

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.142 of 2020

Arising Out of PS. Case No.-391 Year-2018 Thana- KHAJANCHI HAT District- Purnia

KUNDAN KUMAR @ MANIKANT SINHA @ KUNDAN AMBASTHA
S/o Umashankar Sinha @ Uma Shankar Prasad Sinha Resident of Village-
Shaktinagar, Chunapur Road, Sipahi Tola, P.S.- K. Hat, Distt- Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

WITH
CRIMINAL APPEAL (DB) No. 456 of 2020
In
CRIMINAL APPEAL (SJ) No.293 of 2020

Arising Out of PS. Case No.-391 Year-2018 Thana- KHAJANCHI HAT District- Purnia

1. KUNAL SINHA (AMBASTHA) @ KUNAL AMBASTHA Son of Umashankar Sinha @ Uma Shankar Pd Sinha Resident of Village - Shaktinagar, Chunapur Road, Sipahi Tola, P.S.- K. Hat, District - Purnea
2. Lala Nawaneet @ Sanu Sinha @ Lala Navnit Sanu Son of Umashankar Sinha @ Uma Shankar Pd Sinha Resident of Village - Shaktinagar, Chunapur Road, Sipahi Tola, P.S.- K. Hat, District - Purnea
3. Umashankar Sinha @ Uma Shankar Pd. Sinha Son of Late Jagdish Prasad Verma Resident of Village - Shaktinagar, Chunapur Road, Sipahi Tola, P.S.- K. Hat, District - Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 142 of 2020)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Jitendra Narain Sinha, Advocate

For the State : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 456 of 2020)

For the Appellants : Mr. Ajay Kumar Thakur, Advocate
Mr. Jitendra Narain Sinha, Advocate

For the State : Ms. Shashi Bala Verma, APP



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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
And
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 10-12-2025

The aforesaid appeals preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') arise out of the same judgment of conviction and order of sentence dated 10.12.2019 and 17.12.2019 respectively, passed by the Court of learned Presiding Officer, Fast Track Court No.2, Purnea in Sessions Trial No.439 of 2018 (CIS No.439 of 2018), arising out of K. Hat (Madhubani) P.S. Case No.391 of 2018, hence these appeals have been heard together and are being disposed off by the present common judgment and order. By the said judgment dated 10.12.2019, the Ld. Trial Court has convicted all the appellants of the aforesaid appeals have been convicted under Section 304B and 498A of the Indian Penal Code (hereinafter referred to as the 'IPC'). While appellant-Kundan Kumar alias Manikant Sinha alias Kundan Ambastha of Cr. Appeal (DB) No.142 of 2020 has been sentenced to undergo rigorous imprisonment for life under Section 304B/34 of the IPC, the appellants of Cr. Appeal (DB) No.456 of 2020 have been



awarded a sentence of rigorous imprisonment for seven years under Section 304B/34 of the IPC. However, all the appellants have been sentenced to undergo rigorous imprisonment for three years for the offence punishable under Section 498A/34 of the IPC.

2. The short facts of the case as per the written report of the informant, namely Kanchan Devi, who is the mother of the deceased (P.W.5), is that the marriage of her daughter was solemnized with Kundan Kumar alias Manikant Sinha on 19th of June, 2017 at Purnea. She has alleged that a few days after the marriage, the appellant-Kundan Kumar alias Manikant Sinha and his entire family including brother-in-law, sister-in-law, mother-in-law, father-in-law and sister/brother-in-law started indulging in inflicting cruelty and demand of dowry. She has further stated that she had given various articles to her daughter as per her capacity such as jewellery and cash as also one Maruti Swift Dezire car at the time of her marriage, however the appellants as well as other family members started making further demand of Rs.10 Lakhs cash and 2 Kathas of land and used to torture her daughter for the same. It has further been alleged that two days before the date of occurrence the informant got a phone call at around 11:10 pm from her



daughter that her husband Kundan Kumar wanted to speak to her and as soon as he took the phone he started hurling abuses and threatened her of dire consequences to the extent of killing her daughter by hanging her in case his demand for Rs.10 Lakhs and 2 Kathas of land was not fulfilled. In response to the same, the informant expressed her inability to provide anything else but he did not pay heed to the same and on the date of occurrence at around 3:00 pm, while she was in the Sasural of her elder daughter, she received a phone call from her son that the deceased was being taken for cremation, but with the help of other local people, they were brought to the police station and while the dead body of the deceased was in the car, appellant-Kundan Kumar was driving the vehicle and all the family members including the father-in-law and brother-in-law were going to cremate the deceased. Upon getting such information, the informant along with her husband Nawal Kishore Shrivastava, her elder daughter and one other daughter along with her husband left for Purnea.

3. On the basis of the above-mentioned written report a formal F.I.R. bearing K. Hat (Madhubani) P.S. Case No.391 of 2018 was instituted on 06.06.2018 at 5:00 pm against the appellant of Cr. Appeal (DB) No.142 of 2020 along with



other family members under Section 498A, 304B, 201 and 120B of the IPC. After investigation and upon finding the case to be true, the police had submitted the first chargesheet against the appellants, Kundan Kumar alias Manikant Sinha alias Kundan Ambastha, Kunal Sinha and Umashankar Sinha alias Uma Shankar Prasad Sinha on 03.08.2018, whereafter second chargesheet was submitted on 17.09.2018 against Manisha Sinha and Navneet alias Sanu under Section 498A and 304B/34 of the IPC. Thereafter, cognizance was taken under the aforementioned Sections on 17.08.2018 and the case record was committed to the Court of Sessions. Accordingly, Sessions Trial No. 439 of 2018 was instituted, whereafter the trial commenced and charges were framed by the learned Trial Court on 29.01.2019 under Section 304B, 498A and 302/34 of the IPC.

