

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.151 of 2004

1. Subodh Sharma S/o Lale Sharma R/o vill - Faridanpur, P.S.- Sanhaula, Distt.- Bhagalpur
2. Jhunma Devi W/o Lale Sharma R/o vill - Faridanpur, P.S.- Sanhaula, Distt.- Bhagalpur. (Case against the appellant has been abated vide Honourable Court order dated 15-02-2025)
3. Lale Sharma S/o Late Nathan Mistry R/o vill - Faridanpur, P.S.- Sanhaula, Distt.- Bhagalpur. (Case against the appellant has been abated vide Honourable Court order dated 15-02-2025)
4. Kanhai Mistry S/o Late Sharma R/o vill - Faridanpur, P.S.- Sanhaula, Distt.- Bhagalpur. (Case against the appellant has been abated vide Honourable Court order dated 15-02-2025)

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ajay Kumar Thakur, Advocate
	:	Mr. Vaishnavi Singh, Advocate
	:	Mr. Md. Ziaul, Advocate
	:	Mr. Manish Kumar, Advocate
For the Respondent/s	:	Mr.Anita Kumari Singh, A.P.P.

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

Date : 15-02-2025

1. This appeal is arising out of judgment of conviction dated 14.02.2004 and order of sentence dated 17.02.2004, on the file of Additional Sessions Judge, Fast Track Court No. II, Bhagalpur in Sessions Trial No. 19 of 1993 whereby the appellants were



convicted and sentenced to undergo rigorous imprisonment for a period of seven years for the offences punishable under Section 304-B of the Indian Penal Code and they were also sentenced to undergo imprisonment for 2½ years for the offence punishable under Section 498-A of Indian Penal Code. However, the trial Court has clarified that both the sentences shall run concurrently.

2. It is pertinent to mention that this Court vide order dated 05.09.2024 has called for the report of the appellants from the Superintendent of Police, Bhagalpur regarding their death/alive status, as the counsel for the appellants reported to the Court that Appellants No. 2 to 4 were no more. Accordingly, this Court received the report of the Superintendent of Police, Bhagalpur dated 23.09.2024 wherein, it is reported that the Appellant No. 2, Jhunma Devi alias Dhunmi Devi died on 22.02.2013, Appellant No. 3



Lale Sharma died on 07.06.2021 and the Appellant No. 4, Kanhai Mistri, died on 21.06.2010. This Court has recorded the report of the Superintendent of Police and abated the criminal case against Appellants No. 2 to 4 vide order dated 15.02.2025 which shall form part of this appeal.

3. This appeal is now dealt against the Appellant No. 1 alone i.e. of Subodh Sharma. It is pertinent to mention the relationships among the appellants. Appellant No. 4 was the husband of the deceased. Appellant No. 2 and 3 were the in-laws and Appellant No. 1 Subodh Sharma is brother-in-law of the deceased respectively.

4. The case of the prosecution, as per the written application dated 13.05.1991, on the file of Sanhaura Police Station was that the father of the deceased (Parmila Devi), Mani Mistri, preferred a written application before the Officer-in-Charge of



Sanhaura Police Station, Bhagalpur. The brief contents culled out of the written application is that Parmila Devi who was the daughter of the informant was married to Kanhay Sharma i.e. the 4th appellant in the year 1987. At the time of marriage articles worth Rs. 8,000/- were given as gifts to Appellant No. 4. In spite of that, Appellant No. 4 as well as Appellant No. 3 made additional demand for a colour TV, when the demand was not met by the informant, the appellants allegedly threatened and beat the deceased. When the said fact of harassment was brought to the knowledge of the informant (P.W. 7), he brought his daughter and the 4th appellant, to his village Mahgama for sometime and they both stayed in the village for a period of one month. Thereafter, the 4th appellant along with the deceased returned back to the matrimonial place at Fardanpur. On 13.05.1991 at about 07:00 AM, one Sugreev Sharma



came to the house of P.W. 7 and informed him that all the appellants had administered poison to Parmila Devi and as a result her condition has become precarious. On receiving the information, P.W. 7 along with his brother Sanni Mistri (not examined), his son Janardhan Sharma and his brother-in-law/Patti Mistri (not examined) went to the matrimonial house of the deceased and found Parmila Devi lying dead on a cot. At that particular point of time, the male members were absent except the appellant no. 2. Then, he came to know that all the appellants administered poison, to Parmila Devi on 12.05.1991 at about 11:00 AM which ultimately led to her death at 06:00 PM on the same day.

5. On perusal of the charge-sheet, it is evident that an F.I.R. was registered against all the appellants for the offence punishable under Section 304-B r/w Section 34 of the Indian Penal Code. On



completion of the investigation, the Investigating Officer filed charge-sheet against all the four appellants for the offences punishable under Section 302, 304-B r/w Section 34 of the Indian Penal Code. Cognizance for the offences was taken by the concerned Magistrate and the case was committed to the Court of Sessions on 05.01.1993. Subsequently, the case was made over to the Additional Sessions Judge, Fast Track Court No. 2, Bhagalpur for conducting the trial.

