

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.178 of 1994

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SANJAY KUMAR, son of Baldeo Prasad Gupta, resident of Bakerganj, P.S.
Pirbahore, District Patna

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Chittranjan Sinha, Sr. Advocate with Ms. Surya Nilambari, Advocate
For the Respondent/s	:	Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
and
HONOURABLE MR. JUSTICE S. KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date : 03-07-2019

This appeal arises out of the judgment and order dated 26.2.1994 passed by Sri P.N. Yadav, the then Additional Sessions Judge-I, Patna in Sessions Trial No. 671 of 1989 by which he has convicted the sole appellant, who is husband of the deceased, and two other accused persons, being father-in-law and mother-in-law of the deceased, under Sections 302 and 304B read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and further both the sentences were directed to run concurrently.

2. It is relevant to mention here that other two accused, Baldeo Prasad and Sushila Devi, father-in-law and mother-in-law, filed Cr.Appeal(DB) No. 121 of 1994 before this Court, which stood abated vide order dated 30.11.2017 passed in Cr.Appeal (DB) No. 121 of 1994 since they died during the pendency of the appeal.



3. Prosecution story as per fardbeyan (Ext.3) of PW 8 Suresh Prasad, brother of the deceased, recorded at 7.15 P.M. on 10.2.1989 at the residence of Baldeo Prasad Gupta, father-in-law of the deceased, is that his sister Manju Devi was married two years ago with appellant Sanjay Kumar and today at about 6 P.M. two boys of Bakarganj Bazar came to his house and informed that a fire broke out at her sasural. Further prosecution story is that he and Umesh Prasad rushed to the house of the deceased and they first went to the first floor which presented a dreadful look and accused Baldeo Prasad Gupta and Sushila Devi along with 2 or 3 boys were present there in the courtyard and on being asked as to what had happened, they told them that a fire broke out in the house. It is also alleged that thereafter he found the dead body of his sister lying in the floor in wet condition and there was smell of kerosene oil. Further prosecution story is that thereafter he raised alarm, the boys present there tried to stop him but he went to lodge complaint, met one Hawaldar and informed him about the occurrence. It is also the prosecution story that the appellant and his father and mother were demanding dowry of colour TV and Fridge and they were unable to fulfil the demand, on which they were not allowing her to go to her "maike" for last eight months. It is also his case that his grandfather and his brother came for her "Bidai" but they were not allowed to meet her. Prosecution story also shows that though she was pregnant but she was subjected to torture by the appellant and other accused persons and they have killed the deceased by setting her on fire for non-fulfilment of demand of dowry.

4. On the basis of the above statement of the PW 8 Suresh Prasad, FIR was registered at Pirbohore Police Station. Police after investigation submitted charge sheet against the appellant and other accused persons.



Subsequently, cognizance of the offence was taken and on commitment the case traveled to the file of Sri P.N.Yadav, the then Additional Sessions Judge-I, Patna for trial and disposal.

5. During trial charges were framed under Sections 302/34 and 304B/34 of the IPC against the appellant and other accused persons.

6. Prosecution in order to substantiate its case has examined altogether 11 witnesses, they are PW 1 Sheochander Prasad, uncle of the deceased, PW 2 ManikLal, who was mediator in the marriage, PW 3 Krishna Prasad Gupta, the inquest witness who had proved the inquest report (Ext. 6/1), PW 4 Rita Kumari, sister of the deceased, PW 5 Ram Chander Prasad, father of the deceased, PW 6 Tribeni Prasad Gupta, witness of seizure, was tendered for cross examination, PW 7 Dr. Radha Raman, who conducted post mortem on the body of the deceased, PW 8 Suresh Prasad, brother of the deceased and informant of the case, PW 9 Laxman Pd. Singh, I.O. of the case, PW 10 Abhey Kant, witness on the fardbeyan and identified his signature on all the pages of the fardbeyan and PW 11 Deepak Kumar, Press Photographer, who had taken photographs of the dead body and proved the negative as Ext.9 and two photographs as Exts. 10 and 10/1.

7. Apart from the above, the following documents have been brought on the record as Exhibits : Exts. 1 & 1/1- signature of Sheo Chandra Prasad on seizure list, Exts. 1/2 & 1/3- signature of Tribeni Prasad on seizure list, Ext.1/4- signature of Krishna Pd. Gupta (PW 3) on inquest report, Ext.1/5- signature of Ram Chandra Prasad (PW 5) on inquest report, Ext.2- seizure list, Ext.3- fardbeyan, Ext. 4- endorsement on the fardbeyan, Ext.4/1- endorsement on the fardbeyan, Ext.5- FIR, Ext.6- post mortem report, Ext.6/1- Inquest Report, Ext.7- challan of dead body, Ext.8- copy of "Kaman"



certificate, Ext.9- photo negative, Exts.10 & 10/1-enlarge photo of negative (two).

8. On behalf of defence also, seven witnesses have been examined, they are DW 1, Dr. Om Prakash Singh, DW 2, Pratush Kumar Gupta, DW 3, Ram Babu, DW 4, Manoj Kumar, DW 5, Shiv Kumar Prasad, DW 6, Avinash Kumar Verma, DW 7, Mahanand Singh and DW 8 is Dinesh Pandey. Apart from that, Dr. Mrs. D. Singh was examined as CW 1.

9. On behalf of defence, the following documents have been brought on the record : Ext.A-Entry No.609 dated 11.2.1990 in S.D.E., Ext.B-writing of Dr. Seema Verma, Ext.B/a- writing of Dr. D. Singh, Ext. B/b-writing of Dr. Rakesh Kumar, Ext.B/c- writing of Dr. D. Singh, Ext.B/d-writing of Dr.Miss Amita Das, Ext.B/e- writing of Dr.Mrs. D.Singh, Ext.C-entry in the admission register, Ext.C/1- entry on admission register at Sidharth Mahila College of the deceased, Ext.D- admission receipt, Ext.D/1- receipt of Sidharth Mahila College, Exts. E to E/2- receipts, Ext.F- guarantee card, Ext.G- endorsement of the office on Ext.H, Ext.G/1- writing of deceased on Ext.H, Ext.H- admission form of deceased, Ext.I- certified copy of (Not readable).

