

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.284 of 2015

Arising Out of PS. Case No.-147 Year-2010 Thana- MADANPUR District- Aurangabad

Ramashish Mahto, Son of Baij Nath Mahto, Resident of village - Mahuraw,
P.S.-Madanpur, District - Aurangabad

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Gaurang Chatterjee, Advocate
		Mr. Nilanjali Chatterjee, Advocate
For the Respondent	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 22-07-2021

Heard Mr. Gaurang Chatterjee, learned counsel for
the appellant and Mr. Dilip Kumar Sinha, learned Additional
Public Prosecutor for the State.

2. This appeal is directed against the judgment
of conviction dated 07.02.2015 and the consequent order of
sentence dated 12.02.2015 passed by the learned Additional
Sessions Judge-III, Aurangabad in Sessions Trial No. 275 of
2011/ 70 of 2014 by which he has convicted the appellant for
the offences punishable under Sections 304-B and 498-A of the
IPC (for short 'IPC') and sentenced him to undergo rigorous
imprisonment for life.

3. Surprisingly, after convicting the appellant



on charges under two heads, the Trial Court vide impugned order dated 12.02.2015, passed a composite sentence without specifying the offence for which it was sentencing the convict.

4. The operative part of the order dated 12.02.2015 passed by the Trial Court reads as under: -

“On perusal of the case record and taking into consideration the contention of both the parties, it appears that the case is of dowry death and the deceased is subjected to cruelty. Thus, considering all the facts and circumstances of the case, the convict, namely, Ramashish Mahto is hereby sentenced to undergo rigorous imprisonment for life. This will meet the end of justice.”

5. The Judicial process is a complex one, but, in general, once a person is charged, he goes on trial. The Trial Court hears the evidence presented against him by the prosecution as well as his own defence and after hearing the arguments on behalf of the prosecution and defence, it records its judgment of conviction or acquittal. After a conviction in criminal proceedings, sentencing is next.

6. Section 235(2) of Code of Criminal Procedure (for short ‘CrPC’) provides that if the accused is



convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

7. While examining the scope of Section 235(2) in ***Santa Singh v. State of Punjab*** since reported in ***AIR 1976 SC 2386***, the Supreme Court observed:

“The court must, in the first instance, deliver a judgment convicting or acquitting the accused. If the accused is acquitted, no further question arises. But if he is convicted, then the court has to “hear the accused on the question of sentence, and then pass sentence on him according to law”. When a judgment is rendered convicting the accused, he is, at that stage, to be given an opportunity to be heard in regard to the sentence and it is only after hearing him that the court can proceed to pass the sentence.”

8. Once the Trial Court had held the appellant guilty for the charges under Sections 304-B and 498-A of the IPC, it was required to pass sentence for each of the proved charges, or, at least it ought to have assigned reason as to why it was not passing sentence for a particular charge. A composite order of sentence for two proved charges without specifying the



charge for which the sentence is being passed and without explaining as to how the composite sentence would meet the end of justice can not be said to be an order of sentence passed on an accused in accordance with law.

9. Coming back to the main issue at hand, the First Information Report (for short 'the FIR') giving rise to Session Trial No. 275 of 2011/70 of 2014 was instituted on the basis of *fardbeyan* of one Baij Nath Mahto (P.W.4), which was recorded by the Sub-Inspector of Police-cum-Officer-in-charge of Madanpur Police Station S.N. Singh (P.W.8) on 09.07.2010 at 08:00 PM in the Primary Health Centre, Madanpur.

10. In his *fardbeyan*, Baij Nath Mahto stated that his daughter Sweety Devi was married to the appellant in March, 2009. At the time of marriage, he had given gift to the appellant to the best of his capacity, but the appellant, his father and mother used to torture and assault his daughter for dowry quite often. He further stated that on 09.07.2010 at 12:00 AM, he received an information on his cellular phone that his daughter was unwell. He was requested to come to see her. On receiving the call, he along with his family members proceeded for the matrimonial home of his daughter. When he reached there, he saw that his daughter was lying unconscious on a cot and her husband, mother-in-law and father-in-law were sitting



outside the door. On an inquiry made by him regarding the cause of ill health of his daughter, the appellant and his parents abused and ill-treated him. Thereafter, he went to Madanpur Police Station and informed the police. On his information, the police came and took his daughter to Primary Health Center, Madanpur where she died during treatment. He alleged that his daughter has been poisoned to death by her husband Ramashish Mahto, mother-in-law Sarswati Devi and father-in-law Baij Nath Mahto.

