

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 1689 of 2017

(Against the Judgment of conviction and order of sentence dated 03.10.2016 passed by learned District and Additional Sessions Judge-IX, Hazaribag, in Sessions Trial No. 415 of 2011 in connection with Keredari P.S. Case No.15 of 2011 corresponding to G.R. No.938 of 2011)

Sanjay Sao, son of Chathu Sao, resident of Villae-Pahra, Police Station-Keradari, District Hazaribag.

... .. Appellant

Versus

The State of Jharkhand

... .. Respondent

With

Cr. Appeal (DB) No. 1373 of 2016

1. Gita Devi wife of Chathu Sao
2. Chathu Sao son of Late Laldhari Sao
Both resident of Village Pahra, P.O. and P.S. Keredari, District Hazaribag.

... .. Appellants

Versus

The State of Jharkhand

... .. Respondent

P R E S E N T

HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

.....

For the Appellant

: Mrs. Nalini Jha, Advocate

[Cr. Appeal (DB) No. 1689 of 2017]

Mr. Hemant Kumar Shikarwar, Advocate

Mr. Pawan Kr. Singh, Advocate

Mr. Amandeep, Advocate

Mr. Abhishek Kumar, Advocate

[Cr. Appeal (DB) No. 1373 of 2016]

For the Resp.-State

: Mr. Sardhu Mahto, APP

[Cr. Appeal (DB) No. 1689 of 2017]

Mr. Pankaj Kr. Mishra, APP

[Cr. Appeal (DB) No. 1373 of 2016]

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C.A.V./Reserved on 31.01.2024

Pronounced on 20/02/2024

Per Sujit Narayan Prasad, J.:

1. Both the appeal since arise out of the common judgment of conviction and sentence, as such, directed to be listed together for analogous hearing and hereby disposed off by the common order.
2. Both these appeal, under Section 374 (2) of the Code of Criminal Procedure, has been preferred against the Judgment of conviction and

order of sentence dated 03.10.2016 passed by learned District and Additional Sessions Judge-IX, Hazaribag, in Sessions Trial No. 415 of 2011 in connection with Keredari P.S. Case No.15 of 2011 corresponding to G.R. No.938 of 2011, whereby and whereunder, the appellants have been sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Section 304(B)/34 of IPC as also sentenced to undergo rigorous imprisonment for three years alongwith fine of Rs.20,000/- for the offence punishable under Section 201/34 of IPC and in default of payment of fine, have been further directed to undergo simple imprisonment for three months.

3. It needs to refer herein that the learned counsel for the appellant of Cr. Appeal (DB) No.1689 of 2017 has submitted that the appellant of the said appeal has completed the sentence inflicted upon him but even then, he wants to press this appeal on merit.
4. The appeal being Cr. Appeal (DB) No. 1689 of 2017 has been filed on behalf of the husband of the deceased, namely, Sanjay Sao, while the Cr. Appeal (DB) No. 1373 of 2016 has been filed on behalf of the mother-in-law of the deceased, namely, Gita Devi and father-in-law of the deceased, namely, Chathu Sao.
5. The appeal being Cr. Appeal (DB) No. 1689 of 2017 has been argued by Mrs. Nalini Jha, learned counsel on behalf of the appellant and Mr. Sardhu Mahto, learned Additional Public Prosecutor on behalf of the respondent-State. While the Cr. Appeal (DB) No. 1373 of 2016 has been argued by Mr. Hemant Kr. Shikarwar, learned counsel on behalf of the appellants and Mr. Pankaj Kr. Mishra, learned Additional Public Prosecutor on behalf of the respondent-State.
6. The prosecution story in brief, which is required to be referred herein, reads as under:

The informant's daughter Sangita Devi was married to Sanjay Sao resident of village Pahra P.S Keredari District- Hazaribag on 08.03.2011. At the time of marriage, cash of Rs.60,000/- and other articles worth Rs.50,000/- was given to Sanjay Sao. In-Laws of Sangita Devi used to demand a motorcycle. Motorcycle could not be

given as the financial position of the informant was not good. On 10.04.2011 informant's son-in-law Sanjay Sao reached at Teliyadiah and said that his daughter has fled away with a boy in the night. Informant tried to locate his daughter but could not trace her out. In the evening of 14.04.11 at about 5:00 PM villagers of village Pahra informed him that dead body of his daughter is lying in a well of Pahra. On receiving this information, he along with other villagers reached there. He found the dead body in front of house of Chathu Sao. It has been alleged that Sanjay Sao, Chathu Sao and Gita Devi have murdered his daughter.

