

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.505 of 2002**

1. Yogendra Nath Jha S/O Late Jata Nath Jha R/o vill - Parmanandpur, P.S. - Raniganj, Distt. - Araria(Case against the appellant was abated vide Honourable Court order dated.- 06-01-2015)
2. Shashi Rama Devi W/O Yogendra Nath Jha R/o vill - Parmanandpur, P.S. - Raniganj, Distt. - Araria

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with  
**CRIMINAL APPEAL (SJ) No. 533 of 2002**

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SURENDRA NATH JHA son of Yogendra Nath Jha resident of village Parmanandpur, P.S. Raniganj, Dist. Araria

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 505 of 2002)

|                      |   |                                |
|----------------------|---|--------------------------------|
| For the Appellant/s  | : | Mr.Sourendra Pandey, Advocate  |
|                      | : | Mr. Rajesh Mishra, Advocate    |
|                      | : | Mr. Basant Kumar, Advocate     |
|                      | : | Mr. Abhishek Kumar, Advocate   |
| For the Respondent/s | : | Ms. Anita Kumari Singh, A.P.P. |

(In CRIMINAL APPEAL (SJ) No. 533 of 2002)

|                      |   |                                |
|----------------------|---|--------------------------------|
| For the Appellant/s  | : | Mr.Sourendra Pandey, Advocate  |
|                      | : | Mr. Rajesh Mishra, Advocate    |
|                      | : | Mr. Basant Kumar, Advocate     |
|                      | : | Mr. Abhishek Kumar, Advocate   |
| For the Respondent/s | : | Ms. Anita Kumari Singh, A.P.P. |

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY**  
**ORAL JUDGMENT**

**Date : 12-12-2024**

**1.** Criminal Appeal(SJ) No. 505 of 2002 is filed by Yogendra Nath Jha and Shashi Rama Devi who are the in-laws of the deceased Babita Kumari. Criminal Appeal No. 533 of 2002 was preferred by



Surendra Nath Jha, the husband of the deceased Babita Kumari. Both the criminal appeals are arising out of the judgment and conviction in Sessions Case No. 346 of 1995 (Tr. No. 81 of 2002) on the file of Additional Sessions Judge (FTC-3), Purnea whereby all the appellants were sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 304-B r/w Section 34 of the Indian Penal Code.

**2.** As stated supra, the appellants Yogendra Nath Jha and Shashi Rama Devi are the parents of Surendra Nath Jha. The case of the prosecution as per the fardbeyan i.e. (the statement of Dilip Kumar Jha, brother of the deceased) is that on 04.05.1991, the deceased Babita Kumari (aged 18 years) got married with Surendra Nath Jha. There was no dispute regarding dowry. Babita Kumari lived in the same village for about one year after the marriage. At that particular point of time Surendra Nath Jha visited the village 3 or 4 times to meet his sister. It is specifically mentioned in the fardbeyan that there were no complaints about the marriage, either by



Surendra Nath Jha or by Babita Kumari. The Durgaman (Gauna) of Babita Kumari took place on 07.05.1992, and she went to her in-laws place. After 20-25 days of Gauna, the uncle of Dilip Kumar Jha i.e. Indranath Jha met Babita Kumari who complained to him, that her in-laws were harassing her for dowry, refusing to serve her food and slapped her, when she demanded for the food. On that Indranath Jha returned to the village and informed the said fact to the father of Babita. Later, father of Dilip Kumar Jha went to the in-laws house of Babita Kumari, to bring her back, but the appellants did not allow his father to meet her, and he was forced to return back to the village. The contents of the fardbeyan further disclose that the father of Dilip Kumar Jha planned to visit Babita Kumari on the occasion of Krishna Janmastami to bring her home. Meanwhile, on 05.08.1992 (one day prior to preferring the fardbeyan), at about 04:30 PM, Devanand Rai, brother-in-law of his elder brother came to their residence and informed them that he had received a telephone call from Shambhu Nath Rai (Mukhiya of



Chunapur Panchayat) intimating them, about the death of Babita Kumari. Upon receiving the news, Dilip Kumar informed the death intimation to his family members, and they all rushed to the in-laws place of Babita Kumari, where and they were informed that Babita Kumari committed suicide by hanging herself and her last rites were performed on 04.08.1992. The contents of the Fardbeyan further disclose that Surendra Nath Jha, with the help of his parents, sisters and others i.e. 30-32 persons from the village with a common intention harassed the deceased for dowry and intentionally murdered Babita Kumari and cremated her body without informing her family, with an intent to conceal the crime.

**3.** Basing on the fardbeyan of Dilip Kumar Jha, dated 06.08.1992, a case was registered against the appellants and others, for the offences punishable under Section 302 r/w Section 34 of Indian Penal Code, Section 201 of the Indian Penal Code, and under Section 3 and 4 of the Dowry Prohibition Act, vide G.R. No. 1042 of 1992 on the file



of Raniganj Police Station, Farbisganj Sub-Division, Araria District, vide F.I.R. No. 129 of 1992 dated 06.08.1992. The police have thoroughly investigated the case and laid a charge-sheet against the appellants under Sections 302, 304-B, 201 r/w Section 34 of Indian Penal Code.

**4.** During the course of trial, charges were framed against three appellants for the offences punishable under Section 302, 304-B and Section 201 r/w Section 34 of the Indian Penal Code read over and explained to the appellants. The appellants pleaded not guilty of the charges and claimed to be tried.

