**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL APPEAL (SJ) No.153 of 2004**

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1. Munna Sharma, son of Ram Jatan Sharma, resident of village Dariyapur, P.S. Ghoshi, District Jehanabad.
2. Mahesh Sharma, son of Ram Jatan Sharma, resident of village Dariyapur, P.S. Ghoshi, District Jehanabad.
3. Ganesh Sharma, son of Ram Jatan Sharma, resident of village Dariyapur, P.S. Ghoshi, District Jehanabad.

... ... Appellant/s

Versus

STATE OF BIHAR

... ... Respondent/s

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with
**CRIMINAL APPEAL (SJ) No. 233 of 2004**

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1. UDAY SHARMA son of Ram Jatan Sharma village- Dariyapur, Ps- Ghosi, dist- Jehanabad
2. Ram Jatan Sharma (Abated vide Honble courts order 26-03-2025) Son of Late Neman sharma village- Dariyapur, Ps- Ghosi, dist- Jehanabad
3. Siyamani Devi Wife of Ram Jatan sharma village- Dariyapur, Ps- Ghosi, dist- Jehanabad

... ... Appellant/s

Versus

The State of Bihar bihar

... ... Respondent/s

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**Appearance :**
(In CRIMINAL APPEAL (SJ) No. 153 of 2004)
For the Appellant/s : Mr.Bimal Kumar, Adv.
For the Respondent/s : Ms. Anita Kumari Singh, APP
(In CRIMINAL APPEAL (SJ) No. 233 of 2004)
For the Appellant/s : Mr.Nilesh Kumar, Adv.
For the Respondent/s : Ms. Anita Kumari Singh, APP

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

**Date : 23-04-2025**

**1.** Cr. Appeal (SJ) No. 153 of 2004 and Cr. Appeal (SJ) No. 233 of 2004 are arising out of the same judgment in Sessions Case No. 215 of 2000/Sessions Trial No. 035 of 2001 dated 04.03.2004 on the file of Additional District and Sessions Judge No. -I, Jehanabad.

**2.** Cr. Appeal (SJ) No. 153 of 2004 is preferred by the appellant Munna Sharma (Accused No. 2), Mahesh Sharma (Accused No. 4) and Ganesh Sharma (Accused No. 3), whereas Criminal Appeal (SJ) No. 233 of 2004 is preferred by the appellants Uday Sharma (Accused No. 1), Ramjatan Sharma (Accused No. 5) and Siyamani Devi (Accused No. 6).

**3.** It is just necessary to mention the relationship between the appellants. Accused No. 1, Uday Sharma is the husband of the deceased Seema. Accused No. 5 and 6 are the parents of Accused No. 1/Uday Sharma, Accused No. 2/Munna Sharma, Accused No. 3/Ganesh Sharma and Accused No. 4/Mahesh Sharma. All the appellants were charged for the offences punishable under Section 304-B and Section 201 of the Indian Penal Code, wherein the trial Court convicted them under Section 304-B and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years each for the offence punishable u/s 304-B and they are further sentenced to undergo imprisonment for a period of three years each for the offence punishable under Section 201 of the Indian Penal Code. Further all the appellants were directed to pay a fine of Rs. 5,000/- each and in default of payment of fine they shall undergo rigorous imprisonment for a period of six months.

**4.** The case of the prosecution as per the written report of the informant/Nityanand (P.W. 6) dated 17.09.1999, are that the deceased Seema was his sister who got married to Accused No. 1/Uday Sharma in the year 1996. At the time of marriage they had given gifts to the accused within their capacity which included a motorcycle. Inspite of it, the deceased Seema was continuously tortured by the accused for jewellery, TV and solar energy equipment. In Falgun Month (Name of the month in Hindi) in the year 1999, Seema's Durgaman was solemnized and she went to her in-laws house. Ten to 15 days later, when P.W. 6 went to meet her, the deceased wept and told him that all the accused were demanding for dowry in the form of TV and solar energy equipment and were regularly assaulting her. Further, Uday Sharma threatened to kill her and that he would perform a second marriage. Ten days prior to filing of the written complaint, when the informant again went to the house of the appellants, all the accused demanded a TV and solar equipment from him and also threatened to kill his sister and further assaulted the deceased/Seema in his presence.

**5.** Further, the written report disclose that on 16.09.1999, when the informant went to the house of the appellants, all the appellants met him at the door step and stated that he had come empty handed. They further informed him that his sister had left for her heavenly abode as a consequence of not payment of the dowry. On inquiry, the villagers informed the informant that the accused had murdered Seema on 13.09.1999 and cremated her on the banks of Falgu river.

**6.** Basing on the written report of P.W. 6, the S.H.O. Ghosi Police Station registered a case against all the accused vide Case No. 200 of 1999 for the offences punishable under Section 304-B, 201 r/w Section 34 of the Indian Penal Code and under Section 3 and 4 of the Dowry Prohibition Act. On completion of the investigation, a charge-sheet was laid against all the accused for the said offences. The Learned Magistrate took cognizance of the aforesaid offences on 17.02.2000 and committed the case to the Court of Sessions on 07.09.2000. On 15.04.2002, the trial Court framed charged against all the accused for the offences punishable under Section 304-B and under Section 201 of the Indian Penal Code, read over and explained the contents of the charges to the accused persons in Hindi for which they pleaded not guilty and claimed to be tried.

