

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.717 of 2015

Arising Out of PS.Case No. -369 Year- 2005 Thana -MUZAFFARPUR TOWN District- MUZAFFARPUR

1. Mala, wife of Sanjay Kumar
2. Sanjay Kumar, son of Shyam Nandan Prasad Sinha
3. Prakash Kumar @ Dhiraj, Son of Jivachh Prasad, All are residents of village - New Area Sikandarpur, P.S. - Town, District : - Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 748 of 2015

Arising Out of PS.Case No. -369 Year- 2005 Thana -MUZAFFARPUR TOWN District- MUZAFFARPUR

1. Manju Devi @ Manju Sinha, Wife of Jiwachh Prasad
2. Jiwachh Prasad, Son of Late Chanderdeo Prasad, Both are resident of Mohalla - New Area Sikandarpur, P.S. Town, District - Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 768 of 2015

Arising Out of PS.Case No. -369 Year- 2005 Thana -MUZAFFARPUR TOWN District- MUZAFFARPUR

1. Anand Kumar @ Niraj, Son of Jiwachh Prasad, resident of Mohalla:- New Area Sikandarpur, P.S.- Town, District:- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :
(In CR. APP (SJ) No.717 of 2015)
For the Appellant/s : Mr. Yugal Kishore-Advocate
For the Respondent/s : Mr. S. B. Verma-A.P.P.
(In CR. APP (SJ) No.748 of 2015)



For the Appellant/s : Mr. Yugal Kishore-Advocate
 For the Respondent/s : Mr. S. A. Ahmad-A.P.P.
 (In CR. APP (SJ) No.768 of 2015)
 For the Appellant/s : Mr. Yugal Kishore-Advocate
 For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 10-09-2018

Cr. Appeal (S.J.) No.717 of 2015, wherein Mala, Sanjay Kumar and Prakash Kumar @ Dhiraj are the appellants, Cr. Appeal (S.J.) No.748 of 2015, wherein Manju Devi @ Manju Sinha and Jiwachh Prasad are the appellants and Cr. Appeal (S.J.) No.768 of 2015 wherein Anand Kumar @ Niraj is the appellant commonly originate against the judgment of conviction dated 09.10.2015 and order of sentence 10.10.2015 passed by the 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No.731 of 2006 as well as Sessions Trial No.549 of 2007 (amalgamated) whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 304B of the I.P.C. and sentenced to undergo R.I. for ten years, under Section 498A I.P.C., under Section 120B of the I.P.C. for which, no separate sentence has been inflicted and further, directing that the period having undergone during course of trial will be set off as provided under Section 428 of the Cr.P.C. on account thereof, have been heard together and are being decided by a common judgment.

2. Before coming to mainstream, it is apparent from the



record that Sessions Trial No.731 of 2006 commenced only against the appellant/ accused Sanjay Kumar wherein charge was framed on 18.07.2007 and PW-1, Seema Srivastava was examined on 03.09.2007. After submission of supplementary chargesheet, Sessions Trial No.549 of 2007 commenced against the accused/ appellants Manju Devi @ Manju Sinha, Mala, Prakash Kumar @ Dhiraj, Jiwachh Prasad, Anand Kumar @ Niraj wherein charge was framed on 10.12.2007 and then thereafter, both the Sessions Trial have been directed to amalgamate and then thereafter, Seema Srivastava has been re-examined as PW-1. In the aforesaid background, procedure adopted by the learned lower Court happens to be irregular, however, did not cause prejudice on account of re-examining Seema Srivastava as PW-1, even after amalgamation.

3. Sanjiv Kumar (PW-6) filed Complaint Case No.2607 on 17.10.2005, against all the accused/ appellants showing the date of occurrence 05.09.2005, place of occurrence to be house of the accused with an allegation that his sister Nitu Kumari was married with Anand Kumar @ Niraj on 29.04.2005 at Vishwanath Chaudhary, Vivah Bhawan, Banaras Bank Chowk. During course of negotiation of marriage, father of Anand Kumar had demanded dowry and the details thereof, have been incorporated on a paper in his handwriting, which was handed over to him (list attached). As per list, he had handed over the articles costing Rs.5,00,000/-. After marriage, his



sister had gone to her sasural on 30.04.2005 and stayed there. After staying for a week, the accused persons began to torment her as, according to them, the articles were not at all given as per list. So, directed her to bring Rs. One Lac from her Naihar, otherwise it will not be good for her. Whenever complainant and his family members visited the place of his sister, they were humiliated and further, there was persisted demand of Rs. One Lac. Complainant and his family members shown their inability to pay the amount on account of their poor financial condition. The torturous conduct of the accused persons was being communicated by his sister through letter and further, she had shown apprehension of her life in case of non-fulfilment of demand. On 05.09.2005, they heard rumour with regard to her death, whereupon he had gone to sasural of his sister where people have said that dead body has been taken away to Sikandarpur for funeral. Informant rushed to the cremation ground and found dead body of his sister completely burnt. Seeing the situation, his mental condition imbalanced. Even then, he tried to know about the actual affair and during course thereof, so many kinds of explanation has been given creating suspicion. Then thereafter, he returned back. After gathering information during the intermediary period, he came to know that his sister has been murdered on account of non-fulfilment of demand of dowry. It has further been disclosed that in the night of 04.09.2005, she was brutally assaulted and murdered by administering poison and



then thereafter, burnt the dead body without informing them. It has also been disclosed that delay has been caused on account of collection of information. It has further been disclosed that during the intervening period, police was also informed, but failed to register a case. The accused persons also made offer, so that case should not be instituted.

