

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.521 of 2015

Arising Out of PS. Case No. -164 Year- 2013 Thana -MAHUA District- VAISHALI(HAJIPUR)

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Binod Rai @ Vinod Kumar Ray S/o Ganesh Ray resident of Village - Paharpur,
P.S. - Mahua, District - Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Rajesh Kumar, Adv.
For the Informant : Mr. Mukesh Kumar-1, Adv.
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 19-04-2018

Appellant, Binod Rai @ Vinod Kumar Ray has been found guilty for an offence punishable under Section 304B of the I.P.C and sentenced to undergo R.I for 7 years vide judgment of conviction dated 29.07.2015 and order of sentence dated 04.08.2015 passed by Additional Sessions Judge, IInd, Vaishali at Hajipur in Session Trial No. 113 of 2014.

2. Dhana Devi, (P.W.3) filed written report on 07.6.2013 disclosing therein that marriage of her daughter Suman Devi with Binod Rai @ Vinod Kumar Ray, S/o Ganesh Ray, resident of Village-Paharpur, P.S. - Mahua, District - Vaishali was solemnized about 2 years ago. Then thereafter, she stayed at her Sasural and during course thereof, there was demand of motorcycle as well as golden chain at the end of Binod Rai, Ganesh Ray, Sarita Devi and mother of Binod Rai (Wife of Ganesh Ray). They also threatened her that in case of non-fulfillment of demand of dowry that means to say the motorcycle and chain, they would not allow her (Suman



Devi) to stay at their place. Fulfillment of demand was condition precedent to allow stay of Suman Devi at their place otherwise she will be subject to eliminate. On 05.6.2013, Suman had talked with her father Ram Parwesh Ray and during course thereof, she had disclosed that if, by 6.6.2013, Motorcycle, Chain is given then she will be alive otherwise her Sasuralwala has hatched a conspiracy to eliminate her. Today, that means to say on 07.6.2013 at about 09:00 A.M somebody informed that Suman has been murdered and in order to dispose of her dead body, her dead body has been taken to Hajipur and during course thereof, has been intercepted by Ganesh Ray, Mausera brother of the deceased.

3. On the basis of the aforesaid written report, Mahua P.S Case No. 164/13 was registered followed with an investigation as well as submission of charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

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. It has also been pleaded that deceased was issueless and on account thereof, was suffering from some sort of gynaecological problem due to which, there was stomach ache and for that she was locally treated, then taken to Mahua from where she was referred to PMCH which was informed to the prosecution party, who instructed to Ganesh to accompany, and in whose presence and in a way to PMCH, she died. Subsequently thereof, as the prosecution party advanced undue demand which has been turned down at the end of the appellant



consequent thereupon, instant case has been instituted levelling false and frivolous allegation. However, neither oral nor documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had examined all together eight P.Ws who are PW-1, Ram Pravesh Rai, PW.2-Prabhat Kumar Ray, PW.3-Dhana Devi, PW.4-Indradeo Rai, PW.5-Parwati Devi, PW.6-Dr. Brajesh Kumar Singh, PW.7-Dilip Kumar Baitha, PW.8-Ganesh Rai. Side by side, also exhibited Ext.1-Postmortem report, Ext.2-Formal FIR, Ext.2/1-Endorsement over written report, Ext.3-Inquest Report, Ext.3/1-Signature of PW.8 Ganesh Rai over inquest report.

6. Manifold arguments have been raised on behalf of learned counsel for the appellant while assailing the judgment impugned. The first and foremost happens to be with regard to conduct. On this very score, it has been submitted that as deceased was ill, prosecution party were informed who were along with the appellant in the ambulance while in a way to Patna unfortunately, during midst of way deceased died and soon thereafter, the prosecution party advanced undue demand and then, as he declined to accept was taken to Mahua Police Station on the ambulance itself and that happens to be reason behind presence of PW.8, Ganesh. The aforesaid activity is also to be perceived in the background of the fact that the allegation happens to be with regard to demand of dowry in form of motorcycle and a chain while, from the evidence of the informant, PW.3 as well as inquest report, Ext.3, it is apparent that at the time of death, the



