

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 805 of 2002

- Ashok Kumar S/o Arjun Lal Aged about 29 years Village Kosmanda, P.S. Champa, District Janjgir Champa

---- Appellant

Versus

- State of Chhattisgarh

---- Respondent

For Appellant : Shri G.S. Ahluwalia, Advocate

For Respondent/State : Ms. Madhunisha Singh, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

21.11.2019

1. This appeal arises out of the judgment of conviction and order of sentence dated 22.07.2002 passed by the Fourth Additional District Judge (FTC), Janjgir (C.G.) in Sessions Trial No. 360/2001, whereby, the appellant stands convicted and sentenced as under:-

<u>Conviction:</u>	<u>Sentence:</u>
Under Section 304B of the Indian Penal Code (hereinafter referred to as the 'IPC')	Rigorous imprisonment for ten years and pay a fine of Rs.500/-, in default of payment to further undergo rigorous imprisonment for two months
Under Section 306 of IPC	Rigorous imprisonment for seven years and pay a fine of Rs.500/-, in default of payment to further undergo rigorous imprisonment for two months
Under Section 201 of IPC	Rigorous imprisonment for three years and pay a fine of Rs.250/-, in default of payment to further undergo rigorous imprisonment for one month
All sentences run concurrently	

2. Case of the prosecutions is that marriage of appellant Ashok Kumar was solemnized with deceased Laxmin Bai on 07.07. 1997 at village Kosmanda, District

Janjgir-Champa. After marriage one boy was born out of their wedlock. The deceased died on 07.03.2001 within 3 years and 8 months of her marriage. The funeral was done in the presence of appellant's family and parental family of the deceased alongwith villagers. After funeral, Ex.-P/6 written complaint was made by PW-5 Balram, father of deceased, to S.H.O., Champa which was reduced in writing in Roznamcha Sahana No. 523 dated 11.03.2001 against the appellant and his family members regarding treating the deceased with cruelty for demand of dowry. On 12.03.2001 at about 16:40 hours, merg intimation (Ex.-P/7) was lodged by PW-5 Balram. After merg enquiry, FIR (Ex.-P/19) was registered on the same day i.e. 12.03.2001 under Sections 306 & 201 read with Section 34 of IPC by Sub Inspector of Police Station – Champa.

3. On the basis of merg intimation (Ex.-P/7) and the F.I.R. (Ex.-P/19), the Investigating Officer gave notice (Ex.-P/1) to the *Panchas* and prepared inquest (Ex.-P/2). As per seizure Ex.-P/4, burnt soil and ash were seized from where the body of the deceased was cremated. Seized burnt soil and ash were sent for FSL examination vide Ex.-P/10. During Investigation statements of the witnesses were recorded which revealed that after marriage and prior to death of the deceased, she was being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry as a result of which she committed suicide by consuming poisonous substance.

4. After completion of usual investigation, charge-sheet was filed against appellant Ashok Kumar (husband/A-1), Shyamlata (sister-in-law/*Jethani*/A-2), Madan @ Puranik (brother-in-law/A-3), Kanahaiya Lal (brother-in-law/A-4), Rukmin Bai (mother-in-law/A-5) and Arjunlal (father-in-law/A-6) under Sections 304-B & 201 read with Section 34 of IPC. The trial Court framed charges under Sections 304-B, 306 & 201 of IPC against the accused persons, which were denied by them, they pleaded innocence and prayed for trial.

5. So as to hold the accused persons guilty, the prosecution examined as many as 16 witnesses. Statements of the accused persons were also recorded under

Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence for false implication and in their defence, no witness has been examined.

6. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment while acquitting Shyamlata (A-2), Madan @ Puranik (A-3), Kanahaiya Lal (A-4), Rukmin Bai (A-5) and Arjunlal (A-6) of all the charges, convicted and sentenced the accused/appellant as mentioned in para-1 of this judgment.

