

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.554 of 2017**

Arising Out of PS. Case No.-69 Year-2014 Thana- RAMGARH District- Kaimur (Bhabua)

Manu Sharma @ Munnu Sharma son of Late Ramnarayan Sharma, R/o
Village- Ramgarh, P.S.- Ramgarh, District- Kaimur at Bhabua.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Tribhuwan Narayan, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)**

Date : 28-06-2024

The present appeal has been preferred against the judgment of conviction and order of sentence dated 24.03.2017 and 28.03.2017 respectively passed by Ld. Additional Sessions Judge-VI, Kaimur at Bhabua in Sessions Trial No. 68 of 2015 (Trial No. 152/2016) arising out of Ramgarh P.S. Case No. 69 of 2014 registered against three accused persons, including the Appellant herein, for the offences punishable under Section 304(B) read with Section 34 of the Indian Penal Code.

2. By the impugned judgment, the Appellant has been found guilty for the offence punishable under Section 304(B) and Section 34 of Dowry Prohibition Act and he has been sentenced to undergo life imprisonment and to pay a fine of Rs.



20,000/- under Section 304(B), and in case of default to pay the fine, to undergo additional simple imprisonment for six months, and to undergo simple imprisonment of one year and to pay a fine of Rs. 5,000/- under Section 34 of Dowry Prohibition Act and in case of default to pay the fine, to undergo additional simple imprisonment for three months.

3. The prosecution case, as unfolded by the *fardebayan* of the informant Dinanath Sharma on 21.04.2014 at 18:10 O'clock at the house of the Appellant to the police officer is that he had married off his daughter Jyoti Kumari @ Rina to the Appellant/Manu Sharma three years back as per Hindu Rites and Customs. After the marriage, his daughter started living at her matrimonial home, but since then, the son-in-law/Appellant Manu Sharma and his elder brother Munna Sharma and wife of Munna Sharma started pressurizing his daughter to bring additional dowry i.e. golden chain and other items and on account of non-fulfillment of the same, she was subjected to harassment. On being informed by his daughter, the informant and other persons went to the matrimonial home of his daughter to persuade them not to do such things. But despite that, the people of the matrimonial home kept subjecting his daughter to torture. On the day of the *fardebayan*, the informant got



information at 5:00 O'clock in the evening that his daughter has been killed by his son-in-law Manu Sharma (Appellant) and his brother Munna Sharma and wife of Munna Sharma and they are preparing for her last rites. After this information, the informant along with his son and brother came to the matrimonial home of his daughter and found that his daughter Jyoti Kumari @ Rina has been killed and kept on a cot in the *verandah* and preparation was going on for her last rites. On seeing the dead body, he found that she was strangled by rope to death. In his *fardebayan*, he has claimed that his daughter Jyoti Kumari @ Rina has been killed by his son-in-law Manu Sharma (Appellant), his brother Munna Sharma and the wife of Munna Sharma.

4. After lodging of the F.I.R., investigation commenced and after investigation, charge-sheet bearing no. 88 of 2014 dated 31.10.2014 was submitted against all the three F.I.R. Accused persons, including the Appellant for the offence punishable under Section 304(B) read with Section 34 of the Indian Penal Code. Thereafter, cognizance of the offence punishable under Section 304(B) read with Section 34 of the Indian Penal Code against all the three Accused persons and the case was committed to the Court of Sessions and the charge was



framed by the Sessions Court on 15.05.2015 under Section 304(B) read with Section 34 of the Indian Penal Code and also under Section 302 read with Section 34 of the Indian Penal Code and Section 34 of the Dowry Prohibition Act read with Section 34 of the Indian Penal Code. The charges were read over and explained to the Accused persons for which they pleaded not guilty and claimed to be tried and hence, the trial commenced.