4. The prosecution, in order to substantiate its case, has examined 9 witnesses on its behalf during the course of trial, they being, P.W.1-Preeti Srivastava (sister of the deceased), P.W.2-Deepti Srivastava (sister of the deceased), P.W.3-Mithilesh Prasad Srivastava (uncle of the deceased) P.W.4-Nawal Kishore Srivastava (father of the deceased), P.W.5-Kanchan Devi (informant and mother of the deceased), P.W.6-Mritunjay Kumar (brother of the deceased), P.W.7-Bibesh



Kumar (cousin brother of the deceased), P.W.8-Dr. Bimal Kumar (doctor, who had conducted the postmortem examination on the dead body of the deceased) and P.W.9-Ramchandra Yadav (the Investigating Officer of the case).

5. Mr. Ajay Kumar Thakur, the learned counsel for the appellants has submitted, at the outset, that the appellants have been convicted on totally *non est* grounds and the impugned judgment of conviction has been passed against the weight of evidence rather in complete dearth of evidence. The learned counsel has made pointed arguments towards the fact that the evidence with regard to demand of dowry and infliction of torture/cruelty upon the deceased is totally non-existent for basing or sustaining a conviction under Section 304B or Section 498A of the IPC. It has been submitted that all the prosecution witnesses, except the informant, are hearsay witnesses on the point of demand of dowry and torture in lieu thereof. The evidence of demand made by the husband of the deceased, Kundan Kumar on phone has also not been substantiated by way of any concrete investigation thereupon and the evidence of the Investigating Officer (P.W.9) making reference to some call data records (CDR) on mobile phones of family members of the appellants is totally inconclusive. The prosecution has also



failed to produce the CDR of the telephone number from which it is alleged that the demand of dowry was made by Kundan Kumar, the husband of the deceased or any other family member. It has further been submitted in this context that the prosecution have also not got their phone details chequed and investigated deliberately, in order to preclude the truth from surfacing. It has also been pointed out that one of the material witnesses, Kapil Sharma, who was a neighbour and staying in the vicinity of the place of occurrence, the only independent witness whose statement was recorded by the Investigating Officer during the course of investigation, was withheld by the prosecution for the reasons best known to them. Such suppression and withholding of material evidence has been contended to lead to adverse inference under Section 114(g) of the Indian Evidence Act. Illustration (g) of Section 114 of the Indian Evidence Act is being reproduced hereunder:

Section 114 (g)—That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

6. Dealing with the issue of investigational lapses, the learned counsel has made reference to certain case laws in order to contend that when such material omissions on the part of the Investigating Officer is committed, they create holes in



the fabric of the prosecution story which are impossible to mend, which are as follows:

- (i) M. Arjuna vs State, reported in AIR 2019 SC 43, para-24;
- (ii) Prakash vs State of Karnataka, reported in (2014) 12 SCC 133, para-49;
- (iii) Thamaraya and another vs State of Karnataka, reported in 2025 INSC 108, para-29 onwards.

7. It has also been argued by the defence that not only the deposition of the witnesses relating to dowry demand are at variance with each other but also no information or complaint was lodged before any authority with regard to any such demand at any earlier point of time. The learned counsel for the appellants points out that as far as the issue of infliction of torture and cruelty is concerned, the same is also vague and remains merely a bald allegation as neither the First Information Report nor the evidence recorded during trial indicates any specific instance of cruelty or any other details about when and who were inflicting torture and in what manner.

8. It has next been contended on behalf of the appellants that the prosecution allegation of homicidal death of the deceased remains unsubstantiated in view of the medical evidence inasmuch as the doctor (P.W.8), who conducted the postmortem examination of the dead body of the deceased, has opined the cause of death of the deceased to be due to asphyxia as a result of hanging with no other injury seen on the dead



body, externally or internally, but for the ligature mark on the neck. Thus, the oral allegations pertaining to presence of several injuries on the body of the deceased gets falsified by both the inquest report (Ext.6) as also by the postmortem report (Ext.5).

9. It has further been submitted that in the present case, it is the prosecution witnesses themselves who have deposed that since the deceased was not being permitted to visit her father during his operation, the same could be a probable reason for her committing suicide as she was quite angry and disturbed about the same and in this context, the learned counsel has pointed towards para-13 of the deposition of P.W.1, Preeti Srivastava, the sister of the deceased. The deposition of P.W.4, Nawal Kishore Srivastava has also been referred to in this connection only to highlight the fact that the dispute between the husband and wife i.e. Kundan Ambastha and the deceased had aggravated on account of the fact that the deceased was not permitted to visit her father at Bhagalpur. It has been emphatically contended in this respect that such evidence of the full-fledged prosecution witnesses would have a binding effect on the prosecution. The learned counsel has made reference to some case laws in this regard which are being enumerated as hereunder:

(i) Rajaram Vs. State of Rajasthan, reported in (2005) 5 SCC



272;

(ii) Mukhtar Ahmad Vs. State, reported in (2005) 5 SCC 258;

(iii) Javed Masood Vs. State of Rajasthan, reported in AIR 2010 SC 979;

(iv) Virendra Vs. State of Madhya Pradesh, reported in AIR 2022 SC 3373

10. The learned counsel for the appellants, after having taken us through the evidence, has submitted that the prosecution has thus miserably failed to prove its case beyond reasonable doubts as they have not been able to establish the essential ingredients of Section 304B of the IPC, inasmuch as, they have neither been able to prove the existence of the demand of dowry nor have they been able to prove the factum of cruelty meted out to the deceased soon before her death. In order to lend strength and support to the argument that in absence of specific evidence with regard to demand of dowry and particular acts of cruelty or harassment caused by the appellants, the evidence led by the prosecution does not fulfill the pre-requisites to invoke prosecution under Section 304B of the IPC or Section 113B of the Indian Evidence Act and the prosecution would not succeed in establishing its case under the abovementioned provisions. The learned counsel for the appellants has referred to some case laws in this regard, which are being enumerated hereunder:

