ORISSA HIGH COURT : CUTTACK

AFR

CRLA No.203 of 2015
CNR No.ODHC010168932015

An appeal under Section 374(2) of
the Code of Criminal Procedure, 1973,
from the judgment and order dated 6th April, 2015
of the Additional Sessions Judge, Jajpur
in C.T. No.126 of 2009

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Laxman Mahanta
Son of Natabara Mahanta
Of Village: Manitira, P.S.: Sukinda
District: Jajpur ... Appellant

-VERSUS-

State of Odisha ... Respondent

Counsel appeared for the parties:

For the Appellant : M/s. Uma Charan Mishra,
Asutosh Mishra,
J.K. Mahapatra,
D. Debadarsani and S. Dash,
Advocates

For the Respondent : Mr. Sonak Mishra,
Additional Standing Counsel.

P R E S E N T:

HONOURABLE
DR. JUSTICE SANJEEB K PANIGRAHI

AND

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Date of Hearing : 31.10.2026 :: Date of Judgment : 18.11.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The appellant, Sri Laxman Mahanta, faced trial in the Court of learned Additional Sessions Judge, Jajpur in Criminal Trial (C.T.) No.126 of 2009 for commission of offences punishable under Sections 498-A, 304-B and 302 of the Indian Penal Code, 1860 ("IPC", for short) and Section 4 of the Dowry Prohibition Act, 1961 ("DP Act", for short). The learned trial Court on conclusion of the trial, found the appellant guilty of offences under Section 302 and Section 304-B read with Section 498-A of the IPC, besides Section 4 of the DP Act and convicted him in exercise of provision of Section 235(2) of the Code of Criminal Procedure, 1973 (in short, "CrPC"). The appellant was sentenced to undergo imprisonment for life with fine of Rs.10,000/- (rupees ten thousand only), in default, to undergo rigorous imprisonment for one year more under Section 302 of IPC, rigorous imprisonment for seven years under Section 304-B read with Section 498-A of IPC and rigorous imprisonment for six months and fine of Rs.5,000/- (rupees five thousand only), in default, to undergo rigorous imprisonment for two months more under Section 4 of the DP Act. It is directed that all the substantive sentences of imprisonment would run concurrently.

1.1. Hence, this appeal directed against Judgment dated 06.04.2015 (arising out of G.R. Case No.543 of 2008 in the file of Judicial Magistrate, First Class, Jajpur Road) has been filed.

Prosecution Case:

2. Filing First Information Report ("FIR" for short), it was reported to the Inspector-In-Charge of Sukinda Police Station on 9th August, 2008 by Sri Baidyanath Mahanta of Sorisapada under Gandia Police Station in the district of Dhenkanal (P.W.10) that his daughter (Kanchan Mahanta) married the appellant (Laxmana Mahanta) on 8th March, 2004 as per the Hindu rites and customs. But, after one year of the marriage, his daughter was subjected to cruelty in various ways and even not allowed to visit her parent's house. At the time of marriage, the informant has stated to have given one motorcycle and cash of Rs.15,000/- as dowry on demand of the bridegroom's family. The appellant and his other family members also demanded further articles like colour T.V., cash of Rs.50,000/- and a high value motorcycle. Though on earlier occasions whenever the deceased fell ill, a call was being received, but in the present occasion it was not intimated to him about ill-health of the deceased; but after the death, a call was received by the brother of the deceased for the purpose of taking her to hospital. The informant was intimated

by two of the villagers that his daughter has already expired. On the basis of said report, the Police registered Sukinda P.S. Case No.66 of 2008 under Sections 498-A, 304-B, 302/34 of IPC and Section 4 of the DP Act against the appellant.

2.1. The Inspector-In-Charge of Sukinda Police Station (P.W.14) after registration of the case, took up the investigation and in the course of investigation, he examined the informant (P.W.10) as well as other witnesses, visited the spot and prepared a spot map. He also examined some witnesses at the spot and intimated the Executive Magistrate and after his arrival on 10th August, 2008 he (P.W.14) held inquest over the dead body of the deceased. He also sent the dead body of the deceased to the Community Health Centre, Danagadi accompanied by Havildar (Jogendra Mohanty) for post-mortem examination. The dowry articles were seized and a seizure list was prepared. The same was handed over in *zima* of the informant under *zimanama* (Ext.5). He also seized the motorcycle bearing registration No.OR-06F-2135 as dowry article under the seizure list *vide* Ext.7/1 and handed over the same in *zima* of the informant under *zimanama* (Ext.4). On 9th August, 2008 he had seized medical prescription along with pathological report and malaria test card being produced by Laxman Mahanta. The wearing apparels of the deceased were seized after post-mortem examination. He



also received post-mortem examination report and made a query to the doctor *vide* query requisition under Ext.9/2 and he received the opinion report from the doctor. The appellant was arrested on 30th January, 2009 and forwarded to the Court. Material Objects were sent to the State Forensic Science Laboratory, Rasulgarh through the Court of Judicial Magistrate, First Class, Jajpur Road for chemical examination and on completion of investigation, he submitted the charge-sheet against the appellant under Sections 498-A, 304-B, 302, 406 of IPC and Section 4 of the DP Act against the appellant.

Framing of Charge:

3. After submission of charge-sheet, the case was committed to the Court of Sessions. The learned trial Court framed charges under Sections 498-A, 304-B, 302 of IPC and Section 4 of the DP Act against the appellant and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to.

