

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.164 of 2015

Arising Out of PS.Case No. -23 Year- 2009 Thana -CHAKAI District- JAMUI

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Pramod Kumar Verma, S/o Tulsi Prasad Verma, Resident of Village-Manakola,
Police Station- Chakai, District Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 136 of 2015

Arising Out of PS.Case No. -23 Year- 2009 Thana -CHAKAI District- JAMUI

- =====
1. Tulsi Prasad Verma, Son of Topi Mahto.
 2. Chunki Devi, Wife of Tulsi Prasad Verma.
 3. Chhote Lal Verma, Son of Tulsi Prasad Verma.

All resident of village - Manakola, Police Station - Chakai, District – Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (SJ) No.164 of 2015)

For the Appellant/s : Mr. Akhauri Kamal Kishore Sahay, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.136 of 2015)

For the Appellant/s : Mr. Akhauri Kamal Kishore Sahay, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 06-09-2017

Criminal Appeal (SJ) No.164 of 2015 wherein
Pramod Kumar Verma is the appellant, Criminal Appeal (SJ) No.
136 of 2015 wherein Tulsi Prasad Verma, Chunki Devi, Chhote Lal
Verma are the appellants commonly originate against the
judgment of conviction dated 29.01.2015 and order of sentence
dated 30.01.2015 passed by Additional Sessions Judge, Jamui in
Sessions Trial no.334 of 2009, on account thereof, have been
heard together and are being decided by a common judgment.

2. All the appellants named above have been found
guilty for an offence punishable under Section 304B/34 of the IPC



and each one has been directed to undergo R.I. for ten years.

3. Jagdish Verma (PW.7) filed written report on 03.03.2009 disclosing therein that his daughter namely, Manju Kumari (deceased) was married with Pramod Kumar Verma, son of Tulsi Prasad Verma of village-Manakola on 28.04.2004 whereupon came to her Sasural where she was staying. After sometime, Pramod Kumar Verma, Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma began to torture her for fulfillment of demand of cash having made by the Pramod Kumar Verma. On being informed, they rushed and tried to sort out a solution but, could not materialized whereupon, panchayati was convened. They, (the accused persons) have not conceded to accept the verdict of the panchayati. During midst thereof, his daughter begotten a son which is presently two and half years. About two months ago, Pramod Kumar Verma demanded rupees fifty thousand on the pretext that aforesaid amount was to be paid against appointment as "Para Teacher" whereupon, he shown his inability on account of indecency. However, he paid rupees five thousand in cash as well as issued cheque appertaining to rupees five thousand in his favour. On 01.03.2009 at about 07:00 PM his wife Tara Devi dialed his daughter which was received by Pramod Kumar Verma. On query, he said that today it would not be possible to have talk with her daughter. She will be able to talk tomorrow. On 02.03.2009 at about 03:00 PM Pramod Kumar Verma dialed and conveyed that condition of his daughter is serious and is admitted at Jhajha Hospital. On this information, he rushed and reached at the house of Pramod Kumar Verma on 02.03.2009 at about 07:00 PM where he found dead body of his daughter lying in the courtyard. On query from the neighbours, he came to know that



accused Pramod Kumar Verma, Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma assaulted her on the preceding night as well as they caused murder to his daughter. It has also been disclosed that she was pregnant of seven months. It has also been disclosed that he had not approached the police due to night.

4. After registration of Chakai P.S. Case No.23/2009, investigation commenced and concluded by way of submission of charge sheet paving the way of trial which ultimately concluded by way of recording conviction and sentence against the appellants, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. It has also been submitted that during course of pregnancy deceased had sustained severe complications whereupon, was taken to the clinic of Dr. Jaya Mitra, Jhajha and during course of treatment she died. To substantiate the same, DW.1 Keshav Tanti has been examined to exhibit the prescription as Ext.A.

6. Learned counsel for the appellants while assailing the judgment of conviction and sentence has raised manifold arguments. The first and foremost happens to be that conviction and sentence recorded for under Section 304B of the IPC is not at all found substantiated from the evidence adduced on behalf of prosecution. To substantiate the same, it has been submitted that from the written report as well as from the evidence of the witnesses, it is apparent that marriage was solemnized in the year 2004 and since thereafter, though in vagueness there happens to be an allegation to the effect that victim was tortured for



fulfillment of demand of dowry but, is not at all found substantiated with any instance. That being so, it could be safely interfered that there was no demand nay, torture on that very pretext. Furthermore, it has also been submitted that right from initial version of the prosecution, it is apparent that the cash appertaining to rupees fifty thousand allegedly demanded by appellant Pramod Kumar Verma was not in lieu of dowry nor it should be as, the same was demanded for getting his appointment as Para Teacher. That being so, the major ingredients for constituting an offence under Section 304B of the IPC is not at all found duly substantiated.

