

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.214 of 2003

Arising Out of PS.Case No. -378 Year- 1997 Thana –Kotwali (Barari) District- BHAGALPUR

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Ganesh Tiwary @ Ganesh Prasad Tiwary, son of late Surya Narayan Tiwary,
resident of village-Deshwar, Police Station-Bath in the District of Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 269 of 2003

Arising Out of PS.Case No. -378 Year- 1997 Thana –Kotwali (Barari) District- BHAGALPUR

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Gopal Tiwary, son of Ganesh Tiwary, resident of village-Deshwar, Police Station-
Bath in the District of Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.214 of 2003)

For the Appellant/s : Mr. Gopal Prasad Roy, Adv.

Ms. Anuja Shree Roy, Adv.

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

(In CR. APP (SJ) No.269 of 2003)

For the Appellant/s : Mr. Gopal Prasad Roy, Adv.

Ms. Anuja Shree Roy, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 07-02-2018



Heard Sri Gopal Prasad Roy, learned advocate assisted by Ms. Anuja Shree Roy, learned counsel on behalf of the appellants in both the appeals and Sri Sujit Kumar Singh, learned APP for the State.

2. The present criminal appeals have arisen out of the judgment dated 9th April, 2003 passed by learned Additional District & Sessions Judge, Fast Track Court, Bhagalpur in Sessions Case No.24 of 1999/Trial No.221 of 2002. By the impugned judgment, the trial court has held that the prosecution has successfully proved its case against all the accused persons, except against one Soni Devi. The appellant in Cr. Appeal (S.J.) No.214/2003 is the father-in-law of the deceased whereas the appellant in Cr. Appeal (S.J.) No.269 of 2003 is the husband of the deceased. They have been convicted under Sections 304B, 498A and 201 of the Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act.

3. For the offence under Section 304B, the sentences awarded to both the accused are rigorous imprisonment for ten years whereas three years each has been imposed for the offences under Sections 498A and 201 of the Indian Penal Code. A sentence of six months each under Sections 3 and 4 of the Dowry Prohibition Act has been imposed. All the sentences shall run concurrently. They have been further sentenced to pay a fine of Rs.2,000/- separately each of



the accused and in default of payment of fine they have to undergo a further period of simple imprisonment for three months.

4. The prosecution case as disclosed by the informant Abhay Kumar Pandey (PW-7) is that the deceased was married in the year 1993 with accused Gopal Tiwary. She was living in her matrimonial house along with in-laws, husband and sister-in-law Soni Kumari. It is alleged that at the time of marriage, some dowry was also given as per the demand of the father of the accused Gopal Tiwary. It is alleged that after marriage, the accused Gopal Tiwary was putting pressure on his wife for more dowry and when the deceased expressed her inability then she was subjected to torture for this. It is also alleged that two years before the actual occurrence, at the time of marriage of the sister of Gopal Tiwary a sum of Rs.10,000/- was demanded from the informant's side on which Rs.7,500/- was given, but the amount was less than the demand so an attempt was made to kill the informant's sister by burning. It is alleged that on 2.7.1997 as the informant was working in a cloth shop one Dhirendra Kumar Jha came to him at about 6.30 pm and informed him that his sister has been burnt to death. The informant went to her sister's matrimonial house and found the dead body of his sister placed on a cot and members of his sister's matrimonial house told him that she died due to bursting of stove while she was preparing



milk. The informant claims that he got knowledge from the neighbouring people that at the time of occurrence only deceased and her husband were present in the house while the parents-in-law and sister-in-law had gone outside but they reached about 5.30 pm and all of sudden all of them had taken out the dead body of deceased Punam.

5. On the basis of the fardbeyan of the informant investigation was conducted after lodging the FIR. On completion of investigation, a charge-sheet was filed under Sections 304B/34 of the Indian Penal Code. Cognizance was taken of the offences and after commitment the case was transferred to the court of Sessions. In this case the appellants were, however charged under Sections 498A, 304B read with Section 34 IPC and also under Sections 3 and 4 of the Dowry Prohibition Act. During the course of trial one of the accused Bimla Devi (mother-in-law) died and proceeding against her was dropped vide order dated 30.07.2002.

6. The defence came out with a plea that they have been falsely implicated in this case. Father-in-law Ganesh Tiwary (appellant in Cr. Appeal No.214 of 2003) took a plea that he was not present at the place of occurrence and he heard that the deceased died due to bursting of stove.

