

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1950 of 2017**

Arising Out of PS. Case No.-67 Year-2015 Thana- PANAPUR District- Saran

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1. Ram Naresh Pandit, Son of Dinanath Pandit,
 2. Mankesh Kumar Pandit, Son of Ram Naresh Pandit,
 3. Bhagirathi Devi, W/o Ram Naresh Pandit, All Resident of Village- Betaura, P.S.- Panapur, District- Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 2259 of 2017

Arising Out of PS. Case No.-67 Year-2015 Thana- PANAPUR District- Saran

Sujit Kumar Pandit, Son of Ram Naresh Pandit, R/o Village- Betaura, P.S.- Panapur, District- Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1950 of 2017)

For the Appellant/s	:	Mr. Ajay Thakur-Advocate Mr. Nilesh Kumar-Advocate
For the Informant	:	Mr. Rananjay Kumar-Advocate Mr. Kumar Binode Bariar-Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh-A.P.P.

(In CRIMINAL APPEAL (SJ) No. 2259 of 2017)

For the Appellant/s	:	Mr. Ajay Thakur-Advocate Mr. Nilesh Kumar-Advocate
For the Informant	:	Mr. Rananjay Kumar-Advocate Mr. Kumar Binode Bariar-Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh-A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

23-04-2019

Cr. Appeal (S.J.) No.1950 of 2017 as well as Cr.



Appeal (S.J.) No.2259 of 2017 cropped up against the common judgment of conviction and sentence, on account thereof, have been heard together and are being disposed of by a common judgment.

2. Appellant Sujit Kumar Pandit (Cr. Appeal (S.J.) No.2259 of 2017 and appellants Ram Naresh Pandit, Mankesh Kumar Pandit and Bhagirathi Devi (Cr. Appeal (S.J.) No.1950 of 2017) have been found guilty for an offence punishable under Section 304B/34 of the I.P.C. and each one has been sentenced to undergo R.I. for ten years, under Section 201/ 34 of the I.P.C. and each one has been sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for six months, additionally vide judgment of conviction dated 30.05.2017 and order of sentence dated 02.06.2017 passed by the 9th Additional Sessions Judge, Saran at Chapra in connection with Sessions Trial No.341 of 2016.

3. Jitendra Prasad (PW-6) filed written report on 30.06.2015 alleging inter alia that his niece Rinki Devi daughter of his elder brother Bijendra Prasad has been married to Sujit Kumar, son of Ram Naresh Pandit of villlage-Betaura about three years ago and a son aged about two years namely Aanshu,



out of wedlock. Just after marriage, the accused persons began to demand Rs. One Lac as well as a golden chain and for that, they vexed his niece in order to procure the same from her parents. Whereupon, his niece used to inform them. On account of poverty, they were not able to fulfil the demand and in the aforesaid background, in the night of 29/30.06.2015, his niece has been murdered by her husband Sujit Kumar Pandit, in laws Ram Naresh Pandit, Bhagirathi Devi, Mankesh Kumar Pandit and Shila Kumari and further, in order to remove the evidence of crime burnt the dead body at the deserted brick-kiln of one Jai Prakash Singh. It has also been disclosed that they have received information from an unknown over mobile.

4. After registration of Panapur P. S. Case No.67 of 2015, investigation commenced and culminated by way of having the appellants on trial while Shila Kumari has been exonerated which concluded with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that deceased was suffering from so many disease including heart disease and for that, she was treated at



I.G.I.M.S., Patna, Sahyog Hospital, Patna as well as she was also treated at local level and to substantiate the same, two DWs have been examined including Dr. Raj Kishore Singh and further, got the relevant prescription an exhibit of the record.

