

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1828-MA-2017
Reserved on: 16.1.2023
Date of Decision: 27.1.2023

Krishan Kumar

.....Applicant

Versus

State of Haryana and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sukesh K. Jindal, Advocate
for the applicant.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. S.K.Yadav, Advocate
for respondents No. 2 and 3.

SURESHWAR THAKUR, J.

1. Through the instant application, the aggrieved victim-complainant prays for leave being granted, to challenge the verdict of acquittal, as made on 5.4.2017, upon Sessions Case No. 57 of 2016/20.8.2016, by the learned Additional Sessions Judge, Rewari. The above made verdict of acquittal, upon the accused concerned, was in respect of charges drawn against them qua offences punishable under Sections 498-A, 304-B read with Section 34 of the IPC

Factual Background

2. The genesis of the prosecution case, is rested upon the apposite FIR, to which Ex. PL is assigned. The narrations carried in the appeal FIR Ex. PL are that, on 11.07.2016, Krishan Kumar gave a complaint against his son-in-law Manish Kuumar, Mona Manish's sister, Sunita mother of Manish

and Ram Chander grandfather of Manish, with the allegations that he had married his daughter Pooja, on 03.06.2015 with accused Manish but after marriage, Pooja was mentally, and, physically tortured by the main accused for want of sufficient dowry. It is further alleged, that Sunita being mother-in-law along with her daughter Mona, who is married, had been torturing Pooja for dowry. That about such torture, Pooja had informed her brother, and, on 04.07.2016 an information was received on mobile that Pooja had committed suicide by hanging. Thereafter the complainant went to Kharagwas village, and, signed certain documents, as he was disturbed because of this incident, but now in full senses, he has made a complaint that the accused had forced his daughter to commit suicide, as she was unable to meet their demand of dowry including car and cash.

Investigation proceedings

3. That, on receipt of the complaint, a case under Sections 498-A, 304-B read with Section 34 IPC was registered. Post-mortem examination on the dead body of Pooja was conducted, and, sealed parcels were sent to FSL, Madhuban for analysis. Spot was inspected and its photographs were clicked. Accused Manish was arrested on 14.07.2016, and, his disclosure statement was recorded. The scaled site plan of the place of occurrence was prepared. Further investigation was conducted by DSP Mohammad Jamal, and, only accused Manish and Sunita were found involved in this case. On 02.08.2016, accused Sunita was arrested, and, her disclosure statement was recorded. During investigation, Mona daughter of Mukesh and Ram Chander son of Mool Chand were found innocent. After conclusion of investigations into the FIR bearing EX. PL, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C.,

before the learned committal Court concerned.

Committal Proceedings

4. Since the offence under Section 304-B of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 12.8.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Court Proceedings

5. The learned trial Judge concerned, after receiving the case for trial, subsequent to its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, for offences punishable under Sections 498-A, 304-B read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

6. In proof of its case, the prosecution examined 10 witnesses, and, thereafter the prosecution evidence was closed. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and, led only one defence witness into the witness box.

7. As above stated, the learned trial Judge concerned, proceeded to make an order of acquittal, upon the accused concerned.

Submissions of the learned counsel for the appellant

8. The learned counsel for the aggrieved appellant/complainant has argued with much vigour before this Court, that the impugned verdict of acquittal, as became drawn by the learned trial Judge concerned, is based

upon a gross misappraisal of the evidence germane to the charge. Therefore, he has argued, that the impugned verdict of acquittal, requires an interference, being made by this Court.

9. In making the above submission, the learned counsel for the appellant has argued, that since the deceased committed suicide by hanging rather within seven years of her marriage, thereupon her demise by hanging, does per se spark an inference, that she died in an unnatural circumstance, in her matrimonial home. Thus, when there was forthright evidence before the learned trial Judge concerned, hence making clear underlinings that the accused had been demanding dowry from the deceased. Therefore, he submits, that the deceased, though had committed suicide by hanging, but when the said event is but an unnatural death, besides when the demise of the deceased evidently occurred within seven years of her marriage, resultantly, the inference, as embodied in Section 113-A of the Indian Evidence Act (for short 'the Act'), becomes attracted to the charge, as, became drawn against the accused concerned. Therefore, he submits, that it was but incumbent, upon the accused to adduce cogent evidence suggestive, that the commission of suicide by the deceased, through hanging, was not a sequel of theirs making any demands of dowry, upon her, and/or was not a sequel of theirs either directly or indirectly rather being incriminatory participants in the commission of suicide by hanging, by the deceased, and/or evidence was to surface suggestive, that the accused had not abetted the commission of suicide by the deceased. In the absence of adduction of the discharging evidence, rather by the accused, he submits, that the charge drawn against the accused, became unflinchingly proven, and, a verdict of conviction was to be made against them.

