

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.706 of 2013

Arising Out of PS.Case No. -45 Year- 2011 Thana -BHAIRABASHTHAN District- MADHUBANI

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1. Raghav Jha @ Raghav Jha Son Of Sri Kunwar Jha Resident Of Village Lohna,
P.S. Bhairav Asthan, District Madhubani.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Nilesh Kuamr, Advocate
Mr. Ravi Ranjan, Advocate
For the Informant : Mr. Pankaj Kumar Jha, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-04-2017

This appeal is directed against judgment dated 24.08.2013 and order of sentence dated 27.08.2013 passed by Sri Man Mohan Sharan Lal, 3rd Additional Sessions Judge, Madhubani passed in Sessions Trial No.215 of 2012, arising out of Bhairabsthan P.S.Case No.45 of 2011, G.R. No.1012 of 2011, by which he has convicted the sole appellant under Section 304B and 498A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act and sentenced him to undergo R.I. for ten years for offences punishable under Section 304B of the IPC and two years R.I. for the offences punishable under Section 498A of the Indian Penal Code and he has also been fined of Rs.5000/- under Section 498A of the Indian Penal Code and in default



of payment of fine, to undergo R.I. for three months. The appellant has further been sentenced to undergo R.I. for two years under Section 4 Dowry Prohibition Act and in default of payment of fine, R.I. of three months. The learned trial court has further directed that all the sentences shall run concurrently, however, the appellant has been acquitted from the charges under Section 302 of the Indian Penal Code and U/S 3 of the Dowry Prohibition Act.

2. The prosecution case in short is that Umesh Chandra Mishra, (P.W.5) filed a written report on 18.09.2011 at 06:00 P.M. before the Police stating therein inter alia that marriage of his daughter, Bandana Kumari, was solemnized with the appellant 19 months ago and after the second marriage, his daughter was taken to the maternal home by the appellant and other accused persons. It is also stated that the accused persons threatened and asked her to bring 5 Tola gold from her father, which was informed by the deceased to her mother but they did not take it seriously. It is also a case that three months prior, she gave birth to a child and today an information was given about date of 'bidagari' of her daughter fixed on 30.9.2011, which was accepted by the accused persons, however, again a demand of 5 Tola gold was made by the appellant and further threatened of dire consequences. It is also a case of the prosecution that thereafter, he received information that his daughter died due to 'current' and he



immediately came to the house of the accused and found the dead body at 'Verandah' and also found sign of assault as well as blackening on her neck that clearly shows that she has been killed. It is also his case that the whole articles of his daughter was scattered in her room and her petticoat was besmeared with stool and he did not find any 'Jewar' of daily use. He also found articles of cremation. He has further alleged that all the accused persons including the appellant have killed her.

3. On the basis of aforesaid written report, Bhairabasthan P.S.Case No.45 of 2011 was registered against the appellant and other persons under Section 498A, 323 and 304B of the Indian Penal Code and 3 & 4 of the Dowry Prohibition Act and after investigation, the police has submitted charge-sheet against the appellant only under Section 304B and 498A of the Indian Penal Code as well as under Section 3 & 4 of the Dowry Prohibition Act and the investigation was kept pending against the other accused persons, which was committed to the court of Sessions, which ultimately came to the file of Sri Man Mohan Sharan Lal, 3rd Addl. Sessions Judge, Madhubani for trial and disposal.

4. The appellant has been charged under Section 498A and 304B of the Indian Penal Code and under Section 3 & 4 of the Dowry Prohibition Act.



5. The learned trial court after the trial convicted and sentenced the appellants under Section 304B of the Indian Penal Code as well as under Section 498A of the Indian Penal Code and also under Section 4 of the Dowry Prohibition Act, however, the appellant has been acquitted from the charges under Section 302 of the Indian Penal Code and U/s 3 of the Dowry Prohibition Act.