11. The *fardbeyan* of the informant Baij Nath Mahto, was sent to the Madanpur Police Station for institution of the FIR and the officer-in-charge of the Madanpur Police Station Satendra Narayan Singh himself took up the investigation of the case.

12. After receipt of the *fardbeyan* of the informant, a formal FIR was drawn by a Sub-Inspector of Police, namely, Ram Sevak Prasad Singh vide Madanpur P.S. Case No. 147 of 2010 on 09.07.2010 at 12:00 AM under Sections 328 and 304-B read with 34 of the IPC.

13. A perusal of the record would demonstrate that even prior to the recording of the *fardbeyan*, the inquest report was prepared at the Primary Health Centre, Madanpur at 07:00 PM on 09.07.2010.



14. After institution of the FIR, the investigating officer sent the body of the deceased to the Aurangabad Sadar Hospital for postmortem examination.

15. In the Sadar Hospital, Aurangabad, a Medical Board was constituted, which conducted the postmortem examination on the body of the deceased.

16. A perusal of the postmortem examination report (Exhibit- 3) would make it clear that the cause of death could not be ascertained by the Medical Board. The Board preserved the viscera and handed over the same to the police for chemical examination. The record would further reveal that the prosecution failed to produce the expert opinion regarding the viscera in question.

17. The investigating officer inspected the place of occurrence, apprehended the accused persons, recorded the statement of witnesses, collected the postmortem examination report and on completion of investigation submitted the police report before the Court of Magistrate.

18. On receipt of the police report submitted under Section 173(2) of the CrPC, the learned Jurisdictional Magistrate took cognizance of the offences and summoned the accused persons to face trial.

19. After ensuring the appearance of the accused



persons and after complying with the provisions of Section 207 of the CrPC, the learned Jurisdictional Magistrate committed the case to the Court of Sessions.

20. The learned Session Judge transferred the record of the case to the Court of Additional Sessions Judge-III, Aurangabad, who explained the charges under Sections 304-B and 498-A of the IPC to the appellant Ramashish Mahto, his father Baij Nath Mahto and his mother Saraswati Devi to which they pleaded not guilty and claimed to be tried.

21. During trial, the prosecution examined eight witnesses and exhibited certain documents in support of the charges.

22. Witnesses examined during trial are Sushma Devi (P.W.1), mother of the deceased, Sanjay Yadav (P.W.2), related as brother of the deceased, Ravindra Mahto (P.W.3), brother of the deceased, Baij Nath Mahto (P.W.4), father of the deceased, Dr. Sahabuddin (P.W.5), a member of the Medical Board, who had conducted the postmortem on the body of the deceased, Kedar Mahto (P.W.6), a co-villager of the informant, Ram Chandra Ram (P.W.7), a co-villager of the informant and Satendra Narain Singh (P.W.8), the investigating officer of the case.

23. Out of above eight witnesses, Kedar Mahto



(P.W.6) and Ram Chandra Ram (P.W.7) were declared hostile by the Trial Court at the request of the prosecution.

24. **Sushma Devi (P.W.1)**, mother of the deceased, stated in her deposition that her daughter was married to the appellant in the year 2009. After marriage, she went to her *sasural*, but her husband, father in law and mother in law frequently used to subject her to cruelty. They used to abuse her and demand dowry. She further stated that her daughter had come to her maternal home after marriage. Subsequently, the accused persons took her back promising that she would be kept with dignity and honour in her *sasural*. She stated that after she went to her *sasural*, within a month, the appellant informed that her daughter was seriously ill. Thereafter, she went together with her husband and son to the matrimonial home of her daughter. When she reached there, she found her lying unconscious on a cot and froth and bad smell was coming from her mouth. When inquiry was made from her husband and in-laws, they started abusing them. Thereafter, they came to Madanpur Police Station and informed the police about the entire occurrence. She further stated that when the police came to the place of occurrence, the accused persons fled away. Her husband and the police took her daughter to hospital where she died during treatment. She stated that her daughter was killed



by administering poison due to non-fulfillment of demand of dowry.