7. Learned counsel for the appellant submits as under:

- That there is nothing on record on the basis of which it could be considered that Laxmin Bai died on 07.03.2001 in suspicious condition. The evidence on record does not reveal cause of death of the deceased. Therefore, it is not established that the deceased committed suicide.
- That on 07.03.2001 dead body of the deceased was cremated in presence of mother Sumitra Bai (PW-4), father Balram (PW-5), brother Vishram Prasad (PW-7) and other relatives of the deceased. At that time, nobody had raised any suspicion regarding death of the deceased.
- That from the statement of the prosecution witnesses it is quite clear that there has never been any demand of dowry on the part of the appellant or his family members from the deceased or her family members at any point of time.
- That before the death of deceased, no report was made by the parental members of deceased to the police regarding cruelty or harassment by the appellant or his family members to the deceased nor any social meeting was ever convened in this regard.
- That almost all the witnesses have deposed that when death of deceased was found to be natural, the villagers and the relatives of the deceased advised to perform funeral rites and all of them were present and did not

whisper a single word that the death was unnatural.

- That the charges under Sections 304B & 306 of IPC are not made out and the prosecution has utterly failed to adduce any reliable evidence to prove the charges.
- That as regards the offence under Section 304B of IPC, the basic ingredients for attracting this offence i.e. soon before her death she was subjected to cruelty, is missing in this case.
- That presumption as to dowry death would only get activated upon the proof of the fact that the deceased was subjected to cruelty or harassment for or in connection with any demand of dowry by the accused and that too, in the reasonable contiguity of death.
- That on the same set of evidence available on record, other co-accused namely Shyamlata (sister-in-law/Jethani/A-2), Madan @ Puranik (brother-in-law/A-3), Kanahaiya Lal (brother-in-law/A-4), Rukmin Bai (mother-in-law/A-5) and Arjunlal (father-in-law/A-6) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State.

Reliance has been placed on the decisions of the Hon'ble Supreme Court in the matter of **Gurdeep Singh v. State of Punjab and Ors., AIR 2011 SC 3616**; **State of Karnataka v. Dattaraj and Ors., 2016 CRI.L.J. 1434 (SC)** and the decision of Patna High Court in the matter of **Shivnath Sahni and Anr. v. State of Bihar, 2019 CRI.L.J. 793**.

8. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the accused/appellant is proved to have meted out ill-treatment to the deceased, who was forced to commit suicide within 3 years & 8 months of her marriage and therefore, the accused/appellant has rightly been convicted and sentenced by the learned trial Court.

9. Heard counsel for the respective parties and perused the material on record.

10. In the present case, the deceased Laxmin Bai died on 07.03.2001 in her matrimonial house and her funeral was done on the same day in presence of appellant's family and the parental family of the deceased alongwith villagers of village Kosmanda. After the funeral of the deceased was done, Ex.-P/6 written complaint made by PW-5 Balram, father of the deceased on 09.03.2001. On the basis of this written complaint, merg intimation (Ex.-P/7) was lodged on 12.03.2001 and on the same day F.I.R. (Ex.-P/19) was also registered alleging that after marriage and prior to death of the deceased, the deceased was being subjected to cruelty and harassment by the accused/appellant and his family members or his relatives for demand of motorcycle, TV and cooler as dowry as a result of which she committed suicide by consuming poisonous substance. While funeral rites were going on, mother Sumitra Bai (PW-4), father Balram (PW-5), brother Vishram Prasad (PW-7) and other relatives of the deceased were also present, but they had not raised any objection that the deceased died unnatural death, regarding any demand of dowry and she was being subjected to cruelty and harassment by the accused/appellant and his family members.

11. In this case, it is not in dispute that marriage of the deceased Laxmin Bai was solemnized with appellant Ashok Kumar on 07.07.1997 and she died in her matrimonial home on 07.03.2001. For bringing home offence under Section 304 of IPC, the following ingredients are required to be proved beyond reasonable doubt:

- (i) death of the woman concerned is by any burns of bodily injury or by any cause other than in normal circumstances and
- (ii) is within seven years of her marriage and
- (iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The explanation to this Section exposts "cruelty" as:

- (i) any willful conduct which is of such a nature as is likely to drive the

woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. So far as offence under Section 304B of IPC is concerned, the first two ingredients i.e. death of the woman concerned by burn injury or by cause other than in normal circumstances within seven years of her marriage have undoubtedly been proved by the prosecution. However, now it is to be seen from the evidence on record whether the third ingredients i.e. soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry, has been proved by the prosecution or not.