10. On conclusion of trial, learned trial court has come to the conclusion that the accused persons subjected the deceased to cruelty and harassment to create pressure upon her to fetch the colour TV and fridge from her parents and when demand was not fulfilled they killed the victim by setting her on fire and thus ingredients of both Sections 302 and 304B read with Section 34 IPC are established and thus convicted the appellant and other accused persons and sentenced them as mentioned above.



11. Being aggrieved by the same, the present appeal has been preferred by the appellant and other accused persons had also preferred Cr.Appeal(DB) No. 121 of 1994 which stood abated due to their death, as stated above.

12. Learned counsel for the appellant has assailed the impugned judgment and order on the ground that the evidences of witnesses so far demand and torture do not appear to be trustworthy as they suffer from the contradictions from their earlier statement and furthermore PW 4, sister of the deceased, claimed that the deceased disclosed her when she went to meet her one week ago about demand, torture and threatening to kill her and her evidence also disclosed that she has stated the same to her father (PW 5) but in spite of that neither PW 4 nor PW 5 has taken any step to inform the police and there is also no such prosecution story as per fardbeyan lodged by brother of PW 4, i.e., PW 8 and that also made the aforesaid evidence incredible. Second submission is that on the other hand, the evidence of Dws. 2 and 3 disclosed that when fire broke out and on hulla they went to the house of Baldeo Prasad, father-in-law of the deceased, opened the door and found the dead body lying on the floor and their evidence also disclosed that the appellant and other accused persons were not present. Further submission is that the I.O. (PW 9) has also found the door frame uprooted and “killi” lying on the ground, as such, above evidence does not make out a case of homicidal death, rather it appears that she has committed suicide. Third ground for assailing the impugned judgment and order is that the evidence of CW 1 disclosed that she was pregnant and she was under treatment of Dr. Smt. Deventala Singh (CW 1) and the evidence of Dws. 5 to 8 disclosed that she was studying in Sidharth Mahila College in B.A. course and all the above



evidence of the defence witnesses disclosed that relationship of the deceased with the appellant was cordial and appellant and others were taking proper care of her. It is also submitted that the evidence of DW 4 disclosed that information of breaking out of fire was given to the family members of the informant, as such aforesaid evidence demolished the prosecution story of demand of dowry, torture and harassment and the death is homicidal but learned trial court without considering the same has convicted the appellant not only under Section 304B but also under Section 302 IPC and in support of his contention he has relied upon a decision of Hon'ble Apex Court in the case of **Baijnath and others vs. State of Madhya Pradesh :(2017) 1 SCC 101.**

13. On the other hand, learned APP has defended the judgment on the ground that the evidence of Pws. 1, 2, 4, 5 and 8 clearly disclosed that the accused persons were demanding colour TV and Fridge and for that they were harassing her and evidence of PW 4 disclosed that one week prior to the occurrence she had gone to her sasural to meet the deceased, who disclosed her that she was subjected to torture with respect to demand of colour TV and Fridge and accused persons were threatening to kill her. Further submission is that the death is within the house of the accused persons and no explanation has been given by the appellant or other accused persons and so far contradictions are concerned, they are actually not the contradictions and at best they are improvement which are bound to occur as the witnesses were deposing after a long time and further those improvements do not go to the root of the case. Hence, as per prosecution, the impugned judgment and order does not suffer from any inconsistencies and infirmities.



14. In the background of above submission, advanced by both parties, on perusal of the record, it appears that the prosecution story, i.e., fardbeyan (Ext.3) disclosed that on the information that a fire broke out in the house of the deceased, the informant along with others reached there, found her dead body lying on the floor in burnt condition, there was smell of kerosene oil coming from the dead body and from the articles kept in the room, dead body was drenched in kerosene oil and reason behind the occurrence was that there was demand of colour TV and Fridge and for non-fulfilment of demand she was tortured and ultimately she was done to death and earlier also her grandfather and brother were not allowed to meet her.

15. Informant, who is brother of the deceased, has been examined as PW 8 and he in his evidence in chief has supported the prosecution story as described in the fardbeyan and categorically stated that the reason behind the occurrence is that they have given much dowry at the time of marriage of the deceased but in spite of that accused persons were demanding colour TV and Fridge but they were unable to give the same. His evidence further disclosed that Devlal Sah, who was his grandfather, died, Ram Babu (DW 3), Tirath Pd. Gupta, Pratush Kumar Gupta (DW 2), Bholu Ram, Tarkeshwar Prasad, Vinay Kr. Gupta are the men of the accused persons and witness Umesh Prasad were not deposing due to fear of the accused persons. His cross examination in paragraph-9 disclosed that Rita Kumari (PW 4) met with the deceased one week prior to the occurrence and after that she came back to his house, however he has stated as to what she has stated in the house, she did not disclose him. Even in his cross examination in paragraph-12 he stated that demand of colour TV and Fridge was made several times but he could not give the exact date. His cross examination further disclosed that Baldev



Prasad and his wife were arrested at his house. His statement also disclosed that after recording his statement, Darogaji called Abhey Kant, who also put his signature. This witness has been given a suggestion that he and his father were demanding the ornaments of the deceased and the accused persons did not return and for that the case has been filed, which this witness has denied. The fardbeyan, as per this witness was recorded at 7.15 P.M. just after the occurrence and his evidence disclosed that several persons were present there and in such a situation claim of defence of demand of ornaments from the accused persons, does not appear to be probable and learned trial court has also not relied on the above story. Otherwise, even in spite of cross examination there is nothing in the evidence of this witness to disbelieve his evidence with regard to demand of colour TV and Fridge and for that the deceased was subjected to cruelty.

16. PW 1 is the uncle of the deceased and his evidence disclosed that he reached at the place of occurrence on hulla of fire broke out in the sasural of the deceased, found her dead body in burnt condition. His evidence further disclosed that he had gone to meet Manju (deceased) in her sasural but he was not allowed to meet her and father and mother of appellant told him that they have only son and to provide colour TV and Fridge, then only he will be allowed to meet his niece. His evidence further disclosed that their behaviour towards his niece was not good and they were always threatening her. This witness has been cross examined at length by defence and even in his cross examination in paragraph-20 he has stated that for the first time he went to meet her 5-6 months before the occurrence and second time he had gone after two months of his above visit but he was not allowed to meet her. The defence has cross examined this witness as to whether he had any



suspicion and whether he has informed the police or the Magistrate or the Panchayat but he has stated that he has not informed the police.