**5.** On behalf of the prosecution, P.Ws. 1 to 14 were examined, and Exhibits 1, 2, 2/1, 3 and 3/1 were marked. On completion of the prosecution evidence, the appellants were examined under Section 313 of the Code of Criminal Procedure, and on behalf of the defence Exhibits 'A' and 'B' were marked.

**6.** On considering the entire oral and documentary evidences on record, the trial court



convicted and sentenced all the appellants for the offences punishable under Section 304-B of the Indian Penal Code r/w Section 34 as stated supra.

**7.** Heard the Learned counsel for the appellants and the Learned Additional Public Prosecutor for the State.

**8.** The point for determination in these appeals are that:-

I. whether the trial Court committed any error or irregularity in convicting and sentencing the appellants for the offences punishable under Section 304 r/w Section 34 of the Indian Penal Code?

II. Whether the prosecution was able to prove the guilt of the appellants for the offences punishable under Section 304-B r/w Section 34 of the Indian Penal Code beyond reasonable doubt?

**9.** P.Ws. 1 to 4 are the brother, father, grandfather and sister of the deceased respectively.

**10.** On perusal of the evidence of P.Ws. 5 to 12, it is evident that the trial Court tendered their



evidences, and they were only subjected to cross-examination. P.Ws. 13 and 14 were declared hostile by the trial Court. The evidence which is available on record is only that of the family members of the deceased. It is pertinent to note that the prosecution has not made any effort to examine the doctor and Investigating Officer for the reasons best known to them.

**11.** It is the contention of the Learned counsel for the appellants that the prosecution has miserably failed to prove that there was any demand for dowry or additional dowry by the appellants, and the manner and mode of the death of the deceased. It is a case of the prosecution that the deceased died by committing suicide. However, the Learned counsel for the appellants contends that there is nothing on record, to prove that the deceased committed suicide. It is also contended by the Learned counsel for the appellants that the prosecution has miserably failed to prove that the deceased was subjected to cruelty soon before her



death, and therefore, prayed to acquit all the appellants.

**12.** It is contended by the Additional Public Prosecutor Ms. Anita Kumari Singh that there is no error or irregularity in the order of the trial Court and prayed to confirm the judgment and order of sentence of the trial Court.

**13.** On perusal of the record, it is evident that Yogendra Nath Jha, the first appellant in Criminal Appeal (SJ) No. 505 of 2002, died during the pendency of the appeal, and this Court has abated the case against the appellant Yogendra Nath Jha vide order dated 06.01.2015. Accordingly, Criminal Appeal (SJ) No. 505 of 2002 is heard only on behalf of the 2<sup>nd</sup> appellant i.e. Sashi Rama Devi. The record also reveals that this Court enlarged Shashi Rama Devi as well as Surendra Nath Jha on bail vide order dated 03.12.2002 in both the appeals.

**14.** It is necessary to reappriciate the entire evidence on record to determine whether the trial Court has committed any irregularity or error in convicting the appellants.



**15.** The evidence of P.W. 1, Dilip Kumar Jha, disclose that the marriage between Babita Kumari and Surendra Nath Jha took place on 04.05.1991, but her sister Babita Kumari was not sent to her in-laws place immediately. Later, they performed the Durugman (Gauna) ritual on 04.05.1993 and on that day a verbal altercation took place regarding dowry, wherein the appellants allegedly demanded 10 grams of gold, furniture and other articles. However, those items were not handed over and Babita Kumari was sent to her in-laws place. It is testified by P.W. 1 that his uncle Indranath Jha went to the place of Babita Kumari, met her and that Babita Kumari informed him about the harassment being faced by her in the hand of her in-laws, for demand of dowry and also about the cruel acts of the appellants, such as not providing her food and slapping her. He further testified that his uncle, Indranath Jha conveyed these facts to his father, who in turn went to meet Babita Kumari, but the appellants did not permit him to meet her. Subsequently, his father planned to bring Babita to their home on the eve of



Krishna Janmashtami, but in the meantime, i.e. on 05.08.1992, Devanand Rai came to their residence and informed them about the death of Babita Kumari. On that they all went to the house of the appellants, where Yogendra Nath Jha informed them, that Babita Kumari had committed suicide and her last rites were performed. It is specifically testified by Dilip Kumar Jha that Babita Kumari's body was cremated without informing them. The signature of Dilip Kumar Jha on the fardbeyan was marked as Exhibit 1.

**16.** It is important to note that the fardbeyan or the F.I.R. were not marked as Exhibits. However, four documents were brought on record i.e. Exhibit 2 and 2/1 letter alleged to be written by the deceased Babita Kumari and received them after her death. The envelopes of the letters were marked as Exhibit 3 and 3/1.

**17.** It is relevant to mention that the evidence of P.W. 1 when compared with the contents of the Fardbeyan disclose that several improvements were made by this witness. The fardbeyan does not



disclose any demand for dowry by the appellants, either at the time of marriage or during Durugman (Gauna) ritual. For the first time, P.W. 1 testified before the Court about the demand of dowry and harassment by the appellant. Another important point to be noted is that, P.W. 1, Dilip Kumar Jha, in his fardbeyan as well as in his deposition stated that his uncle, Indranand Jha, met Babita at her in-laws house but he was not examined as witness to corroborate that Babita Kumari was harassed prior to her death at the appellants' house.

**18.** In the cross-examination it is stated by P.W. 1 that one Nagendra Prasad, Sub-Inspector has recorded his statement.

