

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.503 of 2003

- =====
1. Dinesh Kumar Gupta @ Dinesh Kumar Sah Son of Mahuli Sah.
 2. Mahuli Sah, Son of Late Sudama Sah.
 3. Fuljharo Devi, Wife of Mahuli Sah.
- All residents of Village – Karara Basantpur, P.S. – Ara Muffasil, District – Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Harsh Singh, Adv.
Mr. Ravi Shankar Chaudhary, Adv.

For the Respondent/s : Mr. Bipin Bihari, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: -09-2018

Appellants seek to challenge the judgment of conviction and order of sentence dated 23.09.2003 passed by Shri U.B.N. Singh the then 2nd Additional Sessions Judge, Arrah in Sessions Trial No. 474 of 1998, whereby, the appellants above named stood convicted under Section 304B, 201 of the Indian Penal Code (hereinafter referred to as the “IPC”) as well as under Section 3 and 4 of the Dowry Prohibition Act, and were sentenced to undergo rigorous imprisonment for ten years under section 304B of the I.P.C. and rigorous imprisonment for three years under Section 201 of the IPC. No separate sentence was passed under Section 3 and 4 of the Dowry Prohibition Act.



2. The facts germane for adjudication of the present appeal are that the informant Naresh Kumar filed a written report before the Muffasil police station, Arrah, Bhojpur, stating there in that he is resident of Village – Parura Rampur, P.S. – Sandesh, District – Bhojpur but usually he used to reside at Faridabad, where he had a shop of gold smith. It is stated that the daughter of the informant, namely, Nitu Kumari was married with the appellant Dinesh Kumar Gupta on 28.06.1997, thereafter, the Nitu Kumari went to her Sasural with her husband. Thereafter, on 7.7.1997, the informant brought back her daughter Nitu Kumari to his house at Rampur Parura. On 19.07.1997, on the request of the appellant Dinesh Kumar Gupta that he felt inconvenience in preparing food, Nitu Kumari went to her *Sasural*. It is alleged that on 19.09.1997, the appellant Dinesh Kumar Gupta informed the informant over telephone that the Nitu Kumari is seriously ill. On which, the informant came to Arrah on 20.09.1997 and contacted Gupta Nath, brother of the appellant Dinesh Kumar Gupta, who disclosed that his daughter is quite alright and, then, informant asked brother in law to call Nitu and her husband to have a meeting and appellant Dinesh Kumar Gupta and Nitu Kumari came to Arrah and during talks, Nitu Kumar disclosed the informant that she used to be tortured for demand of Rs. 1 lac and a colour T.V. The informant, anyhow, pacified the matter and sent back his daughter



Nitu Kumari to her Sasural with appellant Dinesh Kumar Gupta and the informant and his family members returned to Faridabad. It is further alleged that on 3.10.1997 at about 10 A.M., appellant Dinesh Kumar Gupta informed the informant on phone that her daughter had fled away from her matrimonial house and on the same day at about 5.30 P.M. he again informed the informant that his daughter Nitu Kumari had died. On which, the informant came to Arrah on 4.10.1997 and proceeded to Maner to find out the whereabouts of her daughter, where he heard rumours that her daughter has disappeared but he could not find his daughter, then, he went to village Basantpur, at the matrimonial house of his daughter and as the appellant Dinesh Kumar Gupta was not there he met his father appellant Mahuli Sah, who first disclosed that his daughter had severe stomach pain and due to which she died, thereafter, another explanation was offered that Nitu Kumari has committed suicide by hanging herself. The informant believed that his daughter has been done to death by the appellants and her dead body was disposed of on account of non fulfillment of demand of dowry.

3. On the basis of the aforesaid written report Arrah Muffasil P.S. Case No. 156/97 was registered against the appellants under Section 304B of the IPC and under Section 3/4 of the Dowry Prohibition Act.



4. Police after investigation submitted chargesheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Shri U.B.N. Singh the then 2nd Additional Sessions Judge, Arrah for trial and disposal.