Submissions of the learned counsel for respondents No. 2 and 3/accused

10. On the other hand, the learned counsel for the accused-respondents No. 2 and 3, has made a vigorous address before this Court, that the impugned verdict of acquittal, as became drawn by the learned trial Judge concerned, is well meritorious, and, does not require any interference being made therewith.

11. For the reasons to be assigned hereinafter, this Court finds no merit in the instant application seeking leave to appeal, and, is constrained to dismiss it.

Reasons for forming the above conclusion

12. It is not disputed that the deceased had committed suicide by hanging. The above fact is even echoed in the post-mortem report, to which Ex. PH is assigned. Apparently also, the deceased did not provenly author any suicide note, rather with echoings therein about the accused abetting her, in hers committing suicide. Moreover, the incrimination drawn against the accused is not qua theirs abetting the deceased in hers committing suicide, but the incrimination drawn against the accused, is for, an offence punishable under Section 498-A, 304-B read with Section 34 of the IPC. In consequence, *prima facie* it is not deemed fit to either delve into or make any adjudication, in respect of the accused abetting the commission of suicide by hanging rather by the deceased.

13. However, it becomes incumbent, upon this Court to both delve into, and, adjudicate, upon the above made submission, as, made by the learned counsel for the aggrieved applicant, inasmuch as, with the demise of the deceased happening through hers committing suicide by hanging, and, with the said ill event evidently occurring within seven years of her

marriage, (i) whether hence the presumption embodied in Section 113-A of the Act, provisions whereof become extracted hereinafter, rather became attracted qua the accused, (ii) and/or whether the prosecution has adduced evidence to enable this Court to raise the presumption, (iii) and/or, whether such evidence, rather for this Court becoming coaxed, to raise the relevant presumption, hence became enjoined to become adduced by the prosecution, and, upon the said evidence disclosing that, the said presumption is raisable, qua whether, thereupon a necessity arose qua the onus for rebutting the said presumption, rather shifted onto the accused, hence requiring them to adduce cogent evidence, displaying their innocence.

“113A. Presumption as to abetment of suicide by a married woman.—*When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.”*

Analysis of the submissions of the learned counsel for the applicant

14. To gauge the vigour of the address, as made by the learned counsel for the aggrieved applicant, that in consonance with the above necessity qua drawings of presumption against the accused, (i) there also becomes sparked a further necessity, especially with the commission of suicide, by the deceased, by hanging, (ii) given rather also the said demise, prima facie being construable to be death, which has occurred otherwise than in natural circumstances, (iii) besides given such unnatural death happening within seven years of her marriage, hence in the above manner, qua

thereupon it being construable to be a dowry death, as there purportedly existed formidable evidence on record, displaying qua the deceased becoming subjected to cruelty or harassment by the accused, on account of theirs making persistent demands of dowry upon her, imperatively besides qua thereupon whether a verdict of conviction is to be made, upon the accused.

15. Therefore, it has to be but obviously tested whether hence the charge drawn against the accused for the commission of an offence punishable under Section 304-B of the IPC, has been cogently proven. Furthermore, whether as but a natural corollary thereof, the prosecution has adduced evidence, that such an unnatural death of the deceased, at her matrimonial home, within seven years of her marriage, does attract thereons, the above presumption, as carried in the Act (supra). Moreover, it also becomes necessary to further determine, whether if assumingly, this Court concurs, with the above submission of the learned counsel, for the aggrieved applicant, that whether there is cogent evidence displaying, that the deceased was subjected to mental or physical cruelty, by her husband, or other members of his family, but at her matrimonial home, and, such harassment was in respect of demand of dowry, and, that the purported unnatural demise of the deceased, through hers committing suicide by hanging, is to be treated to be a dowry death or not. Therefore, initially it is necessary to allude to the fact, whether the prosecution has adduced cogent evidence suggestive, that (a) this Court becomes led to presume, that the provisions of Section 304-B of the IPC becomes prima facie attracted. For appreciating the provisions of Section 304-B of the IPC, the same are ad verbatim extracted hereinafter.