**19.** Exhibits 2 and 2/1 are the letters alleged to have been written by the deceased Babita Kumari. Exhibit-2 was addressed by the deceased to her mother, intimating that she felt unwell and that she would explain everything when she meets them. On perusal of Exhibit 2/1, it is evident that the deceased addressed the letter to her brother, Dilip Kumar Jha, mentioning only that "the situation of the house is



very bad". Except the said statement the letters do not disclose any reference about the dowry demands, or about the demand for additional dowry or about harassment by the appellants. It is specifically testified by P.W. 1 that he never visited Babita Kumari at her in-law's house, during her lifetime and also admitted that inspite of learning about the harassment being faced by Babita Kumari through their uncle, they did not take any legal action. It is testified by the P.W. 1 that immediately after coming to know about the incident, they never visited the house of Babita Kumari, but reached thereon the next day at 05:00 PM. Further P.W. 1 was unable to state the name of the persons, from whom he came to know about the cause of death of Babita Kumari and he also admitted that the appellants had neither demanded for any dowry from him nor misbehaved with him.

**20.** The evidence of P.W. 2, Ramanand Jha, who is the father of the deceased, is also in the same line as that of P.W. 1. It is testified by P.W. 2 that they had stated that they would give 10 grams of gold, at



the time of marriage, but were unable to give it so and that after one year during the Durugama (Gauna) ritual, the appellants demanded for the gold. His evidence further disclose that he went to meet his daughter and found her to be very weak, but her in-laws did not allow him the talk to her. Later, he received information about her death. It is specifically testified by P.W. 2 that the deceased had addressed Exhibit 2 and 2/1 intimating them about the harassment she faced by her in-laws, due to demand for dowry and gold ornaments.

**21.** The evidence of P.W. 3, i.e. grandfather of the deceased was also similar to that of P.W. 2. However, his evidence do not disclose about the fact that Indranath Jha met Babita and later Indranath Jha informed them about the harassment faced by Babita in the hands of the appellants.

**22.** The evidence of P.W. 4, Sima Kumari (sister of Babita Kumari), disclose that the marriage between Babita and Surendra Nath Jha took place on 04.05.1991 and Durgaman (Gauna) rituals took place after a year and that Babita Kumari died, at her in-



laws place. Her evidence further disclose that her father (P.W. 2) and uncle (not examined) went to in-laws house of Babita to meet her, but they were not allowed by her in-laws. She further stated that she was intimated by Dilip Kumar Jha that the appellants had murdered Babita and burnt her body. She also admitted the handwriting of Babita on Exhibit 2 and 2/1. She further testified that she received the letters i.e. Exhibit 2 and 2/1 on 07.08.1992 i.e. subsequent to the death of deceased. She was informed by her uncle, that Babita was not sick before her death, however, the name of uncle was not stated by her. She further testified that she went to Purnea on 28<sup>th</sup> April, to appear for an examination but did not meet Babita and that she was informed by Dilip Kumar Jha on evening of 04.08.1992 that Babita was murdered by appellants for demand of dowry. However, inspite of receiving the news, her father had not gone to the appellants' house.

**23.** The version of P.W. 4 contradicts the evidence of P.W. 1 regarding the death intimation received by them. P.W. 1 stated that he learnt about



the death from one Devanand Rai at 04:30PM on 05.08.1992. The evidence of P.W. 4 categorically reveals that she was informed by Dilip Kumar Jha on 04.08.1992 about the death of the deceased. Hence, it can be construed that Dilip Kumar Jha was aware of the death of the deceased on 04.08.1992, but he preferred the fardbeyan on 06.08.1992, i.e., with a delay of 48 hours. The delay in reporting the incident to the police is not at all mentioned in the Fardbeyan.

**24.** On perusal of the evidence of P.Ws. 5 to 12, it is evident that the witnesses were tendered, and they were only permitted to be cross-examined. At this juncture, it is relevant to refer the case law in ***Sukhwant Singh Vs. State of Punjab reported in (1995) 3 SCC 376*** wherein the Lordships have held as under:-

**“9.** *Section 138 of Indian Evidence Act envisages that a witness should be examined-in-cheif and then subjected to the cross-examination and for seeking any clarification, the witnesses may be re-examined by the*



*prosecution. There is no meaning in tendering a witness for cross-examination only. Tendering of a witness for cross-examination, as a matter of fact, amounts to giving up of the witness by prosecution as it does not choose to examine him in chief. However, the practice of tendering witnesses for cross-examination in Session trials had been frequently resorted to since the enactment of the Code of Criminal Procedure, 1898. The reason behind taking recourse to such a practice, which undoubtedly is inconsistent with Section 138 of Evidence Act, is not far to seek. Under the Code as it stood prior to its amendment of Act 26 of 1955 a full-fledged Magisterial enquiry was to be held, in a case which was triable exclusively by the Court of Sessions or the High Court, in accordance with the*



*procedure laid down in Chapter XVIII thereof and in that enquiry prosecution was required to examine all its witnesses. Under Section 288 of that Code the evidence of the witnesses so recorded by Committing Magistrate could be treated, at the discretion of the Sessions Judge, as substantive evidence at the trial. More often than not, the prosecution taking advantage of the above provision, used to ask for and obtain leave of the Sessions Court to treat the depositions of those witnesses whom they did not intend to examine afresh, recorded in the committal enquiry as its evidence in the trial and then tender them for cross-examination. In other words, the prosecution brought on record of the trial court and relied upon the testimonies of some of the witnesses recorded at its instance before the*



