

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.48 of 1995

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

- =====
1. Balmukund Pandey (**Since Deceased**), son of late Gaya Dutta Pandey
 2. Anil Pandey, son of Sri Jugal Kishore Pandey
- Both resident of village Dhanibar, P.S. Rishiup, District-Aurangabad
- Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Shashi Chandra Pandey, Adv.
Miss Surya Nilambri, Amicus Curiae

For the State : Mr. Dilip Kumar Sinha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 26-10-2018

1. This criminal appeal has been preferred against the impugned judgment of conviction and sentence order dated 31.03.1995 passed by learned 2nd Additional Sessions Judge- Aurangabad in Sessions Trial No. 200 of 1994/81 of 1994 by which and whereunder he convicted the appellants for the offences punishable under Sections 304-B, 201, 498-A of the Indian Penal Code whereas acquitted them of the charges framed under Section 302 of the Indian Penal Code and Section 4 of D.P. Act and accordingly, sentenced them to undergo rigorous imprisonment for life for the offence punishable under Section 304-B of the Indian Penal Code, to



undergo rigorous imprisonment for three years for the offence punishable under Section 201 of the Indian Penal Code and to undergo rigorous imprisonment for one year for the offence punishable under Section 498-A of the Indian Penal Code. However, all the sentences were ordered to run concurrently.

2. It is pertinent to note here that during pendency of this criminal appeal, appellant no. 1, namely, Balmukund Pandey died and accordingly, his appeal stood abated vide order dated 18.08.2018.

3. PW-2, namely, Mithilesh Kumar Pandey gave his ferdbeyan to PW-7 on 25.04.1994 at about 5:00 PM. at village Dhanibar to this effect that he got information from the PW-4 Murari Mishra that his niece, namely, Kusum Devi was killed by her husband as well as grand father of her husband by pressing her neck and after that by putting her on fire. The PW-4 also informed that dead body of Kusum Devi had been burnt to ash. PW-2, further, claimed that having got the aforesaid information, he immediately went to Village Dhanibar where he came to know from the villagers that at the time of alleged occurrence, both the appellants were present at their house and the appellant no. 2, who happens to be husband of deceased Kusum Devi, pressed her neck and after that put her on fire and by doing the aforesaid act he gave the colour of an accident. The PW-2, further, claimed that aforesaid occurrence took place at about 8:00 A.M. but



he was never informed by the appellants. The PW-2, further, claimed that appellant no. 2 Anil Pandey was demanding motorcycle in dowry and when the aforesaid demand was not fulfilled, the deceased was subjected to cruelty. PW-2, further, claimed that marriage of deceased had taken place in the year 1991 with appellant no. 2. He, further, claimed that appellant no. 2 was a drunkard and the aforesaid habit of appellant no. 2 caused difference between him and the deceased. The PW-2 claimed that deceased was killed by the appellants and subsequently, her dead body was cremated.

4. On the basis of aforesaid ferdbeyan of PW-2, Baroon (Risiup) P.S. Case No. 51 of 1994 for the offences punishable under Sections 498-A, 302, 201/34 of the Indian Penal Code and Section 4 of D.P. Act, 1961 was registered and accordingly, formal FIR was drawn up against the appellants for the aforesaid offences on the same day.

5. The matter was investigated by the PW-7 and after completion of investigation, he submitted charge-sheet for the aforesaid offences against the appellants. The cognizance of the offence was taken and the case was committed to the court of sessions in usual way and accordingly, both the appellants were put on trial before the court below.

6. The appellants stood charged for the offences



punishable under Sections 302, 304-B, 201, 498-A of the Indian Penal Code and Section 4 of D.P. Act, 1961. The appellants denied the charges and claimed to be tried.

7. In order to prove the charges, the prosecution examined, altogether, 8 witnesses and also got exhibited certain documents including two letters said to be written by the deceased as Ext. 2 series. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and denied the prosecution story. The defence also got examined three defence witnesses in support of their defence.

8. The learned trial court after perusing the evidences available on the record convicted and sentenced the appellants in the manner as stated above having relied upon the testimonies of prosecution witnesses in general and Ext. 2 series in particular.