5. Charges were framed under Sections 304B and 201 of the IPC as well as under Sections 3/4 of the Dowry Prohibition Act and to prove the charges, prosecution has examined altogether six witnesses. They are; P.W. 1 – Om Prakash Sah, cousin of the informant , P.W. 2 – Narain Sah, uncle of the informant, P.W. 3 – Manoj Kumar brother in law (*sala*) of the informant, P.W. 4 – Manorama Devi, wife of the informant and mother of the Nitu Kumari, P.W. 5 – Naresh Kumar, informant and father of Nitu Kumari, P.W. 6 – Sitaram Singh is the Investigating Officer of this case.

6. From the side of the defence also five witnesses have been examined and they are; D.W. 1 – Laxmi Gupta, D.W. 2 – Ramesh Gupta, D.W. 3 – Mehrum Saurusul Miyan, D.W. 4 – Devendra Singh and D.W. 5 – Nakchedi Sah.

7. The defence of the appellants as per the statement recorded under Section 313 Cr.P.C. as also from the evidence of defence witnesses is that the girl had disappeared her own from her



matrimonial house and her whereabouts could not be located and earlier also she used to flee away to Faridabad to her father's house and further defence is that the appellant Dinesh Kumar Gupta had also informed about the same to the informant and his family members. Further defence is that they have falsely been implicated in this case.

8. It appears from the perusal of evidence that PW 5 is the informant in this case and he has supported the case of prosecution and his evidence disclosed that the marriage of his daughter Nitu Kumari was solemnized with Dinesh Kumar Gupta on 29.06.1997. Thereafter, his daughter Nitu Kumari went to her Sasural. After five days of marriage, informant and others went to her Sasural, where, Mahuli Sah, father in law of Neetu Kumari, Dinesh Kumar Gupta, Husband of Nitu Kumari and Fuljharo Devi mother in law of the Nitu Kumari demaded Rs. 1 lac and a colour T.V. for *bidai* of the Neetu Kumari, on which, the informant refused. On 07.07.1997, Neetu Kumari came to his house and she also disclosed about the demand to her mother. On 29.07.1997, Neetu Kumari was sent back to her *Sasural* and the informant and his family members returned to Faridabad. His evidence further disclosed that on 19.09.1997, appellant Dinesh Kumar Gupta informed the informant on telephone that Nitu Kumari was ill, on which this witness along with his wife came to Arra and went to the house of brother of appellant Dinesh



Kumar Gupta, namely, Gupta Sah, who disclosed that Dinesh and Neetu had left for Maner in the evening. On the next day, his brother in law Manoj went to Maner and called the Neetu and Dinesh, and Neetu Kumari disclosed that she was not ill rather they were demanding Rs. 1 Lac and a colour T.V., for which he has been called and also disclosed about the torture being meted out to her. However, this witness anyhow sent both of them to their house. Thereafter he returned to Faridabad. On 3.10.1997, a telephone came that his daughter Nitu had died and he along with his wife left for Arrah and also communicated Narayan Sah and Om Prakash about the incident. Evidence of this witness disclosed that he reached Arra at 9 A.M., and he along with Om Prakash and Narayan went to Maner, where, he found the shop of Dinesh Kumar Gupta closed and persons disclosed that her daughter died two to three days earlier and they had gone after closing the shop, on which, they came to Basantpur at Sasural of his daughter Nitu Kumari and they met Mahuli Sah, he narrated different stories, first he told that his daughter has committed suicide by hanging herself and again he told that she died on the way to hospital for her treatment. Evidence of this witness also shows that he came to know from the villagers that his daughter was done to death four days ago and the dead body was disappeared. Thereafter, he came to Ara and informed the police about the incident. A suggestion



has been given to this witness as his daughter Nitu Kumari was not happy with marriage, she fled away from her matrimonial house, for which, this present false case has been lodged, he denied the said suggestion.

