

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1193 of 2018**

Arising Out of PS. Case No.-186 Year-2014 Thana- JAYNAGAR District- Madhubani

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Anil Kumar Mahto S/o- Late Rajendra Mahto, resident of Village- Jaynagar,
Gaditola, P.O.- Jaynagar, Ward No. 12, P.S. Jay Nagar, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the State	:	Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 27-06-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 25.07.2018 and order of sentence dated 30.07.2018 passed by learned Additional Sessions Judge-VI, Madhubani in Sessions Trial No. 289 of 2017 arising out of Jaynagar P.S. Case No. 186 of 2014, G.R. No. 3018/14, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Section 304B of the I.P.C. and sentenced him for life imprisonment.



2. The prosecution case, in brief, is as under:-

2.1. The daughter of the informant Ganga Mahto, namely Rani Devi, was married with the accused Anil Kumar Mahto four years prior to the occurrence. After marriage, Rani Devi has begotten a son of three years, namely Shubham Kumar, and a daughter of fifteen months, namely Shristhi, at the time of occurrence. After marriage, the accused Anil Kumar Mahto started demanding a heavy amount as dowry and the informant from time to time provided the amount according to his financial capacity. Earlier before ten or fifteen days of the occurrence, the accused Anil Kumar Mahto and his mother demanded dowry on which the informant told regarding his incapability in doing so. Then, the accused and his mother threatened him to miss his daughter forever. On 27.10.2014, during night hours, the Police of Jaynagar P.S. informed the informant on his mobile that his daughter died and he was called to come to the Police. At about 05:00 am in the morning, when the informant reached the spot, he saw that his daughter was killed by burning and his granddaughter Shrishti Kumari was also burnt and killed. His grandson, Shubham Kumar, has sustained serious burn injuries and was brought to somewhere for his treatment.



2.2. After registration of the F.I.R., the Investigating Officer started the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 289 of 2017.

3. Heard learned counsel Mr. Ajay Kumar Thakur assisted by Mrs. Vaishnavi Singh and Mr. Ritwik Thakur for the appellant and Mr. Sujit Kumar Singh, learned A.P.P. for the Respondent-State.

4. Learned counsel for the appellant mainly submits that though the charge was framed against the appellant and other co-accused for the offences punishable under Sections 302/34 and 304B/34 of the I.P.C., the Trial Court has convicted the appellant for the offences punishable under Section 304B of I.P.C. and the other co-accused have been acquitted. It is submitted that the present appellant is the husband of the deceased and, therefore, he has been convicted and the other family members have been acquitted by the Trial Court. At this stage, it is submitted that the prosecution has failed to prove the case against the appellant



beyond reasonable doubt despite which, the Trial Court has convicted the appellant for the offences punishable under Section 304B of the I.P.C. Learned counsel would submit that, in the present case, there is no eye-witness to the occurrence in question and the allegation levelled by the prosecution that the appellant and the other family members have killed the deceased is not duly proved. It appears that the Trial Court has convicted the appellant on the basis of the presumption as the death of the deceased took place within seven years of marriage of the appellant and the deceased. Learned counsel would further contend that even the ingredients of Section 304B of I.P.C. are not made out by the prosecution and the same is not duly proved. Learned counsel referred the provisions contained in Section 304B of I.P.C. and thereafter placed reliance upon the following decisions:-

(i) **Charan Singh Vs. The State of Uttarakhand**, reported in **AIR 2023 SC 2095**.

(ii) **Baijnath and Ors. Vs. State of Madhya Pradesh**, reported in **(2017) 1 SCC 101**.

(iii) **Sandeep Kumar and Ors. Vs. State of Uttarakhand and Ors.**, reported in **(2022) 14 SCC 544**.

(iv) **Amar Singh and Ors. Vs. State of Rajasthan**, reported in **(2010) 9 SCC 64**.



5. Learned counsel for the appellant thereafter referred the deposition of the prosecution witnesses and contended that the incident took place in the room which was locked from inside and from the evidence of the prosecution witnesses, it is revealed that the window was broken from outside and thereafter the concerned person entered into the room and opened the lock of the door. Thus, it is contended that the ingredients of Section 304B are not made out. Further, the house in which the incident took place, the other persons were also residing. When the appellant was not in the room where the incident took place, the Trial Court has committed an error while passing the impugned judgment and order *qua* the present appellant. Learned counsel, therefore, urged that the impugned judgment and order be quashed and set aside and thereby the appellant be acquitted.