9. Miss Surya Nilambri, learned Amicus Curiae appearing for the appellant no. 2, namely, Anil Pandey submits that learned trial court failed to notice that prosecution could not succeed to prove all the essential ingredients of Section 304-B of the Indian Penal Code. She, further, submits that to seek conviction under Section 304-B of the Indian Penal Code, it is the duty of the prosecution to prove all the essential ingredients of Section 304-B of the Indian Penal Code and unless all the ingredients of Section 304-B



of the Indian Penal Code are proved, the judgment of conviction cannot be passed under Section 304-B of the Indian Penal Code. She submits that in the present case, prosecution failed to prove that deceased was subjected to cruelty soon before her death and also failed to prove that any dowry demand was made by the appellant no. 2.

10. Learned Amicus Curiae, further, submits that learned trial court relied upon Ext. 2 series but failed to take notice of this fact that the aforesaid two letters were forged documents. Continuing her submission, she submits that PW-3, who has brought the aforesaid letters before the court at the time of his evidence, frankly admitted that writing on envelope as well as on letters are quite different and the aforesaid admission of PW-3 goes to show that the writings on envelop as well as letters are of two persons. She, further, submits that PW-7 has stated in his deposition that letters and envelops were handed over to him by PW-3 on 27.04.1994 and the entry regarding handing over of the aforesaid letters and envelops was made by him in case diary but mistakably in place of envelop, he wrote inland letters in the case diary. She submits that the aforesaid fact creates some suspicion and it appears that subsequently, the prosecution got manufactured so-called letters and produced before the trial court.

11. Learned Amicus Curiae, further, submits that learned



trial court has relied upon letters and envelopes (Ext. 2 series) but no question regarding the aforesaid letters and envelopes was put up to appellant no. 2 while recording his statement under Section 313 of the Cr.P.C. and, therefore, no opportunity was given to appellant no. 2 to explain about the genuineness of aforesaid letters and envelopes.

12. Learned Amicus Curiae, further, submits that moreover, there is nothing in the entire evidence to show that it was appellant no. 2 who demanded motorcycle in dowry and subjected the deceased into cruelty because almost all the material witnesses including father of the deceased claimed that it were other family members of the appellant no. 2 who informed them that appellant no. 2 was not satisfied with the articles given to him at the time of marriage and gauna. She submits that mere dissatisfaction is not amount of making demand of dowry because none of the prosecution witnesses claimed that appellant no. 2 had ever been made any demand.

13. Learned Amicus Curiae, further, submits that learned trial court has acquitted the appellants of the charge framed under Section 4 of D.P. Act, 1961 but surprisingly enough, convicted the appellants for the offence punishable under Sections 498-A and 304-B of the Indian Penal Code. She submits that when the charge of demand of dowry could not be established, the appellants could not



have been convicted for the offences punishable under Sections 498-A and 304-B of the Indian Penal Code.

14. Learned Amicus Curiae, further, submits that defence witnesses very clearly stated that house of appellant no. 2 was caught in fire accidentally and deceased was engulfed in the aforesaid fire and unfortunately died due to burn injuries.

15. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that all the material prosecution witnesses including father of the deceased very clearly stated that the appellants had demanded motorcycle in dowry and when the demand was not fulfilled, the deceased was subjected to cruelty and harassment and subsequently, she was put on fire. Learned Additional Public Prosecutor submits that Ext. 2 series support the aforesaid fact as deceased had written letters to her parents prior to her death narrating her ordeal, specifically, mentioning regarding the illegal demand as well as factum of torture. Learned Additional Public Prosecutor, further, submits that it is an admitted position that marriage of deceased had taken place with appellant no. 2 in the year 1991 and she died within seven years of her marriage due to burn injuries at her matrimonial home and, therefore, it is obvious that prosecution succeeded to prove all the ingredients of Section 304-B of the Indian



Penal Code and, therefore, the learned trial court rightly convicted the appellants for the offences punishable under Sections 304-B and 498-A of the Indian Penal Code. He, further, submits that prosecution witnesses, specifically, stated that dead body of the deceased was cremated after her murder and PW-7 seized bones and ash from the burning ghat and, therefore, the learned trial court rightly convicted the appellants for the offence punishable under Section 201 of the Indian Penal Code.

