

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.153 of 2015**

Arising Out of PS.Case No. -128 Year- 2010 Thana -KRITYANAND NAGAR District- PURNIA

1. Md. Idris Son of Late Nasuruddin

2. Noorjahan wife of Md. Idris Both Resident of village - Chanka Tola, P.S. K. Nagar, District - Purnea

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 565 of 2016

Arising Out of PS.Case No. -128 Year- 2010 Thana -KRITYANAND NAGAR District- PURNIA

1. Md. Hassan Son of Idris, Resident of Village- Chanka Tola, P.S- K.Nagar, District- Purnea.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.153/3016+565/2016)

For the Appellant/s : Mr. Ajit Rayan Kumar, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 22-12-2017**

Appellants, Md. Idris, Noorjahan (Cr. Appeal (SJ)

No. 153/2017) and Md. Hassan (Cr. Appeal (SJ) No.565/2016) have

been found guilty for an offence punishable under Section 304B of the

IPC. Appellants, Md. Idris, Noorjahan have been sentence to undergo

RI for 7 years taking into account their age while Md. Hassan has

been sentenced to undergo SI for 10 years vide judge of conviction

dated 22.01.2015 and order of sentence dated 28.01.2015 passed by

2nd Additional Sessions Judge, Purnea in Sessions Trial No.

1122/2010.

2. In the aforesaid background, both the appeals have been heard together and are being decided by a common judgment.

3. Md. Ejaz Alam (PW 4) gave his Fard-e-beyan on 04.05.2010 at about 3.00 PM while he was present by the side of dead body of his sister, Nasrin Khatoon at her Sasural lying at village-Chanka Kala Tola disclosing therein that his younger sister Nasrin Khatoon was married with Md. Hassan son of Md. Idris about three months ago as per Muslim rituals. At the time of marriage, they had gifted her sister ornaments, clothes etc according to their means but his brother-in-law Md. Hassan, his father, Md. Idris and mother Noorjahan were not at all satisfied and, his brother-in-law advanced demand of motorcycle and was regularly demanding the same over mobile. Because of the fact that they were suffering from financial hard-ship so, they could not be able to satisfy the demand of his brother-in-law. His sister also used to inform them over mobile that her husband, father-in-law, mother-in-law are torturing her on account of non delivery of motorcycle. Today, i.e. on 04.05.2010 at about 11.00 AM, he received an information through mobile that on account of assault made by her husband, father-in-law, mother-in-law, his sister has died. Soon thereafter, he along with other family members, co-villager came to the place of his sister and found dead body of his



sister kept over a cot. Father-in-law, mother-in-law and husband of his sister were absconding. On minute observation of the dead body of his sister, they found mark of violence.

4. On the basis of the aforesaid *Fard-e-beyan*, K-Nagar PS Case No. 128/2010 was registered followed with an investigation and after completing the same, charge-sheet was submitted on the basis of which, trial commenced and concluded in a manner, subject matter of the instant appeals.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that deceased as well as her husband, Md. Hassan were cousin brother and sister (mausera bhai bahan), they were on visiting terms as a result of which they developed love and deflecting the sermons of her family, deceased left her place, came to the place of groom where *Nikah* was performed and she remained at her *Sasural*. The *Naiharwala* of deceased were not at all inclined to accept the aforesaid relationship and in the aforesaid background whenever they got an opportunity, they came to the *Sasural* of deceased where she was subjected to physical as well as mental torture and lastly, she (deceased) committed suicide. In order to substantiate its case, witnesses have also been examined.

6. In order to substantiate its case, prosecution had



examined altogether 8 PWs who are PW-1, Md. Iliyas, PW-2, Abdul Karim, PW-3, Md. Shamim, PW-4, Md. Ejaz Alam, PW-5, Md. Akhtar, PW-6, Bibi Feroza Khatoon, PW-7, Suresh Paswan and PW-8, Rup Narayan Kumar. Side by side, also exhibited Ext-1 Series, signatures of informant, witnesses over relevant document, Ext-2, Fard-e-beyan, Ext-3, Inquest Report, Ext-4, Postmortem report.