6. On the other hand, learned A.P.P. has opposed the present appeal. It is contended that, in the incident in question, the wife and two children of the appellant have died and the incident in question took place within a period of four years from the date of marriage of the appellant and the deceased. One son, aged about three years, and one daughter, aged about fifteen months also died in the incident in question. It is further submitted that, from the deposition of the prosecution witnesses, it is revealed that there



was a demand of dowry by the appellant and his family members. The informant, who is the father of the deceased girl, has specifically alleged against the appellant with regard to the demand of dowry. The other prosecution witnesses have also supported the said version of the informant. It is also submitted that, prior to ten days of the incident, once again, the amount of Rs. 50,000/- was demanded from the informant. However, when he was not in a position to give the said amount, harassment was made to the deceased and thereafter she died an unnatural death. It is submitted that the physical torture was given to the deceased which is proved from the medical evidence. Learned A.P.P., therefore, urged that when the incident in question took place, three person died including two minor children of the appellant, the Trial Court has not committed any error while passing the impugned judgment and order. Learned A.P.P., therefore, urged that the present appeal be dismissed.

7. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We have also considered the submissions made by the learned counsel appearing for the parties. It would emerge that, PW-1 Sanjay Kumar Mahto has stated, in his examination-in-chief, that the deceased Rani Devi is his cousin sister. She got married to Anil Mahto. After marriage, Rani used to



live at her in-law's house. She gave birth to two children, one boy, namely Shubham Kumar, and one girl, namely Shrishti Kumari. It is stated that Anil Kumar Mahto and his mother Durgeshwari Devi used to torture the deceased Rani Devi for money. Anil Kumar Mahto, Durgeshwari Devi, Sunil Mahto alongwith his wife Anita Devi also used to torture her for money. His uncle (the deceased's father) gave them as much money as possible. Once, after *Durga Puja* and before *Diwali*, Anil Kumar Mahto called Rani's father over phone and demanded Rs.50,000/-. His uncle said that earlier he kept on giving money but he did not have any more money to give as he had three sons and he has to consider for their future also and he cannot continue giving money. His uncle was told that if the money was not given, then he will lose his daughter. It is stated that, Anil Kumar Mahto, Sunil Kumar Mahto, Durgeshwari Devi and Anita Devi hatched a conspiracy and set Rani, Shubham and Shrishti Kumari on fire by pouring kerosene oil. Shrishti Kumari and Rani were burnt to death then and there. Later on, Shubham Kumar also died in D.M.C.H. It is stated that the information of the said plan was based on the assumption of their repeated demand of money. It is also stated that it was Sunil Kumar Mahto who took Shubham for treatment.



7.1. In his cross-examination, he has stated that the accused belonged from Jaynagar and that the distance between his house and the accused's place is about 50-60 kms. Jaynagar is his in-law's place. He had gone to Anil Mahto's place for the purpose of marriage. Further, he had given the description of Anil Mahto's house.

8. PW-2 Lal Babu Mahto has stated in his examination-in-chief that the deceased (Rani) is his cousin sister. Rani got married to Anil Mahto and started living at her in-law's house after marriage. She had two children, one boy and one girl with Anil Mahto. It is stated that Rani Devi, her son Shubham Kumar and her daughter Shrishti were murdered by Anil Kumar Mahto in collusion with his mother Durgeswari Devi, his brother Sunil Kumar Mahto and his wife Anita Devi by hatching a conspiracy. After Rani's marriage, Anil Kumar Mahto, his mother Durgeshwari Devi, his brother Sunil Kumar Mahto and his wife Anita Devi often used to torture Rani Devi for money. Rani's father had fulfilled their demands many times before. Ten days before the incident, around *Diwali*, the accused persons had demanded Rs.50,000/- but Rani's father was unable to give them the said amount. The accused persons then murdered Rani Devi and her two children for not giving Rs.50,000/-. After receiving



the information from Jaynagar Police Station, they reached at the place of incident at 05:00 in the morning.

8.1. During his cross-examination, he has stated that he got the information about the incident on hearing the shouting of his uncle. It is stated by him that there are four members in the family of Rani Devi i.e. Anil Kumar Mahto, Sunil Kumar Mahto, their mother Durgeshwari Devi and Sunil Mahto's wife Anita Devi. Further, it is stated that he reached the place of occurrence after the incident. He had never told anyone anything regarding the torture. He used to receive the information from Rani's father. In his statement, before the Police, he has stated on assumption that everyone planned and carried out this incident.