7. Furthermore, it has also been submitted that the witnesses who have been examined in this case are the Naiharwala of the deceased as their kith and kin only. Non of the co-villagers of the appellants were examined during course of investigation nor they have been cited as a charge sheet witness. Furthermore, all of them happens to be hearsay in nature and so, their evidences are inadmissible in the eye of law. That being so, virtually it happens to be a case of no evidence.

8. It has further been submitted that PW.12, the Investigating Officer had not found anything adverse during course of inspection of the P.O. In likewise manner, it has also been submitted that evidence of PW.9, the doctor who had conducted postmortem also did not identify the culpability of the appellants and the cumulative effect, as such it happens to be nugatory steps are the end of the prosecution. So submitted that the judgment of conviction and sentence recorded by the learned lower court happens to be contrary to the spirit of law as well as



based upon wrong, flimsy grounds consequent thereupon, is fit to be set aside.

9. In an alternative, it has also been submitted that the demand was advanced at the end of Pramod Kumar Verma, the son-in-law having no positive, concrete evidence against the remaining appellants and that being so, appellants Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma who are in-laws deserve acquittal.

10. Controverting the submission having made on behalf of appellants, it has been submitted on behalf of learned A.P.P. that death of deceased at her Sasural within seven years of marriage otherwise than normal circumstance is found duly substantiated by the evidence of PW.9, the doctor along with other witnesses. Furthermore, it has also been submitted that witnesses have categorically stated with regard to activity of all the appellants during intervening period, including demand as well as torture meted out to the deceased and that had been properly analyzed by the learned lower court while holding the appellants guilty for an offence punishable under Section 304B/34 of the IPC, therefore the judgment of conviction and sentenced recorded by the learned lower court did not attract interference.

11. In order to substantiate its case prosecution had examined altogether twelve PWs, namely, PW.1 Ram Das Ram, PW.2 Ganesh Verma, PW.3 Karman Verma, PW.4 Tara Devi, PW.5 Kaleshwar Prasad Verma, PW.6 Suresh Prasad Verma, PW.7 Jagdish Verma, PW.8 Sheo Shankar Prasad Verma, PW.9 Dr. Arun Kumar Singh, PW.10 Kamleshwari Yadav, PW.11 Ratan Kumar Verma and PW.12 Arjun Ram. Side by side had also



exhibited, Written Report-Ext.1, Inquest Report-Ext.2, Postmortem Report-Ext.3, Formal FIR-Ext.4, Cheque dated 12.12.2008 as Ext.5 and the receipt having made by appellant Pramod Kumar Verma as Ext.5/1. In likewise manner, defence had also examined one DW.1 Keshav Tanti had exhibited prescription allegedly issued by Dr. Jaya Mitra as Ext.A.

12. PW.9 had conducted postmortem over the dead body of Manju Kumari on 03.03.2009 at about 02:15 PM and found the following:

Rigor Morit was present in four limbs.

External examination:

- (I) White froth coming out from left nostril while blood as well as froth coming out from right nostril.
- (II) Swelling 3"x2" with bruised area over left side of face in front of left ear.
- (III) Left eye mild congested.
- (IV) Left side of face congested.
- (V) Abdomen protuberant.

On dissection- Abdominal distension due to enlarged uterus about 28.30 week size. Fundus of uterus and posterior surface of uterus congested, on opening uterine cavity a female dead fetus of 28-30 week size taken out. Placenta attached with uterine well. Dark blood clot over posterior wall of placenta behind uterus in small amount. No haemoperitoneumia urinary bladder full.

Both lungs congested. No Haemothorax. Lumen of trachea containing blood tinged froth. Right chambers of heart full of dark blood, left



chambers of heart empty.

No blood clots underneath the swelling over left side of face in front of left ear.

No any other internal or external injury found.

All the above injuries were ante-mortem caused by closing mouth and nostrils at a time for sometime by some soft substance may be by pillow. Since injury till death within 3-4 minutes. In the opinion of the doctor death was due to asphyxia by closing the mouth and nostril at a time. Time elapsed since death 12 to 18 hours.

