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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved On: 15.07.2019
Judgment Pronounced On: 30.08.2019

CRL.A.1199/2012

Gadadhar Panda

..... Appellant

Versus

The State & Anr.

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms. S.R.Pandey and Mr.
A.K.Pandey Advocates.
For the Respondents : Ms. Radhika Kolluru, APP for
State.
Mr. Alok Bhachawat, Mr. Uday
Singh and Mr. S.Jeeva Nandan, `
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. The appellant has instituted the present appeal under section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') read with section 482 Cr.P.C. against the impugned judgment dated 30.07.2012 passed in Sessions Case No. 50/2012,

arising out of FIR No.473/2007 (hereinafter referred to as the 'subject FIR'), registered at Police Station –Kalkaji; whereby the Trial Court has acquitted the appellant Dev Prasad Giri (hereinafter referred to as 'the respondent no. 2') of a charge framed against him under section 498A/304B/34 Indian Penal Code, 1860.

2. Before going into the merits of the present appeal, it is relevant to recapitulate the brief facts of the present case which are as follows:

'On 20.05.2007, at about 9.59 a.m., DD No. 4A was handed over to SI Balbir Singh and he along with Ct. Dharam Singh reached at the spot i.e. H.No. 1680-C/3, 1st Floor, Govind Puri Extn., Delhi where they saw a lady lying dead on the bed with ligature marks on her neck. The name of the lady was revealed as Pratibha. Appellant Dev Prasad Giri was found present at the spot and told the IO that said lady is his wife and she had hanged herself from the ceiling fan and he had brought down the dead body from hanging position. No suicide note was found at the spot. IO informed the crime team as well as SDM. IO informed about the present incident to the parents of victim and thereafter on the next date i.e. on 21.05.2007, Gadadhar Panda (father of the victim), Ms. Kanchan (mother of the victim) and Suryakant Panda (brother of the victim) reached Delhi and they were produced before SDM on 22.05.2007 where statement of Gadhadhar Panda was recorded before the SDM. In his statement, Sh. Gadadhar Panda (father of the victim) stated that his daughter Pratibha Panda was married with accused Dev Prasad Giri on 06.07.2003. He alleged that at the time of marriage, in-law of his daughter demanded the money of Rs. 3,00,000/- in dowry and on his request, they agreed to take Rs. 2,50,000/-. He further deposed that he had given Rs. 2,50,000/- by

way of six demand drafts and apart from that, the accused and his family also demanded furniture and he fulfilled their demand by taking money from his relatives. He has further stated that her daughter was subjected to cruelty for demand of dowry. On 20.05.2007, he received information that his daughter has committed suicide and this information was given to them by accused Dev Prasad Giri.

After his statement, recorded by SDM, IO took the bed sheet in possession with which she was hanged. Crime team arrived at the spot and took some photographs. IO seized the jewellery items which were on the body of the victim and also seized one small size purse. One gold chain with Z type locket, two gold kundal and two ear rings, one gold ring on which thread was wrapped, one gold ring on which white colour stone was fixed, one ring with diamond, two gold bangles, one pair silver paijeb, one silver ring with white stone, four artificial bangles, one ICICI Visa card and one leather bag were also seized by the IO. On the basis of statement of Gadadhar Panda, recorded by the SDM, the FIR in the present case was registered under Section 498A/304B IPC on 22.05.2007.

On 23.05.2007, IO Insp. Sunder Lal got conducted the post mortem on the dead body of deceased. IO also recorded statement of Gadhadhar Panda (father of deceased), Smt. Kanchan Bala (mother of deceased) and Surya Kant Panda (brother of deceased). IO had also taken into possession photocopies of six bank drafts of total Rs.2.50 Lac and marriage invitation card.

Appellant Dev Prasad Giri was arrested on 23.05.2007 and his personal search was also conducted. On 29.05.2007, the postmortem report of deceased was obtained. IO also received six pages of Oriya language along with its translated copy in English and one CD and one marriage invitation card and on 19.06.2007 again two photographs were received. On 19.06.2007, the Viscera was sent to FSL-Rohini through Ct. Rajpal. Accused Sneh Lata Giri and Siba Prasad Giri could not be arrested and they were declared PO. After completion of the investigation, charge-sheet against the appellant was filed before the Court of Ld. MM for the offences punishable under Sections 498A/304B IPC was filed and the matter

was committed to Ld. Sessions Court as the offences involved in the present case were sessions triable.

