

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

C.R.A 580 of 2018

Bagesh Singh & Others

Vs

The State of West Bengal

With

C.R.A 581 of 2018

Daya Shankar Singh

Vs

The State of West Bengal

For the appellants :Mr. Sandipan Ganguly, Sr. Advocate

Mr. Avik Ghatak, Advocate

Mr. Amit Ranjan Pati, Advocate

Mr. Karan Dudhwewala, Advocate

For the State in CRA 580 of 2018 :Mr. N.P. Agarwal, Advocate

Ms. Subhasree Patel, Advocate

Ms. Surachi Saha, Advocate

For the State in CRA 581 of 2018 :Mr. Madhusudan Sur, Ld. APP

Mr. Manoranjan Mahata, Advocate

Heard on : July 11, 2022

Judgment on : July 19, 2022

Bibhas Ranjan De, J.:-

1. Both the appeals are directed against the judgement and order dated 29.09.2018 and 04.10.2018 passed by the Learned Additional Sessions Judge, Fast Track 1st Court, Barrackpore 24 Parganas (North), in Sessions Trial No. 01(06)2008 corresponding to Sessions Case No. 08 (07) 2007 arising out of Bizpur Police Station Case No. 40 of 2006 thereby convicting all four appellants in C.R.A. No. 580 of 2018 and C.R.A No. 581 of 2018 for committing offence punishable under Section 498A/304B/34 of the Indian Penal Code, 1860 and sentenced to rigorous imprisonment for 3 years and to pay a fine of Rs. 2000/- each in default to suffer further rigorous imprisonment for 2 months for the commission of offence punishable under Section 498A /34 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC') ; the 3 appellants namely Bagesh Sign, Devanti Devi and Smt. Kiran Singh are further sentenced rigorous imprisonment for 7 years and to pay a fine Rs 5000-/ each in default to suffer further rigorous imprisonment for 5 months for commission of offence punishable under Section 304-B/34 of the Indian Penal Code, 1860 and appellant Daya Sankar Singh has been sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- in default to suffer further rigorous imprisonment for 10

months, for the commission of offence punishable under Section 304-B/ 34 of the Indian Penal Code. Both the sentences are directed to run concurrently and the period of detention already undergone in course of investigation and trial is directed to be set off in terms of Section 428 of the Criminal Procedure Code.

2. Prosecution case in a nutshell is as under: that the marriage of the appellant namely Bagesh Singh with deceased Manorama Singh @ Baby was celebrated on 22.02.2004 at Madsalapur Police Station Aandar Bazar, Post Office Aandar, District Siwan, State Bihar. It is alleged that at the time of marriage one Splendor Motor Cycle, Gold Ornaments, Cash of Rs. 1,00,000/- and other valuable articles were given to bridegroom. After marriage Manorama @ Baby was brought to her in laws house at Railway Quarter No. 1209/B, Bhut Bagan, Police Station Bizpur District 24 Parganas (North). From then on, Baby was subjected to mental and physical torture by all four appellants on demand of dowry of Rs. 25,000/-. Baby informed the incident of torture to her father (complainant) over telephone. That is why Baby was taken to her parental house in September 2005 by her brother Rakesh Singh @ Guddu. She disclosed entire facts of torture to her parents. Thereafter, the appellant Daya Shankar Singh came to the house of complainant at Bihar. The complainant expressed his inability to

meet up to the demand and the appellant Daya Shankar Singh made the complainant understand that the Baby would not be subjected to any torture and took her back to matrimonial home. On 16.02.2006 complainant received telephonic message to the effect that his daughter Manorama succumbed to severe burn injuries at her in-laws house.