(i) Charan Singh alias Charnajit Singh Vs. State of Uttarakhand, reported in AIR 2023 SC 2095;

(ii) Karan Singh Vs. State of Haryana, reported in 2025 INSC



133: (2025) SCC online SC 214;

(iii) Chabi Karmakar and others Vs. State of West Bengal, reported in (2025) 1 SCC 398;

(iv) Shoor Singh and Anr. Vs. State of Uttarakhand, reported in (2025) 2 SCC 815;

11. *Per contra*, Ms. Shashi Bala Verma, the learned APP for the State has submitted that the evidence of the prosecution witnesses, who are no doubt the relatives of the deceased, are consistent to the effect that a demand of Rs.10 Lakhs and 2 Kathas of land was being made from the deceased and at least one such specific instance of a phone call to the informant i.e. the mother of the deceased is on record. The evidence of the prosecution witnesses are also consistent on the fact that her family members were not allowed to meet her although the distance between the parental house and matrimonial house was hardly two kilometers. She has submitted that the very fact that the deceased was not even permitted to visit her father who was to undergo surgery is an instance of cruelty in itself. The learned APP has further submitted that the death of the deceased was purely homicidal and not a case of suicide. In this regard, she has invited the attention of this Court to the evidence of the Investigating Officer (P.W.9) para-4 to indicate the description of the place of occurrence and the distance between the bed and the fan in order to contend that the commission of suicide by the deceased



could not have been possible in such circumstances. She has also relied upon the medical evidence to submit that the evidence of the doctor (P.W.8) is also not consistent with the theory of suicide by hanging as in para-2 of the deposition of the doctor it has been clearly indicated that on internal dissection rupture of thyrohyoid membrane and distortion of laryngeal box has been found which is clearly indicative of strangulation instead of hanging. On such grounds, the learned APP for the State has submitted that the prosecution has been able to prove, through as many as nine witnesses examined in its favour, to establish its case beyond reasonable doubts.

12. Besides hearing the learned counsel for the parties, we have minutely perused the evidence both oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

13. P.W.1 (Preeti Srivastava), who is the elder sister of the deceased has stated that her younger sister was married to Kundan Ambastha alias Manikant Sinha on 19.06.2017 and her father, as per his capacity, had given various articles in the marriage as gift. She has further stated that upon completion of 15 days of marriage, the in-laws of the deceased started demanding 2 Kathas of land and Rs.10 Lakhs in cash and



upon non-fulfillment of such dowry demand, they threatened to murder the deceased and severed her ties with the family. She specifically states that the demand of dowry was made by the in-laws of the deceased before her mother (P.W.5) over phone. Her further statement is that on 06.06.2018, which is the date of occurrence, while she was at her matrimonial home at Nathnagar, she received an information with regard to the death of the deceased through her brother, Mritunjay Kumar and upon such information being received, she along with her mother, father and other family members proceeded for K. Hat Police Station and found the dead body of her sister in the rear seat of the car and upon closely seeing the dead body some marks of rope were found on the neck and other marks of violence were found on the body. The appellants Kunal Ambastha, Navaneet and Uma Shankar Sinha were also present in the said vehicle which was brought in the police station. In her cross-examination, this witness has admitted that she is deposing for the first time in Court to the effect that she got information about the said incident from her mother, brother and sister. She also admits that when the demand of Rs.10 Lakhs and 2 Kathas of land had started, such information was not given to any police station. She has further stated that demand for money was



last made by the husband of the deceased over phone on 4th of June, 2018 when the deceased had called her mother, however she has also made specific statement that she does not remember the phone number of mobile phone from which the said phone call was made and upon non-fulfillment of such demand, threatening was also given. She has reiterated this fact that her statement has never been recorded at any other place before being recorded before the Court. However, in the same breath, she has stated that at the time of Panchnama being prepared, her statement was recorded by the police. It has further been disclosed by her that she had met the deceased only once after her marriage at the reception ceremony because no one was permitted to meet her sister i.e. the deceased. She has denied the defence suggestion of Maruti Suzuki Car being purchased on loan and not being accepted as gift. In para-13 of her deposition, she has responded to the Court's query that her father was undergoing an operation at Bhagalpur and her sister wanted to attend the same, however members of her matrimonial home did not allow her to make such visit, for which she was very angry and disturbed. The dispute with regard to this issue had escalated and this could be the probable reason for the occurrence.



14. Deepti Srivastava, the elder sister of the deceased has been examined as P.W.2 and she has more or less repeated the same story as narrated by P.W.1. In her cross-examination, she had stated that her parents had disclosed to her that Kundan Ambastha was demanding 2 Kathas of land and Rs.8 Lakhs cash, however she would not be able to disclose the date of such demand and further no information to the police or to the Court was given with regard to such demand. This witness has further stated that she did not make such statement before the police that two days before the occurrence in the night of 4th of June, 2018, Kundan came to house and called her mother on phone through her sister i.e. the deceased, whereafter he had used foul language and made a demand for land and cash and threatened to kill in case of non-fulfillment of the same. This witness has further stated that she had first seen the dead body in the vehicle inside the police station where her father, mother and other family members were also present. She has also stated that she had come along with her mother from Nathnagar and her mother had told her that Rs.8 Lakhs cash had been given for the car. It further appears from her evidence that no information with regard to the demand made from her mother on 4th June, 2018 was given by them to anyone. She has



denied the fact that her sister had committed suicide and that they have falsely implicated the accused persons in a case of demand of dowry.