25. In cross-examination, P.W.1 stated that when her daughter was being treated, she was present at the hospital. She explained that her daughter died during treatment in the hospital itself. She admitted that she had not lodged any prior complaint regarding ill-treatment meted out to her daughter in her *sasural*. She further admitted that her daughter had come to her maternal home 4-5 times. She admitted that she used to pay respect to her son-in-law and her son-in-law also used to pay due respect to her. She admitted that her previous statement under Section 161 of the CrPC was recorded by the police at the police station in presence of her husband and her son. She further admitted that her daughter was literate and knew reading and writing, but she never wrote any letter in respect of ill-treatment or assault caused to her in her matrimonial home. She admitted that marriage of her daughter was solemnized in a temple. She stated that her husband came to the police station along with her son and lodged the FIR. She denied the defence suggestion that at the Madanpur Primary Health Centre, the husband and in-laws of the deceased were present. She also denied the defence suggestion that no demand of dowry was ever made by the accused persons and her daughter died due to



illness.

26. **Sanjay Yadav (P.W.2)**, a relative of the informant, supported the prosecution case as narrated in the FIR. In his examination-in-chief, he specifically stated that on information regarding illness of Sweety Devi, when he along with others arrived at her *sasural*, the appellant and his father were present along with their co-villagers. When they were questioned as to why Sweety was not being provided treatment, they started quarreling. Thereafter, they went to the police station and met with *Daroga*, who went together with the father of Sweety to the place of occurrence. The father and other family members of Sweety took her to Madanpur Primary Health Centre where she died within ten minutes of commencement of her treatment. He stated that Baij Nath Mahto (P.W.4) had instituted the FIR.

27. In cross-examination, P.W.2 admitted that the marriage of Sweety Devi had taken place in a temple. He admitted that he came to know regarding the demand of dowry from the father of the victim. He further admitted that in his previous statement made before the police, he had not stated that on receiving call regarding the illness of Sweety Devi on 09.07.2010, he had gone to her *sasural* and found her lying unconscious on a cot. He admitted that the victim and her



husband belong to poor and marginalized class. He denied the defence suggestion that the victim died due to illness.

28. **Ravindra Mahto (P.W.3)**, brother of the deceased Sweety Devi also supported the prosecution case as narrated in the FIR in his examination-in-chief. He stated that when he along with others reached at the *sasural* of Sweety Devi, she was found lying unconscious on a cot and froth was coming from her mouth. He stated that when Sweety Devi was taken to Madanpur Primary Health Centre, saline was administered to her and after 10-15 minutes, she died during treatment. He stated that his previous statement was recorded by the police at the hospital where the inquest report was prepared on which he and his father had put their respective signatures. He identified those signatures, which were marked as Exhibits- 1 and 1/1 respectively.

29. In cross-examination, he admitted that when he put his signature on the inquest report, the format was blank. He stated that he wanted his sister to be treated first, but at the insistence of his father, he visited the police station first where his father lodged the case and, thereafter, they went to the *sasural* of Sweety Devi and took her to Madanpur Primary Health Center for treatment. He stated that his sister died 15-20 minutes after the treatment started. He admitted that the



marriage of his daughter was solemnized in a temple. He further admitted that he came to know regarding the demand of dowry from his father and the deceased sister. He admitted that his statement was recorded by the police only once when he had gone to the police station along with his father and lodged the case. He admitted that his brother in law (appellant) visited his *sasural* four times after the marriage and he was treated well by them. He stated that his sister knew reading and writing. He also admitted that she never wrote any letter regarding the demand of any kind made by the accused persons.

30. **Baij Nath Mahto (P.W.4)**, the informant, supported the prosecution case as narrated in the FIR. He also admitted that when he reached the matrimonial home of his daughter, she was lying unconscious on a cot and froth was coming from her mouth. He proved his signature on the *fardbeyan*, which was marked as Exhibit -2.