6. The trial Court framed charges against all the four appellants on 20.12.2003, for the offence punishable under Sections 304-B r/w 34 of the Indian Penal Code and also for the offences punishable under Sections 498-A r/w 34 of the Indian Penal Code. The contents of the charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.



7. On behalf of the prosecution P.Ws. 1 to 10 were examined and Exhibits 1 to 4 were marked which are as follows:-

Prosecution Witness No.	Prosecution Witness Name
P.W. 1	Mahesh Prasad Singh
P.W. 2	Bipin Bihari Singh
P.W. 3	Chhote Lal Mandal
P.W. 4	Rajendra Prasad Pandey
P.W. 5	Dhanni Mistry
P.W. 6	Janardhan Sharma
P.W. 7	Manni Mistry
P.W. 8	Sugriv Mistry
P.W. 9	Dr. Kailash Jha
P.W. 10	Bishnudeo Singh

Sl. No	Exhibit	Exhibit Details
1.	Exhibit-1	Letter
2.	Exhibit-2	Fardbayan
3.	Exhibit-3	Postmortem Report
4.	Exhibit-4	Formal F.I.R.

8. All the appellants were examined under Section 313 of the Code of Criminal Procedure for the incriminating evidence found against them. They denied all the prosecution evidence and reported



defence evidence. On behalf of the defence D.Ws. 1 to 4 were examined, which are as follows:-

Defence Witness No.	Defence Witness Name
D.W. 1	Sudama Prasad
D.W. 2	Md. Siddhik Rahi
D.W. 3	Vishnudeo Mandal
D.W. 4	Kishan Mistry

9. On considering the entire oral and documentary evidence on record, the trial Court has found the appellants guilty for the offences punishable under Sections 304-B r/w 34 of the Indian Penal Code and under Sections 498-A r/w 34 of the Indian Penal Code and convicted them as stated supra.

10. Heard the Learned counsel, Mr. Ajay Kumar Thakur, for the appellants and the Additional Public Prosecutor, Ms. Anita Kumari Singh, for the State. Perused the record.

11. It is contended by the Learned counsel for the appellants that the prosecution has miserably



failed to prove the ingredients of Section 304-B of the Indian Penal Code, so as to convict the appellant, as there is no evidence on record to prove that the deceased died due to burns or bodily injury or otherwise than under the normal circumstances. It is further contended that the medical evidence do not prove that the deceased died otherwise than normal circumstances. Further, the Investigating Officer was also not examined by the prosecution to bring on record the mode and manner of investigation done by him. The Learned counsel for the appellants also contended that the appellants missed the opportunity to explain the circumstances relating to the incriminating evidence found against them from the evidence of prosecution witness, as Section 313 Code of Criminal Procedure examination was not properly conducted by the trial Court. It is further contended that none of the witnesses have stated



anything about the dowry given to the appellants at the time of marriage and there are no specific allegation against the Appellant No. 1, as to any cruelty or harassment caused by him prior to the death of the deceased. It is also urged that none of the witnesses testified about the dowry, and crucial witnesses were not examined to prove appellants had the knowledge about the death of the deceased and therefore, it is prayed to set aside the judgment of conviction and order of sentence.

12. On the other hand, the Learned Additional Public Prosecutor contended that article worth Rs. 7,000/- to 8000/- were given to all the appellants, as dowry and further Exhibit-1(letter) disclose that deceased was harassed, during her lifetime, for demand of TV by the appellants and therefore, the judgment of the trial Court needs no



interference and trial court has rightly convicted the appellants and prayed to confirm the judgment.

13. The points for determination in this appeal are as follows:-

I. Whether the prosecution is able to prove the guilt of the appellants for the offences punishable under Sections 304-B r/w 34 of the Indian Penal Code and for the offences punishable under Sections 498-A r/w 34 of the Indian Penal Code?

II. Whether the trial Court has rightly convicted the appellants?

14. As stated supra, the case against appellant no. 2 to 4 got abated and the material found on record against appellant no. 1 shall only be re-appreciated in this appeal. It is not necessary to reiterate the entire evidence of the prosecution



witness and the same shall be discussed as and when necessary to that extent.

15. PW 1- Mahesh Prasad Singh, P.W. 2-Bipin Bihari Singh, P.W. 3-Chhote Lal Mandal, P.W. 4-Rajendra Prasad Pandey are co-villagers of P.W. 7 i.e. the informant (Father of the victim). However, they were declared hostile by trial Court, therefore, the evidence of P.Ws. 1 to 4 is nowhere helpful for the prosecution to prove the guilt of the appellants, hence, it is not discussed at length.

16. The evidence of the blood relatives of the deceased Parmila Devi consist of P.W. 5 (uncle), P.W. 6 (brother) and P.W. 7 (father).