15. P.W.3 (Mithilesh Prasad Srivastava) is the uncle of the deceased and has also made similar narration as made by P.W.1 and P.W.2 in his examination-in-chief. He has additionally stated that he was informed in the morning by the informant (P.W.5) that Kundan was using abusive language for making demand of land and cash. The wife of this witness had told him on 06.06.2018 at 6 pm that the deceased was done to death and they were at K. Hat Police Station and upon such information, he reached K. Hat Police Station all alone at 5 pm to find the dead body of the deceased kept on the rear seat of the car and also saw a petrol gallon kept there. He has stated that he saw some marks of violence on her face, hands and legs. His statement was recorded by the police and he had given the same statement to the police as he was deposing before the Court. In para-6 of his cross-examination, this witness has stated that after marriage of the deceased he had never gone to her Sasural as he was not permitted to do so. Upon the Court question, he has responded in para-7 that he had transferred an amount of Rs.4.5 Lakhs from his account into the account of Kundan Kumar.



However, with regard to the said transfer, he admits that he did not show any documents to the police. He has further stated that he got to know about the torture meted out to the deceased from the mother of the deceased and he had not given information either to the police or the Court with regard to any torture meted out to the deceased. He has further stated that he cannot recollect as to whether he had stated before the police that he had given Rs.10 Lakhs cash 5 Bhar gold and Rs.8 Lakhs for purchase of vehicle in the marriage.

16. P.W.4 (Nawal Kishore Srivastava) is the father of the deceased who has also deposed on similar lines as other witnesses. In paras-18 and 19 of his deposition, he has stated that he got to know 15 days after the marriage that the accused persons are making demand for dowry but no information or complaint was given by him before any police station or the Court as it was a family issue. He has further stated that his daughter (the deceased), after her marriage, had only come once to his house for two hours and he never went to the house of Kundan complaining about the demand being made by him. His operation had taken place at Bhagalpur on 25.04.2018, however Kundan Kumar was not there at Bhagalpur at the time of operation and he had not shown the documents of his



treatment to the police as also had not disclosed the mobile number by which his daughter and son-in-law had talked to his wife and he even does not remember the said mobile number. He has further stated that his two other daughters along with the son-in-laws were there with him at Bhagalpur for his operation and despite the fact that he had made a call to the deceased to come, she did not come due to which this witness had annoyance against the family of his son-in-law, Kundan Kumar. He has stated that at the time of occurrence, Kundan was posted at Kashmir staying at Barrack and on 4th of June, 2018 he had come to Purnea, while the incident is of 6th of July, 2018. After he came home the dispute between the husband and wife got escalated which was the reason that Kundan Ambastha must have stopped the deceased from going to Bhagalpur, however he had no knowledge as to whether his daughter, Minu (deceased) was annoyed over the said fact or not.

17. Kanchan Devi, the mother of the deceased, who is the informant of the present case, has been examined as P.W.5 has reiterated the contents of the F.I.R. and has stated that on 4th of June, 2018, there was a threatening call by the appellant-Kundan Kumar of killing her daughter in case of non-fulfillment of demand of land and cash. Upon information



received from her son, she along with her two daughters and her husband came to Purnea and saw the dead body of the deceased lying on the rear seat of the car at the police station. She also claims to have seen several marks of violence on her dead body and also found her spine broken. The written report given by her on her behalf bearing her signature has been identified by her and marked as Ext.1. She has also got some receipts marked as exhibits regarding transfer of cash purchase of jewellery. In her cross-examination, this witness has stated that 15 days after the marriage which took place on 19th of June, 2017, the demand for dowry had started, however this information was not given to any police station or Court. She further stated that she does not remember the phone number from which the phone call was received on 4th of June, 2018 and she neither remembers the phone number on which phone was received nor has she disclosed the same to the police. She has admitted that her statement was recorded by the police during the course of investigation, however she had not shown relevant documents to the investigating officer which were being produced before the Court. She has further stated that on the ground of operation of her husband at Bhagalpur, she along with others were stationed at Bhagalpur from 18th April to 4th June, 2018 and had also



asked her daughter, Minu (deceased) to come and at that time Kundan was not in Purnea, however no one was permitted to go to the house of the deceased, hence no one went. The witness has denied that the deceased had committed suicide since she was not happy with the marriage and also denied the factum of false implication of the accused persons. Upon the Court question, this witness has responded in paras-34 and 36 that the deceased did not use to go for studies after marriage and before the occurrence but she had gone for taking her examination as this opportunity was given to her by her in-laws. She has further stated that when Kundan Ambastha had come to her house after the marriage he had made a demand of Rs.10 Lakhs cash and 2 Kathas of land but they had expressed their inability in fulfilling the said demand and has further stated that the accused persons did not permit her to talk to her daughter.

18. P.W.6 (Mritunjay Kumar) is the brother of the deceased and also a signatory on the inquest report (Ext.4). In the examination-in-chief, this witness has narrated the incident of 6th of June, 2018 while he was at Purnea at his house to the effect that he was informed through an unknown phone number that his sister was being taken in a car and upon such information he got the car traced and intercepted the same to



find that his sister was lying dead in the car. However, in para-7 of his cross-examination, he has made a categorical statement that his statement was never recorded by the police and in para-10 he has further clarified that he is giving his statement for the first time in the Court.

19. P.W.7 (Bibesh Kumar) is the cousin brother of the deceased and also a signatory to the inquest report (Ext.4/1). He has also narrated about the demand of dowry and that the behaviour of the matrimonial family towards the deceased was not good. He further states that his sister died on 6th of June, 2018, he was informed about the same by his younger brother, Mritunjay Kumar (P.W.6) and he also found the dead body of the deceased in the car in which her husband (appellant) and his family were also present. This witness has further stated that after marriage of the deceased, he could never meet her as there was no permission to do so. In paras-9 and 10 of his cross-examination, he has specifically stated that he has never given any statement before the present statement and the police never recorded his statement.