6. The appellant has assailed the judgment and order and the main ground of the appellant is that the prosecution has not been able to prove the demand of dowry as well as torture in this case and for conviction under Section 304B of the Indian Penal Code, it is well established practice that the prosecution has to prove; (i) Death within seven years of marriage; (ii) Death under unnatural circumstances; (iii) Demand of dowry; (iv) Torture and cruelty of the deceased with respect to demand of dowry and (v) Torture and cruelty in connection with demand of dowry soon before death.

7. It has been argued in the present case that the prosecution has miserably failed to prove the prosecution story of demand of dowry and cruelty, as such, the prosecution has failed to prove charge under Section 304B and Section 498A of the IPC and in support of his contention, the learned counsel for the appellant has cited decision of Hon'ble Apex Court reported in **2013BLJ (4) 179 SC, 2009 (16) SCC 778, AIR 2003 SC 2865.**



8. On the other hand, learned A.P.P. and the learned counsel for the informant has submitted that there are cogent and sufficient materials available on record that clearly shows that the appellant was demanding 5 Tola gold prior to the occurrence and accused persons threatened of dire consequences, if the demand is not fulfilled and there was finding of the Doctor showing cause of death due to strangulation. It has also been argued that the death of the deceased was within five years of her marriage, as such prosecution has been able to establish its case under Section 304B & 498A of the Indian Penal Code. In support of this contention, learned counsel for the informant has cited decisions of Hon'ble Apex Court reported in **AIR 1995 SC 120, AIR 2003-2108 SC** and **AIR 1999 SC-146**.

9. On the aforesaid background, now the evidences have to be scrutinized. Prosecution has come with a case that the marriage of the deceased was solemnized just 19 months prior to the occurrence. It is also a case of the prosecution that she was tortured for demand of 5 tola gold and she was threatened on 18.9.2011 that if the demand is not fulfilled, she had to face dire consequences and thereafter on the same day, the deceased died and the Doctor has found the death due to strangulation.

10. In this case the prosecution has examined seven witnesses in support of his case, out of which, P.W.1 is Satrugan Jha, P.W.2 Nand



Kumar Jha, P.W.3 Anil Kumar Jha, P.W.4 Sudharshan Kumar Mishra, P.W.5 is Umesh Chandra Mishra (informant), P.W.6 is Dr. Pashupati Mishra and P.W.7 is Rajbansi Ram, retired Police Inspector and I.O. of the case and following documents are admitted into evidence on behalf of prosecution:-

Exhibit. 1, Signature of Shatrughan Jha over Seizure list.

Exhibit. 1/1, Signature of Nandan Kumar Jha over seizure list.

Exhibit. 1/2, Signature of I.O. over seizure list.

Exhibit. 2, Written Report.

Exhibit. 3, Post mortem Report.

Exhibit. 4, Inquest Report.

Exhibit. 5, Formal F.I.R.

11. On behalf of defence three witnesses have been examined and they are: D.W. 1, Naresh Jha, D.W. 2, Santosh Jha, and D.W. 3, Raghav Jha (appellant).

12. P.W.5 is informant of this case and he has supported prosecution case, so far factum of marriage within seven years is concerned and stated in his evidence-in-chief that the marriage was solemnized 19 months ago and his evidence also shows that when the deceased came on 'Bidagari', she told about the demand of 5 Tola gold and good clothes, for which she was tortured. His evidence also shows that she had disclosed about the same to his mother. His



evidence further shows that on 18.9.2011, he was at Biroul in his house and he was informed by his son that 'bidagari' of his daughter had been fixed on 30.9.2011 and the accused persons are ready for the same. His evidence also shows that on 18.09.2011, appellant told him about 5 'tola' gold and also told him about facing dire consequences, if the said demand is not fulfilled and at 1.00 P.M., he received information on telephone that his daughter, Bandana Kumari has died. His evidence further shows that he along with others went to the house of the deceased and saw the dead body of the deceased on the straw mat, having spot on her eyes and also deep spot on his waist, there was deep spot on right side of her neck and also on the back. His evidence also shows that inside of her room, some articles were scattered and also articles of cremation was there. He has given his written statement before the police and he has proved the written statement given in his writing and signature as Ext. 2. This witness has been cross examined at length and in his cross examination, he has stated at para 4 that after the marriage, the deceased came on 'bidagari' to his house along with the appellant and stayed there for nine days and they have come for 3-4 times, there was cordial relation between the appellant and his family members. Para 5 of his cross examination also shows that the appellant has never made any demand directly to him and further says that his daughter also had not