Evidence during trial:

4. In order bring home charges against the appellant, the prosecution examined as many as 14 (fourteen) witnesses besides adducing documentary evidence in support of its case. Two witnesses were examined from

the side of the defence. P.Ws.1 and 2 are the barber and washerman respectively, who deposed about the marriage of the appellant with the deceased. P.Ws.3, 4, 5, 6, 7, 9, 11 and 12 are the relatives of the deceased from her parental side. P.W.10 is the father of the deceased, who lodged the F.I.R. P.W.13 is the Medical Officer, who conducted autopsy over the dead body of the deceased and P.W.14 is the Investigating Officer. The P.W.4, aunt of the deceased did not turn up to face the cross-examination despite the order of recall being passed by the learned trial Court. D.Ws.1 and 2 are the brother and cousin of the appellant.

Appreciation of evidence:

5. P.W.3 (uncle of deceased) deposed, *inter*-alia, that at the time of marriage of the deceased, as per in-laws' demand for dowry, the appellant was given cash and kind, and that 3 to 4 years of the marriage, the appellant demanded further dowry, non-compliance of which resulted in the deceased subjected to cruelty and torture. He further deposed that he had noticed marks of assault and injury on the body of the deceased, lying on a cot inside the house of the appellant. The other related witnesses have made identical versions as of P.W.3 during their examination-in-chief. But, the defence by way of cross-examining other witnesses as well as the Investigating Officer (P.W.14) could elicit contradictions

in the evidence of witnesses who were relatives. The net result is the relatives, examined as witnesses, omitted to state before the P.W.14 regarding demand of dowry.

5.1. Now, adverting to the evidence of the informant, the father of the deceased (P.W.10), he stated that one year after the marriage, both the deceased and the appellant had come to his house and at that point of time, the deceased had complained before him regarding demand of further dowry and torture meted to her. During cross-examination *vide* paragraph-4 of his evidence, he deposed that in presence of mediator, the issue relating to dowry got settled and the dowry articles presented by him at the time of marriage of the deceased with the appellant had been enlisted in writing, signed by himself and some gentlemen. At the same time, he admitted to have not stated these facts before the Investigating Officer regarding the details of dowry articles being given by him to the appellant at the time of marriage. He further named some of his relatives including P.W.9 (brother of the informant) witnessed giving of dowry articles by him at the time of marriage of the deceased. But, P.W.9, who is no other than the younger brother of P.W.10, has stated nothing about dowry demand, giving of dowry or dowry related torture. Ext.1 is the F.I.R. entered into evidence through the P.W.10 as well as the P.W.3, who scribed the same. P.W.10 neither in his F.I.R. nor in his evidence before the Court has stated

about any dowry demand to have been raised by the appellant at any point of time immediately before the death of the deceased. The Ext.1 recites, *inter-alia*, that one year after the marriage, demand of one colour T.V., one motor bike and cash of Rs.50,000/- had been demanded from the side of the appellant and/or his relatives. It was further alleged *vide* Ext.1 that the appellant and his other relatives acted together in a planned manner, and caused the death of the deceased. In fact, the F.I.R. (Ext.1) was registered against the appellant and his four other relatives, but on completion of trial, Charge-Sheet (Final Form) was filed by the police against the appellant alone. To put in other words, no evidence could be collected by the Investigating Agency to seek prosecution of any other relatives of the appellant.

5.2. With regard to demand of giving of dowry, no independent evidence has been adduced by the prosecution and equally, no evidence of any other named witness came on record to show that the deceased was subjected to any dowry related torture prior to the fateful incident.

6. Coming to the medical evidence produced by the prosecution, having gone through the evidence of P.W.13, who conducted autopsy over the dead body of the deceased on 10.08.2008 *vide* Ext.8 and also Ext.9,

which was subsequently furnished by P.W.13 to meet the query of the Investigating Officer (P.W.14), it could be observed that during the post-mortem examination, P.W.13 (Surgery Specialist) noticed tongue protruded out with red coloured liquid secretion from mouth and nose, swelling on the right side of the neck, subcutaneous emphysema, ecchymosis, abrasion, haemorrhage in the subcutaneous tissues, injuries on the neck, muscles and lacerated injuries involving the larynx and upper part of the trachea with full of blood. P.W.13 opined that death was due to asphyxia resulting from blunt trauma to the neck. He further stated that the injuries were antemortem in nature and sufficient to cause death in the ordinary course of nature. The said opinion of the doctor was further affirmed through Ext.9, which was duly proved during his re-examination.

6.1. For better appreciation the deposition of P.W.13 (the doctor, who conducted the post-mortem examination on the dead body of the deceased on 10th August, 2008, is quoted verbatim:

"On 10.08.2008 I was Surgery Specialist, Danagadi C.H.C. On the same day I conducted autopsy on the dead body of Kanchan Mahanta, wife of Laxman Mohanty of vill- Manitira being identified by Havildar J. Mohanty, and Gramarakhi Satrughan Patra.

The deceased was a female aged about 49 years, average body build. No rigor mortise was present, the

face was puffy, igamatus congested, cyanotic, tongue protruded out with red coloured liquid secreation from mouth and nose, Swelling of neck on right side having subtutanious empty sane of neck with ecchymocis on the right side of neck. A small abrasion of 1 c.m. diameter on the right side of the neck having no ligature mark on the neck. On dissection of the neck, hymmorage subtutantious tissue with air bubbles seen, and abrasion of few muscles of the right side of the neck also seen. Lacerated injury of lyrings and upper part of tracia with full of blood. The cause of death was due to axpicia due to blunt trauma on the neck. Other internal organs were intact and there was no other injury on other parts of the body. The injury on the neck were ante-mortem in nature. Dr. Niranjan Swain also assisted me during P.M. examination, but I had prepared this report. This is our report marked Ext.8 and this is my signature marked Ext.8/1, and this is the signature of Dr. Niranjan Swain marked Ext.8/2. The time since death was within 24 to 48 hours since the time of P.M. examination.