16. Having heard the contentions of both the parties, we went through the record. As we have already stated that, altogether, eight prosecution witnesses were examined by the prosecution to prove its case. Out of them PW-1 Krishna Murari Pandey is relative of PW-4 and this witness claimed that he alongwith one Saroj Babu had gone to the house of the appellants in connection with negotiation of marriage of appellant no. 2 and at the time of negotiation, appellant no. 1 Balmukund Pandey (since deceased) and father of appellant no. 2 told that the appellant was demanding motorcycle but lastly the matter was settled as the bride party agreed to give a television but after marriage the appellant no. 2 used to make demand of motorcycle. This witness further claimed that one year prior to the alleged occurrence there was Sataisa at his home and his son Parshuram Pandey, his brother Awadh Kishore Pandey and PW-3, the



father of deceased had gone to the village of appellants to take Bidai of the deceased but the appellants did not allow the deceased to go with them and subsequently, Awadh Kishore Pandey informed him that deceased had asked him not to come again for Bidai and at that time she was weeping. This witness, further, claimed that mother in law of the deceased had given threatening to Awadh Kishore. This witness, further, claimed that appellant no. 1 Balmukund Pandey (since deceased) came to his house to attend the Sataisa and he had made complaint to him for not allowing the deceased to participate in Sataisa. This witness, further, claimed that relation of the deceased with her husband was not cordial. However, this witness claimed that three months prior to the alleged occurrence, the PW-3 took the deceased to his home and after that thrice the appellant no. 2 came to the house of PW-3 for taking Bidai of the deceased but deceased was not allowed by PW-3 to go to her matrimonial home. This witness, further, claimed that however, one and half months ago to the alleged occurrence the deceased was allowed to go to her matrimonial home but on 25.04.1994 he got information of the alleged occurrence from Murari Pandey, Bhuneshwar Pandey and others. This witness admitted in his cross examination that as soon as he got information of the alleged occurrence, he informed his family members and villagers. This witness, further, admitted that at that time the parents



of the deceased were at Daltenganj. This witness, further, stated that he went to the matrimonial house of the deceased on 27.04.1994 but did not give any information to parents of the deceased in respect of the alleged occurrence. This witness admitted that south portion of house of the appellants was completely burnt and articles kept in the room situated at south-east of the house were also completely burnt. This witness admitted that at the time of negotiation of marriage, when he as well as natal people of the deceased expressed their inability to give motorcycle in dowry and made proposal to give television, the in-laws of the deceased readily agreed to accept the television. This witness admitted that at the time of negotiation of marriage, he had talked with Balmukund Pandey and Yugul Kishore Pandey and after marriage of deceased he had never visited the matrimonial home of the deceased. This witness admitted that he had met appellant no. 2 Anil Pandey after his marriage but he had no complain with the behaviour of appellant no. 2 Anil Pandey.

17. PW-2 Mithilesh Kumar Pandey is informant of the present case. This witness stated that on 25.04.1994 at about 12:00 noon PW-4 gave information to him about the alleged occurrence and having got the aforesaid information, he along with PW-4, Paras Nath Mishra, Gautam Pandey and Uday Pandey went to the village of appellants where he came to know that the appellants committed the



murder of the deceased by pressing her neck and after that her dead body was put on fire. This witness claimed that he came to learn the above stated facts from one Gopal Pandey and Vijay Singh of village Dhanibar. This witness, further, stated that at the time of marriage, the appellants and mother of appellant no. 2 had made demand of motorcycle but the aforesaid demand could not be fulfilled and similarly, at the time of performing Gauna, the above stated demand was made. This witness, further, stated that he as well as others had gone to the village of the appellants to take Bidai of the deceased at the time of function of Sataisa at his home but the deceased was not allowed to go with them as the appellants and mother of appellant no. 2 demanded motorcycle in dowry and said that unless the motorcycle in dowry is given, the deceased would not be allowed to go to her parental home. This witness, further, claimed that information in respect of death of deceased was not given to him as well as his other family members by the appellants. This witness stated in his cross examination that when PW-4 gave information to him about the alleged occurrence, Naresh Pandey, Shyamdeo Pandey and Damodar Pandey were present there. This witness, further, stated that he did not give any information to the villagers nor to the family members of his family about the alleged occurrence. This witness, further, admitted that he also did not send any information of the alleged occurrence to