informed about the demand of dowry and he did not know, as to whom his wife told about the said demand. He has also admitted that thereafter he had no talk with the appellant rather he had a talk with the father-in-law. Para 5 of his cross examination also shows that when he had gone to her 'Sasural' of his daughter, at that time, the appellant, his father, mother and other relatives were present there but he has not been informed as to how she died. His evidence in para 11 also shows that he was also present at the time of post mortem but para 13 of his cross examination shows that he had not tried to get the dead body rather the dead body was sent to her 'Sasural' and further shows that after birth of the child of the deceased, she had gone to 'Sasural' after ten days. His evidence also shows that she was treated well and a suggestion had been given to this witness that he had lodged a false case with ulterior motive of some demand.

13. So far evidence of Shatrughan Jha (P.W.1) is concerned, his evidence- in -chief shows that the marriage was solemnized 19 months ago and three months prior she had a child also. His evidence- in -chief also shows that he had gone to her house and found the dead body on straw mat. This witness has also stated that the inquest report and the seizure list were prepared in front of him and he put his signature thereon and he also identified the signature of Nandan Kumar Jha over the inquest report. In cross examination, this witness



has stated that she was his niece. In Para 7 of his cross examination, he has stated that he enquired from the public, present there about her death and they disclosed that she died due to 'kai-dast' (diarrhea) His evidence in para 7 also shows that they have not asked for the dead body. In para 8, this witnesses has also stated that her niece had told about the demand of dowry to her mother and also told that they are pressurizing for that.

14. Nandan Kumar Jha (P.W.2) has also stated about the marriage, 18 months prior and after that on 18.9.2011, a phone call was received in his house that the deceased has died. His evidence further discloses that he saw bruise on the eye, neck and back of the deceased and further disclose that her petticoat was besmeared with stool and broken bangles were there and he has put his signature on the seizure list, which he has identified as Ext.1/1. In para 2 of his evidence, this witness has stated that Bandana Kumari was tortured for demand of gold and as the demand was not fulfilled, she was killed . In his cross examination at para 5, this witnesses has disclosed that at her 'sasural', 10 persons were there including the appellant, his father, mother and her aunt standing near the dead body. His evidence further discloses that the family members of the in-laws of the deceased has not tried for cremation. In para 6 of his cross examination, this witness has admitted that the story of demand of dowry was not



disclosed by the deceased to him. He has further stated that he had talk with the deceased one or two times in her 'maike' and evidence of this witness also disclose that father -in -law of the deceased was friend of his uncle.

15. Evidence of Anil Kumar Jha (P.W.3) shows that he has went with the informant to 'sasural' of the deceased and in para 2, he has stated that there was demand of 5 Tola gold and clothes by the appellant and his family members and this witness was discharged as nobody is available for further cross examination. His evidence does not disclose, as to what is his source of information about demand of dowry and as to whether he is any relative of informant (P.W. 5) or not ?

16. Sudarshan Kumar Mishra (P.W.4) is brother of the deceased and his evidence- in -chief also discloses death of deceased on 18.9.2011 and further stated that the deceased was married three years prior with the appellant and on information, he went there and saw the dead body of the deceased and he has also saw the sign of abrasion on the eye and back . He has also stated in his evidence that whenever he used to go to her 'sasural', she used to talk that her husband is saying that good clothes and ornaments have not been given but she has not stated about the demand by the other accused persons. His evidence also shows that on 18.9.2011, he had fixed the date of 'bidagari' of