5. During trial, the following six witnesses were examined on behalf of the prosecution:-

- (i) **P.W.-1** – Munna Sharma (Brother of the deceased)
- (ii) **P.W.-2** – Pawan Sharma (Brother of the deceased)
- (iii) **P.W.-3** – Gorakh Sharma (Uncle of the deceased)
- (iv) **P.W.-4** – Dinanath Sharma (Informant and father of the deceased)
- (v) **P.W.-5** – Shayamla Kumar (Investigating Officer)
- (vi) **P.W.-6** – Dr. Jitendra Nath Singh (who conducted the postmortem examination on the dead body of the deceased)

6. During trial, the prosecution has also brought on record the following documentary evidence:-

- (i) **Ext. 1** – Signature on the seizure list;
- (ii) **Ext. 1/1** - Signature of Pawan Sharma on fardebayan;
- (iii) **Ext. 1/2** - Signature of the informant on the fardebayan;
- (iv) **Ext. 2** – Inquest Report
- (v) **Ext. 3** – Signature on the seizure list
- (vi) **Ext. 4** – The fardebayan
- (vii) **Ext. 5** – Endorsement on the fardebayan
- (viii) **Ext. 6** – Formal FIR
- (ix) **Ext. 7** – Copy of the postmortem report



7. After closure of the prosecution evidence, the Appellant herein was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came into prosecution evidence so as to afford him opportunity to explain those circumstances. During this examination, he has stated that he had heard the evidence of the prosecution. However, he has not explained those circumstances. But he has stated that the prosecution evidence are false. He has also stated that his marriage with the deceased, Jyoti Kumari was solemnized in 2006. He has also claimed that he is innocent. He has also examined three witnesses in his defence, who are as follows:

(i) D.W.-1, Rambadhai Pandey

(ii) D.W.-2, Radheshyam Sharma

(iii) D.W.-3, Vansh Narayan Sharma

8. Ld. Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment whereby Ld. Trial Court has found only the Appellant guilty of offence punishable under Section 304(B) of the Indian Penal Code and Section 3 of Dowry Prohibition Act and other co-accused, namely, Munna Sharma and Kumkum Devi were acquitted of all the charges. The appellant has not been found guilty under Section 302 of the Indian Penal Code.



The co-accused, namely, Munna Sharma and Kumkum Devi have been acquitted in view of the finding that they were separate in mess and business with the Appellant and they had nothing to do with the matrimonial life of the Appellant and his deceased wife. The Appellant has been directed to undergo imprisonment for life under Section 304(B) of the Indian Penal Code and to pay a fine of Rs. 20,000/- and in case of default to pay the fine, he has been directed to undergo additional simple imprisonment for six months and to undergo simple imprisonment of one year and to pay a fine of Rs. 5,000/- under Section 34 of Dowry Prohibition Act and in case of default to pay the fine, to undergo additional simple imprisonment for three months.

9. We have heard the learned Counsel for the Appellant and Ld. APP for the State.

10. The learned Counsel for the Appellant submits that the impugned judgment of conviction and order of sentence passed by the Trial Court are not sustainable in the eye of law or on facts. The Trial Court has not applied his judicial mind and has failed to properly appreciate the evidence on record. He also submits that the prosecution has failed to prove its case against the Appellant beyond all reasonable doubts. There is no cogent



evidence on record to fasten the Appellant with guilt as alleged by the prosecution.

11. To substantiate his claim, the Counsel for the Appellant submits that all the non-official prosecution witnesses are related and interested and no independent witnesses have been examined by the prosecution and hence, they cannot be relied upon for conviction of the Appellant. He further submits that the alleged occurrence had taken place beyond seven years of the marriage. He refers to defence witnesses, who have deposed that marriage of the Appellant with the deceased was solemnized in 2006 and as such, the alleged occurrence had taken place in the year 2014, i.e. after about seven years of marriage. He also submits that the Trial Court has failed to appreciate the defence witnesses that the deceased Jyoti Kumari was suffering from arthritis and on account of depression, she committed suicide. He also submits that there are discrepancies and contradictions in the statements of the witnesses, making dent into the prosecution case with regard to sentence, the learned Counsel for the Appellant also submits that in the given facts and circumstances, awarding of maximum punishment to the Appellant under Section 304(B) of the Indian Penal Code is in no way justified in view of the young age of the Appellant and first offence of the Convict.



12. However, the learned APP for the State submits that there is no illegality or infirmity in the impugned order and sentence. The prosecution case against the Appellant is well proved and other co-accused who were acquitted in view of the finding by the Ld. Trial Court they were separate in mess and business from the Appellant.

13. The only question before us for consideration is whether the conviction and sentence of the appellant under Section 304(B), IPC and Section 34, Dowry Prohibition Act is sustainable in the eye of law.