7. In course of deposition, altogether ten witnesses have been examined on behalf of the prosecution. PW-1 Lalmani Mandal is



a close neighbour of the deceased. PW-2 is Sashi Kant Mandal also a neighbour. PW-3 is Anju Devi who did not support the case of the prosecution and was declared hostile. PW-4 is Mantu Mandal who is an accounts clerk in PWD Department, he has deposed that the room in which the alleged occurrence took place was a government quarter which was allotted in the name of Sadanand Pandey (father of the deceased) and the members of the deceased matrimonial family had been living there. This witness has denied that he ever stated before the police that on the day of occurrence at 10.00 AM he had seen the parents-in-law and sister-in-law of the deceased going to Burhanath Temple. PW-5 is Sadanand Pandey (father of the deceased) who has deposed that while he was present in his office and came out of the office at about 5.45 Pm to go to his home at Sabour in the way he met Mantu Mandal (PW-4) who told him that his quarter is on flame in which his Samdhi Ganesh Tiwary used to live. On getting this information, he went there along with Mantu Mandal (PW-4) and found the door of the quarter closed and so he called his daughter and knocked the door which was opened by his Samdhi.

8. PW-5 claimed that when he reached there at this particular time, all the accused persons carried the dead body of Punam outside and the dead body was placed on a cot. The intensity of burning was so deep that the dead body was not being identified.



This witness has also stated that he sent one Dhirendra Jha (P.W.-8) to call his son Abhay Kumar Pandey (P.W.-7), the son reached there and told him that his sister has been burnt to death. He further stated that the husband of his daughter and other members of her matrimonial house always used to demand money from him and at one time on the occasion of the marriage of sister of Gopal Tiwary, he gave them Rs.7,500/- although the demand was for Rs.10,000/-.

9. PW-6 is Santosh Kumar Tiwary who is brother of the deceased. He has proved his signature on the inquest report (Ext.2) which was prepared on 3.7.1997 (one day after the alleged occurrence). PW-7 Abhay Kumar Pandey is the informant himself who has supported the prosecution case. He has stated that he was called by his father and when he reached at the place of occurrence he saw that his father was weeping and the dead body of his sister was placed on a cot. He enquired from the parents-in-laws, sister-in-law and also from the husband of the deceased about the occurrence and they replied him that she died due to bursting of stove.

10. PW-7 has further stated that the stove was in good condition filled up with kerosene oil to its full capacity and the milk was not being prepared rather milk was placed on Sinka (a structure made of rope suspended by the ceiling). This witness has further stated that family members of his sister's matrimonial house always



used to demand money and accordingly many a times the demand was made, but as they continued in demanding so his father became unable to meet their demand. This witness has further stated that he had not gone to the police station rather the police himself reached there and so he gave his statement before the police. This witness has proved his fardbeyan which is Ext.-3. This witness has proved the seizure list of an empty container of kerosene oil of five litres capacity, stove and some burnt clothes which is Ext.-4. He has also proved the inquest report which is Ext.-5.

11. PW-8 is Dharendra Kumar Jha who has stated that his house is situated near the place of occurrence and he saw the dead body of Punam, he has stated that a large number of people had already assembled and some of them were weeping and the father of the deceased told him to call his son Abhay Kumar Pandey and so he went to the shop where Abhay Kumar Pandey (PW-7) was working and returned along with him. This witness, in course of his cross-examination, has stated that he has no any personal knowledge about the occurrence. He has stated that the seizure list was prepared on the following morning and the bed-sheet was seized in his presence. He also stated that stove was without any key. PW-9 is Dr. Sohan Prasad Choudhary who has stated that on 3.7.1997 he performed postmortem examination on the dead body of Punam Kumari and found the



following injuries:

“(1) Ritornortius injury, smell of K.Oil on the cloth:

Dermoegidermal burn with pale and blackening on the surface of body involving whole of head and face, neck, chest, abdomen, back, buttock, pudenda, both superior extremity including both palm and both inferior extremities including both sole.

On dissection – all the internal organ were found congested. Trachea and ossopheghus contain mucous and fine throat. Stomach contains semi-digested food. Bladder was empty. Hearth both chamber contain some amount of blood. Utreous size was big and upper end of uterous was up to the (2” below the ambellious) Size (5 month size) uterous contains male child of five month age. Intestine contains Gas and fissies. Visceras were kept for chemical analysis. A portion of each of viscera of lung, heart, liver, spleen, whole of stomach with its contents and one half of each kidney for chemical examination.”