3. On receipt of the said complaint Assistant Sub Inspector, Pranab Kumar Goswami attached to Bizpur Police Station prepared formal FIR and started Bizpur Police Station Case No. 40 dated 18.02.2006 under section 498-A/304-B of the IPC which was endorsed to sub inspector Goutam Saha for investigation. Investigating Officer visited place of occurrence and prepared a rough sketch map with index thereof and examined available witnesses by recording their statement under Section 161 of Criminal procedure Code. He also collected the inquest report of the deceased in connection with Bizpur Police Station UD Case No. 08 dated 17.02.2006, prepared by one Executive Magistrate, seizure list dated 17.02.2006 and Surothal Report prepared by one Assistant Sub Inspector, Somen Mukherjee. On his transfer Investigation Officer Goutam Saha made over the charge of investigation to Sub Inspector Manik Chakraborty on 2.07.2006. He then collected Post Mortem Report of the deceased and also examined some witnesses by recording their statement under Section 161 of Criminal Procedure Code.

He prepared a seizure list of photographs on 16.10.2006 in respect of photographs showing marriage of deceased. On completion of investigation, charge sheet being no.165 dated 23.12.2006 was submitted before the Jurisdictional Court against all 4 accused, i.e all 4 appellants under Section 498-A/304-B of the IPC.

4. Ld. Additional Chief Judicial Magistrate (Jurisdictional Court), Barrackpore committed the case to the Court of Ld. Additional Sessions Judge, Barrackpore , 24 parganas (North) , who then transferred the case to the Additional Sessions Judge, Fast Track Court No. 1 Barrackpore, for trial.

5. Ld. Additional Sessions Judge, Fast Track Court No.1, Barrackpore 24 Parganas (North) (herein after referred to as 'Ld. Trial Court'), framed charge against all four appellants on 02.06.2008 for the offence punishable under Section 498-A/304-B/34 of the IPC. On hearing the contents of the charges all four appellants pleaded not guilty, and therefore, all of them claimed to be tried for the aforesaid offences.

6. To prove the case against the accused/appellants, the prosecution examined 11 witnesses. Through the aforesaid witnesses, the prosecution brought on record the relevant documentary evidence viz. written complaint, seizure list dated 16.10.2006, seizure list dated 17.02.2006, inquest report, carbon copy of dead body challan, rough sketch map with index, formal FIR

and post Mortem report. The statement of accused/appellants were recorded under Section 313 of the Code of Criminal Procedure by pointing out the incriminating circumstances against the accused/ appellants. The case of the accused was of a total denial. Thereafter, the defence led the evidence and examined Bagesh Singh (one of the appellants) as Defence Witness No. 1 (D.W.1). That on appreciation of the evidence and considering the material on record and considering the submissions made on behalf of the accused/appellants as well as the prosecution, by judgment and order dated 29.09.2018, the Ld. Trial Court convicted all four accused/ appellants for the offence for which they were tried.

Argument Advanced:

7. Mr. Sandipan Ganguly, Ld. Sr. Advocate appearing on behalf of the all four appellants in connection with both the appeals (C.R.A No. 580 of 2018 and C.R.A No.581 of 2018), has assailed the evidence of Prosecution Witnesses (for short P.W.) No. 1,2,3,5, and 7 and submitted that entire prosecution case revolves around the evidence of those 5 witnesses. He has submitted that prosecution could not adduce any cogent evidence to attract the essential ingredient i.e 'soon before her death' to attract the provision of offence under Section 304-B of the IPC. Assailing the evidence of those witnesses, Mr. Ganguly has further submitted that there was cordial

relation between the two families and had that not been so there would have been a complaint either before the police or before the local people regarding perpetration of torture on demand of due money during the life time of deceased before the fateful day.

8. Mr. Ganguly has further submitted that Post Mortem Report shows death due to the effect of shock resulting from ante mortem burn injury. But Post Mortem doctor has not been examined in this case to corroborate his opinion and for giving an opportunity to cross-examine thereon. The name of Rakesh Singh @ Guddu appearing in the evidence of prosecution witnesses, has not been examined in this case and none of the witnesses to the inquest report except P.W. 6, has been examined in this case.

9. Mr. Ganguly has further argued that there is no specific evidence on record regarding dates of torture on demand of due dowry amounting to Rs. 25,000/- . It is further submitted that though according to prosecution case the fact of torture was informed by the deceased to her father (P.W. 1) through mobile phone but those mobile phones were not seized to verify the call details. Mr. Ganguly has also pointed out few contradictions among the statement recorded under Section 161 Criminal Procedure Code (for short Cr.P.C) and the evidence recorded in Court.

