

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.805 of 2013

1. Indra Kumar, S/o Hukumchand Jain, age 42 years,
2. Uday Bhan, S/o Hukumchand Jain, age 35 years,

Both R/o Pratapganj Para, Jagdalpur, P.S. Kotwali, Jagdalpur,
District Bastar (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through P.S. Kotwali, Jagdalpur, District
Bastar (C.G.)

---- Respondent

For Appellants: Mr. Jagatsher Singh and Mr. Neeraj Mehta,
Advocates.

For Respondent/State: Mr. Aditya Sharma, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/05/2017

1. This criminal appeal is directed against the judgment of conviction recorded and sentence awarded by the 1st Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.63/1995 on 12-8-2013 by which accused No.1 (A-1) Indra Kumar and accused No.2 (A-2) Uday Bhan have been convicted and sentenced in the following manner: -

A-1 Indra Kumar

Conviction	Sentence
Section 498A of the IPC	RI for two years and fine of Rs.2,000/-, in default, additional RI for six months.
Section 304B of the IPC	RI for ten years and fine of Rs.2,000/-,

	in default, additional RI for two years.
Section 3 of the Dowry Prohibition Act	RI for five years and fine of Rs.15,000/-, in default, additional RI for one year.
Section 4 of the Dowry Prohibition Act	RI for one year and fine of Rs.5,000/-, in default, additional RI for three months.

A-2 Uday Bhan

Conviction	Sentence
Section 498A of the IPC	RI for two years and fine of Rs.2,000/-, in default, additional RI for six months.
Section 304B of the IPC	RI for ten years and fine of Rs.2,000/-, in default, additional RI for two years.

2. Brief facts of the case, as unfolded by the prosecution, are as under: -

2.1) Marriage of deceased Mamta Jain was solemnized with appellant No.1 in the intervening night of 6th and 7th March, 1992, at Jagdalpur, whereas deceased Mamta Jain and her father are residents of Rajnandgaon. Immediately after marriage, a reception was organised at Rajnandgaon which was attended by deceased Mamta Jain and appellants No.1 and 2 also and they returned back to Jagdalpur on 9-3-1992. On 17-4-1992, Mamta Jain died and morgue intimation Ex.P-20 was reported by Dr. M.A.H. Rizvi (PW-7) on 17-4-1992 at 4.06 a.m.. Thereafter, on 18-4-1992, a written report Ex.P-12 was filed by D.C. Jain (PW-9), father of the deceased, to the effect that her daughter was subjected to cruelty in connection with dowry and consequently,

FIR Ex.P-16 was registered on 19-4-1992 by Police Station Jagdalpur. Inquest was prepared vide Ex.P-7 on 18-4-1992 and dead body was sent for postmortem. Postmortem was conducted by Dr. M.A.H. Rizvi (PW-7) on 17-4-1992 itself and cause of death was shock and haemorrhage as a result of internal bleeding. Thereafter, a case punishable under Sections 304B & 498A of the IPC and Sections 3 & 4 of the Dowry Prohibition Act was registered against the present appellants and one Hukumchand Jain, father of the present appellants, and also against Arun Kumar, Urmila and Rajkumari. Since Arun Kumar, Urmila and Rajkumari were later-on killed in a motor accident, they were not charge-sheeted and A-1, A-2 and A-3 Hukumchand Jain were charge-sheeted for the aforesaid offences.

2.2) Case of the prosecution, in brief, is that Arun Kumar, brother of A-1 and A-2, went to Rajnandgaon and settled the marriage between Mamta Jain and A-1. It is further case of the prosecution that at the time of settlement of marriage, it was decided that D.C. Jain (PW-9) would spend Rs.75,000/- and marriage ceremony would take place at Jagdalpur. Marriage was fixed for 7-3-1992. It was also decided that D.C. Jain (PW-9) would come to Jagdalpur on 6-3-1992 for marriage of her daughter. It is also case of the prosecution that entire expenses of marriage ceremony would be born by Arun Kumar.

2.3) It is also the case of the prosecution that after marriage, deceased Mamta Jain remained in her father's house from 15-3-

1992 to 4-4-1992, thereafter, she came to the house of the accused persons and died on 17-4-1992 at about 3.30 a.m.