ornaments having over the body of deceased was of much more value of the articles so allegedly been shown to be demanded by the appellants. In the aforesaid background, the demand of motorcycle as well as chain is found completely falsified. Then, it has been submitted that had there been a genuine conduct at the end of the prosecution party, as alleged, they would have rushed to the nearby police station that means to say Hajipur industrial Area police station after stopping the ambulance by which appellant was going along with the dead body as it lies at a distance of few far long. If the aforesaid theme is minutely perceived then it will depict the falsity of the case as, while moving on ambulance, PW.8 Ganesh would not have been in a position to identify the occupants including the dead body, nor could have in a position to stop the moving ambulance. Even accepting for a moment that he had seen, had there been an offence committed at the end of the appellant, then in that circumstance, ambulance would not have been stopped seeing the PW.8. That means to say, presence of PW.8 indicates that he was present along with deceased as well as appellant since before the death of deceased and was in a way to Patna along with informant and others, but, due to death of deceased they began to advance undue demand which the appellant declined and then, they overpowered the driver, took the ambulance to Mahua Police Station covering more than 35 KM where, taking the police in their collusion got this case filed.

7. It has also been argued that during course of evidence, the witnesses have stated more particularly, the



informant herself that there was sign of assault over the body of deceased but, neither the postmortem Ext.1 nor the Investigating Officer (PW.7) nor the inquest report Ext.3 substantiated the evidence of the PW.3 along with evidence of PW.8, Ganesh.

8. PW.6, doctor during course of conduction of postmortem report had not found any external injury over the person of deceased nor could be able to trace out cause of death. Furthermore, with regard to injury having over uterus, he had stated during cross-examination that the same might be on account of termination of pregnancy. Moreover, the aforesaid injury has not been found cause of the death. It has also been urged that doctor during course of P.M. had found so many external appliances affixed with the body, which was to be for providing medicine, guiding the patient during course of treatment. Not only this, whatever finding was recorded by the doctor during conduction of PM was not conclusive on account thereof, viscera was preserved and the report has not been made an exhibit so, cause of death is found unascertained.

9. Now coming to merit of the case, it has been submitted that the ingredients of Section 304B of the IPC is not at all found duly substantiated in the background of the fact that apart from having omnibus, generalize, vague allegation made in the written report, there happens to be specific disclosure that on 05.06.2013 deceased had talked with her father wherein she had disclosed that by 06.06.2013 motorcycle and chain should be provided otherwise they have conspired to eliminate her, but,



father PW.1, during course of his evidence had not substantiated the aforesaid allegation and so, considering the nature of the allegation suffering from vagueness suggest that the same happens to be an afterthought story introduced as failed to satisfy their illegal demand and for that, this false case has been filed.

10. It has also been submitted that though in terms of Section 113B of the Evidence Act obligation has been cast upon the accused to discharge the onus but, the aforesaid eventuality will come into play only after the allegation having been substantiated by the prosecution. In the instant case, the prosecution has miserably failed to substantiate its case on account thereof, there would not be applicability of Section 113B of the IPC and so, the appellant would not be required to discharge the onus. That means to say non entering in defence at the end of the appellant will not cause prejudice to him. In any view of the matter as the prosecution failed to substantiate its case, instant appeal is fit to be allowed setting aside the judgment of conviction and sentence. Also relied upon 2014(3) PLJR 409 (SC).

11. On the other hand, the learned Additional Public Prosecutor while refuting the submission made on behalf of appellant has submitted that from the evidence available on the record, it is abundantly clear that prosecution has succeeded in its case beyond all reasonable doubt along with the fact that appellant failed to discharge onus having over him in accordance with Section 113B of the Evidence Act whereupon, the judgment impugned did not attract interference. Consequent thereupon,



instant appeal is fit to be dismissed.

12. For substantiating an offence under Section 304B of the IPC, the prosecution is required to prove the following ingredients:-

- (a) The deceased who met with death must be within seven years of marriage.
- (b) The death should be on account of burn or bodily injury or otherwise than normal circumstance.
- (c) Before her death there was demand of dowry.
- (d) And for fulfillment of demand of dowry she has been subjected to torture at the end of her husband or relative of the husband soon before her death.

In case, the prosecution succeeds to establish the aforesaid ingredients then, in that circumstance, in terms of Section 113B of the Evidence Act, the onus lies upon the accused to explain otherwise it will be presumed that deceased met with dowry death. It is also apparent that the meaning of torture as incorporated under Section 304B of the IPC has been borrowed from Section 498A of the IPC. In likewise manner, the dowry has been borrowed from Dowry Prohibition Act.