**Analysis of the provisions of Section 304-B of the Indian Penal Code,
and, of Section 113-A of the Indian Evidence Act**

“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.”

16. There is prima facie a limited inter se linkage inter se the presumption in Section 113-A of the Act, and, the provisions of Section 304-B of the IPC, in respect whereof a charge became drawn against the accused. However, a perusal of Section 113-A, discloses that trite underlinings therein are, that the Court is empowered to, “may presume”, qua the commission of suicide by a woman becoming abetted by her family or any relative of her husband, but only if the suicide has been committed by her within a period of seven years from the date of her marriage, yet but subject to her husband or such relative of her husband provenly subjecting her to cruelty. Therefore, the above import of provisions (supra), as carried in the Act (supra), do assign leverage in the Court concerned, to draw a presumption qua the husband or his relatives, abetting the commission of suicide by a woman, subject to the said suicide becoming committed but within seven years of the date of her marriage, besides when there is evidence in respect of the husband of the deceased or his relatives, meteing or

subjecting her to cruelty either physical or mental. In short, the availability of drawings of presumption, as carried in the provisions (supra), is limited to a situation where the charge drawn against the accused, is for an offence punishable under Section 306 of the IPC, and, may not *stricto sensu* relate to a situation where the charge drawn against the accused, rather is for an offence punishable under Section 304-B of the IPC, especially when in respect of the latter drawn charge, there is an imperative requirement, that harassment or cruelty, as became purportedly perpetrated, upon the deceased, did become so perpetrated but on account of demands of dowry, being made upon her by her husband, or the latter's relatives.

17. Be that as it may, yet independent of the above provisions, as carried in Section 113-A of the Act, yet there also occurs an implied presumption in Section 304-B of the IPC, provisions whereof becomes extracted hereinabove. The reason for drawing the above conclusion ensues from the factum, that in the first segment, of the above provisions, a clear echoing, becoming carried, hence with unfoldings qua 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, thereupon, such death shall be called "dowry death", and, such husband or relative "shall be deemed" to have caused her death. The trite plank for raising the above prima facie reason, becomes anchored upon the factum, that the words "shall be deemed to have caused death", rather occurring at the end of the above extracted provisions of sub-section (1) of Section 304-B of the IPC, and, theirs

speaking qua upon the earlier thereto evidently proven ingredients thereof, rather embodying penal ingredients, that upon the demise of the deceased, occurring otherwise than in normal circumstances, and, at her matrimonial home, but within seven years of her marriage, penal facts whereof are comprised in the initial segment or the component of sub-Section (1) of Section 304-B of the IPC, qua thereupon alone the charge qua the offence (supra) being cogently proven. The fact of the above penal provision carrying two segments, became planked upon, occurrence of the words “and it is shown” inter se or between the first, and, subsequent thereto penal ingredients. Therefore, the phrase “and it is shown” but necessarily is assignable a connotation, that but necessarily evidence is required to be adduced, that the said unnatural death of the deceased was a sequel of hers soon before her death, becoming subjected to cruelty or harassment, by her husband or by any relatives of her husband for in connection with any demand for dowry, and, or the said statutory words cast a necessity qua evidence in proof of all the therein penal ingredients but obviously being enjoined to become adduced. Therefore, reiteratedly the words “and it is shown” occurring between the earlier segment of sub-Section (1) of Section 304-B of the IPC, and, the word “shall be deemed to have caused her death” occurring in the subsequent thereto segment thereof, and, also hence ending the substantive section (supra), does convey(s) that the evidence in respect of the facts, narrated in both the segments, is required to be adduced by the prosecution. In sequel, it is only in the event of cogent proof being adduced qua both the components of sub-Section (1) of Section 304-B of the IPC, that thereupon the implied presumption, as enshrined within the phrase “shall be deemed to have caused her death” may become raisable. However, even if this Court