4. The learned Magistrate referred the same to the concerned police station for registration and investigation of a case as provided under Section 156(3) of the Cr.P.C. as a result of which, Town P. S. Case No.369 of 2005 was registered followed with an investigation. It is evident from the record that after concluding investigation, chargesheet was submitted at two stages and the subsequent eventuality having cropped up on that very score, had already been referred at an earlier part.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that the deceased was suffering from ailment since before her marriage and for that, she was being treated by the informant himself. Few days prior to her death, she was taken away by the informant to his house where husband Anand Kumar had visited on 03.09.2005, after coming to know about ailment of the deceased. Then, he along with informant took the deceased to the local doctor, Dr. Y. K. Singh, who had



examined the deceased and prescribed medicine. As the medicine did not respond properly on account thereof, she was again taken to Dr. Y. K. Singh and as per instruction, deceased was admitted at Prashant Memorial Charitable Hospital on 04.09.2005 by the informant himself where during course of treatment, she died on 05.09.2005 at 7.10 A.M. Informant is the person, who received dead body and funeral taken place as per inspection of the informant. It has also been pleaded that just after funeral, the informant, his father, his brother-in-law (Bahnoi), along with some anti-social elements came and advanced illegal demand with a threatening that if their undue demand is not being honoured, then in that circumstance, they will be implicated in a false dowry death case. They have again visited their place on 08.09.2005 and during course thereof, they have abused, assaulted as well as also snatched away Rs.1500/- and for that, Complaint Case No.2292 of 2005, was filed on 09.09.2005 by Prakash, wherein cognizance had already been taken. After coming to know about the same, this case has been filed in retaliation on an advice of an advocate. In order to substantiate the same, apart from oral evidence, documentary evidence has also been made an exhibit.

6. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Seema Srivastava, PW-2, Sanjay Kumar Tulsyan, PW-3, Dinesh Kumar, PW-4, Sanjay Kumar, PW-5, Suresh Kumar, PW-6, Sanjiv Kumar and PW-7, Md.



Murtuja. Prosecution had also exhibited, Exhibit-1 series, letter in the pen of deceased, Exhibit-2, list allegedly in the pen of appellant Jiwachh Prasad, Exhibit-3, passbook of Postal Department, Exhibit-4, Complaint petition, Exhibit-5, protest petition, Exhibit-6, formal F.I.R., Exhibit-7, copy of Complaint petition (basis of F.I.R.), Exhibit-8, certified copy of F.I.R. of Town P.S. Case No.125 of 2010. On the other hand, defence also examined three DWs, who are DW-1, Dr. Binod Kumar Mehta, DW-2, Kaushal Kishore Sharma and DW-3, Ram Padarath as well as had also exhibited, Exhibit-A, copy of admission form, Exhibit-A/1, photo copy of prescription issued by Dr. Ramji Prasad, Exhibit-2, not levelled, Exhibit-A/3, duly filled up admission form, Exhibit-B, photo copy of treatment chart, Exhibit-B/1, copy of progress report, Exhibit-C, death certificate issued by Prashant Memorial Hospital, Exhibit-C/1, death report, Exhibit-D, admission entry in register, Exhibit-D/1, discharge entry in the register, Exhibit-E, copy of Complaint Case No.2292 of 2005, Exhibit-E/1, order of cognizance. Exhibit-X, X/1 and X/2 have been marked for identification.

7. Learned counsel for the appellants submits that the judgment impugned happens to be capricious, perverse in the background of non-appreciation of relevant materials in its right perspective. While elaborating the submission, it has been submitted that there are three kinds of evidence available on the record,



dismantling, fake structure formulated by the prosecution. The first one is the deceased was at her Naihar since before her death. She had fallen ill and after coming to know about the same, husband Anand Kumar had gone to the place and then, he along with informant took the deceased to the clinic of Dr. Y. K. Singh, who had examined her, prescribed medicine, but did not respond well and so, they re-visited on the following day on which, the Dr. Y. K. Singh instructed them to admit, whereupon deceased was taken to Prashant Memorial Charitable Hospital where she was admitted by the informant himself, treatment commenced and during course thereof, she died on 05.09.2005. The dead body was received by the informant himself and then thereafter, as per Hindu custom funeral was to be carried by the husband, which was done in presence of informant as well as his other family members. All the relevant documents relating to admission, treatment, death certificate receiving of dead body have been exhibited and on that very score, DW-1 and DW-2 have been examined.

