

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.487 of 2011

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1. SADANAND SINGH, S/O LATE JAGESHWAR SINGH.
 2. SUNITA DEVI, W/O SADANAND SINGH
 3. SATISH SINGH @ SATISH CHANDRA SING S/O SADANAND SINGH.

ALL R/O NEW POLICE LINE, MUNGER, PERMANENT ADDRESS-
IKCHARI, P.S. KHAHALGAON, DISTRICT – BHAGALPUR.

.... **APPELLANT/S**

VERSUS

THE STATE OF BIHAR

.... **RESPONDENT/S**

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Appearance:

For the Appellant/s : Mr. Manohar Prasad Singh, Adv.
Mr. Samir Kumar Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 22-05-2018

Appellant, Sadanand Singh, Sunita Devi, Satish Singh @
Satish Chandra Singh vide judgment of conviction dated 20.04.2011
and order of sentence dated 21.04.2011 have been found guilty for an
offence punishable under Section 304B of the Indian Penal Code and
each one has been sentenced to undergo S.I for 10 years, under Section
498A of the I.P.C and each one has been sentenced to undergo S.I for 3
years as well as to pay fine appertaining to Rs.5000/- and in default
thereof, to undergo S.I for 3 months, additionally, under Section 201 of
the IPC and each one has been sentenced to undergo S.I for 3 years as
well as to pay fine appertaining to Rs.5000/- and in default thereof to
undergo S.I for 3 months additionally, under Section 3 of the Dowry
Prohibition Act and sentenced to undergo S.I for 6 months as well as to
pay fine of Rs.2000/- in default thereof to undergo S.I for one month,
with a further direction to run the sentences concurrently with a further
direction that the period already under gone during course of trial will



be set off in accordance with Section 428 Cr.P.C by the Additional Sessions Judge, 1st Munger in Sessions Trial No. 53/2005.

2. Ashok Kumar Mandal (PW-3) filed written report on the basis of which Kotwali P.S. Case No. 346/2004 was registered as directed by the Superintendent of Police, Munger having an allegation that his daughter Mamta Kumari (deceased) was married to Satish Singh, son of Sadanand Singh of village-Ikchari, Bhagalpur on 14.12.2001 and at that very time, he had gifted the property, articles according to his status. During course of enjoying marital life, his daughter had begotten a son who, at the present moment is six months old. After staying to short period at her *sasural*, his daughter came to Quarter No. 115 of new Police Line, Munger, as her mother-in-law Sunita Devi happens to be a lady constable and began to reside with her husband Satish, father-in-law, Sadanand Singh, sister-in-law, Nandini and mother-in-law, Sunita Devi. Few months after the marriage, the father-in-law, mother-in-law, husband developed evil eye over his property over which they directed that either half of the property should be gifted to Satish or, Rs.2,00,000/- be given in lieu thereof otherwise, they will not allow Mamta to stay furthermore. They also threatened that they will continue with their activity whereunder Mamta was being coaxed to procure the same. It has also been disclosed that on 12.07.2004, when he had gone to quarter no. 115 for getting *Bidai* of his daughter, grandson (nati), his son-in-law, Samdhi, Samdhini ill behaved with him, abused and further, threatened that as he is not responding properly on their demand on account thereof, he is being instructed either to finalize the event by way of parting with half share or to deposit rupees two lacs otherwise, he will have to face the dire consequence.



On 18.07.2004, at about 04:00 P.M rumor floated that his daughter has been badly assaulted by his son-in-law as well as his parents and , on the pretext of treatment, they succeeded in getting her removed. He rushed to quarter no. 115 where, only Nandini Kumari was present. None others were present. They inquired from her whereupon, she refused to give any kind of information. Then thereafter, they have gone to Bhagalpur hospital, made hectic search but could not got any kind of information. In the aforesaid background, he is apprehensive that on account of non-fulfillment of demand, his daughter might have been murdered and to screen themselves, her dead body has been disposed of.

3. After registration of the case bearing Munger Kotwali P.S. Case No. 346/2004, investigation was taken up and after concluding the same, charge-sheet was submitted whereupon, trial commenced and concluded in a manner, subject matter of instant appeal. Furthermore, it is apparent from the LC record that Nandini has also been summoned in accordance with Section 319 of the Cr.P.C vide order dated 15.05.2008 but, on account of her non-appearance, her trial was separated. However, subsequent event thereto has not been flashed by either of the party.

4. 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. There happens to be specific defence that there was no demand of dowry nor deceased was ever tortured on that very score. Deceased, at the time of alleged occurrence was carrying pregnancy of two months and during course thereof, developed some sort of complication including severe bleeding as a result of which, she was



taken to Bhagalpur after having been informed to the prosecution party. While being under treatment of Dr. A.K. Singh, the prosecution party also arrived and unfortunately, in presence of, all of them, deceased taken her last breath and for that, the doctor had also issued death certificate. The members of the prosecution party as well as accused persons jointly done funeral of the deceased. Thereafter, the members of the prosecution party developed greedy eye whereupon asked for ornaments and for that, they brutally assaulted the members of the accused persons and for that, on the fard-beyan of Satish, Kotwali P.S. Case no. 347/2004 was registered. In order to substantiate the same, apart from documentary evidence four DWs have also been examined.