10. Referring to the evidence of defense witness, Mr. Ganguly has tried to establish the plea of *alibi* and submitted that after marriage Bagesh Singh (A-1), husband of the deceased stayed for 20 days at her matrimonial home and returned to Dubai and thereafter he never returned to India and that has been further corroborated by the evidence of prosecution witnesses. Thereby Mr. Ganguly has tried to make this Court understand that Bagesh Singh (A-1) is not at all involved in the alleged offence, if there be at all, in any manner.

11. In support of his contention Mr. Ganguly has relied on the decisions following cases:

- ***Bajnath and Others v. State of Madhya Pradesh (2017) 1 SCC 101.***
- ***Major Singh and Another v. State of Punjab 2015 5 SCC 201***
- ***Abhijit Mondal v. State of West Bengal 2019 (2) Cal. L.T. 115***
- ***Somenath Jana v. State of West Bengal 2018 SCC Online Cal 8609: (2018) 3 Cal LT 348: (2018) 3 Cal LJ 121.***
- ***Satbir Singh and Another v. State of Haryana (2021) 6 SCC 1.***
- ***Vijender v. State of Delhi (1997) 6 SCC 171***
- ***Jitu Sk., Jhantu Sk. & Mansoor Barajee v. State of West Bengal 2005 SCC Online Cal 389: (2006) 1 CHN 337***

- ***June Alias Mandi v. The State (Calcutta) 1986 East Cr. C. 834 9Cal)***
- ***Radha Mohan Singh @ Lal Saheb & others v. State of U.P (2006) 1 SCC (Cri) 661***

12. Mr. N.P Agarwal, Advocate, appearing on behalf of the State in CRA No. 580 of 2018, has referred to the evidence on record and submitted the entire evidence adduced in this case clearly proves the alleged offence by the involvement of the appellants.

13. Mr. Madhusudan Sur, Additional Public Prosecutor, appearing on behalf of the State in C.R.A No. 581 of 2018, has relied on the evidence of P.Ws 1, 2,3,5 and 7 with regard to dowry demand and torture inflicted on the deceased. He has submitted that from the side of the defense neither settlement of dowry to the tune of Rs. 1,25,000/- nor the payment of Rs. 1,00,000/- at time of marriage was denied. He has further submitted that the witness of this case squarely implicated all the appellants for inflicting torture upon the deceased on demand of dowry.

14. Mr. Sur has further referred to evidence on record and submitted that witnesses testified all facts of torture specifically in their evidence. Examination of A-4 under Section 313 of Cr.P.C has been referred and it is

submitted that A-4 never explained his role to set the victim from burn injuries or as to hospitalization of the deceased.

Decision:

15. Before evaluation of evidence in terms of prosecution case we may extract below the provision of Section 304-B of the IPC that depicts 'dowry death':

“304B 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.

Explanation.- For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(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.”

16. The word “dowry” has been defined in Section 2 of the Dowry Prohibition Act, 1961. The same is extracted below:

“Definition of ‘dowry’ – In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly –

(a) By one party to a marriage to the other party to the marriage; or

(b) By the parents of either party to a marriage by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies.

Explanation I. – Omitted by Act 63 of 1984

Explanation II. – The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

17. In this regard we should also refer to the provision of Section 113-B of the Indian Evidence Act, 1872 for appreciation of evidence in connection with an offence under Section 304-B of IPC. The provision Section 113-B is extracted below:

“ 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.

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

18. Now, if we juxtapose both the provisions under Section 304-B of the IPC, and 113-B of the Evidence Act, it would be clear that once the prosecution has been able to testify that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, soon before her death, the Court shall proceed on a rebuttable presumption that the person who had subjected her to cruelty or harassment in connection with the demand for dowry, had caused a dowry death within the purview of Section 304-B of the IPC. Therefore, the said presumption can be rebutted by the accused through evidence showing that all the ingredient of Section 304-B of the IPC has not been substantiated.