**7.** During the course of trial, on behalf of the prosecution, P.Ws. 1 to 7 were examined and Exhibits 1 to 5 and 5/1 were marked. The details of the witnesses and Exhibits are as follows:-

| Prosecution Witness No. | Prosecution Witness Name |
|---|---|
| P.W. 1 | Ramashish Sharma |
| P.W. 2 | Ram Naresh Sharma |
| P.W. 3 | Mithilesh Sharma |
| P.W. 4 | Jagdish Sharma |
| P.W. 5 | Suresh Sharma |
| P.W. 6 | Nityanand Kumar |
| P.W. 7 | Md. Murtaza |

| Sl. No | Exhibit | Exhibit Details |
|---|---|---|
| 1. | Exhibit-1 | Signature of Suresh Sharma on Seizure List |
| 2. | Exhibit-2 | Letter of Ram Jaten Sharma |
| 3. | Exhibit-3 | Signature of informant on written report |
| 4. | Exhibit-4 | Formal F.I.R. |
| 5. | Exhibit-5 | Seizure list of letter |
| 6. | Exhibit-5/1 | Seizure list of motorcycle |

**8.** However, on perusal of the Exhibits, it is evident that neither the written report of P.W. 6 nor the F.I.R. were marked as exhibits before the Court.

**9.** On completion of the prosecution evidence all the accused were examined under Section 313 of the Code of Criminal Procedure for the incriminating evidence appeared against them. All the accused pleaded innocence. On behalf of the defence D.Ws. 1 to 7 were examined and Exhibits A to F were marked. However, D.W. 4, 5, 6 and 7 were advocate clerks through whom Exhibits A to E were marked. Exhibit F was marked directly by the Court as it was a public document. The details of Exhibit A to F will be discussed at the relevant stage. However, a brief description of Exhibits A to F is given below:-

| **Sl. No** | **Exhibit** | **Exhibit Details** |
|---|---|---|
| 1. | Exhibit-A | Certificate granted by Headmaster Vasudewacharya Sanskrit High School |
| 2. | Exhibit-B | Letter sent to Ram Jaten Sharma |
| 3. | Exhibit-C | Registry Envelop |
| 4. | Exhibit-D | Recommendation of Headmaster-cum-Principal |
| 5. | Exhibit-D/a | Petition of Ganesh Sharma |
| 6. | Exhibit-E | Prescription of Doctor |
| 7. | Exhibit-F | Admit Card of Munna Sharma |

**10.** On completion of oral and documentary evidence on record, the trial Court convicted and sentenced the appellants as aforesaid. The present appeals are preferred by the appellants challenging the conviction and sentence imposed by the trial Court. It is pertinent to mention that Exhibit 2, is a letter, alleged to have been written by the Ramjatan Sharma i.e. the Accused No. 5 was marked subject to objection. Initially, the trial court should mark the document tentatively as an exhibit subject to objection. Once the trial is completed, the Court should allow the parties to make arguments related to the objection. The trial court at the stage of the final judgment shall make its final decision on the documents admissibility considering the arguments and evidence presented. If the objection is sustained, the document will be excluded from consideration while rendering the judgment. This procedure helps the Court to save time during trial and allows for a more comprehensive consideration of the issue of admissibility at the later stage potentially leading to a more accurate final decision. In essence, marking a document subject to objection is a procedural step that allows for more thorough evaluation of document's admissibility while allowing the trial to proceed efficiently.

**11.** In the present case, the above procedure was not duly followed by the trial Court. Exhibit-2 was marked subject to objection yet trial court without deciding on its admissibility proceeded in the trial which is erroneous on the part of the trial Court. The document (Exhibit 2) was marked through P.W. 5, Suresh Sharma, who is the uncle of the deceased. His evidence clearly disclose that accused no. 5, Ramjatan Sharma, has addressed a letter to his father demanding a colour TV and solar equipment. However, the said document was not proved by the prosecution in any manner. This court reiterates that Exhibit 2 was marked subject to objection and the procedure prescribed was not duly followed by the trial Court. Section 73 of the Indian Evidence Act gives ample power to the trial Court to compare the signatures or hand writing with other admitted or proved writings.