14. In view of the submissions on behalf of the Appellant, it would be relevant to point out at the outset itself that there is no bar in law in examining family members or any other persons as witnesses who are related to the deceased. In fact some times, only family members are found to be witnesses to an offence. Moreover, evidence of any family member cannot be discarded only on account of his or her relationship with the deceased. The evidence of such witnesses has to be weighed on the touchstone of truth and, at most, a court is required to take care and caution while appreciating their evidence. [Refer to Abhishek Sharma Vs. State (NCT of Delhi), 2023 SCC OnLine SC 1358; Yogesh Singh Vs. Mahabeer Singh & Ors, (2017) 11



SCC 195; Mano Dutt and another Vs. State of Uttar Pradesh, (2012) 4 SCC 79; State Vs. Saravanan, (AIR 2009 SC 152); State of U.P. Vs. Kishanpal, (2008) 16 SCC 73; Namdeo Vs. State of Maharashtra, (2007) 14 SCC 150; State of A.P. Vs. S. Rayappa, (2006) 4 SCC 512; Pulicherla Nagaraju Vs. State of A.P., (2006) 11 SCC 444; Harbans Kaur Vs. State of Haryana, (2005) 9 SCC 195 and Hari Obula Reddy and Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675]

15. As far as non-examination of independent witnesses by the Prosecution is concerned, it is relevant to note that the people in general are reluctant to be a witnesses in a criminal case. One can not ignore this handicap with which investigation agency has to discharge its duties. Moreover, the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. [Refer to Appabhai & anr. Vs. State of Gujrat, AIR 1988 SC 696; Darya Singh Vs. State of Punjab, AIR 1965 SC 328; Yogesh Singh Vs. Mahabeer Singh & Ors, (2017) 11 SCC 195; Sheo Pujan Tiwari Vs. State of Bihar, 2016 (2) PCCR 187 and Dalip Singh Vs. State of Punjab, AIR 1953 SC 364].



16. With regard to contradiction and discrepancies

in the prosecution witnesses, it is again relevant to point out that it is a settled position of law that minor discrepancies on trivial matters, not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental deposition, shock and horror at the time of occurrence and threat to the life. Therefore, it is the duty of the Court not to attach undue importance to minor discrepancies unless they go to core of the matter and shake the basic fabric of the prosecution case as the mental ability of a human being cannot be expected to be attuned to absorb all the details of the incident. Minor discrepancies are bound to occur in statements of witnesses. In fact, minor discrepancies in deposition are indication that the witnesses are not tutored and they are truthful. In case of rustic witnesses coming from



villages, court should not be oblivious of the fact that their behavioral pattern and perceptive seems are not attuned to sophisticated approaches familiar in courts. [Refer to C. Muniappan & others Vs. State of T.N., (2010) 9 SCC 567; State of U.P. Vs. Krishan Master, (AIR 2010 SC 3071); Appabhai & Anr. Vs. State of Gujrat, AIR 1988 SC 696; Shivaji Sahebrao Bobade & Anr. Vs. State Of Maharashtra (1973 AIR 2622); Sanjay Kumar Vs. State of Bihar; 2019 SCC OnLine Pat 1077; State of Madhya Pradesh Vs. Dal Singh: (2013) 14 SCC 159; Smt. Shamim Vs. State (GNCT of Delhi), 2018 (4) PLJR 160; S. Govidaarju Vs. State of Karnataka, 2013 (10) SCALE 454; Narotam Singh Vs. State Of Punjab & Anr. (AIR 1978 SC 1542); Leela Ram Vs. State of Haryana, (1999) 9 SCC 525; Subal Ghorai and Ors. Vs. State of West Bengal, (2013) 4 SCC 607 and Yogesh Singh Vs Mahabeer Singh & Ors., (2017) 11 SCC 195]

17. The submission of Ld. counsel for the Appellant that in case of suicide, Section 304(B), IPC does not get attracted is also without any substance in view of the settled position of law. So far as Section 304(B), IPC is concerned, it is not relevant whether it is a case of homicide or suicide. For application of section 304(B), IPC, death of the women is required to be caused



by any burns or bodily injury or occurs otherwise than under normal circumstances. In other words, the death should be other than natural death. And needless to say that suicide is not natural death. Hence, the case of suicide is covered under the definition of dowry death as defined by Section 304(B), IPC. In **Raja Lal Singh Vs. State of Jharkhand, (2007) 15 SCC 415**, Hon'ble Supreme Court has held that it is settled by a series of decisions of this appellate Court that so far as Section 304(B), IPC is concerned, it is not relevant whether it is a case of homicide or suicide.