8. The second phase happens to be just after funeral. The informant advanced an illegal demand with a threatening that in case of non-fulfilment of demand, accused persons will be falsely implicated in the case of dowry death. Again visited place on 08.09.2005 along with his brother-in-law, father, his henchmen, advanced illegal demand, threatened and during course thereof,



abused, assaulted and snatched away Rs.1500/-, for that a Complaint Case was instituted on 09.09.2005, wherein cognizance had already been taken. After coming to know about the same, it has been admitted by the prosecution that they took advice and then, as per instruction, got this case filed. So, this case has been filed with false and frivolous allegation as a counter blast.

9. It has also been submitted that there happens to be inordinate delay in institution of this case without any explanation and so, the unexplained delay is caused severe dent in the prosecution case, as all the witnesses have admitted their presence at funeral ground. So, had there been any kind of suspicion, then in that circumstance, any of them would have taken care to inform the police, but they did not, as they were knowing since before regarding death of deceased due to ailment in their presence at reputed nursing home as well as dead body was received by the informant himself.

10. Then, coming to merit of the case, it has been submitted that after going through the evidences of the witnesses, it is apparent that they are not at all consistent over their status, whereupon their testimony became unreliable. Furthermore, their unethical approach clearly suggest that neither there was demand nor victim was ever tortured, nay they visited the place of the accused/ appellants. Therefore, their testimony became unworthy of credence. Apart from the fact that there happens to be material development in



their testimony adversely affecting reliability. So, the cumulative effect did not justify the finding recorded by the learned lower Court, whereupon is fit to be set aside.

11. On the other hand, learned Additional Public Prosecutor counter-meeting with the submission made on behalf of appellants has submitted that death is admitted one. If the defence fails in order to substantiate that deceased died while she was staying at her Naihar due to ailment and for that, she was admitted at Prashant Memorial Charitable Hospital by the informant himself, then it will be presumed that deceased died while staying at her sasural and the ultimate conclusion would be that, she died at her sasural and in the aforesaid background, it was incumbent upon to meet with the allegation that she was being vexed for fulfilment of demand of dowry, which lastly cost her life. Be that as it may, from the record, it is evident that prosecution has succeeded in proving its case in the background of the fact that the list having prepared by the accused Jiwachh Prasad of the items, articles, which was to be offered at the end of the prosecution as dowry and further, subsequent conduct of the appellants inflicting torture upon the deceased to meet with the demand of Rs. One Lac is found properly established. Furthermore, it has been submitted that certainly, there happens to be delay in launching of the prosecution, but the reason therefor has been divulged right from the initial stage, which happens to be probable



one as informant and his family members suffered from agony as well as became aghast with the situation.

12. It has further been submitted that filing of Complaint Case at the end of the appellants is indicative of the fact that after coming to know about the actual affair leading to death of the deceased would ultimately drag them before the Court of justice and only to make out a defence case, they have filed the same. Otherwise, there was no occasion to name the father of the deceased as one of the accused, who was blind.

13. It has also been submitted that status of DW-1, DW-2 and DW-3 are of formal in nature. Not only this, they have merely exhibited the documents having in pen of others. None of the doctor has been examined in order to suggest that the condition of the victim was deteriorating, critical. The documents have been prepared later on and on account thereof, there happens to be over handwriting. It has further been submitted that whether the relevant form contains the signature of the informant could be seen after comparing the signature available on the complaint petition, vakalatnama. So, after proper scrutiny of the documents at the end of the rival party suggest that the documents prepared at the end of the defence are forged and fabricated and further, presence of complaint petition is an additional circumstance, whereupon the finding recorded by the learned lower Court did not require interference.



14. PW-6 is the informant, who had deposed that he had filed complaint petition before the Court of Chief Judicial Magistrate on 17.10.2005, which was sent to the local police for registration and investigation. Then had stated that Nitu Kumari was his sister, whose marriage was solemnized with Anand Kumar @ Niraj on 29.04.2005. Jiwachh Prasad happens to be her father-in-law. During course of negotiation of marriage, Jiwachh Prasad had given a list of articles, which was to be given at the time of marriage as dowry in his pen and handwriting. Photo copy thereof, was filed along with complaint petition. A copy thereof, was also placed before the police (original filed and exhibited). Then had stated that as per list, he had handed over cash as well as articles appertaining to Rs. Five lacs. After marriage, his sister had gone to her sasural where after staying for a week, her sasuralwala began to torture her on the plea that as per list, articles have not been given and so, the remaining articles along with Rs. One Lac be procured from Naihar. So that they should purchase the articles according to their own choice. His sister had informed, whereupon he had gone to meet with his sister. During course thereof, a demand of Rs. One Lac was made and further, threatened that in case of non-fulfilment, he will have to face dire consequence. His sister had also disclosed that her mother-in-law, father-in-law, husband, Dewar, sister-in-law and Nandosi are insisting upon to procure and for that, she was being tortured. He had consoled his