> ***"73. Comparison of signature, writing or seal with others admitted or proved.-*** *In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person*

*may be compared with the one which is to be proved although that signature, writing or seal has not been produced or proved for any other purpose.*

*The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."*

**12.** In order to ascertain whether the signature on Exhibit 2 belongs to Accused No. 5 or not? the Court had ample power to obtain the specimen signatures of Accused No. 5 in order to compare them with the signature on Exhibit 2. However, the trial Court for the reasons best known to it did not follow the procedure envisaged under Section 73 of the Indian Evidence Act. It is also relevant to mention that the prosecution did not take any effort to send the document to GEQD Department for comparison of the signature of Accused No. 6 to establish that it was the letter addressed by him. Even in the absence of the compliance with the procedures contemplated under Section 73 of Indian Evidence Act or of referring the signatures to GEQD, the trial Court has relied on the contents of Exhibit 2 and came to a conclusion that there was a demand for dowry or additional dowry by the accused prior to the death of the deceased. Except for Exhibit-2 there is no other document on record to show that there was a demand for additional dowry by the accused soon before the death of the deceased.

**13.** P.W. 1/Ramashish Sharma, is one of the villager of deceased's parental village as well as a relative. It is the specific evidence of P.W. 1 that he accompanied the informant to the police station and also made his signature on the written report. However, the written report does not bear the signature of P.W. 1 nor does it mention that P.W. - 1 accompanied P.W. 6 to the police station. P.W. 1 has no personal knowledge about the dowry demands or the manner of the death of the deceased. His evidence is a hearsay evidence as he did not witness the death of deceased nor about the alleged harassment by the accused prior to the death of the deceased, for demand of additional dowry.

**14.** P.W. 2/Ram Naresh Sharma, is the father of the deceased. His evidence disclose that he was working as a Hawaldar in Army Medical College, Pune and was informed through P.W. 6, his son, about the death of the deceased. On that he availed leave two days later after receiving the information and came to Dariyapur. His evidence further disclose about the contents of Exhibit 2 i.e. the alleged letter for demand of dowry. However, Exhibit-2 was not marked through him.

**15.** P.W. 3/Mithilesh Sharma, is the maternal uncle of the deceased, who also came to know about the death of the deceased through P.W. 6. It is specifically stated by P.W. 3 that P.W. 6 went to the house of the accused/appellants on 13.09.1999. However, the written report of P.W. 6 do not disclose that he visited the house of the appellants on 13.09.1999. It is specifically mentioned in the written report of P.W. 6 that he went to the house of the appellants on 16.09.1999 and came to know from the villagers that the deceased was murdered by the accused. The evidence of P.W. 3 is also a hearsay evidence.

**16.** P.W. 4/Jagdish Sharma, is also a co-villager from deceased parental village and a relative of the deceased. His evidence is also in same line as that of P.W. 1 and 3. His evidence can also be construed as a hearsay evidence. However, in the cross-examination at Para-14, P.W. 4 testified that he had shaved his head and mustache and they have performed the last rituals of the deceased which clearly establish that he was a relative of the deceased. However, the evidence of P.W. 2 and 5 contradicts the evidence of P.W. 4 as to performing the rituals of the death of deceased. Neither P.W. 2 nor P.W. 6 testified about the death rituals of the deceased.

**17.** P.W. 5/Suresh Sharma, is the paternal uncle of the deceased through whom Exhibit 2, the alleged letter addressed by Accused No. 5 was said to be marked, subject to objection. Exhibit-1 is the signature of P.W. 5 on the seizure list through which Exhibit 2 was seized. His evidence disclose that he received a call from P.W. 5 on 16.09.1999 and came to Jehanabad on 17.09.1999, at about 08:00 AM. It is testified by P.W. 5 that Exhibit-2, the letter, was written after the Durgaman, but he did not know whether it was written prior or after the Durgaman and had not seen any other letter written by Accused No. 5/Ramjatan Sharma. Therefore, this Court cannot come to a conclusion that P.W. 5 was well acquainted with the hand writings and signatures of Accused No. 5 to confirm that Exhibit-2 was the letter, written by accused no. 5.

**18.** P.W. 6/Nityanand Kumar is the informant who is brother of the deceased. His evidence disclose that they have given a cupboard, bed, mattress, motorcycle and jewellery as gifts at the time of marriage, in the year 1996 and the Durgaman was performed in the month of February, 1999. He also testified that Mahesh Sharma (Accused-4) started demanding for a TV and solar energy equipment and that all the accused persons harassed and assaulted his sister which was informed to him by deceased, when he went to the house of the appellants. He also testified that Accused No. 5 had written a letter to his father demanding TV and solar energy equipment. However, Exhibit 2 was not addressed to P.W. 6. It was addressed to the father of P.W. 6. The evidence of P.W. 6 clearly disclose that he visited the house of the appellant on 16.09.1999 and came to know about the death of the deceased and when enquired the villagers told him that the accused have murdered the deceased and burnt her body. On 17.09.1999, he came to Dariyapur with his family members and went to Ghosi Police Station and preferred a written application which is in his writing and his signature on the written report is marked as Exhibit 3. He testified that Ramjatan Sharma wrote a letter to his grand-father. In his cross-examination, P.W. 6 stated about the dowry given to the accused at the time of marriage which was Rs. 1,50,000/- in cash and utensils worth Rs. 50,000/-.