6. Altogether ten PWs have been examined on behalf of prosecution viz. PW-1, Nagina Pandit, PW-2, Birendra Prasad, PW-3, Lila Devi, PW-4, Manish Kumar Prasad, PW-5, Shailesh Prasad, PW-6, Jitendra Prasad, PW-7, Navin Kumar Singh, PW-8, Ram Narayan Pandit, PW-9, Rangila Pandit and PW-10, Manoj Kumar Sah. Side by side, also exhibited as Exhibit-1, signature of informant over written report, Exhibit-2, written report, Exhibit-3, endorsement, Exhibit-3/1, formal F.I.R., Exhibit-4, seizure list. In likewise manner, two DWs have also been examined at the end of the defence namely DW-1, Dr. Raj Kishore Singh and DW-2, Lallan Pandit and had also exhibited as Exhibit-A series, the prescription issued by DW-1, Exhibit-B, the death certificate, Exhibit-C, signature of a doctor over ultra-sound report, Exhibit-D, the prescription issued by I.G.I.M.S. Patna, Exhibit-E, the prescription issued by Sahyog Hospital.

7. It has been submitted at the end of the learned counsel for the appellants that the judgment impugned is not at



all sustainable in the eye of law, because of the fact that none of the ingredients attracting conviction under Section 304B of the I.P.C. is found duly substantiated from the evidences having on the record. In order to justify the same, it has been submitted that first of all, conduct of the parties has to be seen. The marriage is three years prior to the date of occurrence. The informant PW-6 has stated that his last visit was one year prior to the date of occurrence. Had there been demand of dowry and for that, the deceased would have been treated with cruelty or torture, then in that circumstance, their presence would have been certainly during the intervening period. Having complete absence at the end of the prosecution to have their presence during the intervening period is indicative of the fact that neither there was demand nor deceased was subjected to torture. Apart from this, it has also been submitted that had there been demand followed with torture, then in that circumstance, the prosecution would have taken necessary legal steps to ward off such kind of activity, but again there happens to be silence at the end of the prosecution on that very score. Apart from this, the witnesses, on account of their contradictory statement made themselves unreliable, untrustworthy, incredible and so, over all perception did not justify the finding.



8. Contrary to it, it has been submitted that having presence of medical prescription of renowned institution of a State of Bihar i.e. I.G.I.M.S. is indicative of the fact that deceased was suffering from some sort of severe ailment since before and on account of poverty, the appellants could not succeed having treatment continued at that place. Though taken all sincere effort to have proper medical care at the local level, which DW-1, Dr. Raj Kishore Singh has properly substantiated, followed with issuance of death certificate at his end divulging the death due to ailment under his treatment and that being so, the obligation having over the accused in terms of Section 113B of the Evidence Act is found duly discharged. So, submitted that the judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

9. In an alternative, it has also been submitted that whole things happen to be connected one. In usual phenomenon, the prosecution party getting presence of an advocate at their end and for that, PW-6 had admitted, but with an explanation that happens to be his relative, in order to coerce, got this case filed suppressing the earlier version, which as is evident from the evidence of PW-1 is found duly exposed whereupon, the present F.I.R. happens to be inadmissible in the



eye of law on account of being hit by Section 162 of the Cr.P.C. So, the whole prosecution is found completely gutted down. In any view of the matter, the judgment impugned is non-sustainable in the eye of law.

10. On the other hand, learned Additional Public Prosecutor counter-meeting the submission having at the end of the appellants has submitted that prosecution happens to be fair. In likewise manner, from the judgment impugned, it is evident that all the points whatever been raised at the end of the appellants, at the present moment have already properly answered. That being so, nothing remains.

11. Apart from this, it has also been submitted that during the consideration of the defence witness, it is apparent that the documents whichever been exhibited, more particularly that of I.G.I.M.S. did not connect identity of the deceased to be the patient and in likewise manner, the Sahyog Hospital, which also, for want of examination of the treating doctor goes out of consideration, more particularly when the prescription did not find place with regard to registration of the aforesaid hospital in order to justify its existence. Coming to the remaining prescriptions, it has been submitted that DW-1 has come in order to rescue otherwise, when the same is tallied with



the prescription issued by the I.G.I.M.S. as well as Sahyog Hospital, its validity, genuineness, authentication go out of consideration. That means to say, the defence could not be able to discharge its obligation in accordance with Section 113B of the Evidence Act.