Such injury on the neck causes death in ordinary course of nature. There was no symptom of any fever or malaria fever on the dead body.

Cross-examination by defence:

The P.M. examination was conducted in the dead bouse of the hospital, but the report was prepared in the office. I had prepared a rough report in separate paper. This final report was prepared from that rough report, prepared at the time of examination. I had no submitted that rough report to the police. The report does not disclose, whether it was homicidal or suicidal or accidental as it was not possible to determined. It is not a fact that without seeing the chemical examination report on the viscera, it is not

possible to opine the cause of death. As it was a newly married couple and in usual practice we had collected viscera. I have not mentioned in my report that such injury on the neck causes death in ordinary course of nature, and I have also not mentioned that there was no symptom of fever or malaria fever on the dead body.

Both of us conducted examination of the body jointly. It is not a fact that we had not conducted the P.M. examination on the dead body, and that a false report has been submitted to oblige the police.

Drowning also causes Aspexia so also hanging. In both the cases, it may be homicidal or suicidal, aspexia is caused for various modes of death.

Re-examination:

The police had made a query regarding the possibility of death due to that injury in ordinary course. I had submitted my opinion in the positive. This is my report marked Ext.9, and this is my signature marked Ext.9/1.

Cross-exam, by defence

This report vide Ext.9 had been submitted on 29.1.2009. It is not a fact that such a report has been submitted vide Ext.9 to oblige police and it is afterthought."

6.2. It is an admitted fact that at the relevant point of time, *i.e.*, in the intervening night of 8th and 9th August, 2008, the appellant and the deceased were sleeping in the bedroom of the house of the appellant and none else was present there to give out any ocular account of the alleged incident. It is brought on record at the instance of the prosecution that on 08.08.2008 a pathology report

had been obtained showing the deceased to have been suffering from malaria fever. The appellant in his statement recorded under Section 313, CrPC, disclosed that the deceased died of malaria fever. There is, however, no explanation from the side of the defence as to how the ante-mortem injuries, as found by P.W.13, were occasioned on the body of the deceased.

7. The learned trial Court on appreciation of evidence, recorded conviction of the appellant not only under Section 302 of the IPC but also under Section 304-B read with Section 498-A of the IPC and also under Section 4 of the DP Act. Separate sentences have also been awarded *vide* the impugned judgment. When charges were separately framed by the learned trial Court under Section 302 and 304-B of the IPC, conviction and sentence separately on those counts was not impermissible. But, the moot question is, whether the prosecution could be able to prove the charges during the trial.

Rival contentions:

8. Sri Ashutosh Mishra, learned counsel appearing for the appellant submitted that the prosecution failed miserably to attract the charge of murder or the charge under Section 304-B of IPC against the appellant,

inasmuch as the ingredients thereof are found missing from the evidence of the prosecution.

8.1. Vociferous arguments were advanced by the learned counsel urging the Court to consider that, in light of the undisputed fact that the deceased was suffering from malaria and consequent physical weakness, the death could have been accidental. As no ligature mark was found on the neck of the deceased, as is emanating from the evidence of P.W.13 to the effect that "A small abrasion of 1 c.m. diametre on the right side of the neck having no ligature mark on the neck", the charges of culpable homicide amounting to murder cannot be said to have been proved to the hilt. Drawing attention of this Court to deposition of P.W.13 it is submitted that the doctor did not clarify whether the cause of death was homicidal/suicidal/accidental. Further the said witness was candid in his cross-examination that the injury on the neck can cause death in ordinary course of nature. Placing reliance on the seizure list which contained medical prescription and pathological report of the deceased, Sri Ashutosh Mishra, learned Advocate emphasised that even if it is conceded for the sake of argument, but not admitting, that the appellant did assault the deceased, the evidence of the doctor leads to prove that those specific injuries on the neck were not severe enough to cause the death under normal circumstances. Essentially, the learned counsel sought

to persuade this Court to alter the conviction from murder to culpable homicide not amounting to murder.

8.2. It is, thus, submitted that the conviction of the appellant under Section 304-B of IPC as recorded by the learned trial Court is based on no evidence. The evidence of D.Ws.1 and 2 would show that the appellant on the fateful day took the deceased to see a doctor in connection with treatment of malaria fever. They clearly have stated that the death could be caused due to such suffering. Had there been any intention to do away with the wife, the appellant could not have taken her to the doctor.

8.3. The learned counsel appearing for the appellant in support of his submissions has placed reliance on a decision of the Bombay High Court in the case of *Reg Vrs. Govinda, (1877) ILR 1 Bombay 342.*

9. Apropos the submissions and arguments so advanced, Sri Sonak Mishra, the learned Additional Standing Counsel appearing for the respondent, while relying on the circumstantial evidence as well as the medical evidence on record, submitted that it is the appellant-husband on application of last seen theory with cogent material could prove that under what circumstance the injuries were found on the neck of the deceased, as reported by the Surgery Specialist (P.W.13).

9.1. Vehemently opposing the suggestion of Sri Ashutosh Mishra, learned Advocate for the appellant that the case would fall within the ambit of culpable homicide not amounting to murder punishable under Section 304 as defined under Section 299, IPC, he proceeded to argue that the prosecution having established the charges against the appellant without any breach in the chain of circumstances, there is no reason to believe that the prosecution could not prove the fact of murder beyond all reasonable doubt, particularly when it remained undisputed that in the house there were none except the deceased and the appellant and the injuries found on the body of the deceased. He sought to clarify that the medical evidence on record and absence of plausible explanation from the side of the appellant regarding the cause of the ante-mortem external injuries, which could be found during autopsy.