13. During cross-examination, it is evident that the finding recorded by this PW had not been directly challenged at the end of the appellant save and except proper identification of its physiology and that happens to be reason behind, in para-6 he had stated that asphyxia is a physiological phenomena occurring in any human body due to lack of oxygenate in lungs arbula and suffocation i.e. environmental phenomena in lack of oxygen in external side. He had further stated that the froth comes out after passing 3 to 4 mints of asphyxia. He had further stated that in case of homicidal asphyxia by pressing the mouth and nostrils there would be sign of eyes open, eye balls congested, face congested and forth and forth blood clots which he mentioned in the postmortem report. That being so, death of deceased Manju otherwise than normal phenomenon is found duly substantiated by the PW.9, doctor along with the fact that she was pregnant at the time of her death. Now the evidence of remaining witnesses have to be seen in order to adjudge finding recorded by the learned lower court.

14. PW.1 had stated that deceased Manju Devi was



daughter of Jagdish Verma. This case has been instituted by Jagdish Verma against Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma. Manju Devi was married with Pramod Kumar Verma about six years ago (on the day of his evidence) according to Hindu rites and customs. After marriage, she began to reside at her Sasural. After stay for sometime at her Sasural, she was treated with cruelty at the ends of accused persons for procurement of dowry and for that, she was even manhandled as well as abused at due interval. Accused persons were demanding rupees fifty thousand. Accused Pramod Kumar Verma even advanced his demand from his father-in-law as well as mother-in-law for payment of rupees fifty thousand to get himself employed as Para Teacher. Jagdish had informed Pramod Kumar Verma that he is unable to provide aforesaid amount even then, had paid five thousand in cash as well as cheque appertaining to rupees five thousand which he got encashed. On 01.03.2009, Tara Devi had dialed to Manju Devi which was received by Pramod Kumar Verma. He disclosed that Manju Devi is ill and is admitted at Jhajha Hospital so, talk would not materialized. Tomorrow, he will manage the same. On 02.03.2009 at about 03:00 PM Pramod Kumar Verma had informed Jagdish Verma, his father-in-law that Manju Devi is ill and is admitted at Hospital whereupon Jagdish Verma and Suresh Verma rushed over motorcycle. During midst of way, Pramod Kumar Verma again dialed and informed that Manju Devi is now no more. Tara Devi had informed him with regard to aforesaid event whereupon he along with Tara Devi, Ganesh Prasad, Rohit Sah proceeded on motorcycle. They reached at the house of accused in the night and found dead body of Manju Devi having over cot in the courtyard. None were present.



From villagers they came to know that Pramod Kumar Verma, Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma have assaulted as a result of which she died. In torch light they have had seen froth coming out from nostril, they have also seen blood over her face as a result of which, they inferred that Manju Devi has been murdered. Deceased was pregnant at that very time. During cross-examination at para-3 he had stated that marriage was solemnized about six years ago. Deceased had begotten a son which is presently aged about two and half years. That child is living with his father. In para-4 he had stated that he came to know with regard to occurrence from the wife of informant. He had further stated that Pramod Kumar Verma had informed regarding the death. He had also informed regarding ailment of the deceased. He had further stated that he is unable to disclose names of the co-villagers of the Pramod Kumar Verma who had disclosed regarding assault over the deceased. He had found blood clot over one eye of the deceased. There was no injury over her neck. He is not remembering whether he had seen the blood clot over left eye or right eye. He had seen blood at the temporal region. He had also seen the scare mark which was 2"-3" long over temporal region. They have seen the dead body in torch light which was not presented before the Investigating Officer. He had denied the suggestion that Manju was ailing since before and on account thereof she died. Court had also questioned him whereupon he had stated that he had visited place of Manju Devi after marriage twice or thrice. After the birth of son he had gone there. At that very time, Manju Devi had not disclosed regarding demand of dowry. Budhan Mahto was middle man during course of negotiation. At the time of finalization of negotiation, he was



one of the participants. Rupees sixty five thousand, utensils, wrist watch, ring, cloth were to be given which, the informant had already given. There was nothing due. Then thereafter, he came to know that deceased was being tortured over procurement of cash.