7. Defence had also examined two DWs. DW-1, Manzoor Alam, DW-2, Md. Nizam as well as also had exhibited Ext-A series, *Nikahnama*.

8. Learned counsel for the appellants while assailing the judgment of conviction and sentence has submitted that the learned lower court recorded its finding in mechanical manner without appreciating the defence version which also got support with the prosecution version. On that very score, it has been submitted that there happens to be specific plea at the end of the appellants that deceased, out of being in deep love and affection, thwarting the sermons of her *Naiharwala* left her house, came to the place of the appellants and bonded herself with appellant Hassan which, is found duly admitted by the evidence of PW-4, informant as well as father of the deceased PW-5, Md. Akhtar. It has further been submitted that from the evidence of PW-5, it is crystal clear that no demand was made at the end of the appellants during course of negotiations or



subsequently thereof, on the other hand, the marriage expenses were borne by Md. Idris and that being so, the prosecution party came to his place along with girl where *Nikah* was performed. When suggestion having been given to the respective prosecution witnesses along with evidence of two DWs are being properly scrutinized in the background of the aforesaid admitted factual aspect, then in that event, there was no occasion for the appellants to demand motorcycle and for that, would have indulged in torturing the victim which lastly cost her life. Furthermore, it has also been submitted that demand of dowry has purposely been introduced and in likewise manner the constant touch in between the deceased with Naiharwal but, the aforesaid event, during course of cross-examination is found demolished as none of the prosecution witnesses had disclosed their own mobile number as well as mobile number of deceased and so there was no occasion for the father (PW 5), the mother (PW 6) and brother/informant (PW 4) to know about the same. That being so, the story of prosecution that deceased used to inform them through mobile regarding torture or cruelty whichever may be having been inflicted upon her on account of non fulfillment of demand of dowry in the form of motorcycle, suffers from fantasy.

9. That being so, the major ingredients of Section 304B of the IPC is not at all found duly substantiated whereupon the



finding recorded by the learned lower court is fit to be set aside.

10. At the other end, the learned APP vehemently controverted the submissions made by learned counsel for the appellants and submitted that from the postmortem report Ext-4, it is apparent that the deceased died due to ante-mortem injuries including having been throttled/strangled which always happens to be by way of external force. Had there been a case of suicide, there would have been presence of other kind of injuries without having other kind of injuries having found over the dead body. Apart from this, it has also been submitted that the doctor during cross-examination had categorically explained that had there been a case of suicide then, there would have been only hyoid bone fractured but in the present case trachea has been found completely fractured which could be only by exercising throttling by exerting force. So, death of deceased is otherwise than normal circumstance, is found duly proved and in likewise manner, the date of marriage that means to say just after a few months of marriage. So far, demand of dowry and torture is concerned, right from the initial version the prosecution had duly exposed and substantiated. Though, admittedly at the time of marriage there was no demand but, as it appears after marriage they were expecting some valuable gifts and having dissatisfied, advanced their demand by way of a motorcycle and as the same was not provided by



the *Naiharwala*, ultimately cost the life of the deceased.

11. Marriage is not denied nor presence of ante-mortem injuries over dead body. For better appreciation, the evidence of PW-8 is incorporated below:-

On External Examination:-

(A) Bleeding from mouth and notes present, both eyes swollen and closed, mouth semi closed. Tongue protruded. Rigor mortis not present (absent) and putrefaction (decomposition) started.

(B) String mark present on interior surface of skin of neck in whole breadth of neck.

(C) (i) Abrasion mark on right side of the lower part of abdomen size 2"x1".

(ii) Abrasion mark on the lower part of the right fore- head size 2"x1".

(iii) Abrasion mark on the back of the upper part of left forehead size 3"x1".