9.2. Sri Sonak Mishra, the learned Additional Standing Counsel appearing for the Respondent has supported the conviction of the appellant and sentence recorded by the learned trial Court.

9.3. To buttress his arguments, he cited a decision of the Hon'ble Supreme Court of India rendered in the case of *Andhra Pradesh Vrs. Rayavarapu Punnayya, (1976) 4 SCC 382.*

Discussion and analysis upon re-appreciation of the evidence and materials on record:

10. Where the criminal charge is grave warranting severe punishment, especially capital punishment, the evidence adduced by the prosecution needs a deeper scrutiny. In the instant case the learned trial Court not only recorded conviction and awarded punishment under Section 304-B read with Section 498-A of the IPC, but also convicted and sentenced the appellant under Section 302 of IPC.

11. Before adverting to the question as to whether the charge under Section 302 of the IPC has been proved beyond reasonable doubt by the prosecution, it is felt expedient to delve into the question in relation to the challenge made in the criminal appeal against the conviction. Carefully examined the evidence on record and diligently considered the arguments advanced by both the sides.

12. Perusal of impugned judgment reveals that the conclusion arrived at to convict the appellant is based on circumstantial evidence and last seen theory.

12.1. Regard may be had to the principles illuminatingly enunciated in *Raghunatha Vrs. The State of Karnataka, 2024 SCC OnLine SC 365,* wherein it has been reiterated as follows:



"7. Undoubtedly, the prosecution case rests on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has very well been crystalized in the judgment of this Court in the case of Sharad Birdhichand Sarda Vrs. State of Maharashtra, (1984) 4 SCC 116, wherein this Court held thus:

'152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Vrs. State of Madhya Pradesh, (1952) 2 SCC 71 = AIR 1952 SC 343 = 1952 SCR 1091. This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi Vrs. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal Vrs. State of Maharashtra, (1972) 4 SCC 625 = AIR 1972 SC 656. It may be useful to extract what Mahajan, J. has laid down in Hanumant case, (1952) 2 SCC 71 = AIR 1952 SC 343 = 1952 SCR 1091:

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such

as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade Vrs. State of Maharashtra, (1973) 2 SCC 793 where the observations were made:

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

(2) the facts so established should be consistent only with the hypothesis of the

guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

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

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

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

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.'

8. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court held that it is a primary principle that the accused 'must be' and not merely 'may be' proved guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be

such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused."

13. For the purpose of a charge under Section 304-B of IPC, the prosecution ought to have proved that soon before death, the deceased was subjected to cruelty or harassment and such cruelty and harassment was in connection with demand of dowry.

13.1. The Hon'ble Supreme Court of India in the case of *Piyush, son of Deepak Narlawar Vrs. State of Maharashtra, 2026 INSC 1183 = 2026 SCC OnLine SC 2308*, observed as follows:

"28. Before delving into the merits of the case and the contentions of the parties, we find it apposite to discuss the aforementioned sections invoked against the appellant in the FIR. A bare perusal of the said FIR reveals that offence of dowry death as punishable under Section 304B of the IPC has been invoked. To establish the offence of dowry death, the following essential ingredients need 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.*

29. *The prosecution must at first establish the existence of the necessary ingredients for constituting an offence under Section 304-B of the IPC. Once these ingredients are satisfied, the rebuttable presumption of causality, provided under Section 113-B of the Evidence Act, 1872 operates against the accused."*

13.2. In *Satbir Singh Vrs. State of Haryana, (2021) 7 SCR 269* it has been observed as follows:

"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 Vrs. 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.****"*

A similar view was taken by this Court in Rajinder Singh Vrs. 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 304B of the Indian Penal Code (45 of 1860)"*

17. *This Court, in the case of Bansi Lal Vrs. State of Haryana, (2011) 11 SCC 359, emphasized the mandatory application of the presumption under Section 113-B of the Evidence Act once the ingredients of Section 304-B of IPC stood proved:*

> *"19. It may be mentioned herein thatthe legislature in its wisdom has used the word 'shall' thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. ... Therefore, in view of*

the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. …

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.'

18. Therefore, once all the essential ingredients are established by the prosecution, the presumption under Section 113-B, Evidence Act mandatorily operates against the accused. This presumption of causality that arises can be rebutted by the accused.

19. The usage of rebuttable presumption of causality, under Section 113-B, Evidence Act, creates a greater responsibility on Judges, defense and prosecution. They need to be extra careful during conducting criminal trials relating to Section 304-B, IPC. In order to address this precarious situation, procedural law has some safeguards, which merits mentioning herein."

13.3. Having the delineated scope for consideration of ingredients of constituting offence under Section 304-B of the IPC, at this juncture it may not be out of place to have reference to cross-examination of P.W.10, namely Baidyanath Mahanta, who is the father of the deceased, admitted to have settled the dowry articles to be given to the appellant ***"10 to 12 days before marriage"*** at his

house, but he could not divulge the exact date. Though he stated that a list was prepared, he could not produce the same nor did he tell *"about the details of the articles to the police"*. Such arrangement is stated to be before the marriage, which took place in the Month of March, 2004 (stated by Purno Chandra Mahanta, uncle of the deceased, P.W.3 and Ramesh Chandra Mahanta, the brother of deceased, P.W.5).

13.4. With respect to further demand of another motor cycle, colour television and cash worth Rs.50,000/- as dowry "after marriage" it is stated in the examination-in-chief by the P.W.10 that the same was demanded after one year of marriage. He stated thus:

"that my daughter during her visit to my house had complained of demand of Pulsar vehicle, colour television and cash of Rs.50,000/- and after 2 to 3 hours the accused left my house. It is not a fact that I had stated before the police that the accused stayed in my house for one day.

