

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2573 of 2023

Arising Out of PS. Case No.-622 Year-2018 Thana- NAUBATPUR District- Patna

Surya Prakash, son of Om Prakash Gupta @ Bhola, resident of Village -
Kajuri, P.S- Naubatpur, Distt.- Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr.Ramakant Sharma, Sr. Advocate Mr.Rajesh Kumar, Advocate
For the State	:	Mrs.Anita Kumari Singh, APP
For the Informant	:	Mr.Anant Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-08-2024

Heard Mr. Ramakant Sharma, learned Senior Advocate duly assisted by Mr. Rajesh Kumar, learned counsel for the appellant/convict, Mrs. Anita Kumari Singh, learned counsel for the State duly assisted by Mr. Anant Kumar Mishra, learned counsel for the informant.

2. This appeal has been filed by appellant/convict against judgment of conviction dated 06.05.2023 and order of sentence dated 11.05.2023 rendered by learned Additional Sessions Judge-VI, Danapur, Patna in connection with Session Trial No. 810/2019 arising out of Naubatpur P.S. Case No. 622 of 2018 (G.R. No. 220/2019), whereby



and whereunder the appellant has been convicted under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment of seven (7) years.

3. The crux of prosecution case as springs through written information of informant namely, Sajivan Sao (PW-4) is that his daughter (deceased) was married to one Surya Prakash (the husband/appellant) as per Hindu rites and rituals on 30.05.2015. The informant stated that the husband of his daughter and other in-laws were regularly tortured her on the pretext of demand of dowry and was threatened to kill. On 31.12.2018, the informant received a call from mobile No. 6205427242 saying that the day i.e. 31.12.2018, would be the last day of his daughter. The informant further stated that after receiving the said call on his mobile, he went there and saw that mother-in-law of his daughter namely, Smt. Savitri Devi (co-accused), father-in-law Om Prakash Gupta (s/o-Bhola Sao), her husband Surya Prakash (appellant/convict) and brother-in-law namely, Chandra Prakash were physically assaulting his daughter and and finally killed by pressing her neck. The informant further



stated that his deceased daughter had one daughter aged about two years and one son aged about two months out of her wedlock.

4. On the basis of aforesaid written information, the S.H.O. of Naubatpur Police Station registered F.I.R. bearing Naubatpur P.S. Case No. 622 of 2018. After investigation, the police submitted charge-sheet against the appellant/convict and other co-accused persons under Sections 302/304(B)/120(B) of the Indian Penal Code. Thereafter, cognizance was taken against the accused persons under the aforesaid sections of the I.P.C. Finally, the case was committed to the court of session on 15.06.2019 after compliance of the provisions of Section 207 of the Cr.P.C.

5. After commitment, learned trial court explained charges to appellants/accused, on the basis of materials collected during investigation, which they pleaded "not guilty" and claimed trial.

6. To establish its case before the learned trial court, the prosecution altogether examined total of **nine (9)**



witnesses namely, Indu Devi (PW-1), Rekha Devi (PW-2), Sona Devi (PW-3), Sajivan Sao (PW-4), Rajiv Ranjan Kumar (PW-5), Saney Lal Soren (PW-6), Raju Sao (PW-7), Sanjay Kumar (PW-8) and Dr. Avinash Kumar Singh (PW-9).

7. The prosecution has produced and relied upon following documentary evidences also as to substantiate its case during trial, which are as under:

Exhibit No(s).	List of documents
Exhibit-1	Signature of informant on written report.
Exhibit-2	Protest petition filed by informant
Exhibit-3	Endoresement of S.H.O. on the written report
Exhibit-4	Formal F.I.R.
Exhibit-5	Inquest report dated 31.12.2018
Exhibit-6	Charge-sheet.
Exhibit-7	Post-mortem report dated 31.12.2018.

8. After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused persons including appellants/accused were recorded under Section 313 of the Cr.P.C. which was denied in totality by claiming his complete innocence and false implication, where



appellant categorically stated that on the date and time of occurrence he was on his duty at “Jhajha” Railway Station.

9. Appellant examined one witness in his defence as DW-1 namely, Niranjana Devi and also relied upon following exhibits/documents:

Exhibit No(s).	List of documents
Exhibit A	Some page of diary of the deceased.
Exhibit B	Medical papers of P.M.C.H. belonging to deceased Guddi Devi.
Exhibit C	Duty Chart of Surya Prakash

10. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellants/convicts, in aforesaid terms. Being aggrieved of which present appeal was preferred.