the father of the deceased who was at Daltenganj at that time. This witness, further, admitted that when he reached at the village of appellants, he had talked with Gopal Pandey and others and subsequently, he lodged the case on the basis of information given by the Gopal Pandey and PW-4 Murari Mishra. This witness, further, admitted that PW-4 disclosed to him that one Panditji of village Dhanari had given information to him about the alleged occurrence. This witness, further, admitted that DW-1 Vivekanand Mishra is his brother in law and he has no enmity with DW-1. This witness, further, admitted that on 26.04.1994 he met his brother Anirudh Pandey (PW-3) at Risiup police station and PW-3 told him that he got information about the alleged occurrence from DW-1, DW-2 and DW-3.

18. PW-3 Anirudh Pandey is father of the deceased. This witness claimed that marriage of deceased was solemnized with appellant no. 2 Anil Pandey in the year 1991 and at the time of marriage, appellant no. 1 Balmukund Pandey (since deceased) Yugal Kishore Pandey, Narvdeswar Pandey and appellant no. 2 Anil Pandey had demanded one motorcycle in dowry but, anyhow, matter was settled and in place of motorcycle, one television and one fan had to be given and subsequently the marriage was solemnized. He, further, claimed that in March 1993, Duragman of his daughter was solemnized and at that occasion also, appellant no. 2 demanded one



motorcycle but he expressed his inability to fulfil the aforesaid demand. This witness, further, claimed that in the month of April 1993, the appellant no. 1 (since deceased) had attended the function of Sataisa at his home and when he asked about the Bidai of the deceased, the appellant no. 1 (since deceased) told that unless the demand of motorcycle is fulfilled, the Bidai of the deceased is not possible. This witness, further, claimed that in the month of August 1993, he took the Bidai of the deceased and took her to Daltenganj where several times appellant no. 2 came for Bidai of deceased and subsequently, on 13.03.1994, he allowed the deceased to go to her matrimonial home but on 25.04.1994 his daughter was killed by the appellants. This witness claimed that appellants used to torture the deceased mentally and physically and deceased had written letters to him disclosing the torture meted out to her as well as illegal demand of the appellants. This witness proved two letters along with envelopes as Ext. 2 series. This witness admitted that envelopes of the aforesaid letters were not in handwriting of the deceased. This witness also admitted that except two letters, he had no other letters of the deceased. This witness, further, admitted that deceased remained at her matrimonial home from 21.05.1993 to August 1993 and from 13.03.1994 to 25.04.1994. This witness, further, claimed that deceased was a literate lady and she had passed Vidhya Vinodini



examination. This witness produced certificate of Vidhya Vinodini examination which has been marked as 'X' for identification. This witness admitted that he got information about the alleged occurrence on 25.04.1994 at about 3:00 to 4:00 P.M from one Sudhanshu Tiwary of village Bhairapur who gave the aforesaid information on telephone. This witness, further, claimed that he proceeded from Daltenganj in the morning of 26.04.1994 and straightway went to Risiup police station where he remained 10 to 15 minutes but he could not meet the Officer in charge of Risiup police station. However, he met PW-2 and got further information in respect of the alleged occurrence from PW-2. He, further, claimed that he went to the house of appellants on 27.04.1994 where again Ramji Pandey, Raleshwar Pandey etc. gave information to him about the alleged occurrence. This witness admitted that having got letters of deceased he talked with appellants and their family members but they did not behave properly but even then he did not lodge any case nor gave any sanha regarding the above stated fact. This witness denied that he had shown the police two inland letters in course of investigation and subsequently, got manufactured forged letters.

19. Another important witness is PW-4 who is relative of PW-2 and PW-3. This witness claimed that Murari Mishra of village Dhanari gave information to him about the alleged occurrence



and after that he as well as Bhuvneshwar Mishra and Parasnath Mishra gave information to PW-2 about the alleged occurrence and, thereafter, they along with others went to burning ghat where in their presence police seized ash and bones from the burning ghat. This witness proved his signature on the seizure list.

