

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.131 of 2004

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1. Ramesh Ram (Appellant name abated vide Hon'ble Court's order dated 04-12-2024) S/O- Ram Chandra Ram R/O Village- Baijnathpur @ Khanpur, P.S- Ahiyapur, Dist- Muzaffarpur.
 2. Ram Chandra Ram S/O Late Bhuta Ram R/O Village- Baijnathpur @ Khanpur, P.S- Ahiyapur, Dist- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mrs. Vagisha Pragya Vacaknavi, Amicus Curiae
For the Respondent/s : Mr. Sayed Ashfaque Ahmad, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 20-03-2025

1. The criminal appeal is arising out of impugned judgment and order dated 21.02.2004, passed by the 1st Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 484 of 2000, by which the appellants were convicted under Sections 304-B and 201 of Indian Penal Code. They were sentenced to undergo rigorous imprisonment for a period of seven years for the offence punishable under Section 304-B of Indian Penal Code and three years for the offence punishable under Section 201 of Indian Penal Code. Further, a fine of Rs. 1000/-



each was also imposed for the offence punishable under Section 201 of Indian Penal Code, and in default of payment of fine, they shall undergo rigorous imprisonment for one month.

2. It is pertinent to mention that, initially, three accused were arrayed in the FIR; however, charge-sheet was submitted only against appellant Nos. 1 and 2, namely, Ramesh Ram and Ram Chandra Ram. Consequently, the trial was conducted only against these two accused. During the course of the trial, it was brought to the notice that accused Pariya Devi, wife of appellant No. 2, had passed away, hence, no charge-sheet was filed against her.

3. The present appeal pertains to the year 2004, and this Court had called for a report from the Superintendent of Police, Muzaffarpur, as to know the status of the appellants as none appeared for appellants. Accordingly, this Court received a letter from Superintendent of Police, Muzaffarpur, reporting that appellant No. 1 Ramesh Ram had passed away, while appellant No. 2 Ram Chandra Ram is alive. Consequently, this Court abated the criminal case



against appellant No. 1, Ramesh Ram, vide order dated 04.12.2024, and the appeal was directed to proceed against appellant No. 2 alone, who is father-in-law of the deceased.

4. The case of the prosecution, as per the written report of the informant/ P.W.5/ Baiju Ram, addressed to the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur, dated 22.07.1999, disclose that the deceased/ Dipani Devi @Dukhni was the sister of the informant, and was married to the appellant No. 1, three years prior to the date of written report. Appellant No. 2, Ram Chandra Ram, demanded a dowry of rupees three thousand from the father of the deceased/ i.e. P.W. 4/ Sant Lal Ram. It was alleged in the written report that the informant promised to arrange the dowry after the marriage, which was accepted by appellant No. 2, and the marriage was solemnized. After the marriage, the deceased accompanied appellant No. 1 to her matrimonial home, but she was not allowed to visit her parental home and was subjected to various form of torture. It is also alleged that the husband and the



in-laws of the deceased used to assault her, and she informed the informant about it. Whenever, the informant visited her, the deceased requested him to arrange money; fearing that she might otherwise be killed by her matrimonial family members. On that, the informant/ P.W. 5 met the appellants and the mother-in-law of the deceased and requested them not to assault the deceased. He also expressed his inability to pay the money, due to poverty but assured them that he would pay it, once he arrange the funds. Further, P.W. 5 requested that the deceased be permitted to accompany him, but the appellants and the mother-in-law of the deceased refused for it. On 21.07.1999, when P.W. 5 visited to the house of the appellants, he could not find anyone there and on questioning a boy who was playing nearby the house, he was informed that the family members had killed his sister and burnt her body in the backyard. When he tried to verify this information from the neighbours, they made excuses and refused to speak to him. Thereafter, he approached the police station, but the police also refused to register



the case and as such the written report was submitted to the Deputy Inspector General, Tirhut Range, Muzaffarpur.