On 24.07.2008, the supplementary charge was received by Sh. V.K.Bansal, the then Ld. ASJ, and the same was clubbed with the main charge sheet vide order dated 24.07.2008 wherein both the accused Sneh Lata Giri and Siba Prasad Giri were declared proclaimed offender.'

3. Vide impugned judgment dated 30.07.2012, passed by Sh. Lal Singh, Ld. ASJ-02/FTC, New Delhi District, Patiala House Courts, appellant Dev Prasad Giri was acquitted for the offence punishable under section 498A/304B IPC and file was ordered to be consigned to Record Room with direction to reopen the same as and when co-accused persons namely Sneh Lata Giri and Siba Prasad Giri, who had been declared proclaimed offenders, are arrested or surrender before the court.

4. Aggrieved by the impugned judgment dated 30.07.2012, Sh. Gadadhar Panda, appellant/father of the victim, filed the present appeal and has argued that Ld. Trial Court has misappreciated the testimony of material witnesses PW-2 Gadadhar Panda, PW-5 Ms. Kanchan, PW-8 Surya Kant Panda and PW-9 Alekh Chander Behra, who have categorically deposed that there was demand of dowry and deceased was subjected to cruelty for non-fulfilling of the said demand and as a result of such cruelty, she died an unnatural death.

He has argued that demand of dowry had started right from the beginning of the marriage and continued till the death of the deceased Pratibha Panda.

5. Learned counsel for the appellant has argued that learned Trial Court erred in coming to the conclusion that there was no demand of dowry and no cruelty was committed upon the deceased by the respondents for non fulfilling the said demand. PW-2 Gadadhar Panda, PW-5 Ms. Kanchan, PW-8 Surya Kant Panda and PW-9 Alekh Chander Behra have categorically stated that there was demand of dowry and a sum of Rs. 2,50,000/- was paid to the father of the respondent no.2 by way of demand drafts.

6. It was further argued that learned Trial Court failed to appreciate the evidence of PW-5 Ms. Kanchan who deposed that she had received a telephone call from her daughter on 19.05.2007, i.e., just a day before her death and told her that she was beaten by her husband and she was also tried to be strangled.

7. Learned Counsel has next argued that there were other incidents of demand of dowry and cruelty dated 15.04.2007 and

15.05.2007. The learned Trial Court has, however, ignored the same and wrongly acquitted respondent no. 2.

8. Learned counsel has further argued that despite the fact that all ingredients of section 304B of IPC were fulfilled, the learned Trial Court has acquitted the respondent no. 2 by relying upon such minor contradictions which do not go to the root of the case. Learned Trial Court has also failed to properly appreciate and interpret the phrase 'soon before her death' which does not mean immediately before death but is a flexible term and in other words, it should not be remote in point of time and thereby make it a stale one and that it should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

9. Learned Counsel has further argued that since at the time of alleged incident, only accused and victim were in the house, it was for the accused to explain as to why the deceased died an unnatural death as there cannot be any independent witness to narrate as to what had happened inside the house.

10. Learned counsel has further argued that even if it is assumed for the sake of argument that no offence under Section 304B IPC was made out, however, there was sufficient evidence before learned Trial Court to convict the appellant under Section 306 IPC.

11. It is next argued by Ld. Counsel that the death of Pratibha Panda was otherwise than in normal circumstances as there were ligature marks on the neck. The death had occurred within 7 years of marriage and as per the evidence appearing on record, the deceased was subjected to cruelty and harassment which started after 15 days of marriage and continued till the death of Pratibha. The learned Trial Court has, therefore, erred in acquitting the respondent no.2.

12. It is next argued by Ld. Counsel for the appellant that the acquittal is simply based upon the arguments advanced by learned defence counsel which are not tenable as these go against the facts and evidence available on record. Testimony of PW-5 Gadadhar Panda proves that there was harassment of the deceased for money. Statement of PW-8 reveals that there was an apprehension that deceased would be killed by accused persons and in fact the threat

was also transformed into reality as Pratibha Panda died an unnatural death on 20.05.2007.