9. PW-3 Subodh Mahto has stated in his examination-in-chief that the deceased (Rani Devi) is his niece. Rani got married to Anil Mahto and she had two children. After marriage, Rani was regularly tortured for money by her in-law's i.e. her mother-in-law Durgeshwari Devi, Anil Mahto, Sunil Mahto and his wife Anita Devi. It is stated that his brother (the deceased's father) used to give them some amount. After receiving call from Jaynagar Police Station, he was informed by his brother that Rani is no more. When they went to Jaynagar, they saw that Rani Devi, her daughter Shrishti Kumari were lying dead and her son was taken



to the Hospital for treatment. After some time, it was informed to him that her son had also died. All of them died because of pouring of kerosene oil.

9.1. In his cross-examination, he has stated that when Rani was married to Anil Kumar Mahto, at that time, he was unemployed. Before the incident, it is stated that Anil Mahto had secured a job.

10. PW-4 Dr. Pashupati Mishra is the Medical Officer, who was posted at Sadar Hospital, Madubani on 28.10.2014. He conducted the *post mortem* of the dead body of Rani Devi and found following *ante mortem* injuries:-

“(i) 100% post mortem burn in dissection, blood and blood-clots were found inside tracheal cavity.

(ii) Heart, left chamber of heart was found empty and right chamber was full of blood.

(iii) All internal viscera named lungs, liver, kidney and spleen were congested.

(iv) Urinary bladder was empty.

(v) Uterus was non gravid.

(vi) Stomach contain semi solid materials and gas.

(vii) Intestine contains gas and fecal matters.

Time since death- within 24 hours.

Opinion- death in my opinion was due to asphyxia caused by strangulation. This *post mortem* report is in my writing and signature. It is exhibited as Exhibit-2.”



10.1. On the same day, he conducted the *post mortem* of the dead body of Shrishti and found following *ante mortem* injuries:-

“1. Face and both inferior oxtremities were burnt. On dissection- Heart left chamber was empty and right chamber was full of blood. All internal visceras named lungs, liver, kidney and spleen were conjusted. Urinary bladder was empty. Stomach contained fluidy materials and gases. Intestine contains fecal materials and gases. Time since death was within 24 hours. Death in my opinion was due to shock and asphyxia caused by the above mentioned thermal burn.”

10.2. In his cross-examination, he has stated that the time since death is determined by rigor mortis present in the body. Rigor mortis was present throughout the whole body of Rani Devi. It is also stated by him that blood is not possible to be found in the trachial cavity after death. It is always found in the case of throttling or strangulation. He has mentioned 100% burnt injures. He had not found any injury as laceration bruise, or any else. Due to burn, ligature was not found. He did not find any rupture dislocation at hyoid bone. It is also stated that fracture on the hyoid bone is conclusive of throttling and, at the same time, at strangulation. Existence of fracture in the hyoid bone, only leads to the conclusive proof of strangulation, but if strangulation is above or below of hyoid bone, hyoid bone may not be broken.



11. PW-5 Rajendra Kumar Mahto is the brother of the deceased Rani Devi. He has stated, in his examination-in-chief, that Anil Mahto had two children with Rani Devi (deceased), one son Shubham Kumar and one daughter Shrishti. After marriage, Anil Mahto, his mother Durgeshwari Devi, Sunil Mahto and his wife Anita Devi used to demand money from Rani Devi. From time to time, his father provided them money for the sake of love of his daughter. On denying of giving the amount of Rs.50,000/-, the accused persons told them that if the money was not given, then he will lose his daughter. On 27.10.2014, the day Rani died, his father was called from Jaynagar Police Station in the night hours and was told that Rani had died. On receiving the information, they rushed to Jaynagar where they found that his daughter (Rani Devi) and Shrishti had died and Shubham Kumar was in the hospital and then it was later known that he also had died. He is absolutely confident regarding the fact the his sister and her son and daughter were murdered by Anil Mahto in collusion with his family members.