13. Section 113B of the Evidence Act enjoins a statutory presumption as to dowry death in the following terms:

“113B. Presumption as to dowry death. – When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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 purpose of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)”

Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily

ordained presumption of commission of the offence of dowry death by the person charged therewith.

14. Keeping in view the above settled legal position, this Court proceeds to appreciate the evidence, oral and documentary, available on record.

15. In this case, all the family members of the appellant i.e. Shyamlata (sister-in-law/*Jethani*/A-2), Madan @ Puranik (brother-in-law/A-3), Kanahaiya Lal (brother-in-law/A-4), Rukmin Bai (mother-in-law/A-5) and Arjunlal (father-in-law/A-6) including appellant (husband/A-1) were reported to have committed cruelty against the deceased in connection with demand of dowry, thereby compelling her to commit suicide.

16. The prosecution case is mainly based on oral evidence of PW-4 Sumitra Bai (mother of the deceased), PW-5 Balram (father of the deceased) and PW-7 Vishram Prasad (brother of the deceased).

17. During investigation, burnt soil and ash were seized from where the body of the deceased was cremated vide Ex.-P/4 and were sent for FSL examination vide Ex.-P/10. But till now no any FSL report was submitted by the prosecution that the deceased died natural or unnatural death and no postmortem examination was conducted on the body of the deceased.

18. It is not disputed by the parties that on the same set of evidence, co-accused Shyamlata (A-2), Madan @ Puranik (A-3), Kanahaiya Lal (A-4), Rukmin Bai (A-5) and Arjunlal (A-6) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State. In these circumstances, the evidence on record needs to be scrutinized with great care and caution to see whether the prosecution has been able to prove guilt of the appellant/husband beyond all reasonable doubt.

19. PW-1 Chhatram, who is resident of village Kosmanda, has proved the notice (Ex.-P/1), inquest (Ex.-P/2) and seizure (Ex.-P/4). He admits, in para-5 that the

village Sarpanch Kamod (PW-3) was also present in funeral of the deceased. He further admits, in para-6, that the mother, father, brother and other relatives of the deceased had attended the funeral and it had been done with the permission of parental members of the deceased and the village Sarpanch and he did not tell that the deceased has consumed any poisonous substance. In para-7, he admits that the accused persons are reputed persons of their society and they were keeping the deceased well. PW-1 did not say about the deceased being subjected to cruelty and harassment by the appellant or his family members.

20. PW-2 Manharan, who is resident of village Kosmanda, did not support the prosecution case.

21. PW-3 Kamod Kumar, who belongs to the Village Kosmanda where the deceased was residing with her husband and his family members, has stated that Balram (PW-5), father of the deceased, resident of village Khokhra, is of his society and is an eminent person, therefore, he (PW-3) know to him (PW-5). PW-3 has stated in para-3 that on the day when Laxmin died, Bharat (son of Arjun-A-6) came to his home and informed that the deceased died on account of pain in her stomach. Then, he went to the house of deceased and saw that many persons were present there alongwith father, mother and brother of the deceased. After seeing the body of deceased, the father of the deceased told him (PW-3) that he did not want to lodge any report. PW-3, in para-5, has stated that the funeral of the deceased had been done. In para-13, he stated that after 3-4 days of incident, the police personnel called him in police station and during investigation, he told the police that the father of the deceased and his relatives found natural death of deceased and advised for funeral and he also participated in funeral of the deceased. Prior to funeral of the deceased, PW-3 told the father of the deceased (PW-5) that if you (PW-5) have any suspicion for death of the deceased, you can lodge the report, I (PW-3) am with you (PW-5), but the persons who had come from Khokhra village said that we would not lodge any report. In para-14, PW-3

has stated that on the day of *Tijhawan* (3rd day of ritual of the deceased) near Bhelwa pond, he was present with the father of the deceased and his family members, but at that time, the family members of the deceased did not complain regarding death of the deceased. In para-16, he has stated that appellant Ashok Kumar was doing the work of driver and he kept his wife and child happily.