12. The investigating officer was requested to make an arrangement to send the visceras to Forensic Science Laboratory for needful. According to the witness, the time elapsed since death was between 12 to 24 hours approximately. Cause of death was kept pending till Forensic Science Laboratory report. Nature of burns was postmortem in nature and it was 100%. The witness has proved his



post mortem report which is Ext.7. This witness has further stated that Alumium phosphide commonly known Celphos is a severe gastrointestinal irritant and is highly poisonous, if in viscera report, poison is found, the cause of death will be due to poison.

13. In cross-examination, the witness has stated that burning was post-mortem. He has further stated that if cause of death is not determined, then viscera report is preserved and added that viscera report was sealed by him. Viscera was sent to the Department by him and from the department, it was handed over to the police and the police sent it for examination. The witness again stated that all the burn injuries were post-mortem. He has further stated that the viscera of all the organs were collected in one clean glass jar which was new and was of two liters capacity.

14. PW-10 is the Investigating Officer of the case who has stated that during the evening hour on 2.7.1997 while doing patrolling with the officer in-charge he reached Adampur chowk, where he came to know that one woman had been seen burnt to death in the PWD Department quarter and so on the basis of the information, he along with the officer in-charge of Barari police station reached there, where he met the informant Abhay Kumar Pandey (P.W.-7) whose fardbeyan was recorded by the officer in-charge Vidyasagar of Barari police station. This witness has also



proved the forwarding report which is Ext.-8, he got the charge of the investigation and so he again recorded the statement of the informant. He has stated that due to night and heavy rain inquest report was not prepared at that time. He has further stated that he attempted to search out the named accused persons, but they were absconding. He inspected the place of occurrence which was a P.W.D. government quarter meant for 4th grade employee situated at Adampur. He has stated that in one of the rooms the occurrence took place in which he found one cot and also found bed-sheet and pillow in burnt condition. He has further stated that he found one chair made of iron on which one quilt in burning condition and in haphazard way was lying. He also found one Sari in red colour soaked in kerosene oil and a large portion of it was found burnt. He found one empty tin of five litres capacity which was smelling with kerosene oil below the cot in the room of the deceased. He also found one stove fully filled up with kerosene oil but without any key and cover. The investigating officer stated that Sadanand Pandey had not stated before him that the accused persons had demanded Rs.5,000/- on the occasion of shradh ceremony of the grand-father and had also not stated before him that as the money was not given, so his daughter was burnt to death. The investigating officer came to know from nearby people that in the day time only the deceased and her husband Gopal Tiwary were present in



the house while the deceased's parents-in-law and sister-in-law had gone to outside and returned to residence only in the evening.

15. It was the case of the defence that the marriage of the deceased with Gopal Tiwary took place in the year 1993. It was argued that ingredients of Sections 304B, 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act have not been established by the prosecution because the prosecution has failed to prove about any demand of dowry or any torture committed on the deceased for the purpose of dowry. It was argued that the prosecution has not established that the deceased was subjected to cruelty and harassment by her husband and/or by any other relative of the husband soon before the death of deceased. In this regard, the defence placed reliance on the judgment of the Hon'ble Supreme Court in the case of Sunil Bajaj Vs. State of M.P. reported in 2002 (1) Patna Criminal Cases Reporter (S.C.) 257 in which it has been held that " in order to convict an accused for an offence under Section 304B of the IPC the following essentials must be satisfied:-

- (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such death must have occurred within seven years of her marriage;



(iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by the relatives of her husband;

(iv) Such cruelty or harassment must be for or in connection with demand of dowry.

The defence took a plea that only when the aforementioned ingredients are established by acceptable evidence, such death shall be called dowry death and the husband or his relative shall be deemed to have caused her death. It was also submitted that normally in a criminal case the accused can be punished for an offence on establishment of commission of that offence on the basis of evidence, which may be direct or circumstantial or both, but in case of an offence under Section 304B IPC an exception is made by deeming provision as to nature of death as dowry death and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects but on proving the existence of the ingredients of the said offence by convincing evidence. The case was that the burn injuries were ante-mortem and it was not post-mortem as stated by the doctor. It was argued that the deceased died accidentally due to bursting of stove while she was preparing milk and her husband tried to save her and in the process he also got burn injuries on his hand. It was also argued



that except the husband, all the remaining accused persons were not present at the place of occurrence as they had gone to Burhanath temple to attend a marriage ceremony.