**19.** This appears to be an improvement as it was neither mentioned in the written report nor stated in his chief examination. Further, he testified about a gold chain and ring which was given to Accused No. 1 along with their weight. He also testified that there were no dispute at the time of marriage or Durgaman ceremonies and later he was informed by Seema about the harassment made by the appellants when he went to the appellants house. It is specifically stated by P.W. 6 that he did not lodge any complaint with the police inspite knowing about the harassment made by the accused and neither felt of preferring a complaint nor threat to the deceased life. He further admitted at Para-30 that the deceased's Sradh rituals were not performed and the deceased body was burnt, but did not state the date or location of the cremation to the Inspector. This part of his evidence contradicts the evidence of I.O. (P.W. 7).

**20.** P.W. 7, the Investigating Officer, testified that he visited the second site i.e. the place where the dead body was burnt and found only remnants of wood and coal at the place. There is no conclusive evidence before the Court to prove that the dead body was burnt. If at all a dead body was burnt, the remnants should have contained the bones and ashes of human body. Hence, therefore, it can be construed that the prosecution has failed to prove that the dead body was burnt at the second place of occurrence. The evidence of Investigating Officer also disclose that as per the informant, the accused brutally murdered Seema in their courtyard and later cremated her body at the western part of Falgu River

**21.** However, neither any of the eyewitness nor the informant deposed about the presence of human bones, at the second place of occurrence. Therefore, it is highly improbable to conclude that the deceased's dead body was burnt at the second place of occurrence.

**22.** Heard the Learned counsel for the appellants and the Learned Additional Public Prosecutor, Ms. Anita Kumari Singh, and perused the record.

**23.** It is the specific contention of the Learned counsel for the appellants that the prosecution has miserably failed to prove the demand of dowry made by the appellants or any additional demand for a TV or solar equipment. Even in the absence of such material evidence, the trial Court convicted the appellants for the offences punishable under Section 304-B and 201 of IPC. Therefore, he prayed to set aside the conviction and sentence imposed against the appellants in both the appeals.

**24.** On the other hand, the Learned Additional Public Prosecutor, Ms. Anita Kumari Singh, contended that there is no error or irregularity in the judgment of the trial Court. In order to screen away the evidence, the appellants have burnt the dead body of the deceased, without giving any intimation to the family members of the deceased, therefore, the trial Court has rightly held that the prosecution was able to prove the guilt of the appellants beyond reasonable doubt and prayed to confirm the judgment.

**25.** The points for determination in these appeals are:

(i) whether the prosecution was able to prove the guilt of the appellants beyond reasonable doubt for the offence punishable under Sections 304-B and 201 of IPC?,

(ii) whether the trial Court is right in convicting the appellants for the aforesaid offences?

**26.** The Learned counsel for the appellants relied on the judgments of the Hon’ble Apex Court on the point of delay in fowarding the FIR to the Court, in the case of *Manoj Kumar Sharma and Others vs. State of Chhattisgarh, AIR 2016 Supreme Court 3930*, and in the case of *Jafruddin and Others vs. State of Kerala reported in 2022 SCC OnLine SC 495*.

**27.** Before discussing the propositions laid down in the above judgments, it is necessary to examine under which Section of law, the FIR was registered in this case. The entire case of the informant, as per the fardbeyan, is that the death occurred on 13th September, 1999, and he came to know about the death on 16th September, 1999, and gave the report to police on 19th September 1999. The contention of the informant, as per the fardbeyan, is that all the accused harassed the deceased for dowry especially for a demand of TV and Solar equipment, and they brutally murdered her, and without intimating the family members of the deceased, burnt the dead body of the deceased at the second place of occurrence. Admittedly, at the time of filing the fardbeyan the body of the deceased was not present. For better appreciation, its just necessary to reproduce Section 174 of Cr.P.C. which reads as follows:-

> **Section 174:** *(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 police 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)[1] 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 the 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.*

**28.** As per the above prosecution of law, the officer in-charge of the police station is empowered to register a case under Section 174 of Cr.P.C. in case the death occurs either by suicide or under any reasonable suspicion that some other person has caused the death. Further, the investigating officer must inform the Executive Magistrate to conduct an inquest. However, in this case, as the dead body was not present at the time of written report, the question of conducting an inquest by the Executive Magistrate may not arise. Further, Section 174(3)(ii) specifically envisages that in a case relating to the death of a woman within seven years of her marriage under any circumstances, raising reasonable suspicion, the case has to be registered initially under Section 174 of the Cr.P.C. Even in the absence of the dead body, the intimation has to be given the Executive Magistrate who could have inquired into the matter and would have recorded the statement of the villagers and neighbours of the accused, in order to acertain whether the death was a homicide. Section 176 of Cr.P.C. also provides ample power to inquire the cause of death by a Magistrate.

Section 176 of Cr.P.C. reads as follows:-

*(1)[1] [[3][2* * *] 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.*

*[1][(1-A) 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.*

[1]*[(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.*

**29.** In the present case, the provisions under Sections 174 or 176 of Cr.P.C. was not followed during the course of investigation.