(D) Bruise present near lower part of forearm near wrist size 3"x2"x1" and fracture of lower part of one forearm. Alna bone was present.

(E) Large white patch on back of chest (upper layer of skin peeled off) size 6"x4".

(F) Black patch on the left side of upper part of chest lateral aspect from left axillia upto below left breast size 3'X2"x1".

On dissection of head:-

Blood oozing from cut incised skin but no fracture of skull bones present on opening skull brain congested mild haemorrhage present in brain matter. Neck- Ligature mark by string (like rassi) present in interior part and lateral part in whole breadth of neck present. On further deep dissection of neck fracture of larynx cartilage present. On opening larynx old haemorrhage clot present. Mucus and froth present in larynx and trachea. No injury to aesophagus and major blood vessels. On dissection of Chest no fracture ribs bones present.

Heart-Externally NAD(Not any defect) Right side full and left side chamber empty.

Lugs- Congested, mucus froth present.



On dissection of abdomen- Stomach and intestine congested, reddish in colour. In opening of stomach-Semi digested food present. Intestine filled of fluid, gases. Urinary bladder full. Uterus-Normal, Breast and genitalia (Vagina), Normal, Liver, Spleen, Kidney, all congested. Time elapsed since death more than 72 hours.

Cause of death due to above mentioned injuries and asphyxia due to strangulation (throttling) causing cardiac respiratory failure.

12. During cross-examination at para-5, he had categorically stated that in the case of suicide, death may be also caused due to asphyxia but in that case no trachea is fractured rather only hyoid bone is fractured while in murder by strangulation, trachea bone is fractured as in the present case. That means to say the cause of death happens to be homicidal and not suicidal. Time elapsed since death is within 72 hours. Its relevancy will be considered later on.

13. The death within seven years of marriage is not under controversy as from Ext-A Series, it is evident that marriage was solemnized on 08.02.2010, that means to say, only three months prior to the death of the deceased. From *Nikahnama*, Ext-A Series, it is also evident that same was executed at the place of appellants in presence of Quazi, Md. Ashiqur Rahman as well as in presence of two witnesses, the first one is Md. Anwar who belonged to Naihar of deceased and other Md. Nizamuddin, a co-villager of the appellants.

14. The components of Section 304B IPC happens to



be:-

- A. The death should be within seven years of marriage.
- B. The death should be by burn, bodily injury or otherwise than normal circumstance.
- C. There should be demand of dowry and for that, deceased would have been tortured soon before her death
- D. The aforesaid activity be by her husband or relative of the husband.

15. As stated above, there happens to be no controversy with regard to death of the deceased within three months of marriage and further meeting with homicidal death. Now evidences have to be seen in order to search out whether remaining ingredients, that means to say demand of dowry and torture having been meted out by the deceased soon before her death, by her husband or relative of the husband is to be seen. So far demand soon before death is concerned, it has been conclusively settled that no straitjacket formula could be evolved, rather it varies case to case. However, so far facts of



the present case is concerned, deceased remained alive only for short span of three months at her *Sasural* while meeting with homicidal death.

16. During course of performance of such exercise, first of all evidence of father, PW-5 is to be taken into consideration. He had deposed that informant Md. Ejaz happens to be his son. Deceased Nasrin was his daughter who was married on 04.02.2010 with Md. Hassan son of Md. Idris. Marriage was solemnized at the house of bridegroom lying at village-Chankakola Tola. Her murder was committed on 04.05.2010 at the same village at the house of her husband, Md. Hassan. In para-3, he had stated that at the time of marriage, he had not given Tilak but, he had gifted ornaments (so detailed), furniture, clothes and other items (so detailed) in lieu of gift. Her *Sasuralwala* was not at all satisfied with the aforesaid items. Subsequently thereof, they advanced demand of motorcycle but as his financial condition did not permit to honour the demand, on account thereof, motorcycle was not provided. Thereafter, deceased, Nasrin had informed over his mobile as well as mobile of her brother (informant) that on account of non delivery of motorcycle, her husband, father-in-law, mother-in-law are torturing her as well as she was also subjected to physical assault. He had further stated that while he was at Dehradun, his son had informed over mobile regarding