17. PW 2 Manik Lal is mediator in the marriage of deceased with the appellant and his evidence disclosed that in the house of Baldev Prasad Gupta he saw the dead body in burnt condition. His evidence further disclosed that Ram Chandra Babu (PW 5) and Sheo Chandra Babu (PW 1) two days prior to the occurrence came to him and informed that appellant and other accused persons were demanding colour TV and Fridge and they were unable to give the same, on which he assured that he would try to talk to them. His evidence further disclosed that on Sunday he went to the house of the appellant, met with his father and mother and tried to make them understand that the informant and his family members were not in a position to give TV and Fridge but it appears to him that till the demand was not fulfilled their behaviour towards Ram Chandraji (PW 5) would not be changed and thus he informed Ram Chandra Babu (PW 5) about the same.

18. PW 3 Krishna Prasad Gupta is a witness on inquest report and he identified his signature on inquest report and the signature of Ram Chander Prasad on the inquest report (Exts. 1/4 & 1/5).

19. PW 4 is the sister of the deceased and she has stated that she had gone to the house of the deceased and found the dead body lying on floor and there was smell of kerosene oil. Further her evidence disclosed that one week prior to the occurrence, she went to the sasural of the deceased and met with her and during talk she started crying and disclosed that due to non-fulfilment of demand of TV and Fridge her father-in-law, mother-in-law and husband were torturing her and threatening her to kill. This witness has also stated that she disclosed the same to her father and mother. She has been cross



examined mainly on the point that she desires to marry with another person and due to that she has taken poison, to which she denied the above suggestion. Even in spite of cross examination she has again stated that one week prior to the occurrence, she came alone to the house of the deceased. She admitted in her cross examination that she suspected that the accused persons might kill her and she informed about the same to her father but she has not told her father to inform the police nor she has informed the police.

20. PW 5 is the father of the deceased and in his evidence in chief he has stated that he went to sasural of his daughter on information and found her dead body lying on the floor. His evidence disclosed that deceased was married with appellant on 5.6.1987 and Gouna was performed in 1988 and his evidence also disclosed that the behaviour of accused persons was not good as in "Bidai" they were demanding colour TV and Fridge and he tried to get them understand that later on he would fulfil the demand and about that he informed the Mediator also. His evidence disclosed that his daughter Rita Kumari (PW 4) went to sasural of the deceased and informed him that the deceased told her that for non-fulfilling of demand they were threatening to kill her and further stated that for that the present occurrence took place. He has been cross examined about the deceased having pregnant of eight months and she was under treatment of Dr. D.Singh (CW 1) and other Doctors, about which he showed his ignorance and stated that in 1987 he got her treated. His evidence also disclosed that she passed I.A. Examination from his house but he did not know that at the time of death she was studying in B.A.

21. PW 6 Tribeni Prasad Gupta, a witness on seizure, has been tendered for cross examination and there is nothing relevant in his cross examination to discuss.



22. PW 7 Dr. Radha Raman has conducted the post mortem examination of the deceased and his evidence disclosed that same was done under the guidance of Dr. V. Kumar, Head of the Department of Forensic Medicine, P.M.C.H., Patna and assisted by Dr. Lallan Chaudhary, Medical Officer, Department of Forensic Medicine, P.M.C.H., Patna, and found the following :

“The ante mortem Dermo, epidermal burn injury with some red lining was found on the whole body except both Sole. Smell of kerosene oil was detected. Tongue was protruded. On dissection, froth and carbon particles was found in trachea. Mucosa of trachea was found congested. Hyoid bone was found intact. All viscera were found congested. In uterus, a male foetus of more than seven months was found. The length of the foetus of seventeen inches. In heart, cherry red coloured blood was found in right side of the heart. Cause of death – Burn Injury. Time till death – within 24 hours. Post Mortem report was marked as Ext.6. His cross examination disclosed that in stomach few ounces of undigested rice and vegetable were found. This food might have been taken within an hour of death.”

23. PW 9 is the I.O. of the case and his evidence disclosed that at 7 P.M. on 10.2.1989 he was posted as additional In-charge in Pirbohore Police Station and while he was on patrolling duty at Bakarganj Gola Road, he heard that one lady died due to burn, he went there and recorded statement of Suresh Prasad (PW 8), which was marked as Ext.3, proved endorsement as Ext.4. His evidence further disclosed that investigation was handed over to him. He recorded statement of the informant, inspected the place of occurrence and found dead body lying on floor, tongue protruded, hair fully burnt, bleeding from nostril, three bottles (sisi) were found, two were in standing position and one in fallen condition. Empty bags of cement were kept beneath her head like “Takia” (pillow) which was not burnt. There was smell of kerosene oil from the clothes. He has also found length and breadth



of the room was 10' x 8', the window was found open, two door planks, one western plank was separate from the "choukhat" kept on the floor and the second plank had one chain and one lock in open condition. He has not found any mark of violence on any of the plank of the door. "Killi" was found broken. He has also found one "Chowki" outside the house and he found one lock in open condition. He has also found a plastic jerrycan of five litres from which smell of kerosene oil was coming. He prepared inquest report in presence of Sheo Chander Prasad and Tribeni Pd. Gupta, prepared seizure list of chain, lock and jerrycan, handed over the body for post mortem, issued "kaman" certificate, recorded statement of Ram Chander Prasad and Krishna Pd. Gupta and on receiving post mortem report forwarded the issuance of warrant against the appellant praying for adding Section 304B IPC in the FIR. This witness has been cross examined and in cross examination in paragraph-23 he has stated that he has not made entry in station diary and when he reached at Police Station at 12 O'clock in night the fardbeyan was received there. He has also been cross examined about the station diary entry with respect to his duty and he has admitted that Entry Nos. 596-599 are not mentioned in the register. He has been cross examined at length in order to extract that FIR has not been registered at 10.15 P.M. on the same day. His cross examination also disclosed that he recorded the statement of Ram Babu, Tribeni Pd. Gupta, Santosh Kr. Gupta, Bhola Pd. Gupta, Tarkesh Pd. Gupta @ Prem Kumar, Vinay Kr. Gupta and Umesh Prasad.

24. PW 10 is the witness of the fardbeyan. He identified his signature over the fardbeyan and his evidence disclosed that after signature he left the place.



25. PW 11 is the Press Photographer. His evidence disclosed that he has taken photographs and he proved the negative as Ext.9 and Photographs as Exts. 10 & 10/1. Though he has also been cross examined but there is nothing relevant in his cross examination.