9. Learned counsel for the appellants has drawn my attention towards para 12 of cross examination of this witness to submit that the attention of this witness has been drawn towards the statement made before the police, in which, he has stated that he has not written in his written report that on Faridabad, he was informed by the appellant Dinesh Kumar Gupta on telephone about the illness of Nitu Kumari on 03.10.1997 at 10 P.M., he received telephone call that his daughter fled away, he has further stated on his own that on 03.10.1997, when he received information that his daughter fled away, he rang up to Maner first but he did not had a talk, thereafter, he rang up his uncle Om Prakash and informed him about the fleeing away of Nitu Kumari and this piece of evidence is contrary to the statement made in the evidence in chief that he received information that she died rather there is evidence, which clearly shows that information was given to him about fleeing away of Nitu Kumari and on that very information, he had come to Ara and it is the case of the defence also that she used to flee away and on that day also she had fled away. As such, the evidence of this witness that he received



information that Nitu Kumari died does not appear to be free from reasonable doubt. No doubt, his evidence disclosed that there was demand of Rs. 1 lac and a colour T.V. for which, the deceased was being tortured.

10. P.W. 1, is the Om Prakash and his evidence also disclosed about the factum of marriage of Nitu Kumari with the appellant Dinesh Kumar Gupta and also of demand of dowry of Rs. 1 lac and a colour T.V. by the appellants and for that they used to torture and assault the said Nitu Kumari. His evidence further disclosed that he along with Naresh and Narayan went to Maner and came to know that the Nitu Kumari was killed and dead body was disposed of. Evidence of this witness further disclosed that after one week, when Nitu Kumari had come back from her *Sasural*, she went to Faridabad and remained there for two months and Dinesh Kumar had brought her by *Rosgaddi*. His evidence also disclosed that he could not say as to who informed them that Nitu Kumari was killed and the dead body was got disappeared. A suggestion has also been given to this witness as Nitu Kumari was not happy with her matrimonial life, she fled away from her matrimonial house, for which, this present false case has been lodged. However, he denied the said suggestion.

11. PW 2 Narayan Sah is the uncle of informant and he has



also supported the case of prosecution of demand of dowry of Rs. 1 lac and a colour T.V. and also of threatening. His evidence in cross-examination in para -7 shows that when Nitu Kumari came back from her *Sasural* after 15 days, her mother and father was in the village. Cross examination of this witness further disclosed that they had gone to Maner at 11 'O' Clock but they could not meet Nitu and Dinesh and people disclosed that Nitu Kumari has been killed and Dinesh Kumar Gupta was absconding. This witness has also been given a suggestion that Nitu Kumari had fled away from Maner and earlier also, she used to flee away to Faridabad and the marriage was solemnized against her will and the information was given to Naresh on phone and the present case is false and concocted, though he denied the aforesaid suggestions.

12. PW 3 is the brother in law of the informant and he has also supported the case of prosecution regarding demand of Rs. 1 lac and a colour T.V. and the torture being meted out to her. A suggestion has also been given to this witness that the marriage of Nitu Kumari was solemnized against her will and she used to flee away and information was given about her fleeing away by the Dinesh and both parties have searched her and, thereafter, the present false and concocted case was lodged, however, he denied the said suggestion.



13. PW 4 is the wife of informant and mother of the Nitu Kumari. This witness has also supported the case of prosecution with regard to factum of marriage and demand of Rs. 1 Lac and a colour T.V. and stated that the Dinesh had informed on phone that the Nitu Kumari was not well and on that very information, they had come to Arrah, where, they learnt that Nitu Kumari was not ill rather Dinesh had called them on the pretext of demand of Rs. 1 lac and a colour T.V. and after three months Dinesh again rang up and informed that Nitu Kumari died, on which, they came here and came to know that dead body was got disappeared by them. Attention of this witness has been drawn towards the statement made before the police and she has stated that she had stated before the police that after marriage, her husband had gone to the matrimonial house of her daughter with *Kaleba* and when he came back, he informed about demand of Rs. 1 Lac and a Colour T.V. by the appellants and she has also informed the police that when Nitu Kumari came to her *Maike*, she disclosed her about demand of Rs. 1 Lac and a Colour T.V. Her cross-examination also disclosed that she received information regarding death of Nitu Kumari at about 5 P.M. and left Faridabad at about 7 to 8 P.M. and they reached Ara next day at 6 A.M. However, the evidence of PW5, who is informant in this case, shows that he had received information at about 12 to 1 P.M. Her evidence in para 12 shows that her husband