5. Basing on the written report of the informant dated 22.07.1999, a case was registered against the appellants and the mother-in-law of the deceased, in connection with Ahiyapur Police Station Case No. 170 of 1999. After due investigation, on 13.01.2000, the police submitted a charge-sheet against the appellants for the offences punishable under Section 304-B of Indian Penal Code, keeping the investigation pending against Pariya Devi, the wife of appellant No. 2. On 02.12.2000, the trial Court framed charges against the appellants for the offences punishable under Sections 304-B and 201 of Indian Penal Code. The charges were read over and explained to the appellants in Hindi, for which the appellants pleaded not guilty and claimed to be tried.

6. The prosecution has examined altogether six witnesses i.e. P.Ws. 1 to 6, and marked one Exhibit. The name and details of P.Ws. and list of exhibit are as follows:-



Prosecution witness No.	Prosecution witness name
P.W. 1	Budhan Singh
P.W. 2	Pramod Kumar Singh
P.W. 3	Nagendra Ram
P.W. 4	Sant Lal Ram
P.W. 5	Baiju Ram
P.W. 6	Ramdeo Ram Ravi

Sl. No.	Exhibit	Exhibit Details
1.	Ext. 1	Signature of P.W. 5 Baiju Ram on written report

7. After considering the entire oral and documentary evidence on record, the trial Court convicted the appellants for the offences punishable under Sections 304-B and 201 of Indian Penal Code.

8. The points for determination in this appeal are :-

(i) Whether the prosecution is able to prove the guilt of the appellants for the offences punishable under Sections 304-B and 201 of Indian Penal Code beyond reasonable doubt?

(ii) Whether the trial Court has rightly convicted the appellants for the aforesaid offences?



9. As none appeared for the appellants, this Court was constrained to appoint *Amicus Curiae*, Ms. Vagisha Pragya Vacakanvi vide order dated 18.08.2023.

10. Heard the Learned *Amicus Curiae* and the Learned Additional Public Prosecutor.

11. It is contended by the Learned *Amicus Curiae* that the trial Court has not properly appreciated the evidence on record and the prosecution has miserably failed to prove the essential ingredient that the deceased was harassed by the appellant and his family members soon before her death. It is further contended that apart from the allegation that the appellant No. 2 demanded Rs. 3000/- (Rupees three thousand only) as dowry, there is no other accusation against him, and in the absence of such evidence, the trial Court ought not to have convicted him. It is further contended by the Learned *Amicus Curiae* that she has restricted her arguments only with respect to appellant No. 2, as appellant No. 1 the criminal case against him was abated.



12. To support her contentions, she relied on the judgment of the ***Satvir Singh Vs. State of Haryana*** reported in **2021 6 SCC 1** relied upon the citation of the Hon'ble Apex Court in ***Major Singh Vs. State of Punjab*** reported in **2015 5 SCC 201**, where a three bench Judge of the Hon'ble Apex Court dealt with the essential ingredients of Section 304-B of Indian Penal Code and therefore, prayed to set aside the judgment of conviction and sentence passed by the trial Court.

13. On the other hand, the Learned Additional Public Prosecutor contended that there is no error or irregularity found in the judgment of the trial Court and also convicted that the appellants had destroyed the evidence prior to the arrival of the family members of the deceased, and therefore, prayed to confirm the judgment of the trial Court.

14. It is not necessary to reiterate the entire facts as well as the evidence on record, and this Court eschews unnecessary details. However, it is necessary to re-appreciate the evidence of P.Ws. 1



to 5 to decide the points for determination in the appeal.

15. P.W. 1/ Budhan Singh, testified that he did not know anything regarding the instant case, and that his statement was not recorded by the police. At the instance of the prosecution, this witness was declared hostile.

16. P.W. 2/ Pramod Kumar Singh, is a co-villager of the appellants. His evidence disclose that the deceased died one year prior to the trial and that the deceased's grandfather came to the village two or three days after her death. He further stated that he heard the deceased had died due to diarrhea. In cross-examination, he testified that he had good terms with appellant No. 2 and the deceased's grandfather and that he had never heard of appellant No. 1 misbehaved with his wife/deceased.