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Cross-examination by defence:

It is not fact I had not stated before the police that the accused had demanded motor cycle, cash of Rs.15,000/- and household articles and that those things had been given at the time of marriage, and that after one year of the marriage, I had gone to her house, and that she complained before me that she was assaulted and

abused in demanding cash of Rs.50,000/- and a colour television ...”

13.5. The Inspector-In-Charge of Sukinda P.S. (P.W.14) in his cross-examination stated that:

> *“8. I had examined Ramesh Chandra Mahanta (P.W.5)[1]. It is a fact that he had not stated before me that they had demanded cash of Rs.20,000/- and that after two months of the marriage they had demanded Rs.50,000/- with a colour television and that he had gone to their house. ****
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> *9. I had also examined Kalandi Mahanta (P.W.6)[2]. He had not stated before me that he had tried to convince the accused persons and that he expressed his inability to fulfil the demand...*
>
> *10. I had examined Susila Mahanta (P.W.7)[3]. It is a fact that she had not stated before me that after six months of the marriage she had come to their house and complained that the accused Laxman and his family members were demanding cash of Rs.50,000/- and a colour television and that the parents of the deceased were not able to fulfil the dowry demands and that they tried to convince the accused person and the family members, but they started torturing the deceased and that after four years of marriage, the accused Laxman and other family members murdered the deceased due to non-payment of dowry. It is not a fact that she had not stated before me that two months before her death the deceased had come to out house and had*

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1 Brother of the deceased.
2 Brother of the deceased.
3 Aunt of the deceased.

complained of demand of dowry by accused Laxman and other in-laws in demanding cash and colour television and that the deceased had sustained number of injuries on her person.

11. *I had examired Bauribandhu Pradhan (P.W.8). He had not stated before me that he had heard regarding demand for dowry of cash of Rs.50,000/- and a colour television, and that in his presence the accused and other in-laws of the deceased had demanded cash of Rs.15,000/- and motor cycle, and thet he had seen the dead body with numbers of injuries on it.*

12. *I had examined Baidyanath Mahanta (P.W.10)[4]. ... He had not stated before me that during visit of his daughter, she had complained of demand for dowry: Pulsar vehicle, colour television, and Rs.50,000/-, and that after remaining 2 to 3 hours at his house, the accused, went away, and he had not stated that on 08.08.2008 the elder brother of the accused had intimated me about the illness of his daughter ****

13. *I had examined Laxman Mahanta (PW12). He has been examined as Laxmidhar Mahanta. It is a fact that he had not stated before me that the accused had demanded cash of Rs.15,000/-, one motor cycle and household articles, and that after one year of the marriage, he had gone to the house of deceased, and that she had complained she had been tortured and assaulted and abused in demanding dowry of cash of Rs.50,000/- and colour television ..."*

13.6. Perusal of impugned judgment of the learned Trial Court it is apparent from paragraphs 24 and 25 thereof that:

[4] Father of the deceased.



"24. There is sufficient evidence regarding giving of dowries of Rs.15,000/- one motor cycle, gold ornaments at the time of marriage on demand, but after the marriage the accused demanded a colour television and cash of Rs.50,000/-. Two months before death also the accused was continuing such demand. ***But so far as the material aspect as to cruelty the evidence is not clear****.*

***

25. There is sufficient evidence as to taking dowry of one motorcycle, cash of Rs.15,000/- and gold ornaments at the time of marriage, and after the marriage also the accused was demanding further dowries of Rs.50,000/- and a colour television. Two months before marriage also he had demanded dowry. The parental family members of the deceased had come to convince the accued and had expressed their inability. ***Most of the witnesses without giving the details incidents of torture, went on deposing that the deceased had been torturing physically and mentally and ultimately she had been killed by throttling. If the deceased had not been put to cruelty in demanding dowry, what for the parental family members of the accused were trying to convince the accused.*******"*

13.7. This Court finds perversity in such finding of fact. On the one hand when the learned Trial Court perceives no clear evidence is brought forth that the deceased was treated with cruelty, yet on the basis of interested witnesses (parental family members of the deceased) it was assumed that there demand of further dowry. The

deposition of Inspector-In-Charge makes it clear that the subsequent story as to further demand of dowry after marriage is concocted one. Neither specific date(s) or occasion(s) were elicited by the prosecution from the evidence of witnesses nor was any independent witness examined to bring home the charge of offence under Section 304-B of the IPC read with Section 4 of the DP Act. As interpreted by the Hon'ble Supreme Court of India, the words "soon before her death" employed in Section 113-B of the Indian Evidence Act are significant in order to draw presumption that the deceased was subjected to cruelty or harassment for, or in connection with, any demand for dowry. On analysis of evidence on record, and on denial of D.W.2 (cousin brother of appellant) regarding demand for dowry, this Court is persuaded to hold that "soon before" the death of wife of appellant, there was no iota of evidence available to presume that the cruelty, if any, meted to the deceased was on account of demand for dowry. The evidence on record transpires that death of Kanchan Mahanta occurred on 08/09.08.2008. The death of the deceased took place within seven years of her marriage and the death was otherwise than in normal circumstances are undisputedly available on record.

13.8. Section 113-B of the Indian Evidence Act, 1872, is linked to the charge under Section 304-B of the IPC. As per Section 113-B of the Indian Evidence Act, the Court

shall presume as to dowry death, when 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. Needless to mention that the presumption as contemplated under Section 113-B of the Indian Evidence Act is bound to be drawn by the Court provided the essential requirements are present and fulfilled.