received information at 10 A.M. on 3.10.1997 and F.I.R. also disclosed that PW 5 informant has received information at 10 A.M. on 03.10.1997 and next day, they came by Shramjeevi Express. Evidence of PW5 further disclosed that on 3.10.1997, he came to station at 4 P.M. and proceeded to Ara from Shramjeevi Express, which was late and he reached there by 9 A.M. His evidence further disclosed that he left Delhi by Shramjeevi Express at 5 P.M. As such, the evidence of PW4 is contradictory to the evidence of PW5 so far timing of receiving information is concerned.

14. PW6 is the Investigating Officer in this case and his evidence disclosed that he has submitted charge-sheet in this case but his evidence disclosed that he has not made any investigation at Maner with respect to this case and he has further stated in his evidence in para – 6 that Manorama Devi had not stated before him that her husband had gone to the *Sasural* of Neetu Kumari with Kaleba and after returning from there, he disclosed Manorama Devi with regard to demand of Rs. 1 Lac and a Colour T.V. and she has also not disclosed that the Neetu Kumari had informed her about demand of Rs. 1 lac and a colour T.V. Evidence of this witness further disclosed that witness Manoj Kumar has not disclosed that after two and half months, his sister and *bahnoi* came to him rather Manoj Kumar had stated that they asked him to bring Nitu and he came with



Nitu at 12/1 'O' Clock and he saw Om Prakash and Narayan also. His evidence further disclosed that Manoj Kumar had told him that Nitu Kumari disclosed him that there was a demand of Rs. 1 Lac and a Colour T.V. and for that she was being tortured. As such the evidence of PW4 and PW5 is contradictory to the previous statement made before the police.

15. On behalf of the defence also five witnesses have been examined and D.W. – 1 Laxmi Gupta is a resident of Maner and his evidence disclosed that marriage of Dinesh was solemnized in the year 1997 and he was living with his wife Nitu Kumari and during her stay, she fled away to Faridabad then appellant Dinesh rang up his father in law and his father in law had brought her back and she remained there for eight to ten days and again fled away and Dinesh had again rang up and brought her back and she remained for eight to ten days and again fled away and Dinesh had again informed his father in law and he came and told that if she will not be found, then, they will lodge a case against him. His evidence also disclosed that they have not informed the police about her fleeing away.

16. Evidence of DW 2 also disclosed that she had fled away twice and on both occasions, they sent her back but she again used to flee away and, thereafter, this time father in law of the Dinesh came and told that if she would not be found, he will lodge a case against



them.

17. Evidence of DW3, DW4 and DW5 also disclosed that the girl was in habit of fleeing away and she used to be brought back but this time father in law of the Dinesh came and the present case was lodged.

18. Learned Trial Court on conclusion of trial convicted the appellants under Sections 304B and 201 of the IPC as well as under Section 3/4 of the Dowry Prohibition Act and sentenced them in the manner aforesaid.