26. DW 1 is Dr. Om Prakash Singh and his evidence disclosed that she was under treatment of Dr. (Mrs.) D. Singh and he has proved certain documents as exhibits.

27. DW 2 Pratish Kumar Gupta appears to be the brother-in-law (bahnoi) of Madan Mohan Gupta, brother of the appellant and his evidence disclosed that he received information from his sister that fire broke out in the house of Baldev Prasad, he went there and found the door towards upper floor was closed, he broke the door and on going upstairs, he found smoke and he saw the dead body of Manju Devi lying on the floor and smell of kerosene oil was coming out. He has also stated that at that time Baldev Babu and his wife and son were not present there. He also claimed that one hour before when he had gone to the roof top of Madan Babu he saw Manju on roof top standing silently. This witness has been cross examined and he disclosed that he met with the police at 8 P.M. in the night and at that time Baldev and his wife were arrested. His evidence in cross examination further disclosed that he searched Baldev and his family members but they were not found.

28. DW 3 Ram Babu also claims in his evidence that on 10.2.1989 while he was taking tea at the tea shop he heard that fire broke out in the house of Baldev Babu and he went there and saw that the entry door was closed from inside and he broke open the door, went up and the door was also closed there and he broke open the door, went inside and saw the dead body of Manju lying on the floor in burnt condition and he threw water on her. His



evidence disclosed that Baldev and his family members were not present there. In his cross examination he has stated that at the time, fire broke out in house of Baldev Prasad, he saw the accused Sanjay (appellant) at Sarswati Puja Pandal but again he has stated that he was not present there. He had also stated in his cross examination that the door which he had broken, had been shown to the Darogaji. His evidence also disclosed that at that time Sanjay did not come there.

29. DW 4 Manoj Kumar has stated in his evidence that on hulla that fire broke out in the house of Baldev Babu he went there and saw the dead body of Manju Devi lying on the floor and he went to inform Suresh Babu (informant) and also went to the house of Rajendra Babu, who disclosed that Baldev Babu had left for his house. However, his cross examination disclosed that he has not made any statement before Darogaji or Magistrate and even not tried for that. His evidence also disclosed that brother of Baldev Babu is his Gotia.

30. DW 5 Shiv Kumar Prasad is a non-teaching staff of Ganga Devi Mahila College and he has brought the attendance register for I.A. Political Science for the Session 1986 and the name of deceased Manju Devi has been mentioned in the admission register, which has been marked as Ext.C and the roll number of Manju Kumari was 111 in Political Science. He also proved the receipt as Ext.D. However, he has admitted in his cross examination that he has no knowledge about her roll number as 111.

31. DW 6 Avinash Kumar Verma is a business man and in his evidence he tried to show that he has a shop of TV, VCR, Washing machine, etc. and he has proved three receipts which were in the name of Baldeo Pd. Gupta but he has stated that he could not show as to who has purchase the



fridge. The receipts were marked as Ext. E to E/2. His evidence also disclosed that he did not know Baldeo Prasad Gupta. However, his evidence in cross examination disclosed that the receipts did not carry revenue stamp, which was necessary for sale of articles above Rs.20/-.

32. DW 7 Mahanand Singh is an Assistant of Sidharth Mahila College and he has proved the admission register for the session 1989-90 BA Part-1 and the entry made by Kusum Devi, Assistant. He has also proved the same as Ext.C/1 and it is related to Entry of Manju Kumari, Roll No.66. He has also proved the carbon copy of the receipt as Ext.D/1 which was in the name of Manju Kumari and photo graph of Manju Kumar was over there. The application form was marked as Ext.E. However, he has admitted that the form was not filled up in his presence and the guardian's column was vacant. He has also admitted that neither the receipts were written in his presence nor the application form was filled up in his presence.

33. DW 8 Dinesh Pandey is a Priest, who claims in his evidence that he got married Sanjay with Manju Kumari and he has identified the photograph of Manju marked as Ext.G. He has admitted that he was the "Purohit" of Baldeo Babu and he has also admitted that Sanjay (appellant) has remarried in which he was present.

34. The court has also examined Dr. Smt. D. Singh as a court witness and her evidence also disclosed that the deceased Manju Gupta was pregnant and she was under her treatment. In her cross examination she has admitted that she did not know the patient personally. She has also admitted that no register was maintained for outdoor patient.

35. In this case, much has been argued on behalf of the appellant by referring the evidence of Pws. 1, 2, 5 & 7 as well as PW 9 (I.O.) that their



evidence suffers from contradictions and as such their evidences do not appear to be credible so far demand of dowry and torture are concerned.

36. So far word “contradiction” is concerned, the same has been defined in the case of **Tahsildar Singh and another vs. State of U.P. : AIR 1959 SC 1012** by a 6-Judge Bench of Hon’ble Apex Court and the majority view is as follows :

“”Contradict” according to the Oxford Dictionary means to affirm to the contrary. Section 145 of the Evidence Act indicates the manner in which contradiction is brought out. The cross-examining Counsel shall put the part or parts of the statement which affirms the contrary to what is stated in evidence. The indicates that there is something in writing which can be set against another statement made in evidence. If the statement before the police-officer- in the sense we have indicated- and the statement in the evidence before the Court are so inconsistent or irreconcilable with each other that both of them cannot co-exist, it may be said that one contradicts the other.”

37. However, all the discrepancies and variations from the earlier statement cannot be termed as contradictions as a witness omits to say anything or leaving any part in his statement made before police in his evidence in court that may be considered as omission, whereas the witness has said something else in the court from what he has said before police that may be termed as improvement in his evidence. It is not so that all contradictions, omissions and improvements are relevant and fatal but only those contradictions, omissions and improvements are relevant which go into the root of the case and makes the prosecution case incompatible by those evidence.

38. On harmonious reading of Section 145 of Evidence Act, Section 161 and Section 162 of Cr.P.C. it appears that in order to prove contradiction, the attention of such witness must be called to those parts of it



which are to be used for the purpose of contradicting him. If the witness admits the part intended to contradict him, it stands proved and there is no need to further prove of contradiction. However, if he denies having made that part of statement, his attention must be drawn to the statement and must be mentioned in the deposition. Thereafter when I.O. is examined in the court his attention would be drawn to the above evidence of the witness for the purpose of the contradiction and it will then be proved in the deposition of the Investigating Officer. The above proposition was held by Hon'ble Apex Court in the case of **Tahsildar Singh** (supra) and followed again in the case of **V.K.Mishra vs. State of Uttarakhand : (2015) 9 SCC 588** by a 3-Judge Bench of Hon'ble Apex Court.