11. Hence, the present appeal.

Submission on behalf of the appellants/convicts

12. While opening the argument on behalf of the appellant/convict, Mr. Ramakant Sharma, learned senior counsel submitted that false implication of appellant/convict can be easily construed from the fact that the written information to S.H.O., Naubatpur (Patna) was made on



01.01.2019, despite of the fact that formal F.I.R. was drawn on 31.12.2018 itself. Even the endorsement on written information dated 01.01.2019, which is Exhibit '1'. Endorsement of the then S.H.O. Naubatpur P.S. is dated 31.12.2018. This single fact is sufficient to suggest that how in planned and formulated manner, the appellant/convict was implicated with this case, where his wife committed suicide out of mental depression, who are under treatment since last one year in Patna Medical College & Hospital, Patna (hereinafter referred to "P.M.C.H.").

13. It is submitted by Mr. Sharma that the version of written information of informant *qua* crime in question is completely different with the deposition of informant Sajivan Sao (PW-4). It appears from the written information (Exhibit '1') that informant received a call on 31.12.2018 from mobile No. 6204527242, where caller threatened him in abusive language and said that today is the last day of his daughter, which is also the last day of the year. He followed the message as he received on mobile and went to matrimonial home of his daughter where he claimed to saw



that mother-in-law of his daughter namely, Smt. Savitri Devi (co-accused), father-in-law Om Prakash Gupta, her husband Surya Prakash (appellant/convict) and brother-in-law namely, Chandra Prakash were assaulting his daughter physically and finally pressed her neck causing her death.

14. It is pointed out by Mr. Sharma, from the version of F.I.R., that the informant claimed himself to be an eye witness of the occurrence and he was present at the time of alleged occurrence in the matrimonial home of her daughter. It is pointed out that having this background, claiming to be an eye witness of the occurrence, if the testimony of informant/PW-4 be taken into consideration, it is appearing full of contradiction, which is, on its face, fails to convince that her deceased daughter namely, Guddi Devi was killed in connection with demand of dowry and she was subjected to cruelty soon before her death in connection with dowry demand, and, therefore, there is no occasion to import the presumption as available under Section 113B of the Indian Evidence Act. In support of his submission, Mr. Sharma relied upon the legal reports of Hon'ble Supreme



Court as available through **Sher Singh alias Partapa Vs. State of Haryana [(2015) 3 SCC 724]** and **Bishwajit Halder alias Babu Halder and Others Vs. State of West Bengal [(2008) 1 SCC 202]**.

15. Arguing further, Mr. Sharma submitted that the evidence as surfaced during the trial completely suggest that appellant/convict was on his duty on the date of occurrence. He was working as Railway Goods Guard and at the time of occurrence, he was present on his duty at "Jhajha" Railway Station, which is about 200 km. from the place of occurrence, and by any stretch of imagination his presence at the place of occurrence is not possible, therefore, the version of informant/PW-4 claiming his presence at the place of occurrence is apparently false.

16. It is submitted that learned trial court with same set of evidence acquitted the mother-in-law and father-in-law of the appellant/convict, but convicted the appellant for only apparent reason that he is the husband of deceased. In this connection, it is also submitted that from the deposition of witnesses, it cannot be gathered that



demand of dowry was in proximity with the present occurrence. In support of his submission, learned senior counsel relied upon the legal report of Hon'ble Supreme Court as available through **Baljinder Kaur Vs. State of Punjab [(2015) 2 SCC 629]**.

17. In view of aforesaid submission, it is submitted that without having any cogent materials and by overlooking of settled legal propositions, the present conviction of appellant/convict was recorded by the learned trial court which deserves to be set-aside/quashed.

Submission on behalf of the State.

18. Learned A.P.P. for the State, while opposing the the present appeal, submitted that death of daughter of the informant took place admittedly in her matrimonial home. It is also submitted that demand of dowry was continued since 2015, and it was raised further when appellant/convict employed with Department of Railway as Goods Guard. It is submitted that from the post-mortem report of the deceased, it can be gathered safely that death was unnatural. It is hardly matter that whether it was a murder



or was a suicide for the purpose of dowry death and, therefore, presumption as available under Section 113B of the Indian Evidence Act was correctly imported by the learned trial court and, therefore, the impugned judgment is not required to be interfered.

19. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

20. As to re-appreciate the evidences, while dealing with present appeal, it would be apposite to discuss the evidences as available on record, which are as under:-

21. The most important witness of this case is **PW-4 namely Sajeevan Sao**, who is the informant of this case and father of the deceased. As per his testimony, it appears that marriage of his daughter namely, Guddi Devi was solemnized in the year 2015 with appellant/convict, whereafter she was living very happily in her matrimonial home. He deposed that in the marriage of his daughter, a gift of Rs. Six lakhs, golden jewelry and motorcycle were



given. It was deposed that after some time, in-laws members of his daughter were demanded Rs. Two lakhs from her, which after compromise was given to them. At that point of time, he was accompanied with Ram Prasad and Hari Narayan, who were his co-villagers. After payment of Rs. Two lakhs the matter was settled and everything became normal. In the meantime, the appellant/convict employed with Department of Indian Railways as Goods Guard. Consequent upon, he further raised a demand of Rs. Five lakhs and one four-wheeler. Thereafter, he was called by his daughter that today is her last day, please come with money otherwise they will killed her. Receiving said call, informant/PW-4 visited the matrimonial home of his daughter. He also deposed to receive the call of appellant as to bring money, failing which he will kill his daughter and thereafter the informant went on his duty after killing his daughter and threatened him not to report this occurrence to police. After the occurrence, the informant returned to his home and again came to the matrimonial home of his daughter, where he did not find her, thereafter, he reported



the occurrence to the police. He identified his signature on written information and upon his identification, it was exhibited as **Exhibit '1'**. He also identified his signature on protest petition, which upon his identification, exhibited as **Exhibit '2'**.

21.1. Upon cross-examination, he said that he visited the house of his daughter before one to two months of the occurrence. He categorically stated in his cross-examination that on the date of occurrence, he was in the matrimonial house of his daughter. He stated that F.I.R. was not lodged by him and on 31.12.2018 he was at his home. It was stated that he recorded his statement with police in the evening on 31.12.2018 that he received a call from 6205427242 where he received a threat in abusive language that today is the last day of his daughter and also the last day of the year. He received said information in early morning at about 6:00 a.m. He passed over information regarding death of his daughter to Vijay Kumar, Sulekha Devi, Sona Devi (PW-3) and Indu Devi (PW1). It was stated that at the time of marriage appellant was police constable.



It was also stated that there was one son and one daughter out of present wedlock, where, after the death of his daughter, they remains with parents of this appellant. He denied the suggestion that on 31.12.2018, the appellant was at Jhajha railway station and was on duty. He also denied that his daughter was mentally ill. He also denied the suggestion that his daughter was examined in P.M.C.H. where appellant accompanied her and in connection of her treatment and visited P.M.C.H. on 04.01.2018, 11.06.2018, 06.09.2018 and 10.12.2018. He categorically stated that he filed written information on 01.01.2019. He also stated that he never made any information to police or Gram Kutchheri regarding cruelty as alleged to be committed upon his daughter by the appellant and his family members also, which was committed prior to this occurrence. He denied the suggestion that his daughter committed suicide.

22. PW-1 is Indu Devi, who is the Bhabhi (sister-in-law of the deceased daughter of the informant). She also supported the factum of marriage and demand of dowry in the manner as it was stated by



informant/PW-4. She also said to talk over phone on 30.12.2018 with her Nanad i.e. deceased, where she said that today is her last day of life, if payment would not be made as per demand. Whereafter, on 31.12.2018, she was killed.

22.1. She categorically stated in her cross-examination that she was not the eye witness of the occurrence. She came to know about the death of deceased Guddi Devi from PW-4/informant. In view of aforesaid fact, she is nothing but a hearsay witness and her testimony not appears so relevant *qua* crime in question.

23. Same is the position of **PW-2 namely, Rekha Devi**, who is the sister of deceased. She stated in her cross-examination that on the date of occurrence she was in her matrimonial home. She also denied the suggestion that her deceased sister was mentally ill and was under treatment in P.M.C.H. She also stated that after death of her sister, her both childrens are under care of their grand-parents.