13.9. Now, reverting to the case at hand, the question arises, as to whether the deceased was subjected to any cruelty or harassment having relation to any demand of dowry soon before the case incident. The question also arises is, whether the appellant was able to rebut the presumption, if any, that could have been drawn against him under Section 113-B of the Indian Evidence Act.

13.10. As has already been observed hereinbefore, the prosecution failed to adduce sufficient or cogent evidence to prove the charges of dowry demand, such as cash of Rs.50,000/-, a colour television and a motorcycle. There is absence of sufficient material to indicate that the injuries sustained by the deceased have nexus with the dowry related torture. There was no independent corroboration regarding dowry demand, nor was there any oral or circumstantial evidence to show that the deceased was subjected to any torture or harassment owing to dowry. There is nothing on record

to show that with regard to the alleged dowry demand or dowry related torture, either the deceased or her parental side had made any complaint before the police, any other forum or at least village gentries. Rather, as shown by the prosecution itself, on the day preceding the night of the occurrence, there was a pathological test of the deceased at the instance of the appellant wherefrom it is discernible that the deceased was suffering from malaria fever. In these circumstances, the charge under Section 304-B of the IPC cannot be held to have been proved by the prosecution beyond reasonable doubt against the appellant, inasmuch as no credible or acceptable evidence was elicited in the examination of the witnesses. No independent witness could be produced for examination during the trial regarding dowry demand or dowry related torture soon before the death of the deceased. Rather the father of the deceased candidly admitted to have settled the dowry related issues before the marriage; but regarding subsequent demands he admitted not to have disclosed neither before the police nor before any other independent witness. Hence, the conviction and sentence of the appellant recorded by the learned trial Court under Section 304-B read with Section 498-A of the IPC as well as the charge under Section 4 of the DP Act cannot be sustained.

14. Now, adverting to the challenge against the conviction and sentence under Section 302 of the IPC, having gone through the evidence of P.W.13 (Surgery Specialist) and his reports *vide* Exts.8 and 9, it is disclosed that there was a swelling of neck on the right side of the deceased having "subtutanious emptysane of neck with ecchymocis on the right side of neck" besides "a small abrasion of 1 c.m. diametre on the right side of the neck having no ligature mark on the neck". It is categorically stated by the P.W.13 that no ligature mark was present on the neck of the deceased. As to the internal injury, the evidence of P.W.13 is that on dissection of the neck, "haemrrhage subtutantious" tissue with air bubbles seen, and abrasion of few muscles of the right side of the neck were also seen. Lacerated injury of lyrings and upper part of trachea with full of blood. *Vide* Ext. 8, he reported that the cause of death was asphyxia resulting from blunt trauma to the neck. Though in his examination-in-chief the P.W.13 stated that the nature of injury found on the neck of the deceased could be the cause of death in ordinary course of nature, but admitted, that part of his opinion was missing from Ext.8. In cross-examination it has been admitted as follows:

"I have not mentioned in my report that such injury on the neck causes death in ordinary course of nature, and I

have also not mentioned that there was no symptom of fever or malaria fever on the dead body."

14.1. Nonetheless, during re-examination the prosecution proved through him (P.W.13). The P.W.13 had given written opinion that:

"The police had made a query regarding the possibility of death due to that injury in ordinary course. I had submitted my opinion in the positive. This is my report marked Ext.9, and this is my signature marked Ext.9/1."

14.2. Thus, there was possibility of death due to the aforesaid injury in ordinary course of nature. Although the defence was critical on Ext.9 on account of delay, it is evident on record that since the P.W.13 in his injury report *vide* Ext.9 had not given any specific opinion as to whether or not the external injury found on the neck could have caused death in ordinary course of nature, subsequently the Investigating Officer (P.W.14) had made a specific query in that regard, and in response thereto, the P.W.13 submitted the report *vide* Ext.9, on the basis of the particulars embodied in Ext.8. This Court, hence, finds no reason to disregard or discredit the evidence of Surgery Specialist, which is entirely above board. Hence, without any hesitation, it can be held that the deceased died of asphyxia resulting from the external injury found on the neck.

14.3. Admittedly, there is no direct evidence on record, and in the case of present nature there could be no independent witness as in the house/bedroom none were present except husband (appellant) and wife (deceased). As suggested by the learned counsel for the appellant that the cause of death could be due to duel or quarrel between the husband and wife. In that view of the matter, the learned trial Court has rightly taken aid of Section 106 of the Indian Evidence Act.

14.4. Notice of provisions of Section 106 of the Indian Evidence Act can be taken. Said section stands thus:

> "*106. Burden of proving fact especially within knowledge.—*
>
> *When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*
>
> *Illustration.—*
>
> *(a) When a person does not act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*
>
> *(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."*

14.5. A plain reading of this provision along with the illustrations leaves no doubt in the mind of the Court that if a person has knowledge about any particular fact,

then the burden of proving that fact is upon him. In the facts and circumstances of the present case, the burden is, thus, shifted to the appellant to explain as to how the deceased received proven injuries on her neck which were fatal in nature.

14.6. The lame explanation offered by the appellant or the plea taken by him in defence that the deceased died due to malaria fever cannot be treated a plausible much less satisfactory explanation to discharge his burden under Section 106 of the Indian Evidence Act. Such an explanation, on the other hand, is found to be grave incriminating circumstances against the appellant in the face of the medical evidence on record and the explanation proffered from the side of the defence regarding the cause of the ante-mortem fatal injuries on the neck of the deceased is not acceptable.