13. Death is admitted. Death within seven years of marriage is also admitted. However, it has to be seen whether she died due to burnt or bodily injury or otherwise than normal circumstance for that the evidence of PW.6, the doctor, has to be seen who during course of postmortem, had found following:-

External-Face pale, eyes closed with endotracheal



tube, cardiac lids and vaso fix. Also Foley's catheterized on dissection.

Skull-Scalp intact, skull bone, Meninges and brains are intact.

Neck- Trachea contains endotracheal tube, neck vessels intact, no positive finding seen.

Chest- Bony cage normal, lungs and pleura mildly congested. All chamber of heart contains little blood.

Abdomen- Peritoneum intact, peritoneal cavity contains sero-sanguinous fluid in large amount. Stomach contains 100 ml. of digestive fluid, liver, spleen, kidney intact and mildly congested. Intestines contains gas and fecal matter.

Uterus- Rupture of body of uterus up to right cornual region (Lacerated wound $\frac{3}{4}$ " * $\frac{1}{2}$ " cavity deep) with blood clots in it and around.

Cause of death- Hemorrhage and shock. Nature of weapon used- Hard and blunt object.

Age of injury- within 24 hours, from the time of P.M. Examination.

However, viscera have been preserved also for biochemical analysis of, if the police so wants to get it examined.

14. During course of cross-examination under para-5 the doctor had elaborately been cross-examined over the presence of so many devices which the doctor had incorporated in the postmortem report and further explained that cardiac lids is being applied for monitoring heart function, vasofix for monitoring, I.V Line, Foley's catheter for measuring urinary output. He had further stated that



generally the abovementioned equipments are fixed before death of a patient but so far instant case is concerned that has not been suggested. In para-6 he had been also been cross-examined over presence of rupture of uterus and further, over presence of lacerated wound $\frac{3}{4}$ "x $\frac{1}{2}$ "x cavity deep and all the suggestions whatever been at the end of the appellant was negated by the doctor acceding with that aforesaid injuries might be on account of termination of pregnancy

15. Apart from the fact that doctor was not suggested so far present case is concerned as, the word used by doctor happens to be in general application which has got significance in the present matter as, exhibit-3 inquest report is completely silent over the presence of those equipments attached with the dead body. In likewise manner neither PW.8 the witness over the inquest was cross-examined nor the Investigating Officer, PW.7 was cross-examined/suggested. None of the other witnesses that means to say PW.1, PW.2, PW.3 have been suggested nay, there happens to be any kind of medical report on the record to suggest that those devices were affixed over the deceased in order to save her life. That means to say, death due to bodily injury is found substantiated.

16. As per Modi Medical Jurisprudence Taxonomy-

Uterus- The non-gravid uterus is not ordinarily injured unless involved in the injuries of the pelvic organs, but the gravid uterus is likely to be ruptured by a blow, kick, or trampling on the abdominal wall, or by the passage of a sharp instrument per vaginam to procure abortion.



Death may result from haemorrhage, peritonitis, or septicaemia. The pregnant organ may also be ruptured during injudicious obstetrical operations or by continued tonic spasm during parturition, especially, in obstructed labour.

The external violence, which causes injury to the pregnant uterus, may sometimes be responsible for producing injury on the foetus.

Partial or complete separation of the placenta caused by a blow on the abdomen during pregnancy may cause fatal hemorrhage.

17. So two ingredients that means to say death within seven years of marriage and death due to bodily injury is found duly proved.

18. Now, with regard to remaining ingredients i.e., whether there was demand of dowry and soon before her death, deceased was subjected to cruelty for fulfillment of demand of dowry by the husband or relative of the husband, the evidence of material witnesses are to be seen.

19. On this very score as is evident five witnesses have been examined. Out of them PW.4 and PW.5 happens to be co-villager of the appellant out of whom one has been tendered. Times without number, the activity of the prosecution by way of tendering the witness has been deprecated by the Apex Court and in likewise manner, the performance of judicial act by the court in allowing tendering of witnesses has also not been beatitude as held in ***Sukhwant Singh vs. State of Punjab*** reported in **(1995) 3 SCC 367, State of U.P. & Anr. vs. Jaggo @ Jagdish & Ors. Reported**



in (1971) 2 SCC 42. As evidence Act does not permit in spite of the same, the learned lower court had allowed PW.4 to be tendered at the end of the prosecution. PW.5, became hostile though, she had admitted death but on account of stomach ache resiling from her earlier statement. Now the evidence of three PWs who happens to be father PW.1, brother-in-law PW.2 and mother/informant, PW.3 remain to be tested.