17. The evidence of P.W. 5, Dhani Mistri disclose that Parmila Devi was married to the 4th appellant Kanhay Sharma in the year 1987. Subsequent to the marriage, all the appellants harassed the deceased and also demanded for a



colour TV. On 13.05.1991, he was informed by one Sugreev Sharma and another individual that the deceased was administered with poisoned by the appellants which ultimately caused her death. On that he along with P.W. 6 and 7 went to the house of the appellants and saw the dead body of the deceased lying on a cot. He also noticed spots on her back and blue spots under her eye. Later, they went to Sanhaura police station, where P.W. 7 submitted a written application. His evidence further disclose that the S.I. of Sanhaura Police Station came to the place of occurrence, held inquest over the dead body of the deceased, prepared an inquest report and later forwarded the dead body of the deceased for postmortem examination. Further, the Sub Inspector of Sanhaura Police Station recorded the statements. He also stated that the deceased had addressed a letter to her father, which was sent by post and it



disclose that she was harassed during her lifetime. He specifically testified before the Court that he never went to house of the deceased in-laws during her life time and only went her death. He also testified that the deceased never informed him about the harassment or the demand of colour TV. It was also testified by P.W. 5 that they reached the house of the appellants at about 12:00 noon and he spoke with two or three individuals, but do not remember their names and he saw the dead body in a supine position covered with a cloth and he noticed black spots on the back of the dead body of the deceased, below the blouse. Thereafter, they went to police station and the Sub Inspector came around 03:00 PM to the house of the appellants and after postmortem examination the dead body was cremated at Barari Ghat.



18. The evidence of P.W. 6, Janardhan Sharma, who is the brother of the deceased disclose that Parmila got married to Kanhay Sharma in the year 1987 and later the appellants used to harass and beat her and that they also demanded for a color TV. The deceased Parmila had written a letter which was received by them through post which is Exhibit 1. They came to know through one Sugreev Sharma (P.W. 8) that the deceased had consumed poison and there was no hope for her survival. On receiving this information he along with P.W. 5 and P.W. 7 went to the house of the appellants and saw the dead body of the deceased lying on the bed, while the 4th appellant was present with a child. There was a spot on the back of the deceased and a blue spot around her eye. Thereafter, they went to police station, where P.W. 7 submitted a written application. His evidence also disclose that the Sub



Inspector of Police came to the place of occurrence, held inquest over dead body of the deceased, prepared the inquest report and obtained their signatures. Later, the dead body of the deceased was forwarded for postmortem examination.

19. In the cross examination, it was testified by P.W. 6 that the appellants had assaulted the deceased, in his presence but he do not remember the day or date of the assault and he had not informed the police about that incident. He further testified that Sugreev Sharma is not his relative but he was his sister's brother-in-law. His evidence further disclose that he saw spots on the lips and dark spot under the eyes and further testified that the postmortem papers were prepared, on which the witnesses have put their signature. He also testified that he stated to the police that after the marriage the appellants assaulted the deceased.



20. The evidence of P.W. 7, the father of the deceased, also disclose the fact of marriage between the deceased and the 4th appellant in the year 1987. However, P.W. 7 did not depose about the dowry allegedly given by him, at the time of marriage. Further, P.W. 7 testified that the 3rd and 4th appellants used to demand for a colour TV and they used to assault the deceased for it. His evidence was also in the same line as that of P.W. 6. Later, he alongwith P.W. 6 went to Sanhaura Police Station prepared a written application and submitted it to the Sub Inspector of Police, which was written by Dhani Mistri under his instructions and that he affixed his signature after finding it correct. The written report is Exhibit 2. His evidence also disclose that the Sub-Inspector went to the place of occurrence, prepared inquest report and forwarded the dead body of the deceased for postmortem examination. In the cross



examination, it was admitted by P.W. 7 that he went to the house of the appellant for the first time i.e. after the death of the deceased and that he had no personal knowledge about any incidents or of the death. After coming to know about the incident through Sugreev Sharma, he went to the house of the appellants and he preferred the written application basing on the statement of Sugreev Sharma. His evidence further disclose that the appellants demanded for a TV but he never intimated about it to anyone and that there was no evidence to show, when the appellants demanded for the TV.

21. P.W. 8, Sugreev Sharma, turned hostile.

In the cross examination, it is specifically testified by P.W. 8 that he never stated to the police that the deceased was ill-treated or assaulted for the purpose



of TV and that the deceased was murdered for not receiving the colour TV as dowry.

22. P.W. 9 is the medical officer who conducted the postmortem examination of the deceased, Parmila Devi. His evidence disclose that he conducted the postmortem examination of Parmila Devi, wife of Kanhay Sharma and found the following injuries on her body:-

(I) A Bruise, irregular in shape on the oral and left side measuring 1" x ½".

(ii) On dissection of head the meninges and brain congested.

(iii) On dissection of neck he found hydro intact.

(iv) On dissection of trunk he found the heart full of frothy blood, lungs congested, spleen enlarged to double the size and tough, stomach containing reddish



suspension, mucosa- hemorrhages
congested.

(v) Uterus was non gravid. Half of
spleen was sent for histo-pathology to the
pathology department of Jawaharlal Medical
College.

(vi) Viscera was preserved in
saturated solution of salt for chemical
examination.