the deceased on 30.9.2011 and he had been told that at the time of 'bidagari', fulfil the demand of the appellant otherwise anything can happen and thereafter he received information of her death. In his cross examination at para 4, he said that when she was staying in her 'maike', their conjugal life was found cordial and six months prior, she had gone to her 'sasural'. His evidence in cross examination further discloses that he went to her 'sasural', 2-4 times and her family members were happy due to birth of a child and relationship with the appellant was also cordial with her but whenever he went to her 'sasural', she used to tell his brother-in-law that his demand will be fulfilled when any occasion comes. His cross examination at para 8, also disclosed that he received information that the deceased is suffering from diarrhea and she died on way while they were taking her to Doctor. In para 7 of the cross examination also discloses that he enquired about the death of the deceased from the villagers and they told that she died due to 'kai and dast' or current. His evidence in Para 10 further shows that they have not asked for the dead body nor it was given to them and his evidence further shows that they have filed a petition before the High Court for custody of the child of the deceased.

17. Rajbansi Ram (P.W.7) is I.O. of the case and his evidence shows that he had registered the case on the basis of written report of



the informant (P.W.5) and take over investigation himself . He has inspected the place of occurrence, prepared inquest report, took the statement of the witnesses, obtained post mortem report and after completion of the investigation, submitted charge-sheet against the appellant under Section 498A, 323 , 304B/34 of the IPC as well as under Section 3/4 of the Dowry Prohibition Act and kept the investigation pending against the other accused persons . His evidence in para 6 of the cross examination further disclose that he arrested the appellant from his house. In para 7, his evidence disclose that he had enquired and came to know that the deceased was not treated by any Doctor but he has not written anything in his diary .

18. P.W.6 is the Doctor, who has performed post mortem and he has stated in his evidence on 19.9.2011 that he was posted at Sadar Hospital, Madhubni and he performed the post mortem of the dead body of Bandana Kumari, wife of the appellant, which was identified by the Chaukidar I/C, Pulkit Das at 11.15 A.M. and he has found following ante mortem injury :

i. left eye ball was swollen with echymosis in conjunctiva with swollen cornea.

ii. Abrasion in left side of neck

iii. Bruise 3" X 1" over back

2. Ono dissection, larynx, and trachea were found fractured with



blood and blood clots in tracheal cavity heard, left chamber was empty and right chamber was full of blood. All viscera namely lung, liver, spleen and kidney were found congested. Urinary bladder was found empty. Uterus was non gravide, stomach contained indigested food faecal Materials and gases and intestine contained. Gases and faecal matters. Times since death is twenty four hours. Death, in his opinion, was due to asphyxia caused by strangulation. He proved post-mortem report as Ext.3. He has also been cross examined by the appellant and he has stated in his cross that in the case of diarrhea, stomach may contain indigested food and faecal material and gases. The physical appearance of the dead body shows the strangulation. Further stated that strangulation can not be manufactured.

19. Considering the prosecution evidence, as discussed above, it appears that P.W. 5, has supported the prosecution case regarding death of the deceased within seven years of her marriage and also that dead body was found at 'Verandah' of the appellant but so far allegation of cruelty for demand of dowry is concerned, there is nothing in his evidence to support the allegation of cruelty. No doubt his evidence-in-chief shows that there was demand of dowry of 5 'bhar' Gold and good clothes, he has been told by the appellant that he will have to face dire consequences, if demand of dowry is not fulfilled but his cross-examination shows that he has categorically



stated in para -5 of his cross-examination that prior to the marriage or after marriage, his son-in-law has not made any demand. His wife also not disclosed him about the demand of dowry. Further his evidence in para 15 shows that his daughter was happy in her sasural with her husband. From the discussions made above, evidence of informant relating to demand of dowry and cruelty, does not appear to be trustworthy and believable.