5. Six PWs have been examined at the end of the prosecution to support its case who are PW-1, Ganga Devi, mother of the deceased, PW-2, Baliram Kumar Mandal, driver of the tracker by which allegedly deceased was taken to Bhagalpur, PW-3, Ashok Mandal, informant, father of the deceased, PW-4, Mithilesh Kumar who had not supported the case of the prosecution and that being so, was declared hostile, PW-5, Praduman Singh, part I.O, who had simply submitted charge-sheet and PW-6, Vijay Singh, the main I.O. As well as had also exhibited, Ext.1, letter allegedly written by the deceased to his father, Ext.2, signature of the informant over the written report. In similar way, four DWs have been examined on behalf of the defence. As DW-1, Maheshwar Paswan, DW-2, Awadhesh Yadav, DW-3, Ghanshyam Saha and DW-4, Sadanand Singh. In likewise manner, documentary evidences have also been led as Ext.A- prescription issued by Dr. A.K. Singh dated 17.07.2004, Ext.B- death certificate issued by Dr. A.K. Singh dated 17.07.2004, Ext.C- charge sheet of Kotwali P.S. Case No.



347/2004, Ext.D to D/2- fee receipt issued by the College, Ext.E- mark-sheet, Ext.F- Admt card. The photo copy of the injury report relating to deceased has also been marked "X" for identification.

6. Manifold points have been raised at the end of learned counsel for the appellant while assailing the judgment of conviction and sentence impugned. It has been submitted that for substantiating an offence punishable under Section 304B of the IPC, major ingredients so prescribed therefore has not been fulfilled on behalf of the prosecution and in likewise manner, it has also been submitted that dubious character of the prosecution is found duly exposed and that being so the cumulative effect did not justify the finding recorded by the learned lower court.

7. Elaborating his submission, the learned counsel for the appellant has submitted that marriage was solemnized in the year 2001. Deceased died in the year 2004. There happens to be an allegation attributed at the end of the witnesses that demand was persisting but, they have not made complaint to any authority including that of police. In likewise manner, no specific instance has been placed save and except, deposing in vagueness and that did not satisfy the ingredients for constituting an offence punishable under Section 304B of the IPC. Furthermore, it has also been submitted that from the Ext.A in consonance with the evidence of DW-3, compounder, it is evident that deceased was treated at the clinic of Dr. A.K. Singh where she was carried on a tracker having been hired and on that very score, the prosecution witness PW-2 is very emphatic. He had deposed to such extent during course of examination-in-chief alone that while carrying the patient (deceased) he had stopped the tracker near G.D. College and



then, thereafter, appellant Sadanand Singh got down from the tracker having some females, coming, meeting with the patient who assured the patient that she will be fully cured and the deceased addressed one of them as 'Maa'. So, victim being taken to Bhagalpur for treatment and during midst thereof, met with the PW-1 as well as PW-3 is found duly endorsed.

8. Furthermore, it is evident right from the written report that they have gone to Bhagalpur which is also happens to be the case of the defence but, as the members of the prosecution party brutally assaulted, looted away their belongings as, the appellants failed to oblige them by way of returning the ornaments, got this case filed to defend themselves against a case having been instituted by the appellant Satish. So submitted that when the overall situation is minutely gone through, it is apparent that the instant prosecution happens to be mischievously launched whereupon, suffers from deciduousness.

9. Apart from this, it has also been submitted that not even a single independent witness has come forward to support the case of the prosecution moreover the other family members as there happens to be non-presence of brother of deceased namely Sanjeet and in likewise manner, two other members whose presence has also been shown nor any kind of explanation has been furnished for their non-examination. Whoever been examined are PW-1 and PW-3, the parents and the infirmities persisting in their evidence did not justify their credibility whereupon, should be rejected. Consequent thereupon, appeal is fit to be allowed.



10. On the other hand, counter meeting with the submissions made on behalf of appellants, it has been submitted by the learned A.P.P that if the evidence of DWs are taken together with the prosecution evidence, then in that circumstance, the case is found duly established. As such, finding recorded by the learned lower court did not attract interference.

11. After perusal of the record, evidences led on behalf of respective parties, the following facts are admitted one:-

- a. On the alleged date of occurrence, deceased was at her *sasural*.
- b. Though having an explanation which is to be scrutinized at an appropriate stage, death of deceased is found admitted otherwise than normal circumstances.
- c. And in likewise manner, funeral of the dead body.
- d. There happens to be no controversy over date of marriage and on account thereof, death was within 7 years of age.

12. For substantiating a case wherein charge under Section 304B of the IPC is framed, the prosecution is under obligation to prove (a) death within 7 years of marriage (b) it happens to be on account of burn or bodily injury or otherwise than normal circumstance, (c) There was demand of dowry and for that soon before her death, deceased was subjected to torture, (d) By her husband or relative of the husband.