24. PW-3 is Sona Devi, who is the mother of deceased Guddi Devi and wife of informant/PW-4. She also



appears hearsay witness and came to know about the occurrence from the informant/PW-4. She deposed a new fact in her examination-in-chief that the appellant was in illicit relation with some girls and therefore, he was not keeping his children and deceased with him at his place of posting. She also deposed that the physical assault was reported to her by her daughter. She also denied the suggestion that her daughter was mentally ill and she was under treatment and in connection of her treatment, she visited P.M.C.H. on 04.01.2018, 11.06.2018, 06.09.2018 and 10.12.2018.

25. PW-5 is Rajiv Ranjan Kumar. He is the Investigating Officer of this case. He deposed that the endorsement upon written information is in the handwriting of the then S.H.O. Keshav Kumar Majumdar regarding lodging of present case which is P.S. Case No. 622/2018 dated 31.12.2018, which upon his identification exhibited as **Exhibit '3'**. It was also deposed that the formal F.I.R. is in handwriting of one Binod Kumar, who is "*Thana Lekhak*" which bears the signature of the then S.H.O. Keshav Kumar



Majumdar and, upon his identification, it was exhibited as **Exhibit '4'**. He visited the place of occurrence. He arrested the co-accused Sarita Devi and Om Prakash Gupta on 01.10.2019 (appears typographical error). He stated to record the statement of witness Sanjay Yadav who is PW-8, who stated before him that as appellant was not keeping his wife at place of his posting, therefore, hot exchange took place between them on several occasions. He also stated to record the statement of witness Raju Sao (PW-7). He also stated to record the statement of remaining witnesses and also the statement of Station Master of Jhajha Railway Station namely, Sonelal Soren (PW-6) and after completion of investigation, he submitted charge-sheet bearing No. 80/2019 under Section 302/304B and 120B of the Indian Penal Code dated 14.03.2019, which is in his handwriting and bearing his signature and also the signature of the then S.H.O. Kamaleshwar Prasad Singh, which upon his identification, exhibited as **Exhibit '7'**. Investigation was opened against appellant and his brother namely, Chandra Prakash. After completion of investigation, he also submitted



supplementary charge-sheet No. 571/19 dated 10.10.2019 under Section 302/304B and 120B of the I.P.C. against the appellant. It was stated by him that Mobile No. 6201231977 was located in village-Khajuri, which is the matrimonial village of the deceased daughter of informant/PW-4.

25.1. In his cross-examination, he stated that he took charge of investigation on 31.12.2018 which was lodged on 10:50 P.M. He stated that informant given written information to S.H.O. on 01.01.2019. He stated categorically that after lodging of F.I.R. and after receiving charge of investigation on 01.01.2019, the informant gave his written information where it was never stated by the informant/PW-4 that he was the eye witness of the occurrence. He did not find place of occurrence disturbed in any manner. It was stated by him that he visited Jhajha Railway Station where he found that appellant took Casual Leave for 01.01.2019 and 02.01.2019 and on perusal of his duty chart he found that he was on duty on 31.12.2018 since 9:00 P.M. to 11:30 P.M. He stated that during entire investigation, witnesses disclosed about the demand of



dowry on the basis of hearsay inputs only. It was stated that inquest was prepared at about 8:30 P.M. where it was observed that the death was due to suicide by tying 'Dupatta' around the neck. The said inquest report was signed by the then S.H.O. Keshav Kumar Majumdar. He submitted CDR of mobile No. 6201231977.

26. PW-6 is Sone Lal Soren, who was Station Master of Jhajha Railway Station. He deposed in his examination-in-chief that at 10:00 P.M. an information was given by G.B.I. that wife of appellant committed suicide and, therefore, he has to go urgently. After taking casual leave for 01.01.2019 and 02.01.2019, appellant proceeded for his home. It was stated by him in his cross-examination that on 31.12.2018 till 11:30 P.M., the appellant was present at "Jhajha" Railway Station. Save and except presence of appellant on duty on 31.12.2018, his deposition is not relevant in any manner.

27. PW-7 is Raju Sao, who supported the factum of marriage of deceased daughter of informant with the appellant Santosh @ Surya Prakash. It was deposed by him



that while he was coming from field, he saw gathering in front of the house of Bhola Sao (father-in-law of deceased), where he found that his wife is crying and door was closed from inside. He remained stood there and by that time police also came and broken the door of the house. He saw that the daughter of informant was hanging with ceiling fan by tying 'Dupatta' in her neck. He failed to disclose the cause of occurrence.