11.1. In his cross-examination, he has stated that before his sister's marriage, he had gone to Anil Mahto's home and found that he was doing business of mobiles etc. At that time, both the brothers were doing business together. Sunil was married at that



time and he still feeds his family only through the mobile business. It is also stated that Anil Mahto had got the job of a Teacher. Anil's mother used to run a shop situated at the front of his house. It is further stated that, when he reached at Anil Mahto's house, he found that Rani and Shrishti had died. There was only single bedding in that house. His sister and her son and daughter used to sleep in the same bedding and that he saw burnt material on the same bedding. Further, it is stated that the other members of the family of Anil Mahto had taken the boy to Darbhanga for treatment and that Anil Mahto was not at home on the day and at the time of incident.

12. PW-6 Naresh Chaudhary has stated in his examination-in-chief that the wife and children of Anil Mahto had died. All three of them died because of burn injury.

12.1. In his cross-examination, he has stated that the house of the accused and his house are adjacent to each other. There is a grocery store in possession of the accused in the west of his house. The said grocery store is operated by Durgeshwari Devi. It is stated that Anil Kumar was a government teacher before the incident. On the day of incident, he went to Anil's house and saw that the windows and doors were closed from inside and people were knocking from outside. The window of the room of



Anil had no grill. Sunil broke that window and entered inside. After that, the door opened from inside. Rani Devi was lying in an unconscious state and both the children were also burnt by fire. Anil and he brought both the children to the hospital. The girl Shrishti Kumari was declared dead in Sadar Hospital, Jaynagar and Shubham Kumar was referred to Jaynagar. Later it was found that Shubham had also died during his treatment.

13. PW-7 Ramchandra Mahto has stated in his examination-in-chief that Rani Devi and her two children were burnt to death on the day of incident and there was no fight. One of the children had died in the hospital and the other was taken to Darbhanga where he died.

13.1. During cross-examination, he has stated that there is a shop in the courtyard of the house of the accused which is run by Durgeshwari Devi. He came to the house on the night of the incident. The room, in which Anil Kumar Mahto and his children lived, was locked from inside and smoke was coming out of it and the smell of kerosene was coming. The people of the house were trying to open the door. After opening the door it was found the Rani Devi had died and the children were taken to the hospital where one died and the other was brought to Darbhanga. It is also stated that Anil had good relationship with his wife.



14. PW-8 Phulo Devi has stated, in her examination-in-chief, that Rani Devi had two kids, one son and one daughter. Rani Devi and her kids had died because of fire. Anil, Sunil, Durgeshwari and Sunil's wife were sleeping in the house at the time of incident.

14.1. In her cross-examination, she has stated that Anil Mahto used to run a poultry farm earlier, when he got selected, he joined the service later on. She went to Anil's house on hearing the commotion. Anil's room was locked from inside. Family members and the neighbours were trying to open it from outside. After breaking open the gate, she saw that Rani had die and both the children were burnt. The children were taken to the hospital. It is stated that, on the day of incident, Rani had a heated argument with her father on the phone and she was very worried because of it. On the night of incident, Rani did not allow Anil to sleep in her room. He had slept in another room. It is also stated that Rani had an amicable relationship with her husband and his family members and no dispute had ever taken place.

15. PW-9 Bindeshwar Mahto is the cousin of the informant of this case. In his examination-in-chief, he states that Rani Devi was married to Anil Mahto. She delivered two children after the marriage. Rani Devi and both of her children died when



Anil Mahto, Sunil Mahto, wife and mother of Sunil Mahto poured kerosene oil and set her on fire. They were murdered because of not giving the dowry money. The son of Rani Devi died in D.M.C.H., Darbhanga.

15.1. In his cross-examination, he has stated that he was in his home when he came to know about the incident. His brother informed him about the incident. He states that whatever the informant had told him, he told the names of those persons only, in the Court.

16. PW-10 Dr. Prafulla Kumar Das is the Doctor who had conducted the *post mortem* of the dead body of Shubham Kumar on 28.10.2014 at 03:15 pm. He has stated that:-

“The child was aged about four years. Rigor mortis has appeared in both eye lids, neck muscles and both the upper limbs.

2. Dermo epidermal burn was found on the dead body involving face both ends right forearm, right thigh, both genteeal reign left thigh, and both feet. Superficial lair of the skin was peeled off leaving raw red inflamed area, scull hairs and both eyebrows were burnt and seinged with balmes in scattered area.

3. On dissection, right side of the heart contained small amount of blood, and left empty, both lungs, liver, spleen and both kidneys were mildly congested. Stomach and bladder were empty, brain and its meaning were mildly conjusted.