In case, the prosecution is found successful in proving the aforesaid ingredients then, in that circumstance, presumption, though rebuttable as in accordance with Section 113B of the Evidence Act, is to be drawn whereupon the onus shift upon the accused which is expected to be discharged in accordance with the law. Furthermore, the theme of



cruelty is found synonym to the cruelty having identified under Section 498A of the IPC and further, the dowry is to be properly considered as per definition prescribed under the Dowry Prohibition Act

13. As mentioned hereinabove, with regard to certain circumstances being an admitted one, that the death has been within 7 years of marriage and that death occurred otherwise than in normal circumstance. That being so, the remaining two ingredients that means to say there was demand of dowry and for that deceased was tortured soon before her death, as well as at the hands of the husband or relative of the husband are only the remaining criteria which now have to be searched from the evidences, circumstances adduced on behalf of the respective parties as well as onus having been properly discharged at the end of the appellants.

14. Now coming to the evidence, PW-1 the mother had deposed that her daughter Mamta Devi is now dead. She was severely assaulted by her mother-in-law Sunita Devi, father-in-law Sadanand Singh, husband Satish and sister-in-law Nandini Devi and then thereafter, on the pretext of providing treatment, she was taken away to Bhagalpur. As soon as they got information, she along with her husband gone to the place of accused where none were present save and except Nandini Devi. They inquired from Nandini regarding her daughter whereupon, she shown ignorance. Thereafter, they have gone to Bhagalpur, made hectic search but could not locate. They returned back. Again gone to the place of accused without any clue whereupon, they concluded that their daughter Mamta has already been murdered and her dead body has been disposed of in order to screen themselves. It has also been disclosed that Mamta was married with Satish on



14.12.2001. After marriage, she had gone to her *sasural* where, after staying for sometime, all the accused namely Satish, Sadanand, Sunita and Nandini began to pressurize her to instruct her parents to part with half share. And for that, she was frequently subjected to torture. Their activity had gone to such extent that whenever she used to go to *sasural* of her daughter, she was not allowed to talk with her daughter or to take their daughter's son in her lap. Identified the accused. During cross-examination at para 10, there happens to be cross-examination relating to location of the house of the accused situated at police line and the distance there from of his house lying at Mohalla Shastri Nagar. She had further stated that she is unable to disclose how many flats, are in the police line and whether Sergeant Major was residing in the same colony or not. At para 11, she had stated that when Mamta died, her son was about 6 months old. She had shown ignorance whether delivery took place at "Matri Sadan". Then had denied the suggestion that she never visited the place of Mamta. At Para 12, she had stated that at the time of marriage, Mamta was student of B.A 1ST year. Till the death of Mamta, she had passed the B.A Examination. Then had denied the suggestion that her *sasuralwala* had facilitated the atmosphere wherein she continued with her study by paying fee which she denied. At Para 13, she had stated that she has come to depose along with her husband, son and neighbours. At para 15, she had stated that about a week prior to the death of Mamta, the accused persons have disclosed that after payment of Rs. 2,00,000/- they will allow them to meet with the Mamta. They have also threatened of dire consequences. Then had said that she had not informed any authority because of the fact that they were not inclined to create any kind of uncongenial atmosphere, though, they



have become apprehensive over the attitude of the accused. She had also stated that sometime after the marriage, accused persons began to insist upon to part with half share or to pay Rs. 2,00,000/- in lieu thereof and for that, Mamta they began to torture. She had further stated that her daughter had said that in case of institution of case her husband would not get service. In Para 16, she had stated that no injury was caused on account of assault. She was assaulted after having catching of her hair as well as by stick. She was being pushed by catching of her hair even then she had not instituted a case. As, her daughter had disclosed that by such activity her life is not going to be taken away by the accused. Then had denied the suggestion that all these things have been purposely introduced. In para-17, she had denied the suggestion that at the time of death of the deceased she was carrying pregnancy of two months. In Para 18, she had disclosed that one day prior to the institution of the case she came across the news that Mamta has been murdered. On that day, case was not instituted as they have gone to the Bhagalpur to inquire about the real fact. She got information at Munger itself at about 12 noon. She had not informed the Bhagalpur police as her house lie within Munger district. On the following day at about 11 A.M case was instituted. At para-19, she had denied the suggestion that they have raided the house of Satish Singh on 19.07.2004 and demanded ornaments which was declined by the accused persons whereupon they have assaulted Satish, Sunita Devi, Sadanand and Nandini after carrying them to an orchard, looted away their belongings and then, in order to save their skin, this case has been instituted as, Satish Singh had lodged a case bearing case no. 347/2004. In Para 20, she had denied the suggestion that as deceased



was carrying pregnancy of two months and during course thereof, there was profuse bleeding and for that she was taken to Bhagalpur to the clinic of Dr. A. K. Singh where from she was referred to J.L.N.M.C.H however, during midst thereof, she died. She also denied the suggestion that Mamta was taken away on tracker and during midst thereafter they were called upon to meet with Mamta. They were present during course of treatment as well as at the time of her death. She had denied the suggestion that funeral had taken place in their presence. In para 21, she had stated that she is not knowing whether her son had instituted Kasim Bazar P.S. Case No. 258/2003 against his uncle and others putting an allegation that he along with deceased Mamta was assaulted by them. After coming to know about the same, her *sasuralwala* took her back which caused annoyance to them. In Para 23, there happens to be cross-examination relating to her financial status. In Para 24, 25, 26, 27 there happens to be contradiction. In Para 28, she had stated that after death of Mamta her son is along with them. Then had denied the suggestion that she had deposed falsely.