28. PW-8 is Sanjay Kumar Yadav. He completely denied to know anything about the occurrence and also denied to make any statement before police. He was declared hostile by the prosecution, where upon cross-examination by State, nothing appears substantial from his deposition which may use for the purpose of contradiction or corroboration of the testimony of other prosecution witnesses who appears to be supported the case of the prosecution.

29. PW-9 is Dr. Avinash Kumar Singh, who conducted post-mortem upon the deceased daughter of the informant. It would be apposite to reproduce the relevant



part of the post-mortem, which are as under:

"External Examination – Abrasion 1x1/2 inch just below left mendible.

Abrasion 1x1 inch just right to thyriod cartilage.

Enternal Examination: On opening of air passage blood and clotes were found in the Tracheia. In opening of the chest seven-eights ribs are fractured on lateral aspect of left chest. Blood and cotes were found in left thoracic cavity. Lungs were conjested. Heart on section empty own left side and right sides of hear contains blood. On opening of abdomen liver was conjested. Sprin were pale blooder empty on opening of the brain. Nothing abnormal detected. Time elapsed since death within 12 to 24 hours. In our opinion the cause of death is asphyxia and shock due to Strangulation."

30. It was deposed by him that the aforesaid post-mortem report was prepared by the medical board consisting of Dr. N.K. Mishra, Dr. Avinash Kumar Singh and Dr. Ram Bhawan Singh, which is in the handwriting of Dr. N.K. Mishra which he identified during trial and upon his identification autopsy report of deceased Guddi Devi was exhibited as **Exhibit '8'**. He deposed that he was one of the member of the medical board.

30.1. Upon cross-examination, it was stated by him that as per his opinion and opinion of medical board, this



was a case of strangulation. It was said that in case of hanging, strangulation cannot be made out. It was stated that in strangulation, ligature marks present on all around the neck, but in the present case, there was no ligature mark around the neck. He did not find ligature mark anywhere.

31. DW-1 is Niranjana Devi, who is the sister of appellant. She also supported the factum of marriage with appellant with the deceased Guddi Devi. She identified the writing of deceased Guddi Devi as mentioned in diary which was written between 16.06.2013 to 15.05.2015, which upon her identification exhibited as **Exhibit 'A'**. It was stated that deceased Guddi Devi was under treatment in P.M.C.H. and her medical prescription was identified by her during the trial which upon her identification was marked as **Exhibit 'B'** with objection. She also mark the duty chart of appellant, which was issued by Jhajha Railway Station Master, which she identified and upon her identification, exhibited as **Exhibit 'C'** with objection. She failed to disclose the contents of medical prescription and duty chart for the reason that it was written in English language, which she was not acquainted



with.

Conclusion

32. At the outset from the discussion of aforesaid witnesses, it transpires that **Exhibit '1'** was the basis of entire prosecution, which was authored on 01.01.2019 by the informant/PW-4, whereas endorsement on said written information by the then S.H.O. of Naubatpur Police Station was made on 31.12.2018. As per deposition of PW-5 (I.O. of the case) namely, Rajiv Ranjan Kumar, the said endorsement was made by then S.H.O. namely, Keshav Kumar Majumdar. Informant/PW-4 in his cross-examination categorically stated that he filed written information with police on 01.01.2019. In such a circumstance, the endorsement as to lodge the present case on 31.12.2018 is only appearing to be an endorsement on blank paper. The prosecution failed to explain that how it was done. Certainly, to explain this major discrepancies which is the calyx of present prosecution/case could only be explained by examination of then S.H.O. who had make this endorsement i.e. Keshav Kumar Majumdar, but he could not examined



during the trial leaving this mysterious question unanswered by the prosecution. These discrepancies certainly create an impression of false implication of appellant, as submitted by Mr. Sharma, learned senior counsel for the appellant.