15. PW.2 had deposed that deceased happens to be his niece who was married with Pramod Kumar Verma on 28.01.2004. After marriage, she gone to her Sasural where, she began to reside with her husband, father-in-law, mother-in-law, Debar. After spending sometime, her Sasuralwala began to torture her for procurement of rupees fifty thousand in lieu of dowry. Aforesaid demand was made for getting Pramod Kumar Verma employed as “Para Teacher”. Even though they were suffering from financial crunch, gave rupees five thousand in cash as well as cheque of rupees five thousand to Pramod Kumar Verma. Even then, the lust of Pramod Kumar Verma was not satisfied. He continued with demand. Lastly, a panchayati was convened which also failed. On 01.03.2009 at about 07:00 PM his Bhabhi, Tara Devi dialed to Manju which was received by Pramod. He disclosed that conversation with Manju Devi is not possible. On 02.03.2009 Pramod Kumar Verma dialled and informed his brother, informant that condition of Manju Devi is not well as such she has been admitted at Jhajha Hospital. Getting such information, his brother Jagdish Verma proceeded on motorcycle along with Suresh Prasad. Then thereafter, Pramod Kumar Verma again informed that Manju Devi has died whereupon, he along with Tara Devi, Ram Das Ram, Karman Verma, Mahendra Prasad, Rohit Sah, Nem Chandrapuri gone to the place of Manju Devi where they saw dead body of Manju Devi kept over cot in courtyard. They have also seen blood clot over her nose as well as both ears. They have also



seen some mark over left temporal region, left eyebrow. After close inspection of face of deceased, they have also found her nose pressed. At that very time, she was pregnant of seven months. On query, the neighbours disclosed that Pramod Kumar Verma, Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma had assaulted Manju Devi as a result of which she died. Police came, prepared inquest report in his presence over which he signed (exhibited). Then had stated that accused persons have committed murder of Manju Devi out of greed for money. During cross-examination, he had stated that Hem Lal Mahto and Budhan Mahto were the middleman during course of negotiation of marriage. He is not remembering the exact time of negotiation as well as finalization. He is simply knowing that the demand which were paid by the other side have already been falsified. After marriage, deceased had gone to her Sasural. After staying one day, she came back and then, staying for a day, she again returned back to her Sasural. At that very time there was no complaint at the end of deceased. In para-6, he had stated that Manju Devi begotten a son after one year of marriage. Till then, Manju Devi was enjoying her stay at Sasural in good condition. In para-8, he had stated that his brother had gone to see his daughter and at that very time, he took away gift items, sweets etc. He had stated that he is unable to disclose exact date on which cash appertaining to rupees five thousand was paid to the Pramod Kumar Verma and in likewise manner cheque issued in his name. In para-10, he had stated that he is unable to disclose the exact date of panchayati. In para-11, he had narrated that his Bhabhi Tara Devi had disclosed with regard to her conversation with Pramod Kumar on 01.03.2009. Pramod Kumar had disclosed with regard to ailment of Manju as



well as she was suffering from vomiting. In para-12 he had stated that he had seen blood clot over ear as well as nose of Manju. He had not seen cut mark over eyebrow. He had seen her nose was pressed. He had not seen any visible sign over her nose. In para-13, he had stated that he is unable to disclose names of different persons who had disclosed regarding assault over Manju Devi by her Sasuralwala. He had further stated that in para-14 that they arrived at the place of Manju Devi at about 09:00 PM. In para-15, he had stated that he had not called Chowkidar and in likewise manner Mukhiya as well as Surpanch. Thana lies at a distance of 2-3 KM. They have gone to the place of Manju on motorcycle. They have not gone to Police Station in the night. He is unable to say the exact time whereunder one could arrive at Chakai P.S. from the place of occurrence. In para-16, he stated that on following day, they have gone to Police Station. When police took away the dead body, then thereafter he left place of Manu Devi. Police had arrived at about 7-8 AM and stayed for an hour. Police was informed by his brother. His brother had recorded his fardbeyan. He had denied the suggestion that his niece was ill and was properly treated, and during course of treatment she died. He had also denied the suggestion that he falsely deposed.

16. PW.3 Karman Verma had deposed that this case has been instituted by Jagdish Prasad Verma against accused Pramod Kumar Verma, Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma. Deceased Manju Devi was daughter of Jagdish Prasad Verma who was married with Pramod Kumar Verma on 28.04.2004. Pramod Kumar Verma is resident of Mankola. Few months after the marriage they began to torture deceased Manju Devi for procurement of rupees fifty thousand from her father.