*Committing Magistrate as its evidence during trial and then tendered them for cross-examination by the defence. It will be pertinent to mention here that Act 26 of 1955 which amended the Code of 1898 restricted the examination of prosecution witnesses in the committal enquiry in respect of cases instituted on police report only to those who were to give an ocular version of the incident only.*

**19.** *In State of U.P. v. Jaggio [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] which has been referred to and relied upon by the prosecution and the trial court for adopting the procedure of tendering PW 4 and PW 5 for cross-examination only in our opinion, has not been properly appreciated and has been misapplied. That judgment cannot be read to lay down, as a matter of legal proposition,*



*that a witness can be 'tendered' for cross-examination even without there being any examination-in-chief. If there is some earlier statement of the witness recorded by a competent court or an affidavit filed in the trial court and the witness testifies to the correctness of that earlier statement at the trial, it may (in certain cases of witnesses of a formal nature) as noticed earlier be permissible to tender him for cross-examination after he is sworn to the correctness of the earlier statement, because in that event that earlier statement is treated as the examination-in-chief of the witness but that is not the same thing as tendering a witness for cross-examination only, without there being any examination-in-chief on the record. In Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] a Bench of this Court*



*was considering the question whether the mere presentation of an application by the prosecution to the effect that a certain witness had been "won over" was conclusive of the allegation that he had been so "won over" and the prosecution was therefore relieved of its obligation to examine him at the trial. The proposition was negatived and it was in that context, that this Court observed:*

*"On behalf of the appellant it was said that Ramesh Chand was won over and therefore the prosecution could not call Ramesh. The High Court rightly said that the mere presentation of an application to the effect that a witness had been won over was not conclusive of the question that the witness has been won*



*over. In such a case Ramesh could have been produced for cross-examination by the accused. That would have elicited the correct facts. If Ramesh were an eyewitness the accused were entitled to test his evidence particularly when Lalu was alleged to be talking with Ramesh at the time of the occurrence.”*

**20.** *The Division Bench, therefore, was considering a peculiar fact situation in that case and even in that context it was observed that the witness “could have been produced for cross-examination by the accused” and that “the accused were entitled to test his evidence”. The observations of the Division Bench in Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] , therefore, do not support the*



*view that a material witness can be 'tendered' for cross-examination only. The observations from a judgment of this Court cannot be read in isolation and divorced from the context in which the same were made and it is improper for any court to take out a sentence from the judgment of this Court, divorced from the context in which it was given, and treat such an isolated sentence as the complete enunciation of law by this Court. The judgment in Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] has in our opinion been misappreciated and that judgment cannot be interpreted as a sanction from the Supreme Court to the prosecution to adopt the practice of tendering a witness for cross-examination only, without there being any examination-in-chief, in relation to which the witness has to be cross-*



*examined. All that the judgment in Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] emphasises is that the mere ipse dixit of the prosecutor that a particular witness has been won over is not conclusive of that allegation and the Court should not accept the same mechanically and relieve the prosecutor of his obligation to examine such a witness. It was for this reason suggested by the Bench that where the prosecution makes such an allegation, it must keep the witness in attendance and produce him to enable the defence to cross-examine such a witness to test his evidence as well as the allegations of the prosecution and bring out the truth on the record. After the coming into force of the Criminal Procedure Code, 1973, which replaced the Code of 1898, recording of evidence in*



*commitment proceedings has been totally dispensed with and Section 288 of that Code has been omitted. Consequently, the course suggested by some of the High Courts in the earlier quoted judgments regarding tendering of a witness for cross-examination who had been examined in the committal court, is also no more relevant or available. The Jaggo case [(1971) 2 SCC 42 : 1971 SCC (Cri) 401 : AIR 1971 SC 1586] , which was decided when the Code of 1898 was operating in the field could not, therefore, be pressed into service by the trial court while dealing with the instant case tried according to the Code of 1973. Thus considered, it is obvious that the trial court, wrongly permitted the prosecution to tender PW 4 and PW 5 for cross-examination only. Both PW 4 and PW 5 were, according to the prosecution case itself,*



*eyewitnesses of the occurrence and had removed the deceased to the hospital. Their evidence was, of a material nature which was necessary for the unfolding of the prosecution story. The effect of their being tendered only for cross-examination amounts to the failure of the prosecution to examine them at the trial. Their non-examination, in our opinion, seriously affects the credibility of the prosecution case and detracts materially from its reliability.”*

**25.** The above decision of the Apex Court squarely applies to the present facts and circumstances of the case. However, in the present case witnesses P.W. 5 to 12 were tendered by the Court, but the statements of these witnesses were not recorded by the Magistrate. However, in the absence of the statements recorded by Magistrate, the trial Court tendered their evidence, and witnesses were only subjected to cross-examine.



**26.** P.W. 13 and 14 did not support the case of the prosecution and were declared hostile. Except the evidence of P.W. 1 to 4, there is no other evidence on record.