17. As per the evidence of P.Ws. 1 and 2, there is no incriminating evidence against appellant No. 2.

18. P.W. 3/ Nagendra Ram, is the uncle of the deceased. His evidence disclose that the



deceased was married to appellant No. 1 and had joined the matrimonial home after the marriage. He stated that the deceased was harassed for a dowry of Rs. 3000/- (Rupees Three Thousand only) by her in-laws and her husband and that she was murdered by them. His evidence further disclose that after receiving the information, he went to the appellants' house, where local people informed him that the appellants had burnt the dead body in the agricultural field, located in the backyard of the house.

19. In cross examination, P.W. 3 testified that he was not examined by the police during the course of investigation. The deceased never came to her parental home after the marriage, and he had never visited Dipani's in-laws' house. He further testified that he received information from one Kishori Ram of Bochaha that Dipani died and that he conveyed the same to her family members. He also testified that the deceased's mother-in-law, Pariya Devi, informed him that Dipani had died due to illness.



20. As per the evidence of P.W. 3, he is a hearsay witness and has no personal knowledge of the incident.

21. P.W. 4/ Sant Lal Ram, is the father of the deceased. His evidence disclose that Dipani (deceased) was married to appellant No. 1 about five years ago, and after marriage, she had joined her matrimonial home. He further stated that the in-laws of the deceased did not allow her to visit her parental house, as the dowry demand of rupees three thousand, promised by him was not paid. He further testified that the in-laws used to abuse her for not giving money and that they murdered the deceased. He came to know about the incident through a rickshaw puller on that, he along with his son and two other persons, went to the house of appellants, but did not find his daughter. However, the appellant No. 2 was wearing *utri*. They came to know through the villagers that deceased was murdered and her dead body was burnt. The appellants did not inform them about the death of the deceased before the cremation.



22. In the cross examination, P.W. 4 testified that he did not know the rickshaw puller who informed him about the incident, nor did he know whether the rickshaw puller was examined by the police. When he went to the house of the appellants, all the family members were present, but he did not talk to anyone. There were 2 to 4 women present, who informed him that his daughter had been murdered, but he could not recall their names. He further testified that he saw ashes spread on the ground towards the southern side of the house. He also stated that no one was present at the time when the demand for dowry was made by his son-in-law. The said demand was made after three years of marriage, but he did not remember the day, date or year of the demand. He denied the suggestions that the deceased died due to illness, that they were informed about the illness of the deceased, and that a false case was registered against the appellants to extort illegal money.

23. P.W. 5/ Baiju Ram is the informant and brother of the deceased. His evidence disclose that



at the time of marriage, P.W. 4 could not pay Rs. 3000/- (Rupees Three Thousand Only), as dowry, and after marriage, the deceased had joined her matrimonial house. Due to non-payment of dowry amount, the in-laws of the deceased were not performing her *Bidagari* and they harassed and assaulted her. He further testified that he often visited the matrimonial house of his sister, and his sister used to inform him about the harassment made by her husband and her in-laws. She also requested him to arrange the money; otherwise, they would kill her. Upon this, he assured the in-laws of the deceased that the money would be paid once it was arranged. P.W. 5 further testified that on 17.07.1999, he sent his father to perform *bidagari*, but his sister did not get her *bidagari* on and, P.W. 4 returned. On 21.07.1999, he went to the house of the appellants at about 3:00 PM to perform the *bidagari* ceremony but found no one at the house. He further deposed that upon asking the villagers, he did not receive any information, but a ten year old boy informed him that the deceased was murdered and



her body was burnt behind the house. On that, he went to police station, but the police refused to register the case. Thereafter, he approached the Deputy Inspector General and filed a written report. His signature on the written report was marked as Exhibit 1. His evidence further disclose that the Sub-Inspector took him to the place of occurrence and also recorded his statement.