**30.** In the case of ***Manoj Kumar Sharma Vs. State of Chhattisgarh,*** reported **in AIR 2016 Supreme Court 3930,** the Hon'ble Supreme Court has observed as follows:-

> *In instant case, an inquiry under Section 174 of the Code was convened initially in order to ascertain whether the death is natural or unnatural. Appellants claim that the earlier information regarding unnatural death amounted to FIR under Section 154 of the Code which was investigated by the police and thereafter the case was closed. On a careful scrutiny of materials on record, the inquiry which was conducted for the purpose of ascertaining whether the death is natural or unnatural cannot be categorized under information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code. On information received the police made an inquiry as contemplated under Section 174 of the Code. After holding an inquiry, the police submitted its report before the sub-Divisional*

*Magistrate, stating therein that it was a case of hanging and no cognizable offence is found to have been committed. In the report, it was also mentioned that the father of the deceased-does not want to take any further action in the matter. In view of the above discussion, it clearly goes to show that what was undertaken by the police was an inquiry under Section 174 of the Code which was limited to the extent of natural or unnatural death and the case was closed. Whereas, the condition precedent for recording of FIR is that there must be an information and that information must disclose a cognizable offence and in the case on hand, it leaves no matter of doubt that the intimation was an information of the nature contemplated under Section 174 of the Code and it could not be categorized as information disclosing a cognizable offence. Also, there is no material to show that the police after conducting investigation submitted a report under Section 173 of the Code as contemplated, before the competent authority, which accepted the said report and closed the case.*

**31.** As per the above proposition of law, it can be construed that the inquiry under Section 174 of Cr.P.C. is intended to determine whether a death is natural or unnatural. In the present case, such an inquiry was not conducted, which raises serious doubt about the fairness of the investigation.

**32.** Further, the said judgment also deals with the delay in lodging the FIR and, their Lordship have also held as follows:-

> *Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent No. 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent No. 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the*

*following decision of this Court in Jai Prakash Singh v. State of Bihar and Anr. (2012) 4 SCC 379 (AIR 2012 SC 1676) wherein it was held as under:-*

> *"12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the firsthand account of what has actually happened, and who was responsible for the offence in question."*

**33.** Admittedly, the case of defence is that they intimated the family members of the deceased about the death on 13.09.1999 itself, and that the informant and his family members did not attend the last rituals/rites of the deceased. Later the report was filed on 17.09.1999, i.e., after four days of the death of the deceased.

**34.** The cardinal principle of criminal law is that the prosecution must prove the guilt of the accused beyond reasonable doubt, and the accused shall be presumed to be innocent until proven guilty. In the present case, the trial Court has shifted the burden on the accused/appellants to prove that they were innocent, which is contrary to the principles of criminal jurisprudence. Admittedly, there is a delay of four days in lodging the FIR, and the FIR reached in the nearest Court only on 19.09.1999.

**35.** The Learned counsel for the appellants relied on the 2nd citation, i.e., ***Jafarudheen and Others v. State of Kerala,*** reported in **(2022) 8 SCC 440,** which deals with delay in forwarding the

FIR to the Court. Their Lordships have held as follows:-

*"28. The jurisdictional Magistrate plays a pivotal role during the investigation process. It is meant to make the investigation just and fair. The investigating officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159 Cr.P.C.*

*29. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of such a delay may also not only get bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the*

> *prosecution's case arrived at after due investigation. Ultimately, it is for the court concerned to take a call. Such a view is expected to be taken after considering the relevant materials.*

**36.** While discussing the matter, their Lordships have also relied on several judgments of the Hon'ble Apex Court, namely, (i) ***Shivlal v. State of Chhattisgarh, (2011) 9 SCC 561,*** (ii) ***Bhajan Singh v. State of Haryana, (2011) 7 SCC 421,*** (iii) ***Shiv Ram v. State of U.P., (1998) 1 SCC 149,*** (iv) ***Arun Kumar Sharma v. State of Bihar, (2010) 1 SCC 108,*** (v) ***Rajeevan V. State of Kerala, (2003) 3 SCC 355,*** (vi) ***Thulia Kali v. State of Tamil Nadu, 1972 3 SCC 393,*** all of which deals with the evidentiary value of the FIR and the significance of delays in lodging and forwarding the FIR to the Court.

**37.** In the present case, neither the FIR nor the fardbeyan was marked as an exhibit. However, on perusal of the FIR, it is evident that the Magistrate has affixed his signature dated 19.09.1999. It is also observed that the time of perusal of the FIR, was also not mentioned on the FIR, which is also erroneous on the part of the Magistrate who received the FIR.