3. In order to bring home the offences, the prosecution examined 18 witnesses and brought 24 documents including Exs.P-12 and P-16 – FIR and Ex.P-5 postmortem report. Defence of the appellants is that they neither made any demand of dowry nor treated deceased Mamta Jain with cruelty. It is specific case of the defence that deceased Mamta Jain was suffering from acute high blood-pressure for which she was treated at Jagdalpur Hospital from time to time by three doctors and on the date of death also, she suffered acute high blood-pressure for which she was treated by the local doctor and she was immediately taken to the hospital, but on account of haemorrhage, she suffered death and it was a natural death which is supported by the postmortem report Ex.P-5 proved by Dr. M.A.H. Rizvi (PW-7). In the consultancy report of Prof. Heeresh Chandra Ex.D-4A, which has been admitted by the prosecution on 5-11-1993, death of Mamta Jain has been held to be natural death. In the statements recorded under Section 313 of the CrPC, the appellants made statement that they never harassed deceased Mamta Jain by demanding dowry at that point of time and the deceased was suffering from acute high blood-pressure for which she was treated by doctors and document to that effect, by which the prosecution itself has proved, D-2 has been filed.

4. The trial Court placing implicit reliance upon the statement of

Premchand Jain (PW-18) and other circumstantial evidence discarded the plea of defence put forth by the accused / appellants and proceeded to convict and sentence the appellants on the above-mentioned charges.

5. Appearing for the appellants Mr. Jagatsher Singh and Mr. Neeraj Mehta, Advocates, would submit that the prosecution has been unable to eliminate the possibility that deceased Mamta Jain died natural death. They would further submit that the deceased was suffering from high blood-pressure as has been stated by the prosecution witnesses and proved by documentary evidence Exs.D-1 and D-2. Even the parents of the deceased, at the time of inquest, stated that the deceased had been ill for past one week and that she probably died due to medication, as such, the prosecution has not been able to establish that death was either homicidal or suicidal in nature, therefore, offence under Section 304B of the IPC is not made out. They would also submit that the trial Judge has relied upon the opinion given by Dr. D.K. Satpathy, Director, Medico Legal Institute, Bhopal. Even though this document was filed with the case diary, it was not proved either by examination of Dr. Satpathy or under Section 293 of the CrPC and it was not exhibited as such, unexhibited and unproved documents cannot and do not constitute evidence in the case. When the said report of Dr. Satpathy was not put to the accused during their examination under Section 313 of the CrPC, conviction cannot be based on the said report and it could not have been relied upon. Report of Prof. Heeresh Chandra (Ex.D-

4A) was admitted by the prosecution under Section 294 of the CrPC holding that nature of death of Mamta Jain was natural which has not been controverted. Relying upon the evidence of Pareshwarnath Panigrahi (PW-2), Rajendra Kumar Jain (PW-6), Komalchand Jain (PW-11) and Premchand Jain (PW-18), they would submit that demand, if any, was made by appellant No.1 Indra Kumar, is the additional expenses which were incurred in decoration etc., which was an arrangement between the accused persons and father of the deceased D.C. Jain (PW-9) at the time of marriage. So no amount was ever demanded as dowry and therefore, such a demand cannot be said to be demand of dowry and as such, conviction could not have been based on the demand of said Rs.10,000/-. There is evidence of Premchand Jain (PW-18) that D.C. Jain (PW-9) had taken a loan of Rs.22,000/- from Arun Kumar. They would also submit that no external injury was found on the person of the deceased and as such, she died natural death, as stated by Dr. M.A.H. Rizvi (PW-7) who conducted postmortem on the body of the deceased. Therefore, none of the ingredients of Sections 304B, 498A of the IPC, 3 and 4 of the Dowry Prohibition Act are established.

6. Appearing for the State/respondent, Mr. Aditya Sharma, learned Panel Lawyer, would submit that the prosecution has brought legal and clinching evidence on record to bring home the offence under Sections 304B, 498A of the IPC, 3 and 4 of the Dowry Prohibition Act and as such, the prosecution has fully proved and established the offence beyond reasonable doubt. Therefore, the

learned Additional Sessions Judge is absolutely justified in convicting the appellants for the above-stated offences. The learned Additional Sessions Judge has rightly sentenced the appellants and the appeal deserves to be dismissed.