7. Learned counsel for the appellants of both the appeals have taken the following grounds in assailing the impugned judgment:
 - (i) It is a case where the judgment of conviction is not based upon any eye witnesses since no one has seen the commission of crime of murder of the deceased, namely, Sangita Devi.
 - (ii) The deceased had died by drowning herself in the well and when she was traceless then immediately on the same day, it has been informed at her parental house and hence, it is evident from the conduct of the appellants, particularly the husband, appellant of Cr. Appeal (DB) No. 1689 of 2017 that he has got no complicity in the commission of crime or murder of the deceased who happens to be his wife.
 - (iii) The judgment impugned suffers from serious lacuna since there is no eye witness but mainly on the basis of applying the statutory command as under Section 113(B) of the Evidence Act, the judgment of conviction has been passed.
8. Learned counsel for the appellants, based upon the aforesaid grounds, have jointly submitted that the judgment of conviction is absolutely not based upon the legal proposition and hence, is not sustainable in the eyes of law.
9. *Per contra*, Mr. Sardhu Mahto, learned Additional Public Prosecutor on behalf of the respondent-State in Cr. Appeal (DB) No. 1689 of 2017 and Mr. Pankaj Kr. Mishra, learned Additional Public Prosecutor

on behalf of the respondent-State in Cr. Appeal (DB) No. 1373 of 2016 have jointly submitted that since the death is at the time when the deceased was in the matrimonial house from where she became traceless then Section 113(B) of the Evidence Act will well be applicable and if on consideration of the aforesaid factual aspect the learned court has taken into consideration the applicability of Section 113(B) of the Evidence Act, the same cannot be said to suffer from any illegality.

10. Submission has been made by referring the provision of Section 113(B) of the Evidence Act wherein the provision has been made by way of reverse onus upon the accused to give the reason of death since the death has occurred due to the demand of dowry while the deceased was in the matrimonial house and hence, in such a case, there is no likelihood of an eye witness and in that view of the matter, the provision of Section 113(B) has been carved out so that if the dowry death will occur in the matrimonial house, then it is the bounden duty of the accused person, in whose house the death has occurred, to disclose the reason of death.
11. But, herein, the appellants have failed to disclose that for what reason the death has occurred and as to why the deceased was found in the well and why the missing report was not filed before the concerned police station even though the deceased happens to the wife of the appellant of Cr. Appeal (DB) No. 1689 of 2017, therefore, if in such circumstances, the provision of Section 113(B) has been applied, in the facts and circumstances of the case, the same cannot be said to suffer from error.
12. We have heard the learned counsel for the parties, perused the documents available on record as also the LCR and the finding recorded by the learned trial court in the impugned order.
13. This Court, on the basis of the material available on record is required to answer the following issues:

- (i) Whether based upon the testimony, Section 113(B) of the Evidence Act will apply in a case where the death admittedly has occurred in the matrimonial house and the dead body having been found in the well which is just adjacent to the house;
- (ii) Whether the judgment of conviction based upon the applicability of Section 113(B) of the Evidence Act and Section 304 -B of Indian Penal Code (IPC) can be said to be justified in absence of eye witness as the issue has been raised herein.

14. This Court, in order to answer both the issues, deems it fit and proper to refer the provision of Section 304 -B of (Indian Penal Code) IPC and section 113-B of the Indian Evidence Act which reads as under:

“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 purpose of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

15. It is evident from the said provision that 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.

16. It is pertinent to refer here that “Dowry death” in the Penal Code, 1860 was introduced under Section 304-B as per Act 43 of 1986. which 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.”

17. It is evident from the aforesaid provision that, if a married woman dies,

- (i) on account of burns or bodily injury or dies otherwise than under normal circumstances,
- (ii) such death occurs within seven years of marriage,
- (iii) it is shown that she was subjected to cruelty or harassment by her husband or any relative,
- (iv) such cruelty or harassment be soon before her death, and
- (v) such cruelty or harassment by the husband or his relative be for, or in connection with, demand for dowry, such death is called “dowry death” under Section 304-B IPC and the husband or relative shall be presumed to have caused the dowry death.

18. At this juncture the application of section 498-A IPC is also required to be referred herein in which it is stipulated that if a married woman is subjected to cruelty by the husband or his relative, he is liable for conviction under Section 498-A. There is no requirement under Section 498-A that the cruelty should be within seven years of marriage. It is also not invariably necessary under Section 498-A that the cruelty should be in connection with the demand for dowry. It is interesting to note that Section 498-A was introduced as per Act 46 of 1983 to “*suitably deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws*” and Section 304-B was introduced as per Act 43 of 1986 to make the penal provisions “*more stringent and effective*”.

19. Again coming to the scope of the 304-B IPC it is evident that though the expression “presumed” is not used under Section 304-B IPC, the words “shall be deemed” under Section 304-B carry, literally and under law, the same meaning since the intent and context requires such attribution. Section 304-B IPC on dowry death and Section 113-B of the Evidence Act, 1872, on presumption, were introduced by the same

Act i.e. Act 43 of 1986, with effect from 19-11-1986, and Section 498-A IPC and Section 113-A of the Evidence Act were introduced by Act 46 of 1983, with effect from 25-12-1983.

20. The amendments under the Evidence Act are only consequential to the amendments under the Dowry Prohibition Act, 1961 and the Penal Code, 1860. It is significant to note that under Section 113-A, the expression is “court may presume” whereas under Section 113-B, the expression is “court shall presume”. Parliament did intend the provisions to be more stringent and effective in view of the growing social evil as can be seen from the Statement of Objects and Reasons in the Amending Act.
21. Being a mandatory presumption on the guilty conduct of an accused under Section 304-B, it is for the prosecution to first show the availability of all the ingredients of the offence so as to shift the burden of proof in terms of Section 113-B of the Evidence Act. Once all the ingredients are present, the presumption of innocence fades away.
22. In view of the mandatory presumption of law under Section 304-B IPC/113-B of the Evidence Act, it is obligatory on the part of the prosecution to establish that the death occurred within seven years of marriage. Section 304-B IPC permits presumption of law only in a given set of facts and not presumption of fact. Fact is to be proved and then only, law will presume.
23. Thus it is evident that Section 304-B(1) IPC defines “dowry death” of a woman. It provides that “dowry death” is where death of a woman is caused by burning or bodily injuries or occurs otherwise than under normal circumstances, within seven years of 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, in connection with demand for dowry. Further, Section 304-B(2) IPC provides punishment for the aforesaid offence.

