

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.21 of 1994

Arising Out of the judgment of conviction dated 12.01.1994 passed by 5th Additonal Sessions Judge, Bhagalpur in Sessions Trial no. 35 of 1988 and the sentence dated 13.01.1994.

Sunil Kumar Das, Son of Late Sita Ram, Resident of Mohalla – Sikandarpur, P.S.- Mojahidpur, District – Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 43 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

Shambhu Nath Das, Son of Late Sita Ram Das, Resident of Mohalla – Sikandarpur, P.S.- Mojahidpur, District – Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No.21 of 1994)

For the Appellant : Mr. Pravin Kumar
Mr. Krishna Mohan

For the Respondent : Mr.

(In CR. APP (DB) No.43 of 1994)

For the Appellant : Mr. Pravin Kumar
Mr. Krishna Mohan

For the Respondent : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 02-11-2017

During the pendency of the Cr. APP (DB) No. 21 of 1994, the Appellant No. 2 namely Bhola Nath Das, Appellant No. 3 Kailash Pati Das and Appellant No. 5 widow of Sunil Kumar Das



namely Kusum Devi have died and as such the appeal on their behalf stands abated.

2. Both the appeals arises out of the judgment of conviction dated 12.01.1994 passed by 5th Additonal Sessions Judge, Bhagalpur in Sessions Trial no. 35 of 1988 and the sentence dated 13.01.1994 whereby and whereunder the trial court convicted the appellants for the offences punishable under Sections 302/149, 498A and 201 of the Indian Penal Code. The convict namely Shambhu Nath Das was sentenced to undergo life imprisonment for the offence registered under Sections 302/149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year and for the offence registered under Sections 498A and 201 of the Indian Penal Code sentenced to undergo two years of rigorous imprisonment.

3. According to the case of the prosecution laid under the information of P.W. 3 Hardeo Prasad Choudhary is that his daughter namely Suman Devi was married with one Shambhu Nath Das on 27.02.1985. It has been further stated in the written report that the aforesaid Shambhu Nath Das was demanding motorcycle and a color T.V. from his father-in-law and since he was not in a position to give those articles to his son-in-law, the Sasuralwala used to torture his daughter Suman Devi and lastly she was killed on 17.06.1986. It will not be out of place to mention here that the information of death of



aforesaid Suman Devi was given to the father of the victim lady by one B.L. Ram, Officer Incharge of the Mojahidpur Police Station.

4. The police after investigation submitted charge sheet under Sections 302, 149, 498A and 201 of the Indian Penal Code. After taking cognizance, the case was committed to the court of Sessions and after framing of charge the accused persons pleaded not guilty and as such the trial commenced against nine persons. On behalf of the prosecution, nine witnesses have been examined. On behalf of defence, two witnesses were examined. In addition thereto, certain documentary evidence were produced before the trial court and on the scrutiny of the evidence the trial court convicted the appellant Shambhu Nath Das (appellant in Cr. App (DB) No. 43 of 1994) and appellants Sunil Kumar Das, Bhola Nath Das, Kailashpati Das and Kusum Devi (appellants in Cr. App (DB) No. 21 of 1994). As stated above out of the four appellants in Cr. App (DB) No. 21 of 1994 Appellant Nos. 2, 3 and 4 namely Bhola Nath Das, Kailash Pati Das and Kusum Devi have died. Therefore, their appeal stands abated. The accused persons namely Dilip Modi, Ranjit Modi, Binod Modi and Manohar Sah were acquitted by the trial court.

5. The deceased was married to the appellant Shambhu Nath Das (appellant in Cr. App (DB) No. 43 of 1994) on 27.02.1985 and she died in suspicious circumstance on 17.06.1986 i.e. less than



one year of marriage. During course of investigation, P.W. 3, P.W. 4 and P.W. 5 have categorically stated that the accused persons used to torture the victim for fetching dowry, i.e. motorcycle, color TV etc. However, the police after investigation has not submitted charge sheet under Section 304B and only submitted charge sheet under Sections 302, 149, 498A and 201 of the Indian Penal Code. The trial court on the basis of scrutiny of material has convicted the appellants under Sections 302, 201, 149 and 498A of the Indian Penal Code.