19. In this case, it is not disputed that marriage of the deceased was solemnized with the appellant Bagesh Singh on 22.02.2004 and that she had died in her matrimonial home on 16.02.2006 and this fact is proved by P.W. 1, father of deceased, P.W. 2, brother of deceased, P.W. 3, mother of

deceased, P.W. 5 (Ragho Singh) nephew of P.W. 1 and P.W. 7 (Suresh Prosad Roy) friend of P.W. 1.

20. So far as the offence under Section 304-B of the IPC is concerned, the first two ingredients i.e. death of the woman concerned was caused by burn injury or by any cause other than in normal circumstances within seven years of her marriage have undoubtedly been proved by the prosecution in this case.

21. Now, it is to be seen from the evidence on record whether the third ingredient i.e. soon before her death, she was subjected to cruelty or harassment by the appellants for, or in connection with, any demand for dowry, has been proved by the prosecution or not.

22. In this case appellants i.e. Bagesh Singh (A-1), Devanti Debi @ Dewanti Devi Singh (A-2), Kiran Singh (A-3) (in Criminal Appeal No. 580 of 2018) and Daya Shankar Singh (A-4) (in Criminal Appeal No 581 of 2018) were reported to have committed cruelty against the deceased in connection with the demand of dowry, thereby compelling her to commit suicide.

23. Mr. Ganguly has rightly pointed out that the prosecution case is mainly based on the evidence of P.W. 1 (Bramaha Singh) father of the deceased, P.W. 2 (Arun Kumar Singh) brother of the deceased, P.W. 3 (Smt. Shyama

Devi) mother of the deceased, P.W. 5 (Ragho Singh) nephew of the P.W. 1, and P.W. 7 (Suresh Prosad Roy) friend of P.W.1.

24. P.W. 1 in his evidence has deposed that on 22.02.2004 his daughter was married with A1. At the time of marriage dowry was settled at Rs. 1,25,000/- but he could give Rs. 1,00,000/- besides one Hero Honda Motor Cycle, gold ornaments, along with other articles. Few days after marriage, all the appellants subjected her daughter to torture on demand of due dowry of Rs. 25,000/- along with Colour Television, Fridge etc. The deceased used to report the same to P.W. 1 over phone. On 16.02.2006 P.W. 2, resident of Delhi, informed P.W. 1 over phone that appellants set his daughter on fire at their house. Both P.W. 1 and P.W. 2 went to Bizpur Police Station and on being informed they reached morgue and identified charred dead body of his daughter. After Post Mortem examination they performed her last rites when none of appellants was present. Thereafter he went to Police Station and lodged written complaint (Exhibit-1).

25. P.W. 1 further testified that 2/3 months prior to death of his daughter A-4 (in Criminal Appeal No. 581 Of 2018) threatened him by saying that he knew how to compel him to meet their demand. He further testified that 18 days prior to incident of death his daughter informed him that should he fail

to meet their demand she would be subjected to further torture and even she may die.

26. From the cross-examination of P.W. 1 it appears that there was visiting term between the two families. He denied all suggestions put to him in course of cross-examination regarding torture upon his daughter. He also denied the suggestion to the effect that his daughter did not agree to her marriage in the State of West Bengal.

27. P.W. 2, (brother of the deceased), has deposed that his sister was set ablaze by all the appellants at her matrimonial home at Kanchrapara. On 16.02.2006 A-1 informed him over telephone about death of his sister and immediately he informed the said incident to his father (P.W. 1). Then both of them reached morgue in Kolkata on 18.02.2006 and received the dead body of his sister after post Mortem examination and cremated the body. At the time of cremation, no one was present from her matrimonial home.