13. Learned counsel has next argued that this was a case of homicide not suicide. According to learned counsel, the postmortem report reveals that the ligature mark was minimum 1 CM to maximum 2.5 CM in breadth whereas the bed-sheet which is alleged to be and is never of this breadth. In fact, it is much wider and in that case, the ligature mark is all around the neck. Since the ligature mark is in front of neck and out of 28 CMs circumference of the neck, it is only on 13 CMs, therefore, the plea of the accused that it a case of suicide is false and it is in fact a case under section 304B IPC.

14. Ld. Counsel has next argued that the postmortem report clearly states that death is due to ASPHYXIA as a result of compression of neck structure and the doctor's opinion in the post mortem report substantiates the fact that belt was used for compressing the neck and that is why the ligature mark is only in a portion of the neck and that too in the front and this negates the accused's plea that deceased had committed suicide.

15. Ld. Counsel has further argued that accused's silence from 12.00 midnight till 10.00 am in the morning, and the admitted quarrel between the respondent/husband and deceased wife on the fateful night just before the unnatural death clearly proves that the death was due to compression of the neck by the accused with his own belt.

16. *Per contra*, it is argued by Ld. Counsel for the respondent no. 2 that there is no evidence to show that soon before her death, the deceased was treated with cruelty in relation to a demand for dowry. It is further argued that the incidents dated 15.04.2007 and 15.05.2007 had never taken place and except the statement of interested and motivated witnesses, there is nothing on record to prove these incidents. The testimonies of witnesses regarding these incidents are inconsistent and contradictory to each other. It is further argued that the incident dated 15.04.2007 is not mentioned in complaint Ex.PW2/A. It is further argued that there is no medical examination report of alleged beating on 15.04.2007 and spots on the face. The demand of dowry by way of drafts has also not been proved. It is submitted that demand drafts were given for the

purpose of making arrangements for the marriage which had to take place in Cuttack, Orissa whereas family of victim lived in Chhattisgarh. It is further argued that it is clear from the evidence and documents on record that neither harassment was caused nor any demand of dowry was ever made by the accused which may constitute an offence under Section 498A IPC. Ld. Counsel submitted that the allegation relating to demand drafts is an afterthought so as to make a false case of dowry death. It is further argued that no police complaint about the harassment/dowry demand/cruelty from the date of marriage till the death of victim was filed. It is finally argued that reason of suicide by deceased was not the demand for dowry, but probably it was on account of her not being able to conceive for 4 years and respondent no. 2 not agreeing to adopt a child.

17. We have considered the rival contentions and carefully examined the impugned judgment and the evidence appearing on record and are of the opinion that learned Trial Court has correctly appreciated the evidence appearing on record and has rightly held that there are major contradictions in the statements of all the

material witnesses. The drafts for Rs. 2,50,000/- were, in fact, given for the purpose of making arrangements for the marriage which was to take place in Orissa whereas the complainant was residing in Jharkhand and was unable to make the necessary arrangements. Thus, the allegation of the prosecution that Rs. 2,50,000/- were demanded as dowry was not believed by the learned Trial Court and it has given following reasons for the same:-

“PW 2 further stated that after two months of marriage, his daughter was sent to Delhi to live with the accused and accused started giving beatings to her and also compelled her to do work and the accused also told her that she had not brought sufficient money. He deposed that before marriage accused Dev Prasad Giri, his mother and aunt (Tai) demanded Rs. 3 lacs and on this PW 2 inquired them as to who was the guardian and Dev Prasad Giri told him that his father is guardian. PW 2 specifically stated that the matter was settled at Rs. 2,50,000/-, which he gave by way of draft. However, in his cross-examination, PW 2 admitted that the marriage was performed in Orissa and they were living in Chattisgarh and for making arrangements for marriage money was required in Orissa. PW 2 categorically admitted in his cross-examination that for that arrangements of marriage he had to sent the money to Orissa by way of drafts and he issued the drafts as required by the family of accused. At the one point, in his examination in chief, the PW 2 deposed that the accused and his mother demanded dowry of Rs. 3 lacs and that has been settled for Rs. 2,50,000/-, but in his cross-examination, he has admitted that the money was sent for arrangement of marriage by way of drafts. Therefore, there is contradiction in the statements of PW 2. In

cross-examination PW 2 has not stated that the money was sent in lieu of the dowry demand. Therefore, there is force in the contention of counsel of the accused that it is improbable that dowry would be taken in the form of drafts.”