23. The postmortem report is Exhibit-3. On
perusal of Exhibit-3, it is evident that P.W. 9
mentioned that I.O. has to obtain a slip to forward
the Viscera to forensic laboratory in Patna. The
opinion mentioned in Exhibit-3, disclose that injury
no. 1 was antemortem caused by a hard and blunt
object such as a Lathi and the cause of death of the
deceased was reserved pending, the viscera report.
The postmortem report further disclose that the time



of death of the deceased was between 18 to 24 hours prior to the postmortem examination.

In the cross examination, specific questions were asked to this witness which are as follows:-

(I) Whether lungs congestion, frothy blood in hearth and an enlarged spleen whether possible in case of poisoning?

Answer:- Enlargement of spleen cannot occur due to poisoning but is caused by disease.

He further added that an enlarged spleen is possible in the case of Kalaazar disease.

On perusal of the evidence of the doctor, it is evident that the final opinion as to the cause of death of the deceased was reserved by P.W. 9, pending the chemical report of viscera.

24. It is important to note that the investigating officer was not examined, for the best reasons known to the prosecution. On perusal of the



charge-sheet which is on record, it is evident that the manner of investigation was not mentioned in the charge-sheet. Whether the viscera was sent to forensic laboratory for chemical examination or not is also not known to this Court. There is no material on record such as forensic report of the viscera or material objects before the Court to prove that the death of the deceased was caused due to poisoning. It is also relevant to mention that as per the evidences of P.W. 5 and P.W. 7, the blood relatives of the deceased, they came to know about the death of the deceased through one Sugreev Sharma(P.W. 8). It is the case of the prosecution that the appellants have administered poison to the deceased which ultimately caused her death. However, there is no direct evidence before the Court to prove that the appellants administered poison to the deceased. The oral evidence of P.W. 5 and 7 further disclose that



they, along with P.W. 6 reached the house of the appellants on 13.05.1991 and they did not find any male persons in the house. They found the dead body of the deceased lying on a cot, which contradicts the evidence of P.W. 6. The evidence of P.W. 6 clearly disclose that the 4th appellant was present at the place of occurrence along with his child. Further the evidence of P.W. 6 also disclose that he was informed by Sugreev Sharma that the victim had herself consumed poison, which cuts the root of the prosecution case and completely contradict the case of the prosecution. The prosecution has miserably failed to prove whether the deceased herself consumed poison or whether the appellants administered poison to her. Further the prosecution has also failed to prove the cause of the death of the deceased, as the final opinion of doctor was not placed before the Court. In the



absence of such evidence, this Court is of the view that the prosecution has miserably failed to prove that the death of the deceased occurred due to burns, bodily injuries or under circumstances other than normal, in order to attract the ingredients of Section 304-B of Indian Penal Code.

25. Admittedly, this case falls under the category of circumstantial evidence. At this juncture, the Learned counsel relied on the judgment of the Hon'ble Apex Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra*** reported in **(1984) 4 SCC 116**, wherein their Lordships have held in paragraph 153 as follows:-

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:



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

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

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

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

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



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

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

26. It is the contention of the Learned counsel for the appellant that there is no direct evidence in this case, and the entire case is based on circumstantial evidence. The prosecution has miserably failed to establish the chain of events as there are many missing links. Therefore, the counsel prayed to set aside the conviction.

27. On perusal of Section 313 of Code of Criminal Procedure examination, it is evident that the incriminating material were not properly put to the



accused, thereby denying the appellant an opportunity to personally explain the circumstances appearing in the prosecution evidence against them. Only the following questions were asked to the appellants during their Section 313 examination, which reads as under:-

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

Answer:- Yes, I have heard it.

Question:- It is said that you people killed Parmila Devi by deliberately administering her oral dose of poison on 12.05.1991 between 11 AM to 6 PM in order to fulfill your demand of dowry, what you have to submit in defence?

Answer:- I have not committed any such offence which is stated above.



Question:- What you have to pray in
your defence?

Answer:- I am innocent?

28. Admittedly, there is sufficient evidence of P.Ws. 5-7 and 9 to 10 on record. Each of the witnesses has testified against the appellants, but common question were asked to all three appellants. At this juncture, it is relevant to mention that the Apex Court has time and again reiterated that each and every incriminating material must be specifically put to the accused, to enable them to give an explanation.

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



OnLine SC 1364 wherein their Lordships

held that:-

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

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

35.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

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

35.3 The process enshrined is not a matter of



procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

35.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

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

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

35.7 This statement cannot form the sole basis of conviction and is neither a



substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

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

35.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

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



35.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.

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

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

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



was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the



importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence. In various decisions of this Court, the importance of questioning the accused under Section 313 CrPC was given due emphasis, e.g. Rama Shankar Singh v. State of W.B. [AIR 1962 SC 1239 : (1962) 2 Cri LJ 296] , Bhalinder Singh v. State of Punjab [(1994) 1 SCC 726 : 1994 SCC (Cri) 462] , State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] and Lallu Manjhi v. State of Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544] .