39. Hon'ble Apex Court in the case of State of **Rammi @ Rameshwar vs. State of M.P. : (1999) 8 SCC 649** has also observed in paragraph Nos. 25 to 27 as follows :

“25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below :

‘155. Impeaching credit of witness.- The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him-

(1) -(2)

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be ‘contradicted’ would affect the credit of the witness. Section 145 of the Evidence Act also enables the



cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. (AIR (1959) SC 1012)."

40. In the background of the above settled principle, on scrutiny of the evidence of Pws it appears that PW 1 has been confronted in paragraph-25 as to whether he had told the police what he has stated in his evidence and he has stated that he told police that when he was not allowed to meet Manju (deceased) he informed about the same to father of Manju and the Mediator Manik Lal. However, he has admitted that he has not stated before the police that Manik Lal was the Mediator. Further he has stated before the police that Manik Lal (PW 2) got the accused persons understand and also stated before the police that there was no change in the attitude of the accused persons and he has also stated before police that finally the accused persons killed his niece. This witness has not been confronted with the earlier statement made before police. The I.O. in paragraph-40 of his cross examination has stated that PW 1 has not stated before him that when he was not allowed to meet Manju Devi he informed about the same to the father of Manju and Manik Lal (PW 2). He has also not stated that Manik Lal tried to get them understand. He has also not stated that there was no change in the attitude of the accused persons. However, I.O. has stated that PW 1 has stated that Mediator had tried to get them understand but there was no change in their attitude. In the background of touchstone of settled principle, as stated above, this witness



has not been confronted with the earlier statement and defence tried to extract that whatever he has stated about the story informing the Mediator and Mediator pacifying has not been stated before the police but that can only be considered as the omission or improvement. Furthermore, the evidence of this witness also disclosed that he has stated before the I.O. that mediator tried to get them understand but there was no change in the attitude of accused persons. As such the above omission or improvement does not appear to be irreconcilable to his evidence as a whole. On the other hand, apart from above in his evidence also disclosed that he had gone to the sasural of Manju (deceased) but he was not allowed to meet her and he has also stated that father and mother of the appellant were stating that they have only son and as such colour TV and Fridge should be given to them then they will allow him to meet her and he has also stated that behaviour of the accused persons with the deceased was not good. This witness has been cross-examined and in paragraph-20 of his cross examination he has stated that firstly he tried to meet her six months prior to the occurrence and after two months of the first visit he had again gone to meet her but he was not allowed to meet. As such, his evidence regarding demand and not allowing him to meet Manju (deceased) remains intact.

41. PW 2 has also been confronted in paragraph-8 to show that what he has deposed in court, he has not stated so before police and he has stated that he told the police that Sanjay (appellant) came to his house prior to the occurrence and informed about the matter and he has also stated that he asked Sanjay (appellant) to go and pacify them. He has also told the police that he went to the house of Sanjay on Sunday, met with his father and mother. He has also stated before police that he tried to get them understand



that family members of maike of deceased had no ability to provide TV and Fridge. He has stated before police that unless the demand was fulfilled their behaviour towards Ram Chandra Babu (PW 5) would not be changed. He has also stated before police that he told Ram Chandra Babu that the attitude of the accused persons were not good. Thereafter the I.O. has been confronted with the above evidence made by PW 2 and he denied the same and he has stated that PW 2 has not stated so before him. However, at the same time I.O. (PW 9) has stated “परन्तु इस आशय का बयान उन्होंने मुझे दूसरे शब्दों में दिया था।” PW 2 has not been confronted with the previous statement made before the police rather his attention has been drawn towards his evidence in court and evidence of I.O. disclosed he (PW 2) has stated so in some other words. That clearly shows that PW 2 has stated the above fact in other words and not in the words which he has stated in the court and as such it cannot be considered as the contradiction and omission, at best it can be an improvement but on the whole, there is no inconsistency in his evidence in court from his previous statement.

42. So far PW 5 is concerned, he has also been confronted in paragraphs-24, 26 and 44 to show that what he has stated in court, he has not stated before the police and he has stated that he told Darogaji that Rita had gone to the house of Manju and after coming from there she informed him to give TV and Fridge to her sasural people, otherwise they were threatening to kill her and he has also stated before police that Manik Babu came and told to provide TV and Fridge, otherwise they will have to face consequences. Attention of I.O. has been drawn towards the above evidence of this witness (PW 5) and he has stated in paragraph-42 that Ram Chandra (PW 5) has not stated before him that Rita (PW 4) went to the house of Manju (deceased) and



after coming from there she told him to give TV and Fridge and they were threatening to kill her and he has also not stated before police that Manik Babu came and told to provide TV and Fridge otherwise they will have to face consequences and he has also not stated before police that at the time of “Bidai” colour TV and Fridge were not given and he tried to pacify them and he has not stated before police that he informed about the same to Manik Lal and Manik Lal asked him not to get embarrassed he will get them understand. However, he also asked him to give TV and Fridge and he has also not stated before police that at the time of “Bidai” he has not given TV and Fridge and for that she was tortured but at the same time evidence of I.O. (PW 9) disclosed “उन्होंने इस तरह की बात कही थी जो डायरी में कंडिका 8 में अंकित है।” and “उन्होंने इस आशय का बयान दूसरे शब्दों में दिया था।” The above evidence disclosed that he has stated the above fact though in different words and he has not been confronted with the actual words made before the police in his previous statement. In our view, such inconsistencies are trivial and are bound to occur as it cannot be expected from any witness to narrate the details in same words before the police. In general it appears that he has narrated almost the same story in earlier statement before police also, as such it is not a contradiction which goes into root of the case.

43. Hon’ble Apex Court in a case of **State of Madhya Pradesh vs. Dal Singh and others : AIR 2013 SC 2059** has observed in paragraph-7 of the judgment as follows :

“So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence.



The court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. “Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution’s story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” The omissions which amount to contradictions in material particulars, i.e., which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited.

Where such omission(s) amount to contradiction(s), raising serious doubts about the truthfulness of a witness, and other witnesses also make material improvements before the court in order to make their evidence acceptable, it cannot be said that it is safe to rely upon such evidence.....”