12. In the background of aforesaid status of the defence, now the case of the prosecution has to be seen in order to trace out whether all the ingredients so prescribed for attracting Section 304B of the I.P.C. has properly been brought up on the record. To justify the same, it has been submitted that death within three years of marriage that means to say, within seven years of marriage, the statutory period is admitted. None of the prosecution party was at the sasural of the deceased at the time of occurrence and so, they could not say what kind of methodology was used for commission of the dowry death of the deceased, but even accepting the version of the defence not admitted, she died otherwise than normal circumstance. Then, it has been submitted that with regard to demand of dowry and torture having meted out upon the deceased in order to facilitate the same by the husband and his family members is found duly substantiated. That being so, the judgment of conviction and sentence recorded by the learned lower Court is found in



accordance with law as well as is based upon the material available on the record. The same is fit to be confirmed.

13. Before coming to adjudicate upon the main issue, the ancillary events are to be noted down. Out of ten witnesses so adduced on behalf of prosecution, all the co-villager of the appellants namely PW-5, Shailesh Prasad, PW-7, Navin Kumar Singh, PW-8, Ram Narayan Pandit and PW-9, Rangila Pandit have gone volte-face to the prosecution, whereupon have been declared hostile. PW-10, Manoj Kumar Sah is the I.O. The material evidence remains that of PW-1, who happens to be the brother of the informant, uncle of the deceased, PW-2, father of the deceased, PW-3, mother of the deceased, PW-4, brother of the deceased and PW-6, the informant, the uncle of the deceased. Only family members have come forward to depose. Because of the fact that death occurred otherwise than normal circumstances within seven years of marriage are not under controversy, in likewise manner, dead body burning at the deserted brick-kiln of Jai Prakash Singh has also not denied, therefore, the evidences are to be seen relating to remaining ingredients of Section 304B I.P.C. In the present moment, it looks worthwhile to mention that appellants were alternatively charged under Section 302 I.P.C.,



whereunder they have been acquitted. The other infirmity so persisting on record is concerning non-examination of seizure list witness as well as non-production of seized articles having from deserted brick-kiln. Its impact will be seen later on.

14. PW-1 has deposed that his niece Rinki Devi was married with Sujit Kumar on 26.06.2012. After marriage, his niece had gone to her sasural where she spent few months in congenial atmosphere. Then thereafter, Naresh Pandit, Bhagirathi Devi, Sujit Kumar Pandit and Mankesh Kumar Pandit advanced demand of Rs. One lac as well as a golden chain. Because of the fact that they failed to fulfil the demand on account thereof, his niece was being subjected to torture. In the aforesaid background, they have committed murder of his niece on 29.06.2015. On that day, he was at his house where he received information through mobile. Thereafter, he along with his brother, other co-villagers gone to the sasural of his niece where they came to know that after committing murder in order to remove the dead body, burnt at the chaur. Identified the accused. During cross-examination at Para-4, he has stated that he could not get the identity of the person, who had informed him. He had not disclosed mobile number even to the police. He is not remembering the mobile number for the present. He had



not saved that mobile number and so, got deleted. In Para-5, he has stated that on the following day, they have gone to the place of his niece. He had informed regarding the events to his brother as well as neighbours. Then volunteered that information was received over mobile of his brother, who conveyed. On the same day, information was given to the police. In Para-6, he has stated that they have gone to the place at a distance of one kilometer East to the house where dead body was burnt. They have seen burnt dead body. The persons, who had accompanied him had also seen. Then, they have gone to police station where he had detailed the event, which was scribed by the I.O. over which, he had put his signature. In Para-7, he has stated that deceased had one son, who is presently aged about two years, is living with his grandmother. Then had denied the suggestion that Rinki Devi was suffering from heart disease and was being treated for the same. In Para-8, he has specifically stated that there was no talk with the accused persons with regard to ornaments and other items before institution of this case. Then has denied the suggestion that the deceased was suffering from heart disease as a result of which, she died. This case has purposely been filed in order to extract money.