15. PW-2 had claimed to be a driver of a tracker which was hired on the alleged date at about 3-4 A.M. for carrying a patient to Bhagalpur. Accordingly, he lifted the female patient from the police line. Further, he disclosed that the female patient was saying that she will meet with her mother and was groaning. During midst of way, he stopped the vehicle where, 2-3 women came and met with the patient. Then had stated that he carried the woman to Ghanta Ghar, Bhagalpur where they got down. Then identified two accused standing in the dock who disclosed their identity as Sadanand Singh and Sunita Singh and further disclosed that they both had gone along with the patient. During



cross-examination, he had stated that only a female a male accused along with the female patient have gone to Bhagalpur. Then had stated that near D.J. College, he stopped the vehicle where Sadanand Singh got down from the vehicle. Then, other female member came, met with the patient. The patient had called one of the female as Maa who consoled her by saying that she will be cured. Then thereafter, Sadanand Singh boarded the tracker and then, proceeded therefrom.

16. PW-3 is the informant who had deposed that occurrence is of dated 18.07.2004. At about 4 P.M, he received information from Rameshwar Kumar Sinha (not examined) that his daughter has been severely assaulted by Satish, Sadanand Singh, Sunita Devi and Nandini and then, taken away to Bhagalpur on the pretext of treatment whereupon, they had gone to quarter no. 115 at police line, Munger, where only Nandini Kumari was present. None others including his daughter was there. On query made by them she shown ignorance. Then thereafter, he along with his wife gone to Bhagalpur and gone to hospital situated at mohalla-Mayaganj, vigorously search but could not locate. They have also visited private nursing home but failed to trace out. Then it has been disclosed that after marriage, the accused persons were coercing her to have half share in his property or to procure Rs. 2 lakhs failing which, they have also threatened that she will have to face the dire consequences. So, they apprehended that their daughter might have been murdered in the aforesaid pretext. It has further been alleged that after returning from Bhagalpur they have gone to the place of accused again but, they have not found anybody save and except Nandini. Again she was inquired whereupon, shown her ignorance. He had further stated that Mamta was married with Satish on 14.12.2001.



Sadanand Singh is the father-in-law of Mamta while Sunita Devi is mother-in-law and Nandini Kumari is sister-in-law. At the time of marriage, he had made expenses appertaining to Rs. 2.50- 3 lakhs. After marriage, Mamta had gone to her *sasural* then at quarter no. 115, police line where she remained in good harmonious atmosphere for 2-3 months and then thereafter, the accused persons advanced their demands and for that, she was regularly subjected to torture. He had also disclosed that her daughter had begotten a son who, at the time of occurrence was about 6 months old. At Para 8, he had further stated that in the month of April (fourth), he had gone to meet with his daughter, daughter's son and then brought them on *Bidai*. After staying for a month, Sadanand Singh came and asked for *Bidai* whereupon, he requested to send his son-in-law whereupon, he badly abused him. In the month of June (sixth), again corrected May (fifth), on 9th day his son-in-law Satish came asked for *Bidai* and assured that she will not be tortured henceforth. Accordingly, *Bidai* was effected. In Para 9, he had stated that he had visited so many times at the place of Mamta. He had found Mamta in perturbed condition. On query, she had disclosed why he comes when he is being disrespected. He had further stated that lastly, he met with Mamta on 11.07.2004. He had also visited the place of Mamta on 12.07.2004. The accused persons had not allowed *Bidai*. They have not allowed even to meet with her. On the other hand, they insisted that half share be executed or Rs. 2 lakhs be paid. In Para 10, he had exhibited a letter having in the pen of Mamta disclosing the fact that while she was staying at *sasural*, she had written the same and with objection the same has been exhibited. He had further stated that he had handed over the photocopy of aforesaid letter to the I.O. He had



further stated that on 19.07.2004, they came to conclusion that their daughter had been murdered and her dead body had been disposed of at Bhagalpur. In Para 13, he had stated that on 19.07.2014, he had gone to Kasim Bazar police station and then to Kotwali thana but his case was not registered as Sunita Devi happens to be a police constable. Then thereafter, he had gone to S.P whom he had disclosed the event, placed application whereupon, he directed the concerned police station to register a case but, being apprehensive he had also filed complaint case no. 617(c). In Para 14, he had exhibited the written report. Identified the accused. During cross-examination at para 16, he had stated that the case has been instituted one day after the occurrence. In Para 17, cross-examination has been made relating to the letter. He had admitted that sender's name is not there. No date is scribed thereupon. There happens to be no seal of post office. Then had denied the suggestion that letter is a forged one. In Para 18, he had disclosed that marriage was solemnized in the year 2001. She become pregnant in the year 2003. She begotten a son in the month of January, 2004 and she has been murdered in the seventh month of 2004. In Para 19, he had stated that he had got no documentary proof to corroborate that accused persons were demanding half share in the property or cash in lieu thereof. In Para 20, he had stated that case has been instituted after death of Mamta. In Para 21, there happens to be cross-examination relating to his family status, financial status. In Para 22 he had stated that no written demand was made relating to 2 lakhs. In Para 23, he had stated that at the time of marriage, Mamta was student of Inter. She passed the B.com in the year 2004. He had got no admission receipt, fee receipt along with him. Then had denied the