18. In Satvir Singh Vs. State of Punjab, (2001) 8 SCC 633, Hon'ble Supreme Court has held as follows:

“18. We are, therefore, unable to concur with the contention that if the dowry-related death is a case of suicide it would not fall within the purview of Section 304-B IPC at all. In *Shanti v. State of Haryana*, (1991) 1 SCC 371 and in *Kans Raj v. State of Punjab* (2000) 5 SCC 207, this Court has held that suicide is one of the modes of death falling within the ambit of Section 304-B IPC.”

19. In Kans Raj Vs. State of Punjab, (2000) 5 SCC 207, Hon'ble Supreme Court has held as follows:

“19. It is established that the death of Sunita Kumari by suicide had occurred within 7 years of her marriage and such death cannot be stated to have occurred in normal circumstances. The term “normal circumstances” apparently means natural death.....”

20. In other words the expression “otherwise than under normal circumstances” would mean death not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury.”



20. In the case on hand, the victim had committed suicide or met with homicide will be decided a little while hereafter while considering the evidence on record. However, even finding that the victim had committed suicide would not alter finding regarding dowry death if other conditions required under Section 304 (B), IPC are fulfilled by the prosecution evidence.

21. Now we are required to consider the evidence on record to decide the question involved in the case. However, before considering the evidence on record, it is imperative to consider the statutory provisions of Section 304(B) of the IPC and Section 113B of the Evidence Act.

22. Section 304(B) of the IPC defines the offence of Dowry Death. It reads as follows:-

“304B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

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

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

23. As such, the **essential ingredients** of dowry



death are as follows, as held by **Hon'ble Supreme Court** in **Major Singh Vs. State of Punjab, (2015) 5 SCC 201.**

“10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:

(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a ‘normal circumstance’;

(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; and

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

24. The words “**soon before her death**” is, however, not defined in the Act. Hence, in each case, the Court is required to analyze the facts and circumstances of the case leading to the death of the victim and decides if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death.

25. In **Kans Raj Vs. State of Punjab, (2000) 5 SCC 207 Hon'ble Apex Court** has held that the term “soon before” is not synonymous with the term “immediately before”. However, it also doesn't mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty



or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough. The relevant para of the **Kans Raj Case (Supra)** may be referred to which is as follows:

“15.....“Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term “soon before” is not synonymous with the term “immediately before” and is opposite of the expression “soon after” as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.”

(Emphasis supplied)

26. In Sher Singh Alias Partapa Vs. State of Haryana, (2015) 3 SCC 724, Hon’ble Supreme Court has also held that the word “soon” should not be interpreted 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 of the Indian Penal Code.

27. Section 113B of the Indian Evidence Act is also required to be taken note of while considering the prosecution case under Section 304(B) of the Indian Penal Code to see whether the prosecution case stands proved or not against the Accused. **Section 113B** of the Indian Evidence Act provides for **presumption as to dowry death**. It 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 Penal Code, 1860 (45 of 1860)”

28. As per the statutory provisions of Section 113B of the Indian Evidence Act, it clearly emerges that when the Court is considering the question whether the person has committed the dowry death of a woman, he shall be presumed to have caused the dowry death, if it is shown that before her death such woman had been subjected by such person to cruelty or



harassment in connection with any demand for dowry.

29. As such, for raising presumption under Section 113B of the Indian Evidence Act against the accused, the Prosecution is required to prove the following two conditions:-

(i) Dowry Death of a woman in terms of Section 304(B), IPC has been committed.

(ii) The Accused has subjected the woman to cruelty or harassment for or in connection with any demand of dowry soon before her death.