22. PW-4 Sumitra Bai, mother of the deceased, has stated that after 4-6 months, the deceased came with her husband to parental home and told her that on account of less dowry being given, the family members of the appellant are ill-treating her. Thereafter, she (PW-4) and her husband (PW-5) had gone to village Kosmanda and convinced the family members of in-laws of the deceased and thereafter they (PW-4 and PW-5) returned. PW-4 has stated that when her son Bhuneshwar had gone to village Kosmanda to take her sister, the accused persons did not send her daughter. On the 3rd day, Puranik (brother-in-law of deceased/A-3) and one village boy Manik came to her house at about 05:00 am from village Kosmanda and they told that Laxmin Bai is not feeling well and on this information, her (PW-4) another son Vishram Prasad (PW-7) had gone to village Kosmanda along with Puranik (brother-in-law of deceased) and one village boy Manik. Thereafter, she (PW-4) and her husband (PW-5) were also going to village Kosmanda and on the way, her son Vishram Prasad was coming from village Kosmanda and he told them that Laxmin Bai has died. After receiving this information regarding death of the deceased, PW-4 fell unconscious. In para-10, she stated that Kamod (PW-3), who is Sarpanch of village Kosmanda, is her relative.

23. PW-5 Balram is father of the deceased. He has stated in paras-2 & 3 that after 1 ½ years of marriage of his daughter, she informed him that on account of not giving the motorcycle, TV, cooler at the time of marriage, she was being subjected to cruelty and harassment by the accused persons and his family members for demand of dowry. He stated that 2-3 months prior to incident, his son Bhuneshwar

had gone to Kosmanda for taking his (PW-5) daughter, but the in-laws of the deceased had not sent the deceased. After about 2 months of this incident, Puranik (A-3) and one village boy Manik came on motorcycle to his house (village Khokhra) at about 05:00 am from village Kosmanda and they told that Laxmin Bai is not feeling well and they proceeded to go to Mission Hospital. Then, his another son Vishram (PW-7) was sent to Kosmanda by him alongwith them. Thereafter, he (PW-5) and his wife (PW-4) were also going to Mission Hospital and on the way, his son Vishram Prasad met them and he told them that Laxmin Bai has died. In para-10, he has stated that one girl from his village was also married in village Kosmanda and when she ever met him, she would not tell that the appellant was not keep Laxmin Bai well. In para-11 of his evidence, he has stated that whenever appellant used to come to his house, he (appellant) never demanded money for starting business or for purchasing motorcycle and the appellant was aware of the fact that he (PW-5) has no money but he (PW-5) is reputed person. In para-18, he has stated that Kamod (PW-3) told him that if you have any suspicion, then you can lodge the report.

24. PW-7 Vishram Prasad is the brother of deceased Laxmin Bai. He stated that after 4-6 months of marriage, the deceased had come to his house and told that the accused persons were telling her for bringing motorcycle, TV and cooler and in the event of not bringing the same, they used to ill-treat and beat her. He has stated that on 07.03.2001 at about 05:00 am, her sister's brother-in-law Puranik (*dewar*) and one Manik had come to his house by motorcycle and told that his sister is not well, therefore, they have come to bring him (PW-7). Thereafter, he went alongwith them by sitting on their motorcycle first to B.D. Mahant Hospital from where they went to Mission Hospital Champa, but his sister was not admitted in the hospital and then they went to village Kosmanda and saw that her sister was lying dead in *Parchi*. Then, he was going back to inform this to his parents by bus and on the way Champa Mission Road seeing his parents, he stopped the bus and called his

father and informed about the death of Laxmin Bai. He stated that hearing the information of death of Laxmin Bai, his mother fell unconscious. Then he again went to village Kosmanda by Luna and their parents also went to village Kosmanda by Rickshaw, where Arjun (A-6) told that Laxmin bai died on account of stomach pain and vomiting. PW-7 stated that at the time of funeral of deceased was going on, he and his parents were also present. PW-7 has also stated in para-7 that on 09.03.2001 after the funeral, he and his father Balram (PW-5) alongwith others have submitted written complaint in police station Champa.