20. PW-5 Awadh Kishore Pandey is also a witness on the point of demand of dowry and torturing. This witness claimed that in the month of June/July 1993, he had gone to the house of appellants to take Bidai of the deceased who was his cousin niece but Jugal Kishore Pandey and Abha Devi as well as appellants demanded one motorcycle in dowry. This witness claimed that his niece (deceased) started weeping and after that he returned to his home. However, this witness, further, claimed that appellant no. 1 had come to attend the function of Sataisa and at that time also, appellant no. 1 disclosed that appellant no. 2 was demanding motorcycle. This witness, further, claimed that initially, the date of Sataisa was fixed in the month of April but subsequently, it was re-fixed in the month of June/July.

21. PW-6 is a formal witness who proved the certificate of Vidhya Binodini examination of deceased as Ext. 4.

22. PW-7 Rajendra Prasad is investigating officer of this case. This witness claimed that on 25.04.1994 at about 9:10 A.M. he got a rumor that dead body of wife of appellant no. 2 Anil Pandey was



being cremated and having made sanha entry to the aforesaid information, he went there and found that dead body had already been burnt. Subsequently, he seized bones and ash. This witness also claimed that he recorded the ferdbyan of PW-2 at 5:10 P.M. He also claimed that he inspected the place of occurrence and found that one room of the house of the appellants was completely burnt and articles kept in the aforesaid room were also burnt. This witness also found that Chajja of the aforesaid room had been removed. This witness further stated that PW-3 had given two letters to him on 27.04.1994 but mistakably he wrote in his case diary that PW-3 had given two inland letters to him. This witness admitted that he had not made any mark or sign on the aforesaid letters or envelops. This witness, further, admitted that he had not sealed the seized ash and bones. This witness stated that seized ash and bones had been wrapped in a newspaper but he had not given case number on the aforesaid packet.

23. PW-8 is a formal witness who has proved formal FIR as Ext. 6.

24. After perusal of above stated evidences adduced on behalf of the prosecution, we find that PW-1 Krishna Murari Pandey, PW-2 Mithlesh Kumar Pandey, PW-3 Anirudh Pandey, PW-5 Awadh Kishore Pandey are said to be witnesses on the point of demand of motorcycle. However, PW-1 claimed that he and one Saroj Babu had



gone to the house of appellants for negotiation of marriage of the deceased and at that time, the appellant no. 1 Balmukund Pandey (since deceased) and father of appellant no. 2 had disclosed that appellant no. 2 was insisting for taking motorcycle in dowry but the matter was resolved as in-laws of the deceased agreed to take television instead of motorcycle. However, PW-1 claimed that even after solemnization of marriage, the appellant no. 2 used to make demand of motorcycle. This witness admitted at para 5 of his cross examination that after marriage he had talked with appellant no. 2 but he had no grievance or complain against the behaviour of appellant no. 2. The aforesaid admission of PW-1 goes to show that claim of making demand of motorcycle after solemnization of marriage was not genuine because had the appellant no. 2 made demand of motorcycle even after solemnization of marriage, the PW-1 would have certainly expressed his dissatisfaction about the behaviour of appellant no. 2. Moreover, this witness has, nowhere, stated that appellant no. 2 had directly made demand of motorcycle in his presence. PW-2 Mithlesh Kumar Pandey is uncle of the deceased. This witness claimed that both the appellants and mother of appellant no. 2 had made demand of motorcycle and again when he went to take Bidai of the deceased at the occasion of Sataisa, the mother of appellant no. 2 made demand of motorcycle. Therefore, it is obvious