6. During course of hearing of this appeal, Mr. Pravin Kumar, learned counsel appearing on behalf of the appellants has highlighted many infirmities in the consideration by the trial court and submitted that the prosecution has failed to bring home the charges against the appellants beyond reasonable doubts. He has drawn our attention to the various circumstances to indicate that the prosecution has not been able to establish murder of the victim Suman Devi by the appellants. He submitted that in the instant case, there is no eye witness and as such in the matter of appreciation of circumstantial evidence, the trial court has committed error in ignoring the well settled principles that in the matter of circumstantial evidence the chain of events and the circumstances must be complete and must lead to only one conclusion which ruled out any other hypothesis of commission of crime. He submitted that in the totality of the fact and



situation when there was material available on the record to suggest that the victim died due to diahorrea and the appellants and his family has taken care for her treatment no case of murder is made out against the appellants. He submitted with reference to the deposition of different witnesses who were the next door neighbour of the appellant and according to appellants' counsel neighbour are the best persons to depose on the point of cruelty or unnatural death of Suman Devi, as according to the prosecution the alleged crime was committed inside the house of the appellant and the next door neighbour in their depositions have in so many words stated that the relationship of the appellant Shambhu Nath Das with his wife was cordial and there was never any scuffle or dispute between the husband and the wife. P.W. 1 in his cross-examination had deposed that due to diahorrea the victim died. He categorically stated that he has seen the dead body and there was no sign of burning. Similar was the version of P.W. 2 who was also the next door neighbour, who deposed that there was cordial relationship of Shambhun Nath Das with his wife and the deceased died due to diahorrea. She also claimed that she has seen the dead body and there was no sign of burning on the dead body.

7. Counsel for the appellants referred to the deposition of P.W. 8, the investigating officer of this case. The investigating officer has admitted that he does not recollect about the query he has made to



the appellant Shambhu Nath Das during course of investigation. He has referred to the statement of the investigating officer in paragraph – 15, which indicate that he has not investigated the case in the right direction rather perfunctory investigation was done by the investigating officer as he has not recorded the statement of the witnesses. In paragraph-18, he has admitted that witnesses have not deposed that any kind of physical torture was made to the victim by the appellants. In paragraph-19, he has also admitted that the informant has not stated before him that his daughter has complaint him that the family of the appellant used to torture for fetching motorcycle and color TV. He also admitted in paragaraph-21 that witness Sakaldeo Prasad Chouhdary has not stated before him that when he visited the house of Suman Devi she disclosed that the four brothers were pressurizing his daughter for fetching dowry.

8. Mr. Kumar referred to the deposition of D.W. 1 Dr. Srimati Santwana Roy to demonstrate that appellants' family use to take care of the victim and as and when required she was taken to the doctor for treatment which is evident from the deposition of D.W.1. He submitted that the instant case is a peculiar one that the informant Babu Lal Ram is the I.O. of this case who has mentioned the gist of the incident and addressed the same to the Chief Judicial Magistrate, Bhagalpur which is unknown practice. The usual practice is to record



fardbeyan and thereafter formal FIR is drawn and only after drawing the formal FIR the police station use to dispatch the formal FIR to the court of the Chief Judicial Magistrate. To the contrary, in this case the officer in-charge, police station, Mozahidpur has addressed the fardbeyan to the Chief Judicial Magistrate on 16.06.1986 and thereafter, the formal FIR was recorded. The formal FIR was dispatched on 18.06.1986 which was received by the Chief Judicial Magistrate on 19.06.1986. Referring to the version of P.W. 1 and P.W. 2, he submitted that these two witnesses were the most competent witnesses and they have deposed that the relationship of the appellant Shambhu Nath Das was cordial with his wife and they have categorically stated in the court that the deceased died due to diahorrea and the appellants have taken the deceased for treatment to the doctor and they have categorically stated before the court that they seen the dead body of the victim and there was no mark of burning on the dead body. Referring to the aforesaid deposition of P.W. 1 and P.W. 2 Mr. Kumar submitted that the prosecution has not declared them hostile and as such, the court has to accept the version of P.W. 1 and 2 on the point that the death was not unnatural. He submitted that, in fact, after the death Telegram was sent to the father of the victim which indicate the *bona fide* conduct of the appellant and as such, the conviction of the appellant based on circumstances which are not