30. The aforesaid two conditions being foundational facts are required to be proved by the prosecution beyond reasonable doubts for raising presumptions under section 113B of the Indian Evidence Act. The presumption of innocence is human right, subject to the statutory exceptions. The said principle forms the basis of our criminal jurisprudence. Hence, the foundational facts required for raising presumption, must be proved by the prosecution beyond reasonable doubts. Otherwise, the prosecution would only file a charge-sheet against the accused claiming that the case of the prosecution should be accepted as gospel truth, putting entire burden on the accused to prove his innocence. Such proposition of law would be certainly violative of the fundamental right of the Accused,



as enshrined in our constitution. Hence, presumption can be raised only when the foundational facts are established by the prosecution by proof beyond reasonable doubts. Reliance is placed on **Babu Vs. State of Kerala, (2010) 9 SCC 189**, wherein **Hon'ble Apex Court** has observed as follows, in the context of the POCSO Act:

"27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden on proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. (Vide: Hiten P. Dalal Vs. Bratindranath Banerjee, (2001) 6 SCC 16; Narendra Singh Vs. State of M.P., (2004) 10 SCC 699, AIR 2004 SC 3249; Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70: AIR 2007 SC 451; Noor Aga Vs. State of Punjab, (2008) 16 SCC 417; and Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54: AIR 2008 SC 1325)."

(Emphasis supplied)



31. The conjoint reading of Section 304(B), IPC and Section 113B of the Indian Evidence Act shows that in case of dowry death, the prosecution is relieved of its burden to prove not only *mens rea* but even direct connection/involvement of the accused with dowry death, if the ingredients of Section 304B, IPC and the conditions as stipulated under Section 113 Evidence Act are fulfilled. On account of this relaxation of standard of proof, lesser punishment has been provided for dowry death compared to murder. Hon'ble Supreme Court has clearly held in **Hem Chand Vs. State of Haryana, (1994) 6 SCC 727**, that irrespective of the fact whether accused has any direct connection/involvement with the death or not, he shall be presumed to have committed the dowry death if the prosecution proves that death of women is dowry death and accused has subjected such women to cruelty or harassment soon before her death in connection with demand for dowry. The relevant para of **Hem Chand Case (supra)** reads as follows:

“7. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can therefore be seen that irrespective of the fact whether the



accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied.....”

(Emphasis supplied)

32. Similar view has been expressed by Hon’ble Supreme Court in **Sunil Dutt Sharma v. State (Govt. of NCT of Delhi), (2014) 4 SCC 375**. It reads as follows:

“15.....So long there is credible evidence of cruelty occasioned by demand(s) for dowry, any unnatural death of a woman within seven years of her marriage makes the husband or a relative of the husband of such woman liable for the offence of “dowry death” under Section 304-B though there may not be any direct involvement of the husband or such relative with the death in question.....”

(Emphasis supplied)

33. Now question is what would be the standard of proof for the accused to rebut presumption raised under Section 113B of the Indian Evidence Act. Here, it may be pointed out that presumption under Section 113B of the Indian Evidence Act is presumption of law and mandatory in nature. The Section carries the word “Court shall presume”. As per Section 4 of the Indian Evidence Act, under such presumption, the presumed fact is required to be regarded as proved unless and until it is disproved.

34. Hon’ble Supreme Court in **Sher Singh Vs. State of Haryana, (2015) 3 SCC 724** has held that it would not be appropriate to lessen the husband’s onus to rebut the



presumption to that of preponderance of probability and that would annihilate the deemed guilt expressed in Section 304B and such a curial interpretation would defeat and neutralize the intentions and purposes of Parliament.

35. In *Paranagouda v. State of Karnataka*, 2023 SCC OnLine SC 1369, Hon'ble Supreme Court has reiterated the view that the Accused is required to rebut the presumption raised against him under Section 113B of the Indian Evidence Act by proof beyond reasonable doubt.

36. Now question is whether the prosecution has proved the aforesaid twin conditions to raise the presumption under Section 113 B, Evidence Act against the Appellant as per the evidence on record.

37. Coming to the prosecution evidence, we find that the **informant, Dinanath Sharma**, who is father of the deceased, has been examined as **P.W.-4**. In his **examination-in-chief**, he has reiterated the allegation as made in the *fardebayan*. He has also deposed that seizure list was prepared in his presence. In his **cross-examination**, he has deposed that his daughter was well treated at her matrimonial home for one year and thereafter, he had brought his daughter at his home where she lived for 2-4 months and thereafter, she was taken back to the matrimonial



home by her husband and thereafter, she never came back.