20. So far evidence of other witnesses are concerned, evidence of P.Ws shows about the factum of marriage within seven years and further dead body of the deceased was found at the house of appellant. However, evidence of cruelty and torture is concerned, P.W.1, had stated in para -8 that her niece (deceased) had told her mother about the demand of dowry and also about the fact that they used to pressurize the deceased but the same is hearsay evidence only. Evidence of P.W. 2 also shows about torture for demand of dowry and as the demand was not fulfilled, deceased was killed but in para -6 of his, cross-examination, this witness has stated that story of demand of dowry was not disclosed to him by the deceased. His evidence further disclosed that he had talked with the deceased one or two times in her 'maike' and there is nothing in his evidence to show about source of his knowledge about demand or torture. As such, his evidence with regard to demand and cruelty by the appellant, does not appear to be



trustworthy and beyond doubts. P.W. 3, has also stated about the demand of 5 'Bhar' gold and clothes by the appellant and it further appears that this witness was discharged as nobody was available for his further cross-examination. However, his evidence does not show that as to whether he was related to the informant and his family members and what is his source of informant with regard to the above stated demand and further there is absolutely nothing in his evidence to show that the deceased was subjected to cruelty before her death. Evidence of P.W. 4, brother of the deceased also shows that whenever he used to go to her 'sasural', deceased used to tell him that her husband always used to taunt that gold and other ornaments have not been given but she had not stated about the demands made by other accused persons. His evidence also shows that on 18.09.2011, he had fixed the date of 'Bidagari' of the deceased on 30.09.2011 and it was told by the appellant that if the demand was not fulfilled at the time of 'Bidagari' anything can happen and thereafter, he received information of her death but his cross-examination in para -4, shows when deceased was living in her 'maike' her conjugal life was cordial and six months prior, she had gone to her 'sasural'. His cross-examination further shows that he had gone to the deceased's sasural two to four times and her husband and other family members were happy with the birth of a child and relationship with the family was



cordial. His cross-examination further shows that deceased used to tell the appellant that his demand will be fulfilled when any such occasion arises. On close scrutiny of evidence of the witness also it does not appear that even if the appellant had demanded 5 'tola' gold and date of '*bidagari*' was fixed on 30.09.2011, after talk with the accused persons and he has assured to fulfill his demand when occasion arises, therefore, as to what was the occasion for appellant for killing the deceased on the same day, this creates a serious doubt about his evidence.

21. Defence has come with a case that the deceased died due to kai and dast (diarrhea) and for that she was also treated. In support of this contention, he has examined two witnesses and apart from that, appellant has got examined himself also as defence witness and they have stated that deceased died due to kai and dast (diarrhea) and for that she was treated by village doctor. Further defence of the appellant and other accused persons is that they have falsely been implicated in this case as the informant had demanded Rs. 10 lakhs and stated that otherwise he will implicate them in false case.

22. In the present case, sole appellant has been charged under Section 498A, 323, 304B/34 Indian Penal Code and Section 3 & 4 of the Dowry Prohibition Act and was convicted under Section 304B, 498A Indian Penal Code and also under Section 3 & 4 of Dowry



Prohibition Act.

23. So far Section 304B Indian Penal Code is concerned, it has been incorporated in the Criminal Law Second Amendment Act, 1983, which has been brought with a view to control the menace of death due to dowry and Section 304(B) provides as follows:-

(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. Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

24. Accordingly, amendment to Section 113B has also been incorporated in the Evidence Act, which reads as follows:-

“Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been



subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code.”

25. On plain reading of Section 304B as well as Section 113B of Evidence Act, it appears that there shall be presumption of dowry death if prosecution has been able to establish following:

- (i) death of the woman must have caused by burns or bodily injury or otherwise than normal circumstances.
- (ii) such deaths must have occurred within seven years of her marriage.
- (iii) soon before her death, woman must have been subjected to cruelty or harassment by her husband or his relatives.
- (iv) such cruelty or harassment was for, or in connection with, any demand for dowry.
- (v) such cruelty or harassment should have been meted out to the woman soon before the marriage.

26. On conjoint reading of both the Sections i.e. 304B Indian Penal Code and 113B of Evidence Act, it is clear that once prosecution succeeds in proving the above circumstances, there shall be presumption of “Dowry Death” against the husband or relative of husband. The decisions cited by both the parties also support above



proposition. At the same time, for drawing presumption, prosecution has to prove the above circumstances beyond all reasonable doubts i.e there must be cogent and reliable evidence in support of above circumstance.