20. Dr. Bimal Kumar is the doctor who had conducted the postmortem examination of the dead body of the deceased and has been examined as P.W.8. He has stated in his



evidence that on 06.06.2018, he and one Yogendra Prasad conducted postmortem examination and found the following ante-mortem injuries on her dead body :

1. On External Examination:-

- a. Riger mortis was present in all four limbs.
- b. one about 1/4" wide ligature mark obliquely placed on the interior part of the neck with a knot mark on the right mastoid area of the skull.
- c. No other injuries could be seen.

2. On Dissection:-

- a. Head - Meinneges and brain congested.
- b. Neck - On dissection of ligature mark a whitish parchment like connective tissue was seen with the engorgement of adjacent muscle and rupture of thyrohyoid membrane. Distortion of laryngeal box was present.
- c. Thorax – Both lungs intact and congested with petechial hamerrohage under plural convering. On cutting lungs thick blackish blood came out.
- d. Heart – Heart intact with right chamber full with blakish blood. Left cahmber empty. Thoracice cage intact.
- e. Abdomen – Stomach contained 100-150 CC semidigested food with fluid having nonspecific smell. Intestine contained gas and faces other abdonal viscera intact.
- f. Uterus – empty and of normal size.
- g. External Genetalia within normal limits.

21. The doctor has further stated that the time elapsed is within 6 to 24 hours and the cause of death has been opined as death due to asphyxia as a result of hanging. The postmortem report has been marked as Ext.5 which bears the signature of this witness as also one Yogendra Prasad (Ext.5/1).



In the cross-examination, the witness has stated that he did not find any fracture on the dead body of the deceased and also did not find any internal injury on the dead body which was caused by interference. He has stated that the injury may be caused by hanging.

22. P.W.9 (Ramchandra Yadav) is the Investigating Officer of the case who took charge of investigation of K. Hat P.S. Case No.391 of 2018 (wrongly stated as 391 of 2012) on the orders of Station House Officer of K. Hat and recorded the further statement of the informant along with the statements of other witnesses as also recorded the statement of P.Ws.1, 2, 3 and 4. The inquest report was prepared by the then S.H.O., Ravi Kumar Chaudhary which has been identified by him and marked as Ext.6. The seizure list has also been proved by this witness and marked as Ext.7. The present I.O. seized the vehicle and also arrested three accused persons. Thereafter, he inspected the place of occurrence and on such inspection, he found that the deceased was staying in the room on the upper floor where he found a rope hanging from the fan over the bed. He also took the statement of the witness, Kapil Sharma and received the postmortem report of the deceased on 10.06.2018. On 20.07.2018, he wrote an application for obtaining the CDR of



some mobile numbers of one Punam Sinha, Aarti Sinha, Sonam Sinha and Akhilesh Sinha to the technical branch of the office of the Superintendent of Police and received the said CDR on 27.07.2018 and perused the same. After investigation, he submitted the chargesheet against the accused persons on 03.08.2018 and 17.09.2018. He has identified the writing and signature of the Officer-in-Charge, who prepared the formal first information report, which have been marked as Ext.8 and 8/1.

23. In his cross-examination P.W.9, the Investigating Officer has admitted that the informant, Kanchan Devi had never stated before him that an amount of Rs.8 Lakhs was given to Kundan Ambastha in place of a car and also that the informant never produced any document with regard to giving of Rs.5 Lakhs and jewellery during the course of investigation. Similarly Deepti Srivastava (P.W.2) and Mithilesh Prasad Srivastava (P.W.3) never stated before him that 10 to 15 days after the marriage of the deceased she was being subjected to torture and an amount of Rs.8 Lakhs cash and 2 Kathas of land was being demanded and that they had given a sum of Rs.10 Lakhs cash, jewellery worth Rs.5 Lakhs and a sum of Rs.8 Lakhs for car at the time of marriage. This witness has further stated that he did not write in the seizure list that petrol



was kept in the car and he had also not indicated the name of Kapil Sharma, whose house is in the vicinity of the place of occurrence, as a witness in the chargesheet. He has further stated that upon perusal of CDR he got to know that the mobiles of Punam Sinha, Aarti Sinha, Sonam Sinha and brother-in-law, Ashwani Sinha were found active in Delhi from 01.06.2018 to 07.06.2018. He has further stated that the inquest report was prepared by the then S.H.O., which was indicated by him in the case diary and the same bears the signatures of Mritunjay Kumar (P.W.6) and Bibesh Kumar (P.W.7) but he did not take the statement of these witnesses during the course of investigation. He only took the statement of Kapil Sharma from the vicinity of the place of occurrence. On a Court question, the witness has responded in paras-25 and 26 by stating that the inquest report does not bear the signature of any Executive Magistrate.

24. After closing the prosecution evidence, the learned Trial Court recorded the statement of the appellants under Section 313 Cr.P.C. on 12.06.2019 for enabling them to personally explain the circumstances appearing in the evidence, against them, however they have not given any explanation and they have only denied the allegation and stated that they are



innocent.

25. The learned Trial Court, upon appreciation, analysis and scrutiny of the evidence adduced at the trial, has found the appellants guilty of the offences and has sentenced them to imprisonment as noted above by its impugned judgment of conviction and order of sentence.

Analysis and Consideration

26. We have perused the impugned judgment of the learned Trial Court, the entire materials on record and have given a thoughtful consideration to the rival contentions made by the learned counsel for the appellants as well as the learned APP for the State.

27. The contents of the first information report have already been dealt with in detail earlier and a perusal of the same in nut shell would show that the daughter of the deceased was subjected to demand of dowry and torture 10 to 15 days after her marriage and subsequently, the appellant - Kundan Kumar, on 4th of June, 2018, repeated the said demand on telephone while hurling abuses and also threatening the informant of dire consequences. F.I.R. was instituted on 06.06.2018 after receiving news of dead body being carried in a vehicle.