31. In cross-examination, he admitted that the information about the illness of his daughter was given on phone by the appellant, who requested him to come and meet his ailing daughter. He also admitted that his daughter knew reading and writing but she never wrote any letter regarding any sort of cruelty inflicted upon her by the accused persons for non-fulfillment of demand. He stated that on the date of



occurrence, firstly, he went to the police station and, thereafter, he came to the hospital where his statement was recorded and the case was registered. He admitted that at the police station, the police had inquired from him regarding the occurrence before taking the victim to the hospital. At that time, his son was also present there. He further admitted that the police had also made inquiry from his son at the police station. He also denied the defence suggestion that his daughter died due to illness.

32. **Dr. Sahabuddin (P.W.5)** was posted at Sadar Hospital, Aurangabad on 10.07.2010. He held the postmortem examination on the body of the deceased at 08:45 AM on 10.07.2010. He stated in his deposition that no ante-mortem injury on any part of the body of the deceased was found. However, he too said that froth was coming from nose and mouth of the deceased. He stated that since the cause of death could not be ascertained, viscera was preserved. According to him, time elapsed since death and the postmortem examination was 12 hours. He has proved his writing and signature on the postmortem examination report, which was marked as Exhibit 3. He further stated that he had constituted a Medical Board for postmortem examination of which Dr. Prem Prakash was also a member with him. He proved the signature



of Dr. Prem Prakash on the postmortem examination report, which was marked as Exhibit- 3/1.

33. In cross-examination, he admitted that in case of epileptic attack, froth may come from the mouth and nose. He admitted that he did not find any external ante-mortem injury on the body of the deceased. He also admitted that viscera report was never brought to him as a result of which he could not form any opinion about the cause of death.

34. **Satendra Narain Singh (P.W.8)**, the investigating officer stated in his deposition that on 09.07.2010 he was posted as a Sub-Inspector in the Madanpur Police Station. On that day, the informant orally informed him that his daughter is being killed by her husband and in-laws by administering poison. He stated that when he went to her *sasural*, he was threatened. He stated that on the information of the informant, he went to the house of the appellant where he saw that Sweety Devi was lying unconscious on a cot and froth was coming from her mouth. She was not able to speak. She was brought to Madanpur Primary Health Center in a vehicle and was treated by a doctor but, in course of treatment, she died. He stated that the *fardbeyan* of the informant was recorded at the hospital itself. He proved the *fardbeyan* in his own writing and signature, which was marked as Exhibit- 2/1.



He also proved the pagination made in the writing of Officer-in-charge Mr. Janardhan Prasad Singh on the *fardbeyan*, which was marked as Exhibit- 2/2. He proved the formal FIR in the writing and signature of Assistant Sub-Inspector of Police, Ram Sevak Prasad Singh, which was marked as Exhibit- 4. He stated that after institution of the FIR, the inquest report was prepared by the Sub-Inspector of Police Rakesh Kumar. He proved the signature and writing of Rakesh Kumar on the inquest report, which was marked as Exhibit- 1/2. He stated that thereafter challan was prepared and the body of the deceased was sent for postmortem examination. He proved the carbon copy of challan, which was marked as Exhibit- 5. He stated that he inspected the place of occurrence, recorded the subsequent statement of the informant and also recorded the statements of witnesses, namely, Ravindra Mahto (P.W.3), Ram Chandra Mahto (P.W.7) and Kedar Mahto (P.W.6). He further contended that he received the post-mortem examination report, arrested the accused persons and recorded the defence statement. He sent viscera for chemical examination after obtaining permission of the learned Chief Judicial Magistrate and, on completion of investigation, submitted charge-sheet before the Court. He stated that during investigation Kedar Mahto and Ram Chandra Mahto had stated before that froth and bad smell



was coming from the mouth of the deceased.

35. In cross-examination, he stated that in spite of receipt of information from the informant at the police station, neither he made any *sanaha* entry nor registered the FIR. He proceeded for the place of occurrence. He further admitted that he has not made any *sanaha* entry even after seeing the victim lying unconscious on a cot. He admitted that he did not record the statement of neighboring persons. He feigned ignorance about the receipt of viscera report. He admitted that he did not collect the sample of the froth coming from the mouth of the victim. He denied the defence suggestion that the investigation of the case is faulty.

36. After cross-examination of P.W.8, the prosecution case was closed and the case was fixed for examination of the accused persons under Section 313 of the CrPC.