15. PW-2 is the father of the deceased namely



Birendra Prasad, who has deposed that in between the night of 29/30.06.2015, while he was at Delhi, received information regarding murder of his daughter by an unknown person, whereupon he along with his brother had gone to the sasural of his daughter on 01.07.2015, had not found accused persons at their house. On query, neighbours have disclosed that after murdering his daughter, dead body has been burnt. Then has stated that his daughter was married with Sujit Kumar in the month of June, 2012. While his daughter was staying at her sasural, she remained in cordial atmosphere for 7-8 months. Then thereafter, Ram Naresh Pandit, Bhagirathi Devi, Sujit Kumar Pandit, Mankesh Kumar Pandit advanced demand of Rs. One lac as well as a golden chain. His daughter used to inform over mobile. He, times without number, requested them not to harass his daughter, but that gone unheeded. Lastly, he had gone there and requested, but they continued with inflicting cruelty and harassment over his daughter. Lastly, his daughter had informed, if he fails to pay Rs. One lac and a golden chain, the accused persons (so named) will not spare. He has further stated that on 27.06.2015, his daughter had informed that in case of non-payment, she would not be allowed to survive and lastly, in between 29/30.06.2015, his daughter has been murdered.



Identified the accused. During cross-examination, he has stated that his statement was recorded before the police. He has further stated that he got information in the night of 29.06.2015. He has further denied to have made statement before the police that in the morning of 30.06.2015, his daughter was murdered by strangulation by the accused persons. He has also denied to have made statement before the police that when he reached at the house of his daughter, he had seen father of his Samdhi, Vishundeo Pandit, who was sleeping at the darwaza. He has further denied to have made statement before the police that when he met with father of his Samdhi and inquired about his daughter, he had replied that your daughter has died. He has further stated that during course of statement before the police, he has stated that when he reached at the sasural of his daughter, none was present. In Para-10, he has stated that accused persons have demanded money from his daughter. They have not demanded cash or golden chain from him. He shown inability to divulge the exact date on which, he had gone to the place of his daughter in order to reconcile the matter. In Para-11, he has stated that he along with his brother conjointly gone. They have stayed for 10-15 minutes. In Para-12, he has stated that whenever they have gone and tried to talk, the accused persons



kept mum. At that very time, all the accused persons along with his daughter were present. He had not informed any authority. Then thereafter, he had not visited the place of his daughter. In Para-13, he had denied the suggestion that his daughter was suffering from heart disease, liver disease. He has denied the suggestion that his daughter was being treated at I.G.I.M.S. In Para-14, he has stated that there was no talk of compromise with the accused persons. He denied the suggestion that they have demanded hefty amount for compromising the case. Then has denied the suggestion that his daughter died of ailment and this case has falsely been instituted with ulterior motive.

16. PW-3 is the mother of the deceased. During her examination-in-chief, she has stated that deceased was her daughter, whose marriage was solemnized in the Year 2012 with Sujit Kumar Pandit. After marriage, she had gone to her sasural whether she lived in a congenial atmosphere for about 7-8 months. Then thereafter, there was demand of Rs. One lac as well as a golden chain at the end of Ram Naresh Pandit, Bhagirathi Devi, Sujit Kumar Pandit, Mankesh Kumar Pandit. Her daughter informed her on telephone. As they have not fulfilled the demand on account thereof, her daughter was subjected to cruelty and torture, even physically. Her daughter