death of his daughter on 04.05.2010. After 3-4 hours, again he informed that death has been caused 1-2 days prior but, he has got information today. He has also informed that her *Sasuralawala* tried to suppress the incident but, anyhow it got spread over as a result of which, his son got information. About 2-3 days prior to her death his daughter had informed that the accused persons have severely tortured her and so, she was very much apprehensive that she might be murdered. 2-3 days after getting information, he returned back to his house. Identified the accused. During cross-examination at para-10, he had stated that his statement was not at all recorded by the police. Talks initiated two months prior to the marriage. In para-11, he had stated that his wife as well as Noorjahan (one of the accused) are full sisters. In para-7, he had stated that he is fully aware with the family affairs of the accused persons and on account thereof, he negotiated. In para-8, he had stated that marriage took place at the house of bridegroom at Chanka Tola. His house lies 12-15 Kms away therefrom. As father of boy happens to be his Saarhu, on account thereof, marriage was solemnized at his place. Expenses were borne by the bridegroom side, that means to say, by his Saarhu. *Nikahnama* was prepared which bore signature of bridegroom, bride, Quazi, he himself as well as witnesses. In para-10, he had stated that he along with his brother, co-villager had participated during course of Nikah.



They had carried the bride. After Nikah, they returned back. In para-11, he had stated that for the first time, he came to know with regard to torture being inflicted to his daughter for fulfillment of demand of dowry over phone. In para-12, he had stated that he is not remembering SIM number by which his daughter used to talk with him. He had further stated that he is also not remembering his own SIM number. In para-14, he had stated that at the time of occurrence he was at Dehradoon. In para-15, he had stated that even after discloser at the end of his daughter that her life is in danger, he had not informed any police official. In para-16, he has stated that 5-6 days after marriage, he had gone to Sasural of his daughter. 1-2 days thereafter, he returned back to Dehradoon. He denied the suggestion that as his daughter had married according to her own will on account thereof, they used to assault her as a result of which, his daughter committed suicide.

17. PW-6 is Bibi Feroza Khatoon, mother of the deceased who during course of her examination-in-chief, had reiterated the version of PW-5 regarding marriage, stay of deceased at her Sasural, demand of motorcycle as torture having been inflicted over deceased for procurement of the same and lastly, regarding commission of her murder. She had also stated that during course of investigation her statement was recorded. Identified the accused.



During cross-examination at para-6, she had stated that Noorjahan (one of the accused) happens to be her full sister. Her son-in-law, Md. Hassan is the son of her sister, Noorjahan. At an earlier occasion, they were on cordial relationship as well as were on visiting terms. In para-7, she had stated that as she liked the family atmosphere of her sister on account thereof, they negotiated and got her daughter married. In para-8, she had stated that the boy and girl were not on talking terms since before their marriage. On specific question, she had stated that her sister, Noorjahan had not accompanied Md. Hassan to her place and that also happens to be with regard to status of the deceased. At an earlier occasion in para-11, she has stated that before Nikah, her daughter was not knowing with whom her Nikah is going to take place. In para-12, she had stated that Bidai was effected along with clothe, ornaments, furniture etc. At para-13, she had stated the demand of motorcycle was advanced after marriage. At the time of marriage, there was no demand. The same answer has been reiterated at para-14 whereunder she had stated that during course of stay of her daughter at her Sasural demand of motorcycle was advanced. On that very score, it was said that in case, motorcycle is not provided then in that event, she will be murdered. In para-15, she had stated that her daughter was kept in cordial atmosphere for the two months after marriage and then thereafter, they began to torture her for