**27.** Section 304-B of Indian Penal Code defines dowry as follows:-

***“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.*

*Explanation.- For the purposes 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.”*

**28.** As per the above definition, four ingredients must be satisfied to prove the guilt of the accused. Further, dowry death must be proved beyond reasonable doubt. There must be either ocular, oral or documentary evidence to prove demands of dowry, ill treatment/cruelty made by appellants, due to the failure to meet the such demands. In the present case, the prosecution miserably failed to establish that the death was occurred otherwise than normal circumstances. There is no evidence on record to establish that the deceased committed suicide, by hanging. In order to convict the appellants under Section 304-B of the



Indian Penal Code, the prosecution must prove that Babita Kumari was subjected to cruelty or harassment by Surendra Nath Jha or Shashi Rama Devi or Yogendra Nath Jha in connection with the demand of dowry, soon before her death. Except the testimonies of P.Ws. 1 to 4, there is no other evidence on record to establish that the appellants demanded for dowry and in turn Babita Kumari was subjected to cruelty/harassment. Furthermore, the fardbeyan was very much silent, regarding demand for dowry made by the appellants either at the time of marriage or soon before the death of the deceased. In order to constitute the offence under Section 304-B of Indian Penal Code i.e. dowry death, the harassment must be of such a nature that it drives the woman to commit suicide, or the death must occur due to injuries, burns or otherwise under abnormal circumstances.

**29.** As stated supra, the nature of the deceased's death whether natural or otherwise than under normal circumstances has not been proved in this case. The trial Court has not framed any charge



against the appellants for the offence punishable under Section 3 and 4 of the Dowry Prohibition Act, though charge-sheet was filed for the said sections. It is mentioned in the fardbeyan that the deceased was murdered by the appellants and some other persons. The trial Court framed charges against the appellants for the offences punishable under Section 302 r/w Section 34, 304-B r/w 34 of the Indian Penal Code and under Section 201 of Indian Penal Code (for causing disappearance of the evidence of the offence or giving false information to screen offender).

**30.** At this juncture, the Learned counsel relied on the judgment of the Apex Court in ***Kunhiabdulla and Anr. Vs. State of Kerala reported in (2004)4 SCC 13***, wherein the Lordships have held as under:-

*“9. The provision has application when 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. In order to attract the application of Section 304-B IPC, the essential ingredients are as follows:*

*(i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.*

*(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.*

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

**10.** *Section 113-B of the Indian Evidence Act, 1872 (in short “the Evidence Act”) is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:*

*“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 had 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 Penal Code, 1860.”*

*The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the*



*legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The*



*presumption shall be raised only on proof of the following essentials:*

*(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)*

*(2) The woman was subjected to cruelty or harassment by her husband or his relatives.*

*(3) Such cruelty or harassment was for, or in connection with any demand for dowry.*



(4) *Such cruelty or harassment was soon before her death.*

**11.** *A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. Evidence in that*



*regard has to be led by the prosecution.*

*“Soon before” is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is*



*relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft", is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the*



*mental equilibrium of the woman concerned, it would be of no consequence.”*

**31.** As per the above citation, there must be an existence of direct link between the effective cruelty based on dowry demand and the death concerned which squarely applied to the present case on hand. In the present case, the prosecution has miserably failed to prove that the deceased, Babita, was subjected to cruelty for demand of dowry soon before her death.

**32.** In ***Gurjit Singh Vs. State of Punjab (Criminal Appeal Nos. 1492-1493 of 2010)*** their lordships have held at paragraph 24 as under:-

*“It has thus been observed that though presumption could be drawn, the burden of prove of showing that such an offence has been committed by the accused is on the prosecution. The prosecution has to establish beyond reasonable doubt that the accused instigated, conspired or intentionally*



*aided so as to drive the wife to commit suicide."*

**33.** In the present case also, it is specific case of the prosecution that the deceased, Babita Kumari, committed suicide, due to unbearable harassment by the appellants, therefore, duty is casted upon of the prosecution to prove that the deceased was subjected to harassment, prior to her death.

**34.** In the case of ***Pushpendra Singh & Ors. Vs. State (Criminal Appeal No. 160 of 2015) reported in (2015) SCC Online Del 12748*** decided by a Division Bench on 12.10.2015, similar questions were examined. After referring to the provisions contained in Section 304-B of the Indian Penal Code and Section 113-B of Indian Evidence Act, and various judgments thereupon, it was observed as follows:-

**"102.** *Broad principles emerging from above noted case law, to the extent germane to the issues*



*raised before us, may be culled out as under : -*

*(i) The death of a married woman within seven years of the marriage, otherwise than under normal circumstances must result in a serious attempt on the part of the investigating agency, and the court, to inquire if it is a case of culpable homicide;*

*(ii) If the evidence shows the husband or any of his relatives to be the actual or direct participant in the commission of the acts resulting in the death, the trial must proceed on the charge of culpable homicide;*

*(iii) If the evidence is forthcoming to show that the unnatural death of the married*



*woman within seven years of her marriage was preceded “soon before” her death by she being subjected to cruelty or harassment for or in connection with demand for dowry by the husband or any of his relatives, the charge of “dowry death” is to be invoked as an “alternative charge”, or even as a single or main charge against others not implicated by reason of abetment, conspiracy etc.*

*(iv) The offence of “dowry death” is neither a substitute, nor “minor offence”, nor “included” in the offence of “culpable homicide”;*

*(v) To bring home the charge of “culpable homicide”, the prosecution must prove the*



*accused to have intentionally committed the act causing death or causing bodily injury resulting in death. In contrast, to bring home the charge of "dowry death", direct nexus on the part of the accused with the act(s) causing death, or resulting in bodily injury causing death, need not be shown. The prosecution needs to prove only the fact of death being otherwise than under normal circumstances (to put it simply, it being an unnatural death), coupled with the fact that the deceased (necessarily a married woman) had been subjected to cruelty or harassment for or in connection with the demands for dowry by the husband, or any of his*



*relatives, the death having occurred within seven years of the marriage. Upon such proof, the Court is bound to presume that the husband, or the relative, who is party to the cruelty or harassment of the specified nature is responsible for the "dowry death";*