conclusive rather incomplete and contradicted by P.W. 1 and P.W. 2 and as such the judgment of conviction of the appellant by the trial court is contrary to the settled principles applicable in the matter of circumstantial evidence. He submitted that so far as appellant Sunil Kumar Das is concerned, he is only a Devar of the victim and there is absolutely no allegation against him about his participation in torture. There is no specific allegation of torture against the appellant Sunil Kumar Das in connection with demand of dowry and demand of motorcycle and color TV. There is no adverse circumstances to justify his conviction.

9. Mr. Kumar submitted that in this case nine persons were made accused and out of nine four were acquitted who were the neighbours of the victim who participated in the cremation of the victim at Barari Ghat. In view of the fact, that they have been acquitted by the trial court the appellant Sunil Kumar Das also deserve acquittal on the same analogy and the principle which was applied by the trial court for acquittal of the accused namely Dilip Modi, Ranjit Modi, Binod Modi and Manohar Sah. There is no allegation made other than that he is brother of the husband of the deceased and he is the family member where the crime was allegedly committed.

10. Mrs. Shashi Bala Verma, learned counsel appearing



on behalf of State submitted that it is true that the circumstantial evidence for conviction under Section 302 of the Indian Penal Code is not sufficient, but the materials available on the record would indicate that the victim died in unnatural circumstance and the conduct of the appellants are not natural, but blameworthy as they have disposed of the dead body without waiting for the arrival of the parents and relatives of the victim. More so, in view of the fact, that from the materials available on the record it appears that the victim was treated with cruelty and she were subjected to physical and mental torture by the family of the appellants. She submitted that in totality for the fact and situation, even if the circumstantial evidence are not enough to hold the appellant guilty for the offence under Section 302 of the Indian Penal Code the materials available on records are sufficient to make out a case under Section 304B of the Indian Penal Code.

11. We have considered the rival submission of the parties. We have considered various aspects of this case. The trial court has noted that the relationship of Shambhu Nath Das and his wife Suman Devi was not good rather the deceased had been subjected to cruelty which was expressed by her in her letter Ext. 1/1 wherein she has written that her life has become a burden for her and she was not feeling comfortable in her Sasural. We have also seen that during the course of investigation, the police has found evidence of



P.Ws. 3, 4 and 5 to indicate that Shambhu Nath Das was behaving in a hostile manner from the date when 'Barat' reached the door of the deceased's father. The trial court has noted various facts as to dowry related cruelty in paragraph -35 of the judgment. The investigating officer as well as the trial court has also noted the fact of death of the deceased within one year, but unfortunately no care was taken either by the investigating officer or the trial court to frame charge under Section 304B of the Indian Penal Code. The trial court subjected the appellants to face trial under Section 302 of the Indian Penal Code where the obligation of the prosecution is to bring home the charges beyond all reasonable doubts. The trial court ought to have framed charge under Section 304B of the IPC and in such event the burden of proof ought to have shifted on the accused in the event of proof of basic facts of death within seven years and dowry related cruelty is noticed immediately before death. In such a situation the amended provision of Section 113-B of the Evidence Act is attracted which cast obligation on the defence to prove innocence, but neither the investigating officer nor the trial court has bothered to charge the appellant for the offence under Section 304B of the Indian Penal Code. During scrutiny of the materials of this case, we have considered various circumstances which would indicate that the death occurred within one year of the marriage and there is a definite case of