procurement of motorcycle. In para-16, she had stated that one month after the marriage her daughter has come to her place and after staying for 10 days, she returned back. At para-17, she has stated that when she came at her place, she was satisfied. In para-18, she had stated that somebody of Chanka Tola Village had informed her son regarding murder of her daughter. She had further stated that she had not tried to locate him. In para-21, she had stated that as she was ill at the time of Nikah so she had not gone to the place of bridegroom. She had further stated at para-22, that she was admitted at Sadar Hospital, Purnea. At para-24, she had stated that she met with her daughter after two months of Nikah when she came to her place. At para-25, she had stated that her Sasuralwala had not caused any incident in her presence. Then had denied the suggestion at para-26 that deceased committed suicide on account of torture and cruelty meted out by them as she married against their will and wish.

18. PW-4 is the informant. He had deposed that the deceased Nasrin was his younger sister who has been murdered by her husband, Md. Hassan, father-in-law, Md. Idris and mother-in-law, Noorjahan on 04.05.2010. Her marriage was solemnized on 04.02.2010 with Md. Hassan. Marriage was solemnized at Village-Chanka Tola. They have given sumptuous gifts at the time of marriage but her brother-in-law as well as parents were not satisfied.



In due course of time, Md. Hassan, Md. Idris demanded motorcycle from him. His brother-in-law repeatedly demanded from him over mobile and further threatened that in case of non fulfillment his sister will be murdered. His sister had also informed him that Md. Hassan, Md. Idris and Noorjahan were assaulting her relating to motorcycle. 2-3 days prior to the occurrence, deceased had talked with him and even on that moment, she had disclosed maltreatment and further requested that motorcycle be given as at that very moment she was assaulted with Lathi, belt, fists and slaps. On 04.05.2010 at about 11.00 A.M., he received information over his mobile to the effect that his sister has been murdered by her husband, father-in-law, mother-in-law whereupon he along with Iliyas, Abdul Karim, Md. Shamim as well as other co-villagers rushed. Villagers came on tractor. When then came at the place of his sister, they found her dead body lying over cot. Kothi was broken and paddy was spread over. One Lathi was kept beneath the cot. There were marks of violence over cheek, arm and back. None of the family members were present. Police arrived whereupon, he narrated the incident which was recorded by the police (exhibited). Then had said that accused persons are threatening to compromise the case otherwise, they will face the similar consequence. During cross-examination he had stated that deceased, Nasrin Khatoon was three years younger to him. She was



illiterate. She knew only Urdu. In para-13, he had stated that after proper verification, marriage was solemnized. At para-14, he had stated that after marriage Nasrin had gone to her Sasural. In para-15, he had stated that she had not come to his place after marriage. They used to visit her place. She remained alive only for three months at her Sasural. He had gone to effect Bidai after 25 days of marriage. He was duly honoured but his sister had disclosed that her Sasuralwas is demanding motorcycle and for that, her husband used to assault her. In para-16, he had stated that his sister had even informed at his house with regard to demand of motorcycle. In para-17, he had further stated that Md. Hassan also happened to be his cousin (mausera bhai) being of same age group. They both are well conversant to each other. Once he got his sister treated at his village on her arrival with regard to injuries caused by her brother-in-law. At para-18, he had stated that he had not tried to locate the person who had informed him regarding murder of the deceased. In para-20, he had stated that neither husband nor in-laws of his sister had assaulted her in their presence over demand of motorcycle. In para-21, he had stated that his sister has been murdered. His sister used to phone him that her Sasuralwala used to torture her and at any moment they would commit murder and on the basis thereof, the instant case has been registered. Then had denied the suggestion that as the deceased married with Hassan



against the wish of the family members, on account thereof, they used to assault her. Out of frustration, she had committed suicide.

19. PW-1 is Iliyas is a co-villager who during course of examination-in-chief had reiterated the same version. During cross-examination, he had stated at para-9 that demand for motorcycle was advanced three months after marriage but, the same was not provided due to financial constraint. In para-10, he had stated that he had not visited place of Nasrin since before her death. In para-11, he had stated that when they arrived at the place of Nasrin, no family members were present. Only dead body of Nasrin was there. Even after arrival of police, none came.