44. Further in the case of *Smt. Shamim vs. State (GNCT of Delhi)* : 2018(4) PLJR 160, in paragraph-12 Hon’ble Apex Court has observed as follows :

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before



the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it."

45. As discussed above, this Court finds the above discrepancies in the evidence of Pws. 1, 2 & 5 to be minor and trivial in nature and on the reading of whole evidence of Pws. 1, 2, 5 & 8 they inspire confidence and appears to be credible.

46. Moreover, the evidence of PW 1, uncle of the deceased, PW 2 Mediator, PW 4, sister of the deceased, PW 5, father of the deceased and PW 8, brother of the deceased and informant are consistent on the point of demand of colour TV and Fridge and the evidence of PW 1 is also that he was not allowed to meet her and the behaviour of the accused persons was not good with the deceased. Furthermore, evidence of PW 4, sister of the deceased, disclosed that she had gone to the sasural of the deceased one week prior to the occurrence where the deceased told her about the demand of TV and Fridge and for that she was subjected to torture and the accused persons were threatening to kill her and in spite of cross examination there is nothing in her evidence to doubt its credibility. An argument was advanced by learned counsel for the appellant that evidence of PW 4 and Pws. 1, 5 & 8 do not appear to be credible as in such a situation it would have been the natural conduct of Pws 1, 4 and 5 to inform the Panchayat or the police about the same but their evidences disclosed that they have not informed the police.



However, to our view, the above submission does not have much force as Pws 1, 4 and 5 are the uncle, sister and father of the deceased and in a situation like present case, the family members of wife (deceased) instead of rushing to make complain, are trying to pacify the matter and generally wait to get the matter cooled down, as lodging of the case could aggravate the situation. Further the evidence of Pws. 1 and 5 also disclosed that they approached the PW 2 (Mediator) to get the accused persons understand. In such a situation, if no complaint was lodged, that is quite understandable.

47. Another argument has been made on behalf of defence that PW 4 is the sister of the informant (PW 8) and as per evidence of PW 8 he has no knowledge what his sister (PW 4) has disclosed and further stated that PW 4 did not disclose anything to him and that also falsifies the evidence of PW 4. However, the evidence of PW 8 also disclosed that PW 4 had gone to meet the deceased and the same is corroborated by the evidence of PW 5, as such prosecution evidence appears appears to be consistent that PW 4 had gone to meet the deceased just one week prior to the occurrence and deceased disclosed about demand and torture and the above evidence can not brushed aside on the ground that PW 4 did not inform the same to PW 8 as there may be some circumstances under which he (PW 8) was not informed.

48. In the present case, the evidence, as discussed above, categorically shows that the deceased was married with appellant Sanjay Kumar in the year 1987 and even in his statement under Section 313 Cr.P.C. the appellant has admitted the above fact. Prosecution evidence available on the record further shows that the deceased died due to burn injury on 10.2.1989 and even the defence witnesses have admitted the above fact and as such it is also clear that the deceased died within seven years of her marriage.



49. Argument has been made on behalf of the appellant drawing attention of the Court towards the evidence of DW 1 and CW 1 to show that the deceased was pregnant and proper care was being taken of her and she was treated by Dr. D.Singh (CW 1). Further drawing the attention to the Court towards evidence of Dws 5 and 7 it has been submitted that she had done her I.A. from her sasural and she was doing her B.A. from Sidharth Mahila College in order to show that all was well and the story of torture and harassment has no leg to stand. Further our attention has been drawn towards evidence of DW 6 to show that he has already purchased Fridge and as such the prosecution story that she was tortured for demand of TV and Fridge does not stand. On close scrutiny of the evidence adduced by both parties, it appears that the deceased was pregnant and was under treatment of Dr. D.Singh but it is the admitted fact that she was found in burnt condition having six months foetus. As such the death of the deceased was otherwise than under normal circumstances. So far evidence of DWs 5 and 7 is concerned, it shows only that she was earlier student of Political Science in Ganga Devi Mahila College and she was a student of B.A in Sidharth Mahila College but it does not show that who has paid the fees and got admission, on the other hand evidence of PW 5 is that he got her I.A. education completed, as such the evidences of Dws 5 and 7 are also of no help to the appellant. So far evidence of DW 6 is concerned, receipt for purchase of Fridge, only show it was in the name of Baldev Prasad but the receipt does not carry any revenue stamp which was usually carry on purchase of article of such a value and and further DW 6 has admitted that he does not know the purchaser, as such the above evidence has of no help to the appellant.



50. Considering the menace and multitude of occurrence of death of wife, our Legislature has come with an amendment, i.e., Dowry Prohibition (Amendment) Act, 1986 and inserted Section 304B in the Indian Penal Code and Section 113B in the Indian Evidence Act, which are as follows :

“304B. Dowry Death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.”

“Section 113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

51. On conjoint reading of Section 304B IPC and Section 113B of Indian Evidence Act it appears that once the prosecution has been able to prove (i) death of a woman is caused by burns or bodily injury or otherwise than under normal circumstances (ii) such a death has occurred within seven years of her marriage (iii) she has been subjected to cruelty or harassment by her husband or any of his relative (iv) such cruelty or harassment should be available in connection with demand of dowry (v) such cruelty or harassment has to be shown or meted out to the deceased soon before her death. On proof of the above there shall be a presumption against the accused persons for causing dowry death. No doubt, the above presumption is rebuttable.

52. From the evidence, as discussed above, it appears that there are evidences available on the record to show that there was demand of colour TV and Fridge which could not be fulfilled by PW 5, father of the deceased.