had informed her that if they are not going to fulfil the demand, the accused persons will not spare her. She has further stated that on 27.06.2015, her daughter had requested her to fulfil the demand, otherwise she will be murdered by her sasuralwala. On 30.06.2015, she received information that her daughter has been murdered and her dead body has been burnt. This information has been over mobile of her husband. Identified the accused. During cross-examination at Para-5, there happens to be contradiction and is found duly corroborated by PW-10, Para-11 that after 7-8 months stay at her sasural Ram Naresh, Sujit, Bhagirathi, Mankesh began to assault. Further, on 27.06.2015, her daughter had informed that in case of non-fulfilment of demand, she will be murdered. Then has disclosed that her daughter had talked with her father (her husband), who communicated the same. She had further stated that she is not remembering whether anybody else was informed or not, but police was informed and then thereafter, police had gone to the place of her daughter. At that very time, she was at Delhi. In Para-6, she has stated that she had not gone to the sasural of her daughter. She was at Delhi. At the time when her daughter was subjected to torture. Police was informed, but what steps police had taken is known to her husband. In Para-7, she has stated that



her daughter was not being treated anywhere. Then has denied the suggestion that on account of heart disease as well as liver disease, her daughter was being treated at I.G.I.M.S. Patna and was admitted there. In Para-8, she has stated that her daughter had not sent any letter. Then has denied the suggestion that her daughter died on account of ailment and this case has falsely been instituted against the accused persons.

17. PW-4 is the brother of the deceased, who has deposed that deceased was his sister, who was married with Sujit Kumar Pandit in the month of June, 2012. After marriage, she had gone to her sausral where she enjoyed congenial atmosphere for about 7-8 months. Then thereafter, Ram Naresh Pandit, Bhagirathi Devi, Sujit Kumar Pandit, Mankesh Kumar Pandit advanced demand of Rs. One lac and a chain in lieu of dowry and for that, they began to harass. On 27.06.2015, his sister informed that in case of non-payment of Rs. One lac as well as chain, her sasuralwala will not spare her. In the night of 29.06.2015, somebody telephoned his father with regard to killing of his sister and getting the dead body burnt, whereupon he along with his father came from Delhi and gone to sasural of his sister on 01.07.2015, none was there. On query, the neighbours have disclosed that in the night of 29th, deceased was



done to death and then, her dead body was burnt. Identified the accused. During cross-examination at Para-4, he has stated that he is not remembering the mobile number of his sister. He could not say from which number his sister had telephonically informed his father. He has further stated that he is not knowing from which mobile number, they got information regarding killing of his sister on 29th. However, after getting the information, he along with his father and mother, uncle gone to the sasural of his sister. In Para-5, he has stated that he is unable to disclose the names of neighbours. He further stated that at the time of occurrence, he along with his father was at Delhi. He has further stated that accused persons were demanding Rs. One lac and a chain since before the occurrence. In Para-6, he has stated that he is unaware with the fact that his sister was ailing and was admitted in the hospital for treatment. In Para-7, he has stated that none had informed regarding her ailment. At Para-8, he has stated that he had made statement before the police that on 29.06.2015, they received information regarding murder of his sister and getting her dead body burnt duly corroborated by the I.O. (PW-10) Para-13. In Para-9, he has stated that he had talked with his uncle before institution of case. Then had denied the suggestion that whole allegations happen to be false and



frivolous, his sister died out of ailment.

18. PW-6 is the informant/ another uncle of the deceased. He has stated that deceased was his niece. She was married with Sujit Kumar Pandit in the month of June, 2012. After marriage, she had gone to her sasural where she enjoyed in congenial atmosphere for about 7-8 months. Then thereafter, Ram Naresh Pandit, Bhagirathi Devi, Sujit Kumar Pandit, Mankesh Kumar Pandit advanced demand of Rs. One lac and a golden chain and for that, they began to torture. Because of the fact that they failed to fulfil their demand on account thereof, the accused persons murdered his niece Rinki Devi and burnt her dead body. He has further stated that he received the information to this effect in the night of 29.06.2015, whereupon he along with his neighbour gone to sasural of Rinki where they have not seen any member. They have not seen Rinki. They made query from the villagers, who disclosed that Rinki has been murdered and her dead body has been burnt. Then, he had gone to police station where got the written report in the pen of Manoj Kumar Pandit at his dictation (exhibited). Identified the accused. During cross-examination at Para-5, he has stated that he is not remembering the mobile number by which he received information. In Para-6, has stated that accused persons had not