33. From **Exhibit '1'** and also from deposition of PW-4/informant, it appears that he was the eye witness of the occurrence and was present in matrimonial home of his daughter on the date and time of occurrence. It appears from his deposition that demand of further dowry of Rs. Five Lakhs and four-wheeler was started to made when appellant joined railway as Goods Guard. It appears from his deposition that prior to this occurrence, a demand of Rs. Two lakhs was also made, which was paid by the informant. It appears from his testimony that he never made any complaint with any authorities including police regarding said dowry demand. It appears from the testimony of informant and other prosecution witnesses that the cruelty was not committed upon the daughter of informant by the appellant soon before her death in connection with dowry demand, rather a new story was introduced by PW-3, who is mother



of the victim that cause of difference between her daughter and appellant was that as appellant was in relation with some girls and not keeping her daughter with him at his place of posting, creating a doubt whether the cause of death was dowry demand or alleged marital affairs. Though, informant tried to make his case that soon before the death of her daughter a demand was raised regarding dowry, by calling on his mobile phone but said mobile phone and call was never proved during the trial that who is the owner of said mobile, therefore, it cannot be said that it was made by appellant. In this connection, it is important to mention that I.O./PW-5 deposed that a call was made from mobile No. 6201231977 to the phone of informant on 31.12.2018 about 8:08 P.M. which was found in village Khajuri, but prosecution failed to connect said mobile number with the appellant/convict. It also appears from the deposition of prosecution witnesses including informant that demand of dowry was started to be made when appellant/convict joined in the services of Railways as Goods Guard, therefore, the proximity of demand of dowry soon before death is also



appears doubtful and, therefore, the prosecution failed to establish the foundational aspect of Section 304 of the I.P.C. as to import presumption as available under Section 113B of the Indian Evidence Act.

34. In the aforesaid context, it would be apposite to reproduce the **para 9, 13 and 16** of the judgment of Hon'ble Supreme Court as available through **Sher Singh alias Partapa (supra)**, which reads as under:

"9. The legal regime pertaining to the death of a woman within seven years of her marriage thus has numerous features, inter alia:

(i) The meaning of "dowry" is as placed in Section 2 of the Dowry Prohibition Act.

(ii) Dowry death stands defined for all purposes in Section 304-B IPC. It does exclude death in normal circumstances.

(iii) If death is a result of burns or bodily injury, or otherwise than under normal circumstances, and it occurs within seven years of the marriage and, it is "shown" in contradistinction to "proved" that soon before her death she was subjected to cruelty or harassment by her husband or his relatives, and the cruelty or harassment is connected with a demand of dowry, it shall be a dowry death, and the husband or relative shall be *deemed* to have caused her death.

(iv) To borrow from Preventive Detention jurisprudence—there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time;



the query of this Court in the context of condonation of delay in filing an appeal—why not minutes and second—remains apposite.

(v) The deceased woman's body has to be forwarded for examination by the nearest civil surgeon.

(vi) Once the elements itemised in (iii) above are shown to exist the husband or relative shall be deemed to have caused her death.

(vii) The consequences and ramifications of this "deeming" will be that the prosecution does not have to prove anything more, and it is on the husband or his relative concerned that the burden of proof shifts as adumbrated in Section 113-B, which finds place in Chapter VII of the Evidence Act. This Chapter first covers "burden of proof" and then "presumption", both being constant bed-fellows. In the present context the deeming or presumption of responsibility of death are synonymous.

13. In our opinion, it is beyond cavil that where the same word is used in a section and/or in sundry segments of a statute, it should be attributed the same meaning, unless there are compelling reasons to do otherwise. The obverse is where different words are employed in close proximity, or in the same section, or in the same enactment, the assumption must be that the legislature intended them to depict disparate situations, and delineate dissimilar and diverse ramifications. Ergo, ordinarily Parliament could not have proposed to ordain that the prosecution should "prove" the existence of a vital sequence of facts, despite having employed the word "shown" in Section 304-B. The question is whether these two words can be construed as synonymous. It seems to us that if the prosecution is required to prove, which always means beyond reasonable doubt, that a dowry death has been committed, there is a risk that the purpose postulated in the provision may be reduced to a cipher. This method of statutory interpretation has consistently been disapproved and deprecated except in exceptional instances where the syntax permits reading down or reading up of some words of the subject provisions.

16. As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into



their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word "shown" is used as synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word "deem" to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333] and *State of T.N. v. Arooran Sugars Ltd.* [(1997) 1 SCC 326], requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304-B IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely,

(i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(ii) within seven years of her marriage,

(iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(iv) in connection with any demand for dowry, and

(v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with



the demand of dowry.

We are aware that the word “soon” finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word “deemed” was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.