20. PW-2 is another co-villager who during course of examination-in-chief had reiterated the same version. During cross-examination, at para-9, he had stated that Nikah was performed at Naihar of deceased that means to say, at Village-Burhiyagola. In para-11, he had stated that as he had kept the date of death scribed whereupon, he disclosed the same. He had visited the place of occurrence on the alleged date. In para-14, he had said that only dead body of deceased was lying at her Sasural. None was present. In para-16, he had been suggested that he has got no information with regard to the occurrence.

21. PW-3 is the uncle of the deceased who during



examination-in-chief had reiterated the version. He had also stated at para-5 that as Hasan failed to procure motorcycle on account thereof, he brutally treated the deceased. Nasrin used to inform his brother regarding her misfortune and further, they have threatened to eliminate. He had also stated that Hassan had also telephonically informed him and advanced demand of motorcycle. In para-6, he had stated that when he along with others reached at the place of occurrence, only dead body of the deceased was there. All the family members were absent. During cross-examination at para-9, he had stated that marriage was settled at the instance of parents. He had further stated at para-12 that as per settlement amongst the elders, Nikah was performed at the place of accused persons. In para-13, he had stated that Nasrin used to telephone him on his Mobile No. 916289865. Her Mobile number is saved in his mobile but, at the present moment, he is not remembering her mobile number. She had dialed 5-6 times. The Exact date he is not remembering but is available in his mobile. In para-14, he had stated that how many times deceased had telephoned her brother, he is unable to say. In para-15, he had further stated that in spite of having discloser at the end of victim that she was being threatened at the end of accused persons, no information was given to the police as, they were not expected so. In para-17, he had stated that Nasrin had not visited her Maika after



marriage but they used to visit. In para-18, he had said that the accused persons have not maltreated Nasrin in their presence. Then had denied the suggestion that they have falsely deposed.

22. PW-7 is the Investigating Officer who had deposed that on getting rumour that a woman has been killed at Village-Chanka Tola, on account thereof, after registering SD entry, they proceeded and reached at the Village and then to the place of Md. Hassan where they found a dead body of a woman lying over a cot in the verandah of the house. At that very time, some persons were present who disclosed their identity and accordingly, recorded Fard-e-beyan of brother of deceased, namely, Md. Ejaz (Exhibited since before). He took up investigation, prepared inquest report, sent the dead body for postmortem, recorded further statement of the informant, inspected the place of occurrence which happens to be the house of Idris. Articles kept in a room were scattered. Kothi was found in broken condition. Paddy was scattered. Then shown boundary of the place of occurrence. North-Md. Rafi, South-house of accused and then Md. Habib. He had recorded statement of Md. Shamim, Feroza Khatoon, Iliyas, Abdul Karim. Got the Fard-e-beyan registered. On 21.05.2010, he had arrested Md. Idris, Noorjahan. Received postmortem report. On 23.07.2010, one of the accused Md. Hassan surrendered before the CJM whereupon, charge-sheet was



submitted after concluding the Same. During cross-examination at para-17, he had stated that the dead body of deceased was found at eastern flank of the house of Md. Idris kept over a cot. During course of preparation of inquest report he had not mentioned with regard to injury having over the neck of the deceased. In para-20, he had stated that place of occurrence happens to be the house of Md. Idris. In para-21, he had stated that Chauki was in the room while cot was outside whereupon dead body was kept. In para-26, he had stated that informant had disclosed that he received information regarding occurrence over his mobile but, during course of investigation he had not try to locate the person who had informed the informant. In para-27, he had stated that during course of investigation he had interrogated presence of surroundings but, they have not disclosed their names and as they were not inclined to depose so, their names have not been shown. In para-29, he had further admitted that during course of investigation none had claimed to be an eyewitness to the occurrence.

