

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.132 of 2009

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Chandra Sekhar Prasad @ Chandrakher Prasad, son of Narayan Mahto,
resident of village-Ajaypur (Rampur Ka Tola), P.S.-Chandi, District-Nalanda.
... .. Appellant/s

Versus

The State of Bihar Respondent/s

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with

Criminal Appeal (SJ) No. 155 of 2009

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- 1. Narayan Mahto**, son of late Karu Mahto.
- 2. Keshri Devi**, wife of Sri Narayan Mahto.
Both residents of village- Ajaypur (Rampur Ka Tola), P.S.-Chandi,
District-Nalanda.

... .. Appellant/s

Versus

The State of Bihar Respondent/s

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Appearance :

(In Criminal Appeal (SJ) No. 132 of 2009)

For the Appellant/s : Mr. Sanjay Kumar, Amicus Curiae

For the State : Mr. Parmeshwar Mehta, A.P.P.

(In Criminal Appeal (SJ) No. 155 of 2009)

For the Appellant/s : Mr. Sanjay Kumar, Amicus Curiae

For the State : Mr. Parmeshwar Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date : 31-01-2019

1. Appellants Chandra Shekhar Prasad (Cr. Appeal (SJ) No.132 of 2009), Narayan Mahto and Keshari Devi (Cr. Appeal (SJ) No.155 of 2009) have been found guilty for an offence punishable under Section 304B/34 of the IPC and have been sentenced to undergo R.I. for ten years vide judgment of conviction dated 22.12.2008 and order of sentence dated 23.12.2008 passed by the Additional Sessions Judge, Ind, Hilsa, Nalanda in Sessions Trial No.703/2006, on account thereof, heard analogously and are decided by a common judgment.



2. Jadunandan Prasad filed written report on 02-01-2006 disclosing therein that he had married his daughter Manju Kumari in the year 2002 with Chandra Shekhar Prasad, son of Narayan Mahto of village-Ajaypur (Rampur Ka Tola). At the time of marriage, he had paid Rs.65,000/- in cash and articles comprising of Rs.50,000/-. After marriage, he retained his daughter at his place and her Gauna was effected after a year as per prevailing custom. At the time of Gauna also, he had gifted the articles according to his means. After staying for sometime by his daughter at her Sasural, he visited and during course of meeting his daughter disclosed that her husband Chandra Shekhar Prasad, mother-in-law Keshari Devi, father-in-law Narayan Mahto are coercing her in routine manner, to bring Rs.50,000/- as his father is in service over which, replied that her father has got no money in order to fulfill their demand. Thereafter, he met with his son-in-law, Samdhi and Samdhin and requested them not to torture her on the pretext of non-fulfillment of demand of dowry but, they did not pay heed to it. That being so, Manju continued to face torture and cruelty at their end. Lastly, he brought his daughter at his house where, his daughter had elaborately detailed the activities of her husband, father-in-law, mother-in-law extorted over her in order to procure dowry. After sometime, his son-in-law came at his place



and asked for Bidai which they accepted but, begged not to torture her on the pretext of dowry. After sometime, his daughter again informed with regard to her miseries whereupon, he had gone there. After conversation with his daughter he was known to the fact that her mother-in-law was insisting upon to procure Rs.50,000/- for doing business as, her husband was unemployed otherwise, she has threatened that her husband will be remarried after eliminating her. Lastly, he took her to his place. While staying at his place, she had disclosed that in case their demand is not fulfilled then in that circumstance, she will not be allowed to survive. Subsequently thereof, Bidai was effected and during course of her stay at her Sasural two days thereafter he received an information that she has been murdered whereupon, rushed to the place. After arrival, they have not seen the dead body whereupon began to search and during course thereof, came to know that dead body has been taken away by the police. Accordingly, came to police station found the dead body having mark over her neck.

3. Chandi P.S. Case No.3/2006 was registered on the basis of the written report 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 has been pleaded under Section 313 Cr.P.C. as well as suggested during course of cross-examination is that of complete denial. It has further been pleaded that deceased being a short tempered lady committed suicide on trivial domestic issue. However, nothing has been adduced in defence.

5. Altogether seven PWs have been examined on behalf of prosecution who are PW.1-Dharamshila Devi, PW.2-Lalmohan Kumar, PW.3-Jadunandan Prasad, PW.4-Kameshwar Prasad, PW.5-Ramdeo Prasad, PW.6-Gopalji Singh and PW.7-Dr. Mithilesh Kumar.

6. Side by side has also exhibited Ext.1-Written Report, Ext.2-Endorsement over written report, Ext.3-Formal FIR, Ext.4-Postmortem Report. As stated above, nothing has been adduced in defence.

7. The learned Amicus Curiae while challenging the finding recorded by the learned lower court has submitted that from the facts available on the record, no offence under Section 304B of the IPC is found duly substantiated whereupon, the finding recorded by the learned lower court is not at all legally sustainable. Furthermore, it has also been submitted that PW.1 mother, PW.2 brother and PW.3 father are inconsistent to each other to such extent that the story of demand of dowry vanishes



whereupon, no conviction could be recorded under section 304B of the IPC. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

8. On the other hand, the learned Additional Public Prosecutor submitted that on account of faulty investigation at the end of the I.O. due to his in competency, did not make the trial stifle. Furthermore, it has also been submitted that PW.1, PW.2 and PW.3 are family members who have occasion to perceive the event which deceased confronted while staying at her Sasural corroborated by PW.4 as well as PW.5. That being so, the prosecution case is found duly substantiated whereupon judgment impugned is fit to be confirmed.

9. For attracting an offence of dowry death, the following ingredients are required to be fulfilled at the end of the prosecution:

- (a) death should be within seven years of marriage.
- (b) The death should be due to burn, injury or otherwise than normal circumstance.
- (c) There should be demand of dowry and for that, soon before her death, deceased was subjected to torture and
- (d) By her husband or relative of the husband.



If, the prosecution succeeds in substantiating the aforesaid ingredients then, in that circumstance, there would be presumption of dowry death in accordance with Section 113B of the Evidence Act though re-buttable. That means to say, accused has got an option to rebut the allegation whatsoever been attributed against him if, so desires. Furthermore, by a catena of judicial pronouncement it has been settled at rest that even the death being a suicide would not cast any kind of deficiency over the prosecution case in case, the remaining ingredients are fulfilled as the law itself speaks, “otherwise than normal circumstance”.

10. In Jagjit Singh v. State of Punjab reported in **AIR 2018 SC 5719**, it has been held:

“24. A reading of Section 304-B of the IPC along with Section 113-B of the Evidence Act would establish that once the prosecution shows that soon before the death of the wife, she has been subjected to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person caused the dowry death within the meaning of Section 304-B IPC. The words 'shall presume' in Section 113-B of the Evidence Act, while it mandates that the Court is duty bound to proceed on the basis that the person has caused the dowry death, the presumption is rebuttable and it is open to the relative to prove that the ingredients of Section 304-B IPC are not satisfied. See in this regard, the following statement of law contained in the case of *G.V. Siddaramesh v. State of Karnataka* 2010 (3) SCC 152:

"26. Section 113-B of the Evidence Act raises a presumption against the accused and reads:

"113-B. 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.

Explanation. - For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a woman. It is then up to the appellant to discharge this presumption."

25. We may also notice the statement of law contained in the decision of this Court in the case of Ashok Kumar v. State of Haryana reported in 2010 (12)SCC 350 which reads as under:

"24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in Kaliyaperumal v. State of T.N.:(2004) 9 SCC 157: 2004 SCC (Cri) 1417, stated the following ingredients which should be satisfied: (SCC p. 162, para 4)

"(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

11. PW.7 is the doctor who had conducted postmortem on 02.01.2006 over the dead body of Manju Devi and found the following:-



(i) Black bruise right side upper part of the leg 1" x 3/4"

(ii) Red swollen left side of neck and cheek 4" x 3"

On dissection of neck, the doctor has found subcutaneous heamatoma right side of neck, subcutaneous heamatoma left side of neck over right side area and gave his opinion about the case of death, asphyxia due to throatling.

12. During course of cross-examination this witness at para-6 has categorically stated that it is not a case of suicide.

13. From the evidence available on the record, it is evident that date of marriage has not been controverted. That means to say marriage in the year 2002 is not under controversy and in likewise manner the date of the death which happens to be within seven years of her marriage. Moreover, from the evidence of doctor, death by strangulation, means by having application of external force is found substantiated.

14. Now the remaining two ingredients are to be seen along with whether the appellants have been able to rebut the presumption as required under Section 113B of the Evidence Act?

15. PW.1 is the mother who has deposed that her daughter Manju Kumari was married in the year 2002 with Chandra Shekhar Prasad. Her daughter had gone to her Sasural and after staying for sometime returned back. While staying her place



she had disclosed that her husband, mother-in-law and father-in-law are insisting upon to procure Rs.50,000/- in lieu of dowry and for that, they are even physically assaulting her. At the time of marriage she gave cash appertaining to Rs.65000/- as well as articles costing of Rs.50,000/-. Then she stated that her son-in-law came and took his daughter on Bidai. She was again tortured for procurement of Rs.50,000/-. They came to know about the same on a disclosure made by her daughter who was taken a back to her place. Subsequently, when her son-in-law came asking for Bidai, she had requested him not to torture her for dowry. Later on, Bidai was effected. And then, they came to know regarding murder of her daughter whereupon, all of them rushed to Sasural of her daughter. They have gone to Chandi P.S. where her dead body was lying having black spot over her neck. Identified the accused. During cross-examination at para-2 she has stated that for the first time she had gone to the Sasural of her daughter after her marriage. In para-3 she has stated that her other son-in-law Ajay Kumar was the middle man during course of negotiation and all articles cash passed through him. At para-4 she has stated that at the time of marriage, there was no dispute. Marriage was solemnized in congenial atmosphere. At para-9 she has stated that after Vidai, her daughter stayed at her Sasural for fifteen days and



during midst thereof, wife of Bindeshwar Ram had gone with *Daura* (gift items sent to Sasural of the girl during her stay). Her husband had accompanied her. They have gone on *Chauthari* (fourth day of marriage). She has further stated that she had conversation with maid servant. In para-10 she has stated that maid servant had disclosed that Chandra Shekhar Prasad (son-in-law) took out pistol and pointed out at her daughter. Then again said maid servant alone had gone to Sasural of her daughter. In para-12 she has stated that in presence of maid servant, her son-in-law had not committed any sin. In para-13, she has stated that her daughter Manju has disclosed that her husband had pointed out pistol at her. In para-14 she has stated that her husband returned back from Sasural of her daughter after 2-4 days. He returned alone. Her husband had not disclosed anything to her. He had not complained. In para-15, she has stated that ten days thereafter her husband revisited the Sasural of her daughter for Bidai. He had gone alone. On the following day, he returned back with daughter. When her daughter came then she had disclosed that her husband had pointed out pistol at her. Her husband had not disclosed with regard to any kind of tension so perceived by him. At that very time, all things were smoothly sailing. Her daughter had not disclosed anything else than pointing out pistol and for that no



cause was disclosed. Paragraph 17 to 23 are over the same. In para-24 she has stated that about an year Chandra Shekhar came with vehicle for Bidai. Ruksaddi was effected. Till then, the situation was cordial. At that very time, none had accompanied her. Her daughter remained there for 2-3 months during midst thereof, neither letter nor phone was received at her end. However, her husband had gone there. He made night halt and on the following day, he returned back. He had not disclosed anything to her and so, she presume that all was well. In para-25 she has stated that her daughter was literate. She was inter pass. She used to post letter but the letters have been misplaced, destroyed during the intervening period. In para-26 she has stated that she received two letters after coming of her husband from her Sasural. In para-27 she has stated that about a month thereafter her husband had gone to the Sasural of her daughter. After returning therefrom, he had stated that there is no good news as, daughter used to weep. Her husband had accompanied the daughter. Her husband disclosed that son-in-law use to assault her. Her daughter had disclosed to the father that he (husband) used to demand money but for that, she was tortured. In para-28 she had stated that her husband again had gone to the place of her daughter where he was disclosed by her daughter regarding demand of money and assault having over



her in order to procure the same. Then, her husband took the daughter along with him. After arrival of her daughter, she had talked with her and during course thereof, she had disclosed that her Sasuralwala was demanding money and for that, they used to assault her. She had shown apprehension that in case of non payment of the money, they will murder her. She had not disclosed this event to her debar. Her daughter had disclosed the same in her presence as well as in presence of her husband. At that very time, no outsider was present. In para-29 she had stated that to preserve the prestige of the family, she had not disclosed the event to the friends of her husband. In para-30 she had stated that 1-2 months thereafter when her son-in-law came for Bidai, she had requested him not to torture her for the dowry. At that very time, she had not called Ajay but, later on her husband had gone to him for getting the matter properly resolved. In para-31 she had stated that even after her request to her son-in-law not to torture her daughter, her son-in-law did not pay heed to it and on account thereof, tension continued. She had further stated that she is not remembering how much amount was paid to him at the time of Bidai. Her son-in-law returned back unhappily. In para-32 she had stated that she had sent her husband to the place of her daughter. At an earlier occasion, Ajay used to visit but, due to differences he declined and



so, her husband used to go alone. Her husband stayed for a night and on the following day, he returned back. Her husband had talked with father-in-law of her daughter namely Narayan Mahto in order to sort out the solution but, failed which was reported to her by her husband after returning therefrom. In para-34 she had stated that for a year or two forbidden to go at the Sasural. They have also not taken any effort. In para-35 she had stated that after 'Chhath' her son-in-law came for Bidai. They have allowed the same. At that very time her son-in-law had come alone. At that very time, none from her family had accompanied him. At that very time, her son-in-law had assured that he will keep his wife properly. Subsequently, her son-in-law advanced demand of Rs.50,000/-. On court question she disclosed that when she said that she has got no money, her son-in-law kept silence. However, Bidai was effected. In para-36, 37 there happens to be cross-examination over demand of Rs.50,000/- at the end of her son-in-law. Her son-in-law had stated that any how he will take Rs.50,000/-. In para-38 she had stated that from the approach of her son-in-law they became apprehensive in the background of the fact that they have perceived continuous danger over the life of her daughter. In para-39 she had stated that her daughter was not inclined to go with her husband but, her son-in-law insisted. Then



had stated at para-45 that after departure of her daughter, her husband had not visited her place. In para-47 she had stated that she is unable to disclose how they have received information but, one person had come from Salempur. In para-48 she had stated that she had not met with Ajay another son-in-law before going to Sasural of her daughter. In para-49 she had stated that Salempur has wrongly been mentioned rather the person was sent by Ajay belong to village Rampur. Then again stated that she is unable to disclose who sent the person from Sasural of her daughter but, one person has came therefrom. In para-50 she had stated that after receiving information, she along with her husband, son, villagers have gone firstly to the Sasural of her daughter where they came to know that dead body has been taken away by the police, gone to police station where seen the dead body. At that very time Chowkidar and person of the village were present. Then had denied the suggestion that her daughter had got no differences with her Sasuralwala nor her Sasuralwala ever demanded dowry nor she was tortured for the same. She had denied the suggestion that her daughter was a short tempered lady whereupon, died on her own. She had further denied the suggestion that she had died on account of her own in the background of the fact that her Sasuralwala had



tried to pacify her on account of quarreling with her Gotini. Then had denied the suggestion that she had deposed falsely.

16. PW.2 is the brother of the deceased who had deposed that deceased died at her Sasural lying at village Rampur Tola Ajaypur. Her marriage was solemnized with Chandra Shekhar Prasad in the year 2002 and thereafter, had gone to her Sasural and began to reside during course thereof, she died. She was throttled to death by her husband and in-laws on account of non-fulfillment of demand of dowry which they were insisting upon since before. Identified. During cross-examination he had stated at para-3 that he had gone to Sasural of his sister only twice. The first one at the time of Chheka and the second one, after her death along with his other family members as well as villagers. At para-4 he had stated that when he had gone to the Sasural of his sister after her death, none was present. House was locked. In para-5 he had stated that they met with the neighbours but, unable to disclose their names. During conversation with them, they came to know that the dead body has been taken away to police station. In para-6 he had stated that during course of conversation they came to know that after death of deceased at her Sasural, her dead body has been taken to police station. In para-7 he had stated that they, after coming to know about the same left the place. In para-8 he had disclosed that



house of his another brother-in-law lies in the nearby village. He had not accompanied them. In para-8 (renumbered ought to have been 9) he had stated that when they reached at the police station, they found the dead body. They have seen Narayan Mahto, Chowkidar and some of the villagers of Sasural of the deceased. They have stayed for an hour and during course thereof, police inquired from them. During course thereof, he had stated before police that the dead body belongs to his sister who has been murdered for dowry. In para-9 he had stated that he had stated before the police that his brother-in-law, parents of his brother-in-law caused murder by strangulation. In para-10 he had stated that information with regard to death of his sister was conveyed by a person. He had not met with him. His father had disclosed. Then thereafter, his father directed to be ready so that they should go to Sasural of the deceased. At that very time, none of his family members had disclosed regarding the information received by them relating to death of the deceased. Again said that he is unable to say who had disclosed him regarding death of the deceased. Again para-9 (again wrongly mentioned) he had stated that before going to police station, they have not informed their relative. He had informed his uncle after approaching the police station. In para-12 he had stated that the person who had come to inform



them had not accompanied them. Then at para-14 had denied the suggestion that on the alleged date he was not present in the village. In para-15 he had stated that during midst of their presence at police station his cousin brother Bhupendra had come to police station. His another brother-in-law Ajay Kumar had not come. Then thereafter dead body was sent to postmortem. Funeral was effected at Bakhtiyarpur. In para-17 he had stated that Narayan was arrested at the police station itself. In para-18 he had stated that he had not seen the occurrence. He had not met with anybody who had claimed to be an eyewitness to occurrence. He had further stated that he is unable to disclose name of anybody who could have disclosed that his brother-in-law along with his parents caused murder by throttling. In para-19 he had stated that he could not met with anybody who could have enlightened over the issue. In para-23 he had stated that his sister used to talk with him. In para-24 he had stated that his father used to visit at the Sasural of his sister but he is unaware with the fact whether villagers have accompanied him for the purpose of compromise/resolving. He had gone to the Sasural of his sister. His sister had not written any letter to him. He is unaware with the fact whether his sister had written letter at the house. Then there happens to be cross-examination at para-26, 27, 28 (again wrongly mentioned) with



regard to cause of death of his eldest sister. At para-29 denied suggestion that his sister was not tortured by anybody nor there was demand of dowry. He had also denied the suggestion that deceased died on her own and for that, the demand of dowry and torture having on that very score at the end of the accused was not the reason.

17. PW.3 has stated that 02-01-2003 is the date of occurrence. His daughter Manju was married with Shekhar Prasad of village-Ajaypur in the year 2002 as per Hindu rights and custom. At the time of marriage he had given Rs.65,000/- in cash as dowry and the articles appertaining to Rs.50,000/-. Ruksaddi was effected one year thereafter. While she was staying at her Sasural, he used to visit at her place and during course thereof, he came to know that her Sasuralwala were torturing her for getting the demand of dowry duly fulfilled. The accused were actively indulged in such illegal activity which, his daughter used to say. Accused persons were demanding Rs.50,000/- in lieu of dowry. Times without number he tried to resolve but, the accused persons did not pay heed and lastly, caused murder of his daughter at her Sasural. After getting information, he rushed. He first of all gone to the Sasural of his daughter where he came to know that his daughter has been murdered by way of throttling on 01.01.2006.



He was also informed that dead body of his daughter has been taken to police station. Accordingly, they came to police station. They have seen the dead body of his daughter having mark over her neck and after seeing thereof, they inferred that his daughter has been murdered by way of throttling. Thereafter, he instituted the case (exhibited). Identified the accused. During cross-examination at para-4 he had stated that he happens to be three brothers. Indradeo is a teacher, Krishnandan is living away. In para-5, 6, 7, 8 there happens to be cross-examination relating his family affair as well as cause of death of his eldest daughter. In para-9 he had stated that at the time of negotiation of marriage they were informed that Chandra Shekhar is a B.A. Pass and is doing service at Dhanbad but, those things have been found to be false. In para-11 he had stated that now they have come to know that Chandra Shekhar is 8-9th Class passed having two bigha land. Before marriage, he had not inquired from Chandra Shekhar. In para-12 he had stated that Ajay Kumar, his another son-in-law had participated during course of Chheka as well as marriage. In para-13 he had stated that his son-in-law Ajay Kumar had not gone to the Sasural of Manju after marriage. In para-15 he had stated that he had visited place of deceased 5-7 times. He had also visited after marriage and before Ruksaddi. On that very score, he has



been cross-examined furthermore, whereupon, shown his inability to disclose exact date of his going to the place of deceased. In para-16 he had stated that he had not instructed his son-in-law Ajay Kumar to go to Sasural of deceased in order to inquire about her welfare. In para-17 he had stated that after Ruksaddi and before his arrival at the Sasural of deceased, Narayan Mahto visited his place only once. He had also stated that before going to Sasural of the deceased, no letter was ever received at the end of the deceased. He had not talked over telephone with the deceased or her Sasuralwala. He had further stated that for the first time when he had gone to Sasural of the deceased, he arrived at evening hour, stayed at night and, on the following day, he returned back. At that very occasion all things were normal. None came from her Sasural. On the other hand, he used to visit her place. None other of his family had gone. He frequently visited to the place of his daughter at an interval of 2-3 months. On his second visit, his daughter had disclosed that she is being tortured by her Sasuralwala. She had also disclosed that her Sasuralwala were torturing her for fulfillment of demand of dowry. At the second occasion also he reached at evening night stayed and on the following day he returned back. At that very time, he requested her Sasuralwala not to torture her but he had not disclosed it to Ajay or



anybody else. In para-19 he had stated that he had not contacted with the persons who had helped during course of negotiation. In para-20 he had stated that after returning back to his house, he had disclosed the same to the family members including, his remaining two brothers. However, he had not disclosed the same to his well wishers. In para-21 he had stated that even after his request at the second time, the accused persons have not acceded on the other hand threatened that his daughter will be murdered. He had not informed any authority, as he, taken the same in casual manner. He had disclosed the same to his family members. In para-22 he had stated that at third occasion when he visited the place of his daughter, he accompanied her to his place. He had gone there after a gap of 2-3 months. He took his daughter with the consent of her Sasuralwala. She remained at his place for a month then thereafter, his son-in-law came and accompanied his daughter. He had come alone over a vehicle and took away her daughter. His son-in-law stayed for a day. In para-24 he had stated that his daughter (deceased) had disclosed regarding demand by her Sasuralwala. None other had disclosed the same. In para-25 he had stated that he used to discuss the issue at his house with other family members but, he had not taken an outsider to Sasural of his daughter for getting the matter properly resolved. He even had not



accompanied his brothers. He on his own took the initiative and for that, he used to visit Sasural of his daughter. In para-26 he had stated that he had not talked with Raghubir Mahto for redressal of the problem who happened to be full brother of his Samdhi. In para-27 he had stated that he had perceived harmonious relationship amongst Radhubeer Mahto with his Samdhi. He had also stated that he used to talk with his Samdhi. They even talked over demand. In para-28 he had stated Sasuralwala of his daughter were persistently demanding Rs.50,000/- but for what he is not knowing. He had further stated that there was pressure over him relating to aforesaid demand. In para-31 he had stated that his daughter had come to his place several times after marriage. Usually Chandra Shekhar used to take Bidai. In para-32 he had stated that after visiting his house at third occasion, his daughter began to complain against her Sasuralwala over demand of dowry and torture therefor. She remained alive for three years, thereafter. In para-33 he had stated that his son-in-law is a farmer but occasionally goes outside in search of his livelihood. Whenever they demanded money, he used to pay even part thereof. Then at para-36, 37 there happens to be cross-examination with regard to his first daughter (since deceased). In para-39 he had stated that when they arrived at the place of his daughter, they met with



several villagers but, is unable to disclose their names. However, Raghubeer was certainly not. In para-40 he had stated that when he reached at the place of his daughter, he came to know that dead body has been taken to the police station. They also came to know that deceased has been murdered by pressing her neck with lathi but, he had not mentioned the name of the person in his written report who had disclosed the same. Then had denied the suggestion that deceased committed suicide after having been humiliated as, she had asked curse against her Dayadin which was disclosed by the villager. He also denied suggestion that neither there was demand of dowry nor, deceased was tortured for the same. He had denied the suggestion that none of the villagers had disclosed regarding murder by way of throttling. He had further denied the suggestion that neither Ajay nor his brother have suggested to institute a case and on account thereof, they have been left out to be a witness.

18. PW.4, PW.5 are not the family members of the informant rather they happens to be friend of PW.3. They have disclosed that they were informed by the informant (PW.3) that deceased was done to death at her Sasural by her in-laws within three years of her marriage on account of non-fulfillment of demand of dowry to a tune of Rs.50,000/- and for that, she was



being tortured. They have also stated that they have accompanied the informant PW.3 to the police station where they have seen dead body of the deceased having mark over her neck. During cross-examination, PW.3 at para-9 had disclosed regarding death of eldest daughter of the informant out of burn but, shown his unawareness whether case for the same was instituted or not. In para-11 he had stated that when they reached at the police station, one person from the village of Ajaypur was there. In para-13 he had stated that one person came and informed regarding death of Manju but he is unable to disclose his identity. In para-12 he had stated that they reached at the police station. Ajay, one of the son-in-law of the informant was present there. PW.5 during cross-examination had stated that he had also gone to the Sasural of deceased on the relevant day where, they came to know that dead body has been taken away to the police station. Accordingly, they have gone to police station. They have found one Chowkidar and Narayan Mahto along with 10-15 persons. The villagers were saying that deceased has been murdered by the Sasuralwala. But, he is unable to disclose their identity. In para-3 he had stated that informant Jadunandan Prasad had previously said to him that Sasuralwala of Manju is demanding Rs.50,000/- and for that, deceased was being tortured. At that very time Ramashish, Sanjay



and others were present. He had further stated at para-5 that some body of village Ajaypur had informed regarding the misfortune over which, they have gone there. He had further stated that only Jadunandan Prasad informed him regarding demand of Rs.50,000/-. In para-6 he had stated that he met with police at the police station. They remained there for two hours and then gone to Biharsharif as dead body was sent to postmortem. Accused Narayan Mahto was arrested at the spot. Then had denied the suggestion that neither there was demand nor deceased was done to death for the same. In para-8 he had stated that another son of the informant was also present at the police station.

19. PW.6 is the I.O. He had stated that on 02-01-2006 he was officer-in-charge of Chandi P.S. On that day chowkidar along with a villager brought a dead body over cot accompanied by Jadunandan Prasad who had filed written report scribed by the Dafadar Kamal Kishore Sharma on his dictation having his endorsement (exhibited). Then had exhibited formal FIR. Took up investigation. Prepared the inquest report (exhibited) sent the dead body for postmortem recorded further statement of the informant statement of other witnesses, gone to the place of occurrence and visited the house of the deceased /accused persons. Detailed the same. Shown the boundary. Recorded statement of the co-villager.