7. I have heard learned counsel appearing for the parties, considered the rival submissions made therein and also perused the records of the trial Court with utmost circumspection.
8. Before considering the prosecution case as well as the defence pleaded, it is desirable to extract the relevant provisions of Section 304-B which relates to dowry death:

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

*Explanation.--*For the purposes 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."

The above provision was inserted by Act 43 of 1986 and came into force with effect from 19.11.1986.

9. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied--

- The death of a woman should be caused by burn or bodily

injury or otherwise than under normal circumstances.

- Such death should have occurred within seven years of the marriage.
- Soon before the death of deceased, she must have been subjected to cruelty or harassment by her Husband or any relative of her Husband.
- Such cruelty or harassment should be for or in connection with demand for dowry.

Thus, if the aforesaid ingredients are established by the prosecution by leading appropriate reliable evidence, such death shall be called dowry death and the court shall presume and it shall record such fact as proved unless and until it is disproved by the accused.

10. Section [113B](#) of the Indian Evidence Act, 1872 speaks about presumption as to dowry death which reads as under:--

"113-B. 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 (45 of 1860)."

The aforesaid provision shows that if the woman has been subjected to cruelty as defined in Section [498-A](#) IPC, the court may presume that such person has caused dowry death. Section [2](#) of the Dowry Prohibition Act, 1961 provides as under:--

"2. Definition of "dowry".--In this Act, "dowry" means

any property or valuable security given or agreed to be given either directly or indirectly--

a. by one party to a marriage to the other party to the marriage; or

b. by the parents of either party to a marriage or by a other person, to either party to the marriage or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

11. To attract the provisions of Section 304B of the IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304B of the IPC and Section 113B of the Evidence Act is present with the idea of proximity test.

12. As regards the principles concerning the above-referred provisions, this Court wishes to refer to the decisions of the Supreme Court in the matters of K. Prema S. Rao v. Yadla Srinivasa Rao¹, Kaliyaperumal v. State of T.N.², Devi Lal v. State of Rajasthan³ and Ashok Kumar v. State of Haryana⁴.

13. In K. Prema S. Rao (supra) it has been held as under:

"16. ... To attract the provisions of Section 304-B IPC, one of the main ingredients of the offence which is required to be established is that 'soon before her death' she was subjected to cruelty and harassment 'in connection with the demand for dowry'."

1 (2003) 1 SCC 217

2 (2004) 9 SCC 157

3 (2007) 14 SCC 176

4 (2010) 12 SCC 350

14. In **Kaliyaperumal** (supra) relevant portion reads as under:

"5. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to the expression 'soon before' used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence."

15. In **Devi Lal** (supra) the ingredients of the provisions of Section

304-B as laid down in **Harjit Singh v. State of Punjab**⁵ and **Ram Badan Sharma v. State of Bihar**⁶ have been reiterated as under:

"20. The question, as to what are the ingredients of the provisions of Section **304-B** of the Penal Code is no longer res integra. They are: (1) that the death of woman was caused by any burns or bodily injury or in some circumstances which were not normal; (2) such death occurs within 7 years from the date of her marriage; (3) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband; (4) such cruelty or harassment should be for or in connection with the demand of dowry; and (5) it is established that such cruelty and harassment was made soon before death."

16. In **Ashok Kumar** (supra) it has been held by the Supreme Court as under:

"19. We have already referred to the provisions of Section **304-B** of the Code and the most significant expression used in the section is 'soon before her death'. In our view, the expression 'soon before her death' cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other."

17. Similar view was expressed by the Supreme Court in the matter of **Yashoda v. State of M.P.**⁷, where it is stated that determination of the period would depend on the facts and circumstances of a

5 (2006) 1 SCC 463

6 (2006) 10 SCC 115

7 (2004) 3 SCC 98

given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the provisions of this section. However, there must be existence of proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient, whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.

18. In the matter of **Appasaheb and another v. State of Maharashtra**⁸ it has been held by the Supreme Court as under:

"9. Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

10. Section 2 of the Dowry Prohibition Act reads as under:

8 (2007) 9 SCC 721

"2. Definition of 'dowry'.—In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly.

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving and taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, (see Union of India v. Garware Nylons Ltd and Chemical and Fibres of India Ltd. v. Union of India). A demand for money on account of some financial stringency or for making some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for 'dowry' as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz demand for dowry is not established, the conviction of the appellants cannot be sustained."