14.7. In *Trimukh Maroti Kirtan Vrs. State of Maharashtra, (2006) 10 SCC 681* it has been succinctly held that based on circumstantial evidence where no eye witness account is available, the principle that is to be followed is: "when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete". In the said case the appellant had taken the plea that the death was

caused due to ailment, which was found to be false by the medical evidence of the doctor. In the present case like that of the reported case, injuries were found on the neck of the deceased and this Court having found no plausible explanation by the appellant the circumstantial evidence borne on record leads to one conclusion that the appellant committed the offence.

14.8. The following is the ratio of the decision rendered in the case of *Sharad Birdhichand Sarda Vrs. State of Maharashtra, (1984) 4 SCC 116*:

"It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete than a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court."

14.9. In the case of *Reena Hazarika Vrs. State of Assam, (2018) 13 SCR 1108* it has been held as follows:

"8. The essentials of circumstantial evidence stand well established by precedents and we do not consider it necessary to reiterate the same and burden the order unnecessarily. Suffice it to observe that in a

case of circumstantial evidence the prosecution is required to establish the continuity in the links of the chain of circumstances, so as to lead to the only and inescapable conclusion of the accused being the assailant, inconsistent or incompatible with the possibility of any other hypothesis compatible with the innocence of the accused. Mere invocation of the last seen theory, sans the facts and evidence in a case, will not suffice to shift the onus upon the accused under Section 106 of the Evidence Act, 1872 unless the prosecution first establishes a prima facie case. If the links in the chain of circumstances itself are not complete, and the prosecution is unable to establish a prima facie case, leaving open the possibility that the occurrence may have taken place in some other manner, the onus will not shift to the accused, and the benefit of doubt will have to be given."

14.10. The Hon'ble Supreme Court of India in the case of *Sudru Vrs. State of Chhatisgarh, (2019) 8 SCC 333* held, failure of the accused to furnish satisfactory explanation regarding the injury can be considered under Section 106 of the Indian Evidence Act and a false implication by the accused can fortify an already established finding of guilt. The following observations found in said judgment may profitably be quoted hereunder:

"5. The learned counsel for the appellant submitted that, the trial court as well as the High Court have erred in convicting the appellant and dismissing the appeal. It is submitted that, the case rests on circumstantial evidence and the prosecution has

utterly failed to prove the incriminating circumstances and in any case has failed to establish the chain of incriminating circumstances, which leads to no other conclusion than the guilt of the appellant. It is further submitted that, the star witness Janki Bai has turned hostile and as such there is no evidence to sustain order of conviction.

6. *No doubt, in the present case all the witnesses who are related to the accused and the deceased have turned hostile. PW 1 Janki Bai, wife of the appellant and the mother of the deceased has also turned hostile. However, by now it is settled principle of law, that such part of the evidence of a hostile witness which is found to be credible could be taken into consideration and it is not necessary to discard the entire evidence. Reference in this respect could be made to the judgment of this Court in Bhajju Vrs. State of M.P., (2012) 4 SCC 327, which reads thus:*

> *'36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.'*

7. From the evidence of PW 1 Janki Bai it would reveal, that insofar as that part of the evidence wherein, she has stated that there was a quarrel between her husband and her, she left the room with the other two children and the deceased and the appellant were alone in the room and that when she reached the house in the morning, she saw her son Ajit covered with the blanket and after opening the said blanket seeing Ajit to be dead is concerned, the same has remain unshattered. It could thus be seen that, from the evidence of PW 1 Janki Bai, it can be safely held that there was a quarrel between PW 1 Janki Bai and appellant and after the quarrel, she went to the house of her brother-in-law with two younger children and that the deceased was left alone in the company of appellant and on the next day morning the deceased was found to be dead.

8. ***In this view of the matter, after the prosecution has established the aforesaid fact, the burden would shift upon the appellant under Section 106 of the Evidence Act. Once the prosecution proves, that it is the deceased and the appellant, who were alone in that room and on the next day morning the dead body of the deceased was found, the onus shifts on the appellant to explain, as to what has happened in that night and as to how the death of the deceased has occurred."***

14.11. It is true that as per the settled principle of law, Section 106 of the Indian Evidence Act does not relieve the prosecution of its primary burden, and it is required to first establish the circumstances from which a reasonable inference of guilt can be drawn against the

accused. As discussed above, on the facts and in the circumstances of the present case it is admitted that the deceased was suffering from malaria fever and that the appellant was present in the house/bedroom along with the deceased in night of 08/09.08.2008. Further, the appellant, who had the knowledge about the incident that took place at the relevant point of time, did not disclose the same, and rather in the face of the unimpeachable medical evidence on record that the deceased died of the fatal injury, those were found on the person of the deceased, gave a false implication that the deceased died of malaria fever, instead of explaining the cause of such injury.

14.12. In the case of *Reg. Vrs. Govinda, (1877) ILR 1 Bom 342* it was held as follows:

> *"8. In the present case the prisoner, a young man of 18, appears to have kicked his wife (a girl of 15) and to have struck her several times with his fist on the back. These blows seem to have caused her no serious injury. She, however, fell on the ground, and I think that the evidence shows that the prisoner then put one knee on her chest, and struck her two or three times on the face. One or two of these blows, which, from, the medical evidence, I believe to have been violent and to have been delivered with the closed fist, took effect on the girl's left eye, producing contusion and discoloration. The skull was not fractured, but the blow caused an extravasation of blood on the brain, and the girl died*

in consequence either on the spot, or very shortly afterwards. On this state of facts the Sessions Judge and the assessors have found the prisoner guilty of murder, and he has been sentenced to death. I am myself of opinion that the offence is culpable homicide, and not murder. I do not think there was an intention to cause death; nor do I think that the bodily injury was sufficient in the ordinary course of nature to cause death. Ordinarily, I think, it would not cause death. But a violent blow in the eye from a man's fist, while the person struck is lying with his or her head on the ground, is certainly likely to cause death, either by producing concussion or extravasation of blood on the surface or in the substance of the brain. A reference to Taylor's Medical Jurisprudence (Fourth Edition, p. 294) will show how easily life may be destroyed by a blow on the head producing extravasation of blood."