28. P.W. 2, further testified that at the time of marriage they paid cash of Rs. 1,00,000/- one Motor Cycle, Gold Ornaments and other articles. There was demand of Rs. 1,25,000/-. After marriage his sister started to reside at her matrimonial home with all the appellants. From then on whenever he had talked to his sister, she would inform about torture by the appellants for the non-payment of Rs. 25,000/- and other articles. They brought her

sister back to their house. After some time A-4 (Daya Shankar Singh) had been to their house and on the promise of not to inflict torture upon her sister, they sent her back to her matrimonial home. One week prior to her death his sister rang him up and told that she was being severely tortured at her matrimonial home and she would be killed in case of failure to meet their demand. He told her sister that he would come to Kolkata on 18.02.2006 and would take her back to their house.

29. In cross-examination P.W. 2 denied all the suggestions put to him regarding torture or demand of money. In cross-examination he admitted that neither Police nor any of the neighbours was ever informed about torture by the appellants. He also admitted that A-1 (Bagesh Singh) would reside at Dubai and after one month of marriage A-1 returned to Dubai.

30. P.W. 3 'mother of the deceased' also corroborated the alleged torture on demand of money. She further deposed that one week prior to her death her daughter called her brother over telephone and asked him either to arrange money or to take her away.

31. In cross-examination P.W. 3 stated about the relationship between the two families. She denied all the suggestions regarding torture on demand or money.

32. P.W. 4 (neighbour of P.W. 1) claimed himself as scribe of the written complaint which was prepared by him at the dictation of P.W. 1. Written complaint was marked as Exhibit 1/1.

33. P.W. 5 (nephew of P.W. 1) testified that the deceased used to disclose about her torture by the appellants on demand of Rs. 25000/- and other articles at her matrimonial home. But they could not provide the money and the articles demanded by the appellants. In cross-examination he stated that he visited the matrimonial home of deceased at Kanchrapara and he was received by the family members of her matrimonial home. He stayed in her matrimonial home one night. He denied the suggestion put to him regarding torture on demand of money.

34. P.W. 6 (Jagannath Roy) resident of Kanchrapara Railway Quarter deposed that he never heard about any incident of accident in the family of the appellants and wife of Bagesh Singh (A-1) died unnaturally.

35. P.W. 7 (Suresh Prosad Roy), in his deposition testified that he would know both the families since marriage of deceased with A-1. He identified the A-4 in Court. He further stated that after 2/6 months of marriage he met deceased at her parental home and on being asked the deceased replied that she was not well and her father had not done the right thing. She (deceased) further stated that her father had not paid the entire agreed term

of 'dahej' and for that reason she was being mentally tortured. P.W. 7 further stated that P.W. 1 requested him to ask the mediator of the marriage to request Daya Shankar Singh (A-4) not subjecting her daughter to torture mentally. Accordingly, P.W. 7 also requested the said mediator. P.W. 1 informed him about death of his daughter.

36. In cross-examination P.W. 7 stated that he was examined by the Police. P.W. 8 (Rekha Debi), stated that he resided in a quarter just opposite to that of the appellants. She has further stated that she had no acquaintance with the wife of Bagesh Singh (A-1) as she would come out rarely. She would not say how the wife of Bagesh Singh died. She was declared hostile by the prosecution. She denied the statement given to the Investigation Officer under Section 161 to the Cr.P.C. In cross-examination on behalf of the appellants, he stated that she never heard of any dowry demand made by the accused persons.

37. P.W.9, A.S.I Sri. Soumen Mukherjee, attached to Modhyamgram Police Station, prepared inquest report in connection with Bizpur Police Station UD case no. 08 dated 17/02/2006 over the dead body of Smt. Baby Singh, female, aged about 21 years, in presence of witnesses. Inquest report was admitted in evidence as Exhibit 5.

38. P.W. 10, 'S.I of Police, attached to Bizpur Police Station,' took up investigation of this case from earlier I.O S.I Gautam Saha on his transfer. He visited P.O, prepared rough sketch map with index (Exhibit 7), examined witnesses and arrested one accused person. He collected inquest report and seized the case docket of Bizpur Police Station UD Case No.08 dated 17.02.2006. He collected Post Mortem Report. He prepared seizure list in respect of documents and certified copies under a seizure list. He sent viscera of the deceased and wearing apparels to Forensic Science Laboratory. He proved formal FIR (Exhibit 8). On completion of investigation he submitted the charge sheet.