**38.** The 3rd Citation, relied upon by the Learned counsel for the appellants is ***Bijoy Singh v. State of Bihar,*** reported in **(2002) 9 SCC 147,** wherein, their Lordships have held as follows:-

> *"5. The first information report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer in charge of the police station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer in charge of the police station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take*

*cognizance of such offence. After recording the FIR, the officer in charge of the police station is obliged to proceed in person or depute one of his subordinate officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Evidence Act or to contradict him under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind.*

*6. This Court in Meharaj Singh (L/Nk.) v. State of U.P. [(1994) 5 SCC 188 : 1994 SCC (Cri) 1391 : 1995 Cri LJ 457] held that FIR in a criminal case and particularly in a murder case, is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eyewitnesses, if known to the informant. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought.*

*7. Sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some* *other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it.*

**39.** The 4th citation, on which the Learned counsel for the appellants relied is ***Meharaj Singh (L/Nk.) v. State of U.P.,*** reported in **(1994) 5 SCC 188,** wherein, their Lordships have held as follows:-

*"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the*

*crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at* *serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR."*

**40.** All the above mentioned judgments squarely apply to the facts and circumstances of the present case. As already discussed above, though the death occurred on 13th September 1999, the report was lodged only on 17th September, 1999 by the informant and FIR was forwarded to the Court on 19th September, 1999. Neither the investigating officer nor the informant, in their evidence, has given any satisfactory explanation for the delay in lodging the FIR or for the delay in forwarding the FIR. Therefore, it can be construed that the FIR came into existence, after due deliberations and consultations and was anti-timed to give it a colour of a promptly lodged FIR.

**41.** Admittedly, there is delay of four days in lodging of the FIR. The Hon'ble Apex Court, in respect of delay in lodging the FIR in the case of ***Sekaran v. State of Tamil Nadu*****,** reported in **(2024) 2 SCC 176 : (2024) 1 SCC (Cri) 548 : SCC OnLine SC 1653** have held as follows:-

> *"14. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version.*
>
> *15. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall*

*consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.*

**42.** As per the above-stated citation, if the delay is not properly explained and if it appears to the Court that the cause for delay has been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal to the case of prosecution.

**43.** The Learned counsel for the appellants has further relied on the following judgments of the Hon'ble Apex Court with respect to Section 304-B of Indian Penal Code. In the case of ***State of Punjab v. Daljit Singh***, reported in ***1999 Cri LJ 2723***, their Lordships have held as follows:-

*"9. The explanation appended to the Section mentions that for the purposes of this*

*Section, ‘dowry’ shall have the same meaning as defined in section 2 of the Dowry Prohibition Act, 1961. Section 2 of 1961 Act defines ‘dowry’ to mean “any property or valuable security which is either consented to be given on demand being made or the demand of such property or the valuable security itself as consideration of the marriage”. As mentioned above, there is no allegation in the FIR that any demand of dowry was made by the appellants before or after the marriage as consideration for marriage. It may be recalled that marriage between appellant Khushkismat Singh and Lakhbir Kaur was solemnised four years before she died and that the couple was blessed with two children. The demand of Rs. 50,000/- was made only for sending Khushwant Singh abroad. In our considered view, such a demand cannot be connected with dowry as defined under Section 2 of 1961 Act. We are further of the view that to connect such a demand with dowry as defined under Section 2 would be stretching the definition of ‘dowry’ beyond all proportions. To illustrate, after four or five years of marriage, the husband, being in some difficulty in his business, requests or demands some money from his father-in-law*

> *directly or through his wife, only with a view that he is able to advance in life. Can such a demand be termed as 'dowry'? In our view, the answer has to be in negative. Looked from any angle, we are of the firm view that demand of Rs. 50,000/- made by the appellants so as to send Khushwant Singh abroad, cannot be connected with dowry by any stretch of imagination. That being the position, in our view, learned Sessions Judge was absolutely justified in returning a finding of acquittal against the appellants insofar as their involvement under Section 304-B IPC is concerned.*

**44.** In the present case, the evidence of P.W. 2 (the father of the deceased) P.Ws. 3 and 5, (the uncles of the deceased) and P.W. 6 (brother of the deceased) disclose that at the time of marriage, the appellants had allegedly demanded a TV and solar energy equipment. As per the their evidence, the deceased died three years after her marriage, and until her death, neither TV nor the solar energy equipment was given to the appellants. Except for the oral evidence of the family members of the deceased, there is no corroborating evidence on record to substantiate that there was any demand for dowry in the form of a colour TV and solar energy equipment.

**45.** It is the specific argument of the Learned counsel for the appellants that in the year 1999, the solar equipment was not commonly available or in use and therefore, such a demand could not plausibly have been made in the year 1996 i.e., at the time of the deceased's marriage. Basing of the evidence, it can be construed that no dowry was taken by the appellants at the time of marriage. However, it is the case of prosecution that there was a demand of colour TV and the solar equipment subsequent to the marriage. It can also be noted that during the lifetime of the deceased, no criminal complaint was lodged against the accused for the offence punishable under Section 498-A of IPC, either by the deceased or by her family members, so as to prove that the deceased was subjected to cruelty of harassment by her husband and in-laws.