suggestion that all the expenses were borne by the accused persons. In Para 24, he had categorically stated that all the expenses incurred during course of delivery of Mamta was shared by the accused persons. In Para 25, he had stated that Satish is only one brother and one sister. Then had shown ignorance whether Sadanand Singh had got three buildings and good cultivation. Then at Para 26, 27, strain relationship amongst his brothers has been questioned and further, admitted presence of Kotwali P.S. Case No. 258/2003 having at the instance of his son Manjeet against his brothers. He had further stated that during course of occurrence, his son, wife were assaulted. His daughter was not assaulted. Then had denied the suggestion that his daughter was also assaulted and for that she was treated at hospital. Photocopy of injury report has been marked "X" for identification. Then at Para 28, he had denied the suggestion that at the time of occurrence, Mamta was carrying pregnancy of 2 months. She developed complication, bleeding whereupon, she was taken to Bhagalpur. He volunteered that after assault she was taken to Bhagalpur. Then had denied the suggestion that she died during course of treatment. He also denied that while Mamta was being taken to Bhagalpur they met with her. In Para 29, he had stated that he had gone to Bhagalpur along with his wife in order to search out Mamta. Then had denied the suggestion that in their presence funeral of Mamta was held at Bhagalpur. He had denied the suggestion that after coming from Bhagalpur they have gone to *sasural* of Mamta, asked for ornaments and on being refused by the accused persons, they brutally assaulted them, committed loot and for that, Satish had instituted case and only to save their skin, this case has been instituted. In Para 30, he had stated that he had not mentioned in



the written report that Kasim Bazar police had refused to entertain his written report but he had stated that S.P had endorsed upon the written report. Then had denied the suggestion that this case happens to be forged, fabricated.

17. PW-4 is a witness having his residence at police line who had shown ignorance regarding the occurrence. He had further stated that his residential house happens to be at police line, Munger. He had further stated that occurrence took place adjacent to his quarter. Then had stated that he was knowing deceased Mamta, her husband as well as other members of her *Sasuralwala*. He had identified the accused. He had further stated that he had not heard the sound of commotion in the night of alleged date of occurrence but, on the following day, there was rumor that Mamta died at Bhagalpur on account of illness. He had not seen Mamta and her husband on the alleged date of occurrence. On Court question, he had stated that he had not made statement before the police. Then had stated that he had not made the statement before the police that Mamta died of illness and her dead body was disposed of at Bhagalpur. During cross-examination, he had stated that in the night of alleged date and time of occurrence, there was storm as well as heavy rain and on account thereof, doors, windows of all the quarters were closed. He had not seen anything in the night of alleged date of occurrence. Because of the fact that accused happens to be of his department on account thereof, he had claimed identification.

18. PW-5 is the part I.O who had simply submitted charge-sheet. He had further stated that during midst thereof, he had examined one Nageshwar Prasad Yadav on 29.08.2004 and had taken statement of accused Sadanand Singh on 31.08.2006. During cross-examination at



para-2, his attention had been drawn towards statement of six witness (who have not been examined) and so, that part of the evidence is found inadmissible in the eye of law. At para 3, location of Shastri Nagar Mohalla has been disclosed from the police line. Then had stated that accused persons have claimed themselves innocent.

19. PW-6 is the main I.O who had stated that on 19.7.2004, he was S.I., Police posted at Munger Kotwali P.S. On the same day, at about 13-15 hours he had received an information whereupon, rushed to verify the genuineness of the information. At 14-15 hours, he received written report whereupon, case has been registered (exhibited all the documents). Then he was entrusted with the investigation on the same day. He recorded further statement of the informant, statement of the Ganga Devi. At para 3, he had stated that place of occurrence happens to be the quarter no. 115 of police line wherein Sunita Devi resides. The bed of Mamta Devi (deceased) was in her room. He had recorded statement of Mithilesh Kumar, Constable, Baliram Kumar, driver. Then had stated that Baliram Kumar had stated before him that people have taken away one female who was groaning to Bhagalpur but he is unable to disclose where she was treated. How it had been taken, is a matter of surprise as Baliram Singh is PW.2 and was not declared hostile by the prosecution. He had not tried to know about the doctor during course of investigation. On 07.8.2004, he had taken statement of the driver. On 14.08.2004, he was transferred. As he had not sufficient time on account thereof, he could not be able to make investigation on that very score. He handed over the investigation to Inspector. During cross-examination at Para 4, he had stated that when he reached at the police line he came across the news that all the accused persons were in an



orchard in an injured condition. He had gone there, caught hold them and then took them to hospital for treatment. In Para 5, he had shown boundary of the P.O as West-Hirdaya Narayan Singh, East- Harendra Paswan, North-Bindeshwari . During course of inspection of the P.O, he had not found any mark of violence. He had not found the articles inside the house to be scattered nor in disorganized manner. He had not found broken piece of bangles. In Para 6, he had stated that he had not recorded statement of Dr. A. K. Singh who had issued death certificate. He had not gone to his clinic nor had recorded the statement of any of the staff. Then had stated that he had gone to Bhagalpur during course of investigation. He had gone to funeral place. He had seen the register kept by Karu Paswan wherefrom wood were purchased and at serial no. 634 name of Mamta Devi was there. At para 7, he had stated that he came along with Dy. S.P, Shastri Nagar. Tried to search out the witnesses but none came forward. At the direction of Dy. S.P. he had recorded the statement of driver and khalasi. Nathula Ansari was the proprietor of the tracker. None of the independent witness has come forward to support the case of the prosecution. Then at Para 8, there happens to be contradiction relating to statement of PW-1 visible to such extent. At para 9, he had stated that the distance in between informant's house as well as quarter of the accused could be covered within 8-10 minutes. Then had denied the suggestion that it will be less than 4 minutes.