P.W. 3 and P.W. 5 that the appellants used to make physical and mental torture to fetch motorcycle and color TV. We have also noticed that the appellants have not proved their case of sending Telegram to the parents of the victim about the death of Suman Devi. We have also noticed the deposition of D.W. 1 Dr. Srimati Santwana Roy who in her deposition has stated that she has treated the victim for evacuation of two months' pregnancy in the month of March, 1986. The deposition of D.W. 1 does not indicate that the evacuation of pregnancy was conducted in order to save the life of Suman Devi or she has consented for removal of pregnancy this is one another circumstance to indicate that the victim was subjected to cruelty by the appellants as she was taken to the doctor for removal of pregnancy and the doctor who has evacuated the pregnancy of two months' even does not maintain the register of the patient. Deposition of D.W. 1 is further indicative of the trauma faced by the victim.

12. We find substance in the submission of Mr. Kumar that the chain of events does not lead to only one conclusion that the crime of murder was committed by the appellants in the manner alleged by the prosecution as neither the doctor nor the next door neighbours have supported the prosecution case as to murder due to burning.

13. Thus, in the totality of the fact and situation, it is not



safe to convict the appellant for offence under Section 302 of the IPC in the attending facts and circumstances as the chain of events are not conclusive and does not lead to only one conclusion that the appellant have committed murder by burning the deceased in 'Bhatti'. However, the other circumstance and material available on the record indicates prima facie a case of dowry death, but we find that the charge under Section 304B of the Indian Penal Code was not framed against the appellant and as such, it would not be appropriate to convict the appellant under Section 304B of the Indian Penal Code. In fact, the Apex Court had occasion to consider this aspect of the trial court failure in framing charge under Section 304B of the Indian Penal Code and the resultant effect in the case where materials are available on the record which would warrant trial under Section 304B of the Indian Penal Code, in case the offence under Section 302 of the Indian Penal Code is not established. Reference in this connection may be made to the judgment of the Apex Court in the case of ***Shamnsaheb M. Multani v. State of Karnataka*** reported in (2001) 2 SCC 577 where the Apex Court has discussed the various aspect of the offence under Section 304B of the Indian Penal Code and Section 113B of the Evidence Act.

Paragrpahs 25, 27, 28 and 31 of the said judgment are good guideline which are quoted hereinbelow:

25. *We have now to examine whether, on the*



evidence now on record the appellant can be convicted under Section 304-B IPC without the same being included as a count in the charge framed. Section 304-B has been brought on the statute-book on 9-11-1986 as a package along with Section 113-B of the Evidence Act. Section 304-B(1) IPC reads thus:

“304-B. Dowry death. – (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death”.

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

28. Under Section 4 of the Evidence Act “whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved. So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the



court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

31. Now take the case of an accused who was called upon to defend only a charge under Section 302 IPC. The burden of proof never shifts onto him. It ever remains on the prosecution which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. In such a case the accused can wait till the prosecution evidence is over and then to show that the prosecution has failed to make out the said offence against him. No compulsory presumption would go to the assistance of the prosecution in such a situation. If that be so, when an accused has no notice of the offence under Section 304-B IPC, as he was defending a charge under Section 302 IPC alone, would it not lead to a grave miscarriage of justice when he is alternatively convicted under Section 304-B IPC and sentenced to the serious punishment prescribed thereunder, which mandates a minimum sentence of imprisonment for seven years.

14. The Apex Court had occasion once again to discuss the role of the investigating officer and the trial court in the matter when the materials are available on the record to suggest that it is the case under Section 304B of the Indian Penal Code. The Apex Court has discussed the principles to be followed in the case of death within seven years of the marriage in a case of demand of dowry by the



husband in the case of *Vijay Pal Singh V. State of Uttarakhand* reported in (2014)15 SCC 163. Paragraph 16, 17, 18, 19 and 34 of the judgment are detailed discussion of the principle to be followed in case of materials are sufficient to proceed under Section 304B of the Indian Penal Code, but the accused has not been charged for the offence punishable under Section 304B of the Indian Penal Code. The Apex Court has considered the 91st report of the Law Commission and discuss the role of the investigating officer and the trial court when the evidence are available as to homicide in case of dowry death the Apex Court has discussed the duty of the investigating officer to investigate the case and the duty of the court to decide the case in that perspective.