25. PW-9 Badri Prasad who is the resident of village Khokhra where the parental members of the deceased resides, has stated in para-1 of his evidence that marriage of her daughter Jamuna Bai was also performed in village Kosmanda. He has stated that when he had gone to the house of his daughter, his daughter informed that accused persons were ill-treating Laxmin Bai for dowry as told by Laxmin Bai herself. In para-3, PW-9 has admitted that whenever he went to village Kosmanda to meet her daughter Jamuna Bai, she never told him about Laxmin Bai and appellant Ashok Kumar.

26. I have gone through the judgments relied upon by learned counsel for the appellant wherein the settled principles of law has been reiterated that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to bring home charge under Section 304B or 498A of IPC and presumption under Section 113B of Evidence Act can be invoked only when the prosecution proves beyond all reasonable doubt that soon before her death the deceased was subjected to cruelty or harassment in connection with dowry demand.

27. So far as dowry death and husband or relative of husband of a woman subjecting her to cruelty are concerned, in **Major Singh and Another v. State of Punjab, (2015) 5 SCC 201**, the Hon'ble Supreme observed that:

“The prosecution has not examined any independent witness

or panchayatdars to prove that there was demand of dowry and that the deceased was subjected to ill-treatment. The fact that the deceased was subjected to harassment or cruelty in connection with the demand of dowry by the appellant parents-in-law is not proved by the prosecution. Also, the courts below acquitted all the accused under Section 498-A IPC. Further, subsequent conduct of PWs 1 and 3, raises serious doubts about their presence in the house of the accused at the time of occurrence and witnessing the accused dragging the deceased. They did not raise any alarm nor tried to chase the accused and that PW 1 did not inform anyone in the village of the accused, is quite unnatural conduct. Except the demand of scooter, there is nothing on record to substantiate the allegation of dowry demand. Assuming that there was demand of dowry, it can only be attributed to the husband of the deceased, who in all probability, could have demanded the same for his use. In absence of any evidence that the deceased was treated with cruelty or harassment in connection with the demand of dowry "soon before her death" by the appellants, their conviction under Section 304-B IPC cannot be sustained. The courts below have not analysed the evidence in the light of the essential ingredients of Section 304-B IPC. Hence, the conviction of the appellants under Section 304-B IPC is reversed".

28. Likewise, in ***Bajjnath and Others v. State of Madhya Pradesh, (2017) 1 SCC 101***, the Hon'ble Supreme Court held that:

"Mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Ss. 304-B and 498-A and only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under S. 113-B can be invoked. In the cited case, the prosecution failed to prove beyond reasonable doubt cruelty or harassment meted out to deceased for dowry demand soon before her death. Alleged demand centred around motorcycle which admittedly did not surface at time of finalisation of marriage, and which demand allegedly lingered on for about two

years but no complaint in respect thereof was made to anyone. On the contrary, testimonies of DWs were consistent to the effect that no demand as imputed was ever made nor was there any quarrel over the issue, which was also corroborated by PWs 3 and 7. Besides, benefit in deficiency of proof as to precise cause of death i.e. whether it was homicidal/suicidal, and origin and cause of external injuries would enure to benefit of accused. Prosecution failed to prove crucial ingredient of cruelty and harassment by direct and cogent evidence thereby disentitling itself to benefit of statutory presumption under S. 113-B. In this view of the matter, the impugned judgment convicting the appellants was set aside”.

29. So far as abetment of suicide is concerned, in ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618***, it has been observed by the Supreme Court as under:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73*, this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. It is transpires to the court that a

victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.”

30. Further, it is observed by the Supreme Court in ***Gangula Mohan Reddy v. State of Andhra Pradesh, AIR 2010 SC 327*** as under:

“20. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

21. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under section 306, IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

31. In ***M. Mohan v. State Represented By The Deputy Superintendent of Police, (2011) 3 SCC 626***, the Supreme Court, by the following observation, has clearly held that in order to convict a person under Section 306 IPC there has to be clear *mens rea* to commit the offence:

“45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into

such a position that he/she committed suicide.”

32. I shall now examine the evidence available on record of the instant case in the light of the above observations of the Supreme Court.