demanded money in lieu of dowry from him. He has further stated that he had gone to the place of deceased twice after the marriage, but exact date, he is not remembering. At each occasion, deceased had disclosed regarding the demand and torture having been at the hands of the accused persons, but he had not taken any legal recourse. He had gone to her sasural at third occasion only after her death. In Para-7, he has stated that his brother had telephonically informed from Delhi. As per instruction of his brother, he had gone to sasural of his niece on the following day. He stayed at the house of the accused for about two hours. He along with Nagina Pandit, Arun Sah and Mukesh Sah have gone there. He is unable to disclose the names of other persons from whom, they made query. He has further stated that written report was prepared at the police station itself. His one of the relative happens to be an advocate. He had drafted the application. He had put his signature. In Para-8, he has stated that his niece was not suffering from heart deceased. He is not knowing whether deceased was examined at Maharajganj, Chapra, Sahyog Hospital, Patna and I.G.I.M.S. Hospital Patna. He further denied that during course of treatment, she died. He further denied that Sarpanch and other respectable persons of the locality have informed the police that



she died of ailment. He has further stated that Rinki Devi had begotten a son, who is aged about 2 1/2 -3 years. He resides with his grandmother. They have not yet deliberated whether aforesaid child should be kept by them or not. Then has denied that they have talked with accused persons with regard to ornaments. He denied the suggestion that deceased died of ailment and this case has been falsely instituted with ulterior motive.

19. PW-5 Shailesh Prasad, PW-7, Navin Kumar Singh, PW-8, Ram Narayan Pandit, PW-9, Rangila Pandit are the co-villagers of the appellants and in usual phenomenon, they became hostile as they did not support the case of the prosecution during course of trial. However, during course of cross-examination, PW-5 has stated that deceased died on account of heart as well as liver disease for which, she was treated and during course of treatment, she died. Her funeral was performed as per ritual. She was being kept at her sasural in good congenial atmosphere. PW-7, during cross-examination has stated that he is unable to say whether deceased while staying at her sasural lived in congenial atmosphere or not. PW-8, during cross-examination had stated that Rinki Devi, deceased was suffering from some sort of ailment, but he is



unable to say, how she died. PW-9 has stated that deceased had died on account of ailment.

20. PW-10 is the I.O., who has deposed that on 30.06.2015, he was Officer-in-Charge of Panapur Police Station. On the written report of Jitendra Prasad, Panapur P. S. Case No.67 of 2015 was registered and then, took up investigation (Exhibited the other documents). After taking up of investigation, he proceeded towards P.O., which happens to be the house of accused Ram Naresh Pandit lying at village-Betaura having boundary:-

North-Darwaza of accused and then, road.

South- Barren land of Jai Prakash Singh.

East- Ram Narayan Pandit.

West- House of Mukhtar Pandit.

In Para-3, he has stated that the place where the dead body was burnt, happens to be the deserted brick-kiln of Jai Prakash Singh. They have gone there and seized burnt bone, ash, parts of bamboo. One pair Payal was recovered and for that, seizure list was prepared in presence of Dinanath Pandit and Mokhtar Pandit (Exhibited), recorded further statement of the informant, statement of the witnesses and then, his attention was drawn up towards the previous statement of the witnesses, who have turned hostile. After completing the investigation, submitted



chargesheet. During cross-examination, he has stated that all the seized articles have been kept in P.S. Malkhana. He had not sent the burns to the Forensic Science Laboratory in order to ascertain whether the dead body happens to be that of female or male. Paras-11, 12, 13 contradiction relating to witnesses Lila Devi, Birendra Prasad, Manish Kumar Pandit. Then has denied the suggestion that he had investigated the case in perfunctory manner.