15. The Apex Court has considered the various judgment on the point in paragraph-34 and held that acquittal under Section 302 of the Indian Penal Code does not *ipso facto* lead to acquittal under Section 304B of the Indian Penal Code. If there are evidence available to satisfy the ingredients to Section 304B of the Indian Penal Code the accused are still be convicted under Section 304B of the Indian Penal Code in case there is no rebuttal of presumption on the death caused by the accused.

Paragraphs 16 to 19 and 34 of the aforesaid judgment eloquent on the point and as such are quoted hereinbelow:



16. Since, the victim in the case is a married woman and the death being within seven years of marriage, apparently, the court has gone only on one tangent, to treat the same as a dowry death. No doubt, the death is in unnatural circumstances but if there are definite indications of the death being homicide, the first approach of the prosecution and the court should be to find out as to who caused that murder. Section 304B IPC is not a substitute for Section 302 IPC. The genesis of Section 304B IPC introduced w.e.f. 19.11.1986 as per Act 43 of 1986 relates back to the 91st Report of the Law Commission of India. It is significant to note that the subject was taken up by the Law Commission suo motu. Paragraph-1.3 of the Report reads thus:

*"1.3. **The approach to be adopted.** - If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. In practice, however, two main impediments arise-*

(i) either the facts do not fully fit into the pigeon-hole of any known offence; or

(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.

The first impediment mentioned above is aptly illustrated by the situation where a woman takes her life with her own hands, though she is driven to it by ill-treatment. This situation may not fit into any existing pigeon-hole in the list of offences recognized by the general criminal law of the country, except where there is definite proof of instigation, encouragement or other conduct that



amounts to "abetment" of suicide. Though, according to newspaper reports, there have been judgments of lower courts which seem to construe "abetment" in this context widely, the position is not beyond doubt.

The second situation mentioned above finds illustration in those incidents in which, even though the circumstances raise a strong suspicion that the death was not accidental, yet, proof beyond reasonable doubt may not be forthcoming that the case was really one of homicide. Thus, there is need to address oneself to the substantive criminal law as well as to the law of evidence."

17. In the Statement of Objects and Reasons for the Act 43 of 1986, in the Bill, it is stated as follows:

1. "The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the Houses of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organizations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. ..."

18. However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is



evidence, direct or circumstantial, as to whether the offence falls under Section 302 IPC. Sometimes, Section 302 IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 IPC, the trial court should frame the charge under Section 302 IPC even if the police has not expressed any opinion in that regard in the report under Section 173 (2) of the Cr.PC. Section 304B IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304B IPC are available, the trial court should proceed under the said provision. In Muthu Kutty v. State, this Court addressed the issue and held as follows: (SCC pp. 122-23, para 20)

"20. A reading of Section 304-B IPC and Section 113-B, Evidence Act together makes it clear that law authorises a presumption that the husband or any other relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make



it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused- appellants as they were originally charged for offence punishable under Section 302 IPC along with Section 304-B IPC."

19. *In a recent decision, this Court in Jasvinder Saini v. State (Govt. of NCT of Delhi) observed thus: (SCC p. 262, para 15)*

"15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis



of the direction issued in Rajbir case. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in Rajbir case, but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

34. *In Alamgir Sani v. State of Assam, one of the issues that came up for consideration before this Court on acquittal under Section 302 IPC is whether on account of acquittal under Section 302 IPC, the accused could claim acquittal under Section 304-B IPC. It was clarified by this Court that the acquittal under Section 302 IPC will not lead to automatic acquittal under Section 304-B IPC. Even if an accused is acquitted under Section 302 IPC, if there is evidence available so as to satisfy the ingredients of Section 304-B IPC, the accused can still be convicted under Section 304-B IPC, in case there is no rebuttal of presumption on the death as caused by the accused. To quote: (SCC p. 283, para 15)*