20. During course of statement recorded under Section 313 of the Cr.P.C the appellants/ accused, Satish, Sadanand Singh, Sunita Singh have reiterated the defence whatever been suggested to PW-1 and PW-3 that means to say deceased being pregnant, developed some sort



of complication, bleeding, taken to Bhagalpur for treatment and then, during course thereof, she died. Taking of funeral in presence of prosecution party and then a dispute over refusal to hand over ornaments whereupon they were assaulted after dragging to an orchard and for that Satish had instituted a case and then thereafter this case has been instituted.

21. Defence had also examined 4 DWs. DW-1, Maheshwar Paswan, literate constable posted at Jamalpur P.S. He had stated that he was posted at new police line, Shastri Nagar from 2001 to 2006. He had further stated that at about 12 midnight of 16.07.2004, Sunita and her husband came to police line barrack where his residence was and Sunita said that she should not be given duty on tomorrow as condition of her daughter-in-law was serious. During cross-examination, he had stated that his statement was not recorded by the police during course of investigation. DW-2, is the person who had narrated that at 09:00 P.M on 16.7.2004, Satish had come to his house and disclosed that his father had demanded money on account of illness of his wife. In the same night at about 11 P.M he had gone to police line to give money to Sadanand Singh where Sadanand and his daughter was present. Sadanand had disclosed that condition of his daughter-in-law is serious and so, she has to be taken to Bhagalpur. Then had narrated that he is known to Sadanand Singh since before. During cross-examination, he had stated that he had gone to the place of Sadanand Singh alone. He had seen only Sadanand and his daughter.

22. DW-3 is the compounder of Dr. A. K. Singh who had exhibited the prescription, death certificate issued by the Dr. A. K. Singh. He had also stated that he had administered IV injection to the



patient. She was referred to J.L.N.M.C.H but, in midst thereof, she died. During cross-examination, he had admitted that he has got no document to substantiate being compounder of Dr. A. K. Singh.

23. DW-4 is one of the accused namely Sadanand Singh. He had simply exhibited the receipt issued by the college where deceased had studied and further claimed all the expenses were borne by them. During cross-examination, he had stated that he had not made statement any where.

24. As found it happens to be obligation on the part of the prosecution to substantiate its case. That means to say all the ingredients attracting for constitution of the offence is to be satisfied at the end of the prosecution. As held in foregoing paragraph that there is no controversy with regard to the death of deceased in otherwise the normal circumstance within 7 years of marriage. The only other ingredients that means to say demand of dowry and having been tortured on that very pretext soon before her death by her husband or relative of the husband is to be seen.

25. In ***State of Rajasthan Vs. Jaggu Ram***, reported in **2008 Cr.LJ 1039**, it has been held:-

“19. If the prosecution evidence is considered in the backdrop of the fact that the defence failed to produce any evidence to controvert the facts relating to the demand of dowry, it must be held that the deceased was subjected to cruelty and harassment in connection with dowry immediately after her marriage and such harassment continued till her death and the learned trial judge rightly held the charge under Section 304-B IPC as proved, against the accused. The learned Single Judge of the High Court gave undue weightage to the minor discrepancies in the first information report and the statement of PW 1 _Atma Ram and some alleged omission in the first information report and acquitted the accused ignoring



the most important factor that the deceased suffered injuries in a dwelling unit belonging to her in-laws and in their presence, that she died due to those injuries and that the defence failed to offer any satisfactory explanation for the injuries on the head of the deceased. The defence did introduce the story of the deceased suffering with epilepsy and her being treated for the same, but no documentary evidence was produced to show that she was ever treated for epilepsy. In their cross-examination, the father and brothers of the deceased and the other prosecution witnesses categorically denied that the deceased was suffering from epilepsy and she used to have bouts of fits. Atma Ram also denied the suggestion that she and the accused had taken Shanti @ Gokul for treatment to a Psychiatrist at Jaipur. Some of the Prosecution witnesses who were declared hostile, did try to support the theory that the deceased used to have fits, but their statements can be of no help to the accused because no documentary evidence in the form of prescriptions of doctors or the bills of the treatment and purchase of medicines were produced to prove that the deceased was suffering from epilepsy and used to have fits. The statement of Dr. Shyam Lal Khuteta is also of no help to the accused because he too did not produce record relating to the treatment allegedly given to the deceased for epilepsy long time ago. The conduct of the accused and his family members in not informing the parents of the deceased about the injuries caused on her head and consequential death and the fact that the cremation of the dead body was conducted in the wee hours of 30.3.1993 without informing the parents or giving an intimation to the Police so as to enable it to get the post-mortem of the dead body conducted go a long way to show that the accused had deliberately concocted the story that Shanti @ Gokul was suffering from epilepsy and she suffered injuries on her head by colliding against the door bar during the bout of fits. The disposal of dead body in a hush-hush manner clearly establish that the accused had done so with the sole object of concealing the real cause of the death of Shanti @ Gokul.

20. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of the any person, the burden of proving that fact is upon him. In Ram Gulam Chaudhary vs. State of Bihar [2001 (8) SCC 311] this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation



as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference.

21. In Trimukh Maroti Kirkan vs. State of Maharashtra [2006 (1) SCC 681], a two judge-bench of which one of us (G.P.Mathur,J.) was a member, considered the applicability of Section 106 of the Evidence Act and observed:

“The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the houses should go unpunished.

If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315] quoted with



approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [2003 (11) SCC 271]. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

22. Similar view has been expressed in *State of Punjab vs. Karnail Singh* [2003 (11) SCC 271], *State of Rajasthan vs. Kashi Ram* [2006 (12) SCC 254], *Raj Kumar Prasad Tamakar vs. State of Bihar* [2007 (1) SCR 13].”

26. Also been reiterated in **Maya Devi & Anr. Vs. State of Haryana** reported in **2016 Cr.LJ 629** :-

“21) Section 304B IPC does not categorise death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring “otherwise than under normal circumstances” can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304B IPC are fulfilled, any death



(homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman’s husband or his relative “shall be deemed to have caused her death”. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.

22) The key words under Section 113B of the Evidence Act, 1872 are “shall presume” leaving no option with a court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. In the case on hand, accused persons failed to prove beyond reasonable doubt that the deceased died a natural death. When Kavita allegedly committed suicide, her husband- appellant No.2, though he was not present in the house, was present in his office at M.D. University, Rohtak at the relevant time but he did not make any sincere effort to take her to the hospital which was very near to the place of the incident. Similarly, appellant No. 2 got the deceased examined by DW-2 in order to create an impression that she was struggling with chronic depression but the truth floated upon the surface when the deceased reveals that the accused persons were maltreating her and she had started picking up the ideas of suicide. Lastly, appellant No. 2 falsely informed the court that having learnt about the death of his wife Kavita, he left for Delhi to inform her family members. In fact, the accused never went to Delhi and the complainant received a telephonic message from an unknown person regarding the death of his daughter. So far as Maya Devi- appellant No. 1 herein is concerned, there is no denying the fact that she was working as a teacher in a government school and she was not present at the relevant time at the place of incident but it is very much clear from the evidence on record that both the accused persons had a dominating role in the entire episode and she had always accompanied her son-appellant No. 2 herein to the house of the complainant (PW-3) for the dowry demands. The presumption under Section 113B of the Act is mandatory may be contrasted with Section 113A of the Act which was introduced contemporaneously. Section 113A of the Act, dealing with abetment of suicide, uses the expression “may presume”. This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B IPC: it is necessary to first ascertain whether the ingredients of the



Section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. From the evidence on record, we are of the opinion that in the present case Kavita died an unnatural death by committing suicide as she was subjected to cruelty/harassment by her husband and in-laws in connection with the demand for dowry which started from the time of her marriage and continued till she committed suicide. Thus, the provisions of Sections 304B and 498A of the IPC will be fully attracted.”

27. Over the identification of dowry, in **Rajinder Singh Vs. State of Punjab** reported in **AIR 2015 SC 1359**, after discussing earlier judgment it has been held :-

“20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb's case (AIR 2007 SC 763 : 2007 AIR SCW 456) followed by the judgment of Kulwant Singh (AIR 2013 SC (Cri) 1034 : 2013 AIR SCW 2154) do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. Coming now to the other important ingredient of Section 304B - what exactly is meant by "soon before her death"?”

28. So far ‘soon before her death’ is concerned, in the **Rajinder Singh** (supra) case, it has been explained in following way:-

“23. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304B would make it clear that the expression is a relative expression. Time lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304B.”



29. How far evidence of DW will bind the accused. In **Ashok Kumar Vs. State of Haryana** reported **(2010) 12 SCC 350**, it has been held:-

“41. The above statement of this witness (DW-3) in cross- examination, in fact, is clinching evidence and the accused can hardly get out of this statement. The defence would be bound by the statement of the witness, who has been produced by the accused, whatever be its worth. In the present case, DW-3 has clearly stated that there was cruelty and harassment inflicted upon the deceased by her husband and in-laws and also that a sum of Rs. 5,000/- was demanded. The statement of this witness has to be read in conjunction with the statement of PW-1 to PW-3 to establish the case of the prosecution. There are certain variations or improvements in the statements of PWs but all of them are of minor nature. Even if, for the sake of argument, they are taken to be as some contradictions or variations in substance, they are so insignificant and mild that they would no way be fatal to the case of the prosecution.”