Manju Devi informed her parents. Parents of Manju Devi had informed him whereupon they have gone to Mukhiya Kauleshwar Verma. Mukhiya of Chakai had also arrived and then, they have convened panchayati but, accused persons avoid the same. Manju Devi had begotten a son who is presently aged about four years. He had further stated that accused persons committed murder of Manju Devi at Mankola itself. Pramod Kumar Verma had informed over mobile over which he along with his sister Tara Devi, Ramdeo Ram, Ganesh Verma have gone while Jagdish had gone earlier to them. When they reached at the place of accused, they found dead body of Manju Devi. They have seen blood coming out from nose. They have also seen scratch mark at different parts of body. During cross-examination, he had admitted that he happens to be maternal uncle of deceased Manju Devi. He had further stated that his father is alive but is an old. He had further stated that he had participated during course of marriage of Manju Devi. He had further stated that whatever been finalized during course of negotiation, same was paid. Nothing due remained. In para-5, he had stated that he had not gone to the place of Manju Devi. He had further stated that the son of Manju Devi is residing along with his father. In para-6, he had stated that he is unable to disclose date of torture having meted out to Manju. He had further stated that no Sanha was lodged relating to torture. He had further stated that rupees fifty thousand was demanded two months prior to death of Manju. He had further stated that one Sanha was instituted thereafter. In para-7, he had stated that he is unable to disclose the date of panchayati. He had further stated that he is unaware with regard to cause of death of Manju Devi. He had further stated that Pramod Kumar Verma had informed



regarding ailment of Manju Devi as well as having been admitted at Jhajha Hospital. He had further stated that Pramod Kumar Verma had informed his brother-in-law Jagdish with regard to death of Manju. He had not seen blood over the earth beneath the cot over which dead body of Manju was kept. Blood was over the bed. In para-8, he had further stated that police had come on the following day at about 8-10 AM. Police had seen bloodstain over bed as well as blouse. He had further stated that police had taken away the bed along with dead body. He further stated that he had not seen cut mark over the dead body of Manju. He had further stated that he had not gone along with police to P.S. After departure of the dead body, he returned back. In para-9, he had deposed that police had recorded his statement on the following day itself. He had further narrated that he had stated before the police that Pramod Kumar Verma had informed regarding death of Manju Devi over mobile of Jagdish Prasad. In para-9, he had denied the suggestion that Manju Devi was suffering from some sort of ailment since before as a result of which she died.

17. PW.4 is the mother of victim. She had deposed that Manju was married with Pramod Kumar Verma on 28.04.2004. Pramod Kumar Verma is resident of Manakola. After marriage Manju began to reside at her Sasural where, after sometime, husband Pramod Kumar Verma, father-in-law Tulsi Verma, brother-in-law (Debar) Chhote Lal and mother-in-law Chunki Devi began to abuse as well as assault. They were demanding motorcycle as well as rupees fifty thousand and for that her daughter was being coerced. As the aforesaid demand was not fulfilled on account thereof, she was being tortured. Then had deposed that Pramod Kumar Verma came to her place about two



months ago from the date of occurrence and demanded rupees fifty thousand so that he be able to get appointed under Para Teacher. Her husband Pramod Kumar Verma had given rupees five thousand in cash as well as one cheque appertaining to rupees five thousand of Gramin Bank. Then had stated that she had dialed on 02-03-Fagun to her daughter which was received by Pramod Kumar Verma. She requested him to facilitate talk with her daughter over which Pramod Kumar Verma had disclosed that it is not possible today. Tomorrow she will be able to talk with her. After sometime, Pramod Kumar Verma had informed her husband requesting him to come hurriedly as Manju was admitted at Jhajha Hospital over which her husband and Suresh Verma her debar proceeded therefrom to Manakola. She dialed to Chhote Lal whereupon she was informed by him that Manju is all right. After two hour, when she again dialed Chhote Lal, he informed that Manju died. Her husband had also informed her regarding death of Manju Devi. She, after getting information regarding death of her daughter gone to her place. They have seen dead body of Manju lying over cot in courtyard. They have seen the dead body. They have found some mark over her face whereupon they informed that her Sasuralwala had caused her murder on account of non-fulfillment of demand of dowry. During cross-examination at para-4 she had stated that she happens to be illiterate having no knowledge regarding English calendar. At para-5 she had stated that whatever they undertook to give at the time of negotiation, they have given and in the aforesaid background, marriage was solemnized in pleasant atmosphere. After vidai, Manju Devi gone to her Sasural and began to reside there. Out of aforesaid marriage, she begotten a son who, presently is residing