19. Aggrieved by the said judgment, appellants preferred the present appeal.

20. Learned counsel for the appellants has assailed the impugned judgment on the ground that the materials available on record does not establish the fact that daughter of informant, namely, Nitu Kumari died rather the defence evidence shows that she used to flee away and information was also given to PW5 informant about her fleeing away, which was admitted by PW5 in para 12 of his cross examination. On the other hand, there is no evidence that she died except that witnesses claimed that villagers informed about the death of Nitu Kumari, moreover, there is no evidence available on record as to who disclosed about the death of Nitu Kumari. However, in spite of having any materials available on record, the trial court has concluded



that the girl died and that too under abnormal circumstances. Further submission is that so far demand of dowry is concerned, evidence of PW5 discloses that there was demand of Rs. one lakh and a colour T.V. but evidence of PW4 mother of Nitu Kumari disclosed that her husband PW5 disclosed her about demand of dowry of Rs. one lakh and a colour T.V. as well as the same was informed by the Nitu Kumari but she has not stated this fact before the police in her statement, which clearly appears from conjoint reading of evidence of witness and the evidence of Investigating Officer PW6, whose evidence disclosed that PW4 Manorama Devi had not disclosed the said fact before him. Hence, the evidence of PW4 regarding demand of Rs. 1 lakh and a colour T.V. does not appear to be unimpeachable in character and she has not withstood the test of cross-examination and once the evidence of PW4, with regard to demand of dowry washes away, evidence of PW5 and other witnesses does not inspire confidence so far demand is concerned.

21. It has also been argued that there is absolutely no evidence to show that that the girl was subjected to cruelty that too soon before her death and though the evidence of PW5 disclosed that on 19.09.97, he came to know on telephone that his daughter Nitu Kumari is not well, on which, he went to the Maner to meet his daughter Nitu Kumar, where, she informed him that she was quite



well and he has been called there as there was demand of Rs. one lakh and a colour T.V. and also disclosed about the torture being meted out to her. The evidence, however, shows that everything was quite normal thereafter and after that there was no evidence of torture or harassment to Nitu Kumari with respect to demand of dowry and as such evidence regarding the cruelty that too soon before her death with respect to demand of dowry, is missing. In support of his contention that there is no evidence that the woman was subjected to cruelty soon before her death, learned counsel for the appellants has relied upon a decision of Hon'ble Apex Court in the case of **Kunhiabdulla and Another vs. The State of Kerala** reported in **(2004) 4 Supreme Court Cases 13** and on the basis of which, learned counsel for the appellants has submitted that the essential ingredients to attract application of Section 304(B) of the IPC are not being established by the prosecution and as such the conviction of appellants is bad in law.

22. Further submission of learned counsel for the appellants is that the conviction of the appellants is based only on the circumstantial evidence and the circumstances, which has been considered by the Trial Court for recording the finding of guilt, has not been put to the appellants during their examination under Section 313 Cr.P.C, which is against the spirit of principle of natural justice



and which has caused miscarriage of justice and in support of this contention, learned counsel for the appellants has relied upon a decision of Hon'ble Apex Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in [AIR 1984 Supreme Court 1622]. Learned counsel for the appellants lastly contended that the trial court has failed to consider all these infirmities in the prosecution story and has convicted the appellants under Section 304B of the IPC as well as under Section 3/4 of the Dowry Prohibition Act, which is out and out perverse and not sustainable in the eye of law.

23. On the other hand, learned counsel for the State supported the finding of guilt recorded by learned Trial Court and submitted that the evidence clearly shows that there was demand of Rs. 1 Lac and a Colour T.V. by the appellants and almost all the witnesses have consistently stated about the said demand and further the girl was traceless from the house of the appellants and in such a situation, the onus is on the appellants to explain as to where she had gone, whereas, the evidence available on record shows that she was killed and her dead body was disposed of and the evidence of PW5 also disclosed that she was informed by Dinesh Kumar Gupta on phone that his daughter had died. As such, the Trial Court has rightly held that the death is within the seven years of marriage of the



deceased and there was demand of dowry and there was cruelty soon before her death and, hence, the conviction of the appellants under Sections 304B and 201 of the IPC as well as under Sections 3 / 4 of the Dowry Prohibition Act, is just and proper and does not require any interference.