19. The word "soon before her death", no definite period has been prescribed and the expression "soon before her death" has not been defined either in IPC or Evidence Act.
20. The Supreme Court in the matter of **Mustafa Shahadal Shaikh v. State of Maharashtra**⁹ while considering the words "soon before her death", has held that term of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case and it would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question and there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. It has been further held that if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.
21. Very recently, in the matter of **Bajnath and others v. State of Madhya Pradesh**¹⁰ the Supreme Court has held that proof of cruelty or harassment by husband or any relative of his in connection with demand of dowry and that too in reasonable contiguity of death is *sine qua non* to inspire statutory presumption under Section 113B of the Evidence Act. Their Lordships of the Supreme Court further held that ingredients of cruelty and harassment must be proved by direct and cogent evidence.

9 2012 (11) SCC 397

10 2017 Cri.L.J. 179

22. In view of the judicial pronouncements of the Supreme Court, following ingredients are to be established to hold a person guilty for offence under Section 304B of the IPC: -

1. The death of woman occurs within seven years from the date of marriage.
2. Soon before the death of the deceased, she was subjected to cruelty and harassment by her husband or any relative of her husband in connection with demand of dowry.
3. Death of the deceased was caused by any burn or bodily injury or some other circumstances which were nor normal.
4. The victim was subjected to cruelty or harassment by husband or any of his relative.

23. In the present case, marriage took place in the intervening night of 6th and 7th March, 1992 and deceased Mamta Jain admittedly died within seven years of marriage on 17-4-1992. Now, the next question is whether the death of deceased Smt. Mamta Jain occurred otherwise than under normal circumstances.

24. It is the case of the prosecution that the deceased died otherwise than under normal circumstances whereas, it is the case of the defence that death of the deceased occurred in normal circumstances and she died natural death.

25. Rawalmal Jain (PW-1), who is neighbour of the deceased, has stated that prior to three days of death, he had asked the deceased as to what has happened as she was looking weak, then she has stated about her sickness and that she is suffering from high blood-pressure.

26. Pareshwarnath Panigrahi (PW-2), who is the person known to

both the parties i.e. the accused persons as well as the father of the deceased, has stated that on the date of postmortem, D.C. Jain (PW-9) was stating that his daughter was suffering from blood-pressure and at the time of giving farewell to her daughter (vidai), D.C. Jain asked him to take care of his daughter, as she was suffering from blood-pressure. He has also stated that deceased Mamta Jain had informed him that she is suffering from blood-pressure.

27. Dr. R.B.P. Gupta (PW-3), Assistant Surgeon, who has treated deceased Mamta Jain on 17-4-1992 as he was on emergency duty on that date, has stated that on that day, Hukumchand Jain, father of A-1, had come and informed him that her daughter-in-law is suffering from headache and on being informed so, he had prescribed and given Brufen tablet to meet-out the headache.

28. Rajendra Kumar Jain (PW-6), nephew of the deceased, has also been examined. He has stated that he stayed in the house of Arun Chowdhary from 10-4-1992 to 18-4-1992 and while the accused persons were taking the deceased to the hospital on 10-4-1992, he was coming from Geedam, she was shown and treated by a lady doctor Bansal and it was stated by the lady doctor that deceased Mamta Jain was suffering from high blood-pressure. On the next day, Dr. Nayak has also treated deceased Mamta Jain and he has also informed that Mamta is suffering from high blood-pressure. He has also stated in paragraph 4 of his evidence that on 13-4-1992, deceased Mamta Jain was

treated by Dr. C.L. Sharma and he has also given medicines and stated that she has high blood-pressure and prescribed medicines vide Ex.D-4.

29. Dr. M.A.H. Rizvi (PW-7) has been examined as prosecution witness. He has proved Ex.D-2 and stated that he had worked with Dr. L.K. Nayak, who is no more, for many years. Ex.D-2 is a prescription of medicines written by Dr. L.K. Nayak on 11-4-1992 in which blood-pressure of the deceased has been recorded as 166/110. Ex-D-4 is also a prescription of medicines which has been written by Dr. C.L. Sharma in which blood-pressure has been recorded as 190/140 and Dr. C.L. Sharma has also expressed opinion that Mamta Jain was suffering from high blood-pressure and brain haemorrhage is possible on account of high blood-pressure.
30. K.B. Khatri (PW-12), investigating officer, has stated that at the time of inquest, panch witnesses have informed him that deceased Mamta Jain was unwell for last one week.
31. Dr. S. Bansal (PW-14) has been examined and he has proved Ex.P-2 in which Dr. L.K. Nayak has prescribed medicines on 11-4-1992 and recorded blood-pressure as 166/110.
32. Premchand Jain (PW-18) has also been examined and he has stated that the deceased was suffering from headache and it was informed to him by deceased Mamta Jain.
33. Apart from this, defence has filed the consultancy report of Prof. Heeresh Chandra, Head of the Department of Forensic Medicine,