4. Opinion- Above noted injuries were ante mortem. Dangerous for life in ordinary course of nature and



were caused by flames of fire. Death was due to dehydration and shock. Time since death was within 6 to 12 hours from the time of P.M. examination. This P.M. is in my pen and bears my signature and it is exhibited-4.”

17. PW-11 Ganga Mahto is the informant of this case and father of the deceased Rani Devi. He states, in his examination-in-chief, that Rani got married to Anil Kumar Mahto. After her marriage, Rani used to stay at her in-laws house at Jaynagar. Rani had two children from Anil Mahto, one boy and one girl. It is further stated that, after marriage, Anil Mahto used to demand dowry for which he used to torture his daughter. From time to time, he used to give him money according to his capacity. He states that his daughter Rani, grandson Shubham Kumar and granddaughter Shrishti Kumari were murdered by his son-in-law Anil Mahto, Durgeshwari Devi, Sunil Mahto and his wife Anita Devi by pouring kerosene and burning them to death. It is stated that 10-15 days prior to the incident, his son-in-law Anil Mahto, Durgeshwari Devi, Sunil Mahto and Anita Devi demanded Rs. 50,000/- from him. He expressed his inability to give the said amount. After that, Anil Mahto, Durgeshwari Devi, Sunil Mahto and Anita Devi threatened him that if they do not pay the money, then they will kill his daughter. On the night of 28.10.2014, an Inspector from Jaynagar called him and informed him that his



daughter had died. On receiving this information, he reached his daughter's house at Jaynagar at 05:00 am on the very next day. There, he saw that his daughter had been burnt to death and was lying dead. Regarding his grandson, he found that he was also injured and had gone for treatment. After some time, it was found that he had also died at D.M.C.H. He is convinced that because of not paying Rs. 50,000/-, his daughter and her children were tortured to death by the accused persons. On the same day, the Inspector prepared the Inquest Report of Rani Devi at the spot which was signed by him and his brother. Both the signatures are marked as 'Exhibit-6'. On the same day, the Inspector recovered a mattress, two pillows, a mosquito-net, one *gangeri* and an empty five litres kerosene gallon.

17.1. In his cross-examination, he has stated that, at the time of marriage, Anil Mahto was not doing job. He used to help in his brother's shop. Anil's brother had a mobile shop at the market. Anil's mother used to run a grocery shop at the hoe. Anil used to study as well as work at that time and he had no knowledge whether Anil had a poultry farm or not. Further, it is stated that Anil got a job, 3-4 months prior to the incident. His daughter had asked him for financial help and he used to help her financially. After getting the job, Anil asked him for a dowry of



Rs. 50,000/- and stated that he was not getting the salary. Anil used to make similar demands from him before also. Further, he has stated that he received the information regarding the death of his daughter from Jaynagar Police Station. It is also not known to him as to who had taken his grandson for treatment.

18. PW-12 Ratan Kumar is the Investigating Officer, who was posted as S.I. at Jaynagar Police Station. On the date of incident, he received a hearsay information that a woman and her two children have been burnt. On reaching the spot, he found that a woman and a minor girl had died due to burning. Since it was night hours, the Inquest Report could not be prepared. On 28.10.2014, at 07:00 am, the Inquest Report was prepared and was marked as Exhibit-05/01. The second Inquest Report belongs to Shrishti which was prepared on 28.10.2014 and marked as Exhibit-06/01. Further, he has stated that, from the spot of incident, he had recovered a burnt mattress, two pillows, bedding, shawl and a burnt mosquito-net was found. On the north side of the bed, the dead body of the deceased Rani was found. It is stated that, on the night of the incident, the deceased Rani Devi and her children were said to have died due to burning by pouring kerosene oil on the bed. The deceased's daughter Shrishti was said to have died during the way of treatment and son Shubham was



said to have gone for treatment at D.M.C.H. It is stated that all the witnesses have approved the incident unanimously. The deceased Rani Devi and Shrishti's *post mortem* were received from Sadar Hospital, Madhubani and the deceased Shubham Kumar's *post mortem* report and inquest report is said to have been received from Darbhanga.

