushed to the place of Dwarik where mob was present who were engaged in breaking the door of the house. During cross-examination, he had stated that Dwarika and his son came 10 minutes after his arrival while PW-10 had stated that when he reached at the



place of occurrence after hearing alarm, he found dead body of daughter-in-law of Dwarika burnt. During cross-examination, he had stated at para-9 that when he entered inside the room, there was smoke. Door was closed from inside. After breaking the door, dead body was taken out from the room. She was alone. In para-9, he had stated that at the time of occurrence, parents of Om Prakash were at flour mill.

20. After analytical scrutiny of the evidence of the aforesaid witnesses who happens to be co-villagers of the appellants, though they all have been declared hostile even then, during course of cross-examination, at the end of appellant themselves, they all have made inconsistent version. So far incident of murder being homicidal, suicidal or accidental is concerned, that happens to be immaterial with regard to applicability of Section 304B of the IPC. The main ingredients for attracting Section 304B of the IPC is concerned, (1), the death of a woman must have been caused by burn or bodily injury or otherwise than under normal circumstance. (2) Such deaths must have occurred within seven years of her marriage. (3) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband. (4) Such cruelty or harassment must be for or in connection with demand of dowry.

21. When the aforesaid ingredients is fulfilled, then in



that event, the presumption in terms of Section 113B of the Evidence Act will come into play whereunder the accused has to explain as the presumption happens to be rebuttable in nature.

22. Now coming to the facts of the case as detailed hereinabove, it is crystal clear that (a) death of deceased occurred on account of burn injuries, (b) it happens to be within seven years of marriage. So far remaining two ingredients are concerned, that has to be seen in the background of the facts which happen to be advanced at the end of prosecution to have committed in two sequences. The first one happens to be when the deceased had gone to her Sasural after marriage where staying for some time, faced horrifying situation in order to fulfillment of demand of dowry specified as TV,VCP and chain. On that very score, the informant PW-5 had gone there and tried to pacify the situation but as did not materialize brought back Sunita (deceased) to his place where she remained for more than two years, her Bidai was effected in the month of June 2008 and in the month of July 2009, she was left for heavenly abode. At the present moment, the evidence speaks that apart from activity of the prosecution during intermediary stage regarding which Rs. 25,000/- was paid to Om Prakash, after Bidai of victim, when she came at her Sasural, she again was confronted with the same horrifying situation which lastly cost her life. Side by side, there also happens to be



evidence that deceased was not inclined to stay at Dumraon and was dejected due to non enjoying of company of her husband.

23. As the defence had not suggested which they were under obligation as held by the Apex Court in the case of *Swarn Singh v. State of Punjab* as reported in (2003) 1 SCC 240 wherein it has been observed:-

“..... it is rule of essential justice that whenever opponent has declined to avail himself of the opportunity to put his case in cross-examination it must follow that the evidence tendered on that issue ought to be accepted.

24. In *Maya Devi v. State of Haryana as reported in 2016 Cr.L.J. 629*, it has been observed as follows:-

17) The aforesaid provisions were considered by this Court in [Bansi Lal vs. State of Haryana](#) (2011) 11 SCC 359 wherein it was held that while considering the case under [Section 304B](#) cruelty has to be proved during the close proximity of the time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide. This Court further held that where the cruelty has been proved during the close proximity of the time of death then the provisions of [Section 113B](#) of the Indian Evidence Act, 1872 providing for presumption that the accused is responsible for dowry death, have to be pressed in service. In paras 19 and 20 of the judgment, this Court has further held as follows:-

“19. It may be mentioned herein that the legislature in its wisdom has used the word “shall” thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. It is unlike the provisions of [Section 113-A](#) of the Evidence Act where a discretion has been conferred upon the court wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of [Section 113-B](#) relatable to [Section 304-B](#) IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within 7 years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any



relative of her husband in connection with any demand of dowry.

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression “soon before her death” has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.”

- 18.....
- 19.....
- 20.....

21. [Section 304B](#) IPC does not categorise 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 304B](#) IPC are fulfilled, any death (homicidal or suicidal or accidental) 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 dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.

22. The key words under [Section 113B](#) of the Evidence Act, 1872 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 113B](#) of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. In the case on hand, accused persons failed to prove beyond reasonable doubt that the deceased died a natural death. When Kavita allegedly committed suicide, her husband- appellant No.2, though he was not present in the house, was present in his office at M.D. University, Rohtak at the relevant time but he did not make any sincere effort to take her to the hospital which was very near to the place of the incident. Similarly, appellant No. 2 got the deceased examined by DW-2 in order to create an impression that she was struggling with chronic depression but the truth floated upon the surface when the deceased reveals that the accused persons were maltreating her and she had started picking up the ideas of suicide. Lastly, appellant No. 2 falsely informed the court that having learnt about the death of his wife Kavita, he left for Delhi to inform her family members. In fact, the accused never went to Delhi and the complainant received a telephonic message from an unknown person regarding the death of his daughter. So far as Maya Devi- appellant



No. 1 herein is concerned, there is no denying the fact that she was working as a teacher in a government school and she was not present at the relevant time at the place of incident but it is very much clear from the evidence on record that both the accused persons had a dominating role in the entire episode and she had always accompanied her son-appellant No. 2 herein to the house of the complainant (PW-3) for the dowry demands. The presumption under [Section 113B](#) of the Act is mandatory may be contrasted with [Section 113A](#) of the Act which was introduced contemporaneously. [Section 113A](#) of the Act, dealing with abetment of 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](#) 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. From the evidence on record, we are of the opinion that in the present case Kavita.....

25. Consequent thereupon, the judgment of conviction and sentence passed by the learned lower court is hereby confirmed. The appeal is dismissed.

26. Since appellants are on bail, their bail bonds are cancelled with a direction to surrender before the learned lower court to serve out remaining part of sentence within four weeks failing which the learned lower court will proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	13.10.2017
Uploading Date	31.10.2017
Transmission Date	31.10.2017