24. The next important ingredient which needs to be established is the existence of dowry demand “soon before her death”. This Court in a catena of judgments has held that, “soon before” cannot be interpreted to mean “immediately before”, rather the prosecution has to show that there existed a “*proximate and live link*” between the cruelty and the consequential death of the victim.

25. The Hon’ble Apex Court, in the recent judgment of ***Satbir Singh v. State of Haryana, (2021) 6 SCC 1*** summarized the law under Section 304-B IPC and Section 113-B of the Evidence Act which reads as under:

“38.1. Section 304-B IPC must be interpreted keeping in mind the legislative intent to curb the social evil of bride burning and dowry demand.

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

38.3. The phrase “soon before” as appearing in Section 304-B IPC cannot be construed to mean “immediately before”. The prosecution must establish existence of “proximate and live link” between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.

38.4. Section 304-B IPC does not take a pigeonhole approach in categorising death as homicidal or suicidal or accidental. The reason for such non-categorisation is due to the fact that death occurring “otherwise than under normal circumstances” can, in cases, be homicidal or suicidal or accidental.

38.5. Due to the precarious nature of Section 304-B IPC read with Section 113-B of the Evidence Act, Judges, prosecution and defence should be careful during conduction of trial.

38.6. It is a matter of grave concern that, often, trial courts record the statement under Section 313 CrPC in a very casual and cursory manner, without specifically questioning the accused as to his defence. It ought to be noted that the examination of an accused under Section 313 CrPC cannot be treated as a mere procedural formality, as it is based on the fundamental principle of fairness. This aforesaid provision incorporates the valuable principle of natural justice “audi alteram partem” as it enables the accused to offer an explanation for the incriminatory material appearing against him. Therefore, it imposes an obligation on the court to question the accused fairly, with care and caution.

38.7. The court must put incriminating circumstances before the accused and seek his response. A duty is also cast on the counsel of the accused to prepare his defence since the inception of the trial with due caution, keeping in consideration the peculiarities of Section 304-B IPC read with Section 113-B of the Evidence Act.

38.8. Section 232 CrPC provides that,

'232. Acquittal.—If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.'

Such discretion must be utilised by the trial courts as an obligation of best efforts.

38.9. Once the trial court decides that the accused is not eligible to be acquitted as per the provisions of Section 232 CrPC, it must move on and fix hearings specifically for "defence evidence", calling upon the accused to present his defence as per the procedure provided under Section 233 CrPC, which is also an invaluable right provided to the accused.

38.10. In the same breath, the trial courts need to balance other important considerations such as the right to a speedy trial. In this regard, we may caution that the above provisions should not be allowed to be misused as delay tactics.

38.11. Apart from the above, the presiding Judge should follow the guidelines laid down by this Court while sentencing and imposing appropriate punishment.

38.12. Undoubtedly, as discussed above, the menace of dowry death is increasing day by day. However, it is also observed that sometimes family members of the husband are roped in, even though they have no active role in commission of the offence and are residing at distant places. In these cases, the court needs to be cautious in its approach."

26. Thus, it is evident that Section 304-B and the cognate provisions are meant for eradication of the social evil of dowry which has been the bane of Indian society and continues unabated in spite of emancipation of women and the women's liberation movement. This all pervading malady in our society has only a few lucky exceptions in spite of equal treatment and opportunity to boys and girls for education and career. Society continues to perpetuate the difference between them for the purpose of marriage and it is this distinction which makes the dowry system thrive. Even though for eradication of this social evil, effective steps can be taken by the society itself and the social sanctions of the community can be more deterrent, yet legal sanctions in the form of its prohibition and punishment are some steps in that direction.

27. Before adverting in to the facts of the instant case and in order to determine the aforesaid issue this Court thinks fit to sum-up the aforesaid discussed legal position. It is evident that the offence of dowry death punishable under Section 304-B of the Indian Penal Code is inserted in the Penal Code, 1860 with effect from November 19, 1986 when Act 43 of 1986 came into force. The offence under Section

304-B is punishable with a minimum sentence of seven years which may extend to life imprisonment and is triable by Court of Session. The corresponding amendments made in the Code of Criminal Procedure and the Indian Evidence Act relate to the trial and proof of the offence. Section 498-A inserted in the Penal Code, 1860 by the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983) is an offence triable by a Magistrate of the First Class and is punishable with imprisonment for a term which may extend to three years in addition to fine. The offence punishable under Section 304-B, known as dowry death.