28. This Court would first proceed to examine and analyse the evidence on record to reach a considered conclusion with regard to the genuineness, credibility and acceptability of the prosecutions' evidence. On going through the discussions made hereinabove and in the preceding paragraphs, it would appear that out of nine witnesses examined by the prosecution in its favour, P.W.6 and P.W.7, both of whom are relatives of the deceased, are formal witnesses who have proved the inquest report and they have accepted in their evidence that they have been examined for the first time in Court as would be evident from para-7 of the evidence of P.W.6 and para-10 of the deposition P.W.7. This situation stands further corroborated by the evidence of the Investigating Officer (P.W.9) in paras-22 and 26 of his deposition making it clear that he did not take statement of these witnesses (P.W.6 and P.W.7).

29. As far as P.W.1-Preeti Srivastava is concerned, she also happens to be the sister of the deceased and the doubtful and shaky nature of her evidence would be demonstrated from paras-5 and 7 of her deposition as she states at one point that she has given her statement for the first time in Court and that no other statement has been given by her prior to the present statement and in the same breath, she has



contradicted herself by saying that at the time of preparation of Panchnama the police had recorded her statement but she cannot name the police officer concerned. The remaining witnesses P.Ws.2, 3 and 5 have made some very vital omissions in their statement recorded before the Investigating Officer during the course of investigation and this fact would be evident from para-7 of P.W.2 read along with para-16 of P.W.9 (Investigating Officer) which would make it amply clear that she never made any statement with regard to her sister being subjected to demand of dowry and torture 10 to 15 days after her marriage before the police in her statement recorded under Section 161 Cr.P.C. Similarly, para-24 of the deposition of P.W.3 (Mithilesh Prasad Srivastava) read along with para-17 of P.W.9 would also disclose that he never made any statement with regard to giving of Rs.10 Lakhs cash, Rs.5 Lakhs worth jewellery and Rs.8 Lakhs for car in the marriage. Upon perusal of paras-5,6,14 and 15 of the informant (P.W.5), wherein she has stated about money being transferred to the account of Kunal Ambastha and also with regard to producing of receipts of jewellery, the same stands contradicted by paras-14 and 15 of the Investigating Officer (P.W.9) where he states that she never made such disclosure and she never produced any document with regard to



jewellery worth Rs.5 Lakhs during the course of investigation. As far as the witness Nawal Kishore Srivastava (P.W.4) is concerned, he happens to be the father of the deceased and besides making a vague allegation of demand of dowry and torture, his evidence is based on the information given to him by his wife and son (P.W.5), which is admitted by him in para-30 of his evidence, specifically with regard to the threatening call by his son-in-law, Kundan Ambastha. This witness has accepted during his evidence that he never gave any information or lodge any complaint before any police station or Court with regard to the allegation of demand of dowry as he considered it to be a family issue. He also admits that he never went to the house of his son-in-law for questioning him with regard to the demand made by him. He has also disclosed about making a phone call to the deceased after his operation for asking her to come but she did not come due to which she was annoyed with the family of his son-in-law and his evidence further indicates that there was some dispute between the husband and wife after Kundan Ambastha came from Kashmir where he was posted and he has merely made an assumption that Kundan must have stopped her from going to Bhagalpur and that could be the reason for annoyance to the deceased. His evidence thus does not seem to



be based upon any strong foundation and is rather based upon some apprehensions and surmises. Thus, the evidence of these witnesses do not seem to be worth reliance for proving the guilt of the appellants beyond all reasonable doubt, also in view of the fact that all these prosecution witnesses are the immediate family members of the deceased and they also seem to be interested in conviction of the appellants as they had their own reasons of annoyance with them. The factum of non-examination of any independent witness, although available, further affects the trustworthiness of the prosecution version and also adversely affects its case.

30. In the present facts and scenario, the non-examination of Kapil Sharma by the prosecution as a witness who is a neighbour residing in the vicinity of the place of occurrence and the only independent witness whose statement had been recorded by the Investigating Officer during investigation, attributes poor reflection on the credibility of the prosecution case and withholding of such witness would lead to drawing of an adverse inference against the prosecution by holding that if the said witness would have been examined he may not have supported the prosecution case. We may gainfully refer to the case of **Takhaji Hiraji v. Thakore Kubersing**



Chamansing, reported in **(2001) 6 SCC 145 : 2001 SCC (Cri)**

1070 : 2001 SCC OnLine SC 732 at page 155, paragraph No.

19 whereof is being quoted hereunder:

19. So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case.....

In this context, it would also be apt to mention that the factum of the prosecution not producing the relevant phone details to establish dowry demand and no investigation on such aspect also leads to adverse inference as contemplated under Section 114 (g) of the Indian Evidence Act.

31. Before proceeding to examine the fact as to whether the conviction under Section 304B of the IPC is based upon legally sustainable evidence, we would first meet the arguments advanced on behalf by the learned APP for the State who has defended the impugned judgment of conviction and order of sentence primarily on the ground that the present case is not one of suicide but relates to homicidal death of the deceased and in support of such contention she has



predominantly relied on the medical evidence, which is the postmortem report of the doctor (P.W.8) and specific reference has been made to para-2, wherein it has been recorded that on dissection of ligature mark, a whitish parchment like connective tissue was seen with the engorgement of adjacent muscle and rupture of thyrohyoid membrane with distortion of laryngeal box was present. However, it is noted here that the cause of death opined by the doctor (P.W.8) is due to asphyxia as a result of hanging and not strangulation. There would be a difference in the ligature mark when asphyxia is caused on account of hanging and the same is caused on account of strangulation and that would be the deciding factor that the death is suicide or homicidal. In this context, we have perused the Modi Medical Jurisprudence and Toxicology dealing with the chapter concerning death from asphyxia and have noted that while the ligature mark with respect to hanging would be non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment like, in case of strangulation on, ligature mark is horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish.