20. PW.3 during her examination-in-chief had stated that deceased was her daughter who was married with Binod Rai about two years ago. After marriage, she had gone to her Sasural where, after sometime Binod Rai, Ganesh Rai, mother, sister of Vinod Rai began to torture her for dowry even to the extent of physical assault. They were demanding a motorcycle and a golden chain. Suman had informed telephonically to her father requesting him to provide those items otherwise they will eliminate her. As, she was not able to fulfill their demand, in the aforesaid background, about one and half year ago her daughter was murdered and while her dead body was being secretly taken for disposal, her sister's son Ganesh located the same and took the accused along with dead body to police station where she also arrived. Then thereafter, she got written report scribed in the pen of Ganesh Rai and after putting her thumb impression, handed it over to police (identified). Identified the accused. During course of cross-examination, she had stated at para-2 that while she was at her house, she received information about 09:00 AM but is unable to disclose the date. She received information that Suman has been murdered. It was



informed by co-villager of the Suman who had not disclosed his identity. She received information over her mobile. She is unable to disclose its number. In para-3 she had stated that she passed the information to Ganesh Rai. House of Ganesh was at a distance of two kilometer. In para-4 she had stated that her children had informed to Ganesh over phone. She was not knowing phone number of Ganesh. Ganesh was informed after an hour of receiving information by her whereupon Ganesh rushed but after how much time she is unable to say. Then had stated that she met with Ganesh at police station where they seen the dead body. What Ganesh had said, he could not understand because of the fact that her daughter was dead. In para-5 she had stated that whatever been disclosed by her was correctly scribed by the Ganesh over which she had put her thumb impression. Then para-6 had stated that in the written report as well as in the further statement, she had disclosed that Binod Rai, Ganesh Rai mother of Binod Rai and sister of Binod Rai used to assault for dowry. In para-7 she had stated that she had seen the dead body of her daughter at Mahua Police Station. Dead body was lying over ground. She had seen sign of assault over dead body. She had seen over the stomach left side as well as lower part of the stomach. There was black spot. It was in round shape in the diameter of four fingers. She had not seen other sign. Then had disclosed that at that very time her daughter was wearing sari, sky colour, one golden chain, earring, ring, nose pin. She was unable to disclose the value. Chain and earring was given by her Sasuralwala. In para-8 she had stated that her son-in-law was at police station along with her dead body. Her son-in-law



was apprehended by the police. Police had not taken statement of all the persons at that very time. She was further examined one day thereafter. She had inquired from her son-in-law how her daughter has died. In para-9 she had stated that marriage was solemnized about two years ago since before her death. She was issueless. She had not got treated her. Her daughter had gone to the place of her father at Silau. Her husband had not gone along with her. She had also come to her place. She used to return back to her Sasural after staying 2-4 days. Sometimes on the same day. Her son-in-law also used to come and accompanying her sometimes. She used to visit Sasural of her daughter. She had gone at the place of her daughter along with Panch while they were demanding dowry. She had not gone to police station to record complain over threatening of killing her daughter in case, dowry is not given. In para-10 she had stated that her daughter had disclosed at 2-3 occasions that accused persons are demanding dowry. Then had denied the suggestion that as she was issueless on account thereof, she was being treated at Silau. She also denied that deceased had suffered from stomach-ache a day prior to the alleged occurrence and for that, she was admitted at Mahua near NH and from there she was referred to PMCH where she was being carried on ambulance during midst thereof, she died. She also denied the suggestion that she was also along with deceased and after death of the deceased, they advanced illegal demand and having been declined at the end of the accused, this false case has been instituted.