28. The expression 'soon before her death' used in the substantive section 304B, I.P.C. and section 113B of the Evidence Act is present with the idea of proximity text. No definite period has been indicated and the expression 'soon before her death' is not defined. 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 concerned cruelty or harassment 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 concerned death.
29. It is pertinent to note here that the position of law as per the provision of Section 101 to Section 105 of the Evidence Act is very explicit wherein the burden will lie upon the prosecution to prove the charge beyond all shadow of doubt but in certain circumstances where there is no eyewitness of the alleged crime and accused has to explain the circumstances in which death was caused then the onus will shift upon the accused to disprove the commission of crime.
30. In the aforesaid context, it also requires to refer herein that onus to disprove the guilt lies on the accused persons in view of provision as contained under Section 106 of the Indian Evidence Act, 1972, which reads as under:

“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.”

31. The Hon’ble Apex Court in the judgment rendered in ***Joshinder Yadav Vs. State of Bihar*** reported in (2014) 4 SCC 42 held at paragraphs 16, 17, 18 considering the implication of the provision of Section 106 of the Evidence Act has held as under:

“16. In our opinion, the prosecution having established that the accused treated the deceased with cruelty and that they subjected her to harassment for dowry, the accused ought to have disclosed the facts which were in their personal and special knowledge to disprove the prosecution case that they murdered Bindula Devi. Section 106 of the Evidence Act covers such a situation. The burden which had shifted to the accused was not discharged by them. In this connection, we may usefully refer to the judgment of this Court in Shambhu Nath Mehra v. State of Ajmer [Shambhu Nath Mehra v. State of Ajmer, AIR 1956 SC 404 : 1956 Cri LJ 794] wherein this Court explained how Section 101 and Section 106 of the Evidence Act operate. Relevant portion of the said judgment reads thus : (AIR p. 406, paras 10-11)

“10. Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof. „101. Burden of proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.” Illustration (a) says— „A desires a court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.”

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are „especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience.”

17. In Balram Prasad Agrawal v. State of Bihar [(1997) 9 SCC 338] the prosecution had established the cruel conduct of the accused i.e. her husband and members of his family and the sufferings undergone by the deceased at their hands. The unbearable conduct of the accused ultimately resulted in her death by drowning in the well in the courtyard of the accused's house. This Court observed that what happened on the fateful night and what led to the deceased's falling in the well was wholly within the personal and special knowledge of the accused. But they kept mum on this aspect. This Court observed that it is true that the burden is on the prosecution to prove the case beyond reasonable doubt. But once the prosecution is found to have shown that the accused were guilty of persistent conduct of cruelty qua the deceased spread over years as was well established from the unshaken testimony of father of the deceased, the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them to disprove the prosecution case. This Court observed that the accused had not discharged the burden which had shifted to them under Section 106 of the Evidence Act. While coming to this conclusion, this Court relied

on *Shambhu Nath Mehra* [*Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC 404].

18. In the present case, the deceased was admittedly in the custody of the accused. She disappeared from their house. As to how her dead body was found in the river was within their special and personal knowledge. They could have revealed the facts to disprove the prosecution case that they had killed Bindula Devi. They failed to discharge the burden which had shifted to them under Section 106 of the Evidence Act. The prosecution is not expected to give the exact manner in which the deceased was killed. Adverse inference needs to be drawn against the accused as they failed to explain how the deceased was found dead in the river in one foot deep water."

32. Further, reference, in this regard be made to the judgment rendered in ***Tulshiram Sahadu Suryawanshi & Anr Vs. State of Maharashtra*** reported in (2012) 10 SCC 373 at paragraph 22 held as under:

"22. The evidence led in by the prosecution also shows that at the relevant point of time, the deceased was living with all the three accused. In other words, the appellants, their son A-3 and the deceased were the only occupants of the house and it was, therefore, incumbent on the appellants to have tendered some explanation in order to avoid any suspicion as to their guilt. All the factors referred above are undoubtedly circumstances which constitute a chain even stronger than the account of an eyewitness and, therefore, we are of the opinion that conviction of the appellants is fully justified."

33. This Court, is now proceeding further in order to answer the aforesaid issues, deems it fit and proper to refer the testimony of the witnesses as under:

- (i) PW-1 Bhuneshwar Sao informant himself. He stated in examination-in-chief that Sangita Devi was his daughter whose marriage was solemnized to Sanjay Sao of village Pahra. At the time of marriage Rs. 60,000/- cash and utensils, cloths etc. of worth Rs. 50,000/- was given. After marriage his daughter had gone to Sasural. His son-in-law and father and mother of son-in-law used to demand a motorcycle from his daughter. He could not give motorcycle and due to the same, they used to torture his daughter. After 20 days of marriage his son-in-law reached his house and informed that his daughter has fled away. He searched for his daughter till four days but he could not trace her. After four days his son-in-law informed that girl had drowned in the well. On this information he reached at the matrimonial house of his daughter and saw his daughter's body was burnt due to acid and

bad smell was coming from the dead body. The witness further deposed that his son-in-law and mother and father of son-in-law had thrown his daughter in the well after killing her. Written application has been written by Suresh Sao on his dictation and after hearing the content he had given his thumb impression. Written application is marked as Ex- 1. The witness had identified the accused persons who were standing in the dock.

In cross-examination he deposed that the girl informed him regarding the demand for a motorcycle. He cannot recollect the date of demand of the motorcycle but the demand was made thrice time. He informed the mediator Mahendra Yadav regarding the torture Sanjay Sao used to inflict including burning with acid but he had not mentioned it in the written application. The witness denies the suggestion that dowry is never demanded.