in favour of the accused persons which has been admitted by the prosecution on 5-11-1993 and in which he has stated the death of Mamta Jain to be natural death and his report has been proved by Pareshwarnath Panigrahi (PW-2). The report of Prof. Heeresh Chandra states as under: -

OPINION -

- (i) The death was due to coma caused by the haemorrhage described.
- (ii) All the evidence in the form of result due to existing pathology is available which remains obscure and not analysed and considered in my opinion.
- (iii) Complete authenticated documents were not made available of the whole case in making reference (refers to photographs, statement of husband of deceased, prescriptions etc)
- (iv) The diastolic Arterial pressure when is above 130 mm of Hg is indicative of malignant Hypertension. The deceased on 11/4/92 had diastolic arterial pressure of 110 mm of Hg while on 13/4/92 it shot up to 140 mm Hg. This sudden spurt is sufficient to produce rupture and arterial Haemorrhage which was found at auto play but not located.

FINAL OPINION -

The analysis is based upon the recognised documents submitted and studied under the discipline of Investigative Forensic Medicine and further reconstructed with scientific logic and reasoning on the basis of own experience in the field, available Medico-Legal literature,

covering and resulting in opinion.

“That the deceased Mamta died a natural death.” ”

34. On the other hand, the defence has also examined Moolchand Jain (DW-1) and Narayan Panigrahi (DW-2) who have stated that the deceased was suffering from blood-pressure and proved documents Exs.D-1 to D-4.
35. Statements of aforesaid witnesses would clearly show that the deceased was suffering from acute high blood-pressure and she was being treated regularly. There are documents on record to hold that she was treated by three doctors namely Dr. B. Suri Babu (PW-15), Dr. L.K. Nayak and Dr. R.B.P. Gupta (PW-3), all have treated her for acute high blood-pressure and she has been given medicines to reduce the blood-pressure and bring it down to normal level. The prosecution witnesses have clearly admitted that the fact of deceased Mamta Jain suffering from high blood-pressure was informed to them either by the deceased herself or by father of the deceased D.C. Jain (PW-9). Not only this, in the report dated 14-6-1993 given by Prof. Heeresh Chandra, Forensic Science Expert, which has been admitted by the prosecution on 5-11-1993, Prof. Heeresh Chandra has clearly submitted that the deceased was suffering from high blood-pressure and sudden spurt is sufficient to produce rupture and arterial haemorrhage and that deceased Mamta Jain died a natural death. However, the prosecution has relied upon the report of Dr. D.K. Satpathy in which the death of Mamta Jain has been said to be homicidal. The report of Dr. D.K. Satpathy has been disputed by the

appellants on the ground that it was not exhibited and no question was put to the accused persons placing reliance upon the report of Dr. D.K. Satpathy and, therefore, it cannot be relied upon. Therefore, it cannot be taken as a circumstance against the accused persons in any manner whatsoever.

36. In the matter of **Sharad Birdhichand Sarda v. State of Maharashtra**¹¹ it has been held by the Supreme Court that if circumstances are not put to accused, they cannot be used against him. Similar is the proposition of law laid down by the Supreme Court in the matter of **Nar Singh v. State of Haryana**¹².

37. Thus, on the basis of aforesaid analysis, it is quite apparent that the prosecution has not been able to prove beyond doubt that the death of Mamta Jain was unnatural and she died in other than normal circumstances, whereas the defence has been able to bring sufficient evidence that Mamta Jain died on account of high blood-pressure resulting into arterial haemorrhage and her death is a natural death. Therefore, the prosecution has not been able to prove the first ingredient that Smt. Mamta Jain died otherwise than under normal circumstances.

38. This would bring me to the next question, whether there is demand of dowry by the accused persons and soon before death, the deceased was subjected to cruelty and harassment in connection with demand of dowry by her husband or any of his relative.