21. PW.1 is the father of the deceased. He had stated that Suman was his daughter who was married with Binod Rai son of Ganesh Rai about three and half years ago. After marriage, his daughter had gone to her Sasural where she was roughly treated. Binod Rai, Ganesh Rai, Sarita Devi and Savitri Devi advanced demand of golden chain as well as motorcycle and were threatening either to procure the aforesaid items otherwise she will be eliminated. She was even physically tortured. Whenever he used to visit at her place, her daughter used to narrate the same. His wife had also disclosed and lastly, his daughter has been murdered by Ganesh Rai, Binod Rai, Sarita Devi and Savitri Devi. When they were taking away the dead body for disposal, his wife came to know whereupon, instructed Ganesh Rai son of his Sarhu to rush whereupon, Ganesh Rai gone and had seen the dead body over a vehicle at village-Jaruha. Same was taken to Mahua Police Station. Then thereafter, his wife had instituted this case. At the time of occurrence he was at Silao. His wife had informed and then thereafter, he rushed therefrom. Identified the accused. Police had recorded his statement. In para-2 he had stated that Rabindra Rai cousin brother of Binod Rai was negotiator. At the time of marriage he had not paid cash but customary items were given by him. In para-3 he had stated that he had visited place of his daughter 3-4 times after her marriage. He had gone there carrying the gift items. Sometimes he met with his son-in-law and sometimes not. His son-in-law had not accepted Salami. In para-4 he had stated that his daughter came to Maika 3-4 times after the marriage and 1-2 times to Silao. His son-in-law had not visited Silao. His son-in-law came



to his house 2-3 times. He used stay for a day or even 2-3 days. His daughter was issueless. He is not knowing whether she was treated for the same. He had not informed the police even having been informed that she was being assaulted. His wife had informed regarding death of his daughter at Silao. He had further stated that on 07.06.2013 at about 02:00 PM, his wife had informed. Then had disclosed his mobile number. Then had stated that Ganesh Rai and Binod Rai used to demand dowry repeatedly but, he had not informed the Silao police. Then had denied the suggestion at para-5 that he had got his daughter treated at Silao over being issueless. He had further stated that only for fever she was once treated but he is unable to disclose the name of the doctor. Then had denied the suggestion that deceased suffered from stomach-ache and for that, she was taken to Mahua and from there to Patna during midst of way, she died. As the accused failed to satisfy his wife over undue demand on account thereof, this false case has been instituted.

22. PW.2 is the brother-in-law of the deceased who had stated that Suman was married with Binod about 3-4 years ago. After marriage she had gone to her Sasural where her mother-in-law Parwati Devi, sister-in-law Sarita Devi, father-in-law Rajesh Rai advanced demand of motorcycle as well as chain and for that, were regularly threatening. On account of non-fulfillment of demand of dowry in a form of golden chain, motorcycle, she was murdered by her mother-in-law, father-in-law, sister-in-law and husband. Identified the accused. During cross-examination at



para-2 he had stated that two and half years after marriage Suman died. He had further stated that he had visited the place of Suman twice. The last visit happens to be one year prior to her death. He had talked with Suman once or twice and during course thereof, she had disclosed that she was being tortured with regard to fulfillment of demand of dowry. In para-3 he had stated that he had talked with his Sarhu (husband of the deceased). He had not informed police with regard to incident having reported by his Sali. He along with his father-in-law were working at Silao but at a distance of half kilometer. His father-in-law had disclosed the aforesaid events 3-4 times. The deceased used to come to the place of his father-in-law. He is unable to disclose when she had visited. He is not knowing whether she was being treated at Silao. At para-4 he had stated that the police had recorded his statement 3-4 days after the occurrence.

23. PW.8 is the Ganesh Rai, one of the inquest witness and on that very score, he has been examined. In para-2 of his examination-in-chief he had further stated that he had caught dead body when accused was taking it away for funeral. During cross-examination at para-4 he had stated that he happens to be Mausera brother of the deceased. He had further stated that near Paswanchowk, industrial P.S. lies. At para-5 he had shown the way to Konhara where cremation are being performed. In para-6 he had stated that when he saw the dead body at that very time he was alone. 3-4 persons were along with the dead body. Dead body was over ambulance. He had forced the vehicle to stop. At that very



time, there was no murmuring. None of the persons of the surrounding came. He inquired from Binod Rai and took the vehicle to Mahua P.S. Then had denied the suggestion that he had falsely deposed. He had also denied the suggestion that vehicle was not stopped at Paswan Chowk.