assigns, the above import, to the statutory phrase “shall be deemed to have caused her death” as carried in sub-section (1) of Section 304-B of the IPC. Nonetheless, the above implied presumption, if any, which exists in the substantive provisions of Section 304-B of the IPC, cannot be ideally drawn or can be drawn in a perfunctory or mechanical manner. The reason for making the above conclusion stems from the factum, that even when the demise of a married lady occurs at her matrimonial home, in those circumstances other than in normal circumstances, and, it also occurs within seven years of her marriage, but yet the word “and” as occurs between the earlier thereto ingredients, and, the subsequent thereto phrases, as occur therein, is but reiteratedly suggestive, that both the segments of sub-Section (1) of Section 304-B of the IPC, as are separated by the word “and it is shown” rather require proof being adduced, qua both. The said necessity of proof, being adduced in respect thereof, becomes enjoined to be discharged by the prosecution, through its adducing forthright evidence in respect of harassment or cruelty being meted, upon the deceased by her husband or any relative of her husband or in connection with any demand for dowry. If so, for elaboration but naturally, the prosecution was required to prove, not only qua the demise of the deceased occurring at her matrimonial home, in those circumstances, other than in normal circumstances, and, also was required to prove qua her demise occurring within seven years of her marriage, besides also was required to prove that soon before her marriage, she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry. In case, the above evidence, in respect of the proof qua all the penal ingredients which occur prior, and, subsequent to the phrase “and it is

shown”, does imminently surface(s), thereupon the words “shall be deemed to have caused her death” as become carried at the end of the relevant statutory provision, may necessarily become an able plank for this Court, to presume or conclude, that the accused had committed an offence punishable under Section 304-B of the IPC, otherwise not. In short, the implied penal presumption, as becomes created by the words “shall be deemed to have caused her death”, as occur at the end of the relevant statutory provision, yet do not discharge, the prosecution from adducing evidence, with respect to the preceding therewith ingredients, nor also the onus shifts onto the accused to unflinchingly lead exculpatory evidence. Rather the onus of proving the charge throughout became rested, upon the prosecution. The said implied presumption does only facilitate the raising of an able conclusion of guilt of the accused.

Evidence with respect to the deceased being subjected cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry

18. While traversing to the evidence adduced before the learned Court below, especially for unearthing therefrom, whether the prosecution has discharged the onus of proving, that the deceased was subjected to harassment or cruelty by her husband, and/or by his relatives, in connection with demand of dowry, it is noticed that on 4.7.2016, the complainant one Krishan Kumar had made a statement, to which Ex.PA is assigned. A reading of Ex. PA discloses, that he has not attributed any criminality to the accused, but had made narration therein, that deceased Pooja used to remain tense from her poor performance in Graduation, and, which ultimately led her to commit suicide. Therefore, the above failure in academics of deceased Pooja, does become ventilated in Ex. PA, to become the instigatory or the goading factor, rather upon the deceased to commit

suicide. Similarly in Ex. D1, the father of the complainant one Bhup Singh, had made a similar statement. Neither in Ex. PA, nor in Ex.D1, there is any echoing, about the demand of dowry by the accused, upon the deceased, nor also there is any further echoing, that on account of the said demand of dowry, the accused had meted any physical or mental cruelty or harassment to the deceased. Therefore, in the face of lack of the above trite underlinings, becoming made, respectively in Ex. PA, and, in Ex. D1, the prosecution has obviously failed to erect the requisite foundational strata for enabling this Court to become led to presume that it shall be deemed, that the accused had caused the demise of the deceased nor also prima facie the provisions of Section 304-B of the IPC become attracted. The reason for drawing the above inference, does naturally ensues, from the factum, that in the mandate, as carried in Section 304-B of the IPC, speakings occur qua in the event of the deceased dying otherwise than under natural circumstances, but within seven years of her marriage, and, upon evidence cogent, and, reliable displaying, that the accused for ensuring their demand of dowry, rather being successfully satiated by the deceased concerned, theirs evidently subjecting the deceased to cruelty or harassment, thereupon all the penal ingredients, carried in the relevant charging Section, hence becoming concluded to become invincibly proven. However, though as above stated, the evidence necessary for proving the above foundational facts, rather for supporting the above referred ingredients, as carried in Section 304-B IPC, was required to be adduced by the prosecution. Nonetheless, both the complainant initially in Ex. PA, and, his father in Ex. D1, did not make any echoing therein reflective qua the above statutory ingredients becoming satisfied. The effect of the above, is that, prima facie, there was no occasion

for the learned trial Judge concerned, to draw the implied presumption, as spoken in sub-Section (1) of Section 304-B of the IPC nor obviously there was any occasion for the learned trial Judge concerned, to ask that, resultantly, the onus to adduce exculpatory proof in respect thereof rather being untenably ensured to be shifted onto the accused, nor with such onus remaining undischarged, the accused became amenable for a finding of conviction becoming recorded, upon them.