11 AIR 1984 SC 1622

12 AIR 2015 SC 310

39. In order to consider this question, statements of the prosecution witnesses need to be noticed.

40. Pareshwarnath Panigrahi (PW-2) has stated that at the time of engagement, the accused persons did not demand any dowry and at the time of marriage, quarrel did not take place between the accused persons and Devichand Jain and marriage of Mamta was decided to be held at Jagdalpur, all the expenses of marriage, particularly decoration, dinner etc., were incurred by Arun Chowdhary, as marriage was to be solemnised at Jagdalpur and father of the deceased and the deceased were residents of Rajnandgaon.

41. Rajendra Kumar Jain (PW-6), nephew of the deceased, has stated that he was also involved in the arrangement of decoration in reception as well as marriage and in reception, all the expenses of decoration etc., were incurred by Arun Chowdhary.

42. Komal Chand Jain (PW-11), friend of the two families, stated that so far as incurring additional expenses is concerned, it has been discussed in his presence. He has further stated that Arun Chowdhary has stated that Rs.10,000/- additional expenses have been incurred and the accused persons were demanding Rs.10,000/- incurred towards additional expenses. He has also stated that it is correct to say that the accused persons were demanding additional expenses of Rs.10,000/- which they have incurred in decorating the marriage premises. In paragraph 10, he has also reiterated that when the accused persons demanded

Rs.10,000/- holding it to be additional expenses that have incurred, we have not asked for particulars, but D.C. Jain has asked for particulars, however, he does not know whether it has been supplied or not. He came to the court with D.C. Jain without there being notice of summon by the court.

43. Premchand Jain (PW-18) has stated that father of the deceased D.C. Jain has obtained Rs.22,000/- from Arun Chowdhary and he has promised to repay during the reception party on 15-3-1992.

44. Aforesaid narration of evidence would show that D.C. Jain is resident of Village Rajnandgaon, but any how when the marriage was fixed, it was decided that the marriage would take place at Jagdalpur and all expenses of marriage, which were required to be born by the deceased family, were asked to be born by the accused persons and in lieu of that, Rs.75,000/- was given by the deceased family to the accused persons. However, Arun Chowdhary claimed that in decoration, Rs.10,000/- more has been incurred which accused No.1 demanded from time to time from the father of the deceased and which is apparent from the statements of Pareshwarnath Panigrahi (PW-2), Rajendra Kumar Jain (PW-6), Komal Chand Jain (PW-11) and Premchand Jain (PW-18). Thus, the amount which has been said to be demanded is an amount incurred towards additional expenses which the accused persons (A-1 and A-2) incurred in decorating the marriage place as per the agreement between the accused persons and father of the deceased Devichand Jain. There is no

evidence at all to hold that Rs.10,000/- was being demanded as dowry from the deceased family either from the deceased or from father of the deceased D.C. Jain, as such, the prosecution has failed to prove that dowry was demanded either from the deceased or from her family.

45. The aforesaid fact of incurring additional expenses by Arun Chowdhary and demand by Indra Kumar (A-1) has been stated by the prosecution witnesses stated herein-above. Those witnesses are prosecution witnesses, they have been examined on behalf of the prosecution and their statements have been examined by the prosecution, they have not been declared hostile by the prosecution, as such their statements are binding on the prosecution. It is also pertinent to note the decision of the Supreme Court in the matter of **Javed Masood and another v. State of Rajasthan**¹³ in which it has been held that if a prosecution witness is not declared hostile by the prosecution, his evidence is binding on the prosecution, which squarely applies to the facts of the present case.

46. This would bring me to the next question as to whether the deceased was treated with cruelty after 7th of March, 1992 till her death on 17-4-1992 by the accused persons.

47. So far as the question of cruelty is concerned, the prosecution has examined D.C. Jain (PW-9). In paragraph 5 of his evidence, he has stated that A-1 was demanding Rs.10,000/- on the pretext that he need money to repay loan and further stated that his

daughter has informed him that A-1 has assaulted her and said that his father has no money. This witness has also stated that Indra Kumar was demanding Rs.10,000/- and he has also written letter to Radheylal, but said Radheylal was not examined by the prosecution.

48. Likewise, Lalit Chauhan (PW-17), who is neighbour of the accused persons, has stated that on the same day, he has heard some voice from the nearby house i.e. near the house of the accused persons, some woman was crying for help and next morning, he came to know that daughter-in-law of Hukumchand has died. But in para 2, he has stated that he heard the voice of accused Uday Bhan.

49. The fact remains that demand of Rs.10,000/- even in the statement of D.C. Jain (PW-9) is for the purpose of paying loan and for need and he has stated that such demand is made against dowry and it has been explained further by the prosecution witnesses noticed herein-above. Likewise, Lalit Chauhan (PW-17) has simply stated that he heard the cry of some woman but he has not stated that the cry was made by Mamta Jain and even he has not identified in his statement to be the voice of deceased Mamta Jain. Further, he has been declared hostile by the prosecution and in his cross-examination, he has stated that it was the voice of co-accused Uday Bhan. He has not stated in his statement recorded under Section 161 of the CrPC, which was recorded after a period of 32 days of the

incident, relating to the fact of marpit.

50. Another most important ingredient to constitute the offence under Section 304-B of the IPC is that cruelty to a woman for and in connection with demand of dowry must be soon before her death.

51. As discussed herein-above, in the case is in hand, there is absolutely no evidence that the accused/appellants had subjected the deceased to cruelty for or in connection with demand of dowry soon before her death. Rather the prosecution witnesses themselves including neighbours and relatives of the deceased have not stated that the deceased had informed to them that she was subjected to cruelty in connection with demand of dowry or that dowry was demanded by the accused persons.

52. Thus, from the aforesaid discussion, it is quite established that death of the deceased occurred within a period of 40 days from the marriage. The first condition laid down "within seven years of marriage" has been fulfilled. Baring this first ingredient of Section 304-B of the IPC, other ingredients are completely missing in the case in hand. The prosecution has miserably failed to prove that death of the deceased was caused by burn or bodily injury or by some other circumstance which was not normal. On the other hand, defence has been able to establish that Smt. Mamta Jain died natural death in normal circumstances. There is absolutely no evidence to show that at any point of time, the accused/appellants herein made any demand of dowry and harassed or subjected the deceased to cruelty in connection with that demand

soon before her death. The prosecution witnesses particularly, D.C. Jain (PW-9) – father of the deceased and Smt. Sarla Jain (PW-11) – sister of the deceased have not stated about the allegation against the accused / appellants individually that they have ever subjected the deceased to cruelty for demand of dowry. Rather most of them have stated that only Rs.10,000/- was demanded by Indra Kumar (A-1) as additional expenses which he and Arun Chowdhary have incurred in decorating the marriage premises on the date of marriage as agreed between the parties. Demand of money other than dowry cannot be held to be demand of dowry for the purpose of Section 304-B of the IPC. Mother of the deceased, who could be the star witness, has not been examined by the prosecution for the reasons best known to the prosecution.

53. Section 113-B of the Indian Evidence Act, 1872 referred to by the State demonstrates that to attract the presumption as to dowry death it is necessary to show that soon before her death, the deceased has been subjected to cruelty or harassment or for, or in connection with, any demand for dowry. Even this essential ingredient is not established. The question of drawing presumption by invoking the said provision does not arise in the case in hand. As has already been held, if the prosecution fails to establish that the deceased died in other than normal circumstances or she has been subjected to cruelty or harassment in connection with demand of dowry, the presumption under Section 113-B of the Evidence Act, cannot be drawn.

54. Having thus considered the oral and documentary prosecution evidence, this Court unhesitatingly arrives at a conclusion that the prosecution has not been able to prove its case against the appellants beyond reasonable doubt for commission of offence under Sections 304B & 498A of the IPC and Sections 3 & 4 of the Dowry Prohibition Act. Therefore, the trial Court is absolutely unjustified in convicting them for offence under Sections 304B & 498A of the IPC and Sections 3 & 4 of the Dowry Prohibition Act.
55. In the result, the appeal is allowed. Impugned judgment dated 12-8-2013 passed by the 1st Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.63/1995 convicting and sentencing the appellants for the aforesaid offences is hereby set aside. The accused / appellants are acquitted of all the charges levelled against them and they be released forthwith, if not required in any other case.
56. Bail bonds of the appellants shall remain in operation for a period of six months as per the provisions contained in Section 437-A of the CrPC.

Sd/-
(Sanjay K. Agrawal)
Judge