- (ii) PW-2 Gulab Sao happens to be uncle of the deceased. He stated in examination-in-chief that marriage of his niece was solemnized with Sanjay Sao of village Pahra. Rs. 60,000/- cash and jewelery articles worth Rs. 50,000/- was given given in marriage. After marriage his niece went to her Sasural. After 10-15 days he came to know that a motorcycle was demanded. His brother had not fulfilled this demand. Sanjay Sao reached her *sasural* at about 4:00 PM on 10.04.11 and stated that Sangita has fled away from the house. They searched for Sangita. After four days Sanjay Sao informed that a girl's dead body is lying in well. On that very information he along with some 10-11 persons reached village Pahra and saw the dead body of girl at the door of Chathu Sao. Dead body was burnt and had charred and a bad smell was coming out from dead body.

In cross-examination the witness deposed that he had heard about the demand of motorcycle from his cousin brother. The witness denies the suggestion of the accused that he had deposed falsely

(iii) PW-3 Dr. Anwar Ekram stated in examination- in-chief that on 15.04.11 he was posted at Sadar Hospital, Hazaribag as a medical officer. On that day by order of Civil Surgeon, Hazaribag a medical team of three doctors including Dr. Gopal and Dr. Rajesh Gope and himself had conducted autopsy of the dead body of Sangita Devi, aged about 19 years old W/o Sanjay Sao resident of village Pahra P.S Keredari District- Hazaribag at 11:00 A.M. Dead body was brought in by Chaukidar 312 Naresh Ram and Bhuneshwar Sao. They found following:--

I:- Left eye budged out, right eye was closed, mouth was open and tongue was protruded. Rigor morits was absent in both upper and lower limbs.

II:- Fecal matter discharges from anus. Whole body was burnt, highly decomposed. Blocking of the face. At many places there was pecleny of the skin.

External examination: -

On dissection of neck:- Haemotoma seen over the larynex, fracture of carnial cartidage, congestion of substance tissue of neck. Congestion of ostenal wall of laryna, haemotoma on muscles of neck, Heart right side blood clot, left chamber empty. Both limbs were congested and intact. Liver, spleen congested and partially decomposed. Stomach full of gas and contain mucoid fluid Stomach wall was normal. Urinary bladder was empty, uterus was normal. Cause of death was Asphyxia due to throttling. Viscera was preserved in super saturated saline for F.S.L.

Name of Viscera:-

A portion of heart, lungs, liver, spleen, one kidney and stomach with its contents. Time since death 48 to 72 hours. The witness further deposed that this report is written and prepared by him and bear his pen and signature and also bear signature of Dr.

Gopal Das and Dr. Rajesh Gope member of the board. Postmortem report has been marked as Ex-2.

The witness deposed in cross-examination that he had not mentioned the relation of Bhuneshwar with the deceased. Body was decomposed due to lapse of time. He has not found any injury due to acid. The witness denies the suggestion of defence that his report is faulty.

- (iv) PW-4 Mahavir Prasad Sahu stated in examination in chief that incident had occurred in the evening of 14.04.2011. There was a call to Bhuneshwar Sahu that dead body of his daughter was found in a well. On that information he along with Gulab Sao and 10 other persons of Keredari went to Keredari police station. Thereafter with Chota Babu they visited to village Pahra. They saw the dead body of Sangita Sao in front of the house of Chathu Sao. Police carries the dead body along with Chathu Sao and his wife and son to police station. Marriage of Sangita was solemnized on 08.03.2011 with Sanjay Devi. On 09.04.2011 father of Sangita came to him and said that there was a dispute of my daughter with my son-in-law for dowry. He had requested to visit the matrimonial house. In course of planning for visiting this occurrence is happened. The witness identified the accused persons who was standing on the dock. When he saw the dead body of Sangita Devi at that time her body was swollen and appeared to be burnt.

In cross-examination he stated that he has not stated before the police regarding hearsay matter. Manoj Sao, Kameshwar Sao, Banrsi Sao, Sugiya Devi, Suresh Sao, Raj Kishore Yadav had also gone to village Pahra with him and they reached at about 8-9 P.M.

- (v) PW-5 Sakendra Sao stated in examination-in- chief that marriage of Sangita was solemnized with Sanjay Sao of village Pahra before one month of this incident. He came to know that dead body of girl

was pulled out from well. Thereafter they had gone to village and saw the dead body of girl beside the house of Chatuhu Sao. Dead body was swollen. The witness had been declared hostile on request of the prosecution and he denies the suggestion made by the prosecution. In cross-examination the witness deposed that Rs. 60,000/- cash and utensils had not been given in his presence. He had visited village Pahra before the marriage and after the marriage but he had not visited the house of Sangita. The witness denied the suggestion of defence that he had seen the dead body.

- (vi) PW-6 Suresh Sao stated in Examination-in-chief that Sangita Devi is daughter of Bhuneshwar Sao. The marriage of Sangita was solemnized on 8.03.11 with Sanjay Sao. After marriage she went to her Sasural where she spent 10-15 days properly. Sanjay Sao demand a motorcycle but her father has not fulfilled the demand. On 14.04.11 Bhuneshwar Sao got information by telephone that dead body of his daughter has been recovered from well. On that information they visited the matrimonial house of girl. Dead body of Sangita was kept in front of the door. He had seen the signs of on the body. Bad smell was also coming from the body. It would appear that she was thrown in the well after having been killed. The murder was perpetrated by members of her matrimonial house due to non fulfilment of due demand for a motorcycle.