with his father. In para-6 she had stated that she is unable to say the exact date on which demand was made and the successive dates over which she (deceased) was tortured. She had further stated that no Sanha was lodged with regard to demand. She had further disclosed that she never visited to the place of Manju before her death. In para-7 she had deposed that she is unable to say the exact date on which her husband had paid rupees five thousand in cash as well as issued cheque in his favoured. She had further stated that her husband had paid the amount after borrowing from his brother Nakul and Ganesh. She came to know after having disclosed by her husband. She had further stated that her son-in-law happens to be compounder and earns Rs.10-20 per day. In para-9 she had stated that Pramod Kumar Verma had informed regarding ailment of Manju on phone. In para-10 she had stated that when she reached at the place of occurrence, police was not there. Her husband was there. Dead body of Manju was covered. Burned incense was there. Blood was not oozing out from the injuries. In para-11 she had said that she had not informed the police in the night though they have gone over motorcycle. In para-12 she had stated that on the following day, her husband had gone to police station where he gave fardbeyan. Police also inquired from her. She had made her statement.

18. PW.5, Kaleshwar Prasad Verma, who happens to be co-villager of the appellant. He had deposed that Manju Devi daughter of Jagdish Verma was married with Pramod Kumar Verma about four years ago. She died at her Sasural. How she died, he is unable to say. There was cordial relation amongst the spouse. During cross-examination he had stated that he used to reside at Chakai chowk since 1999. He had further stated that he



had not convened panchayati at the instance of Jagdish Verma.

19. PW.6 had stated that Manju Devi daughter of Jagdish Prasad Verma was married with Pramod Kumar Verma on 28.04.2004. After marriage, she had gone to Sasural and began to reside. During course of her stay, her Sasuralwala began to advanced demand of rupees fifty thousand on the pretext of getting employment under Education Department. Father of Manju had given cash appertaining to rupees five thousand as well as cheque of rupees five thousand but, as the demand was not satisfied by such offer on account thereof, she was subjected to torture as well as harassment. He had further stated that he is unable to say how Manju Devi had died. But she died at her Sasural. He had also accompanied Jagdish Verma to the place of Manju after coming to know to about her death. During cross-examination, he had stated that he happens to be neighbour of Jagdish Verma. He had not gone to the Sasural of Manju at an earlier occasion. He had further stated that he had got no information with regard to terms and condition of the negotiation of marriage. Manju had begotten a son which is residing with his father. The payment of rupees five thousand, issuance of cheque of rupees five thousand, demand of rupees fifty thousand and torture, harassment having inflicted upon deceased was disclosed by Jagdish Prasad Verma. In para-7 he had disclosed that he had gone to Manatola over motorcycle. They reached at Manatola about 6-7 PM, but could not go to police station at that moment. On the following day, at about 6-7 AM they have gone to police station where informant Jagdish Verma gave his fardbeyan over which, he put his signature. Then, thereafter, he returned back to his house. On court question he had stated that he had not talked



with any co-villager. Jagdish Verma had talked but he is unable to disclose their names. They remained at the Sasural of Manju whole night. At that very time Pramod Kumar Verma, Chhote Lal Verma and Tunki Devi were present. They have seen dead body of Manju Devi which was kept over cot in a courtyard. Her dead body was covered. He had seen blood clot over her nose as well as ear. He had also seen mark of injury over her left temporal region. The members of the house were weeping.

20. PW.7 is Jagdish Verma, informant himself, who had stated that deceased was his daughter who was married with Pramod Kumar Verma son of Tulsi Verma on 28.04.2004. After marriage Manju had gone to her Sasural where she began to reside. After sometime she was being harassed at the end of Pramod Kumar Verma, Tulsi Prasad, Tunki Devi and Chhote Lal for dowry. They were demanding cash in lieu thereof. After having informed, he along with Ram Das came at the Sasural of his daughter and then convened a panchayati wherein mukhiya Kaleshwar had presided. Accused persons did not obey the dictum of the panchayati. They were demanding rupees fifty thousand for getting employment as Para Teacher. He flatly refused on account of financial crunch however, paid rupees five thousand in cash as well as issued cheque of rupees five thousand to Pramod Kumar Verma on 12.02.2008. His daughter begotten a son who was two and half years at the time of occurrence. His daughter was pregnant of seven months. On 01.03.2009 his wife Tara Devi dialed Manju Devi to talk which was received by Pramod Kumar Verma. Pramod had disclosed that today it is not possible however, it will be facilitated tomorrow. On 02.03.2009 at about 03:00 PM Pramod informed him to come as Manju is ill and is