24. In the cross-examination, it is testified by P.W. 5 that he is a literate and further stated that the marriage of the deceased was performed in the month of *Vaishakh*. P.W. 4 and his maternal uncle had gone to Khanpur Baijnath for the marriage negotiations and after the marriage, he went five or six times for *Bidagari* but could not state the dates, months or years. He deposed that he went for *Bidagari* for the first time immediately after eight days of the deceased's marriage, but the deceased did not complain to him about any assault. After one year of marriage, the deceased complained to him about the harassment made by her in-laws. On 21.07.1999, when he went to the house of



appellants, he did not talk to the neighbours nor did he try to find the little boy gave him the information. He went to the backyard and found that the dead body was burnt in a pit dug behind the house. As the police refused to register the case, he got his application written by Banke Babu, an advocate, in the morning of 22.7.1999 and presented it before the Deputy Inspector General of Police, who, in turn, directed the police station to register the case.

25. On perusal of the evidence of P.Ws. 4 and 5, who are the father and brother of the deceased, it can be construed that they had no personal knowledge about the death of the deceased. Their evidence clearly disclose that they had promised to pay Rs. 3000/- (Rupees Three Thousand Only) at the time of marriage. The deceased died five years after her marriage and till that, they had not paid the said amount as dowry. The evidence of P.W. 5 clearly disclose that he was informed about the harassment and assault committed by the appellants and the mother-in-law during the lifetime of the deceased.



26. P.W. 6/ Ramdeo Ram Ravi, is the police official who investigated the case and filed the charge-sheet under the supervision of the Deputy Superintendent of Police. The evidence of P.W. 6 is nowhere helpful to the prosecution, as he did not testify before the Court regarding the manner of investigation conducted by him.

27. In order to constitute an 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 either to commit suicide or the death must occur due to injuries, burns or other than under normal circumstances. Admittedly, there is no evidence on record as to the manner of the death of the deceased. As per the evidence of P.Ws. 4 and 5, it is a case of homicide. However, the trial Court did not frame any charge for the offence punishable under Section 302 of Indian Penal Code. The only charges framed against the appellants were under Sections 304-B and 201 of Indian Penal Code.

28. On the one hand, it is the case of the informant that he was informed about the death of



the deceased through a little boy and when he went to the house of the appellants, he did not find anyone there. However, in cross-examination, he specifically testified that he found people in the house of the appellants, but did not talk to them. On the other hand, P.W. 4, the father of the deceased, testified that he came to know about the death through one Kishori Ram. However, neither the little boy nor Kishori Ram was examined as prosecution witnesses to corroborate the evidence of P.Ws. 4 and 5. P.Ws. 4 and 5, in one voice, stated that they could not obtain any information from the neighbours, despite their efforts. A major contradiction which arose from the evidence of P.W 4 and P.W. 5. is that according to P.W. 4, he came to know about the death of the deceased through Kishori Ram and, upon receiving this information, went to the house of appellants along with P.W. 5 and others. However, as per the evidence of P.W. 5, it appears that he alone went to the house of appellants on 21.07.1999, where he came to know about the murder of the



deceased through a little boy and did not find anyone in the house.

29. At this juncture, the Learned counsel relied on the judgment of the Hon'ble Apex Court in ***Kunhiabdulla and Anr. Vs. State of Kerala*** reported in **(2004)4 SCC 13**, wherein the 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 Indian Penal Code, 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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code.)

(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 Indian Penal Code 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 Indian Penal Code 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 Indian Penal Code 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.”

30. 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. In the present case, the prosecution has miserably failed to prove that the deceased, Dipani, was subjected to cruelty for demand of dowry demand soon before her death.



31. In the case of **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.”

32. In the present case also, it is the specific case of the prosecution that the deceased Dipani was murdered by the appellants, therefore, the duty is casted upon the prosecution to prove that the deceased was subjected to harassment, prior to her death and that subsequently, the appellants murdered the deceased.