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



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

In the case of **Premchand Vs. State of Maharashtra reported in (2023) 5 SCC**

522 the Lordships of Apex Court held as under:-

“13. *There is a plethora of judicial pronouncements on consideration of Section 313CrPC, a few of which need to be noted at this stage.*

14. *A Bench of three Hon'ble Judges of this Court in State of U.P. v. Lakhmi [State of U.P. v. Lakhmi, (1998) 4 SCC 336 : 1998 SCC (Cri) 929] has extensively dealt with the aspect of*



value or utility of a statement under Section 313CrPC. The object of Section 313CrPC was explained by this Court in Sanatan Naskar v. State of W.B. [Sanatan Naskar v. State of W.B., (2010) 8 SCC 249 : (2010) 3 SCC (Cri) 814] The rationale behind the requirement to comply with Section 313CrPC was adverted to by this Court in Reena Hazarika v. State of Assam [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] . Close on the heels thereof, in Parminder Kaur v. State of Punjab [Parminder Kaur v. State of Punjab, (2020) 8 SCC 811 : (2020) 3 SCC (Cri) 914] , this Court restated the importance of Section 313CrPC upon noticing the view taken in Reena Hazarika [Reena Hazarika v. State of Assam, (2019) 13 SCC 289 : (2019) 4 SCC (Cri) 546] and M. Abbas v. State of Kerala [M. Abbas v. State of Kerala, (2001) 10 SCC 103 : 2002 SCC (Cri) 1270].

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



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

15.2. *Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.*

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

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

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



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

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

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

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



alia, to test the authenticity of the exculpatory nature of admission.

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

15.10. *Any failure to consider the accused's explanation of incriminating circumstances, in a given case, may vitiate the trial and/or endanger the conviction.*

16. *Bearing the above well-settled principles in mind, every criminal court proceeding under clause (b) of sub-section (1) of Section 313 has to shoulder the onerous responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstance in the evidence that could be used against him. Prior to the amendment of Section 313 in 2009,*



the courts alone had to perform this task. Instances of interference with convictions by courts of appeal on the ground of failure of the trial court to frame relevant questions and to put the same to the accused were not rare.

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



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

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

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

22. *As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the*



accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and, besides ensuring the compliance therewith, the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders as may be called for in accordance with law. The



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

23. *The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which*



such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

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

25. *In the light of the abovestated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot*



tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement recorded under Section 313 CrPC. In both these circumstances the Court would be entitled to draw adverse inference against the accused.

29. *So, the first and the foremost question that this Court has to examine in the present case is, whether the prosecution has been able to establish the chain of event and circumstances which certainly points out towards the involvement and guilt of the accused. Even, before we enter upon adjudicating this aspect of the case, it will be appropriate to narrow down the controversy keeping in view the admissions, if any, made by the appellants. The accused, after having known the entire case of the prosecution, is required to be examined under Section 313 CrPC. All the material evidence has to be put to the accused and he has to be awarded the fair opportunity of answering the case of the prosecution, as well as to explain his version to the court without being*



subjected to any cross-examination. As already noticed, the answers given by the accused can be used against him in the trial insofar as they support the case of the prosecution.”

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

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

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

(a) may at any stage, without previously warning the accused put such questions to him as



the Court considers necessary;

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

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

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

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

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



for, any other offence which such answers may tend to show he has committed.

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

25. *The questions in separate statements of Accused 1 to 4 recorded by the trial court are almost identical. Question 5 is the only question put to them about the evidence adduced against them on the charge of murder of Harpal Singh. Question 5 put to Accused 3 reads thus:*

“Question 5 — That it has come up in prosecution evidence that on being exhorted by accused Kalicharan, accused Yaad Prakash fired 4-5 shots at complainant Atar Singh and his family members with his countrymade pistol with



intention to kill, that hit complainant's cousin Harpal Singh and he died on the spot. What do you have to say in this regard?"

26. *Such a case was not at all made out by the prosecution in the evidence before the court. The material brought on record by the prosecution witnesses (PW 1 and PW 2) is to the effect that Harpal Singh died due to injuries sustained as a result of an attack made by Accused 1, 3 and 4 on him by sharp weapons. These material circumstances brought on record against the accused on which their conviction is based were never put to the accused. What was put to the accused was not the case made out by the prosecution in the evidence. No questions are asked in the Section 313 statement about the post-mortem of the body of Harpal Singh. It is not put to the witness that the cause of death of Harpal Singh was due to haemorrhage and shock as a result of injuries caused by sharp weapons.*

27. *Questioning an accused under Section 313CrPC is not an empty*



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

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

“21. In support of his contention that the failure to put the relevant point against the appellant Hari Singh would affect the final conclusion of the High Court, Mr Anthony has



relied on a decision of this Court in Hate Singh v. State of Madhya Bharat [Hate Singh v. State of Madhya Bharat, 1951 SCC 1060 : AIR 1953 SC 468] . In that case, this Court has no doubt referred to the fact that it was important to put to the accused each material fact which is intended to be used against him and to afford him a chance of explaining it if he can. But these observations must be read in the light of the other conclusions reached by this Court in that case. It would, we think, be incorrect to suggest that these observations are intended to lay down a general and inexorable rule that wherever it is found that one of the points used against the accused person has not been put to him, either the trial is vitiated or his conviction is rendered bad. The examination of the accused person under Section 342 is undoubtedly intended to



give him an opportunity to explain any circumstances appearing in the evidence against him. In exercising its powers under Section 342, the court must take care to put all relevant circumstances appearing in the evidence to the accused person. It would not be enough to put a few general and broad questions to the accused, for by adopting such a course the accused may not get opportunity of explaining all the relevant circumstances. On the other hand, it would not be fair or right that the court should put to the accused person detailed questions which may amount to his cross-examination. The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in



respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person. Besides, in the present case, as we have already shown, failure to put the specific point of distance is really not very material."