27. In the aforesaid background, let me consider the evidence, which has already been discussed above.

28. So far death of deceased is concerned, there are consistent evidence of prosecution witnesses supported by medical evidence of Doctor (P.W. 6) and also corroborated by post-mortem report (Exhibit. 3) that death of deceased was due to strangulation. As such, so far death of deceased is concerned, that is not under normal circumstances and caused due to strangulation.

29. There are also consistent evidence available on record that deceased died within seven years of her marriage. In this case, appellant got himself as defence witness but he has not denied the factum of death within seven years of her marriage.

30. So far subjecting the deceased to cruelty or harassment soon before death and that too in connection with demand of dowry is concerned, the word “cruelty” has not been defined under Section 304B Indian Penal Code but the same has already been defined in Explanation part of Section 498A Indian Penal Code and that shows:

Explanation:-



(a) “any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

31. Furthermore, in case of Section 304B Indian Penal Code, prosecution has also to prove that cruelty has been meted out to the deceased soon before her death and in connection with the demand of dowry.

32. In the present case, from the evidence as discussed above, it appears that though there are some prosecution evidence is there about the demand of 5 bhar Gold but on close scrutiny of those evidences, they do not appear to be believable and trustworthy, so far evidence of P.W. 5 is concerned, it has been stated that the deceased was subjected to cruelty soon before her death in connection with dowry, there is no clinching and reliable evidence available, no doubt, prosecution has come with a story that appellant threatened of dire consequences if demand is not fulfilled but that evidence is also not appear to be reliable as evidence of P.W. 4 and P.W. 5 shows that she was happy in her sasural.

33. From the discussions made above, so far evidence to show that



the deceased was subjected to cruelty or harassment, which is also one of the most vital circumstance to be proved by prosecution, it appears from discussions made above that there is no cogent or reliable evidence available on record to show that the deceased was subjected to cruelty or harassment. Moreover, in this case, mother of the deceased might have been a crucial witness, so far demand of dowry and subjecting her to cruelty is concerned, but surprisingly, she has not been examined by the prosecution as witness in this case. In this case appellant got himself examined as D.W. 3 but no suggestion was given to him about story of demand or about torture or harassment.

34. Considering the discussions made above, it appears that though the deceased died in mysterious circumstances due to strangulation and within seven years of her marriage but so far demand of dowry and subjecting the deceased to cruelty or harassment soon before the death is concerned, evidences are not cogent and reliable.

35. In this case petitioner has been convicted under Section 304B as well as 498A Indian Penal Code and also under Section 3 & 4 of Dowry Prohibition Act, but as discussed above, prosecution has failed to prove the prosecution story of demand of dowry and subjecting the deceased to cruelty or harassment soon before her death. As such no presumption can be drawn for conviction of appellant under Section 304B Indian Penal Code. As such I have come to the irresistible



conclusion that prosecution has failed to prove its charges against the appellant under Section 304B and 498A Indian Penal Code and under Section 4 of Dowry Prohibition Act. Hence conviction of appellant under above Sections of Indian Penal Code as well as Dowry Prohibition Act, is not sustainable.

36. In this case, appellant was also convicted under Section 302 Indian Penal Code but the Trial Court had acquitted the appellant from the charges under Section 302 Indian Penal Code.

37. In this case death of the deceased is due to strangulation and further dead body was found at the house of the appellant and other accused persons and as such burden to prove the death of deceased, lies on the appellant as mentioned in Section 106 of Indian Evidence Act.

38. However, in the present case, it is an admitted fact that informant and family members were informed about death of the deceased and evidence also shows that prior to death, there was no tension between the parties and there is no evidence that only appellant and none else was present at the time of occurrence. Hence burden of proof is not only on appellant to explain the circumstances.

39. Furthermore, no appeal either by the State or by the informant has been preferred against acquittal of appellant under Section 302 Indian Penal Code.



39. In view of discussions made above, judgment and order of conviction and sentence passed against the appellant under Section 498A, 323, 304B/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act is not sustainable in the eye of law.

40. Accordingly, this appeal is allowed. Conviction and sentence of the appellant are set aside. As appellant is in judicial custody, he is directed to be set at liberty forthwith, if not required in any other case.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	NAFR
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