18. We have also carefully perused the statement of the **PW-2 Gadadhar Panda** in regard to demand of dowry by the respondent and found that he has admitted in his cross examination that the amount was given for making arrangements for the marriage in Orissa and not as dowry demand.

19. Perusal of the statement of **PW-2 Sh. Gadadhar Panda** further reveals that he has deposed that he had met his daughter lastly on **15.04.2007** in Cuttack, Orissa and he had seen some spots on her face and on inquiry, his deceased daughter had told him that these spots were the result of beating given by her mother-in-law and brother-in-law as they were demanding Rs.1,00,000/-. However, **PW-5 Ms. Kanchan**, mother of the deceased, who had also met her daughter on **15.04.2007** has nowhere stated that there were pink spots on the face of her daughter and these were there because of the beating given by the her mother-in-law and *Dever* (Brother-in-law). **PW-5 Ms. Kanchan** has stated that on **15.04.2007**, her daughter had told her that she wanted to go to her

parental home and accused had told her (PW-5) that since her parents have just met her, what was the purpose of going to the parental home and had also abused her. This is a totally different version from what has been deposed by PW-2 Sh. Gadadhar Panda.

PW-5 Ms. Kanchan has nowhere stated that her daughter was beaten on **15.04.2007**. Had there been any truth in the statement of PW-2 Sh. Gadadhar Panda, father of deceased, that her daughter was beaten and there were pink spots on her face, PW-5 Ms. Kanchan who had also met deceased on 15.04.2007 must have noticed this fact without any fail. Learned Trial Court has also dealt with this contradiction in the statement of witnesses in its judgment and the relevant observations are as follows:-

“Further, PW 2 stated that he met his daughter lastly on 15.04.2007 in Cuttack, Orissa and at that time they had seen some spots on the face of his daughter and when he inquired as to how she got those spots and she told him that she was beaten for Rs. 1 lac and she was also beaten by her mother-in-law and dewar. PW 5 Ms. Kanchan, who is the mother of the deceased also stated that she last time met her daughter on 15.04.2007 in the matrimonial home of her daughter. But PW 5, mother of the deceased stated that on 15.04.2007, her daughter told her that she wanted to go her parental home and accused told her that her parents had just met and for what purpose she wants to go her parental home and he also abused her. PW 5 further

stated that thereafter, the mother in law stated that they had said so by joking. She further deposed that the mother in law, father in law and husband of her daughter stayed in their home for one day and thereafter left for Cuttack, Orissa and they had given the gifts etc. when they left. Regarding the alleged incident of 15.04.2007, there is also contradictions in the testimonies of PW 2 and PW 5, although, both were stated to have met their daughter on 15.04.2007. As PW 2 categorically stated that on 15.04.2007, when he lastly met with his daughter, he had seen some spots on the face of his daughter and on inquiry she told him that she was been beaten for Rs. 1 lac, however, this fact has not been disclosed by the PW 5 Ms. Kanchan and she has deposed entirely different version regarding the incident of 15.04.2007. Therefore, it creates doubts regarding the alleged incident of 15.04.2007. PW 2 was also confronted with the statement Ex. PW 2/A, given to the police, wherein it was not so recorded that he had seen spots on the face of his daughter and on the inquiry she told that she was given beatings for Rs. 1 lac. PW 2 in his cross-examination further stated that his daughter disclosed to him regarding the incident of 13.04.2007 on 15.04.2007 and at that time his wife was also with him, but PW 5, the wife of the PW 2 had not stated so."