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

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

29. All the cited cases squarely apply to the facts and circumstances of the present case. In a criminal trial, the purpose of examining accused persons under Section 313 of the Code of Criminal Procedure is to fulfill the requirements of the



Principles of Natural Justice, allowing the accused to furnish an explanation regarding the incriminating circumstances associated with him, and Court must take note of such explanation.

30. In cases based on circumstantial evidence, it is essential to determine whether or not the chain of circumstances is complete. No matter how weak the evidence of prosecution may be, it is the duty of the Court to examine the accused and seek their explanation regarding the incriminating material presented against them. Any circumstances that are not put to the accused in their examination under Section 313 of the Code of Criminal Procedure cannot be used against them and must be executed from consideration. It is also contended by the Learned counsel for the appellant that the F.I.R. was marked through an advocate i.e. P.W. 10 who had no knowledge about the content of the documents.



31. It is pertinent to mention that the following are the criteria for marking a document:-

"In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:-

"It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :

(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and

(e) The document has been appropriately stamped, if so required by law.

32. (i). In order to prove contents of a document, the witness through whom the document



is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.

(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. 19 The mere production of a document is not sufficient for the document to be marked as an exhibit.

(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.

(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents."



33. Furthermore, Rule 58 of the Criminal Rules Of Practice and Circular Orders, 1990 envisages about marking of exhibits which reads as follows:-

“58 Marking of exhibits:-

(1) Exhibits admitted in evidence shall be marked as follows:-

(i) if filed by the prosecution with the capital letter ‘P’ followed by a numeral, P1, P2,P3 and the like;

(ii) if filed by defence with the capital letter ‘D’ followed by a numeral, D1, D2, D3 and the like;

(iii) in case of Court exhibits with the capital letter ‘C’ followed by a numeral C1, C2, C3 and the like;



(2) All the exhibits filed by the several accused shall be marked consecutively.

All material objects shall be marked in Arabic numbers in continuous series as M.O. 1, M.O.2 and M.O.3 and the like, whether exhibited by the prosecution or the defence or the Court."

34. This Court is unable to understand as to why the trial Court has not followed the procedure, while marking the Exhibits as per Rule 58 of Criminal Rules of Practice. Admittedly, Exhibit-4/formal FIR was marked through PW-10-an Advocate Clerk.

35. At this juncture, it is relevant to rely on the judgments of Hon'ble Division Bench of this Court in the case of ***Sukhi Yadav v. The State of Bihar*** reported in ***2014 SCC OnLine Pat 5721*** wherein their Lordships have held as follows:-



“9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as “Sankat Mochan witness”. What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of section 172(2) of the Code of Criminal Procedure (for short ‘Cr.P.C.’), which clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial. What the trial court has done is using it as evidence, making it as evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary



can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under section 145 of the Evidence Act is to apply but that does not mean that diary can become evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under section 161 of the Cr.P.C. are proved as evidences or other materials in the case diary are proved as evidence and marked as exhibits. This is a practice that should end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate who has nothing to do in the case, has been permitted



by the trial court to prove the entire case-diary and mark it as exhibit. This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, which absence has to be explained, a person familiar with the handwriting of the author can only prove the document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."

36. The above citation squarely applies to the facts of the present case. Their Lordships have held that a person who is author of the document, or in absence of the author, (whose absence must be explained), a person familiar with the hand-writing of author can prove the documents. Their Lordships have further held that the procedures adopted by the trial Court are unknown to law, and such practices must to be ended.

37. The charges are framed against the appellants for the offences punishable under



Sections 304-B r/w 34 of the Indian Penal Code and under Sections 498-A r/w 34 of the Indian Penal Code.

Section 498-A of Indian Penal Code defines **“Husband or relative of husband of a woman subjecting her to cruelty”** which reads as follows:-

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 purpose 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.]

38. The record reveals that no complaint was made either by the deceased Parmila Devi or by P.Ws. 5 to 7 against the appellants for subjecting the deceased to cruelty or harassment during her lifetime. P.Ws. 5 to 7 in one tone stated that they have not gone to the house of the appellants after the marriage of Parmila Devi until the date of her death. Prosecution has miserably failed to prove that Parmila Devi was subjected to cruelty or harassment for additional dowry, during his lifetime. No



complaint was made to the police during her lifetime.

Section 304-B of Indian Penal Code defines dowry death as follows:-

“304-B. Dowry death. - (1)

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

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

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not



be less than seven years but which may extend to imprisonment for life."