from the aforesaid statement of PW-2 that omnibus allegation of demand of motorcycle has been levelled against the appellants. However, the attention of this witness was drawn towards his previous statement recorded under Section 161 of the Cr.P.C. and this witness stated that he had made statement before the police that both the appellants and mother of appellant no. 2 had demanded motorcycle in dowry but PW-7 at para 19 of his cross examination stated that PW-2 had not made statement before him to this effect that both the appellants and mother of appellant no. 2 had demanded motorcycle in dowry. Again, the attention of PW-2 was drawn towards his previous statement recorded under Section 161 of the Cr.P.C. and this witness claimed that he had made statement before the PW-7 to this effect that at the time of solemnization of Gauna, the demand of motorcycle was made but PW-7 at para 19 of his cross examination denied the aforesaid fact and stated that PW-2 had not made such statement before him. Again, PW-2 claimed that he had made statement before the police that when he went to take back deceased on the occasion of Sataisa, the mother of appellant no. 2 had made demand of motorcycle. However, the PW-7 again denied the aforesaid fact and stated that PW-2 had not made statement that mother of appellant no. 2 had demanded motorcycle when PW-2 came to take Bidai of the deceased. Therefore, it is obvious that PW-2 improved his statement



during course of trial and it is unsafe to place reliance upon the above stated statement of PW-2.

25. PW-3 is father of the deceased and this witness is most competent witness on the point of demand of motorcycle. This witness stated that at the time of solemnization of marriage, appellants and their family members demanded motorcycle but they got satisfied on taking television and fan instead of motorcycle and the marriage was solemnized. The above stated statement of PW-3 goes to show that when PW-3 agreed to give television and fan in place of motorcycle, the appellants and their family members got satisfied with the aforesaid articles and they did not make demand of motorcycle thereafter. However, PW-3, further, claimed that in the month of March 1993 at the time of solemnization of Duragman, appellant no. 2 demanded motorcycle but he expressed his inability to give motorcycle. However, PW-3 has, nowhere, claimed in his statement that on his refusal to give motorcycle at the time of solemnization of Duragman, the appellant no. 2 or his family members created any trouble in solemnization of Duragman. PW-3, further, claimed that in the month of April 1993, appellant no. 1 Balmukund Pandey (since deceased) participated in Sataisa and at that time he told that deceased would not be sent to the house of PW-3 unless the demand of motorcycle is fulfilled. According to this witness, at the time of



Duragman, it was appellant no. 2 alone who made demand of motorcycle. PW-3 has, nowhere, stated that except at the time of solemnization of marriage and Gauna, on any other subsequent stage the appellant no. 2 had demanded motorcycle.

26. PW-5 Awadh Kishore Pandey stated that in the month of June/July 1993 he had gone to the house of in-laws of the deceased to take her Bidai and at that time both the appellants and parents of appellant no. 2 said that deceased would not be sent till fulfilment of demand of motorcycle. This witness, further, claimed that on the occasion of Sataisa when appellant no. 1 (since deceased) came to participate in the aforesaid occasion, the appellant no. 1 (since deceased) disclosed that appellant no. 2 was not ready to forego his demand of motorcycle. This witness admitted in his examination in chief itself that in the month of June/July, 1993 he had gone to the house of appellants to take Bidai of deceased but PW-3 had admitted that PW-5 had gone to the house of appellants to take Bidai of deceased on the occasion of Sataisa which was going to be performed in the month of April, 1993. Therefore, it appears that in course of trial PW-5 developed this story that the date of Sataisa was refixed in the month of June/July, 1993. However, the attention of this witness was drawn towards his previous statement and this witness stated that he had stated before the police that appellant no. 1 (since deceased)



disclosed that appellant no. 2 was adamant to take motorcycle in dowry. However, PW-7 denied that PW-5 had not made such statement before him.

27. Apart from the above stated oral evidences, prosecution has proved Ext. 2 series, two letters said to be written by the deceased to her family members prior to the alleged occurrence to prove the demand of dowry as well as factum of torturing.

28. Perusal of Ext. 2 goes to show that aforesaid letter was written on 21.05.1993 and similarly, perusal of Ext. 2/1 goes to show that aforesaid letter was written on 16.04.1994. PW-3 claimed that both the aforesaid letters are in the handwriting of deceased and PW-3 claimed to have identified the handwriting of the deceased. PW-3 also claimed that deceased had passed out Vidya Vinodni examination and she was a literate lady. Although, the defence challenged the aforesaid claim of prosecution and took stand that deceased was an illiterate lady and she had not written any letter but there is nothing on the record to form an opinion that the deceased was an illiterate lady.