admitted at Jhajha Hospital. Accordingly, he along with Suresh Prasad proceeded over motorcycle. When they reached at the place of Pramod found dead body of Manju in the courtyard of house. He conversed with the villagers and during course thereof, came to know that in the preceding night her husband, father-in-law, mother-in-law and brother-in-law (Debar) assaulted her as a result of which she died. Blood was coming from her nostril, left ear. There was sign of injury over her left eyebrow. On 03.03.2009 he had tendered written report before the Officer-in-charge (exhibited). Police came and prepared inquest report (exhibited). Police took his further statement. Identified the accused. During cross-examination at para-6, he had stated that Sasural of Manju Devi lies 70-80 K.M. from his village. He had further stated that they have not gone to Jhajha. They directly gone to Manatola. They have gone inside house where found dead body over cot in a courtyard. None of the family members were indulged in ritual. None were present. Even after their arrival, none of the co-villager came, dead body was covered with a cloth. They have not changed the position of the dead body. There was no bloodstain over the cloth by which dead body was covered. After sometime, the neighbours came but he is unable to disclose their names. They remained whole night. They have not gone to P.S. in the night. In para-6 he had further stated that on 02.03.2009 Pramod Kumar Verma had informed regarding ailment of Manju. He had also informed that she was admitted at Jhajha. In para-7 he had deposed that he was also interested in getting his son-in-law appointed and for that, he had contributed the amount. In para-8 he had said that marriage was solemnized under congenial atmosphere. Deceased had gone to her Sasural. Deceased visited



his place at different occasions. She had also begotten a son after two years of marriage. At that very time he had gone there with gift. No case was instituted at an earlier occasion though panchayati was convened. In para-9 he had denied the suggestion that as he had demanded the money from Sasuralwala of Manju after her death which they refused on account thereof, instant case has been filed.

21. PW.8, Sheo Shankar Prasad Verma is co-villager of the appellant who had deposed that Manju Devi was married with Pramod Kumar Verma about four years ago. She had begotten a child. Manju is dead. She died at her Sasural. At the time of occurrence she was pregnant of seven months. He had further stated that on the alleged date of occurrence she had gone outside to meet nature's call and during course thereof, she developed some sort of fear psychosis as a result of which, she suffered from mysterious disease and for that, she was taken to Jhajha. Doctor had referred to Patna and during midst thereof, she died. Then thereafter, he was declared hostile. In usual course, during cross-examination he had supported the case of the defence, that she was being kept in good condition at her Sasural. There was no demand.

22. PW.10 is a formal witness who had exhibited the endorsement over the written report as well as formal FIR. PW.11 is also a formal witness who had exhibited the cheque issued but informant in favour of appellant Pramod, as well as its receipt having tendered by the Bank relating to its encashment.

23. PW.12 is the Investigating Officer. He had deposed that after registration of the case, Officer-in-charge had entrusted



him with the investigation and during course thereof, he took further statement of the informant, statement of witnesses, prepared inquest report and sent the dead body for postmortem. He had inspected the place of occurrence which happens to be house of accused persons and then had detailed the topography of the P.O. including location of the dead body having kept in the courtyard over a cot. Further disclosed boundary of the aforesaid house. Recorded statement of the witnesses. Arrested Pramod Kumar Verma. Procured postmortem report and then, submitted charge sheet. During cross-examination at para-4 he had stated that on cursory perusal of the dead body, he found pregnancy but, he had not mentioned the same in the inquest report. In para-5, he had stated that he had received postmortem report on 24.03.2009. He had not requested the doctor to transmit the same at an earliest. He had further stated that he had not gone through the postmortem report. In para-6, he had stated that he had not found any kind of objectionable item at the place of occurrence. He had further stated that he had not gone to the Branch Manager of Udnawah Gramin Bank nor he took his statement. He had further stated that he had not inquired over treatment having provided to the deceased at Jhajha. He had further stated that at the time of inspection of the P.O., villagers have assembled but he had not taken statement of any of them. He had further stated that he had not investigated whether Pramod Kumar Verma was one of the candidate of Para Teacher or not. He had further stated that he had not obtained call details.