20. There are, thus, contradictions in the testimony of PW-5 Ms. Kanchan for which the learned Trial Court has rightly disbelieved her. PW-5 has deposed that one day prior to the death of her daughter, she (her deceased daughter) had made telephonic call to her and told that she was beaten and there was an attempt to strangulate her and her cheek was also swollen and she was not able

to eat. However, this fact has not been disclosed by her to the police in her statement **Ex.PW5/DA**. Moreover, **PW-2 Sh. Gadadhar Panda**, father of the deceased, has not deposed about this fact in his testimony. Since this fact is quite material as it had taken place just one day before the alleged unnatural death, it was not possible that mother of deceased Ms. Kanchan would not have disclosed the same to her husband. Even if it is believed for the sake of argument that this fact was not disclosed by PW-5 Ms. Kanchan to her husband PW-2 Sh. Gadadhar Panda, however, non disclosure of this fact to the IO in her statement **Ex.PW5/DA** is beyond comprehension. It is difficult to believe the fact that PW-5 Ms. Kanchan would not have told this material fact to all concerned including investigating officer. The learned Trial Court has also given its reasoning on this point and it runs as follows:-

“PW 5 Kanchan, mother of the deceased, deposed that one day prior to 20.05.2007, her daughter made a telephone call to her and told that she was beaten and was also tried to be strangulated and her cheek had swollen and she was not able to eat, however, in cross-examination, PW 5 stated that she had told to the police regarding the aforesaid facts. PW 5 was confronted with the statement Ex. PW 5/DA, wherein it was not so recorded.”

21. Learned Counsel for the appellant has, however, pointed out that there was another incident dated **15.05.2007** in which **PW-5 Ms. Kanchan** has stated that her daughter had told her that she was beaten on that day (15.05.2007) and when she had inquired as to why she was beaten, she had told that accused asked her to wake up early in the morning as he has to go somewhere and she replied that the person who had to go must be concerned about the time and also told that she will wake up late in the morning and, therefore, she was beaten. It is argued by learned counsel for the appellant that the said incident has not been discussed by the learned Trial Court and it being a material fact, shows non-application of mind by the learned Trial Court.

22. We have perused the statement of PW-5 Ms. Kanchan. In her cross examination, she has given the following statement:-

“I had told the police that my daughter told me that she was beaten on 15.05.2007 when I inquired as to why she has been beaten by the accused, she told me that accused asked her to wake him up early in the morning as he had to go somewhere and she replied that the person who had to go must be concerned about the time and also told that she will wake late in the morning and therefore she was beaten. Confronted with Ex.PW5/DA wherein the reason of beating and the date is not mentioned, however, it is mentioned that on

15.05.2007 her daughter was beaten and she sustained injury on her face and cheek."

23. Perusal of cross examination of PW-5 reveals that she had not stated to the police about date of incident and reason of her daughter being beaten. Moreover, PW-2 Sh. Gadadhar Panda has not deposed anything about this incident of 15.05.2007. There is no medical examination or police complaint regarding the incident. Perusal of the record reveals that this fact was never disclosed to the police nor corroborated by any other witness. Thus, even if the said fact which is not proved was not discussed by learned Trial Court it does not affect the findings given by the learned Trial Court.

24. Let us now examine the testimony of **PW-8 Surya Kant Panda** who is the brother of the deceased to find out whether learned trial court has rightly evaluated his testimony. This witness has deposed that family of the accused had demanded Rs. 3,00,000/- as part of the dowry but his father had expressed his inability to arrange such a huge amount but he had finally agreed to pay Rs. 2,50,000/-. This amount was paid in the form of three bank drafts. In the cross examination, **PW-8 Surya Kant Panda** has deposed that the demand of Rs. 2,50,000/- was settled after discussion with

both the sides. His father and mother had gone to Cuttack for talk and settlement. Whereas father of the deceased **PW-2 Gadadhar Panda** has stated in his cross-examination that it was given for arrangement of marriage. Statement of this witness is, thus, at variance with the statement of his father regarding purpose for which amount of Rs. 2,50,000/- was given to the family of the accused. In fact it is the father of the complainant who had given the demand drafts and talked to the family of the accused for payment of amount. His statement is, therefore, more reliable than the statement of PW-8. In view of the above contradiction, it is difficult to believe the version of PW-8 and Ld. Trial Court has, therefore, committed no illegality by not relying upon the same.

25. PW-9 Sh. Alekh Chander Behra is the mediator who had arranged the marriage of deceased Pratibha Panda and respondent no. 2 Dev Prasad Giri. He has given a different version regarding amount of dowry demanded. He has stated that a sum of Rs. 4,00,000/- was demanded by the accused persons whereas **PW-5 Ms. Kanchan** has stated that it was Rs. 3,00,000/- and **PW-2** in his cross-examination has stated that it was for making arrangement for

the marriage at Orissa. Thus, there is contradiction in the statement of prosecution witnesses regarding purpose for which amount was given and there is also contradiction regarding the amount demanded by the accused persons.