16. The prosecution case was that all the ingredients of the Sections 304B and 498A IPC as also under Sections 3 and 4 of the Dowry Prohibition Act have been successfully established by the prosecution. Reliance was placed on a case law reported in 2000(3) PLJR S.C. 68 and it was argued that “soon before” is a relative term and cannot be laid down by fixing of time limit. Soon before is not a synonym with the term “immediately before”. Mere lapse of sometime by itself would not provide to an accused a defence if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the deceased.

17. As stated above, the learned court held the accused guilty and sentenced them the punishment as recorded above.

Submissions in Appeal

18. Learned counsel representing the appellant in both the cases has submitted that the prosecution has not been able to prove the case beyond all reasonable doubt. According to learned counsel, there are many loopholes in the case of prosecution which will prove fatal and benefit of doubt will go to the accused leading to their



acquittal in the case. Learned counsel submits that it is an admitted fact that on the alleged date of occurrence (2.7.1997) police reached at the place of occurrence on its own information and not on the information of the father of the deceased. Father of the deceased had already reached at the place of occurrence, he called the informant but did not call the police. When police came there no inquest report was prepared and even no seizure list was prepared by the police that day, the house was also not sealed.

19. The inquest report and the seizure list were prepared only on the next day. The accused were arrested and were produced in the court only on 4.7.1997 because the father of the deceased was not willing to lodge the FIR, but it was because of the insistence of the son (PW-7) he finally succumbed under pressure of the PW-7 and the FIR was lodged on the fardbeyan of PW-7. Learned counsel submits that FIR was lodged in fact on the written report of the informant only on 3.7.1997 at about 8.30 pm meaning thereby that no FIR was lodged in connection with this occurrence for more than 24 hours from the time of information received by father and brother of the deceased. This clearly shows that the father was not agreeable to lodge the FIR because the deceased and her husband were in good relationship, a son was born out of the wedlock and there was no complaint whatsoever of the demand of dowry. Learned counsel further submits



that the fact that the deceased along with her husband and parents-in-law were residing in the government quarter which was allotted in the name of her father shows that both the family had been maintaining good relationship.

20. Learned counsel for the appellants has heavily relied upon the deposition of Sadanad Pandey (PW-5) who happens to be the father of the deceased Punam Kumari. In his deposition this witness has stated that the husband of Punam and her Sasural people were always asking for money and on asking of Gopal Tiwary at the time of marriage of his sister he had given Rs.7500/-. This witness has stated that they had demanded Rs.10,000/- for the purpose of purchase of land and at the time of shradh. He has stated that for the purpose of sharadh he had given Rs.5,000/- but because he did not give money for the purpose of purchase of land his daughter was burnt to death. In paragraph 7 of his deposition he has stated that he had made statement before the police, learned counsel for the appellants submits that if this witness had made statement before the police then it should have been recorded as fardbeyan and that could have been the basis for FIR, therefore the delay of over 24 hours and then lodging the FIR in the present case on the basis of the statement of PW-7 is a result of an afterthought. Learned counsel submits this witness has nowhere stated in his deposition that there was a demand of dowry. His statement is



only to the effect that for the purpose of sharadh and then for the purpose of purchase of land her husband and sasural people had asked for some money, but it was not by way of demand of dowry. There is no allegation that the parents-in-law had ever asked PW-5 to give them money for any reason.

21. Pointing out the statements made in paragraph 12 of the deposition of PW-5, learned counsel for the appellants submits that he has categorically stated that about one year back before the death of Punam he had provided the government quarter allotted in his name to his Samdhi and son-in-law for residential purposes. He has stated that he had a good relationship with them. He has stated that he had given Rs.7500/- on asking of Gopal Tiwary at the time of marriage of his sister. He has further stated that he had told the investigating officer that the accused had asked for money for purpose of sharadh and purchase of land. This witness has categorically stated in his deposition that he had not stated to Daroga Ji that because he had not provided money to the accused for purchase of land they had killed his daughter. Learned counsel has heavily relied upon paragraph 16 of the deposition where in he has not supported his statement made under Section 164 Cr.P.C. In paragraph 18, he has stated that nobody had told him that they had seen his daughter burning. He has stated that only on suspicion he had told that the



accused persons had burnt the daughter.

22. In paragraph 20 he has stated that fardbeyan of his son was not recorded in his presence. In his cross-examination he had accepted that when he went to the quarter he had seen the burn injuries on the hand of Gopal Tiwary. Learned counsel submits that in this case there is no evidence to show that just before her death the deceased was tortured. He has referred to Ext.-9 which is a forensic report and according to that celphos which is highly poisonous nature of substance was found. The death had, therefore, taken place due to consumption of poison. Learned counsel submits that none of the prosecution witnesses have talked of giving Rs.7500/- or Rs.10,000/- as dowry to the accused persons.