24. From the evidence as available on the record, it is evident that deceased was done to death otherwise than normal circumstance at her Sasural and the finding of PW.9 doctor



substantiated the same. It also goes out of controversy that deceased was done to death within seven years of her marriage. With regard to demand of dowry and torture, it is evident that just two months prior to the death of occurrence father of deceased had given cash as well as cheque and the said cheque has been brought up on record by PW.11 having been encashed by the appellant Pramod. Furthermore, there happens to be no denial at the end of appellants on that very score nor there happens to be any kind of explanation to suggest that aforesaid cheque was issued against some other activity and not to satisfy the demand. Now, the question remains whether that demand will constitute dowry, and in likewise manner, subsequent event of torture.

25. In Bachni Devi & Anr. v. State of Haryana through Secretary, Home Department reported in **AIR 2011 SC 1098** wherein similar question was raised the Apex Court had decided the issue explaining **Appasaheb** case reported in **AIR 2007 SC 763** in the following terms:

“**16.** While dealing with the term 'dowry' in Section 304B IPC, this Court in the case of Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar (2005) 2 SCC 388 held as under :

"14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ... or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC."

“**17.** Learned counsel for the appellants heavily relied upon the following observations made by this Court in the case of Appasaheb (AIR 2007 SC 763):

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed



as a demand for dowry as the said word is normally understood."

The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. Appasaheb (AIR 2007 SC 763) cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial."

26. In Maya Devi and another v. State of Haryana

reported in **2016 Cr.L.J. 629**, the desirability of Section 304B as well as implication of Section 113B of the Evidence Act has been properly explained and concluded as follows:

"21. Section 304B IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 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 died an unnatural death by committing suicide as she was subjected to cruelty/harassment by her husband and in-laws in connection with the demand for dowry which started from the time of her marriage and continued till she committed suicide. Thus, the provisions of Sections 304B and 498A of the IPC will be fully attracted."

27. True it is that Investigating Officer PW.12 has been cross-examined on the score that whether he had investigated over the fact that the appellant Pramod to be an applicant against



the post of Para Teacher, however, it is crystal clear that none of the prosecution witnesses more particularly the mother Tara Devi, PW.4 and father Jagdish Verma, PW.7 who categorically stated that demand was on that very score, part payment was made only two months ago from the date of occurrence and further having been duly substantiated by Ext.5, 5/1, neither been denied nor challenged. Not only this, they have not been challenged controverting their evidence with regard to status of appellant Pramod Kumar Verma as one of the candidate over Para Teacher. On the other hand, PW.7 informant was cross-examined to the extent whether he will see his son-in-law appointed or not. The demand, as advanced from the parents of deceased was in the background of relationship bonded with marriage, and so, it has got proper inter connectivity. That being so, the prosecution is found to have substantiated its case and on account thereof, in terms of Section 113B of the Evidence Act the presumption is to be taken against the appellant /accused. However, the same is subject to rebuttal and so, the conduct of the appellants have to be seen in order to search out whether if they have been able to properly discharge the legal obligation.

28. In order to discharge such presumption in terms of Section 113B, defence has exhibited Ext.A, the prescription containing names of Dr. Kanhaiya Kumar Shethi as well as Dr. Jaya Mitra and got it exhibited through DW.1, Keshav Tanti who during examination-in-chief had stated that it happens to be in pen of Dr. Jaya Mitra. Furthermore, it has also been deposed by him that signature of husband of deceased Manju is also there. During cross-examination, this witness had categorically admitted that there happens to be no signature of the doctor over the same



and that speaks a lot with regard to genuineness of the document. Moreover, presence of appellant Pramod Kumar Verma over the aforesaid prescription is indicative of the fact that this false document has been created by him in order to save his skin. That being so, it is apparent that defence had failed to discharge its obligation to the hilt.

29. Taking into account the evidence as discussed above, the reasoning so expressed, it is found and held that prosecution had succeeding in proving its case simultaneously, defence had failed to discharge its onus and that being so, the finding so recorded by the learned lower court happens to be just, legal and proper and is accordingly, affirmed. Consequent thereupon, these appeals sans merit and are dismissed. Appellant Pramod Kumar Verma is under custody which he will remain till saturation of the period of sentence while bail bond of appellants Tulsi Prasad Verma, Chunki Devi, Chhote Lal Verma (Criminal Appeal (SJ) No. 136 of 2015) are hereby cancelled with a direction to surrender before the learned lower court within fortnight to serve out the remaining part of sentence failing which, the learned lower court take proper step in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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