**46.** In the case of ***Baijnath And Ors vs State Of M.P.*** reported in ***2017 (1) SCC 101***, their Lordships have held as follows:-

*24. The evidence on record and the competing arguments have received our required attention. As the prosecution is on the charge of the offences envisaged in Sections 304-B and 498-A of the Code, the provisions for reference are extracted hereunder:*

***"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 purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*
>
> *(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

***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 willful 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."*

*25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:*

> *(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and*
>
> *(ii) is within seven years of her marriage, and*
>
> *(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.*

*The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The*

*Explanation to this Section exposits "cruelty" as:*

> *(i) any willful 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), or*
>
> *(ii) 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.*

*28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:*

***"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 has 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."*

*30. A conjoint reading of these three provisions, thus predicate the burden of the* *prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.*

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

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

**47.** The above citation clearly explain the ingredients necessary for convicting under the offences punishable for Sections 304-B and 498-A of IPC and Section 113 of the Indian Evidence Act, and that the burden lies on the prosecution to establish that soon before her death, the deceased was subjected to cruelty and harassment in connection with demand of dowry. Admittedly, there is no direct evidence in this case to prove that the deceased was murdered by appellants. The entire case is based on circumstantial evidence, and the prosecution has miserably failed to establish the chain of events, as many of the crucial links are missing.

**48.** In the case of ***Hira Lal v. State (Govt. of NCT), Delhi***, reported in ***(2003) 8 SCC 80***, their Lordships have held as follows:-

> *8. Section 304-B IPC which deals with dowry death, reads 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 purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

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

*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 relatives of her husband for, or in connection with any demand for dowry. In order to attract 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 a normal circumstance.*

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

*(iii) She must have been subjected to cruelty or harassment by*

*her husband or any relative of her husband.*

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

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

*Section 113-B of 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 as noted earlier by 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 that 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 the 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.*

**49.** The above citation clearly explains the ingredients that are to be proved by the prosecution to establish the offence under Section 304-B of the IPC. The prosecution must prove the following:-

> (i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstance. (ii) Such a death should have occurred within seven years of her marriage. (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband. (iv) Such cruelty or harassment should be for or in connection with demand of dowry. (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

**50.** In the absence of the dead body, the death has been admitted by the appellants. It is for the prosecution to prove that the death occurred either by burns, bodily injury, or otherwise under normal circumstances. It is alleged by the prosecution witnesses that the deceased was murdered by the appellants. The prosecution has miserably failed to prove that the death of the deceased occurred by burns or by bodily injuries or otherwise under the normal circumstances. The defence of the appellant is that the deceased died due to illness and dysentery. There is no medical or other credible evidence on record indicating the manner in which the deceased was allegedly murdered by the appellants. Therefore, it can be construed that prosecution has miserably failed to prove that the death of deceased occurred otherwise than under the normal circumstances.

**51**. Admittedly, in the present case, the deceased died within three years of her marriage, however, none of the relatives testified that she was subjected to cruelty by her husband or the relatives of the husband, except P.W. 6. The evidence of P.W. 6 (bother of the deceased), disclose that the deceased was abused and assaulted in his presence. If that was the case, the prosecution ought to have prove with cogent evidence that a complaint was preferred against the appellants during the lifetime of the deceased. Further, it is the case of the prosecution that the appellants had demanded a colour TV and the solar energy equipment in the year 1996, prior to the marriage of the deceased with Uday Sharma. The evidence of the prosecution witnesses also disclose that they had not given the TV or solar equipment until the death of the deceased. So, it can also be construed that the deceased was not subjected cruelty, soon before her death. Admittedly, the word ‘‘*Cruelty*’’ is not defined under Section 304-B of IPC, and the explanation is only found under Section 498-A of IPC. Likewise the word "*Dowry*" is also not defined under Section 304-B of IPC, but is defined under Section 2 of the Dowry Prohibition Act, 1961.

**52.** In the case of ***Shoor Singh and Anr V. State Of Uttarakhand*** reported in ***(2025) 2 SCC 815***, their Lordships have held as follows:-

> *23. Indisputably, the accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self-inflicted, the accused suffered*

*any other ante-mortem injury. Moreover, the presence of the accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable under Section 304-B IPC if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/cruelty at the instance of the appellants in connection with any demand for dowry has not been proved beyond reasonable doubt.*

**53.** Admittedly, in the present case also, the manner of death was not proved by the prosecution. Further, the presence of the accused at the time of the incident was also not proved. In the absence of a dead body, the question of the manner of death cannot be proved by the prosecution. Furthermore, as to why the family members of the deceased kept quiet, for four days, if at all the death occurred due to unnatural circumstances or otherwise than under normal circumstances, was not at all explained by the prosecution. Therefore, it can be construed that there were deliberations and consultations prior to lodging of the FIR.