In cross-examination of para-4 the witness deposed that regarding the demand of motorcycle Bhuneshwar Sao told him and also informed him regarding the death.

- (vii) PW-7 Kameshwar Sahu stated in examination- in-chief that incident has taken place 6-7 months ago. Sangita Devi was the daughter of his maternal uncle. Her marriage was solemnized to Sanjay Sao and after marriage she went to her *sasural*. At the time of marriage Rs. 60,000/- cash and other articles was given. His villager Bandhan Sao told regarding the death of Sangita Devi. Natal home of Sangita is at Pahra from where they went to Keredari police station by tempo and thereafter they went to house

of Sanjay Sao. They saw the dead body at the door. Colour of body was black. It appeared that dead body was pulled out from water. Sanjay Sao informed his father-in-law that girl had fled away with somebody. This information has been given 2-3 days ago of the incident. Bhuneshwar Sao started search but he got no trace.

In cross-examination the witness deposed that dowry was not demanded in his presence. The witness denied the suggestion of defence that he deposed on direction of his maternal uncle.

- (viii) PW-8 Banwari Sao stated in examination-in- chief that incident took place about 7-8 PM one and a half years ago at village Pahra. Bhuneshwar Sao told him that his son-in-law, father and mother of son-in-law killed his daughter. On that information he went to village Pahra and Keradari police station. He had seen the dead body of daughter of Bhuneshwar on the door. Face of dead body was burnt. It appeared that the face was burnt by acid etc. Police took the dead body. The witness further deposed that before 4 to 5 days of the incident Bhuneshwar Sao said that member of matrimonial house of his daughter had demanded dowry and they were in a dispute and son-in-law informed him that girl has fled away. The occurrence happened after four days.

In cross-examination the witness deposed in para-7 that matter regarding the demand of dowry came to know from Bhuneshwar. He further deposed in para-10 that girl has remained traceless. Where dead body was found he does not know. He saw the dead body at the door.

- (ix) PW-9 Manoj Kumar Yadav stated in examination in chief that the member of matrimonial house had killed the girl. He had visited Pahra and saw the dead body of the daughter of Bhuneshwar. He along with 12 persons had gone to village Pahra.

In para-5 of the cross-examination the witness deposed that he saw the dead body but murder has not been committed in

his presence. The witness deny the suggestion of defence that he deposed as per influence of informant.

- (x) PW-10 Sugiya Devi, happens to be the mother of deceased Sangita Devi. She stated in examination chief that Sangita Devi is her daughter whose marriage was solemnized to Sanjay four years ago. After the marriage her daughter went to *sasural*. She lived for one month there and then Sanjay Sao, Chathu Sao and Sangita Devi started demanding motorcycle from her daughter. They had expressed their inability to give, then accused persons killed her daughter after applying acid. On information her members of family went there. She had not gone there. Funeral Rites were performed after bringing the body here. On seeing it appears that dead body is burnt.

In para-2 of the cross-examination the witness deposed that accused persons killed her daughter after one month of the marriage. Accused persons demanded Hero-Honda motorcycle from her daughter. During one month her daughter had not come to her house. The witness deposed in para-6 that her daughter was not kept happily and accused persons killed her daughter due to non-fulfillment of demand of a Hero-Honda Motorcycle.

- (xi) PW-11 Bandhu Sao stated in examination in chief that Sangita Devi is daughter of Bhuneshwar Sao. Her marriage was solemnized 3-4 years ago. After marriage Sangita went to her *sasural* and she died after 3-4 months of marriage. How she died he does not know. Villagers told him that she was burnt by pouring acid. Why acid is applied he does not know. This witness has been declared hostile on request of prosecution and he denied the suggestion made by the prosecution.

In cross-examination on behalf of accused the witness deposed that he has no knowledge regarding the incident and he deposed voluntarily.

(xii) PW-12 Jayeshwar Singh happens to be the I.O of this case. He stated in examination in chief that on 14.04.11 he was posted at Keredari police station. Keredari P.S Case No. 15/11 was registered on the basis of written application of Bhuneshwar Sao and he himself got the charge of investigation. Formal FIR bear in writing of Constable Dinesh Singh and his signature bears on it. Formal FIR is marked as Ex- 3. The witness further deposed that noting and signature over formal FIR bears his writing and signature. The noting is marked as Ex- 1/1. After taking charge of investigation he recorded the re-statement of informant and thereafter he proceeded for P.O. He prepared inquest report of dead body of Sangita Devi at P.O and sent the dead body for postmortem. Request for postmortem is borne in the writing of Constable Ram Lagan and his signature is also borne on it. This written request is marked as Ex-4. The witness further deposed that thereafter he recorded the statement of witnessses Gulab Sao, Manoj Sao, Banwari Sao, Mahavir Prasad. First P.O of this occurrence is the house of Sanjay Sao. In east side of P.O is the house of Lakho Sao, in west side under construction house of Bhairo Soa, in north side pucca house of Bhole Sao and in south side is road and thereafter house of Kudu Sao. The witness further deposed that witness Raj Kishore Yadav, Samender Sao, Suresh Sao, Sugiya Devi supported the incident in his presence. The witness further deposed that second P.O of this occurrence is the well situated at about ¼ K.m away from Pahra village. Boundary of the second P.O in east village Janira after K.M, in south village Pahra, in west village Chotki Hawaii. He recorded the defence statement of Sanjay Sao, Chathu Sao and Gita Devi and after finding sufficient evidence he submitted charge-sheet against accused Sanjay Sao, Chathu Sao and Gita Devi u/s 304(B) and 201/34 of the IPC.