"15. We also see no substance in the submission that merely because the appellant had been acquitted under Section 302 IPC the presumption under Section 113-B of the Evidence Act stands automatically rebutted. The death having taken place within seven years of the marriage and there being sufficient evidence of demand of dowry, the presumption under Section 113-B of the Evidence Act gets invoked. There is no evidence in rebuttal."

16. In view of the judgment of the Apex Court discussed above and on consideration of the materials available on the record, consistent evidence of P.W. 3 to P.W. 5, Ext. 1/1, the deposition of D.W. 1 and other facts and circumstances including the fact that the



victim died in suspicious circumstance and the conduct of the appellant in disposing of the dead body without awaiting of the arrival of the parents of the deceased and looking into all materials which does not prove that they have informed the parents of the victim, this court has reason to believe that the instant case requires trial under Section 304B of the Indian Penal Code.

17. Accordingly, in the peculiar facts and circumstances of this case we are left with no option but to remand the Cr. APP (DB) No. 43 of 1994 for trial of the accused after framing charge under Section 304B of the Indian Penal Code. In the light of the judgment of the Apex Court in the case of *Shamnsaheb M. Multani v. State of Karnataka* reported in (2001) 2 SCC 577 and *Vijay Pal Singh V. State of Uttarakhand* (2014)15 SCC 163. So far as the case of appellant of Cr. APP (DB) No. 21 of 1994 is concerned, we have gone through the records of this case and on scrutiny of the evidence of the witnesses including P.W. 3, 4 and 5 we are of the view that there is no specific material warranting remand in this case for trial under Section 304B as there is no specific allegation of either demand of dowry of motorcycle and color TV by this appellant nor there is any specific allegation of torture physical and mental by this appellant in connection with demand of dowry and as such, we do not find any justification to remand back.



18. Since we find that the circumstances of this case does not establish the case of offence under Section 302 of the Indian Penal Code as the circumstances are not conclusive to establish the involvement of this appellant in commission of the crime. Accordingly, we extend him the benefit of doubt and he is acquitted of the offence under Section 302 of the Indian Penal Code accordingly his appeal is allowed and he is discharge of his bail bonds. In the result, Cr. APP (DB) No. 21 of 1994, so far as appellant Sunil Kumar Das is concerned is allowed. The appeal on behalf of appellant no. 2 to 4 in Cr. APP (DB) No. 21 of 1994 stands abated as they died during the pendency of the appeal.

19. So far as the sole appellant of Cr. APP (DB) No. 43 of 1994 is concerned, we find prima facie material for his trial under Section 304B of the Indian Penal Code and accordingly the judgment of the trial court dated 12.01.1994 and the sentence is set aside and the matter is remitted back to the trial court for trial of the appellant afresh in accordance with the principles discussed by the Apex Court in the judgment referred hereinabove after framing charge under Section 304B IPC.

20. The bail bond of this appellant Shambhu Nath Das is cancelled and the appellant is hereby directed to surrender before the court below. If the appellant Shambhu Nath Das does not surrender,



the court below shall take all possible steps to take him into custody. However, it shall be open for the trial court to consider the case of the appellant for grant of bail on its own merit without being prejudiced by the order passed by this Court in this appeal.

21. The trial court is directed to conclude the trial after framing of charge under Section 304B of the Indian Penal Code expeditiously within a period of six months from the date of receipt of the record.

22. The Registry is directed to sent down the entire records of this case to the trial court to facilitate the trial court to frame charge under Section 304B of the Indian Penal Code and conclude the trial within time frame indicated above.

23. Cr. APP (DB) No. 43 of 1994, is accordingly, disposed of.

(Rajendra Menon, CJ)

KKSINHA/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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