30. In **Satya Pal vs. State of Haryana** reported in **AIR 2013 SC 2015**, it has been held:-

“8. We, however, find that P.W. 2 had not stated in her Statement [Exhibit DA] before the Police that P.W. 1 had not told her that the deceased was beaten by the appellant and his family members and that the deceased was closed in a room, but we find on a reading of the evidence of P.W. 1 that the deceased was subjected to beatings twice or thrice for demands of dowry. Moreover, P.W 2 when asked whether she has told the Police about the aforesaid beatings given to deceased, she has said that she in fact, told the police about such beatings. The explanation to Section 161 Cr.P.C. states that an omission to state a fact or circumstance in the statement made to the police may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. It was, therefore, for the Court to decide whether the omission in the statement of P.W 2 about the beatings given to the deceased before the police was significant enough for the Court to disbelieve that the deceased was beaten in connection with the demand for dowry. Considering the evidence of P.W. 1 and P.W. 2 in its entirety, we think that the High Court is right in



coming to the finding that the deceased was not only subjected to a subsequent demand of dowry but also subjected to cruelty and harassment in connection with such demand for dowry soon before her death and that the trial court had not taken a correct view on the evidence of P.W. 1 and PW 2.

9. The High Court had also rightly drawn the presumption under Section 113B of the Evidence Act that appellant had caused the dowry death of the deceased within the meaning of Section 304B IPC and the appellant was required to rebut this presumption that he had caused the dowry death. The appellant did make an attempt to rebut this presumption in his statement under Section 313 Cr.P.C. while answering question No. 16. The appellant stated that the deceased had died a natural death because she was suffering from rheumatic pain (heart disease) and at that time she was being treated by Dr. Roop Chand at Satnali and she was also attended by Dr. Roop Chand on the day of her death. If this was the defence of the appellant in his statement under Section 313 Cr.P.C. it was incumbent upon him to have produced Dr. Roop Chand as a defence witness, but he has not done so. The result is that the appellant has failed to rebut the presumption under Section 113B of the Indian Evidence Act that it is he who had caused dowry death of the deceased within the meaning of Section 304B of the IPC.”

31. In ***Krishnegowda & Ors vs State Of Karnataka*** reported in **2017 Cr.L.J. 2830**, it has been held:-

“**27.** It is settled law that mere latches on the part of Investigating Officer itself cannot be a ground for acquitting the accused. If that is the basis, then every criminal case will depend upon the will and design of the Investigating Officer. The Courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt basing on the evidence on record.”

32. From the evidence available on the record, it is crystal clear that members of prosecution party had got no occasion to see the victim at or around the date and time of occurrence. As such, they had no occasion to see physical condition of the deceased. In the aforesaid background, having acceptance at the end of appellants that deceased died of natural death due to ailment while was undergoing treatment,



ought to have been substantiated by Dr. A. K. Singh, wherein he failed. So cause of death is found unexplained. Moreover, when the condition of deceased was precarious she should have been taken to the specialized treatment or to medical college instead thereof taken to Dr. A. K. Singh who was not a gynecologist nor having specialty relating thereto.

33. Now the another circumstance is found exposed from the evidence of PW-2, a driver who had been procured in order to justify the plea of the defence that the victim was taken to Bhagalpur. He had not spoken that it was rainy day. There was storm. When the evidence of PW-4, one of the Constable and neighbour of the appellants/accused has been gone through, it is evident that during cross-examination itself, he had stated that on the alleged date and time of occurrence, there was storm as well as heavy rain and so, all the doors and windows were closed which, DW-1 another Constable before him accused Sunita and Sadanand had gone to say that he should not be given duty on the following day as condition of her daughter-in-law was precarious, controverted The whole activity is to be seen in the background of the fact that Sunita happens to be a police constable and the event was managed otherwise there was no occasion for the police official of Kotwali police or Kasim Bazar to refuse to register a case compelling the informant to go to the S.P. which is not at all found challenged or controverted. From the evidence of I.O, it is crystal clear that as instructed by the Dy. S.P, he recorded statement of driver and khalasi. The other circumstance as is visualizing is that DW-4, one of accused has come in dock who during course of evidence kept complete mum over the facts of the case. Had there been genuine effort at his end, he must have spoken over facts, exploring the events denying the



allegation whatever been attributed at the end of the prosecution. Apart from this, when the evidence of DW-2 is taken up, it is evident there from that when he reached at the quarter no. 115, he had only seen Sadanand and his daughter. That means to say Satish, deceased, as well as Sunita were not at all present which the defence failed to explain.

34. The another circumstance is that none of the DWs nor any of the prosecution witnesses has been cross-examined on the score of distance from the quarter no. 115 to an orchard wherefrom, as per defence version they were dragged by the prosecution party, assaulted. Had there been such kind of activity that too inside the police line, would not have allowed the prosecution party to indulge in such kind of activity nor would have allowed the accused person outside police line uninterrupted while being dragged by the prosecution party. Moreover, the I.O under Para 4 of his cross-examination was not at all cross-examined on that very score. Furthermore, it is also evident that he (Investigating Officer) had gone to the place during course of investigation of the present case as, just after arriving at the orchard, accused persons were apprehended, and then were sent to hospital for treatment, but no injury report is an exhibit of the record.

35. Giving anxious consideration as well as minute observation of the evidences available on the record coupled with the circumstances visualizing from the record, it is found and held that the finding having been recorded by the learned lower court happens to be in accordance with law, consequent thereupon, this appeal sans merit and is accordingly dismissed.



36. Appellants are on bail hence their bail bonds are cancelled with a direction to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which, the learned lower court will be at liberty to proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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