19. PW-13 Satyanarayan Mahto is the brother of the informant and the uncle of the deceased Rani Devi. He has stated, in his examination-in-chief, that after marriage of his niece Rani, Anil Mahto and his family members Sunil Mahto, Anita Devi and Durgeshwari Devi used to torture his niece for money. From time to time, his brother would give money to Rani's in-laws as per his capability. When Anil Mahto demanded Rs. 50,000/-, his brother refused to give him the amount. Infuriated by his father-in-law's denial, the accused and their family members called his brother and said that if they did not get the money, he would lose his daughter. The information of the said incident was informed to him by Jaynagar Police Station. On reaching the incident spot, he saw that Rani Devi and her daughter were lying burnt to death in the room. Smell of kerosene was coming from the room and a five liter gallon of kerosene oil was also kept there. At that time, it was revealed that Shubham was taken to the hospital for treatment and



later on, he had also died at D.M.C.H., Darbhanga. It is also stated that, for demand of money, Rani Devi and her children were burnt to death by Anil Mahto and his family members by pouring kerosene oil on them.

20. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. It would reveal, from the evidence, that the daughter of the informant got married with the appellant prior to four years from the date of incident. One son and one daughter were born out of the said wedlock. Son was aged about three years and daughter was aged fifteen months at the time of incident. It would further reveal that the informant Ganga Mahto has specifically alleged, in the *fardbeyan*, that his son-in-law i.e. the present appellant was demanding dowry from him after the marriage. Such type of demand was made from time to time and the informant gave financial assistance to the appellant. It is also specifically alleged that, prior to 10-15 days from the date of incident, the present appellant and his mother demanded huge amount from the informant. However, he was not in a position to pay the said amount and, therefore, he had stated that he is now incapable to pay the amount and thereafter the incident took place. The informant is PW-11 who has also stated the said aspect before the Court in his deposition. The other relatives of the deceased i.e.



PW-1, PW-2, PW-3 and PW-5 have specifically supported the version of the informant. From the deposition of the aforesaid witnesses, the prosecution has duly proved that there was a demand of dowry from the present appellant and, prior to ten day of the incident, once again, Rs. 50,000/- was demanded. However, the informant was not in a position to pay the amount and, therefore, he has shown his incapability and thereafter the incident in question took place.

20.1. From the deposition given by PW-4 (Doctor), who had conducted the *post mortem* of the deceased, it would further reveal that 100 per cent burn injuries was sustained by the deceased i.e. the wife of the appellant. The said witness has specifically opined that the death was due to asphyxia caused by strangulation. The Doctor has specifically stated that existence of fracture in the hyoid bone only leads to the conclusive proof of strangulation but if the strangulation is above or below hyoid bone, hyoid bone may not be broken. Thus, from the aforesaid deposition given by the independent witnesses i.e. the Doctor, the prosecution has duly proved that the death of woman is caused by burn/ occurs otherwise under normal circumstances within seven years of her marriage. It is also proved that soon before her death, she was subjected to cruelty or harassment by her husband in



connection with demand for dowry. At this stage, it is relevant to observe that, when the Doctor has specifically opined that the death was caused due to shock and asphyxia caused by strangulation, we are of the view that the prosecution has duly proved that the physical torture and harassment was caused to the deceased prior to her death and there was a demand for dowry. Thus, we are of the view that the learned counsel for the appellant is not right in contending that the prosecution has failed to prove the ingredients of the Section 304B of I.P.C.

21. It was contended by the learned counsel for the appellant that the room in which the incident took place, doors were locked from inside and the concerned person entered into the room after opening the window and, therefore, it was contended by the learned counsel that the deceased might have committed suicide by pouring kerosene oil on herself and in that incident her children also died, who were present in the room. However, we are of the view that the aforesaid contention is totally mis-concieved. From the evidence of the prosecution witness, it is revealed that though the person entered into the room by opening the window, it is clear that there was no grill on the said window and it is not the defence of the appellant that the said window was locked from the inside. Further, from the medical evidence led by the prosecution,



it is clear that the deceased died because of asphyxia due to strangulation. Therefore, the defence taken by the appellant that the deceased committed suicide, cannot be accepted. Therefore, the Trial Court has rightly applied presumption contended in Section 304B of I.P.C. as well as under Section 113B of the Indian Evidence Act, 1872.

22. Further, from the evidence led by the prosecution, it would reveal that specific allegation of demand for dowry was made against the present appellant prior to ten day of the incident and, therefore, the Trial Court has rightly convicted the appellant and, therefore, merely because the benefit of doubt has been given to the other co-accused by the Trial Court, it cannot be said that the present appellant is innocent and the similar type of benefit be given to the appellant. Such type of contention is also misconcieved.