*(vi) For the charge of "dowry death", the husband or the relative, as the case may be, need not be the actual or direct participant in the commission of the acts leading to the death;*

*(vii) To bring home a charge of dowry death, there must be "proximity" or a "live link" between the cruelty and harassment based on dowry demands and the*



*consequential death leading to inference that said conduct was indulged in “soon before” the death;*

*(viii) The past events of cruelty or harassment, they not having become stale, continue to be relevant for raising the presumption, if the evidence shows continuity of the incriminating conduct proximate enough in terms of time to the unnatural death, even if interspersed by tentative efforts at resolution or compromise;*

*(ix) A case of unnatural death of the married woman would not amount to “dowry death”, if it is shown to have occurred on account of an accident or as a result of acts*



*of commission or omission on the part of a third person, i.e. a person other than the husband or any of his relatives, or for reasons not connected with demands for dowry; and,*

*(x) The accused against whom presumption is raised may dispel its effect by showing that he had no hand at all, in the death, and he may do so either by showing that the death was accidental or brought about by another person unconnected with the cruelty or harassment relating to the demands for dowry”*

**35.** Admittedly, live and proximate link as referred in the above judgment is missing in the present case. The trial Court presumed that appellants subjected the deceased to harassment, soon before her death relying on Exhibit 2 and 2/1,



which are letters addressed by the deceased. However, on perusal of Exhibit 2 and 2/1, it is evident that only a one sentence mentioned i.e. “the situation in the house is bad” besides that sentence no incriminating evidence was found about the cruelty or harassment alleged to have been faced by the deceased, Babita Kumari, at the hands of the appellants. The trial court cannot presume that the deceased was subjected to cruelty, basing on the contents mentioned in the letter i.e. “the situation is bad in the house”. Hence, presumption under Section 113-B of Indian Evidence Act cannot be sustained.

**36.** At this juncture, the Learned counsel relied on the judgment of the Apex Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra reported in (1984)4 SCC 116***, wherein the Lordships have held at paragraph 153 as follows:-

*“153. A close analysis of this decision would show that the following conditions must be fulfilled before a*



*case against an accused can be said to be fully established:*

*(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.*

*It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]*

*“Certainly, it is a primary principle that the accused must be and not*



*merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."*

*(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*

*(3) the circumstances should be of a conclusive nature and tendency,*

*(4) they should exclude every possible hypothesis except the one to be proved, and*



*(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."*

**37.** It is the contention of the Learned counsel for the appellant that there is no direct evidence in this case, and the entire case is based on circumstantial evidence, and that the prosecution has miserably failed to prove the links and that there are many missing links, therefore, prayed to set aside the conviction.

**38.** It is contended by the Learned Additional Public Prosecutor that there is no irregularity or error in the judgment of the trial Court. There is incriminating evidence on record and as per the testimony of P.Ws. 1 to 4 and Exhibit 2 and 2/1 the prosecution was able to prove the demand of



additional dowry and harassment and that the trial Court has rightly convicted the appellants and prayed to dismiss the appeal.

**39.** On perusal of Section 313 examination, it is evident that the incriminating material was not properly put to the accused, thereby failing to enable the appellants to personally explain the circumstances appearing in the prosecution evidence against him. Only one question was posed to the appellants during their Section 313 examination, which reads as under:-

Question:- Have you heard the statement of the witnesses ?

Answer:- Yes Sir

Question:- The witnesses are stating that the marriage of Babita Kumari, the sister of the informant Dilip Kumar Jha, happened with son Surendra Jha on 04.05.1991 and after the marriage, you all were harassing her for dowry, used to pass comments on her, and did not use to give her food, and used to assault her and did not even allow her to meet people from her parental home. And did not



even allow her to go to her parental house. You all murdered her and did not even send information to her parental home and even burnt the dead body. What do you have to say regarding this ?

Answer:- The accusations are false and I am innocent.

Question:- Do you have to say anything in defence ?

Answer:- Nothing

**40.** Admittedly, there is evidence of P.Ws. 1 to 4 on record. Each of the witnesses has testified against these appellants, but the same common question was posed to all three appellants. At this juncture, it is relevant to mention that the Apex Court has time and again reiterated that each and every incriminating material must be put to the accused to enable them to give an explanation.

In this context, it is necessary to rely upon the judgment of the Apex Court in **Indrakunwar Vs. State of Chhattisgarh reported in 2023 SCC**



**OnLine SC 1364** wherein their Lordships  
held that:-

*“34. Keeping in view the understanding of the principles of privacy and the propositions of law in regard thereto, we now travel to what, by law, may be required of the convict-appellant in her statement under Section 313 Cr.P.C.*

*35. A perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when considering such statements.*

*35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances*



*appearing in the evidence against them.*

*35.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.*

*35.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.*

*35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the*



*opportunity to say his piece.*

*35.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.*

*35.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.*

*35.7 This statement cannot form the*



*sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.*

35.8                      *This statement is to be read as a whole. One part cannot be read in isolation.*

35.9                      *Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may*



*be borne from the statement may be used to lend credence to the case of the prosecution.*

35.10                      *The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.*

35.11 *The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so*



*articulated must be  
carefully scrutinized and  
considered.*

35.12 Non-  
compliance with the  
Section may cause  
prejudice to the accused  
and may impede the  
process of arriving at a fair  
decision.”