39. As per the above definition, four ingredients must be satisfied to prove the guilt of the accused. Further, dowry death must be proved beyond reasonable doubt. There must be either ocular or documentary evidence to prove demands of dowry and ill-treatment/cruelty by appellants, due to the failure to meet such demands. In the present case, the prosecution has miserably failed to establish that the death occurred otherwise than under normal circumstances. There is no evidence on record to establish that the deceased committed suicide by consuming poison, or whether the poison was administered by the appellants. In order to convict the appellants under Section 304-B of the Indian Penal Code, the prosecution must prove that Parmila Devi was subjected to cruelty or harassment



by appellants in connection with the demand for dowry, soon before her death. Except for the testimonies of P.Ws. 5 to 7, there is no other evidence on record to establish that the appellants demanded for dowry and, in turn, Parmila Devi was subjected to cruelty or harassment. Furthermore, the written application was very much silent, regarding any demand for dowry made by the appellants, either at the time of marriage or soon before the death of the deceased, except for the demand for a colour TV. In order to constitute the offence under Section 304-B of Indian Penal Code, i.e., dowry death, the harassment must be of such a nature that it drives the woman to commit suicide, or the death must occur due to injuries, burns or otherwise under normal circumstances

40. As stated above, the nature of the deceased's death whether natural or otherwise than



under normal circumstances has not been proved in this case. The trial Court has not framed any charge against the appellants for the offence punishable under Section 3 and 4 of the Dowry Prohibition Act, though the charge-sheet was filed for the said sections. It is mentioned in the fardbeyan that the deceased was murdered by the appellants and some other persons. The trial Court framed charges against the appellants for the offences punishable under Sections 304-B r/w 34 of Indian Penal Code and Sections 498-A r/w 34 of Indian Penal Code.

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

“9. The provision has application when death of a woman is



caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry. In order to attract the application of Section 304-B IPC, the essential ingredients are as follows:

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

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.



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

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

“113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, ‘dowry



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

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113-B is a presumption of law. On proof of the



essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

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

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

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

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

11. *A conjoint reading of Section 113-B of the Evidence Act and*



Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the



Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft”, is either the thief, or has received the goods knowing them to be stolen, unless he can account for its possession. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the



death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

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

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

"It has thus been observed that though presumption could be drawn, the burden of prove of showing that such an offence has been committed by the accused



is on the prosecution. The prosecution has to establish beyond reasonable doubt that the accused instigated, conspired or intentionally aided so as to drive the wife to commit suicide."

44. In the present case also, it is the specific case of the prosecution that the deceased Parmila Devi was administered poison by the appellants, therefore, the duty is casted upon the prosecution to prove that the deceased was subjected to harassment prior to her death.

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



and various judgments thereupon, it was observed
as follows:-

“102. Broad principles emerging from above noted case law, to the extent germane to the issues raised before us, may be culled out as under : -

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

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

(iii) If the evidence is forthcoming to show that the unnatural death of the married woman within seven years of her marriage was preceded “soon before” her death by she being subjected to cruelty or harassment for or in connection with demand for dowry by the husband or



any of his relatives, the charge of “dowry death” is to be invoked as an “alternative charge”, or even as a single or main charge against others not implicated by reason of abetment, conspiracy etc.

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

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



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

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

(vii) To bring home a charge of dowry death, there must be "proximity" or a "live link" between the cruelty and harassment based on dowry demands and the consequential death leading to inference that said conduct was indulged in "soon before" the death;

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



interspersed by tentative efforts at resolution or compromise;

(ix) A case of unnatural death of the married woman would not amount to "dowry death", if it is shown to have occurred on account of an accident or as a result of acts of commission or omission on the part of a third person, i.e. a person other than the husband or any of his relatives, or for reasons not connected with demands for dowry; and,

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

46. Admittedly, live and proximate link as referred in the above judgment is missing in the present case. The trial Court presumed that appellants subjected the deceased to harassment,



soon before her death relying on Exhibit-1, which is a letter alleged to have been addressed by the deceased. However, on perusal of Exhibit-1, it is evident that the alleged letter disclose that the deceased was subjected to harassment for the demand of a colour TV. However, the prosecution has failed to prove the handwriting or signature of deceased, to establish that the letter was indeed written by her. Furthermore, it is an inland letter which was received by the postal department. The prosecution has also failed to examine the postmaster to prove that it was received by P.W. 7 through the post office. In the absence of such evidence, the trial Court cannot presume that the deceased was subjected to cruelty basing on the contents mentioned in Exhibit - 1. Hence, the presumption under Section 113-B of the Indian Evidence Act cannot be sustained.



47. Further, the case of the prosecution is that the deceased was administered with poison by the appellants at 11:00 AM on 12.05.1991 and the deceased died at 06:00 PM on the same day. The prosecution has not brought any evidence on record to show whether the victim/deceased was taken to the hospital or not and have also not made any effort to examine the neighbors to prove that the condition of the deceased was precarious, after consuming the poison.