37. In order to enable the accused persons personally to explain the circumstances appearing against them in the evidence, the Trial Court formulated a common question and apprised them that the evidence suggests that the victim Sweety Devi was being subjected to cruelty in her matrimonial home for non-fulfillment of demand of dowry and was poisoned to death on 09.07.2020. In reply, the appellant and the



two other accused persons pleaded innocence in the matter. They stated that they have falsely been implicated in the case.

38. The defence did not lead any evidence. Hence, after hearing arguments on behalf of the parties, the Trial Court pronounced the impugned judgment of conviction and order of sentence against the appellant. However, his father and mother were acquitted of both the charges.

39. Mr. Gaurang Chatterjee, learned counsel appearing for the appellant submitted that the Trial Court has erred in appreciating the law and facts involved in the case. He contended that the initial version of the informant has deliberately been withheld by the prosecution and a subsequent statement of the informant has been treated as FIR. According to him, the FIR itself is a suspicious document. He further contended that the prosecution has not been able to prove that the death of the daughter of the informant was unnatural. He urged that the medical evidence does not corroborate the case of the prosecution. He argued that the prosecution has tried to create some false evidence regarding froth coming from the mouth and nose of the deceased. Such allegations were not made in the FIR. He submitted that even in the inquest report, there is no mention of froth or foul smell coming from the mouth or nose of the deceased. He submitted that the doctor



admitted in his cross-examination that froth may come from mouth in case of epileptic attack. Further, the doctor did not collect the sample of froth coming from the mouth of the deceased. He urged that the doctor, who examined the deceased at Primary Health Center, Madanpur was the best person to reveal about the cause of death and the treatment provided to the victim when she was taken for treatment. He submitted that neither the doctor, who treated her at the Primary Health Center, Madanpur was examined during trial nor any document relating to her treatment at Primary Health Center, Madanpur was brought on record. He further contended that the conduct of the appellant was bona fide as he sent information to the informant on phone regarding illness of his daughter and requested him to meet his ailing daughter. He contended that there is no specific statement that what was being demanded as dowry or when the demand was made. He contended that admittedly the marriage of the daughter of the informant was solemnized in a temple, as the appellant and his in-laws belong to poor and marginalized class. Hence, the vague story of demand from the daughter of the informant by the accused persons in absence of any other cogent material appears to be an afterthought.

40. On the other hand, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing for the State



submitted that the Trial Court has rightly appreciated the facts and law involved in the case and has convicted and sentenced the appellant for the offences punishable under Sections 304-B and 498-A of the IPC. He submitted that the victim Sweety Devi was married on 4th March, 2009. She died in other than natural circumstance on 9th July, 2010. He contended that it is a gross case where the death of the deceased occurred within one and a half year of marriage. He contended that since the deceased was not suffering from any ailment, her death was certainly an unnatural death. He contended that there is consistent evidence that the accused persons used to demand dowry and for non-fulfillment of the same, they subjected her to cruelty. He contended that all the ingredients of the offences punishable under Sections 498-A and 304B of the IPC were proved by the prosecution beyond reasonable doubt. According to him, there is no explanation as to how the froth and bad smell came from the mouth of the deceased. In the absence of any explanation, he contended that the presumption would be that the victim was administered poison. He contended that merely because the viscera report was not proved, it cannot be said that it is not a case of death due to poisoning. He contended that since the ocular testimony of the witnesses has not been shaken, the absence of viscera report would be inconsequential.



41. We have given our anxious consideration to the rival submissions and have carefully perused the evidence on record.

42. Insofar as conviction of the appellant under Section 304-B of the IPC is concerned, it would be pertinent to analyze the law on dowry death.

43. Section 304-B of the IPC, which defines and provides the punishment for dowry death reads as under: -

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

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

44. A perusal of Section 304-B of the IPC clearly demonstrates that if a married women dies otherwise than a natural circumstance within seven years of her marriage



and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

45. In *Major Singh vs. State of Punjab* since reported in *(2015) 5 SCC 201*, a three-Judge Bench of the Supreme Court explained the condition precedent for sustaining the conviction under Section 304-B of the IPC in para 10 as under: -

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a ‘normal circumstance’;

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.”