33. It is also relevant to discuss the judgment of the Hon’ble Apex Court in **Pushpendra Singh & Ors. Vs. State (Criminal Appeal No.**



160 of 2015) reported in **(2015) SCC Online Del 12748** wherein the Division Bench decided the similar questions. After referring to the provisions contained in Section 304-B of the Indian Penal Code and Section 113-B of Indian Evidence Act, along with 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”

34. Admittedly, live and proximate link as referred in the above judgment is missing in the present case. Apart from that, the trial Court has not framed alternative charge under Section 302 of



Indian Penal Code inspite of the evidence of P.Ws. 4 and 5 indicating that the appellants committed the murder of the deceased. The evidence of Investigating Officer is also missing in the case to prove whether the death is homicidal or natural death. The trial Court ought not to have presumed that the deceased was subjected to cruelty soon before her death, in absence of proper evidence on record. Admittedly, there is no direct evidence. The entire case is based on circumstantial evidence and the prosecution has miserably failed to prove the chain of circumstances.

35. It is specific contention of the Learned Amicus Curaie that the prosecution has miserably failed to prove that the deceased was subjected to cruelty by the appellants in connection with any demand for dowry.

36. At this juncture, the Learned amicus curiae relied on the judgment of **Satbir Singh & Anr Vs. State of Haryana** reported in **2021 6 SCC 1**. wherein their Lordships have held as follows:-



8. At the outset, it is pertinent to analyze the law on dowry death. Section 304-B, which defines , and provides the punishment for dowry demand, reads as under

“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."

Section 304-B (1) defines 'dowry death' of a woman. It provides that 'dowry death' is where death of a woman is caused by burning or bodily injuries occurs otherwise than under normal circumstances, within seven years of marriage, and is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband, in connection with demand for dowry. Sub-clause (2) provides for punishment for those who cause dowry death. Accordingly, in **Major Singh V. State of Punjab**, (2015) 5 SCC 201, a three-judge Bench of this Court held as follows:-

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

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



(ii) such a death should have occurred within seven years of her marriage:

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

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

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

9. The first contentious part that exists in the interpretation of Section 304-B, IPC relates to the phrase "soon before" used in the Section. Being a criminal statute, generally it is to be interpreted strictly. However, where strict interpretation leads to absurdity or goes against the spirit of legislation, the courts may in appropriate cases place reliance upon the genuine import of the words, taken in their usual sense to



resolve such ambiguities. [refer **Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company.** (2018) 9 SCC 1. **State of Gujarat v. Mansukhbhai Kanjibhai Shah**, 2020 SCC OnLine SC 412]. At this juncture, it is therefore necessary to undertake a study of the legislative history of this Section, in order to determine the intention of the legislature behind the inclusion of Section 304-B, IPC.

10. Section 304-B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a long-standing social evil. The pestiferous nature of dowry harassment, wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unno10. Section 304-B, IPC is one among many legislative initiatives undertaken by Parliament to remedy a long-standing social evil. The pestiferous nature of dowry harassment,



wherein married women are being subjected to cruelty because of covetous demands by husband and his relatives has not gone unnoticed. The Parliament enacted the Dowry Prohibition Act, 1961 as a first step to eradicate this social evil. Further, as the measures were found to be insufficient, the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) was passed wherein Chapter XX-A was introduced in the IPC, containing Section 498-A.

11. However, despite the above measures, the issue of dowry harassment was still prevalent. Additionally, there was a growing trend of deaths of young brides in suspicious circumstances following demands of dowry. The need for a stringent law to curb dowry deaths was suo motu taken up by the Law Commission in its 91 Law Commission Report. The Law Commission recognized that the IPC, as it existed at that relevant time, was insufficient to tackle the issue of dowry



deaths due to the nature and modus of the crime. They observed as under:

"1.3 If, in a particular incident of dowry death, the facts are such as to satisfy the legal ingredients of an offence already known to the law, and if those facts can be proved without much difficulty, the existing criminal law can be resorted to for bringing the offender to book. IN practice, however, two main impediments arise -

**(i) either the facts do not fully fit into the pigeon-hole of any known offence; or
(ii) the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult."**