In **Naval Kishore Singh Vs.  
State of Bihar reported in (2004) 7  
SCC 502** their Lordships have held as  
follows:-

**“5.** Counsel for the  
appellant pointed out that the  
Sessions Court committed serious  
error in not properly examining the  
accused under Section 313 CrPC.  
Our attention was drawn to the  
statement taken from the present  
appellant. Only three questions



*were put to the appellant. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given*



*opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in*



*evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. In various decisions of this Court, the importance of questioning the accused under Section 313 CrPC was given due emphasis, e.g. Rama Shankar Singh v. State of W.B. [AIR 1962 SC 1239 : (1962) 2 Cri LJ 296] , Bhalinder Singh v. State of Punjab [(1994) 1 SCC 726 : 1994 SCC (Cri) 462] , State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] and Lallu Manjhi v. State of Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544] .*

*6. In the present case, the appellant had not raised any*



*contention in the High Court that he was seriously prejudiced by the way in which the Section 313 questioning was done. If this defect in procedure under Section 313 CrPC had been pointed out, the High Court could have very well remitted the case to the Sessions Court for a proper examination. At this stage, we are not inclined to accept this contention of the appellant especially when the accused was not able to show that he was in any way prejudiced by such irregular procedure.”*

In ***Premchand Vs. State of Maharashtra reported in (2023) 5 SCC 522*** the Lordships of Apex Court held as under:-

***“13.*** *There is a plethora of judicial pronouncements on consideration of Section 313CrPC, a*



*few of which need to be noted at this stage.*

**14.** *A Bench of three Hon'ble Judges of this Court in State of U.P. v. Lakhmi [State of U.P. v. Lakhmi, (1998) 4 SCC 336 : 1998 SCC (Cri) 929] has extensively dealt with the aspect of value or utility of a statement under Section 313CrPC. The object of Section 313CrPC was explained by this Court in Sanatan Naskar v. State of W.B. [Sanatan Naskar v. State of W.B., (2010) 8 SCC 249 : (2010) 3 SCC (Cri) 814] The rationale behind the requirement to comply with Section 313CrPC was adverted to by this Court in Reena Hazarika v. State of Assam [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] . Close on the heels thereof, in*



*Parminder Kaur v. State of Punjab*  
[*Parminder Kaur v. State of Punjab*,  
(2020) 8 SCC 811 : (2020) 3 SCC  
(Cri) 914] , this Court restated the  
importance of Section 313CrPC  
upon noticing the view taken in  
*Reena Hazarika* [*Reena Hazarika v.*  
*State of Assam*, (2019) 13 SCC  
289 : (2019) 4 SCC (Cri) 546] and  
*M. Abbas v. State of Kerala* [*M.*  
*Abbas v. State of Kerala*, (2001) 10  
SCC 103 : 2002 SCC (Cri) 1270] .

**15.** What follows from  
these authorities may briefly be  
summarised thus:

**15.1.** Section 313CrPC  
[clause (b) of sub-section (1)] is  
a valuable safeguard in the trial  
process for the accused to  
establish his innocence.

**15.2.** Section 313,  
which is intended to ensure a



*direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.*

**15.3.** *When questioned, the accused may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.*

**15.4.** *The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognised defences.*

**15.5.** *An accused can make a statement without fear*



*of being cross-examined by the prosecution or the latter having any right to cross-examine him.*

**15.6.** *The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).*

**15.7.** *Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth*



*and examining the veracity of the prosecution case.*

**15.8.** *Statement(s) of the accused cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.*

**15.9.** *If the accused takes a defence and proffers any alternate version of events or interpretation, the court has to carefully analyse and consider his statements.*

**15.10.** *Any failure to consider the accused's explanation of incriminating circumstances, in a given case,*



*may vitiate the trial and/or  
endanger the conviction.*

**16.** *Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of Section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of Section 313 in 2009, the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare.*



**17.** *For toning up the criminal justice system and ensuring a fair and speedy trial, with emphasis on cutting down delays, Parliament amended Section 313 in 2009 and inserted sub-section (5), thereby enabling the court to take the assistance of the Public Prosecutor and defence counsel in preparing such questions [the first part of sub-section (5)]. Ideally, with such assistance (which has to be real and not sham to make the effort effective and meaningful), one would tend to believe that the courts probably are now better equipped to diligently prepare the relevant questions, lest there be any infirmity. However, judicial experience has shown that more often than not, the time and effort behind such an exercise put in by the trial court does not achieve the desired result. This is because either the*



*accused elects to come forward with evasive denials or answers questions with stereotypes like “false”, “I don't know”, “incorrect”, etc. Many a time, this does more harm than good to the cause of the accused.”*

In case of **Sanatan Naskar and Another Vs. State of West Bengal** reported in **(2010) 8 SCC 249**, the Lordships of Apex Court have held:-

**“21.** *The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 CrPC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by the*



*judgments which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 CrPC.*

**22.** *As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only*



*after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass*



*consequential orders as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.*



**23.** *The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The*



*courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.*

**24.** *Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence.*



**25.** *In the light of the abovestated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement recorded under Section 313 CrPC. In both these circumstances the Court would be entitled to draw adverse inference against the accused.*



**29.** *So, the first and the foremost question that this Court has to examine in the present case is, whether the prosecution has been able to establish the chain of event and circumstances which certainly points out towards the involvement and guilt of the accused. Even, before we enter upon adjudicating this aspect of the case, it will be appropriate to narrow down the controversy keeping in view the admissions, if any, made by the appellants. The accused, after having known the entire case of the prosecution, is required to be examined under Section 313 CrPC. All the material evidence has to be put to the accused and he has to be awarded the*