21. DW-1, Dr. Raj Kishore Singh, who has come to depose that on 02.03.2015, he had examined Rinki Devi, wife of Sujit Kumar Pandit. She was suffering from some kind of liver disease. On 06.02.2015, he had prescribed test. Further stated that she was treated on 08.04.2015, 11.05.2015, 13.06.2015, 18.06.2015. He had further stated that Rinki Devi died during course of treatment and for that, he had issued certificate (Exhibited). He has further stated that deceased was also treated at Sahyog Hospital Patna, I.G.I.M.S. Patna. During cross-examination, he has stated that he happens to be physician as well as surgeon, as he has got M.B.B.S. Degree. He has stated that clinic belongs to Rajesh Kumar Gupta and he used to visit on call. In Para-9, he has stated that pathological examination was not conducted in his presence. Then has denied that though



he had not mentioned that he had issued certificate on a request of guardian of the deceased, but he had issued the same on such request.

22. DW-2 is a relative of the appellants, who has come to depose that deceased was suffering from heart disease as well as liver disease and on account thereof, her treatment was provided at the I.G.I.M.S. as well as Sahyog Hospital (Exhibited). During cross-examination at Para-4, he has admitted that marriage was solemnized in the Year 2012. He is not remembering the date, month, year of the death of deceased. In Para-5, he has stated that for the first time, he has seen the signature of Dr. V. Verma, in likewise manner, Dr. Sandeep Kumar of Sahyog Hospital.

23. In order to constitute a dowry death, the prosecution is under obligation to substantiate following ingredients:-

A) Death should be within seven years of marriage.

B) By bodily injury, burnt or otherwise than normal circumstance.

C) Soon before her death, deceased was subjected to torture or harassment for demand of dowry or,

D) At the end of husband or relative of her husband.

24. After satisfying the aforesaid ingredients, in



terms of Section 113B of the Evidence Act, it will be presumed to be a dowry death and in the aforesaid eventuality, such presumption is liable to be rebutted at the end of the accused. Furthermore, it is also settled at rest by catena of decisions that there should not be straight jacket formula in appreciating as well as adjudging the time schedule relating to soon before death rather it should be seen in the background of facts of the individual case and so, it has to construe independently in the background of facts of each case. Now, after discussing the evidences having led at the end of the prosecution as well as defence, it has to be seen whether prosecution has substantiated its case or not and if so, to what extent the defence has been able to rebutt. At the present moment, it should not be lost sight of that the activity of the defence is found only to the extent of preponderance of probabilities. Defence is not at all faced with same measurement than, that of prosecution.

25. It is needless to say that death is admitted and as it appears otherwise than normal circumstance. In likewise manner, within seven years of marriage as apart from prosecution witnesses, DW-2 has also admitted that marriage was solemnized in the Year 2012 and death is of 29.06.2015, approximately three years after the marriage. So, certainly



within seven years of marriage. Now, the remaining two ingredients have to be seen that means to say, soon before her death, she was subjected to torture by her husband or relative of the husband. There happens to be consistent evidence of the PW-2, the father, PW-3, mother and PW-4, the brother that PW-2 had received telephonically information at the end of the deceased on 27th that if they are not going to fulfil the demand of dowry to a tune of Rs.One lac as well as a golden chain a demand persisting since before, then in that circumstance, her sasuralwala is not going to allow her to live. As is evident, PW-2, father has not been cross-examined on that very score. He was not cross-examined whether his daughter had got mobile phone or not and if so, the mobile number. Being father, he was the fit person to answer, but defence though tested from mother, but did not dare to cross-examine him. He has not been cross-examined whether from Delhi, he visited the place or not and with regard to demand of dowry, from his daughter/ deceased as during cross-examination at Para-10, he had categorically stated that accused persons were demanding from her daughter. Accused persons had not demanded from him. Furthermore, from Para-12, it is evident that he had categorically stated that he had not informed anybody nor any official with regard to