The evidence of PW 5 disclosed that demand was made at the time of 'Bidai' but he assured to fulfil that after some time. The evidence of PW 1 disclosed that he was not allowed to meet his niece unless the demand is fulfilled, evidence of PW 2, who is Mediator and PW 8, who is brother of the deceased also disclosed the factum of demand of colour TV and Fridge and all those witnesses are family members and Mediator and as such they are quite natural witnesses to know about the fact of demand. Furthermore, evidence of PW 4 Rita Kumari categorically disclosed that just one week prior to the occurrence she had gone to her sasural and deceased started crying saying that accused persons were demanding colour TV and Fridge and harassing her and threatening to kill her, above evidence of PW 4 has remained intact in spite of cross examination and there is nothing in her evidence to doubt her credibility. As such there are sufficient evidences available on the record with regard to demand of dowry, the evidence also shows that for the first time, at the time of 'Bidai' demand was made and even seven days prior to the occurrence the demand was made and she was subjected to harassment and also of threatening. The evidence of PW 5 also disclosed that after 'Bidai' she was not allowed to come to her maike and the evidence of PW 1 disclosed that he was not allowed to meet her six months prior to the occurrence and two months thereafter and accused persons insisted for fulfilment of demand first. So far cruelty and harassment are concerned, it includes the mental and physical cruelty both and as the deceased was not allowed to come to her maike after "bidagiri" and consistently asked to bring colour TV and Fridge which her father was unable to fulfil. Above evidences clearly make out a case of mental cruelty as she was suffering from mental agony and torture for the last eight months and demand was persistent even seven days prior to the



occurrence. Evidence of PW 4 also disclosed that deceased was crying when she (PW 4) went to meet her and told about demand and torture and also disclosed that the accused persons were threatening. The above consistent evidence makes out a case that the deceased was subjected to demand and cruelty soon before her death. Learned counsel for the appellant has relied upon a decision in the case of **Bajinath and others vs. State of Madhya Pradesh** (supra) but the fact of the present case is different from the fact of that case as in this case there is demand soon before her death for which she was subjected to cruelty and harassment and the demand was first made at the time of 'Bidai' itself and as such it relates to marriage itself.

53. So far death of the deceased is concerned, prosecution case is that deceased was killed by the accused persons and her dead body was found lying on the floor in the house of the accused persons on first floor. The evidence of Dws 1, 2 & 3 also disclosed that her dead body was found in the house of accused persons in burnt condition.

54. Doctor has found the cause of death due to burn injuries. Dead body was found in her room and there is nothing available on the record to show that death is accidental. Even from the argument of the defence it appears that they tried to show that death was suicidal and the deceased committed suicide and in support of his contention the defence has relied upon the evidence of Dws, 2 and 3. Evidence of DW 2 disclosed that the door to go to stair was closed and they broke open the door and thereafter they saw smoke coming out from the north facing door and he and others broke open the door and thereafter found the dead body. Evidence of DW 3 is almost similar that they broke open the door and went inside the room. It has also been submitted that their statement has also been recorded by police.



However, learned APP has pointed out that evidence of informant disclosed that he has stated in his evidence that Dws 2 and 3 are the men of accused persons.

55. On scrutiny of the description of the place of occurrence given by the I.O. (PW 9) it appears that the place of occurrence is north facing room in the first floor of the house of Baldeo Prasad Gupta, father-in-law of the deceased, and the dead body of deceased was found lying on the floor, both the legs were found to be curved, right hand was found curved towards head, tongue was found to be protruded, blood found in nostrils, three bottles (sisi) were found in the room, two in standing position and one in lying position, several clothes were found in burnt condition, smell of kerosene oil was coming from the clothes found in the room, empty bags of cement were found kept below her head, which was not found burnt but was in wet condition, one matchbox filled with match sticks was found beneath the dead body and some sticks were found to be discharged. His evidence further disclosed that one of the door planks of the room in which the dead body of the deceased was found lying was found separated from its frame (Chaukhat) and the same was hanging with chain inside the room. He has also stated that he has not found any mark of violence on the door planks and he has found the "killi" broken. His evidence also disclosed that an open lock was hanging with the chain inside the room of the deceased, a bunch of keys was found on an almirah in the verandah outside the room, lock was found opened from one of the keys of the bunch and he also found a 5-litres empty jerrycan in the courtyard and smell of kerosene oil was coming out from it. Above evidence raised a suspicion as to how the match sticks were not burnt when it was found beneath the dead body and further as to how the empty bags of cement kept



under the head of the deceased as pillow were not burnt though several articles inside the room were found in burnt condition and all the above facts clearly create suspicion about the claim of defence that she committed suicide. Above evidence also disclosed that lock was found in chain but the keys were found outside and I.O. (PW 9) did not find any mark of violence at the door. Admittedly, occurrence took place in the house of the accused persons and even according to cross examination of the prosecution witnesses and from the evidence of Dws and also from the statement of the appellant under Section 313 Cr.P.C., no explanation has been given as to how death has occurred and even if argument of defence is accepted for the sake of argument, there is nothing available on record to show that she was upset, as such she has committed suicide. In the above background, the conduct of the appellant also appears to be relevant as he did not choose to come to the place of occurrence even after occurrence. Admittedly, the dead body was found in the house of the accused persons, including the appellant, death is not accidental, prosecution claims it to be homicidal, whereas the defence claims to be suicidal but in such a situation non-explanation of the circumstances under which the occurrence took place definitely goes against the accused persons.

56. Hon'ble Apex Court in the case of **Trimukh Maroti Kirkan vs. State of Maharashtra : (2006) 10 SCC 681** in paragraphs 13 to 15 of the judgment has held as follows :

“13. 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 from 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 house should go unpunished.

14. 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. 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.”

15. 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.”

57. Further claim of defence that she committed suicide does not appeal to this Court as she was also carrying pregnancy. On the other hand, prosecution case is that she had been done to death by the appellant and other accused persons.

58. In almost similar facts Hon’ble Apex Court in the case of **Prabhudayal and others vs. State of Maharashtra : (1993) 3 SCC 573** in paragraphs 30 to 33 of the judgment has held as follows :

“30. Dr. K.S. Narayan Reddy, M.D., D.C.P., M.I.A.F.M., F.I.M.S.A., F.A.F.Sc., Professor of Forensic Medicine, Osmania Medical College, Hyderabad in his well known treatise *The Essentials of Forensic Medicine and Toxicology*, Sixth Edn. At 255 gives descriptions of internal as well as external symptoms of manual strangulation. At page 255 while dealing with signs of asphyxia, the learned author observes: “The face may be livid, blotchy and swollen, the eyes wide open, bulging and suffused., the pupils dilated, the tongue swollen, dark-coloured and protruded. Petechial haemorrhages are common into the skin of the eyelids, face, forehead, behind the ears and scalp. Bloody froth may escape from the mouth and nostrils and there may be bleeding from the nose and ears. The hands are usually clenched. The genital organs may be congested and there may be discharge of urine, faeces and seminal fluid.” Internal injuries described little later included as under :

“The larynx, trachea and bronchi are congested and contain frothy, often blood stained mucus. The lungs are markedly congested and show ecchymoses and larger subpleural haemorrhages. Dark fluid blood exudes on section. Silvery-looking spots under the pleural surface due to rupture on the air cells which disappear on pricking, are seen in more than 30% cases. The parenchymatous organs show intense venous congestion, and in young persons ecchymoses are usually seen on the heart and kidneys. The brain is



congested and shows petechial haemorrhages. The right side of the heart is full of dark fluid blood and the left empty. Both the cavities are full if the heart stopped during diastole.”