24. Considered the rival contention of the parties. On conjoint reading of Section 304B as well as Section 113B of Evidence Act, it appears that there shall be presumption of dowry death if prosecution has been able to establish following: (i) death of the woman must have caused by burns or bodily injury or otherwise than normal circumstances. (ii) such deaths must have occurred within seven years of her marriage. (iii) soon before her death, woman must have been subjected to cruelty or harassment by her husband or his relatives. (iv) such cruelty or harassment was for, or in connection with, any demand for dowry. In the background of the aforesaid settled principle, on perusal of the evidence, it appears that in this case so far marriage of the Nitu Kumari with the appellant Dinesh Kumar Gupta is concerned, the same is not in dispute and it appears that she got married on 28.06.1997 and so far alleged death of the deceased is concerned, it appears that on 3.10.1997, the informant received the information on telephone that his daughter Nitu Kumari died and he along with his wife left to the place of occurrence and, thereafter, the



dead body of his daughter was traceless and prosecution claims that she was burnt and her dead body was disposed of and considering the same, it appears that she was not found and the incident has occurred within the seven years of her marriage. Now the question arises in the facts and circumstances of the case as to whether, she actually died that too in abnormal circumstance or she was traceless. The evidence of PW5 disclosed that on 3.10.1997, he received the information on telephone that Nitu Kumari died the he left for Ara. His evidence further disclosed that they came to Maner and found the shop of appellant Dinesh Kumar Gupta closed and the villagers informed him that three days ago, his daughter died and they closed the shop and left the place. His evidence also disclosed that then, they came to house of the appellants, where, they met appellant Mahuli Sah and enquired about Nitu Kumari, on which, he started making different stories. Firstly, he told that Nitu Kumari died due to hanging and, thereafter, he told that Nitu Kumari died during her treatment and villagers informed them that his daughter was killed four days ago. However, neither of the villagers of the Basantpur village nor the villagers of Maner was examined to ascertain as to who disclosed about the death of Nitu Kumari, whereas, evidence of PW5 informant in para – 12 of his cross examination shows that on 3.10.1997, appellant Dinesh Kumar Gupta had informed him about the fleeing



away of Nitu Kumari and, then, he rang up to his uncle Om Prakash and asked him to enquire the matter and this part of his evidence is contradictory to his evidence in chief.

25. PW4 is the mother of the deceased and as discussed above, there is contradiction between the evidence of PW5 and PW4, so far time of receiving the information is concerned and the accused persons in their statement under Section 313 Cr.P.C. has also stated that Nitu Kumari had fled away from their place and the evidence of defence witnesses is also consistent on that point that she used to flee away and she also fled away on that day. No doubt, victim/deceased was in the house of the appellants and she was traceless from their house and for that the explanation must be given by the appellants with regard to whereabouts of the Nitu Kumari under Section 106 of the Indian Evidence Act and in the present case, however the appellants had come with an explanation that as Nitu Kumari was not happy with her matrimonial life and she used to flee away and on that day also, she had fled away and information was given to PW5 and PW4 father and mother of Nitu Kumari, as such, the materials suggest that she fled away from the house of the appellants and a suggestion has also been given to the witnesses in this regard and it is the case of the appellants also as per statement recorded under Section 313 Cr.P.C. In the background of that, there is no evidence to show that



she died except the inference being drawn of her not being available and villagers told, whereas, none of the villagers have been examined in this case to show that she died.

26. So far demand of dowry is concerned, it appears from the evidence of PW5 and PW4 as well as from the evidence of other witnesses that there was demand of Rs. 1 lakh and a colour T.V. and for that the appellants earlier also called for PW5 on the pretext that Nitu Kumari is ill and later on they came to know that she was not ill rather they were demanding Rs. one lakh and a colour T.V. and as such, on the false pretext, they have called them. The evidence available on record suggest a demand of Rs. one lakh and a colour T.V. by the appellant Dinesh Kumar Gupta and the evidence does not suggest that any demand was made by other appellants.