26. Learned Trial Court has also given reasons for not believing the version of PW-9 and it runs as follows:-

'PW 9, Alekh Chander Behra, who was the mediator of the marriage, stated that there was a demand of Rs. 4 lacs from the accused side. However, PW 2 and PW 5 stated that there was demand of Rs. 3 lacs from the accused side before the marriage. PW 8 also stated that the demand of dowry was around 2.5 lacs to 3 lacs, therefore, there is contradiction in the statements of material prosecution witnesses, regarding the amount of dowry, alleged to be demanded by the accused side, which also creates strong doubt about the prosecution version.'

27. We do not find any perversity in the appreciation of testimony of PW-9 as well as other material witnesses by the learned Trial Court. It was, therefore, rightly held by learned Trial Court that in view of the contradictions in the testimonies of witnesses regarding the incidents of cruelty and harassment, the prosecution has failed to prove its case that deceased was subjected to cruelty for fulfillment

of demand of dowry and this was responsible for her unnatural death.

28. Learned counsel for the appellant has, however, argued that the postmortem report, the breadth of ligature mark, the accused's silence from 12.00 midnight till 10.00am with regard to unnatural death and the admitted quarrel between the accused and deceased on the fateful night just before the death are sufficient to draw inference that the unnatural death was due to compression of the neck by the accused with his belt, whose general size tallies with the size of the ligature mark.

29. We have given our thoughts to this argument of learned counsel for the appellant. Perusal of the report Ex.PW6/A authored by PW6 Dr. Sudeep Singh reveals that PW-6 has categorically stated in his report and also deposed in the court that in his opinion, it was a case of suicide. This witness has not been cross-examined. In this circumstance, we find no merit in the argument of learned Counsel for the appellant that postmortem report is not correct and the deceased Pratibha had not committed suicide but was murdered by respondent no. 2.

30. Learned counsel for the appellant has next argued that in the instant case there was a telephone call on 19.05.2007 in which the deceased had told her mother that she was beaten badly and this proves that harassment of the deceased continued till death. Learned Counsel has further argued that it can be made out from testimony of witnesses that dowry was being demanded right from the date of marriage till death of deceased and different incidents have been narrated by the witnesses in this regard. However, learned Trial Court has not rightly appreciated the evidence and given a judgment which is perverse and not in accordance with law.

31. In support of his argument Ld. Counsel for the appellant has relied upon the following judgments:-

- (i) **Yashoda and Anothers V. State Of M.P (2004)3 SCC 98;**
- (ii) **Dilip @ Bidyadhar Pradhan and others Versus State of Orissa 2002 Cri LJ 1613;**
- (iii) **Balram Prasad Agrawal V. State of Bihar and others 1997SCC(Cri)612;**
- (iv) **Swal Dass Vs. State of Bihar, (1974) 4 SCC 193;**
- (v) **Rajender Singh Vs. State of Punjab.2015SCC171;**
- (vi) **Kashmir Kaur vs. State of Punjab, (2012) 13 SCC 627;**
- (vii) **Narwinder Singh vs. State of Punjab;**

32. In ‘Yashoda and Anothers V. State Of M.P (2004)3 SCC 98’ the Hon’ble Supreme Court has defined words ‘soon before

death' and held that the term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death.

33. Learned counsel for appellant has next relied on '**Rajender Singh Vs. State of Punjab, (2015) 6 SCC 477**' wherein the Hon'ble Supreme court has held that "soon before" is a relative term. In matters of emotions, no one can have a fixed formula. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

34. Learned counsel for the appellant has next relied upon '**Kashmir Kaur vs. State of Punjab, (2012) 13 SCC 627**' wherein the Hon'ble Supreme Court has held that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate or live link between the effect of cruelty based on dowry demand and the

concerned death. In other words, it should not be remote in point of time and, thereby, making it a stale one. However, the expression “soon before” should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

35. Learned Counsel for the appellant has next relied upon ‘**Dilip @ Bidyadhar Pradhan and others Versus State of Orissa 2002 Cri LJ 1613**’, wherein the Hon’ble Supreme Court has held that in the case of dowry death, it is difficult to have any direct evidence for the reason that occurrence takes place inside the house and the prosecution has, therefore, to rely upon circumstantial evidence to prove its case.