Conclusion

19. The above onus of proving all the ingredients, as carried in sub-section (1) of Section 304-B of the IPC, irrespective of the words “shall be deemed to have caused her death” occurring at the end thereof, do not carry the import, that the prosecution is relieved of its duty from unflinchingly proving the charge. Reiteratedly the reason for drawing the above inference becomes garnered from the factum, that with the words “it is shown”, segregating the first and second part of the clause, hence therefrom an inference becoming sparked, that the words “shall be deemed to have caused her death” as occur at the end of sub-section (1) of Section 304-B of the IPC, do not ever discharge, the prosecution from proving the guilt of the accused beyond a reasonable doubt, in respect of a charge drawn under Section 304-B of the IPC.

Reasons for not accepting the deposition of PW-1

20. Even though, the complainant in his initially made signed statement, as carried in Ex. PA, declined to draw any criminality qua the accused, but on his stepping into the witness box, he had attempted to resile from his signed statement, as carried in Ex. PA, through his making an echoing, that he was not mentally fit, at the time of his drawing Ex. PA.

However, no evidence to support the above factum, has been adduced, contrarily when the investigating officer concerned, has not made any echoing, that at the time of the complainant making Ex.PA, he was perturbed, or was mentally unfit to make the said statement, thereupon it cannot be concluded, that at the time of making Ex. P1, the complainant was unfit to make the statement. Furthermore, though the complainant while stepping into the witness box, as PW-1, has attempted to rid the effect of the exculpatory echoings, as carried in Ex.PA, through his making a testification, that he was pressurized by the villagers to make Ex. PA. However, the above explanation cannot be accepted, as the investigating officer concerned, has not made any similar echoing in his testification. Moreover, when in Ex. D1, there are signed exculpatory echoings qua the accused, therefore, it cannot be said, that the signed statement (supra) of the complainant, as carried in Ex.PA, was made under pressure, or coercion, becoming exercised upon him by the accused. In consequence, the above material inter se contradiction inter se Ex. PA, rather with the testification made by PW-1 in Court, stems an inference, that the said witness had made blatant improvements or embellishments with his previously made statement, in writing, and, thus no credence is to be assigned thereto. Since, as above stated, for ensuring that the charge drawn under Section 304-B of the IPC, becomes concluded to be validly proven by the prosecution, and/or for ensuring that assuming the implied presumption carried in the Act (supra), becoming amenable to be attracted against the accused, yet there was a dire necessity upon the prosecution to prove, that the deceased, who committed suicide by hanging, was led to do so under proven harassment or cruelty becoming meted upon her. Therefore, it was

but necessary for the prosecution to, even irrespective of this Court discarding the testification of PW-1, but on the above plank, rather to prove that during her lifetime, or soon before her death, the deceased was subjected to mental cruelty or harassment by the accused, and, that such cruelty, and, harassment was perpetrated, upon her by the accused, for theirs ensuring that their demand of dowry, rather becomes successfully satisfied by her.

21. Though, in the above regard, the prosecution has rested its case upon the testimony of Dinesh Kumar, the brother of the deceased, who has stepped into the witness box as PW-9, and, testified that on 24-25.6.2016, when he visited the matrimonial home of his sister Pooja, qua the latter apprising him about hers being tortured by the accused, on account of cash, and, car. Moreover, he also testified that he had advised his deceased sister to remain calm, and, assured her, that he would apprise their father, about the said revealed fact once their father returns from duty. However, he yet stated that only on 5.7.2016, on the return of his parents to home, he came to know about the death of his sister. It is but enigmatic, that a close relative of the deceased, one Dinesh Kumar, who visited his sister on 24/25.6.2016, and, who then became apprised by his deceased sister, that she was being tortured by the accused, on account of theirs demanding a car, and, cash from her, his being neither aware about the factum of the demise of his sister, also it is enigmatic that when in respect of the above, he visited the matrimonial home of his sister on 24/25.6.2016, rather his making a statement before the police belatedly therefrom hence on 11.7.2016. Therefore, the effect of the above belated making of a statement by PW-9, before the police containing therein the fact, as testified by him

qua his on 24/25.6.2016, upon his visiting the matrimonial home of his deceased sister Pooja, his becoming apprised by the deceased, that the accused are torturing her on account of theirs raising a demand of dowry from her, is that, but naturally, the said statement is ridden with a vice of premeditation, and, concoction, and, to which no credence can be assigned. As but a natural sequel thereof, it can become invincibly concluded, that the above stated ingredients, as carried in Section 304-B of the IPC, remain completely unproven or they remained not proven beyond any reasonable doubt by the prosecution.