**54.** In the case of ***Karan Singh V. State of Haryana*** reported in ***(2025) SCC OnLine SC 214***, their Lordships have held as follows:-

> *14. There is something fundamental which goes to the root of the matter. While deposing about the demand of dowry, she has not deposed to any particular act of cruelty or harassment by the appellant. This is an essential ingredient of Section 304-B. It is not made out from the evidence of PW-6.*
>
> *16. He accepted the allegation that the accused used to maltreat his sister on account of insufficient dowry given in the marriage and having brought broken furniture is not found in both the police statements. He also stated that the demand for a refrigerator, a motorcycle, and a mixi does not find place in both statements. Therefore, the version of para-7 in his examination-in-chief about the demands of dowry is a significant and relevant omission. Hence, this amounts of a contradiction.*
>
> *In the said case, the demand for refrigerator, motorcycle and mixi was mentioned in the third statement, which was*

*recorded at a belated stage and the Apex Court found it as an afterthought.*

**55.** In the present case as well, this Court is of the view that, if at all there was any harassment or cruelty infected by the appellants towards the deceased for demand of additional dowry, they ought to have file a case under Section 498-A of IPC. Except for the evidence of P.W. 6 and Exhibit-2, the letter, which was marked subject to objection, there is no other material on record to prove the alleged demand for a colour TV or solar energy equipment. It is also pertinent to mention that the trial Court has failed to record any contradictions or omissions, during the course of trial, though there are clear omissions and improvements in the 161 Cr.P.C. statements, made by the prosecution witnesses.

**56.** Upon perusal of the entire evidence on record including oral and documentary, and considering the proposition of law laid down by the Hon'ble Apex Court, it can be construed that the prosecution has miserably failed to prove that the death of the deceased occurred otherwise than under normal circumstances and that she was subjected to cruelty soon before her death. Therefore, the offence under Section 304-B of IPC cannot be sustained, and the judgment of conviction and sentence for the offence punishable under Section 304 of IPC is liable to be set aside.

**57.** It is relevant to mention the proposition laid down by the Hon’ble Apex Court, in the case of ***Mungeshwar Prasad Chaurasia and Anr v. State of Bihar***, reported in ***(2002) 10 SCC 163,*** wherein, their Lordships dealt with the case relating to Section 304-B, 201 r/w 34 of IPC and 498A of IPC, have held as follows:-

> ***5.*** *In the above circumstances it is difficult to sustain the conviction under Sections 304-B and 498-A IPC so far as the appellants are concerned. As Section 201 IPC cannot be separated from the substantive offence, we think it is an idle exercise to consider whether conviction under Section 201 IPC can independently be fastened with the appellants. We, therefore, allow the appeal and set aside the conviction and sentence passed on the appellants. They are acquitted.*

**58.** In the present case, the charge under Section 201 of IPC was framed against the appellants on the ground that the appellants have screened away the evidence by cremating the dead body of the deceased.

Section 201 of IPC deals with the offence of causing disappearance of evidence, which reads as follows:-

> ***201. Causing disappearance of evidence of offence, or giving false information, to screen offender. -*** *Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,*
>
> ***if a capital offence.*** *— shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
>
> ***if punishable with imprisonment for life****. — and if the offence is punishable*

*with 1 [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*

***if punishable with less than ten years imprisonment****. — and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the the offence, or with fine, or with both.*

**59.** The sentence under Section 201 of IPC is categorized differently depending upon the gravity of principal offence. If the major offence is a capital offence, then the punishment may extend to seven years and shall also be liable to fine. If the punishment is for life imprisonment, the accused shall be punished with imprisonment either description which may extend to three years or liable to be fine. If major offence is for less than ten years imprisonment, then the punishment would be ¼ part of the maximum term of the imprisonment provided for the offence, or with fine, or with both. When the major offence itselfe is not proved by the prosecution and is liable to be set aside, there cannot be any punishment imposed under Section 201 of IPC. Therefore, the conviction and sentence imposed under Section 201 of IPC is also liable to be set aside.

**60.** The defence evidence is not discussed at length, as the documents were marked through formal witnesses, who have no knowledge of contents of the documents.

**61.** At this juncture, it is relevant to rely on the judgments of the 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."*

**62.** 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 has to 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 have to be ended.

**63.** In view of the above forgoing discussions, the judgment of conviction and sentence passed by Additional District and Sessions Judge Ist, Jahanabad, in Sessions Case No. 215 of 2000/ Sessions Trial No. 035 of 2001, dated 04.03.2004 is liable to be set aside, and the appellants in Cr. Appeal No. 153 of 2004 and the appellants in Cr. Appeal No. 233 of 2004, are hereby acquitted of the offences punishable under Section 304-B and 201 of Indian Penal Code.

**64.** The record reveals that the appellant in Cr. Appeal No. 153 of 2004 was enlarged on bail by the Court vide order dated 26.04.2004 and appellants in Cr. Appeal No. 233 of 2004 were released on bail 08.11.2004. Hence, the bail bonds of the appellants shall stand cancelled. It is also pertinent to mention that the appellant No. 3 in Cr. Appeal No. 233 of 2004 died during the pendency of the appeal, therefore, no separate order is necessary in that regard.

**65.** In result, the appeals are allowed.

**(G. Anupama Chakravarthy, J)**

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