sister as well as also disclosed inability to fulfil their demand to the accused persons. His sister used to intimate through letter, which was also placed before the police. His sister had disclosed to him to pay Rs.One Lac otherwise she apprehended some untoward incidence. He had further stated that accused Jiwachh Prasad happens to be an employee of Postal Department. By tendering R. D. Passbook, he had stated that maturity amount got transferred by Jiwachh Prasad in his own account on the basis of an endorsement having in his pen (Exhibited). Then had tendered the cash memo regarding purchase of suit, cloth and ornaments at the time of marriage. Identified his signature over complaint petition. Then had stated that on 05.09.2005, he got information with regard to murder of his sister, whereupon his elder sister, Seema Srivastava, first of all, reached followed by him, his two brother-in-laws and two friends. She disclosed that dead body has been taken to Sikandarpur. She was not at all allowed to see the dead body nor they have disclosed the cause of death. Accused persons after locking the house, fled away. He also went to Sikandarpur where 4-5 accused persons were present. They have burnt the dead body. Seeing them, they moved hither and thither. On query, they escaped there from. Later on, they came to know that in the night of 04.09.2005, his sister was brutally assaulted and then, by administering poison, accused persons caused her murder and without giving any information, burnt the dead body. Subsequently thereof,



the accused persons began to offer. They also got the police in their collusion as a result of which, police had not registered case. Lastly, he filed a complaint petition. He had also stated that police had not recorded their statement correctly, whereupon they have made complaint before the Superior Police Officials before whom, they have also given their statement. He had filed protest petition (Exhibited). He had further stated that his parents are old, infirm on account thereof, they are unable to come to Court. He had further stated that accused persons are threatening. They have also instituted false case. Identified the accused. During cross-examination at Para-14, he had admitted presence of case having instituted by accused Prakash Kumar against him and others on 09.09.2005 before the Chief Judicial Magistrate, which is still pending. He had also stated that whatever allegation has been attributed in the aforesaid complaint petition, happens to be false. Then had denied the suggestion that they have demanded Rs. Two Lacs and for that, they have assaulted the family members of sasuralwala of his sister. He had further stated that Punit Lal Yadav, is an Advocate on his behalf in that case, who also happens to be Additional Public Prosecutor and this case has been allotted to his file. In Para-15, he had stated that he has got no information with regard to treatment of his sister at Prashant Memorial Charitable Hospital before her death. He had further stated that he was not knowing the fact that his sister died at Prashant



Memorial Charitable Hospital. Then had stated that funeral of Nitu Kumari was not at all held as per rituals. He had further stated that none of his family members had participated during course of her funeral. Accused persons done funeral at Sikandarpur. Only accused persons were present. When he reached, dead body was completely burnt. As soon as he reached, accused persons fled away. They have not extinguished the fire. At that very time, his two brother-in-laws and friends Sandeep Tulsian and Dinesh Kumar were present. At Para-16, he had stated that they have not informed the police from the funeral place. None of his family members had gone to police station. On 7th day, they have gone to police station for recording the case, but police officials chased them. Then thereafter, he became engaged in his business. Then thereafter, they traced about institution of a case filed by Prakash Kumar. Thereafter, they have gone to the office of an advocate where he had disclosed regarding the occurrence, whereupon learned advocate prepared the complaint. In Para-18, he had stated that at the time of incident, his mobile became dead, it was active three months after the marriage. Then had stated that for the last one year, his mobile is active. Then had stated that he had stated before the police that he used to talk with Nitu Kumari over mobile. In Para-19, he had stated that he came to know regarding the occurrence from a student, but he is not knowing his name as well as whereabouts. Then had denied to have stated before the police that in the morning



on 05.09.2005, the sasuralwala of Nitu Kumari had sent a student to inform that Nitu Kumari has died and on account thereof, they all have been called. Then had stated that when he came at his house at about 9.00 A.M., then his mother disclosed the same. In Para-20, he had stated that after getting information, he informed his brother-in-law at 11.15 A.M. Then again stated that first of all, he received information from his sister Seema Srivastava with regard to death of his sister, then he instructed his friend Sandeep to collect necessary information from the accused persons. His friend has also disclosed them that dead body should not be burnt as they are coming. Then had shown ignorance at which time, he came to funeral place. At that very time, 4-5 persons were there engaged in burning the dead body. Then had denied that he had made statement before the police that when he reached, he had seen 30-40 persons engaged in burning the dead body. At Para-21, he said that he had stated before the police that father of brother-in-law namely Jiwachh Prasad had informed that Nitu Kumari is not well. She was shown to the doctor, but she died. He had admitted to have stated before the police that on query, he came to know that accused persons were torturing her as well as were assaulting her. This information, he received from the resident of new area Sikandarpur. In Para-22, he had stated that list was handed over by Jiwachh Prasad having signature of Prakash, his another son, there are so many cutting over the same. Then had denied the suggestion