23. Learned counsel has further referred the deposition of informant (PW-7) particularly paragraph 11 and 12 of his deposition to show that in paragraph 11 PW-7 has categorically stated that he was told by Dhirendra Kumar Jha who had come to call him that his sister was burnt to death. He has accepted that he became angry and in that mental condition he reached at the place of occurrence. His father was already there. This witness has stated in paragraph 10 of his deposition that after marriage his sister used to come to his home and during last four years he had not gone to any officer or to a social worker to complain anything about the accused



persons. This witness has also accepted in paragraph 10 that Rs.7500/- was given to the accused at the time of marriage of daughter of Ganesh Tiwary. He has further categorically stated that it was not given by way of dowry. In paragraph 12 of his deposition this witness has stated that he came to know that during day time Punam and her husband were in the house and her mother-in-law, father-in-law and Nanad had gone outside and they returned only at 5.30 pm. Learned counsel submits that in the last part of paragraph 12 of his deposition he has stated that Daroga had not read the entire statement recorded by him, he had only put his signature. The FIR was not read over to him. He has further stated that at that time the FIR was only of two pages he knew, but later on Daroga committed a fraud in the FIR. He has accepted that the seizure list was not prepared on that day. This witness has denied the suggestion that before the Daroga reached these people had done something wrong with the articles kept therein.

CONSIDERATION

24. A perusal of the entire evidence available on the record shows that the whole case of the prosecution is based on the deposition of the informant (PW-7) and his father (PW-5). The forensic report and the postmortem report have been proved by the PW-9 the doctor who had conducted the postmortem. Death of the deceased inside the house i.e. the government quarter has been proved



in this case as the witnesses and I.O. all are consistent on this point.

25. Marriage in the present case was solemnized in the year 1993, death had taken place within four years of marriage and the occurrence had happened within four-corner of the residential house in which as per the evidence available on record at the time of alleged occurrence Gopal Tiwary (husband) and the deceased were present. The witnesses are not consistent on the point of presence of the father-in-law. I.O. (PW-10) has narrated the seen of the place of occurrence. He has not found any sign of struggle inside the room. In his deposition he has stated that the informant had stated before him that from the neighbours he could know that in the day time Punam and her husband were present, the father-in-law, mother-in-law and Nanad had gone outside and they returned only in the evening. He has also stated that witness Lalmani Devi had stated before him that she had seen Ganesh Tiwary, Bimla Devi and Soni Kumari going towards Burhanath temple. She had seen Gopal Tiwary and Punam inside the house. The deposition of PW-5 i.e. father of the deceased and other prosecution witnesses are not supporting the case of the prosecution that there was demand of dowry. Even the informant (PW-7) has stated in his deposition that there was no complaint and he had no occasion to go to any officer or any social worker to lodge a complaint. He had stated that his sister was coming to his house from



her sasural. If this statement of PW-7 is read together with statement of PW-5 saying that only one year before her death he had provided his government quarter to his Samadhi and son-in-law for residential purpose because he had been in good relationship with them, this Court will come to a conclusion that there was no complaint of commission of any act of cruelty or torture against the accused persons till the time PW-5 provided his government quarter to the deceased and her matrimonial family to reside therein. In their deposition both PW-5 and PW-7 have stated that Rs.7500/- was given at the time of marriage of the sister of Goptal Tiwary, but they have not stated that this amount was given to fulfill any demand of dowry.

26. The informant (PW-7) has categorically stated that it was not given as dowry. None of the prosecution witnesses who are neighbours of the deceased has come forward to say that they had seen Gopal Tiwary (husband) committing any act of cruelty or torture upon his wife (deceased). The tone and tenor of the deposition of informant (PW-7) shows that he admits about the lodging of FIR in anger and that his mental condition at that time was influenced by his assumption that his sister was burnt to death.

27. Neither in the deposition of PW-5 nor in the deposition of PW-7 any evidence of any past act of cruelty or torture soon before the alleged date of occurrence or within a reasonable time



before the alleged date of occurrence has come on the record therefore, one of the parameters which is required to be proved in a case under Section 304B that the victim was subjected to cruelty soon before her death due to non-fulfillment of demand of dowry seems to be missing and is not in existence. The forensic report (Ext.-9) shows that celphos was found to have been consumed, but under what circumstances celphos was consumed are not evident from the materials available on the record. The burn injuries are postmortem.