35. It would be further apposite to reproduce **para 11, 12, 13 and 14** of the judgment of Hon’ble Apex Court as available through **Biswajit Halder (supra)**, which reads as under:

“11. Alongside insertion of Section 304-B in IPC, the legislature also introduced Section 113-B of the



Evidence Act, which lays down when the question as to 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.

12. Explanation appended to Section 113-B lays down that:

"For the purpose of this section, 'dowry death' shall have the same meaning as in Section 304-B of Penal Code, 1860."

13. If Section 304-B IPC is read together with Section 113-B of the Evidence Act, a comprehensive picture emerges that if a married woman dies in unnatural circumstances at her matrimonial home within 7 years from her marriage and there are allegations of cruelty or harassment upon such married woman for or in connection with demand of dowry by the husband or relatives of the husband, the case would squarely come under "dowry death" and there shall be a presumption against the husband and the relatives.

14. In this case we find that there is practically no evidence to show that there was any cruelty or harassment for or in connection with the demand of dowry. There is also no finding in that regard. This deficiency in evidence proves fatal for the prosecution case. Even otherwise mere evidence of cruelty and harassment is not sufficient to bring in application of Section 304-B IPC. It has to be shown in addition that such cruelty or harassment was for or in connection with the demand for dowry. (See *Kanchy Komuramma v. State of A.P.* [1995 Supp (4) SCC 118 : 1996 SCC (Cri) 31]) Since the prosecution failed to prove that aspect, the conviction as recorded cannot be maintained."

36. It is also relevant to reproduce **para 19** of the judgment of Hon'ble Apex Court as available through **Baljinder Kaur (supra)**, which reads as under:



"19. In our view, there is force in the submission of the learned counsel for the appellant. In cases related to dowry death, the circumstances showing the cruelty or harassment are not restricted to a particular instance, but normally refer to a course of conduct. Such conduct of cruelty or dowry harassment must be "soon before death". There should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her.

37. It is further important to mention that PW-4 claimed to be an eye witness of the occurrence, where he testified that entire occurrence took place when he was present in matrimonial home of his daughter, where appellant alongwith her parents and brother committed the murder of his daughter as he failed to pay the demand of Rs. Five Lakhs and four-wheeler vehicle in dowry by 31st of December, 2018. It appears very surprising that after witnessing the murder of his daughter, informant came to his native village and thereafter again returned to matrimonial village of his daughter i.e. Khajuri, where he did not find his daughter and thereafter reported the occurrence to police. This version of information is sufficient to suggest that he was not the eye witness of the occurrence, rather he projected himself to be an eye witness of the occurrence to secure conviction of the appellant/convict. All prosecution



witnesses who are relative of the deceased denied the mental illness of deceased Guddi Devi, whereas medical prescription, as available on record, which is dated 04.01.2018, 11.06.2018, 06.09.2018 and 10.12.2018 from the department of Psychiatry of P.M.C.H., Patna suggests on its face that the daughter of informant was under treatment for her Psychiatric ailments. All such documents exhibited during trial as **Exhibit 'B'** as it was brought on record by DW-1. Beside this, PW-7, who did not turned up hostile during the trial, stated that the house was broken in front of him and he found Guddi Devi hanging with ceiling fan, which also creates a doubt *qua* version of PW-4/informant regarding crime in question. PW-7 did not find PW-4 present over there. Therefore, from deposition of aforesaid witnesses, it appears doubtful whether the occurrence took place due to non-payment of dowry, as alleged, or due to depression arising out of illicit relation as stated by PW-3 deceased committed suicide.

38. In view of aforesaid facts, the discussion of *alibi qua* appellant/convict is not appears so relevant, when



the prime genesis of the occurrence in itself disputed. Therefore, The judgment of conviction dated 06.05.2023 and order of sentence dated 11.05.2023 passed by learned Additional Sessions Judge-VI, Danapur, Patna in connection with Session Trial No. 810/2019 arising out of Naubatpur P.S. Case No. 622 of 2018 (G.R. No. 220/2019) *qua* appellant/convict is hereby quashed and set-aside.

39. Accordingly, appellant/convict, namely, Surya Prakash is acquitted of the charges levelled against him by the learned trial court, by giving benefit of doubt. As the appellant/convict was on bail, he is discharged from the liabilities of his bail bond.

40. The appeal stands allowed, accordingly.

41. Let a copy of this judgment along with Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.09.2024
Transmission Date	10.09.2024