demand of dowry as well as police. The activity of the accused is found further exposed from cross-examination at Para-14 whereunder accused has tendered a question whereupon he answered, he has not talked with accused for compromise. Then has denied the suggestion that he was demanding hefty money for compromising the case. In likewise manner, PW-1, his brother (uncle of the deceased) has not been tested. PW-3, mother of the deceased, during cross-examination at Para-5 had categorically stated that information was received by PW-2, father of the deceased by the deceased. On her own, she had stated that the police was informed, police had gone to the victim. At that very time, she was at Delhi, what action police had taken is known to her husband, however, no cross-examination over the demand. PW-4, the brother, during cross-examination at Para-5 has stated that accused persons were demanding Rs. One lac and a golden chain from his sister since before the occurrence. PW-6, informant during course of cross-examination at Para-6 had stated that accused persons have not demanded dowry from him.

26. Now, coming over the evidence of defence. There happens to be Exhibit-D, the prescription issued by I.G.I.M.S. (outdoor patient, cardiology) wherefrom it is evident



that it happens to be relating to patient Rinki Devi and at the place of father, husband name, there happens to be remark 'self'. The first endorsement happens to be dated 11.03.2015 and the second dated 25.03.2015. So many test have been prescribed, but none of the same has been made available. The second happens to be Exhibit-E, the O.P.D. Card allegedly of Sahyog Hospital, it is dated 20.03.2015, that means to say, when the patient was examined on 11.03.2015 and at second time on 25.03.2015 I.G.I.M.S. then how in between, she came to Sahyog Hospital on 20.03.2015 without having any reference that she was ever examined at I.G.I.M.S. Patna on 11.03.2015. Exhibit-A series happen to be the prescription issued by DW-1 and the first one is of dated 03.02.2015 that means to say, before examination at I.G.I.M.S. wherein liver disease has been shown while the patient was examined at Cardiology Department at I.G.I.M.S. Then there happens to be a different reports and again happen to be the prescription dated 08.04.2015, the diagnosis differ from whatever been under the I.G.I.M.S., without any reference thereof, 11.05.2015, 13.06.2015, 18.06.2015, then the death certificate dated 29.06.2015.

27. It is settled principle of law that evidence in its totality is to be seen. Furthermore, in *Gian Chand & others vs.*



State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.), it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as



regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

28. The deficiency having at the end of the prosecution that by which mobile number prosecution party was informed and by whom, is not at all found fatal to the prosecution case in the background of the fact that accused persons have not claimed that they have informed the prosecution party, who have visited the place, participated during course of funeral and then thereafter, this case has been



instituted with ulterior motive rather, case was instituted on 30.06.2015 and from the certificate, it is evident that 29.06.2015, death had occurred that means to say, presence of prosecution party at the place of accused persons was on account of some sort of information regarding death of the deceased and as the accused persons/ appellants have not claimed that they have informed, then in that circumstance, somebody else was there, who had informed. Apart from this, though defence had not cross-examined why not demand was made from the elders as the father and the uncle/ informant (PW-6) have categorically stated that no demand was made from them, but with regard to demand from the deceased and torture having inflicted on that very score, has not been properly tested and so, that part of evidence remained intact. The evidence having led in rebuttal as discussed hereinabove speaks a lot with regard to activity of the appellants and further, also cast doubt over its reliability.

29. Consequent thereupon, these appeals fail and are dismissed. Appellants Ram Naresh Pandit, Bhagirathi Devi and Sujit Kumar Pandit are under custody, which they will remain till saturation of the period while appellant Mankesh Kumar Pandit, who is on bail on account thereof, his bail bond



is hereby cancelled directing him to surrender before the learned lower Court within fifteen (15) days, failing which learned lower Court will be at liberty to proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

vikash/-

AFR/NAFR	A.F.R.
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