28. I find that the allegations of demand of dowry and commission of act of torture by the accused persons for the alleged non-fulfillment of demand of dowry has not been proved by the prosecution beyond all reasonable doubt in the present case. The charges for which the accused have been convicted are not conclusively proved from the evidence of the prosecution witnesses and the statement made by the informant himself that he was not read over the fardbeyan recorded by the Daroga and that Daroga had committed fraud in the FIR are also strengthening the case of the defence that the delay in lodging of the FIR for over 24 hours was result of a fact that father (PW-5) who was already there from before at the alleged place of occurrence was not willing to falsely implicate the accused persons and, therefore, when he gave his fardbeyan to the police no FIR was lodged because he was not willing to lodge the FIR



and because he was not willing to lodge FIR, police waited for the fardbeyan of his son (PW-7) who was in angry state of mind and had been making allegations against the accused persons for causing death.

29. Learned counsel has pointed out in the present case that the trial court had not even adhered to the mandatory provisions of Section 313 Cr.P.C. and in course of statement under Section 313 Cr.P.C. the accused persons were not confronted with the materials and circumstances which were produced against them in course of trial. A perusal of the statement under Section 313 Cr.P.C. would show that the accused persons were not at all confronted with the materials which had come against them in course of trial and two most formal kind of questions were asked to them.

30. In the case of **State of Punjab Vs. Tarlok Singh** reported in (1972) 3 SCC 869 as also in the case of **Ishwar Singh Vs. The State of Uttar Pradesh** reported in AIR 1976 SC 2423, the Hon'ble Supreme Court has considered the effect of delay in lodging the FIR. The relevant paragraph 5 of the judgment of State of Punjab Vs. Tarlok Singh (supra) is quoted herein below for a ready reference:-

"5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did



not reach the Magistrate at Dasuya till 8 a.m. the next day, even though it was sent through a special messenger. The distance between the scene of occurrence and Dasuya was only 15 or 16 miles. The inference sought to be drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made no attempt to explain this delay. Such delay, thus, casts doubt on the prosecution version that the report was lodged at 3.45 p.m. without lapse of unnecessary time.”

31. In the case of Ishwar Singh Vs. The State of Uttar Pradesh (supra), the Hon’ble Apex Court in paragraph 9 of the said judgment held as under:-

“9. We have pointed out that the trial court in convicting the appellants overlooked certain significant features of the case, namely, the inordinate and unexplained delay in despatching the first information report to the Magistrate; the difference in the account given by the prosecution witnesses and as appearing from the first informant report of the occurrence; the absence of any statement in the first information report as to the injuries received by some of the accused, and the non-examination of material witnesses. The High Court in affirming the judgment of the trial Court also failed to advert to these circumstances. We do not therefore think that the case against the appellants has been proved beyond reasonable doubt. The appeals are accordingly allowed and the order of conviction and the sentences passed on the appellants are set aside. We direct that the appellants be set at liberty forthwith.”



32. As regards the compliance with the provisions of Section 313 Cr.P.C. the Hon'ble Apex Court in the case of **Sukhjit Singh Vs. State of Punjab** reported in **(2014) 10 SCC 270** in paragraphs 11, 12 and 13 held as under :-

11. In this context, we may profitably refer to a four-Judge Bench decision in Tara Singh v. The State wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: "30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them.

He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit



position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In Hate Singh Bhagat Singh v. State of Madhaya Bharat, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. The aforesaid principle has been reiterated in Ajay



Singh v. State of Maharashtra in following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

33. In my opinion the cumulative effect of the delay of over 24 hours in lodging the FIR and no evidence coming on the point of demand of dowry and commission of any act of torture due to such demand of dowry soon before the alleged date of occurrence or within a reasonable time before the alleged date of occurrence and non-compliance with the provisions of Section 313 Cr.P.C. as has been held by the Hon'ble Supreme Court would prove fatal to the



prosecution case. The accused-appellants have been convicted without pointing out to them the specific points in the charge and the evidences on which prosecution placed reliance to make out the case. One of the essential ingredients of parameters to prove the charge under Section 304B IPC has not been made out against the accused persons. There being no evidence to prove the charges under Section 304B and 498A IPC read with Section 3/4 of the Dowry Prohibition Act, both the accused are entitled to get benefit of doubt.

34. In the result, the judgment under appeal is set aside. The accused are acquitted giving them benefits of doubt and they are discharged from the liability of the bail bonds.

(Rajeev Ranjan Prasad, J)

Arvind/-

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