(emphasis supplied)

12. Taking into consideration the aforesaid Law Commission Report, and the continuing issues relating to dowry related offences, the



Parliament introduced amendments to the Dowry Prohibition Act, as well as the IPC by enacting Dowry Prohibition (Amendment) Act, 1986 (Act 43 of 1986). By way of this amendment, Section 304-B, IPC was specifically introduced in the IPC, as a stringent provision to curb the menace of dowry death in India. Shrimati Margaret Alva, who presented the Amendment Bill before Rajya Sabha observed as follows:

"This is a social evil and social legislation, as I said cannot correct every thing. We are trying to see how and where we can make it a little more difficult and therefore we have increased the punishment. We have also provided for certain presumptions because upto now one of our main problem has been the question of evidence. Because the bride is generally burnt or the wife is burnt behind closed doors in her in-law's home. **You have never really heard of a girl being burnt while cooking in her**



mother's house or her husband's house, It is always in the mother-in-law's house that she catches fire and is burnt in the kitchen. Therefore, getting evidence immediately becomes a great bit problem. Therefore, we have brought in a couple of amendments which give certain presumptions where the burden of proof shifts to the husband and to his people to show that it was not a dowry death or that it was not deliberately done."

(emphasis supplied)

13. There is no denying that such social evil is persisting even today. A study titled "Global study on Homicide: "Gender-related killing of women and girls," published by the United Nations Office on Drugs and Crime, highlighted that in 2018 female dowry deaths account for 40 to 50 percent of all female homicides recorded annually in India. The dismal truth is that from



the period 1999 to 2016, these figures have remained constant. In fact, the latest data furnished by the National Crime Records Bureau indicates that in 2019 itself. 7115 cases were registered under Section 304-B, IPC alone.

14. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, "soon before" they did not mean "immediately before". Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exacts the phrase "soon before" entails. The aforesaid position was emphasized by this Court, in the case of **Kans Raj v. State of**



Punjab, (2000) 5 SCC 207, wherein the three-judge Bench held that:

"**15....** "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit.... **In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct, Such conduct may be spread over a period of time. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be**



**treated as having become
stale enough."**

(emphasis supplied)

A similar view was taken by this Court in ***Rajinder Singh v. State of Punjab***, (2015) 6 SCC 477.

15. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination, is the establishment of a "proximate and live link between the cruelty and the consequential death of the victim.

16. When the prosecution shows 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', a presumption of causation arises against the accused under Section 113-B of the Evidence Act. Thereafter, the accused has to rebut this statutory presumption. Section 113B, Evidence Act reads as under:-

113B. 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 purpose of this section, "dowry death" shall have the same meaning as in section 304aB of the Indian Penal Code (45 of 1860)"

37. It is also necessary to reiterate the discussion in case of ***Bansi Lal vs. State of Haryana***, reported in **(2011) 11 SCC 359** which is as follows:-

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death. It may also be pertinent to mention herein that the expression "soon before her death" has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the



demand of dowry and act of cruelty or harassment and the death. (Vide T. Aruntperunjothi v. State; Devi Lal v. State of Rajasthan; State of Rajasthan v. Jaggu Ram, SCC p. 56, para 13; Anand Kumar v. State of M.P. and Undavalli Narayana Rao v. State of A.P.)

38. In the case of ***Hira Lal and Others vs. State (Govt. of NCT), Delhi*** reported in **(2003) 8 SCC 80** which is as follows:-

9. 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. The 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 presumption operates. Evidence in that regard has to be led by the prosecution. "Soon before" is a relative term and it would depend upon the 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 their 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 the 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.