23. From the evidence available on the record, it is evident that PW-3, PW-4, PW-5 and PW-6 being family members, deposed in conformity over demand as well as torture. The most surprising feature is that during course of cross-examination, there happens to be absence at the end of the appellants to trace out the



veracity of PW-4, informant, at least, to trace out by which number deceased used to call him and in likewise manner, with regard to event of torture, cruelty at the end of the accused persons over demand/fulfillment of dowry in the form of motorcycle. In likewise manner, PW-3 was no at all challenged by way of having the mobile placed in court in order to negate their evidence, nor they were suggest that deceased had no mobile.

24. DW-1 and DW-2 have been adduced on behalf of prosecution only to suggest that the deceased had married with appellant, Md. Hassan against the will and wish of her parents. Furthermore, though it has been suggested that PWs-4, 5 and 6 used to visit his place and they used to assault the deceased as a result of which, she committed suicide. The distance of 15-16 Kms as is admitted one from the house of appellants to the house of *maika* of deceased is a circumstance which put question mark over presence of the family members to the Sasural of deceased so frequently and further, indulged in assaulting the deceased. Moreover, the evidence of doctor clearly rules out the story of suicide apart from the fact that presence of other kind of ante-mortem injuries could not be self inflicted injury and for that, there happens to be no explanation. However, from the evidence of all the witnesses it is evident that when they reached at the place of occurrence none of the family



members were present and this happens to be another circumstance which could be found admissible in terms of Section 8 of the Evidence Act. The aforesaid event is found corroborated with the evidence of the Investigating Officer, PW-7. Not only this, postmortem was conducted on 05.05.2010 and the opinion of the doctor, death was within 72 hours, and in the background of the fact that none of the witnesses has been suggested that they were informed regarding commission of the occurrence, is another circumstance adverse to the appellants more particularly, having their presence. At least, they would have informed the police as well as *Naiharwala* of the deceased which they not even suggested.

25. Section 113B of the Evidence Act allows the presumption, which the court has to infer on account of fulfillment of ingredients of Section 304B of the IPC, though is subject to rebuttal and for that, if the evidence of the two DWs along with answers made by the appellants during course of statement recorded under Section 313 CrPC is gone through, it is found that the same has not been properly discharged.

26. Conduct of the prosecution has also to be seen. Accused persons are no stranger rather own sister's husband. Appellant happens to be Mausera Bhai of the deceased. They were so pious that they during course of evidence had clearly said that



marriage was solemnized at the place of accused. All costs were borne by them. There was no demand at the time of marriage. Then in that event, there would not have occasion to falsely implicate unless they have perceived such conduct at the end of accused.

27. Though the Hon'ble Apex Court in the case of *Rajbir v. State of Haryana* reported in (2010) 15 SCC 116 had directed all the subordinate courts through out India to frame alternative charge under Section 302 of the IPC wherever a charge under Section 304B of the IPC is framed which subsequently been elaborated in the case of *Jasvinder Saini v. State (Govt. of NCT of Delhi)* in (2013) 7 SCC 256 as well as in *Vijay Pal Singh v. State of Uttarakhand* as reported in (2014) 15 SCC 163 which from the record is found completely given up, whereupon there would have been alternative option but considering the evidence on record, the fault at the end of lower court is being ignored.

28. In *Gian Chand & others v. State of Haryana* reported in 2013(4) PLJR 7 (SC) it has been held:-

11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in **Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors.**, AIR 2013 SC 1204 observing as under:



“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(Emphasis supplied)

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.

29. Giving anxious consideration as well as minute scrutiny over the evidence available on the record, it is found and held that the prosecution has succeeded in proving its case and that being



so, both the instant appeals are bereft of merit and are, accordingly, dismissed.

30. Since appellants are on bail, their bail bonds are cancelled with a direction to surrender before the learned lower court within a fortnight to serve out the remaining part of sentence failing which, the learned lower court will take appropriate steps against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

perwez

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