In cross examination of para-18 the witness deposed that none of the witnesses stated before him the date, time and year of demanding of dowry. The witness also not deposed that how many

days before the incident dowry demand was made. As per informant incident is in the night of 10.04.11 and postmortem is done on 14.04.11 at 10:50 and Doctor assessed the time of death within 48-72 hours. He started investigation between 72 to 96 hours after the death because written application submitted on 14.04.11. During investigation he has not recorded the statement of Lakho Sao and Lakhan Sao. The witness denies the suggestion of accused that investigation has not been done properly.

Ex-2 is the postmortem report of Sangita Devi and on perusal of the same it transpires that Medical team observed the cause of death Asphyxia due to throttling. Medical team also found that whole body was blakish and highly decomposed and time since death is 48 to 72 hours and postmortem was done on 15.04.11 by medical board comprising of three doctors.

34. Admittedly herein, there is no eye witness as would be evident from the testimony of the witnesses if taken together. P.W.-1 who is the father of the deceased who has deposed that His son-in-law and father and mother of son-in-law used to demand a motorcycle from his daughter. He could not give motorcycle and due to the same, they used to torture his daughter. After 20 days of marriage his son-in-law reached his house and informed that his daughter has fled away. He searched for his daughter till four days but he could not trace her. After four days his son-in-law informed that informant's daughter had drowned in the well. On this information he reached at the matrimonial house of his daughter and saw his daughter's body was burnt due to acid and bad smell was coming from the dead body.
35. P.W.-2 is the uncle of the deceased who has deposed that after marriage his niece went to her Sasural. After 10-15 days he came to know that a motorcycle was demanded. His brother had not fulfilled this demand. Sanjay Sao reached her *sasural* at about 4:00 PM on 10.04.11 and stated that Sangita has fled away from the house. They searched for Sangita. After four days Sanjay Sao informed that a girl's dead body is lying in well. On that very information he along with

some 10-11 persons reached village Pahra and saw the dead body of girl at the door of Chathu Sao. Dead body was burnt and had charred and a bad smell was coming out from dead body.

36. Thus, it is evident from the testimonies of P.W.1 and 2 that there was demand of dowry in form of motor-cycle and soon thereafter body of the deceased was found in the well in charred condition and it is further evident that the said Well was located near the vicinity of the accused person's house. It appears from the deposition that the husband of deceased in order to save his skin has wrongly stated that deceased was fled away from the house but no police report was lodged by the husband in this regard.
37. The information about the death of the deceased was got by the informant on 14.04.2011 by one villager of the village-Pahra over telephone apprising him that the dead body of his daughter is lying in the well and then he came to know that the dead body of his daughter has been taken out from the well and kept in the house of Chathu Sao. The aforesaid version of testimony has been fully substantiated by the other witnesses.
38. It further appears from the testimony of P.W.-1 and other witness that the demand of dowry was there having been demanded by the son-in-law, mother-in-law and father-in-law of the deceased and when it was not fulfilled then the deceased was subjected to acute torture. It has been disclosed by P.W.-1 immediately after lapse of 20 days from the marriage, the son-in-law has informed that the daughter has fled away and thereafter, the deceased was searched out for four days but there was no trace of her. But when informed by the villagers of the village-Pahra when rushed to the matrimonial house of her daughter then the burned dead body was found having been burned by acid.
39. It is thus, evident that admittedly as per the prosecution version and as per the testimony of the witnesses, the deceased was reported to be traceless by the appellant, the husband, but there is no missing report since nothing has come in the evidence on record. Further, the deceased was found after four days from a well that too on the

information which was given by the local villager of village-Pahra to the father of the deceased.

40. The question herein is that when there is no denial on the part of the appellant of both the appeals that the deceased was not in the matrimonial house rather it is the admitted fact that the deceased was in the matrimonial house and that is the reason the appellant, the husband, informed the father of the deceased about her missing even though the dead body was found in the well which is adjacent to the house rather the same was informed to the informant by the local villager of the village-Pahra.
41. Post mortem was conducted of the dead body and the body was found in the acute decomposed condition and the cause of death has been shown to be Asphyxia since the neck was having mark due to throttling.
42. It is, thus, evident that the reason of death has been shown to be Asphyxia and as per the medical jurisprudence in a case of throttling the tongue of the person concerned comes out which is said in medical term as “protruded”.
43. This Court has considered the fact about protruding of tongue i.e., as to on which circumstance the same can be caused by taking into consideration of the Modi, A textbook of Medical Jurisprudence and Toxicology, the relevant portion of which is quoted as under:
- “(b). Appearance due to asphyxia: The face may be pale or suffused. The eyes are open, the eyeballs are prominent, and the conjunctivae are congested and sometimes there are petechial hemorrhages. The lips are livid, and the tongue sometimes are protruded. Bloody froth comes out of the mouth and the nostrils. The skin shows punctiform ecchymoses with lividity of the limbs. Rupture of the tympanum may occur from a violent effort at respiration.”*
44. This Court, therefore, is of the view that the tongue which has been found to be protruded is also suggestive of the fact that the homicide is there.
45. The dead body of the deceased has been found in a well just adjacent to her matrimonial house, hence, it is the accountability of the appellants to disclose the reason as to how the death occurred. Herein,