24. PW.7 is the Investigating Officer. He during his examination-in-chief, after exhibiting the relevant documents had deposed that after taking investigation of the case he proceeded to the place of occurrence which happens to be single storied house of the accused lying at village-Paharpur Narhatiya. He had identified the boundary of the house. East-Jaikant Sah, West-Pratap Sah, North-Road, South-accused himself. Then thereafter, he recorded statement of the witnesses. Prepared the inquest report, received PM report and then after completing investigation, submitted charge sheet. During cross-examination at para-6 he had stated that he had proceeded with the investigation after being entrusted by the officer-in-charge on 07.06.2013. At the time of recording of FIR he was not present at the Police Station. Inquest was not prepared in his presence. It was prepared by R.R. Prasad. In para-7 he had stated that in inquest report, it has been incorporated that dead body was found in ambulance bearing registration no.BR31E 1710. He had further admitted that dead body was over ambulance which was taken to Police Station. At that very time Ram Pravesh, Dhana Devi, Binod Rai were present. He is not remembering how much time they remained at the Police Station. Accused was arrested within 15 minutes. Accused had not tried to flee



therefrom. He had recorded statement of the accused. In para-8 he had stated that he had not taken statement of driver. Then had denied the suggestion that in collusion with prosecution he had not taken statement of the driver. Then had admitted that there happens to be description with regard to presence of golden ornaments (detailed) over the dead body. He had further admitted that no mark of violence was seen during course of preparation of inquest. In para-9 he had stated that he had not found any incriminating material from the place of occurrence. Then there happens to be statement of Prem Sagar Yadav and Indradeo Yadav (not examined). In para-11 there happens to be contradiction relating to informant that she had not stated before him with regard to presence of two marks of violence over dead body of deceased one at lower part of the stomach while the other on the stomach. In para-12 he had also stated that he had sent the viscera on 07.09.2013 but could not get report till the date of submission of charge sheet. Then had denied the suggestion. He was then recalled and then exhibited the inquest report. During cross-examination nothing substantial has been confronted in the background of para-8 of the cross-examination.

25. From the evidence of PW.8, it is evident that irrespective of the fact that in para-2 of his examination-in-chief he had claimed to have seen the dead body over the ambulance, 2-3 persons were present since before and then, thereafter, he got the dead body along with ambulance as well as accused to Mahua Police Station and on that very score, there happens to be no cross-



examination at the end of the appellant so, presence of PW.8 and having the dead body along with ambulance to Mahua Police Station, presence of accused appellant thereupon is not at all found to be under controversy.

26. With regard to place of occurrence, there happens to be some slackness at the end of PW.7, Investigating Officer. He had simply seen the house of the accused. He had not deposed that he had visited inside the house more particularly the room in which deceased was said to be living rather he had simply stated that deceased was living in a room lying over western side of the house, so the actual place of occurrence that means to say inside the room the Investigating Officer failed to inspect and that happens to be reason behind presence of deficiency over the objective finding and in the aforesaid background at para-9 he had stated that he had not found any incriminating material at the place of occurrence. Certainly, there also happens to be slackness at his end whereunder the driver of the ambulance was not examined by him. There also happens to be slackness at his end as failed to inspect the ambulance in order to trace out whether any medical prescription was there or not though, he has not been suggested nor any of the witnesses have been suggested on that very score that in ambulance necessary prescription relating to treatment and forwarding issued by doctor of Mahua was there nor there happens to be disclosure regarding the name of doctor of Mahua who had examined the deceased.

27. In *Sudha Renukaiah & Ors vs State Of A.P.*



reported in **(2017) 13 SCC 81**, it has been held:

“.....Furthermore, it is well settled that even if IO has committed any error and has been negligent in carrying out any investigation or in the investigation there is some omission and defect, it is the legal obligation on the part of the Court to examine the prosecution evidence de hors such lapses”

28. In likewise manner, there also happens to be deficiency at the end of the lower court who had recorded joint statement of Prem Sagar Yadav as well as Indradeo Yadav under para-10, of deposition of PW.7 who were not at all examined and so, their statement would not have been recorded by the learned lower court.

29. Now coming to submission made on behalf of appellant that life saving device were found during course of postmortem is found unreliable, as neither the same was found during course of preparation of inquest report nor the Investigating Officer, PW.7, Inquest witness PW.8 were cross-examined on that score, apart from the fact that those appliances have not been handed over to police by the doctor after conduction of PM along with viscera.