48. On perusal of the record and as per the evidence of P.Ws. 5 to 7, it is evident that the Sub Inspector of Police conducted the inquest over the dead-body of the deceased and prepared the inquest report. The charge-sheet which forms the part of the record is also silent about the inquest conducted over the dead-body of the deceased or also about the inquest report. There are only two sentences in



the charge-sheet stating that the evidence of the prosecution witnesses was recorded and on completion of the investigation, charge-sheet was filed. The manner of the investigation carried out by the Investigating Officer did not form the part of the charge-sheet.

49. Section 174 and 176 of the Code of Criminal Procedure specify that the Station House Officer has to intimate to the Executive Magistrate in order to conduct an inquest in a case of dowry death and, in turn, the Executive Magistrate shall hold the inquest over the dead-body of the deceased in the presence of two panchayat dars and thereafter the dead body has to be forwarded to the nearest government hospital for postmortem examination. As per the evidence of P.W. 5 to 7, the inquest was conducted by the Sub-Inspector of Police, though he is not empowered to do so, which clearly disclose



that the Investigating Officer did not follow the procedure as provided under Sections 174 and 176 of the Code of Criminal Procedure.

Section 174 and 176 of Code of Criminal Procedure reads as follows:-

“Section 174:- Police to inquire and report on suicide, etc.- (1) When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to



hold inquests, and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such officer and other persons, or by so many of them as concur therein, and shall be forthwith



forwarded to the District Magistrate or the
Sub-divisional Magistrate.

[(3) When –

(i) the case involves suicide by
a woman within seven years of her
marriage; or

(ii) the case relates to the death
of a woman within seven years of her
marriage in any circumstances raising a
reasonable suspicion that some other
person committed an offence in relation
to such woman; or

(iii) the case relates to the
death of a woman within seven years of
her marriage and any relative of the
woman has made a request in this
behalf; or



(iv)there is any doubt regarding
cause of death; or

(v)the police officer for any
other reason considers it expedient so
to do,

he shall], subject to such rules
as the State Government may prescribe
in this behalf, forward the body, with a
view to its being examined, to the
nearest Civil Surgeon, or other qualified
medical man appointed in this behalf by
the State Government, if the state of
the weather and the distance admit of
its being so forwarded without risk of
such putrefaction on the road as would
render such examination useless.

(4) The following Magistrates are
empowered to hold inquests, namely, any



District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Section - 176:- Inquiry by Magistrate into cause of death. - (1)

When the case is of the nature referred to in clause (i) or clause (ii) of Sub-Section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in Sub-Section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in



conducting it, which he would have in holding
an inquiry into an offence.

[(1A) Where,—

(a) any person dies or disappears, or

(b) rape is alleged to have been
committed on any woman,

while such person or woman is in the
custody of the police or in any other custody
authorised by the Magistrate or the Court,
under this Code in addition to the inquiry or
investigation held by the police, an inquiry
shall be held by the Judicial Magistrate or the
Metropolitan Magistrate, as the case may be,
within whose local jurisdiction the offence has
been committed.]

(2) The Magistrate holding such an
inquiry shall record the evidence taken by him
in connection therewith in any manner



hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

[(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry



or investigation, as the case may be, under sub-section (1-A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.]

Explanation.—In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

50. It is the case of the informant that he received the death intimation on 13.05.1991 through P.W. 8 and on that, they all went to the house of the appellant by 12:00 noon and subsequently submitted a written application to Sanhaua Police Station. However, the F.I.R. (Exhibit-4) disclose that the crime



was registered against the accused at 11:00 AM on 13.05.1991. If at all the evidence of P.Ws. 5 to 7 has to be believed then they might have gone to the police station, only after 12:00 noon on 13.05.1991, which contradicts the timing mentioned in the F.I.R.

51. In view of the discussion, this Court is of the considered view that the trial court ought not to have convicted the appellants for the offence punishable under Sections 304-B r/w 34 of the Indian Penal Code or for the offence punishable under Sections 498-A r/w 34 of the Indian Penal Code. There is no evidence on record to show that the appellants, in furtherance of common intention have administered poison to the deceased Parmila Devi. In the absence of such evidence on record, the conviction against the appellants cannot be sustained. Therefore, the conviction and sentence against the appellant are liable to be set aside.



52. This Court is of the considered view that the prosecution has miserably failed to bring home the guilt of the appellants for the offences punishable under Section 304-B r/w Section 34 of the Indian Penal Code and Section 498-A r/w Section 34 of the Indian Penal Code beyond reasonable doubt.

53. As the case against the appellants no. 2 to 4 has been abated, the judgment and sentence against appellant no. 1 alone is liable to be set aside.

54. In result the appeal is allowed setting aside the judgment of conviction dated 14.02.2004 and order of sentence dated 17.02.2004 on the file of Additional Sessions Judge, Fast Track Court No. II, Bhagalpur in Sessions Trial No. 19 of 1993 are hereby set aside and the appellant no. 1 Subodh Sharma is hereby acquitted of the said offences.

55. The record reveals that the appellants were enlarged on bail on 11.03.2005. In view of the



death of appellants no. 2 to 4 and the acquittal of
appellant no. 1 their bail bond shall stand cancelled.

56. Interlocutory Application(s), if any, shall
stand closed.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2025
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