33. It is clear that the dead body of Laxmin Bai had already been cremated and, therefore, postmortem examination on her body could not be conducted. Though burnt soil and ash of the dead body were seized from the spot where the body was cremated and was sent to the FSL for chemical examination, no FSL report is available on record. While the funeral of the deceased was going on, none of the relatives of the deceased including PW-4 Sumitra (mother of the deceased), PW-5 Balram (father of the deceased) and PW-7 Vishram Prasad (brother of the deceased) had raised any suspicion about the death of the deceased and there are material omissions and contradiction in the statements of PW-4, PW-5 & PW-7. From the evidence adduced by the prosecution, mode of death of the deceased is not established. It was a suicidal death or was natural death is not established. The deceased had consumed poisonous substance has also not been established. There is nothing on record on the basis of which it could be established that the deceased was continuously instigated to commit suicide as defined in Section 107 of IPC.

34. The deceased died on 07.03.2001 and it has come in evidence of PW-5 Balram in para-14 that the written report (Ex.-P/6) was made on 09.03.2001 to SHO Champa i.e. after 2 or 3 days. If the deceased was being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry as a result of which she committed suicide by consuming poisonous substance, as to why PW-4 Sumitra Bai (mother), PW-5 (father) and PW-7 (brother) of the deceased kept silence for 2 or 3 days. It has also come in the evidence of PW-5 and PW-7 that one girl Jamuna Bai (daughter of PW-9) also went to village Kosmanda after her marriage, but, Jamuna Bai has not been examined by the prosecution for the reasons best known to it. If we look into the evidence of PW-1

Chhatram, PW-2 Manharan and PW-3 Komod Kumar, who are residents of village Kosmanda where the deceased and her husband (appellant) were residing, they are not saying about the deceased being subjected to cruelty and harassment by the accused/appellant and his family members for demand of dowry. Only general and omnibus allegations regarding demand of dowry have been leveled by the father, mother and brother of the deceased. No specific date, time or place has been mentioned by them in this regard. Prior to death of deceased, they admit that no report was made by them to the police against the accused persons regarding demand of dowry, no notice was ever given to them and also no social meeting was convened in this respect.

35. Though, in the instant case, the death of deceased Laxmin Bai admittedly took place within seven years of the marriage, otherwise than under normal circumstances, i.e. by commission of suicide by Laxmin Bai, but, there appears to be no reliable evidence that the accused/appellant had subjected her to cruelty or harassment in connection with demand for dowry or otherwise. In these circumstances, presumption under Section 113B of the Evidence Act cannot be invoked as there is nothing on record to show that soon before her death the deceased was subjected to cruelty/harassment in connection with demand of dowry. The evidence adduced on behalf of the prosecution is not sufficient for drawing inference that the appellant has committed torture and cruelty upon the deceased in connection with demand of motorcycle, TV & cooler as dowry.

36. On the same set of evidence, other accused persons namely Shyamlata (sister-in-law/Jethani/A-2), Madan @ Puranik (brother-in-law/A-3), Kanahaiya Lal (brother-in-law/A-4), Rukmin Bai (mother-in-law/A-5) and Arjunlal (father-in-law/A-6) have been acquitted of all the charges by the trial Court and no appeal against their acquittal has been preferred either by the complainant party or the State and as such, the judgment of their acquittal has attained finality. There is also no evidence against the appellant proving his involvement in the crime in question. Though the

manner in which the incident occurred raises suspicion against the appellant but it is a well settled principle of law that graver the offence is, higher is the degree of proof and the suspicion howsoever strong, cannot take the place of proof. In this case the prosecution has failed to prove guilt of the appellant beyond all reasonable doubt and being so, the benefit of doubt has to be credited to the appellant, thereby entitling him of acquittal of all the charges.

37. In view of the discussion made above and keeping in view of the above cited judgments of the Hon'ble Supreme Court, the conviction of the appellant under Sections 304B, 306 & 201 of IPC cannot be sustained in the absence of any evidence to show that the deceased committed suicide because of dowry harassment. Hence, the conviction of the appellant under Sections 304B, 306 & 201 of IPC is liable to be set-aside and he is entitled to be acquitted of the said charges.

38. In the result, the appeal is allowed. Conviction and sentence imposed on the appellant under Sections 304B, 306 & 201 of IPC are set aside and he is acquitted of the said charges. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of the provisions of Section 437A of Cr.P.C.

Sd/-
(Gautam Chourdiya)
Judge