30. So far demand of dowry is concerned, PW.1 and PW.3 who are parents are over the same. PW.3, had stated during her examination-in-chief that Suman had informed her father on phone that motorcycle and chain should be given otherwise she will be murdered. On that very score, she was not cross-examined more particularly relating to her previous statement by way of written report wherein she had disclosed that on 05.06.2013



Suman Devi had talked with her husband Ram Pravesh (father). Although under para-6, on other score her attention was drawn up. Not only this, when the evidence of PW.1 has been gone through, he had consistently stated that there was persistent demand and even during course of cross-examination at para-4 he had stated that Ganesh Rai and Binod Rai had demanded dowry from him persistently. But, defence restrained himself to test whether such demand was soon before her death or one year before death or two year before death.

31. The learned counsel for the appellant has referred **2014(3) PLJR 409 (SC)** in order to substantiate his plea that there happens to be vagueness in the allegation having attributed against the appellant over demand of dowry and so failed to substantiate properly whereupon, appellant is entitled for acquittal. The evidence over demand and torture has already been discussed herein above. So far principle relating to application of Section 304B of the IPC is concerned, there happens to be no controversy. While interpreting the phrase soon before her death, the Apex Court had relied upon earlier decision **Balwant Singh & Anr. vs. State of Punjab** reported in **(2004) 7 SCC 724**, it has been held:

“10. These decisions and other decisions of this Court do lay down the proximity test. It has been reiterated in several decisions of this Court that “soon before” is an expression which permits of elasticity, and therefore the proximity test has to be applied keeping in view the facts and circumstances of each case. The facts must show the existence of a proximate live link between the effect of cruelty based on dowry demand and the death of the victim.”



32. In *Sher Singh @ Partapa v. State of Haryana*

reported in **2015 CR.L.J. 1118**, it has been held:

“**14** As is already noted above, Section 113B of the Evidence Act and Section 304B of the IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word 'deemed' in Section 304B to distinguish this provision from the others. In actuality, however, it is well nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word 'shown' is used as synonymous to 'prove' and the word 'presume' as freely interchangeable with the word 'deemed'. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word 'deem' to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory AIR 1953 SC 333 and State of Tamil Nadu v. Arooran Sugars Limited (1997) 1 SCC 326, requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word 'deemed' so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word 'shown' in Section 304B of the IPC as to, in fact, connote 'prove'. In other words, it is for the prosecution to prove that a 'dowry death' has occurred, namely, (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured, (ii) within seven years of a marriage, (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) in connection with any demand for dowry and (v) that the cruelty or harassment meted out to her continued to have a causal



connection or a live link with the demand of dowry. We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word 'deemed' was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113B of the Evidence Act and Section 304B of the IPC, in our opinion, is to counter what is commonly encountered - the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in Court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to Common Law systems, and beyond the contemplation of the Cr.P.C.”

33. After scrutinizing the evidence on record, it is crystal clear:

- (i) Marriage within 2 years from the date of murder is not under controversy
- (ii) There happens to be conclusive finding of the doctor regarding cause of death due to ante-



mortem injury (rupture of uterus).

- (iii)** Demand of dowry-chain, motorcycle is found properly placed by the witnesses.
- (iv)** Specifically disclosed by the father that repeated demand was made by Ganesh as well as appellant.
- (v)** Deceased was subjected to torture and on that score also there happens to be conclusive evidence.
- (vi)** With regard to cause of death. Appellant had placed alternative theory which is not at all found substantiated.
- (vii)** No documentary evidence on record to suggest deceased was examined by doctor at Mahua.
- (viii)** Cause of death due to rupture of uterus due to ante-mortem injury caused by hard and blunt substance not explained although deceased was under his custody, apprehended along with dead body.
- (ix)** No effective cross-examination to demolish the disclosure made by the witnesses over demand of dowry as well as inflicting torture on that pretext.
- (x)** External appliances having affixed with the dead body did not find place in the inquest report nor



cross-examination was made to PW.7 as well as PW.8.

(xi) Those appliances were not at all handed over to the police along with viscera.

34. That being so, the judgment of conviction and sentence recorded by the learned lower court did not attract interference consequent thereupon, instant appeal is found deficient one and is accordingly dismissed. Appellant is on bail, his bail bond is cancelled directing him 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 appellant in accordance with law

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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