39. In cross-examination P.W. 10 volunteers that Arun Kumar Singh stated that Rs. 1,00,000/- was given and Rs. 25,000/- remained due. In reply to a question on behalf of the defence he stated that Arun Kumar Singh has not stated before the earlier I.O that one week before death of Deby (deceased) the victim called him over telephone as she was being severely tortured at her matrimonial home and she would be killed if they failed to pay up the money.

40. P.W. 11, 'S.I of police', attached Bizpur Police Station, initially took up investigation of this case on 18.02.2006. He perused F.I.R and the record in connection with UD Case No. 08 dated 17.02.2006. He visited the place of

occurrence, prepared a rough sketch map with index and examined available witnesses and arrested Daya Shankar Singh (A-4). He collected copy of inquest report prepared by the Executive Magistrate. On his transfer he handed over the Case Diary to officer-in-charge of Bizpur Police Station on 30.06.2006.

41. Mr. Ganguly, in course of his argument, has drawn our attention to the cross examination of P.W. 10 (2nd I.O) who stated that Arun Kumar Singh (P.W. 2) did not disclose before the I.O that one week before death of his sister, he received a phone call from his sister (deceased) regarding severe torture upon her at her matrimonial home and that she would be killed if they failed to pay up the money. Referring to this evidence of P.W. 10 (2nd I.O) Mr. Ganguly has tried to make this Court that such omission in the earlier statement under Section 161 Cr.P.C was fatal to the prosecution case.

42. We cannot accept this submission of Mr. Ganguly. The statements given by the witnesses before the Police are meant to be brief statements and could not take place of evidence in Court. Such omission will not justify a finding by a court that the witnesses concerned are liars. The piece of evidence not available in the statement of the witness before the Police under Section 161 of Cr.P.C cannot take away the nature and character of

the evidence and such evidence cannot be rejected when the evidence is otherwise creditworthy and acceptable. In our case P.Ws 1,2,3,5 and 7 specifically corroborated the facts of torture on demand of dowry and during their cross examination nothing substantial contradiction was elucidated to discredit their evidence. Only by putting suggestion during cross-examination cannot take away the trustworthiness of the witnesses.

43. In ***Bajinath*** (supra), The Hon'ble Apex Court came across the evidence where P.W. 5 mother of the deceased conceded that there was no dowry demand at that stage. On the other hand evidence of the defence witnesses was consistent to the effect that no demand as imputed had ever been made as the family of the husband was adequately well-off and further appellant-1 Bajinath had been living separately from before the marriage. Hon'ble Apex Court also took notice regarding cause of death as it was not clear as to whether that the death had been suicidal or homicidal.

44. In ***Major Singh*** (supra), The Hon'ble Apex Court did not find any evidence as to the demand of dowry or cruelty and that deceased was subjected to dowry harassment soon before her death.

45. In ***Abhijit Mondal*** (supra,) this Hon'ble Court did not find any evidence particularizing the date as well as the nature of demand of dowry or the torture meted out to the victim for non-fulfillment of such demand . This

Hon'ble Court further observed that first information report did not depict as to the demand of dowry which allegation appeared in the evidence before the Court for the first time unlike the evidence of our case.

46. In **Somnath Jana** (supra), this Hon'ble Court categorized some witnesses as inimical to the accused and evidence of other set of witnesses as hearsay. This Hon'ble Court found all the evidence filled with discrepancies contradictions and improbable versions.

47. In **Satbir Singh** (supra), The Hon'ble Apex Court dwelt upon and discussed the law relating to Section 304-B of the IPC read with Section 113-B of the Evidence Act.

48. In **Vijendra** (supra), **Jitu Sk. And others** (supra) and **Arjun Mandi** (supra), The Hon'ble Apex Court did not allow a Post Mortem Report to be admissible without examination of the Post Mortem doctor himself and by producing the document itself except in the cases mentioned in Section 65 of the Evidence Act. Since the copy of the post Mortem report did not come within the purview of any of the clauses of Section 65 of the Evidence Act it was not admissible on this score also.