46. Section 113-B of the Indian Evidence Act, which provides for presumption as to dowry death reads as under: -

“113-B. Presumption as to dowry death—

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman 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.”

47. As per the definition of dowry death in Section 304-B of the IPC and the presumption provided under Section 113-B of the Indian Evidence Act, one of the essential ingredients amongst others is that the death of a woman should be caused by burn or bodily injury or otherwise than under normal circumstances.

48. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring within the purview of death occurring otherwise than under normal circumstances.

49. Keeping these principles in mind, when we analyze the evidence led before the court, we find that it was the husband of the deceased who informed the informant on



telephone first regarding her illness and requested him to come to see his ailing daughter. By the time, the informant along with his wife, son and other persons reached the matrimonial home of the deceased, she was alive. At that time, the husband of the deceased and her parents were found present at their house.

50. The informant and the witnesses have stated that on being questioned about the cause of ailment, the appellant and his family members started quarreling. Thereafter, the informant together with his family members went to the police station and narrated the entire incident to the police. The informant suspected that his daughter has been administered poison and accused persons were trying to kill her. It has also come in the evidence of P.W.1 and P.W.3 that they also made their respective statements before the police at the police station when they had gone together with the informant.

51. In case, the witnesses are telling the truth, the information supplied to the police at the police station was certainly about the commission of a cognizable offence.

52. Section 154 of the Code of Criminal Procedure mandates that when an information about the commission of a cognizable offence is given orally, the police must write it down.

53. Even otherwise, if a police officer comes to



know about cognizable offence, when the information is not cryptic, he is required to register FIR.

54. It is well settled that an FIR is an important document, as it sets the process of criminal justice system in motion. It is only after the FIR is registered at the police station, the police take up investigation of the case.

55. The initial information given by the informant as well as P.W.1 and P.W.3 at the police station regarding the commission of a cognizable offence has not been treated as FIR.

56. Similarly, their statements given at the police station on the date of occurrence have not been entered into the station diary or in the case diary.

57. Thus, it is shrouded with mystery what happened to the initial report made by the informant.

58. In that view of the matter, when we scrutinize the evidence further, we find that the oral statement of the informant was recorded at 08:00 PM on 09.07.2010 at Primary Health Center, Madanpur. The investigating officer has stated in his evidence that firstly the FIR was registered and, thereafter, the inquest report was prepared. However, when we look at the inquest report, we find that the inquest report was prepared on 09.07.2010 at 07:00 PM, i.e., an hour before the



recording of the *fardbeyan*. We further find that the inquest report contains the signature of the informant Baij Nath Mahto and P.W.3 Ravindra Mahto.

59. Apparently, the inquest report was prepared prior to the institution of the FIR. Thereafter, the oral statement of Baij Nath Mahto was recorded at Primary Health Centre, Madanpur on 09.07.2010 at 08:00 PM, which was treated as FIR. The discrepancy in the evidence of the investigating officer, the *fardbeyan* and the inquest report further creates doubt about the authenticity and credibility of the FIR.

60. Learned counsel for the appellant has rightly submitted that the FIR has lost its credibility particularly because the initial version has been suppressed from the court.

61. Let us examine now as to whether the prosecution has been able to prove that the deceased died an unnatural death. We have seen that there is absolutely no evidence relating to poison in relation to the deceased. The doctor, who treated the deceased before her death at the Primary Health Center, Madanpur has not been examined during trial. The prosecution has failed to bring on record any paper relating to the treatment provided to the deceased at the Primary Health Center, Madanpur. The doctor treating the victim at the Primary Health Center was the best person, who could have thrown



some light on the cause of her death and the ailment with which she was suffering. Not only this, P.W.5, a doctor and a member of the Medical Board, which conducted the postmortem examination on the body of the deceased stated in his evidence that he did not notice any ante-mortem injury or mark of violence on the body of the deceased. In case of forcible poisoning by use of any kind of poison, there would be struggle and resistance from the victim and there would be some marks on her body. In the present case, as stated above, there was no mark of violence.

62. Insofar as the question of froth and bad smell coming from the mouth and nostril of the deceased is concerned, it has rightly been pointed out by the learned counsel for the appellant that there is no such mention either in the FIR or in the inquest report.