14.13. Referring to the aforesaid decision in *Govinda (supra)*, the Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of *Bhagwat Kumre Vrs. State of Madhya Pradesh, 2026:MPHC-JBP: 79297* held as follows:

"*19. The legal position with regard to the distinction between murder and culpable homicide not amounting to murder has been settled through a catena of decisions. One of the earliest authorities on the subject Reg. Vrs. Govinda, (1877) ILR 1 Bom 342, wherein the distinction between Sections 299 and 300 of IPC was explained with reference to the different degrees of intention and knowledge. Where an act causing death is accompanied by the*

intention of causing death, or by the intention of causing such bodily injury as is likely to cause death, the case, where it does not amount to murder, falls within Section 304 Part I. On the other hand, where there is no such intention, but there is knowledge that the act is likely to cause death, the case falls within Section 304 Part II."

14.14. Under Section 8 of the Indian Evidence Act, any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. In case of *Prem Kumar Vrs. State of Bihar, (1995) 3 SCC 228*, it is held as follows:

"Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if the motive is proved or established, it affords a key or pointer, to scan the evidence in the case, in that perspective and as a satisfactory circumstance of corroboration. It is a very relevant and important aspect:

(a) to highlight the intention of the accused and

(b) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case."

14.15. In case of *Surinder Pal Jain Vrs. Delhi Administration, 1993 Supp.(3) SCC 681*, it is held as follows:-

> *"11. There is no motive established in this case by the prosecution for the appellant to commit murder of his wife and the evidence of Tara Chand father of the deceased as well as the sister of the deceased and the tenants living in the same house disclosed that the relations between the husband and wife were cordial. In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof."*

14.16. It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.[5]

14.17. On the facts the wordy quarrel between the husband and wife, who was suffering from fever, in the night of 08/09.08.2008 cannot be ruled out and in the circumstances, it can be culled out from the attending circumstances that there was no premeditated mind of the appellant to do away with his wife. There is reason to believe that due to altercation between the appellant and his wife, sudden hit at the neck could have caused

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5 See, *Raghunatha Vrs. The State of Karnataka, 2024 SCC OnLine SC 365.*

injury found. However, the appellant was the best person to say about such injuries sustained by his wife when none else was present in the room in the night.

14.18. This Court draws support from *Jayantilal Verma Vrs. State of M.P. (Now Chhatisgarh), (2020) 12 SCR 411* wherein it has been laid down as follows:

> *"9. The High Court in the given situation, apart from relying on the testimony of PW-1, turned its attention to the post-mortem report. In this context, it was noted that there was blood oozing from both nostrils and mouth of the deceased, there was swelling over the right cheek, marks of ecchymosis at epiglottis region and back of the neck, bruise present at left axillary of cheek and there was depression mark of a mala on the left side of the neck. It went on to state that since the incident had taken place inside the privacy of the house, the onus was on the persons residing in the house, to give an explanation. In such situations, it was noted that it is difficult for the prosecution to lead any direct evidence to establish the guilt of the accused. In this regard, the High Court referred to Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), which reads as under:*
>
> ***
>
> *It, thus, opined that in such cases, while the initial burden to establish the case would be upon the prosecution, it would be of a relatively light character. There would be a corresponding a burden on the inmates of the house to give cogent explanation as to how the crime was committed.*

They could not get away by keeping quiet and offering no explanation.

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25. *We are confronted with a factual situation where the appellant herein, as a husband is alleged to have caused the death of his wife by strangulation. The fact that the family members were in the home some time before is also quite obvious. No explanation has been given as to how the wife could have received the injuries. This is a strong circumstance indicating that he is responsible for commission of the crime.*[6] *The appellant herein was under an obligation to give a plausible explanation regarding the cause of the death in the statement recorded under Section 313 of the Cr.P.C. and mere denial could not be the answer in such a situation."*

14.19. Having regard to the facts and circumstances of the case and in view of the principles laid down by the Hon'ble Supreme Court of India and in other cases referred to above, this Court is of the considered view that the overt act of the appellant attracted Section 304, Part-II of the IPC and not Section 302 of the IPC, inasmuch as there was absence of intention/motive even though the appellant had knowledge that the act committed by him was likely to cause death. Hence, this Court feels it to be a fit case to alter the conviction of the appellant under Section 302 of the IPC to one under Section 304, Part-II of the I.P.C.

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6 *Trimukh Maroti Kirkan Vrs. State of Maharashtra, (2006) 10 SCC 681 = (2006) Supp.7 SCR 156.*

Conclusion:

15. To conclude, the conviction of the appellant under Section 302 of the IPC is altered to one under Section 304, Part-II of the IPC and the conviction and the sentence recorded by the learned trial Court against the appellant under Section 304-B read with Section 498-A of the IPC and Section 4 of the DP Act are hereby set-aside. There shall be no sentence of fine for the offence under Section 304, Part-II of the IPC. Since the appellant is reportedly in custody for more than 12 (twelve) years, which exceeds the punishment provided for the offence under Section 304, Part-II of IPC, he is directed to be set at liberty forthwith, if his detention in jail custody is not required for any other case.

16. In the result, the criminal appeal is allowed in part.

(MURAHARI SRI RAMAN)
JUDGE

SANJEEB K PANIGRAHI, J.— I agree.

(SANJEEB K PANIGRAHI)
JUDGE

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 18-Nov-2026 18:01:34