27. So far prosecution case with regard to subjecting the Nitu Kumari to cruelty and harassment that too soon before her death, the only evidence available is of PW5 that Nitu Kumari had told them when they had come on 20.09.1997 that she was being tortured and harassed for demand of dowry of Rs. 1 lac and a colour T.V., however, there is no corroboration of the aforesaid evidence rather the evidence of cruelty is concerned, the evidence is silent except the evidence of PW 5 that he was informed by the Nitu Kumari. Evidence also disclosed that earlier the matter was pacified and both



Nitu Kumari and appellant Dinesh Kumar Gupta were sent back to their houses and evidence of PW4 and PW5 shows that they had also returned to Faridabad and, as such, it appears that the matter was pacified on 20.09.1997 and even if it is believed that she died, the information was received on 3.10.1997, there is absolutely nothing on record to show as to whether, she was subjected to cruelty after 20.09.1997, as such, so far subjecting the woman to cruelty for demand of dowry soon before her death is concerned, the prosecution has to establish the above circumstances with cogent and reliable evidence. The Hon'ble Apex Court in the case of Kunhiabdulla (supra), while considering the case of similar nature has observed in para 11 of its judgment, which reads as follows:-

“A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before



the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft', is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

28. From the above judgment, it appears that there must be live link between the effect of cruelty based on dowry demand and the concerned death but in the present case, as I have discussed above, the only evidence of PW5 is available on record, who disclosed that when he was called by the appellants on phone on 20.09.1997 and when he reached, his daughter Nitu Kumari disclosed him about the demand



and torture by the appellants. However, after that the matter was pacified and, thereafter, there is no evidence that she was tortured or subjected to cruelty and in such a situation, the ingredients that she was subjected to cruelty soon before her death does not appear to have been established by the prosecution.

29. In view of the above facts and circumstances, it appears that admittedly, Nitu Kumari was living in the house of the appellant Dinesh Kumar Gupta and she was traceless from there and the appellant Dinesh Kumar Gupta being husband of the Nitu Kumari, explanation has to be given by him about her whereabouts and the explanation has been given in the present case and even it is presumed that explanation is not satisfactory and that led to inference that she died but no such question has been put to the appellants while recording their statement under Section 313 of Cr.P.C. that she was in their house and she was traceless and a general question has been asked for the demand of dowry, they have killed the deceased and disposed of the dead body.

30. Considering the entire discussions made above, in the present case, though, there are evidence of demand of Rs. one lakh and a colour T.V. but so far death of the deceased is concerned, evidences are not cogent and reliable to show that she actually died and that too under abnormal circumstances. Similarly, the evidence



that the woman was subjected to cruelty soon before her death is very vague and on that basis, it cannot be established that Nitu Kumari was subjected to cruelty or harassment soon before her death. Learned Trial Court has not considered all these facts, while convicting the appellants under Section 304B and 201 of the IPC. So far demand of dowry of Rs. one lakh and a colour T.V. is concerned, the same is only against appellant Dinesh Kumar Gupta, who is husband of the Nitu Kumari and not against other appellants and in that background the conviction of other appellants under Section 3/4 of the Dowry Prohibition Act cannot be held to be well established and, as such, the appellant nos. 2 and 3, namely, Mahuli Sah and Fuljharo Devi are entitled for benefit of doubt.

31. Consequently, the conviction of all the appellants under Section 304B and 201 of the IPC is set aside and also the conviction of appellants Mahuli Sah and Fuljharo Devi under Section 3/4 of the Dowry Prohibition Act is also set aside. However, so far conviction of appellant Dinesh Kumar Gupta under Section 3/4 of the Dowry Prohibition Act., is concerned, the same is hereby affirmed.

32. However, it appears that in this case no sentence under Section 3/4 of the Dowry Prohibition Act has been awarded and furthermore, the appellant Dinesh Kumar Gupta has also remained in judicial custody for two years and seven months during pendency of



appeal, as such, no separate sentence is required to be passed.

33. In the result this appeal is allowed.

34. Appellants are discharged from their liability of bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.09.2018
Transmission Date	20.09.2018