that this list happens to be forged and fabricated. Then had stated that none of the letter written by his sister, there happens to be description of torture, demand or physical assault. Then had denied the suggestion that the relevant parts of the letter wherein she had praised her sasuralwala has been withheld. In Para-23, he had admitted that he had not mentioned in the complaint petition with regard to passbook and further, containing endorsement of Jiwachh Prasad in a red ink, but he had stated before the police. Then relevant part on that very context has been confronted in a way whether the same has been incorporated in the complaint or not or made statement to that extent before the police, whereupon he had shown ignorance. In Para-24, he had accepted that neither the aforesaid passbook contains the signature of Jiwachh Prasad nor happens to be in his pen rather a separate chit of paper was prepared by him, which was attached there with. Para-25 happens to be cross-examination with regard to purchase of ornaments from different place. In Para-26, he had stated that he is unable to file any paper relating to transfer of amount from his passbook to the account of Jiwachh Prasad. In Para-27, he had stated that his sister had informed him regarding torture. He had further stated that during course of statement before the police, he had stated that as per demand, they have given the articles. He had further stated that he had incorporated in the complaint petition as well as had also made statement before the police that his sister was insisting, if



you want to see her alive, then in that circumstance, give Rs.One Lac, otherwise misfortune will occur with her. Then had stated that other two passbooks, he is unable to file as they both have been given to Jiwachh Prasad. In Para-28, he had stated that he had not mentioned in the complaint petition nor he had stated before the police that Jiwachh Prasad after making endorsement over his passbook, got the amount transferred. He had stated that he received the money. Then had further admitted that he had not mentioned in the complaint nor stated during course of further statement that receipt happens to be in pen of accused persons. Then had stated that he had stated before the police that first of all his elder sister Seema Srivastava arrived followed by him as well as his two brother-in-laws and two friends. He had talked with his sister in the midst of way, who disclosed that dead body has been taken to Sikandarpur and the accused persons have not allowed her to see the dead body nor they have disclosed the cause of death. Then had said that he had not mentioned the same in the complaint petition nor stated to the police. In Para-29, he had stated that he had mentioned the fact in the complaint petition that he received information regarding death of his sister on 05.09.2005. He had further stated that he is not remembering whether he had incorporated the fact in the complaint petition that accused persons were threatening. He had further stated that his father happens to be aged about 70-75 years, his mother happens to be 60 years. He had



talked with him. Then had denied the suggestion that as this case has been falsely instituted on account thereof, his parents are not inclined to depose. In Para-30, he had stated with regard to presence of clinic of Dr. Y. K. Singh at a distance of half kilometer from his house. He had also shown presence of other doctors in the mohalla. In Para-32, he had stated that he is unable to produce print out of talk having in between him as well as his sister over mobile. Then had denied the suggestion to have stated before the police that 30-40 persons were engaged in funeral. He had further stated that he had not fainted seeing the dead body of his sister under fire. He had further stated that he had informed his brother-in-law, sister with regard to death. When he reached Sikandarpur, at that very time dead body was burning. Then, his attention has been drawn relating to his statement before the D.I.G. He had further stated at Para-33 that dead body was burnt at a distance of 1 ½ - 2 kilometers from his house. Then had shown the distance of the Town Police Station from the place to be 3-4 kilometers. So many pay booths were there, but he had not informed the police. In Para-36, he had stated that deceased was not suffering from any kind of ailment since before. Then had denied the suggestion that his sister was suffering from ailment since the time of her childhood and he used to see her. He had denied the suggestion that on 15.08.2005, he took his sister to his house for treatment. He had denied the suggestion that on 03.09.2005, his brother-in-law had



come to his place to see his wife. He had denied the suggestion that they have taken the deceased Nitu Kumari at the clinic of Dr. Y. K. Singh where sline was given, but in the morning of 04.09.2005, condition of his sister deteriorated, whereupon he along with mother and sister shifted Nitu Kumari to Prashant Memorial Nursing Home, but in the morning of 05.09.2005, during course of treatment, Nitu died. In Para-37, he had stated that they became nervous on account of murder of his sister. Then the documents were shown relating to Nitu (deceased), was placed before him, whereupon he denied the suggestion that Nitu was admitted by him at Prashant Memorial Hospital. He disowned his signature, also disowned that he is not known as Sanjeev Verma rather he is Sanjeev Kumar. Then had disowned his signature over format of form of receiving of dead body. Then had denied that his signatures are all over the documents, but he malafidely disowned the same. Then had denied the suggestion that as per their desire, his brother-in-law had lit fire (Mukhagini) and during course of funeral, they all have participated. Then had denied the suggestion that subsequently thereof, they illegally advanced money and to facilitate the same, they took help of anti-social elements, who assaulted the family members and for that, case was instituted by Prakash Kumar and after coming to know about the same, this case has been instituted putting false and frivolous allegation.