31. Whereas in burn injuries, the learned author at pages 237-238 observes, “the brain is usually shrunken, firm and yellow to light brown due to cooking. The dura matter is leathery.” (Dura matter is meninges of the brain.) If the death has occurred from suffocation, aspirated blackish coal particles are seen in the nose, mouth and whole of the respiratory tract. Their presence is proof that the victim was alive when the fire occurred. The pleurae are congested or inflamed. The lungs are usually congested, may be shrunken and rarely anaemic... Visceral congestion is marked in many cases.... The heart is usually filled with clotted blood. The adrenals (glands above kidneys) may be enlarged and congested.

32. Some of these symptoms of internal and external injuries are common in case of strangulation and burn, like face is swollen and distorted, the tongue protruded, the lungs are usually congested, visceral congestion is marked in many cases.

33. What is to be noticed in the present case is that there are hardly “any cries” as per the defence also by the deceased. This is not possible even in a case of suicide. Even if the burns are inflicted with suicidal intent the victim is bound to cry out of pain. Admittedly there were no cries and, therefore, it was not a case of suicidal burn but the deceased was put in a condition where she could not cry and yet get burnt by third party.”

59. In the present case, PW 7 Dr. Radma Raman, who has conducted the post mortem examination of the deceased, has found epidermal burn injury with some red lining was found on the whole body except both sole, smell of kerosene oil was detected, Tongue was protruded. On dissection, froth and carbon particles was found in trachea, mucosa trachea was found congested, Hyoid bone was found in tact, all viscera were found congested and in utero a male foetus of more than seven months was found and the length of the foetus of seventeen inches. In heart, cherry red coloured blood was found in right side of the heart and his evidence also disclosed that



in stomach five ounces of undigested rice and vegetable were found and the food might have been taken within an hour of death.

60. Considering the discussions made above, this Court finds that there is no eye-witness of the occurrence, however there are circumstances against the appellant which are as follows :- (1) occurrence took place inside the house of the accused persons, including the appellant, (2) the deceased was carrying foetus of more than seven months, (3) if it was a case of burning, there would have been evidence of deceased having vomiting, (4) excessive use of kerosene oil was found and deceased was practically drenched with kerosene oil, (5) I.O. has not found any mark of violence on the door, key of the lock and a jerrycan was found outside the room, (6) a matchbox filled with the matchsticks was found beneath the body not burnt, (7) a pillow of empty cement bags was found beneath the neck of the deceased, that was not burnt, (8) in the case of suicide, as discussed in the above judgment, the deceased must cry with fear but no such evidence has come, (9) cherry red coloured blood was found in the right side of the heart, mostly found in the case of strangulation, (10) as per evidence of Doctor, the deceased had taken food just one hour before the occurrence, which shows that prior to death she was not in disturbed condition, rather she had taken her meal, and, moreover, as discussed above, she was a pregnant lady, (11) the evidence, as discussed above, shows that she was subjected to torture and harassment with respect to demand of TV and Fridge and as such there is motive also behind the prosecution story of causing death, and (11) no explanation has been given by the defence about the cause of death or to show that she was mentally disturbed and as such she committed suicide.



61. The above fact, as has been found by the learned trial court also, that she has been put in a condition where she could not cry or resist herself and thereafter she was burnt to death. In the present case there are some discrepancies but those discrepancies are not so vital to make it incompatible to the prosecution case, whereas there is consistency in the prosecution evidence of demand of dowry even one week prior to the occurrence, she was subjected to cruelty with respect to demand even one week prior to the occurrence, death is within seven years of marriage, and as discussed above, the circumstances clearly suggest that the death is homicidal in nature, as such the defence cannot take the benefit of certain discrepancies here and there in the prosecution evidence, rather the circumstances, as stated above, clearly suggest that the deceased was done to death prior to setting her on fire.

62. Hon'ble Apex Court in a case of **State of Haryana vs. Bhagirath and others, reported in (1999) 5 SCC 96** in paragraph-8 of the judgment has observed as follows :

“8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convicted of the guilt only beyond the range of a reasonable doubt. Of course, the expression “reasonable doubt” is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge.”

Hon'ble Apex Court in the case of **Smt. Shamim** (supra) in paragraph-15 has held as follows :

“Each criminal trial is but a quest for search of the truth. The duty of a judge presiding over a criminal trial is not merely to see that no innocent person is punished, but also to see that a guilty person does not escape. One is as important as the other. Both are public duties which the Judge has to perform. The trial court had



erred and misappreciated the evidence to arrive at an erroneous conclusion.”

63. Much stress has been given by learned counsel for the appellant that the evidence of I.O. (PW 9) clearly suggests that FIR was not registered at 10.45 P.M. on the same night and some pages of the station diary were also found missing in order to make out a case that the initial registration of the FIR itself is in doubt and as such prosecution case suffers from infirmities and discrepancies. However, in view of the above evidence on record, as discussed above, such discrepancy does not appear to be fatal to the prosecution case. On the other hand, PW 8 has stated that his statement was recorded by the police at 7.15 P.M. on 10.2.1989 and PW 10 is also an attesting witness of the recording of the fardbeyan. Moreover, it is well settled that any lapse in the investigation does not affect the core of the prosecution case and even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case (as per decision of Hon'ble Apex Court in the **V.K.Mishra case (supra)**). As discussed above, there are enough cogent and reliable evidences available on the record.

64. Considering the entire discussions made above, it appears that the impugned judgment and order does not suffer from any infirmities and the sentence of the appellant both under Sections 302 and 304B IPC appears to be



just and proper. Hence, the conviction and sentence of the appellant are confirmed.

65. Accordingly, the appeal is dismissed. The bail bond of the appellant stands cancelled. The appellant is directed to surrender before the trial court to serve out the remaining part of sentence.

(Vinod Kumar Sinha, J)

spal/-

(S. Kumar, J)

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