38. P.W.-1, Munna Sharma (Brother of the deceased), **P.W.-2, Pawan Sharma** (Brother of the deceased) and **P.W.-3, Gorakh Sharma** (Uncle of the deceased) have also deposed in support of the prosecution case, deposing that the marriage of the deceased with the Appellant was solemnized about three years back and there was demand of additional dowry even after the marriage and on account of non-fulfillment of the same, the deceased was subjected to harassment and torture. It has also come on the record that the family members of the deceased had visited the matrimonial home of the deceased on 20.04.2014 for persuading the Accused persons for not beating the deceased and, on the next day i.e. on 21.04.2014, the informant came to know from P.W.-2, Pawan Sharma about the death of the deceased.

39. P.W.-6 is Dr. Jitendra Nath Singh, who had conducted postmortem examination on the dead body of the deceased. He has deposed in his **examination-in-chief** that the dead body of the deceased Jyoti Kumari @ Rina was brought to the Sadar Hospital, Bhabhua at 12:00 night and he being posted as a Medical Officer had conducted the postmortem examination on the dead body of the deceased on 22.04.2014. The finding as



per the postmortem report is as follows:-

“External appearance- Rigor mortis present in all four limbs less in upper than lower limb. Neck loose. Chin can be flexed over front of chest. Eyes closed. Conjunctivared. Mouth closed tongue bitten between upper and lower teeth. Face deeply cyanosed.

2. External Examination-

A. Abrasion size 1/2"X1/4" transversly placed below chin
b. An oblique ligature mark in upper part of neck with knet mark behind the left ear.

On dissection- skull bone intact Brain matter congested subcutaneous tissue under ligatare mark was dry and white trachea epiglottis and trachea was congested thorasic bony cage was intact both pleura and lung was congested and intact Pericardium and heart were intact and cougested Dark blood was present in both side of heart Liver, spleen both kidneys were intact and cougested Stomach was empty intestine small and large both contained gas liquid and foeces uterous was intact and non gravit urinary bladder was empty.

3. Opinion Above mentioned injuries were antemortem is nature and caused by hanging

B. Death in my opinion was due to asphyxia caused by hanging

C. Time elapsed between death and Autopsy is within 24 to 36 hours”

40. In his **cross-examination**, **P.W.-6** has reiterated that the death of the deceased was due to asphyxia caused by hanging.

41. Even as per the inquest report, the death of the victim was caused by tying rope around her neck.

42. As per, **P.W.-5**, Shayamla Kumar (Investigating Officer) of this case, the place of occurrence is the house of the Accused and as per his deposition, there was ligature mark on the neck of the deceased. He also found *chunri gamcha* converted



like a rope and one thin plastic rope of brown colour in the room of the deceased where she used to sleep. He has also deposed that when he reached the place of occurrence for verification, he met the father, uncle and brother of the deceased. He has also deposed that as per the case diary, the Accused persons were preparing for last rites and when the informant and his family members reached there, the Accused persons fled away. However, he has admitted that no witness has ever claimed that they have seen the occurrence.

43. As such, from the perusal of the evidence of the prosecution on record, we find that as per the evidence of Dr. Jitendra Nath Singh, P.W.-6, one Jyoti Kumari @ Rina (Wife of the Appellant), has died on 21.04.2014 at her matrimonial home on account of *asphyxia* caused by hanging.

44. We further find that the deceased, Jyoti Kumari was married with the Appellant three years back from the date of her death on 21.04.2014. It is also on record that there was demand of dowry by the Appellant and on account of non-fulfillment of the same, the deceased was subjected to beating by the Appellant. It is also on record that on 20.04.2014 i.e one day prior to the death of Jyoti Kumari, her family members had visited the matrimonial home to persuade the Appellant not to



continue beating the deceased for non-fulfillment of his demand for dowry.

45. Coming to the Defence Evidence, we find that **D.W.-1, Rambadhai Pandey**, in his **examination-in-chief**, has deposed that he solemnizes marriages of people and the marriage between the deceased and the Appellant was solemnized by him in the year 2006. However, in his **cross-examination**, he has deposed that he does not remember the date of marriage, nor could he tell the *shak samwat* of the year 2006. He was also unable to tell the name of the father of the girl whose marriage was solemnized with the Appellant. Even the time of the marriage could not be stated by the witness. To Court question, he has deposed that he cannot tell a single *mantra* which is recited on the occasion of a marriage. This witness does not appear to be truthful and trustworthy in regard to his claim that he had solemnized the marriage of the Appellant with the deceased. He does not know even a single hymn which is recited on the occasion of solemnization of marriage.