23. In the case of **Charan Singh (supra)**, the Hon'ble Supreme Court has observed in **Para-21** as under:-

“21. In the aforesaid evidence led by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the Appellant or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the



prosecution does not fulfill the pre-requisites to invoke presumption under Section 304B Indian Penal Code or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A Indian Penal Code are not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.”

24. In the case of **Bajinath (supra)**, the Hon’ble Supreme Court has observed in **Para 32, 33 & 34** as under:-

“32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo v. State of Punjab [Shindo v. State of Punjab, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in Rajeev Kumar v. State of Haryana [Rajeev Kumar v. State of Haryana, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, (2003) 1 SCC 217 : 2003 SCC (Cri) 271] to the effect that to attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she



was subjected to cruelty and harassment “in connection with the demand for dowry”.

33. Tested on the judicially adumbrated parameters as above, we are of the unhesitant opinion that the prosecution has failed to prove beyond reasonable doubt, cruelty or harassment to the deceased for or in connection with any demand for dowry as contemplated in either of the two provisions of the Code under which the accused persons had been charged. Noticeably, the alleged demand centres around a motorcycle, which as the evidence of the prosecution witnesses would evince, admittedly did not surface at the time of finalisation of the marriage. PW 5, the mother of the deceased has even conceded that there was no dowry demand at that stage. According to her, when the husband (who is dead) had insisted for a motorcycle, thereafter he was assured that he would be provided with the same, finances permitting. Noticeably again, the demand, as sought to be projected by the prosecution, if accepted to be true had lingered for almost two years. Yet admittedly, no complaint was made thereof to anyone, far less the police. Apart from the general allegations in the same tone ingeminated with parrot-like similarity by the prosecution witnesses, the allegation of cruelty and harassment to the deceased is founded on the confidential communications by her to her parents in particular and is not supported by any other quarter.

34. To the contrary, the evidence of the defence witnesses is consistent to the effect that no demand as imputed had ever been made as the family of the husband was adequately well-off and further Appellant 1 Baijnath had been living separately from before the marriage. According to them there was no occasion for any quarrel/confrontation or unpleasantness in the family qua this issue. Significant is also the testimony of DW 3, the sister-in-law of the deceased who indicated abandonment of the matrimonial home by her with the son of Thoran Singh, the Sarpanch of the village for which



she understandably had incurred the displeasure of the in-laws. DW 4, the father of DW 3 who had given his daughter in marriage in the same family had deposed that he did not ever encounter any demand for dowry. The testimony of the prosecution witnesses PW 3 and PW 7 fully consolidate the defence version.”

25. In the case of **Amar Singh (supra)**, the Hon’ble Supreme Court has observed in **Para-14** as under:-

“14. Once it is established by the prosecution that soon before her death the deceased was subjected by the appellant to harassment or cruelty in connection with demand for dowry, the court has to presume that the appellant has committed the offence under Section 304-B IPC. This will be clear from Section 113-B of the Evidence Act which states that 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. The prosecution in this case had led sufficient evidence before the court to raise a presumption that the appellant had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption.”

26. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that once it is established by the prosecution that soon before her death, the deceased was subjected by the accused to harassment or cruelty in connection with demand for dowry, the Court has to presume that the



appellant has committed the offence under Section 304B of the I.P.C. It is further held by the Hon'ble Supreme Court that proof of cruelty or harassment by the husband or other or her relative or the person charged is, thus, the *sine qua non* to inspire the statutory presumption.

27. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts and the evidence of the present case, as discussed hereinabove, are examined, we are of the view that the prosecution has duly proved that there was a demand for dowry by the appellant prior to ten days of the incident in question and the prosecution has also shown that there was a harassment/ physical torture given to the deceased as there was opinion of the Doctor that the death was caused due to asphyxia by strangulation. Thus, in the facts and circumstances of the present case, we are of the view that the prosecution has proved the case against the appellant beyond reasonable doubt and, therefore, the Trial Court has not committed any error while passing the impugned judgment and order.

28. At this stage, it is required to be noted that, in the occurrence in question, two minor children of the deceased also died. The incident had taken place in the house of the appellant and it is not the defence of the appellant while giving statement



under Section 313 of the Code that he was not present in the house when the incident took place.

29. We have also gone through the reasoning recorded by the Trial Court and we are of the view that when the prosecution has duly proved the case against the appellant beyond reasonable doubt, no error is committed by the Trial Court while passing the impugned judgment and order. Hence, no interference is required in the present appeal.

30. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

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