32. In the present case, we have noticed as the doctor has clearly noted that on dissection of the ligature mark, he has found at the end of connective tissue which forms one of the characteristic of the ligature mark caused due to hanging. We further note that in the present case there is a rupture of thyrohyoid membrane which is quite different from the fracture of myoid bone which is generally caused due to strangulation. It has been noted in the Modi Medical Jurisprudence and Toxicology that the hyoid bone and superior cornuae of the thyroid cartilage are not, as a rule, fractured by any other means other than by strangulation. Further, to arrive at a conclusion that the death was due to strangulation it is necessary to note the effects of violence in the underlying tissues in addition to the ligature mark or bruise marks caused by the fingers or by the foot, knee and other appearances of death from asphyxia. In case of homicidal strangulation, in addition to ligature mark or finger mark there is a probability of evidence of struggle, marks of violence on the parts of the body, whereas the postmortem report of the deceased as also the evidence of P.W.8 unambiguously indicates that no other injury could be seen on the dead body of the deceased and the doctor in his cross-examination has been categorical in his finding that he did not



find any fracture on the dead body and also did not find any internal injury which was caused by any interference and reiterated in his cross-examination that the injury was on account of hanging.

33. Having regard to such nature of medical evidence, it would be difficult to hold that the cause of death would be on account of strangulation rather the findings in the postmortem report as also the opinion of the doctor is clearly suggestive of the fact that the death has been caused due to asphyxia on account of hanging.

34. We would now proceed to examine the fact as to whether the essential ingredients of the provision of Section 304 B of the IPC have been proved by the prosecution for the purpose of sustaining a conviction thereunder. It would be desirable to first elucidate the essential ingredients of the provisions of Section 304 B of the IPC, which are as under:

- (a) The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;
- (b) The death must have been caused within seven years of marriage;



(c) Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

(d) Cruelty or harassment must have been inflicted in connection with any demand for dowry.

35. The moot question which thus falls for our consideration is, whether the prosecution has succeeded in establishing the said ingredients/circumstances beyond all reasonable doubts so as to sustain conviction under the aforementioned provision.

36. As far as the ingredients (a) and (b) are concerned, the facts of the case along with the evidence adduced disclose that the death of the woman has taken place under circumstances which are not normal and it has happened within seven years of marriage. We, therefore, have to confine the analysis of evidence with regard to ingredients (c) and (d) as enumerated hereinabove to consider whether the deceased was subjected to cruelty or harassment by her husband or any relative soon before her death and whether that cruelty or harassment was in connection with any demand for dowry.



37. Upon perusal of the evidence of the prosecution witnesses, we find that none of the witnesses have stated about any specific instances of cruelty having been meted out to the deceased but for a vague and sweeping allegation of some threatening given by the appellant-Kundan on account of some demand. The only specific instance which has been indicated by way of the evidence of P.W.1 (Preeti Srivastava) and P.W.4 (Nawal Kishore Srivastava), which is being portrayed as an instance of cruelty, is that the deceased was not permitted to go to Bhagalpur where her father was undergoing operation and it was precisely due to this reason that the deceased was quite annoyed and disturbed. Upon consideration of such nature of evidence, we simply are not convinced that such instance would, in any way, be an act of cruelty as envisaged under Section 304 B of the IPC. Admittedly, it is not connected with any demand of dowry and some sweeping allegations of deceased not being permitted to meet her parents or others to meet her, would in no way constitute an offence of cruelty for the purposes of Section 304 B of the IPC. It is also to be considered that any cruelty meted out to the deceased has to be soon before her death and the evidence of P.W.1 and P.W.4 would show that the last instance that they have been able to



show is that she was not permitted to attend to her father who was undergoing an operation at Bhagalpur and there is a specific statement by P.Ws.1 and 4 that this could be the reason for the occurrence. The moment the prosecution witnesses themselves relate to this reason for the death of the deceased, there remains no basis at all for connecting it in any manner with demand of dowry, also keeping in mind the fact that these witnesses are full-fledged prosecution witnesses who have not been declared hostile, hence their evidence has a binding effect on the prosecution.

38. Thus, taking such evidence into consideration, the answer to both the ingredients (c) and (d) would be in the negative as there is in-sufficient evidence to establish the fact that the deceased was subjected to cruelty by her husband or any relative of her husband soon before her death and that too in connection with any demand for dowry. Thus, in view of the fact that there is no proximate link with the death of the deceased and any cruelty inflicted upon her in connection with demand for dowry, virtually there being no evidence in this regard but for bald, vague and sweeping allegations, it can be safely concluded that the offence under Section 304 B of the IPC would not be made out in the facts and circumstances of the



present case. It has been held in the case of **Phulel Singh Vs. State of Haryana**, reported in **(2023)10 SCC 268** that in a case where harassment on account of dowry demand is not established beyond reasonable doubt by evidence on record, charge under Section 304-B of the IPC cannot succeed.

39. At this juncture, we may gainfully refer to the judgment rendered by the Hon'ble Apex Court in the case of **Karan Singh Vs. State of Haryana**, reported in **(2025) 1 SCR 1370**, paragraph-8 whereof is being reproduced hereunder in order to meet the argument of application of the presumption of guilt under Section 113-B of the Indian Evidence Act:-

8. In this case, there is no dispute that the death of the appellant's wife occurred within seven years of the marriage. Section 113-B of the Evidence Act reads thus:

"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 of 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 Indian Penal Code (45 of 1860)."

The presumption under Section 113-B will apply when it is established that soon before her death, the woman has been subjected by the accused to cruelty or harassment for, or in connection with, any demand for dowry. Therefore, even for attracting Section 113-B, the presumption must establish that the deceased was subjected by the appellant to cruelty or harassment for or in connection with any demand of dowry soon before her death. Unless these facts are proved, the presumptions under Section 113-B of the Evidence Act cannot be invoked.