15. PW-1, is the elder sister of the deceased as well as



informant, who during her examination-in-chief, had reiterated the statement made by the informant. Then had stated that on 05.09.2005, she had received an information from an unknown person with regard to killing of her sister at her sasural as well as taking the dead body to burning place for funeral, whereupon she rushed to the sasural of her sister. She had seen preparation was going on to carry the dead body to funeral place. She resisted, but the accused persons, flouted the same. She also requested that dead body be shown to her, which the accused persons also declined. She was ousted on account of protest. Then thereafter, the accused persons took away the dead body. She returned back to her house, informed her relatives and then, reached at funeral place where dead body of her sister was under fire. On query, she came to know that accused persons had killed after administering poison as well as also inflicted physical torture. At Para-10, she had stated that at the time of occurrence, she had not basic telephone connection nor mobile, however, his brother had mobile. She had admitted that accused Prakash had already instituted a case against her husband, brother and father. Then thereafter, they have gone to lawyer, who advised to institute a case for murder of Nitu, whereupon this case has been instituted. At Para-16, she had stated that at the time of receiving information, she was preparing to go to school. She had gone to the house of accused alone. Apart from accused, 5-7 mohalla people were there. She remained for half an hour. Dead body



of her sister was inside the house, whereupon she could not see the dead body as was not allowed by the accused persons to visit. Again corrected that the dead body was kept within the campus of houses of accused persons. Then had stated that she remained for half an hour at the gate. Then thereafter, she returned back. She had gone to the place of her brother along with her husband and then, directly to the funeral place. They have not thought to inform the police. They remained at the funeral place for about 45 minutes. Even thereafter, they have not gone to the place. Then there happens to be suggestion as well as contradiction under Paras-21, 22, 23.

16. PW-2 is the friend of informant, who had deposed that on 05.09.2005, informant had telephonically informed him to come at once at his house, whereupon he rushed. After reaching there, he came to know that his sister Nitu Kumari has been murdered by her sasuralwala due to non-fulfilment of dowry. He was in possession of mobile. Through his mobile Sanjiv had instructed the sasuralwala of Nitu to wait for their arrival and then thereafter, dead body would be cremated. Sanjiv had also inquired about the cause of death, whereupon her sasuralwala made evasive reply. He had also accompanied Sanjiv to the sasural of Nitu where house was locked. None was present. On query, they came to know that they (accused persons) taken away the dead body to somewhere, whereupon they began to search and during course thereof, they have gone to



cremation ground where they have seen the accused persons. Sanjiv had asked for cause of death, whereupon accused persons failed to disclose and then after sprinkling kerosene oil over the dead body, lit fire. In Para-6, he had stated that he is unable to supplement his plea by documentary evidence that Sanjiv telephonically informed. At Para-8, there happens to be the contradiction. In Para-9, he had stated that after telephonically informed to the sasuralwala of Nitu, he along with Sanjiv had gone over scooter. None was present and so, they have directly gone to the cremation ground. They remained there. After completion of funeral, they have gone to the place of informant. Sanjiv was weeping. Who had informed Sanjiv with regard to death of Nitu, he had got no information. He also stated that he, Sanjiv along with some known persons were present there, but he is unable to disclose their name. He had further stated that accused persons have threatened of dire consequences, in case, case is instituted at his end. He had advised Sanjiv to institute a case, but he was very much afraid.

17. PW-3 is another friend, who had deposed that Sanjiv Kumar had disclosed that sasuralwala of Nitu had demanded Rs.One Lac and for that, she was being tortured. He also came to know that in the aforesaid background, she has been done to death. At Para-5, he had stated that on the alleged date and time of occurrence, he had not met with informant or accused persons. In Para-6, he had stated that one day after the occurrence, he was informed by Sanjiv that his sister



is no more. He could not know whether Sanjiv had instituted a case or not. He had not advised him.

18. PW-4 is Sanjay Kumar, brother-in-law of the informant. During his examination-in-chief, he had deposed over negotiation, marriage, demand of dowry. Then had stated that on the alleged date his Sadhu Suresh Kumar informed him that as Nitu has died on account thereof, come immediately. He came to his sasural where came across the news that his brother-in-law (Sala), informant had gone to the house of Nitu, whereupon he had also gone there, none was present. Then had disclosed that they have gone to Sikandarpur along with the dead body. On query, he came across the news that Nitu died on previous night. During cross-examination at Para-8, he had stated that whenever he had gone to the place of his Sali, they were humiliated. In Para-12, he had stated that he after receiving information came along with his wife over motorcycle to his sasural where leaving his wife, he had gone to the place of his Sali and there from to Sikandarpur cremation place where informant, Seema Kumari, Sadhu Suresh Kumar, friend of Sala Sandip Tulsyan and others were present. Jiwachh Babu, Anand Kumar, Dhiraj Kumar @ Prakash Kumar were also present. He remained there for half an hour. The body was already burnt. In Para-13, he had stated that all the family members were present at the Sikandarpur two hours since before his arrival. He carried his brother-in-law (Sala) on rickshaw as



he became unconscious. At Paras-15, 16, 17, there happens to be contradiction.