Procured postmortem report and then, after completing investigation, submitted charge sheet. In para-5 of his cross-examination he had stated that when the dead body of deceased was brought at the police station, at that time so many co-villagers including Chowkidar have come including father-in-law of the deceased namely Narayan Mahato. The prosecution party (informant, his wife, his son) along with Kameshwar and Ramdeo have also accompanied. On query, he came to know that they were coming from the P.O. village. Written report was not scribed in his presence. He had further stated that he had not recorded statement of the inquest witness. In para-8 he had stated that he had not mentioned at whose instance he had visited the place of occurrence. He had not mentioned who had assisted during course of inspection of the P.O. Then had stated that witness Dinesh Prasad and Leela Devi (not examined) had stated before him that how the deceased died in night, they were not knowing. In para-9 he had stated that during course of inspection of the P.O. he had not found any incriminating material with regard to commission of murder. He had received postmortem report on 28.03.2006. Then had denied the suggestion that during course of investigation he had found sufficient evidence with regard to innocence of the



accused persons but, on account of direction of the superior officials, he had submitted charge sheet.

20. From the evidence as discussed herein above, it is evident that death of deceased Manju within seven years of marriage at her place (Sasural) is not at all controverted. In likewise manner, the finding of the doctor, PW.7 has not been challenged who, after conducting postmortem, had found the death caused by throttling. As per Modi jurisprudence, throttling always happens to be on account of inflicting external force and further, had ruled out to be a case of suicide. Though, in order to appreciate the ingredients of section 304B of the IPC, the same happens to be immaterial but, it is now conclusively proved that deceased died of throttling, and so it was certainly homicidal. The remaining ingredients that means to say there was demand of dowry and soon before her death deceased was was tortured with regard to demand of dowry by her husband or relative of the husband, the nature of the evidence suggest that it happens to be some sort of deficient one because of the fact that PW.2, the brother had not corroborated the same while PW.1 the mother did not find enough to substantiate in a manner as required because of the fact that she had not categorically stated that either deceased or her husband, PW.3/informant elaborately discussed with her with



regard to demand of dowry by the Sasuralwala and further, tortured having inflicted on that very score. Though, PW.3 had stated and was also been cross-examined on that very score but, his answer to the effect that he had not talked with anybody including his family members is a circumstance that goes against the prosecution more particularly being inconsistent with the evidence of PW.4 as well as PW.5, the friends of PW.3 who have disclosed that they have come to know with regard to demand of Rs.50,000/- as dowry, torture as well as causing murder of the deceased on that very pretext, from PW.3 the informant. Furthermore, the conduct of the I.O. is also not found above board. However, it is settled at rest that prosecution case would not fail on account of lapses at the end of the I.O.

21. Be that as it may, the Hon'ble Apex Court since before was very much apprehensive with regard to paucity of evidence as, the offences are being committed inside the house of the accused and further, it happens to be difficult for the prosecution to trace out the proper evidence with regard to torture and cruelty meted out in day to day affair on account of non-fulfillment of dowry and that being so, in a case **Rajbir @ Raju & Anr. vs. State of Haryana** reported in **(2010) 15 SCC 116** directed all the trial courts in following way:



“We further direct all trial Courts in India to ordinarily add Section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes against women. Copy of this order be sent to Registrar Generals/Registrars of all High Courts, which will circulate it to all trial Courts.”

22. The aforesaid view has further been tested by the Apex Court in **Jasvinder Saini & Ors. vs. State (Govt. of NCT of Delhi)** reported in **(2013) 7 SCC 256** and reaffirmed in following way:

“14. Be that as it may the common thread running through both the orders is that this Court had in Rajbir’s case (supra) directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

15. It is common ground that a charge under Section 304B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is



erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under [Section 304B](#) is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court.

16. In the light of what we have said above, the order passed by the trial Court and so also that passed by the High Court are clearly untenable and shall have to be set aside. That would not, however, prevent the trial Court from re-examining the question of framing a charge under Section 302 IPC against the appellant and passing an appropriate order if upon a prima facie appraisal of the evidence adduced before it, the trial Court comes to the conclusion that there is any room for doing so. The trial Court would in that regard keep in view the decision of this Court in *Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors.* (2004) 5 SCC 347 where this Court has recognized the principle that in cases where

“the trial Court (upon) a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced, is satisfied that any addition or alteration of the charge is necessary, it is free to do so.

17. Reference may also be made to the decisions of this Court in *Ishwarchand Amichand Govadia and Ors. v. State of Maharashtra and Anr.* (2006) 10 SCC 322 and the decision of the Calcutta High Court in *Rajendra Singh Sethia v. State and Ors.* 1989 Cri.L.J. 255 and that delivered by the



Allahabad High Court in Shiv Nandan and Ors. v. State of U.P. 2005 Cri. L.J 3047 which too are to the same effect. In any such fresh exercise which the trial Court may undertake, it shall remain uninfluenced by the observations made by the High Court on merits of the case including those touching the probative value of the autopsy surgeon's opinion.

23. Again the same has been subject to subjugation in **Vijay Pal Singh & Ors. vs. State of Uttarakhand** reported in **(2014) 15 SCC 163**:

"18. However, it is generally seen that in cases where a married woman dies within seven years of marriage, otherwise than under normal circumstances, no inquiry is usually conducted to see whether there is evidence, direct or circumstantial, as to whether the offence falls under Section 302 of IPC. Sometimes, Section 302 of IPC is put as an alternate charge. In cases where there is evidence, direct or circumstantial, to show that the offence falls under Section 302 of IPC, the trial court should frame the charge under Section 302 of IPC even if the police has not expressed any opinion in that regard in the report under Section 173(2) of the Cr.PC. Section 304B of IPC can be put as an alternate charge if the trial court so feels. In the course of trial, if the court finds that there is no evidence, direct or circumstantial, and proof beyond reasonable doubt is not available to establish that the same is not homicide, in such a situation, if the ingredients under Section 304B of IPC are available, the trial court should proceed under the said provision. In Muthu Kutty v. State (2005) 9 SCC 113, this Court addressed the issue and held as follows:

"20. A reading of Section 304-B IPC and Section 113-B, Evidence Act together makes it clear that law authorises a presumption that the husband or [pic]any other relative of the husband has caused the death of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed before her death in connection with any demand for dowry. It, therefore, follows that the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the offence of death. For those that are direct participants in the commission of the offence of death there are already provisions incorporated in Sections 300, 302 and 304. The provisions contained in Section 304-B IPC and Section 113-B of the Evidence Act were incorporated on the anvil of the Dowry



Prohibition (Amendment) Act, 1984, the main object of which is to curb the evil of dowry in the society and to make it severely punitive in nature and not to extricate husbands or their relatives from the clutches of Section 302 IPC if they directly cause death. This conceptual difference was not kept in view by the courts below. But that cannot bring any relief if the conviction is altered to Section 304 Part II. No prejudice is caused to the accused- appellants as they were originally charged for offence punishable under Section 302 IPC along with Section 304-B IPC."

19. In a recent decision, this Court in *Jasvinder Saini and others v. State (Government of NCT of Delhi)*[(2013) 7 SCC 256], observed thus:

"15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir* case. The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir* case, but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

20. Though in the instant case the accused were charged by the Sessions Court under Section 302 of IPC, it is seen that the trial court has not made any serious attempt to make an inquiry in that regard. If



there is evidence available on homicide in a case of dowry death, it is the duty of the investigating officer to investigate the case under Section 302 of IPC and the prosecution to proceed in that regard and the court to approach the case in that perspective. Merely because the victim is a married woman suffering an unnatural death within seven years of marriage and there is evidence that she was subjected to cruelty or harassment on account of demand for dowry, the prosecution and the court cannot close its eyes on the culpable homicide and refrain from punishing its author, if there is evidence in that regard, direct or circumstantial.

21. In the instant case, the prosecution has not made any attempt to explain the ante-mortem injuries which conclusively point to the cause of death as asphyxia caused by strangulation. Yet, no serious attempt, it is disturbing to note, was done to connect the murder to its author(s).

22. No doubt, nothing prevents this Court from putting the appellants on notice as to why the punishment should not be appropriately enhanced but why we reluctantly decline to do so, we shall explain in the later part of the judgment.

23. In two of the early decisions of this Court, after the introduction of Section 304B of IPC, the ingredients of the offence and the interplay of Section 304B of IPC with Sections 498A, 302, 306 of IPC have also been discussed. In *State of Punjab v. Iqbal Singh and others*[3], the Court in paragraph-8 stated that:

"8. ... The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. That is why the legislature has by introducing Sections 113-A and 113-B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married women is subjected to cruelty or harassment by her husband or his family members Section 498-A, IPC would be attracted. If such cruelty or harassment was inflicted by the husband or his relative for, or in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances within seven years of marriage, such



husband or relative is deemed to have caused her death and is liable to be punished under Section 304-B, IPC. When the question at issue is whether a person is guilty of dowry death of a woman and the evidence discloses that immediately before her death she was subjected by such person to cruelty and/or harassment for, or in connection with, any demand for dowry, Section 113-B, Evidence Act provides that the court shall presume that such person had caused the dowry death. Of course if there is proof of the person having intentionally caused her death that would attract Section 302, IPC. Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306, IPC. In such a case the conduct of the person would tantamount to inciting or [pic]provoking or virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide. ..."

24. In Dinubhai Boghabhai Solanki vs. State of

Gujarat & Ors. reported in (2018) 11 SCC 129, it has been held:

“33. We are not suggesting that Mr. Solanki and his nephew are the persons responsible for the murder of Amit Jethwa. That charge which is levelled against them and other accused persons has to be proved in the trial by cogent evidence. We are also mindful of the principle that standard of proof that is required in such criminal cases is that the guilt has to be proved beyond reasonable doubt. However, at the same time, it is also necessary to ensure that trial is conducted fairly where witnesses are able to depose truthfully and fearlessly. Old adage judicial doctrine, which is the bedrock of criminal jurisprudence, still holds good, viz., the basic assumption that an accused is innocent till the guilt is proved by cogent evidence. It is also an acceptable principle that guilt of an accused is to be proved beyond reasonable doubt. Even in a case of a slight doubt about the guilt of the under trial, he is entitled to benefit of doubt. All these principles are premised on the doctrine that ‘ten criminals may go unpunished but one innocent person should not be convicted’. Emphasis here is on ensuring that innocent person should not be convicted. Convicting innocence leads to serious flaws in the criminal justice system. That has remained one of the fundamental reasons for loading the processual system in criminal law with various safeguards that accused



persons enjoy when they suffer trials. Conventional criminology has leaned in favour of persons facing trials, with the main objective that innocent persons should not get punished.

34. At the same time, realisation is now dawning that other side of the crime, namely, victim is also an important stakeholder in the criminal justice and welfare policies. The victim has, till recently, remained forgotten actor in the crime scenario. It is for this reason that “victim justice” has become equally important, namely, to convict the person responsible for a crime. This not only ensures justice to the victim, but to the society at large as well. Therefore, traditional criminology coupled with deviance theory, which had ignored the victim and was offender focussed, has received significant dent with focus shared by the discipline by victimology as well. An interest in the victims of the crime is more than evident now⁷. Researchers point out at least three reasons for this trend. First, lack of evidence that different sentences had differing impact on offenders led policy-makers to consider the possibility that crime might be reduced, or at least constrained, through situational measures. This in turn led to an emphasis on the immediate circumstances surrounding the offence, of necessity incorporating the role of the victim, best illustrated in a number of studies carried out by the Home Office (Clarke and Mayhew 1980). Second, and in complete contrast, the developing impact of feminism in sociology, and latterly criminology, has encouraged a greater emphasis on women as victims, notably of rape and domestic violence, and has more widely stimulated an interest in the fear of crime. Finally, and perhaps most significantly, criticism of official statistics has resulted in a spawn of victim surveys, where sample surveys of individuals or households have enabled considerable data to be collated on the extent of crime and the characteristics of victims, irrespective of whether or not crimes become known to the police. It is for this reason that in many recent judgments rendered by this Court ⁸, there is an emphasis on the need to streamline the issues relating to crime victims.

35. There is a discernible paradigm shift in the criminal justice system in India which keeps in mind the interests of victims as well. Victim oriented policies are introduced giving better role to the victims of crime in criminal trials. It has led to adopting two pronged strategy. On the one hand, law now recognises, with the insertion of necessary statutory provisions, expanding role of victim in the procedural justice. On the other hand, substantive justice is also done to these victims by



putting an obligation on the State (and even the culprit of crime) by providing adequate compensation to the victims⁹. The result is that private parties are now able to assert “their claim for fair trial and, thus, an effective ‘say’ in criminal prosecution, not merely as a ‘witness’ but also as one impacted” .

36. That apart, it is in the larger interest of the society that actual perpetrator of the crime gets convicted and is suitably punished. Those persons who have committed the crime, if allowed to go unpunished, this also leads to weakening of the criminal justice system and the society starts losing faith therein. Therefore, the first part of the celebrated dictum “ten criminals may go unpunished but one innocent should not be convicted” has not to be taken routinely. No doubt, latter part of the aforesaid phrase, i.e., “innocent person should not be convicted” remains still valid. However, that does not mean that in the process “ten persons may go unpunished” and law becomes a mute spectator to this scenario, showing its helplessness. In order to ensure that criminal justice system is vibrant and effective, perpetrators of the crime should not go unpunished and all efforts are to be made to plug the loopholes which may give rise to the aforesaid situation.

37. The position which emerges is that in a criminal trial, on the one hand there are certain fundamental presumptions in favour of the accused, which are aimed at ensuring that innocent persons are not convicted. And, on the other hand, it has also been realized that if the criminal justice system has to be effective, crime should not go unpunished and victims of crimes are also well looked after. After all, the basic aim of any good legal system is to do justice, which is to ensure that injustice is also not meted out to any citizen. This calls for balancing the interests of accused as well as victims, which in turn depends on fair trial. For achieving this fair trial which is the solemn function of the Court, role of witnesses assumes great significance. This fair trial is possible only when the witnesses are truthful as ‘they are the eyes and ears’ of the Court.

38. We are conscious of the fact that while judging as to whether a particular accused is guilty of an offence or not, emotions have no role to play. Whereas, victims, or family of victims, or witnesses, may become emotive in their testimonies, in a given case, as far as the Court is concerned, it has to evaluate the evidence which comes before it dispassionately and objectively. At the same time, it is also a fact that emotion pervades the law in certain respects. Criminal trials are not allusive to the fact that many a times crimes are committed in the ‘heat



of passion' or even categorized as 'hate crimes'. Emotions like anger, compassion, mercy, vengeance, hatred get entries in criminal trials. However, insofar as the Judge is concerned, most of these emotions may become relevant only at the stage of punishment or sentencing, once the guilt is established by credible evidence, evaluated objectively by the Court¹¹. The aforesaid factors, then, become either mitigating/extenuating circumstances or aggravating circumstances. We make it clear that these factors have not influenced us. We also expect that the trial court will not go by such considerations insofar as first stage is concerned, namely, evaluating the evidence to decide as to whether accused persons are guilty of the offence or not. That part is to be performed in a totally objective manner. Reason is simple. The manner in which the murder of Amit Jethwa is committed may be cruel or ruthless. However, in the first instance it has to be examined as to whether the accused persons are responsible for the said murder or they (or some of them) are innocent."

25. From the lower court record, it is crystal clear that no alternative charge under Section 302 IPC has been framed. There happens to be complete absence of finding at the end of the lower court whether after perusal of materials available in the case diary no ingredient of Section 302 IPC is made out. That being so, the lower court violated the direction of the Apex Court without any cogent reason. That being so, miscarriage of justice is found. Accordingly, the judgment impugned is set aside. Appeal is allowed. Matter is remitted back to the lower court to proceed afresh after framing alternative charge under section 302 IPC along with other allied section. Appellants are on bail which is hereby cancelled, directing them to surrender before the lower court within fortnight, failing which the lower court will proceed



against them in accordance with law. First and last page of the judgment should be given to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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