40. It is clear from the above noted judgment that



the presumption under Section 113-B of the Indian Evidence Act would be attracted, only when the prosecution has established that the deceased was subjected to cruelty or harassment in connection with any demand of dowry soon before her death and in absence of any such evidence, the presumption under Section 113-B of the Indian Evidence Act would not come into play.

41. The other issue which requires consideration is as to whether conviction under Section 498-A of the IPC is legally sustainable in the facts and circumstances of the case at hand. Section 498-A of the IPC reads as follows:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.

“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

42. It can be noted that the provisions of Section 498-A of the IPC enjoins an explanation to the term cruelty which is in two parts, Explanation (a) and Explanation (b). As far as explanation (b) is concerned, the *sine qua non* of this part



is a demand for dowry/any unlawful demand for any property or valuable security and the harassment caused in relation thereto, while the demand for dowry is not the necessary concomitant for explanation (a) which relates to cruelty in general but has to be of such gravity and magnitude as is likely to drive the woman to commit suicide or to cause grave injury to her. However, it needs to be kept in mind that this behaviour has to be a willful conduct of the accused, as is very much apparent from a plain and simple reading of explanation (a) of Section 498-A of the IPC. As far as explanation (b) is concerned, the evidence adduced by the prosecution is totally general and sweeping in nature with no exact time for any such demand being mentioned in respect thereto, rendering the entire allegation vague, unclear and uncertain, as such the same is also inconsequential.

43. The deposition of P.Ws.1 to P.W. 5, who are the family members of the deceased are also replete with inconsistencies with respect to the alleged demand of dowry as some of the witnesses have mentioned about demand of cash and land while the others only talk of a demand for land and the admitted position is that no complain was made before any authority with regard to any such demand. The evidence finds reference to one threatening call by the husband of the deceased



but the prosecution has not cared to get this investigated in order to substantiate the same. Thus, in absence of evidence regarding demand of dowry, harassment by itself would not constitute cruelty within the meaning of explanation (b) of Section 498-A of the IPC as has been held in the case of **Girdhar Shankar Tawade Vs. State of Maharashtra**, reported in (2002) 5 SCC 177, wherein it has been held that it is not every such harassment but only in the event of such a harassment being with a view to coerce the victim or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. It was considered in the said judgment that there was total absence of any of the requirement of the statute in terms of Section 498-A of the IPC and some material which was available could not possibly lend any credence to the requirement of the statute or even a simple demand for dowry.

44. It has further been held in the aforesaid judgment with regard to charge under Section 498-A of the IPC that the legislative intent is clear enough to indicate with particular reference to explanation (b), that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b). In the case at hand, it is noted that



there is one instance of demand of dowry made 15 days after the marriage and then the other reference is made only a few days before the death of the deceased. Thus, in the present case also there is no series of acts which would establish the factum of cruelty as envisaged under Section 498-A of the IPC.

45. We may also gainfully refer to the case of **Achin Gupta Vs. State of Haryana and another**, reported in **(2025) 3 SCC 756**, wherein it has been held that in all cases, where wife complains of harassment or ill-treatment, Section 498-A of the IPC cannot be applied mechanically. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. With regard to the applicability of explanation (a) of Section 498-A of the IPC, the emphasis would lie on the term 'willful conduct' and its impact to ascertain that a woman has been tortured to such an extent that she has been driven to take the extreme harsh step of committing suicide or causing harm to herself in any manner.

46. We may deem it appropriate to refer to the decision of the Hon'ble Apex Court in the case of **Manju Ram Kalita Vs. State of Assam**, reported in **(2009) 13 SCC 330**



which enunciates the conduct which cannot be brought under purview of 'cruelty' for the purpose of Section 498-A of the IPC and reiterates the existence of such cruelty with gravity and continuity as vital considerations for being it in the ambit of the same. Paragraph-21 of the said judgment is being reproduced hereunder:

21. "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

47. As a result of the above analysis it can be safely concluded that in absence of any wrongful conduct on behalf of the accused, the act of the victim could be termed to be an act of desperation which could be on account of varied other reasons and in such hazy and obscure nature of evidence which hugely suffers from the vice of vagueness, we find that the prosecution has miserably failed to prove its case beyond the shadow of all reasonable doubts and the legal framework does not permit the Courts to award moral conviction in absence of legal evidence.

48. Thus, taking an overall perspective of the entire case emerging to totality of the facts and circumstances as



indicated hereinabove and for the foregoing reasons, we find that the impugned judgment of conviction and sentence does not stand to scrutiny, hence the appellants deserve to be acquitted of the charges levelled against them.

49. Accordingly, the judgment of conviction and order of sentence dated 10.12.2019 and 17.12.2019 respectively, passed by the Court of learned Presiding Officer, Fast Track Court No.2, Purnea in Sessions Trial No.439 of 2018 (CIS No.439 of 2018), arising out of K. Hat (Madhubani) P.S. Case No.391 of 2018 are hereby set aside. Consequently, appellants of both these appeals are acquitted from all the charges. The sole-appellant of Criminal Appeal (DB) No.142 of 2020, Kundan Kumar alias Manikant Sinha alias Kundan Ambastha, who is in custody, is directed to be released from the jail forthwith, if not required in any other case. As far as the appellants of second case, being Criminal Appeal (DB) No.456 of 2020, namely, Kunal Sinha (Ambastha) alias Kunal Ambastha, Lala Nawaneet alias Sanu Sinha alias Lala Navnit Sanu and Umashankar Sinha alias Uma Shankar Prasad Sinha are concerned, they are on bail, as such they are discharged from the liabilities of their bail bonds.



50. In the result, both these appeals, bearing Criminal Appeal (DB) No.142 of 2020 and Criminal Appeal (DB) No.456 of 2020, stand allowed.

(Mohit Kumar Shah, J)

(Soni Shrivastava, J)

Trivedi/-

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