*fair opportunity of answering the case of the prosecution, as well as to explain his version to the court without being subjected to any cross-examination. As already noticed, the answers given by the accused can be used against him in the trial insofar as they support the case of the prosecution."*

**In Kalicharan & Ors. Vs. State of Uttar Pradesh reported in (2023) 2 SCC 583** the Hon'ble Apex Court held as follows:-

**"24.** *At this stage, we must refer to the requirement of the examination of the accused under Section 313 of CrPC. Section 313 of CrPC reads thus:-*



***“313. Power to  
examine the accused. -***

*(1) In every inquiry or trial,  
for the purpose of enabling  
the accused personally to  
explain any circumstances  
appearing in the evidence  
against him, the Court-*

*(a) may at any  
stage, without previously  
warning the accused put  
such questions to him as  
the Court considers  
necessary;*

*(b) shall, after the  
witnesses for the  
prosecution have been  
examined and before he is  
called on for his defence,  
question him generally on  
the case:*



*Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).*

*(2) No oath shall be administered to the accused when he is examined under sub-section (1).*

*(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.*

*(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other*



*inquiry into, or trial for, any other offence which such answers may tend to show he has committed.*

*[(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.]*

**25.** *The questions in separate statements of Accused 1 to 4 recorded by the trial court are almost identical. Question 5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal*



*Singh. Question 5 put to Accused 3 reads thus:*

*“Question 5 — That it has come up in prosecution evidence that on being exhorted by accused Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his countrymade pistol with intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot. What do you have to say in this regard?”*

**26.** *Such a case was not at all made out by the prosecution in the evidence before the court. The material brought on record by the prosecution witnesses (PW 1 and PW 2) is to the effect that Harpal Singh died due to*



*injuries sustained as a result of an attack made by Accused 1, 3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons.*

**27.** *Questioning an accused under Section 313CrPC is not an empty formality. The requirement of Section 313CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that*



*accused can offer an explanation. After an accused is questioned under Section 313CrPC, he is entitled to take a call on the question of examining defence witnesses and leading other evidence. If the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the accused will not be in a position to explain the said circumstances brought on record against him. He will not be able to properly defend himself.*

**28.** *In para 21 of the decision of this Court in Jai Dev v. State of Punjab [Jai Dev v. State of Punjab, (1963) 3 SCR 489 : AIR 1963 SC 612] , it was held thus : (SCC pp. 620-21, para 21)*

*“21. In support of his contention that the failure to put the relevant point against*



*the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has relied on a decision of this Court in Hate Singh v. State of Madhya Bharat [Hate Singh v. State of Madhya Bharat, 1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to*



*lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting*



*such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been*



*caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put*



*the specific point of distance is really not very material.”*

**29.** *In para 145 of the well-known decision of this Court in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] , it was held thus : (SCC p. 182, para 145)*

*“145. It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration.”*



**41.** All the cited cases squarely applies to the facts and circumstances of the present case. In a criminal trial, the purpose of examining accused persons under Section 313 of the Code of Criminal Procedure is to fulfill the requirements of Principles of Natural Justice, allowing the accused to furnish some explanation regarding the incriminating circumstances associated with him, and Court must take note of such explanation.

**42.** In cases based on circumstantial evidence, it is essential to determine whether or not the chain of circumstances is complete. No matter how weak the evidence of prosecution may be, it is the duty of the Court to examine the accused and seek their explanation regarding the incriminating material presented against him. Any circumstances that are not put to the accused in his examination under Section 313 of the Code of Criminal Procedure cannot be used against them and must be executed from consideration. It is relevant to mention that the defence has brought on record Exhibit A and B.



Exhibit-A pertains to certified copy of judgment dated 19.01.2001 and Exhibit-B is the death certificate of deceased, Babita Kumari, dated 04.08.1992. It is the case of the informant that he received the information about the deceased's death on 05.08.1992 and later made a report on 06.08.1992, contrary to it, the death certificate disclose the date of death of Babita Kumari as 04.08.1992 indicating a delay of two days in filing the written report by the informant. Further, the evidence of P.W. 4 corroborates with Exhibit-B, as she testified that on 04.08.1992, she received the information of the deceased death through Dilip Kumar Jha (P.W. 1) and even after knowing about the death, none of the family members went the house of the appellants, therefore, it can be construed that P.W. 1 received information about the death of the deceased on 04.08.1992, yet no one from the deceased family went to the house of the appellants. As a result, the appellants were constrained to perform the last rites of the deceased, Babita Kumari, even in the absence of her blood relatives.



The trial Court has erred in convicting the appellants for the offences punishable under Section 304-B of Indian Penal Code. In view of the above discussion, the sentence awarded against the appellants for the offence punishable under Section 304-B of Indian Penal Code is liable to be set aside.

**43.** As stated Supra, the trial Court erred in convicting the appellants for the offences punishable under Section 304-B of the Indian Penal Code and the prosecution has miserably failed to prove the guilt of the appellants beyond reasonable doubt.

**44.** The judgment of the trial Court in Sessions Case No. 346 of 1995 (Tr. No. 81 of 2002) on the file of Additional Sessions Judge (FTC-3), Purnea is hereby set aside and the appellants in both the appeals namely, Shashi Rama Devi and Surendra Nath Jha, are hereby acquitted for the said offences.

**45.** In result both the appeals are allowed.



**46.** The bail bonds of the appellants shall stand cancelled.

**(G. Anupama Chakravarthy, J)**

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