29. It is an admitted position that alongwith the aforesaid two letters, two envelopes were also produced by the prosecution before the trial court. The handwriting on the envelopes are quite different from the handwriting of the above stated two letters. PW-3



claimed that photostat copy of aforesaid letters and envelopes were given to PW-7 on 27.04.1994 and PW-7 admitted this fact that on 27.04.1994 PW-3 handed over two letters to him but he wrongly mentioned in the case diary that two inland letters were handed over to him. Submission on behalf of the appellants is that the aforesaid admission of PW-7 creates doubt about the genuineness of Ext. 2 series and it appears that subsequently, the inland letters were removed from the police record and in place of inland letters, these forged letters were placed on record.

30. PW-3 has admitted in his cross examination that deceased remained at her matrimonial home from 21.05.1993 to August 1993. The aforesaid admission of PW-3 goes to show that deceased reached at her matrimonial home on 21.05.1993. Ext. 2 goes to show that on 21.05.1993 the letter was written meaning thereby that allegedly deceased wrote Ext. 2 on the day of reaching her at her matrimonial home but in the aforesaid letter (Ext. 2), it has, nowhere, mentioned that she reached at her matrimonial home safely on the same day. Therefore, the aforesaid circumstance creates doubt about the claim of PW-3 that deceased remained at her matrimonial home from 21.05.1993 to August 1993 and also creates doubt about the genuineness of Ext. 2. Similarly, Ext. 2/1 goes to show that aforesaid letter was written on 16.04.1994 i.e. a couple of days before the



alleged occurrence and admittedly, the envelop of the aforesaid letter contains a different handwriting and, therefore, the genuineness of the aforesaid Ext. 2/1 also appears to be doubtful.

31. PW-2 and other material witnesses although claimed that deceased was subjected to cruelty due to non fulfilment of illegal demand of motorcycle but on the point of demand of motorcycle the evidence adduced on behalf of the prosecution appears to be doubtful and, therefore, we are of the opinion that prosecution could not succeed to prove the fact of demand of motorcycle. Moreover, the learned trial court acquitted the appellants of the charge framed under Section 4 of D.P. Act and, therefore, it is established that prosecution could not succeed to prove the charge of making demand of dowry by the appellants.

32. As we have already stated that Ext. 2 series appear to be doubtful and except the omnibus allegation of torturing, there is no any other evidence to show that deceased was subjected to cruelty by the appellants and her in-laws soon before her death in connection with demand of dowry. Therefore, we are of the view that prosecution failed to prove the fact of demand of dowry as well as allegation of torturing on deceased by the appellants.

33. No doubt, deceased died within seven years of her marriage in other than normal circumstances but other important



ingredients of Section 304-B of the Indian Penal Code could not be proved by the prosecution and, therefore, in our view, the appellants could not have been convicted for the offences punishable under Section 304-B/34 of the Indian Penal Code and when the prosecution failed to prove charges under Section 304-B/34 of the Indian Penal Code against the appellants, the appellants could not have also been convicted for the offence punishable under Section 201 of the Indian Penal Code. Furthermore, we have already held that prosecution could not succeed to prove that deceased was subjected to cruelty in connection with her marriage and, therefore, the conviction of appellants under Section 498A of the I.P.C. was also not in accordance with law.

34. Apart from the above stated infirmities of the prosecution case, we would like to note here that no question regarding the letters (Ext. 2 series) was asked from the appellant no. 2 when his statement under Section 313 of Cr.P.C. was recorded. Therefore, it is apparent that appellant could not get any opportunity to explain the genuineness of the aforesaid letters. Therefore, we are of the opinion that serious prejudice has been caused to appellant no. 2 and the impugned judgment of conviction and sentence order can not sustain in the eye of law.

35. On the basis of aforesaid discussions, this criminal



appeal is allowed and accordingly, the impugned judgment of conviction and sentence order is, hereby, set aside and accordingly, the appellant no. 2, namely, Anil Pandey is acquitted of the charges. He is on bail. He is discharged from the liabilities of his bail bonds.

36. Copy of first and last page of this judgment be handed over to learned Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	01.11.2018
Transmission Date	01.11.2018