36. Learned Counsel for the appellant has next relied upon, ‘**Balram Prasad Agrawal V. State of Bihar and others 1997SCC(Cri)612**’ wherein it was held by Hon’ble Supreme Court that as per section 106 of the Evidence Act, burden of proving the fact lies on the accused but the initial burden is upon the prosecution. However, once that burden is discharged, it is for the accused to prove the fact specifically within his knowledge.

37. We have given our thoughts to the matter. There is no quarrel with the law laid down by the Hon'ble Supreme Court in the above judgments. However, as discussed earlier, the prosecution has failed to prove that there was demand for dowry and there was consequent continuous harassment for the same and it continued till the end when the deceased had committed suicide and, therefore, the ingredients of section 304B as well as 498A IPC have not been proved beyond reasonable doubt by the prosecution in the instant case.

38. Learned counsel for the appellant has, however, argued that in the alternate, if the prosecution has failed to prove its case under Section 304B IPC, the appellant can be convicted under section 306 IPC. In this regard, he has relied upon, '**Narwinder Singh vs. State of Punjab, (2011) 2 SCC 47**' where the Hon'ble Supreme Court has held as under:-

'21.The High Court upon meticulous scrutiny of the entire evidence on record rightly concluded that there was no evidence to indicate the commission of offence under Section 304-B IPC. It was also observed that the deceased had committed suicide due to harassment meted out to her by the appellant but there was no evidence on record to suggest that such harassment or cruelty was made in connection to any dowry demands. Thus, cruelty or harassment sans any

dowry demands which drives the wife to commit suicide attracts the offence of 'abetment of suicide' under Section 306 IPC and not Section 304-B IPC which defines the offence and punishment for 'dowry death'.

39. Learned Counsel for the respondent no.2 on the other hand has argued that there is no material on record to convert the offence under Section 304-B to 306 IPC in the present case. Section 306 IPC contemplates that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Ld. Counsel for the respondent no.2 has argued that as per evidence appearing on record there was no abetment by respondent no.2 to the suicide committed by deceased Prabibha. He has further argued that it is the duty of the prosecution to prove beyond reasonable doubt whether deceased Pratibha was subjected to cruelty or harassment on account of demand of dowry. As per Section 113-A of the Indian Evidence Act if a married woman has committed suicide within a period of 07 years from the date of her marriage and her husband or his relative have subjected her to cruelty, the Court may presume having regard to the circumstances of the case that such suicide has been abetted by her

husband or by his relative. In this regard, the learned Counsel for the appellant no. 2 has, relied upon '**Mangat Ram vs. State of Haryana, Crl. A.No. 696 of 2009**' decided on 27.03.2014 wherein the Hon'ble Supreme Court has observed that presumption contemplated in Sec. 113-A of Evidence Act is not mandatory but discretionary. The Court has held that, under Section 113A of the Evidence Act, the prosecution has to first establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband has subject her to cruelty. Even though those facts are established, the Court is not bound to presume that suicide has been abetted by her husband. Section 113A, therefore, gives discretion to the Court to raise such a presumption having regard to all other circumstances of the case, which means that where the allegation is of cruelty, it can consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word 'cruelty' in Section 498-A IPC.

40. Thus, a consideration of all the circumstances of the case may strengthen the presumption or may dictate the conscience of the

court to abstain from drawing the presumption. The presumption is, therefore, not an irrebutable one. It can be rebutted by leading defence evidence or the facts and circumstances otherwise available on record may destroy the presumption.

41. In the present case it has been proved on record that deceased Pratibha had committed suicide. The suicide was committed within a period of 07 years from the date of her marriage. However, it has not been proved that there was a demand of dowry and that her husband or his relatives subjected her to any cruelty so that a presumption can be raised that the suicide was abetted by her husband. As discussed above, the presumption is not mandatory and it is only discretionary. The court, therefore, has to consider all the circumstances of the case. On consideration of all the circumstances and evidence led on record, we are of the opinion that prosecution has failed to prove its case and, therefore, no presumption can be drawn that husband of the deceased had abetted the offence.