63. It is true that the witnesses examined during trial have stated in their deposition that bad smell and froth was coming from the mouth of the deceased, but in cross-examination, the doctor has admitted that in case of epileptic attack also, froth comes from mouth and nose. The doctor, who conducted the postmortem examination has not stated a word about any bad smell coming from mouth or nose of the deceased. Further, the doctor has admitted that the cause of



death could not be ascertained in absence of the viscera report.

64. Admittedly, the viscera were preserved but the chemical examination report is absent. In absence of the chemical examination report, by no stretch of imagination, it can be said that the death of the deceased occurred due to poisoning.

65. In *Sharad Birdhichand Sarda vs. State of Maharashtra* since reported in *AIR 1984 SC 1622* and in *Anant Chintaman Lagu vs. State of Bombay* since reported in *AIR 1960 SC 500*, the Hon'ble Supreme Court referred to the circumstances, necessary to prove death by poisoning, which are as under:

“(i) there must be a clear motive for the accused to poison the deceased;

(ii) the poison so administered must be the cause of death;

(iii) the accused must have been in possession of the poison and;

(iv) there was an opportunity with the accused to administer the poison to the deceased.”

66. In the present case, we have seen that the doctor, who conducted the postmortem examination has categorically stated that in absence of the viscera report, he cannot form his opinion regarding cause of death. Thus, the



postmortem examination report did not conclude that the death was due to poisoning. Even if we believe that froth was coming from mouth and nose of the deceased, its sample was never collected. The doctor admits that froth may come from the mouth in case of epileptic attack. There were no traces of poison found in the body of the deceased or at the crime scene and the appellant was not found in possession of poison. The aforesaid facts clearly demonstrate that there is no evidence that the deceased died due to poisoning.

67. Thus, we are of the opinion that the Trial Court has erred in appreciating the evidence. It ignored that the prosecution has miserably failed to establish the fact that the deceased died an unnatural death. In absence of fulfillment of the aforesaid essential ingredient of Section 304-B of the IPC, the conviction of the appellant under Section 304-B of the IPC cannot be upheld.

68. Insofar as the offence under Section 498-A of the IPC is concerned, we find from the deposition of P.Ws. 1, 2, 3 and 4 that the marriage of the daughter of the informant was solemnized in a temple. The prosecution witnesses have admitted that the deceased and the appellant belong to a poor and marginalized class. There is no evidence that at the time of marriage, any demand of dowry was made. There is no specific



statement by any witness that what was being demanded as dowry and when the dowry was demanded. There is a vague allegation by the witnesses that dowry was being demanded.

69. On being cross-examined, the witnesses have admitted that the deceased was able to read and write, but she had never written any letter to her parents or her brother regarding demand of dowry made from her or that she was being subjected to cruelty for non-fulfillment of dowry. On the contrary, the mother of the deceased (P.W.1) has admitted in her evidence that her daughter had come to her maternal home after her marriage 4-5 times. She also admitted that she used to pay respect to her son-in-law and her son-in-law also used to pay due respect to her. The witnesses have admitted that no prior complaint was ever made to the police regarding demand of dowry or assault upon the deceased for non-fulfillment of demand of dowry.

70. Moreover, the vague allegation regarding demand of dowry or subjecting the deceased to cruelty is omnibus and general. The appellant was tried together with his father and mother for the offences alleged. On appreciation of the evidence, the Trial Court acquitted his father and mother of the charges under Sections 304-B and 498-A of the IPC.

71. We are of the view that since the allegation



and the evidence against the appellant stand on the same footing as of his father and mother, who have been acquitted by the Trial Court, the charges against the appellant are also not proved. Since there was no distinction between the case of the appellant and that of the other two acquitted accused persons, the appellant is entitled to be acquitted.

72. In view of the aforesaid, the impugned judgment of conviction dated 07.02.2015 and the consequent order of sentence dated 12.02.2015 passed by the learned Additional Sessions Judge-III, Aurangabad in Sessions Trial Nos. 275 of 2011/70 of 2014 are set aside.

73. The appellant is acquitted of the charges under Sections 304-B and 498-A of the IPC. He is directed to be released forthwith, if not required in any other case.

74. The appeal stands allowed.

(Ashwani Kumar Singh, J.)

(Arvind Srivastava, J.)

sanjeet/-

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