19. PW-5 is another brother-in-law of informant as well as husband of PW-1, who during his examination-in-chief, had reiterated the version of the informant regarding negotiation, demand and torture having been at the end of the sasuralwala of Nitu (deceased). Then had stated that on 05.09.2005, his wife received an information from an unknown person regarding death of Nitu, whereupon his wife had gone to her Naihar. He after locking, also came to his sasural where all the family members were weeping, his wife was not present as she had gone to sasural of Nitu. The accused persons have not allowed her to see the dead body. He had also gone to the sasural of Nitu, house was locked. Neighbours have disclosed that dead body had taken to funeral ground, whereupon they have gone. They have seen the accused persons engaged in sprinkling kerosene oil. They began to cry, whereupon accused persons fled away. His wife had also gone to the funeral ground. During cross-examination at Paras-9, 10, there happens to be cross-examination over demand, purchase of motorcycle, television etc. At Para-15, he had stated that after talking with his wife at his sasural, he had gone to funeral ground. They remained at funeral ground for an hour as before there arrival, half of the dead body had burnt. After one hour of their arrival, accused persons left. In Para-16, he had stated that none at



their side became unconscious. Town Police Station is at the distance of three kilometers from funeral place while Ahiyapur Police Station is at the distance of two kilometer. They have not informed the police. In Para-17, he had admitted presence of case instituted by Prakash Kumar prior to institution of this case. Then had denied the suggestion. In Paras-19, 20, 21, there happens to be contradiction. In Para-24, he had admitted that the residence of the Superintendent of Police lies adjacent to the funeral place. At Para-25, he had stated that they have not informed the police as accused persons have disclosed regarding death of deceased due to illness. When they have demanded the document from the accused persons, they failed to produce the same and on account thereof, this case has been instituted.

20. PW-7 is the Investigating Officer, who had stated that after institution of the case, investigation was entrusted to him. During course of investigation, he had recorded further statement of the informant, visited the house of the accused persons, place of occurrence and detailed the same. It has also been disclosed by the I.O. that accused persons were residing at the ground floor while at upper floor, it was let on tenancy. Then had disclosed the boundary of the P.O. Then had stated that on 21.10.2005, informant had produced photo copy of a list allegedly in the pen of accused Jiwachh Prasad. On the same day, photo copy of letter having in pen of deceased was also produced. He had gone to funeral ground and inquired from the



employee, recorded statement of the witnesses, arrested the accused and then, submitted chargesheet. During cross-examination at Paras-17, 18, 19, 20, there happens to be contradiction relating to Seema Srivastava. At Paras-24, 25, 26, 27, 28, 29, there happens to be contradiction relating to Sandip. At Paras-30, 31, 32, 33, 34, 35, 36, 37, 38 relating to Sanjay. At Para-39, 40, 41, 42, 43 relating to Suresh. In Paras-44, 45, 46, 47, 48 relating to informant. He had further stated at Para-57 that during course of investigation, he could not gather information regarding the death of deceased at Prashant Memorial Hospital during course of treatment.

21. Defence had also examined three DWs, out of whom, DW-1 is Dr. Binod Kumar Mehta, who had claimed himself to be Director of Prashant Memorial Charitable Hospital and under such status, he had exhibited relevant documents. DW-2, who claimed himself to be employee of Prashant Memorial Hospital and in that capacity, he had exhibited certain documents while DW-3 happens to be advocate clerk, who had exhibited complaint petition.

22. Through these three witnesses, bunch of documents have been exhibited, some of which are photo copies without having attestation, comparing and the source. In likewise manner, Complaint Petition of Case No.2292 of 2005 had also been exhibited.

23. From the material available on the record, it is



apparent that present case has been instituted after an inordinate delay taking shelter of Section 156(3) of the Cr.P.C. All the witnesses as is evident, except PW-3, have claimed their presence at the funeral place. They have claimed that in their presence after sprinkling kerosene oil, dead body was burnt. From their evidences, it is also clear that one police station Ahiyapur lies at a distance of two kilometer while Town P. S. at a distance of three kilometer. Even then seeing the abnormal activity of the accused, tried to burn the dead body by sprinkling kerosene oil, none of them cared to inform the police rather they were silent spectator for hours together and after completion of cremation, they left the place. It is further evident that some sort of allegation has been attributed that after few days, they have approached the police station wherefrom they were chased away. However, during course of examination of the I.O., nothing has been suggested. From the evidence of PW-1, PW-2, it is evident that informant had mobile, was a medicine trader and so, must be of Average Intelligence Quotient and further, when informant had called PW-2, over mobile, then in that circumstance, might have informed the police through mobile. Not only this, it has also come in the evidence of PW-5 that the residence of S.P. lies adjacent to the place where cremation was done. So, at least one should have rushed to the place of S.P. on account of faced with sewel. Contrary to it, it is also apparent that after having been noticed relating to a case filed by



accused Prakash Kumar, they gone to take legal advice from an advocate where they were advised to file murder case, whereupon complaint has been filed.

24. Then, there happens to be another circumstance, whether death had occurred at the place of informant or at the place of accused. Although, DW-1 had not examined the deceased and further, had not deposed that the concerned doctor, who had examined the deceased was not available on account of reasons whatever been enumerated under Section 32(1) of the Evidence Act. That being so, the documents whatever been at his end, happens to be inadmissible in the eye of law, whereupon the alleged prescription in the pen of Ramji Prasad is found not at all admissible. In likewise manner, the evidence of DW-2 happens to be. So, the document whatever been, save and except the status of the Complaint Petition No.2292 of 2005, which has been admitted at the end of the prosecution party. That being so, death of deceased at Prashant Memorial Charitable Hospital is found suspicious one and in likewise manner, presence of accused/ husband at the place of prosecution party where deceased was taken away, her ailment as well as having being treated by Dr. Y. K. Singh in absence of relevant prescription as well as non-examination of doctor. In the aforesaid situation, presence of deceased at her sasural is found out of controversy and further, the death during course of her



stay at sasural.