42. It was lastly argued by the Ld. Counsel for the appellant that on the intervening night of 19-20.05.2007, only accused and his

wife were together and in view of Sec. 106 of Evidence Act, it is for the accused to explain as to why her wife committed suicide.

43. Ld. Counsel for the respondent on the other hand has argued that Section 106 of the Indian Evidence Act does not relieve the prosecution from its duty to prove the guilt of the accused beyond reasonable doubt. In this regard he has relied upon '**Shambhu Nath Mehra vs. The State of Ajmer, Crl. Appeal no. 65 of 1954**' decided on 12.03.1956 and '**Sawal Dass vs. State of Bihar, Crl. A. no. 70 of 1972**' decided on 09.01.1974.

44. In '**Shambhu Nath Mehra vs. The State of Ajmer**' it was held that in a criminal case, the burden of proof is on the prosecution and section 106 of Indian Evidence Act is certainly not intended to relieve the prosecution of its duty to prove the case beyond reasonable doubt. It is only designed to make certain exceptional cases in which it would be impossible for the prosecution to establish the fact which are especially within the knowledge of the accused and which he could prove without difficulty or inconvenience.

45. In ‘Sawal Dass vs. State of Bihar, Crl. A. no. 70 of 1972’, the Hon’ble Supreme court has held that the burden of proving a plea specifically set up by an accused which may absolve him from criminal liability, certainly lies upon him. It is a different matter that the quantum of evidence by which he may succeed in discharging his burden or creating a reasonable belief that circumstance absolving him from criminal liability may have existed is lower than the burden resting upon the prosecution to prove the guilt of the accused beyond reasonable doubt.

46. We have given our thoughts to the matter. In the present case, the fact which can be stated to be specially within the knowledge of the accused is that the deceased had committed suicide. At best, the burden of proving the fact that the deceased had committed suicide and has not been murdered was on the accused. The fact that it was a suicidal death has been proved by PW-6 Dr. Sukhdeep Singh. The reason why the deceased committed suicide is not a fact which would be within the special knowledge of the accused and only the deceased would be knowing the reason. Even if it is assumed for the sake of argument that Section 106 of the Indian Evidence Act is

attracted, the accused can succeed in discharging his burden if he creates reasonable belief that as to why the suicide was committed by his wife. The accused has led the evidence to discharge the burden upon him. According to the accused, the reason for committing suicide by deceased was that she could not bear the child despite four years of marriage and she wanted to adopt the child but the accused wanted to wait for some time and, therefore, altercation used to take place between them. It has come in the statement of accused that on the fateful night, the couple had not slept together. It is a settled law that the burden rests upon the prosecution to establish the guilt of accused beyond reasonable doubt. It is also a settled law that accused can succeed in discharging his burden by establishing a reasonable belief, which means circumstances absolving him from criminal liability may have existed. In our opinion, the accused has discharged its burden by leading defence evidence pointing out that the wife was unhappy as she was unable to conceive and wanted to adopt a child which was not acceded to by her husband.

47. It is also a well settled law that the High Court should interfere in appeals against acquittals only where the trial court makes wrong assumptions of material facts or fails to appreciate the evidence properly and if two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt. Reliance is placed upon '**Bannareddy & Ors. vs. State of Karnataka & Ors.**, reported as **2018 (2) Crimes 94 SC**'.

48. In the instant case, the Ld. Trial Court has carefully appreciated the evidence and has taken a reasonable view which has formed the basis of judgment of acquittal. The conclusion reached by the Trial Court is neither palpably wrong nor based on erroneous view of the law. It has taken a very balance view of the evidence. Ld. Trial Court has correctly held that there are material contradictions in the statements of the witnesses and the evidence is

such which is not reliable and trustworthy. We are, therefore, of the opinion that there are no grounds to interfere in the judgment of the Ld. Trial Court.

49. We, therefore, find no infirmity or illegality in the impugned Judgment dated 30.07.2012 passed by the learned Trial Court. The appeal is devoid of merit and is accordingly dismissed. The impugned Judgment dated 30.07.2012 is therefore, hereby upheld.

50. Accordingly, the present appeal fails and the same is dismissed.

**BRIJESH SETHI
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

August 30th, 2019
(AK)