the conduct of the appellants are very suspicious that even though the daughter-in-law was missing but no missing report is there.

46. The defence which has been taken that due to falling in the well, the death has occurred then the question is that how the doctor has opined the cause of death as Asphyxia but there is no explanation to that effect.
47. The ingredient of Section 304B is required to be there so as to pass the judgment of conviction under Section 304B of IPC.
48. We on examination of the factual aspect have found that the demand of dowry is within the period of seven years. The demand of dowry has also been deposed by the witnesses, therefore, all the ingredient of Section 304B of IPC as discussed hereinabove is well attracted.
49. This Court, in that view of the matter, is of the view that when the ingredient of Section 304B of IPC is well attracted and the death admittedly has occurred in the matrimonial house since the body of the deceased has been found in the well which is adjacent to the house and it is not that the death has taken place due to falling in the well rather the cause of death has been shown to be Asphyxia which has been found to be antemortem by the doctor in its opinion.
50. This Court, therefore, is of the view that if in such circumstances the Section 113B has been applied while passing the judgment of conviction, the same cannot be said to suffer from error. The ingredient of Section 113B is only said to be applicable if the demand of dowry is attributed individually by the members of the matrimonial house.
51. We have examined the aforesaid factual aspect as to whether the demand of dowry is only by the husband of the deceased or by the father and mother-in-law also.
52. This Court, on the basis of the testimony of P.W.-1 has found that the demand of dowry is by the son-in-law, the appellant of Cr. Appeal (DB) No. 1689 of 2017 and the mother and father-in-law of the deceased, appellants of Cr. Appeal (DB) No. 1373 of 2016, hence, this

Court is of the view that the demand of dowry has been made by all the appellants, therefore, the ingredient of Section 113B is well applicable with respect to all the appellants herein.

53. This Court has not found anywhere while going through the testimony of the witnesses that the mother-in-law and father-in-law [the appellants of Cr. Appeal (DB) No.1373 of 2016] were living separately to the appellant of Cr. Appeal (DB) No.1689 of 2017 and his deceased wife, hence, the onus of proving innocence as required under Section 113B of the Evidence Act is equally applicable to the appellants of Cr. Appeal (DB) No.1373 of 2016.
54. This Court, in the entirety of facts and circumstances as discussed hereinabove, and coming to the judgment impugned herein, is of the view that the learned trial court has considered the each and every aspect of the matter by taking into consideration the testimony of prosecution witnesses and considering the fact that all the ingredient of Section 304B of IPC is well applicable, therefore, applied the provision of Section 113B of the Indian Evidence Act, hence, this Court is of the view that the impugned judgment suffers from no error.
55. Accordingly, both the appeals fail and stand dismissed.
56. Pending interlocutory application(s), if any, also stands disposed of.
57. Mr. Hemant Kumar Shikarwar, learned counsel for the appellants of Cr. Appeal (DB) No.1373 of 2016 has submitted by way of alternative argument that both the appellants of the aforesaid appeal since are senior citizens and at the time of occurrence, they were aged about 50 years and 57 years respectively and now they are aged about nearly 63 and 70 years respectively, as such, considering their age, the sentence of 10 years as inflicted by the learned Sessions Judge may be reduced to its minimum, i.e., 07 years as provided under Section 304(B) of IPC.
58. There is no opposition on behalf of the learned Additional Public Prosecutor in this regard.

59. This Court, on consideration of the aforesaid submission and taking into consideration that the both the appellants of Cr. Appeal (DB) No.1373 of 2016 are senior citizens having aged about 63 and 70 years respectively, hence, this Court deems it fit and proper to reduce the sentence as inflicted under Section 304(B)/34 of IPC from 10 years to 07 years reason being that under Section 304(B), the minimum punishment is up to 07 years.
60. Accordingly, the sentence as inflicted under Section 304(B)/34 of IPC upon the appellants of Cr. Appeal (DB) No.1373 of 2016, is hereby modified and is reduced from 10 years to 07 years.
61. Since, the appellants of Cr. Appeal (DB) No. 1373 of 2016 are on bail as such they are directed to surrender themselves within 10 days from passing of the judgment, before the learned trial court to serve the remaining of the sentence, if not already served.
62. It is made clear that if the appellants will not surrender themselves within the time prescribed then the trial court is free to take the steps in accordance with law.
63. Let this order/judgment be communicated forthwith to the court concerned along with the Lower Court Records.

(Sujit Narayan Prasad, J.)

I agree,

(Pradeep Kumar Srivastava, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated: 20/02/2024

Saurabh / **A.F.R.**