25. Delay in institution of the case play vital role, more particularly, when it is found not at all explained. In ***Ram Jag and others v. the State of U.P. reported in A.I.R. 1974 SC 606***, it has been held:-

“11. According to the prosecution the occurrence took place at about 4 p. m. and since the First Information Report was lodged at about 12-30 at night at the Tarabganj police station which is at a distance of about 4 miles from the scene of occurrence, the learned Sessions Judge held that there was undue delay in lodging the Report and that the delay was not satisfactorily explained. It is true that witnesses cannot be called upon to explain every hour's delay and a commonsense view has to be taken in ascertaining whether the First Information Report was, lodged after an undue delay so as to afford enough scope for manipulating evidence. Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution must depend upon a variety of factors which would vary from case to case. Even a long delay in filing report of an occurrence can be condoned if the witnesses on whose evidence the prosecution relies have no motive for implicating the accused. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness of the version of the prosecution.”



26. From the evidence available on the record, it is apparent that there has been inordinate delay in institution of the case. There also happens to be inordinate delay in recording statement of the witnesses. In ***Harbeer Singh vs. Sheeshpal and others reported in 2017 CRI.L.J. 169***, it has been held:-

*“16. As regards the incident of murder of the deceased, the prosecution has produced six eye-witnesses to the same. The argument raised against the reliance upon the testimony of these witnesses pertains to the delay in the recording of their statements by the police under [Section 161](#) of Cr.P.C. In the present case, the date of occurrence was 21.12.1993 but the statements of PW1 and PW5 were recorded after two days of incident, i.e., on 23.12.1993. The evidence of PW6 was recorded on 26.12.1993 while the evidence of PW11 was recorded after 10 days of incident, i.e., on 31.12.1993. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the Court. [See *Ganeshlal Vs. State of Maharashtra*, (1992) 3 SCC 106; *Mohd. Khalid Vs. State of W.B.*, (2002) 7 SCC 334; *Prithvi (Minor) Vs. Mam Raj & Ors.*, (2004) 13 SCC 279 and [Sidhartha Vashisht @ Manu Sharma vs. State \(NCT of Delhi\)](#), (2010) 6 SCC 1].*



17. However, *Ganesh Bhavan Patel Vs. State Of Maharashtra*, (1978) 4 SCC 371, is an authority for the proposition that delay in recording of statements of the prosecution witnesses under [Section 161](#) Cr.P.C., although those witnesses were or could be available for examination when the Investigating Officer visited the scene of occurrence or soon thereafter, would cast a doubt upon the prosecution case. [See also *Balakrushna Swain Vs. State Of Orissa*, (1971) 3 SCC 192; *Maruti Rama Naik Vs. State of Maharashtra*, (2003) 10 SCC 670 and *Jagjit Singh Vs. State of Punjab*, (2005) 3 SCC 68]. Thus, we see no reason to interfere with the observations of the High Court on the point of delay and its corresponding impact on the prosecution case.”

27. From the evidence of PWs, it is apparent that there happens to be material development from initial version recorded under Section 161 Cr.P.C. supported by the evidence of I.O. In ***Yogesh Singh vs. Mahabeer Singh and others reported in 2017 CRI.L.J. 291***, it has been held:-

Discrepancies in Evidence

29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be



accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission. (See Rammi @ Rameshwar Vs. State of M.P., (1999) 8 SCC 649; Leela Ram (dead) through Duli Chand Vs. State of Haryana and Another, (1999) 9 SCC 525; Bihari Nath Goswami Vs. Shiv Kumar Singh & Ors., (2004) 9 SCC 186; Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC 191; Sampath Kumar Vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124; Shyamal Ghosh Vs. State of West Bengal, (2012) 7 SCC 646 and Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796).

28. At the present moment, one has to see whether the direction given by the Apex Court in ***Rajbir alias Raju and another vs. State of Haryana reported in (2010)15 SCC 116***, is found



applicable. Aforesaid direction has been issued in the Year 2010, while the occurrence as alleged happens to be of the Year 2005. As the direction could not be treated retrospective in nature. That being so, the present appeal is found out of its purview. Moreover, the nature of evidence also did not attract further scrutiny over the same.

29. Although, the death of deceased is found within seven years of marriage. The plea of the prosecution that she was murdered and further, before her death, there was demand of dowry to a tune of Rs.One Lac and for that, soon before her death, she was subjected to torture. From the oral as well as documentary evidence, it is not at all found duly substantiated, on the other hand, the letters (Exhibit-1 series) suggest otherwise. That being so, the judgment of conviction and sentence recorded by the learned lower Court is not at all found maintainable. Accordingly, the same is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

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