49. In our case it is not disputed that the daughter (deceased) of P.W. 1 succumbed to her burn injuries. It is nobody's case that daughter of P.W. 1 died otherwise than that of burn injuries. In this circumstances, it would be

appropriate to reiterate the observation of the Hon'ble Apex Court in **Satbir Singh** (supra) in following words:

“ 38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

38.2. The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act operates against the accused.

38.3. The phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before”.

The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorizing death as homicidal or suicidal or accidental. The reason for such non-categorization is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.”

50. Observation of the Hon'ble Apex Court in paragraph 38.4 in **Satbir** (supra) is squarely applicable to our case even in absence of Post Mortem Report.

51. In **Radha Mohan Singh** (supra) The Hon'ble Supreme Court dealt with the infirmity or omission in the inquest report. Hon'ble Apex Court observed

that there is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or names of the eye-witnesses or the jist of the statement, nor is it required to be signed by any eye witness.

52. In the instant case, it is not in dispute that the marriage between deceased and A-1 had taken place on 22.02.2004 and deceased was brought in a severely burnt condition from her matrimonial home to the hospital on 16.02.2006 and she had expired on the same day. The evidence which we have discussed amply demonstrates that the harassment of the deceased for money had commenced within few days of her marriage and continued thereafter on several occasion. This fact is borne out from the deposition of P.Ws 1, 2, 3, 5 and 7, which shows that on not being able to fulfill the demand for Rs. 25,000/- deceased was subjected to torture.

53. Mr. Ganguly strenuously contended on the issue of non reporting the fact of torture either to the local Police Station or to neighbour. For that reason, Mr. Ganguly has tried to make this Court understand that there was no torture on demand of dowry.

54. But we are unable to accept the submission made on behalf of the appellants as we find from the evidence that P.W. 1 (father of the deceased) tried to patch up the differences as it appears from the evidence of Suresh Prosad Roy (P.W. 7) who testified that Brahma Singh (P.W. 1) requested him

to request the mediator of the marriage to take up the issue with Daya Singh (A-4) not to torture his daughter mentally. P.W. 7 further stated that mediator of marriage was closed to him. Therefore, the issue of making complaint by father of the deceased cannot be taken as fatal to the prosecution case.

55. In the F.I.R, it is specifically stated that all the appellants subjected the daughter of the complainant to torture mentally and physically on demand of dowry. That was further corroborated by the evidence of P.W. 1, P.W. 2, P.W. 3, P.W. 5 and P.W. 7. In this case A-1 examined himself as DW1 and he has succeeded to establish that after marriage he stayed in her paternal home at Kanchpara for 20 days and returned to Dubai. In support of his contention, his passport has been admitted in evidence as Exhibit-A. This fact has further corroborated by the prosecution witnesses. It is also an admitted fact that on the date of death of his wife A-1 was not in India. But in cross examination he has testified as follows:

“I used to rang home about twice in a week and used to talk with my wife and other family members.”

56. Therefore, A-1 had every access to his paternal home all the time through telephonic conversation. Not only that in his examination in Chief

he only concentrated on his defence of *ali bi* instead of denying allegation of torture on demand of dowry against all four appellants including himself.

57. In the aforesaid view of the matter we find that all four pre requisites for invoking the provision of section 304-B of the IPC stand satisfied in the following manner:

- “Death of Baby (deceased) took place at her matrimonial home within 7 years of marriage.
- The death took place in abnormal circumstances on account of burning
- She was subjected to torture soon before her death.
- Such torture was in connection with demand for dowry.”

58. Considering the evidence brought on record we find no reason to interfere with the findings returned by the Ld. Trial Court.

59. In the result, both the appeals stand dismissed. The appellants, **who are on bail**, shall surrender before the Trial Court within four weeks to undergo the remaining period of their sentence.

60. All pending applications are disposed of accordingly.

61. Let a copy of this Judgment along with the Trial Court record be send back at once.

62. All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

63. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

[BIBHAS RANJAN DE, J.]

64. I Agree.

[DEBANGSU BASAK, J.]