39. On analysis of the above citation, it is evident that the prosecution claims that soon before the occurrence, the victim was subjected to cruelty. However, in the present case, there is no evidence on record to show that the victim/deceased was subjected to cruelty by the appellants soon before



her death. The entire case of prosecution is that P.W. 5 had promised to pay Rs. 3000/- (Rupees Three Thousand Only) at the time of marriage. Admittedly, the death of the deceased occurred within seven years of her marriage. The evidence of P.Ws. 4 and 5 clearly disclose that the promise of dowry itself was not fulfilled for a period of five years. The evidence of P.Ws. 4 and 5 itself disclose that dowry amount, as promised, was not paid to the appellants. No definite period has been indicated for the expression 'soon before'. The Prosecution has miserably failed to prove that the death of the deceased was due to burns, bodily injury or occurred otherwise than under normal circumstances, as required to attract the offence under Section 304-B of Indian Penal Code. In the present case, the trial Court has also not raised any presumption against the appellants that they caused dowry death. It is the specific contention of the appellants before the trial Court that the deceased died due to diarrhea. Furthermore, the evidence of P.Ws. 1 and 2 is nowhere helpful to the prosecution in proving the guilt of the appellants for



the charges leveled against them. The testimonies of P.Ws. 3 to 5 are not based on personal knowledge, but was on what they heard from others. There are also material contradictions between the evidence of P.Ws. 4 and 5.

40. At this juncture, it is relevant to rely upon the Judgment of the Hon'ble Apex Court in case of ***Sakatar Singh v. State of Haryana***, reported in **(2004) 11 SCC 291** which is as follows:-

Another witness, a family friend, though stated about harassment and ill-treatment on account of insufficient dowry but whatever he stated was not a fact which he had known personally. Later he made a statement to improve his earlier inadmissible statement. Therefore, to base a conviction on the evidence of this witness would be highly dangerous. Similarly, the statements of the maternal uncle of the deceased about the demand and the harassment meted out to the deceased were also not admissible as he had no personal knowledge but had heard from others about the same.



There was also contradiction between the statements of the deceased's mother and the deceased's brother in regard to the timing of the demand which is a material contradiction which goes to the root of the prosecution case.

41. The above citation referred in this case clearly applies to the facts and circumstances of the present case.

42. As stated supra, P.Ws. 4 and 5 had no personal knowledge about the incident, and there is no direct evidence in this case. Furthermore, the Court must put incriminating circumstances to the accused to seek response. In the present case, the incriminating evidence was not properly put to the appellant No. 2, except one single question, i.e., "There is evidence against you that on the night of 20th-21st July, you along with your son Ramesh Ram, tortured and assaulted your daughter-in-law Dipani @Dukhni, for not fulfilling your demand for dowry, and then burnt her corpse after hiding it, what do you say?"



43. 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."

44. 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.”

45 .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.”

46. 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."

47. 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.”



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

49. 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 excluded from consideration.

50. Except for the evidence of P.Ws. 4 and 5, there is no other material on record. As stated



(supra), the evidence of P.Ws. 4 and 5 contains material contradictions. The trial Court has erred in convicting the appellants under Sections 304-B and 201 of Indian Penal Code. It is the specific contention of the Learned Amicus Curaie that despite giving the intimation to the family members of the deceased, they did not turn up. Since the death occurred in the house, and it was a village, the appellants were constrained to cremate the dead body of the deceased. According to P.W. 4, he was informed about the death of the deceased through one Kishori Ram, but no date or time was specified in his testimony. Admittedly, the burden rests on the prosecution to prove these facts, and the prosecution has miserably failed to establish the guilt of the appellants beyond reasonable doubt for the charges leveled against them. Therefore, the trial Court erred in convicting the appellants for the aforesaid offences.

51. Accordingly, the judgment of conviction and order of sentence dated 21.02.2004 passed by the 1st Additional Sessions Judge, Muzaffarpur, in



Sessions Trial No. 484 of 2000, is hereby set aside and appellant No. 2 is acquitted for the aforesaid offences.

52. In result, the appeal is allowed.

53. The record reveals that appellant No. 2 was released on bail by this Court vide order dated 08.04.2004. Hence, the bail bonds of the appellant No. 2 shall stand cancelled.

(G. Anupama Chakravarthy, J)

Amandeep/-

AFR/NAFR	NAFR
CAV DATE	N/A
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