46. **D.W.-2, Radheshyam Sharma** is a cousin brother of the Appellant. In his **examination-in-chief** he has deposed that the marriage of the Appellant with the deceased was



solemnized in the year 2006. He has also deposed in his examination-in-chief that the deceased, Jyoti Kumari was suffering from arthritis and she was taking treatment for the same and on account of arthritis she hanged herself. In his **cross-examination** he has deposed that on *halla*, he visited the house of the Appellant and saw that the deceased Joyti Kumari was hanging with *gamcha* tied around her neck. He was also unable to tell the name of the day, date and month of the marriage of the Appellant with the deceased. He has denied the suggestion that he has deposed falsely and the marriage of the Appellant with the deceased was solemnized three years back from the date of death of Jyoti Kumari. This witness also does not appear to be trustworthy in regard to his claim about the year of the marriage between the Appellant and the deceased and the suicide of the deceased. In regard to marriage, he could not tell about the day, date and month of the marriage. Moreover, he himself stated in his cross-examination that when he reached the house of the Appellant, Jyoti Kumari was hanging and she was already dead. It means that he had witnessed the deceased committing suicide.

47. D.W.-3 - Vansh Narayan Sharma has deposed in his **examination-in-chief** that he knows the Appellant, Manu



Sharma and he has worked with him for three months at Kavilaspur at the house of Kesnath Yadav. He has further deposed that on 21.04.2014 also, the Appellant was working with him. In his **cross-examination** he has deposed that the Appellant used to come at the working place from his home. He has further deposed that even on 22.04.2014 they were working together, but he did not tell him anything about the occurrence. Even the evidence of this witness is of no help to the Accused, because he has deposed that the Appellant used to come at the working place from his home. So the plea of *alibi* which has been tried to be proved by this witness could not be proved.

48. Hence, we find that as per the evidence on record the prosecution has proved the following facts beyond reasonable doubts-

- (i) The deceased Jyoti Kumari met an unnatural death by asphyxia due to hanging;
- (ii) The Marriage of the deceased with the Appellant was solemnized three years back from the date of occurrence;
- (iii) There was demand of dowry by the Appellant and;
- (iv) On account of non-fulfillment of the demand of dowry, the deceased was subjected to beating by the Appellant soon before her death.



49. Hence, the prosecution has proved beyond reasonable doubts that Jyoti Kumari @ Rina met with Dowry death and soon before her death she was subjected by the appellant to cruelty or harassment in connection with demand of dowry. As such, the foundational facts for raising presumption under Section 113B of the Indian Evidence Act stand proved by the prosecution to presume that the Appellant caused the dowry death of his wife Jyoti Kumari @ Rina. However, the Appellant has badly failed to rebut the presumption raised against him as required by law. Hence, the Appellant is found guilty under Section 304(B) of the IPC and Section 3 of the Dowry Prohibition Act.

50. However, coming to the sentence awarded to the Appellant by learned Trial Court, we find that the Appellant has been sentenced to undergo life imprisonment under Section 304(B), IPC as per which the minimum sentence provided is seven years which may extend to imprisonment for life. But it has been held by **Hon'ble Supreme Court in Hem Chand Case (Supra)** that extreme punishment of life imprisonment under Section 304(B), IPC should be awarded only in rare cases. It is also settled principle of law that the Court is required to assign special reasons while awarding maximum sentence under any penal provisions. But in the case on hand, we do not find



any special reasons assigned by Learned Trial Court while awarding maximum sentence to the Appellant. We find that in view of the facts and circumstances of the case, such punishment is excessive in view of the young age of the Appellant and the offence being his first one. Punishment for rigorous imprisonment for ten years under Section 304(B), IPC instead of life imprisonment would meet the ends of justice. The sentence is accordingly modified, upholding the punishment under Sections 34 of Dowry Prohibition Act.

51. The Appeal is, accordingly, allowed in part, upholding the impugned judgment of conviction and modifying the impugned order of sentence. As per record, the Appellant has been in custody only since 01.09.2014.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

shoaib/
Ravishankar/-

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