22. Conspicuously also, when there was no firm foundational fact for the learned trial Judge concerned, to draw succor either from the implied presumption, as carried in Section 113-A of the Act, nor from the prima facie entwined therewith mandate, carried in Section 304-B of the IPC, nor when any cogent evidence, in respect of the above statutory ingredient(s), became adduced by the prosecution, thereupon the above implied presumption was undrawable against the accused.

23. Thus, this Court is of a view, that there is no requirement for this Court to draw the above statutory presumption against the accused. Even otherwise, commission of death by hanging, by the deceased in her matrimonial home, especially when there is no cogent evidence to rebut the findings, recorded in PMR, that as a matter of fact, the deceased committed suicide by hanging, does obviously rather make the demise of the deceased to be suicidal, and, not homicidal. Therefore, when there is no evidence qua the accused instigating the deceased to commit suicide, nor when there is obviously any evidence suggestive, that through the accused making demands of dowry, upon her, theirs tacitly abetting the commission of

suicide by hanging by the deceased, which may otherwise make such act of the deceased, to commit suicide by hanging, to be a dowry death, within the ambit of Section 304-B of the IPC, especially when the demise of the deceased occurred at her matrimonial home, within seven years of her marriage, and, such demise becomes purportedly sparked by cruelty or harassment, being meted to her by her husband or by his relatives in connection with any demand, whereupon it may become a dowry death, and, would be punishable under Section 304-B of the IPC. Even otherwise, the death by hanging, by the deceased through hers hanging herself, and, at her matrimonial home, cannot in all circumstances, be construed to be a death, otherwise than under normal circumstances, unless the above spelt ingredients, as carried therein, are proven. However, when the requisite above stated ingredients, as carried in Section 304-B of the IPC, remain completely unestablished by the prosecution, through its adducing cogent evidence. Therefore, this Court is constrained to conclude, that the death of the deceased did not occur at her matrimonial home in the circumstances otherwise than natural, nor the verdict challenged before this Court is unmeritworthy, rather it is based upon an objective appraisal of evidence germane to the charge.

Principles

24. (1) The presumption carried in the Indian Evidence Act, is attractable only when the charge drawn against the accused is for an offence punishable under Section 306 of the IPC.
- (2) The said statutory provision has a limited effect, in respect of a charge drawn under Section 304-B of

the IPC, as the implied presumption, created through the words “shall be deemed to have caused her death”, which hence occur at the end of the relevant statutory provisions, yet do not discharge, the prosecution from adducing evidence qua the deceased being meted cruelty or harassment, in respect of demands of dowry, as, made upon her by her husband, or by his relatives.

- (3) That the statutory phrase “and it is shown” which segregates the first, and, second component of the relevant discharging section, cast a conjunctive onus, upon the prosecution to prove the earlier, and, later components' of the relevant charging sections.
- (4) That the word “ shall be deemed to have caused her death” do not ever discharge the prosecution from adducing evidence rather for unflinchingly proving both the components, as carried in sub-Section (1) of Section 304-B of the IPC.
- (5) The evidence necessary for proving the above foundational facts, rather for supporting the ingredients, as carried in Section 304-B IPC, is required to be always adduced by the prosecution, and, the implied presumption, gets strengthened only, when the defence omits to put the relevant exculpatory suggestions to the PWs concerned,

and/or fails to secure a favourable answer thereto,
rather from the PWs concerned.

Final order

25. Consequently, for the reasons assigned hereinabove, this Court finds no reason to interfere with the impugned verdict of acquittal, as made by the learned trial Court concerned. Thus, leave to appeal against the verdict of acquittal, as made on 5.4.2017, upon Sessions Case No. 57 of 2016/20.8.2016, by the learned Additional Sessions Judge, Rewari, is declined, thus, the application, seeking leave to appeal, is hereby dismissed. The impugned verdict of acquittal, as made by the learned trial Court, is maintained, and, affirmed. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Personal, and, surety bonds, if any, furnished by the accused concerned, are ordered to be forthwith cancelled, and, discharged.

26. Records be sent down forthwith.

27. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 27th, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes