

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.42 of 2014

Arising Out of PS.Case No. -170 Year- 2011 Thana -CHANPATIA District-
WESTCHAMPARAN(BETTIAH)

1. Om Prakash Yadav @ Bhukhal Yadav S/O Shiv Prasad Yadav Resident Of
Village- Karnpati, Police Station- Chanpatia, District- West Champaran

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 26 of 2014

Arising Out of PS.Case No. -170 Year- 2011 Thana -CHANPATIA District-
WESTCHAMPARAN(BETTIAH)

1. Shushila Devi Wife Of Shiv Prasad Yadav R/O Karn Patti, P.S. Chanpatia, Distt
West Champaran
2. Shiv Prasad Yadav Son Of Jay Yadav R/O Karn Patti, P.S. Chanpatia, Distt West
Champaran

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 735 of 2013

Arising Out of PS.Case No. -170 Year- 2011 Thana -CHANPATIA District-
WESTCHAMPARAN(BETTIAH)

1. Asha Devi Daughter Of Shiv Prasad Yadav, Wife Of Pravesh Yadav Resident Of
Karn Patti, P.S. Chanpatia, District West Champaran. At Present Resident Of
Village- Bhawanipur, P.S.- Jogapatti, District- West Champaran

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :
(In CR. APP (SJ) No. 42 of 2014)
For the Appellant/s : Mr. S.S. Thakur



Mr. Arvind Kumar
For the Respondent/s : Mrs. Abha Singh

(In CR. APP (SJ) No. 26 of 2014)

For the Appellant/s : Mr. S.S. Thakur
Mr. Arvind Kumar
For the Respondent/s : Mr. Bipin Kumar
For the Informant : Mr. Akhileshwar Kumar Sinha

(In CR. APP (SJ) No. 735 of 2013)

For the Appellant/s : Mr. S.S. Thakur
Mr. Arvind Kumar
For the Respondent/s : Mr. Sanjeet Kumar Singh
For the Informant : Mr. Akhileshwar Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 23-06-2017

These appeals have been preferred against the judgment dated 29.10.2013 and order of sentence dated 30.10.2013, passed by Shri Nand Kishore Prasad Gupta, learned Adhoc Additonal District & Sessions Judge, Bettiah, West Champaran, in Sessions Trial No. 646 of 2011, by which the appellants in all the above appeals, have been convicted under Section 304(B)/34 Indian Penal Code and appellant Om Prakash Yadav alias Bhukhal Yadav, Shiv Prasad Yadav and Sushila Devi has been sentenced to undergo R.I. for ten years each and appellant Asha Devi has been sentenced to undergo R.I. for seven years. By the above judgment all the appellants have been acquitted from the charge under Section 302/34 Indian Penal Code.

Prosecution case in short is that P.W. 6, who is father of



the deceased lodged a written report before Officer Incharge Chanpatia police station, alleging therein *inter alia* that marriage of her daughter Rima Devi was solemnized with appellant Om Prakash yadav alias Bhukhal Yadav, son of appellant Shiv Prasad Yadav in the year 2007 and second marriage (Gauna) was done in the year 2009. It was alleged that at the time of marriage they had given the dowry as per their status. However, appellants used to torture his daughter (deceased) for demand of Rs. 50,000/-, for which a Panchayati was also held but after few days, the appellants again started demanding motorcycle and a golden chain, for which they used to harass and torture the his daughter (deceased). It is also his case that in the night of 30.06.2011, he received information from his brother in law (Sadhu), Birjhan Yadav that appellants have killed his daughter by tightening a rope around her neck and had fled away.

On the basis of the aforesaid written report, a case being Chanpatia P.S. Case No. 170 of 2011 dated 30.03.2011 was registered against the appellants under Section 304(B)/34 Indian Penal Code. Police after investigation submitted charge-sheet against the appellants under Section 304(B)/34 Indian Penal Code and, thereafter, cognizance of the offence was taken and the case



was committed to the court of sessions, which ultimately came to the file of Shri Nand Kishore Prasad Gupta, Adhoc Additonal District & Sessions Judge, Bettiah, West Champaran.

It further appears from perusal of the record that in this case, charges were framed against the appellants under Section 304(B)/34 Indian Penal Code as well as under Section 302/34 Indian Penal Code.

Defence of the appellants as per cross examination and their statement under Section 313 Cr.P.C. is of innocence and complete denial of the occurrence. It further appears from the cross-examination that their defence is that the deceased died due to *kai and dast* (Diarrhea).

Learned Adhoc Additional District & Sessions, Judge -3rd vide impugned Judgment and order convicted the appellants under Section 304(B)/34 Indian Penal Code and sentenced them as stated above. However, he has acquitted the appellants from the charge under Section 302/34 Indian Penal Code.

Being aggrieved by the aforesaid judgment and order, the appellants have preferred present appeal.

From perusal of the record, it appears that in this case, altogether eight witnesses have been examined on behalf of



prosecution and they are; P.W. 1- Suganti Devi, P.W. 2- Birjan Yadav, P.W. 3- Mahant Yadav, P.W. 4- Paltan Yadav, P.W. 5- Krishna Yadav, P.W. 6-Shivjee Yadav, P.W. 7- Dr. Ashok Kumar Choudhary and P.W. 8- Radha Mohan Pandit, out of which P.W. 6 is the informant as well as father of the deceased, P.W. 5 is the brother of the deceased, P.W. 7 is the Doctor, who performed post mortem examination on the dead body of the deceased and P.W. 8, is Investigating Officer.

Apart from above, following documents have been brought on record and marked as exhibits and they are; ext. 1 fardbeyan, ext. 2 signature of informant on fardbeyan ext. 3 postmortem report and ext. 4 inquest report.

On behalf of the defence also, two witnesses have been examined and they are; D.W. 1, Akhilesh Kumar Yadav and D.W. 2, Lalan Yadav.

P.W. 6 is the informant as well as father of deceased and he has stated in his evidence in chief that marriage of her daughter Rima Devi was solemnized in the year 2007 with Om Prakash yadav alias Bhukhal Yadav and at that time '*Bidai*' ceremony was not performed and in the year 2009, her second marriage '*Gauna*' was performed and, thereafter, she went to her '*Sasural*'. His chief



further discloses that one month after '*Bidai*' appellants started demanding one motorcycle, golden chain and Rs. 50,000/- and for that they used to torture and assault her. He has also stated that her daughter had informed him about the torture and cruelty for demand of the above stated articles and she also told the same to the children of this witness, when they had gone to her '*Sasural*'. His evidence also disclosed that in the year 2010, a Panchayati was also held but the appellants did not agree and on the date of Panchayati also, they have assaulted the deceased. His evidence also shows that on the date of occurrence at about 12 to 12.30 in the night, he received phone call from his brother – in- law (Sadhu) Birjan Yadav that her daughter has been killed by appellants and on that informant along with his son Krishna Yadav and two other neighbors went to Chanpatia police station and gave a written report. Thereafter, police went to the place of occurrence and saw the dead body of the deceased lying on the bed (palang) and all the people of '*Sasural*' were absconding. His evidence in chief further discloses that he found some spot on the neck of the deceased, from which, it appears that she was killed by tightening a rope around her neck. His evidence also discloses that he found some injury on right hand of the deceased and also blood spot on her back, which



shows that she had been assaulted. He has proved the written statement as well as his signature on written statement as ext.1. From the evidence discussed above, it appears that P.W. 6 (informant), has supported the prosecution version as stated in written report by him. This witness has been cross-examined at length and even in his cross-examination, there is nothing in his cross-examination to discredit his evidence. His attention was also drawn towards his earlier statement made before the police in order to show contradictions from earlier statement made before the police but those contradictions are not important to discredit the other evidence of this witness.

P.W. 5, Krishna Yadav, is brother of the deceased and he has also supported the prosecution story in his evidence in chief with regard to torture, assault and murder of the deceased by the appellants for demand of dowry. He stated in his evidence in chief that Birjan Yadav, '*Mausa*' (uncle) informed them about the occurrence. His evidence further shows that they reached the '*Sasural*' of his sister and found that whole family member of his sister's '*Sasural*' had fled away and dead body of his sister was lying on the palang (bed). His evidence in chief supports the factum of marriage of the deceased in the year 2007 and '*Gauna*' (second



marriage) in the year 2009, as well as demand of Rs. 50,000/-, motorcycle and golden chain and also about torture with regard to aforesaid demand. His evidence also discloses that an oral Panchayati was held but it was of no effect. His evidence further discloses that in the evening of the occurrence, the appellants had also assaulted his sister and had spread a rumour that his sister had fled away some where, though she was in her matrimonial house as told to him by his '*Mausi*' (Aunt) Suganti Devi-P.W. 1. Hence P.W. 5, who is son of the informant and he has also supported the prosecution case.

P.W. 1 is the '*Mausi*' (maternal aunt) of the deceased and she claims to be the neighbour of the appellants. Her evidence in chief discloses that on the date of occurrence, she was at her house and in the evening Rima Devi was assaulted by the appellants. She has further stated that they spread a rumour that the deceased had fled away. It further appears from her evidence in chief that at 11.00 P.M. in the night, she heard a screaming sound and she came along with her neighbor to the house of the deceased and saw the dead body of the deceased was lying on '*palang*' (bed). This witness has also stated about the factum of marriage of deceased about four years ago and two years back '*Gauna*' of the



deceased was done and, thereafter, she had come to her '*Sasrua*l' but the appellants used to demand motorcycle, golden chain and Rs. 50,000/-. This witness has further stated that her house is in front of the house of the appellants on the another side of road. Her evidence in chief also discloses that deceased was the daughter of her sister and the deceased used to disclose about she was being subjected to torture and cruelty by the appellants for demand of above stated articles and used to say had her father fulfilled the demand, she might not have to face the torture. This witness has been cross examined at length but there is nothing to discredit her evidence.

P.W. 2, Birjan Yadav is the husband of P.W. 1 and '*Mausa*' (uncle) of the deceased and is resident of the village of the appellants. His evidence in chief discloses that at about 11.00 P.M. in the night on the date of occurrence, his daughter informed him about some sound coming from the house of deceased, thereafter, he along with others went to the house of the deceased and saw the dead body of the deceased was lying on the '*Palang*' (bed), thereafter, he informed the father of the deceased on phone. Evidence of this witness also discloses that marriage of the deceased was solemnized four years ago but '*Bidai*' was done two



and half years after marriage. His evidence in chief also supports the prosecution story with regard to demand of motorcycle, ornaments and Rs. 50,000/- and of assault to the deceased. His evidence further discloses that on the date of occurrence also, appellants had assaulted the deceased. On perusal of his cross-examination, it appears that there are some contradiction in his evidence to his earlier statement made before the police, especially regarding assault to deceased in connection with demand and about assault on same day. However, even on the court's question, he has stated that they used to demand dowry and he has further stated that his wife used to go to save the deceased.

P.W. 3, Mahant Yadav is also resident of village of appellants and his evidence also shows that he saw the dead body of the deceased having mark of violence on her neck and father of the deceased disclosed that the appellants had killed her for demand of dowry. This witness has also stated about the marriage and further stated that he had heard about the assault. His evidence also disclosed about Panchayati in connection with assault, in which he was also a Panch, in spite of cross-examination, there is nothing in his cross-examination to discredit his evidence, but he has admitted in his cross-examination, that in his presence, no occurrence had



taken place.

P.W. 4, is also a villager of the appellants and his evidence in chief discloses that he saw the dead body of Rima Devi on 'Palang' (bed) and there was mark of violence around her neck. This witness has also supported the factum of marriage of the deceased four years ago and 'gauna' after two years of marriage. This witness has also stated about the demand of dowry and assault to the deceased with respect to the said demand of dowry. His evidence further discloses that in the evening of the occurrence also, appellants had assaulted the deceased. Attention of this witness has also been drawn towards his earlier statement made before the police but he has stated that as *Daroga Ji* has not asked about the same, he has not stated about the marriage and 'Gauna' and also about assault to the deceased by the appellants in the evening of the occurrence. His cross-examination further shows that he is a close neighbor of the appellants.

P.W. 7 is Doctor Ashok Kumar Choudhary, who has conducted post mortem examination on the dead body of deceased –Rima Devi and has found following ante-mortem injuries:-

(i) On external Examination – Ligature mark over neck, whole neck area involved anteriorly and posteriorly in the middle



part. Ligature mark black in colour 2 C.M. breadth.

(ii) On dissection – Neck – neck vein engorged. Beneath ligature mark hemorrhage and blood clots in the skin trachea – congested. Blood clot present. Lungs were found congested. Pulmonary vessels were found congested, Hear- right side full, left side empty. Stomach – empty. Uterus – non gravid. Urinary bladder – empty. Time elapsed since death - within 24 hours.

(iii) Injury to neck ante mortem caused by ligature. Cause of death- asphyxia due to strangulation by ligature.

This witness has neither been cross-examined nor any suggestion has been given to him with regard to cause of death due to hanging or it was suicidal.

P.W. 8 is the Investigating Officer in this case and he has stated in his evidence in chief that he has visited the place of occurrence and also prepared inquest report, thereafter, he recorded the statement of witnesses and sent the dead body for post mortem. His evidence in chief also shows that has submitted charge-sheet under Section 304B/34 Indian Penal Code. Further evidence of this witness shows that a dead body was found in the house of appellants and he has prepared inquest report of the dead body of the deceased, which is ext. 4.



On behalf of the defence also, two witnesses have been examined. D.W. 1 has stated that there was no talk of dowry between the accused persons and the informant and accused persons were not torturing the deceased for demand of dowry.

D.W. 2 has also stated that he has no knowledge about the demand of dowry or torture and also no knowledge about the Panchayati.

It has been argued on behalf of the appellants that for conviction under Section 304B/34 Indian Penal Code, prosecution has to prove that the deceased was subjected to cruelty soon before her death and that too with respect to demand of dowry. However, so far the deceased being subjected to cruelty soon before her death is concerned, no cogent and reliable evidence is available on record with respect to subjecting her to cruelty soon before her death that too in connection with demand of dowry. It has also been argued that P.W. 1 and 2 has stated about the assault in the evening of the day of occurrence but P.W. 2 had not stated so before the police, as such their evidence is not free from embellishment. It has also been submitted that P.W. 1 had stated in her evidence in para -9 that when deceased Rima Devi was assaulted, she had gone along with Akhilesh, her mother and her husband but the said Akhilesh



was examined as defence witness and his evidence shows that he was not present in the village on that day. Evidence has also been brought about a “Panchayati” but evidence shows that the said “Panchayati” was with respect to ‘marpit’ and not in connection with demand and there is no cogent and reliable evidence available with regard to demand of dowry. Further in this case, almost all the witnesses are related witnesses and no independent witness has been examined so far demand of dowry and cruelty to deceased is concerned. Learned counsel for the appellants has further argued that so far Section 302/34 Indian Penal Code is concerned, appellants have been acquitted from the aforesaid charge and no appeal has been preferred by the informant or State against the acquittal of the appellants under Section 302/34 Indian Penal Code. It has further been argued that in this case no charge under Section 3/4 Dowry Prohibition Act., has been framed and as such conviction of appellants under Section 304B/34 Indian Penal Code is not sustainable in the eye of law. In support of this contention learned counsel for the appellants has relied upon a decision of Hon’ble Supreme Court in the case of *M. Chandra V. M. Thangamuthu And Another* reported in 2010(9) SCC 73. Learned counsel for the appellants on the basis of above contention, submitted that prosecution has failed to prove its charge against the appellants



under Section 304B/34 Indian Penal Code and thus the order convicting the appellants, is not sustainable in the eye of law.

On the other hand, learned counsel for the State has argued that in this case there are ample evidence to show that the deceased died within seven years of her marriage and that too under abnormal circumstances and there are enough reliable and consistent evidence available on record that the deceased was subjected to cruelty by the appellants in connection with demand of dowry. Hence conviction of appellants under Section 304B/34 is just and proper and does not require any interference.

Heard both sides. On conjoint reading of Section 304B Indian Penal Code as well as Section 113B of Indian Penal Code, the onus is upon the prosecution to prove that; (i) death of the deceased has occurred within seven years of her marriage (ii) death is not under normal circumstance and (iii) soon before the death, the deceased was subjected to cruelty. Once the prosecution has been able to establish above circumstances with cogent and reliable evidence, there shall be presumption against the husband and his relatives that they have caused “ dowry death”, no doubt the aforesaid presumption is rebuttable. The reason behind the enactment of Section 304B and Section 113B Indian Penal Code is that in such type of dowry death cases as occurrence generally took place within the four walls of



house of accused persons as such in such a situation, there is generally no witness or witnesses other than family members are available as family members of the deceased, who are generally aware of demand of dowry and cruelty.

In the present case, as discussed above, there are consistent evidence of P.Ws that the marriage of the deceased was solemnized with Om Prakash Yadav alias Bhukhal Yadav in the year 2007 and the '*gauna*' (second marriage) was done in the year 2009 and, thereafter, the deceased went to her '*Sasural*'. Further there is consistent evidences of P.W. 5 and 6, who are brother and father of the deceased available on record showing that the deceased was killed and her dead body was found on a '*palang*' (cot) in the house of the appellants. There is also evidence that there was mark of violence on the body of the deceased. P.W. 5 and 6, who are brother an father of the deceased have also stated so in the written report, which is the very first prosecution version. Other witnesses have also supported the prosecution story so far the deceased done to death and her dead body was found on '*Palang*' (cot) on the date of occurrence.

P.W. 8, who is the Investigating Officer in this case also stated in this evidence that dead body was found on *palang* (cot) and the same found further corroboration from inquest report (ext. 4). There was also some mark of violence on the dead body on neck an



back as per inquest report (ext. 4). Further the dead body of the deceased was sent for post mortem and the evidence of P.W. 7, the doctor, who performed the post mortem, shows that he has come to opinion that she was done to death by strangulation. No suggestion was given to P.W. 7 that the death was either suicidal or due to illness, though suggestion has been given to P.W. 1 that deceased committed suicide and to P.W. 4 that she died due to *kai and dast* (diarrhea) but no evidence has been brought on record. In support of above contention, it is well established that defence does not have to bring the evidence in order to rebut the presumption rather the same can be gathered from the circumstances as well as evidence available on record but in the present case, as I have stated above, there is absolutely no evidence available on record to show that the death was a suicide or was under normal circumstance rather evidence clearly shows that death was homicidal due to strangulation.

P.W. 6 is the father and P.W. 5 is the brother of the deceased and apart from that P.W. 1 and P.W. 2 are *mausi and mausa* (aunt and uncle) of the deceased and P.W. 3 and P.W. 4 are resident of same village, in which '*Sasural*' of the deceased was situated and it is come in the evidence of P.W. 1 that her house is situated in front of the house of the appellants on other side of the road. Evidence of P.W. 3 also shows that they are neighbours of the appellants. Evidence of



P.W. 6, informant, clearly shows that the deceased was subjected to assault in connection with demand of dowry and the deceased used to tell him on phone and also used to tell his son, when they used to go there. This witness has also stated about the *panchayati* in the year 2010 due to the aforesaid assault. This witness has not been cross-examined with respect to assault, demand of dowry and *panchayati*. No doubt attention of this witness has been drawn towards his statement made before the police and there appears to be some contradictions in his evidence but those contradictions cannot discredit his evidence about assault in connection with demand of dowry. The said evidence of P.W. 6 has been supported by evidence of P.W. 5, who is brother of the deceased and he has also stated about the assault with respect to demand of dowry and also stated about the oral *panchayati* and he had also stated about *panchayati* in his cross-examination and he has stated in para -13, that dowry was not settled prior to marriage but her sister used tell about the torture. This witness has also supported the prosecution story with regard to demand cruelty and assault to the deceased with respect to demand of dowry. P.W. 1 and P.W. 2 are the *mausi and mausa* (aunt and uncle) of the deceased. P.W. 1 has not only supported the prosecution story of demand and assault but she has stated in her evidence in chief that she heard the screaming of deceased at about 11.00 P.M. and when she



went there, she found the dead body of the deceased and she has also stated that Rima Devi (deceased) used to tell her about the torture meted out to her and also used to tell her that had demand would have been fulfilled by her father, she would not have to face those tortures. Her evidence in chief also shows that in the evening of occurrence, deceased was subjected to assault by the appellants. This witness has been cross-examined also and in her cross-examination also, she has supported the prosecution version of assault in the evening and stated that she had gone to save the deceased along with Akhilesh, her mother and uncle but appellants became annoyed and asked them to go out, no doubt Akhilesh had been examined in this case as D.W. 1, and evidence discloses that he was not present there, but P.W. 1 had also stated that they are *patidars* of appellants as such being relative, the possibility of their going into collusion with the appellants, cannot be ruled out.

P.W. 2 has also supported the prosecution case with regard to demand and assault. No doubt there are some contradictions in the evidence of this witness with respect to his earlier statement but he has stated that it is not true that he has not informed *Daroga Ji* that in the evening of date of occurrence, deceased was assaulted by the '*Sasural*' people and even on a question of the Court, he has stated that his wife used to go to save the deceased-Rima Devi and this



evidence, which comes as an answer to Court's query certainly proves the prosecution case with regard to demand as well as assault. P.W. 3 and 4 have also supported the case of prosecution and they were also the witness of the *panchayati* and P.W. 3 has stated that he was *panch* in the said *panchayati*. No doubt, this witness could not state about the date and month of the *panchayati* but as he was deposing in the year 2013 after lapse of almost two years of the occurrence and three years after the said *panchayati*, therefore, it is not supposed from a witness that he would exactly remember the date and month of *panchayati*. P.W. 4 has also supported the prosecution case about the demand of dowry and assault. However, his attention has been drawn towards his earlier statement made before the police and he has stated that as *Daroga ji* had not enquired, he has not stated about the assault to the deceased in the evening. No doubt, D.W. 1 and D.W. 2, who had been examined on behalf of the defence has stated that there was no demand by the appellants but there are evidence of father, brother, aunt and close relatives of the deceased, available on record to support the prosecution story of demand and cruelty and they being close relatives, can well be aware about miss-happening with the deceased.

From the entire discussions made above, it appears that there are sufficient cogent, reliable and consistent evidences available on record to suggest that the deceased was subjected to cruelty and



assault before her death and that too in connection with demand of dowry. There is also evidence that in the evening of the death of occurrence, also, the deceased was assaulted by the appellants. In the present case, death is itself a homicide and is otherwise not under normal circumstances and the occurrence took place just after two years of her 'gauna' (second marriage) when she went to her 'Sasural'. Further it is an admitted fact that the dead body was recovered from the house of the appellants and Section 106 of Evidence Act provides as follows:-

“Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

As such, as per provisions contained in Section 106 of the Evidence Act, onus is on the appellants to explain the cause of death occurred within the four walls of their house but no such explanation has been given.

Learned counsel for the appellants has submitted that conviction of the appellants under Section 304B/34 Indian Penal Code in this case is not proper as there is no charge framed under Section



3/4 of the Dowry Prohibition Act and in such a situation conviction of the appellants under Section 304B/34 Indian Penal Code is not sustainable in the eye of law and in support of this contention learned counsel for the appellants has relied upon the decision of Hon'ble Supreme Court in the case of *M. Chandra V. M. Thangamuthu And Another* reported in *2010 (9)SCC 733*, I have gone through the said judgment but there is nothing in the aforesaid judgment holding that in absence of charge under Section 3/4 Dowry Prohibition Act, no , conviction can be held under Section 304B/34 Indian Penal Code. Especially when there are circumstances that (i) death of the deceased was within seven years of her marriage (ii) death was due to strangulation (iii) she was subjected to cruelty in connection with demand of dowry soon before her death (iv) death was homicidal and occurred within the house of the appellants (v) family members of the deceased was not informed regarding her death and (vi) appellants were absconding. Hence, there are ample cogent, consistent and reliable evidence available showing an offence being committed under Section 304B/34 Indian Penal Code.

In the present case, so far evidence of cruelty, assault or demand of dowry is concerned, there is only general and omnibus allegation against all the appellants and there is nothing available on record to suggest attribution of specific allegation against any of the



appellants. In this case Om Prakash Yadav alias Bhukhal Yadav, is the husband, appellant – Sushila Devi aged about 55 years, is mother-in-law, appellant – Shiv Prasad Yadav, is father-in-law aged about 60 years and appellant-Asha Devi, is sister in law aged about 22 years and it has come that at the time of occurrence, Asha Devi already married. There is also no consistent evidence available on record to show that all the appellants were present at the time of occurrence or they have made demand or assaulted the deceased. No doubt some witnesses have stated about their presence but in our State, there is a trend of exaggerating the occurrence and also trend to implicate all the family members of the husband in cases under Sections 304B and 498A Indian Penal Code. It is well settled that the court while scrutinizing the evidence in cases under Section 304B, has to see specific attribution of allegation against each family members of in-laws of the deceased as it is the duty of husband to protect her from other members of his family and it is his duty to explain the cause of death of his wife, which occurs inside his house.

Considering the entire discussions made above so far appellants Sushila Devi, Shiv Prasad Yadav and Asha Devi, mother-in-law, father-in-law and sister-in-law respectively is



concerned, considering the fact that no specific allegation has been attributed to any of them, in such a situation, they are entitled for benefit of doubt it appears that prosecution has failed to prove its charge under Section 304B Indian Penal Code against those appellants beyond all reasonable doubts.

So far appellant Om Prakash Yadav alias Bhukhal Yadav, is concerned, I find that charge under Section 304B Indian Penal Code is established against him, however, considering his age, sentence is modified and he is directed to undergo rigorous imprisonment for a period of seven year instead of ten years. Hence conviction of appellant Om Prakash Yadav alias Bhukhal Yadav is affirmed with modification in sentence as indicated above. Conviction and sentence of other appellants are set aside.

As the appellants, namely, Shiv Prasad Yadav, Sushila Devi Asha Devi are on bail, they are discharged from the liabilities of bail bonds.

Accordingly, this appeal is disposed of in the manner aforesaid.

(Vinod Kumar Sinha, J)

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