IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.2469 of 2017

Arising Out of PS. Case No.-451 Year-2015 Thana- KHAGARIA District- Khagaria

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1. Bal Mukund Malakar aged about 71 years; S/o Late Ram Shevak Malakar Resident of Village-Bhagat Tola (Mathura Pur), P.S. & District-Khagaria

2. Meena Devi aged about 65 years; W/o Bal Mukund Malakar Resident of Village-Bhagat Tola (Mathura Pur), P.S. & District-Khagaria

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (SJ) No. 2688 of 2017

Arising Out of PS. Case No.-451 Year-2015 Thana- KHAGARIA District- Khagaria

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Sri Ram Malakar S/o Bal Mukund Malakar, Resident of Village-Bhagat Tola Mathura Pur, P.s. and District-Khagaria

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 2469 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv
: Mr. Pranshu Singh, Adv
: Mr. Purushottam Kumar, Adv

For the Respondent/s : Mrs. Anita Kumari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 2688 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv
: Mr. Pranshu Singh, Adv
: Mr. Purushottam Kumar, Adv
: Mr. Abu Bakar, Adv

For the Respondent/s : Mr. Shyed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

Date : 09-10-2026

Both these appeals have been heard together, which arises out of same judgment, and disposing herewith by this common judgment.

2. Heard Mr. Ajay Kr. Thakur, learned counsel

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appearing on behalf of petitioners and Mr. Syed Ashfaque Ahmad and Mrs. Anita Kumari Singh, learned A.P.Ps. for the State.

3. Both these appeals preferred by appellants/convicts namely, **Bal Mukund Malakar & Meena Devi in Cr. Appeal (SJ) No. 2469/2017** and **Sri Ram Malakar in Cr. Appeal (SJ) No.2688/2017** against judgment of conviction dated 03.08.2017 and order of sentence dated 04.08.2017 rendered by learned Fast Track Court No. 1, Khagaria in Sessions Trial No. 105/2016 and 94/2017, (arising out of Khagaria P.S. Case No. 451/2015), whereby and where-under all these appellants have been convicted for the offence punishable under Section 304-B/34 of the IPC and sentenced to undergo rigorous imprisonment of seven years each and to pay a fine of Rs. 5000/-, and in default of payment of fine, both appellants have to undergo further for simple imprisonment for a period of one year for Bal Mukund Malakar & Meena Devi in Cr. Appeal (SJ) No. 2469/2017. So far as appellant namely, Sri Ram Malakar in Cr. Appeal (SJ) No.2688/2017 is concerned, he was further sentenced to undergo R.I. for ten years under Section 304B/34 of the IPC along with fine of Rs. 10,000/- and in default of payment of fine appellant have to undergo further rigorous imprisonment for a period of one year.

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4. The crux of prosecution case as springs that the informant's daughter, Soni Kumari Rubi, was married to accused Sri Ram Malakar, son of Balmukund Malakar, of Bhagat Tola, P.S. Khagaria, District Khagaria, on 28.11.2013. At the time of marriage, the informant allegedly gave gold ornaments worth about Rs. 5 lakhs, along with other household articles as dowry/gifts. After marriage, Soni Kumari went to her matrimonial home and remained there for about 15 days, during which her husband, parents-in-law and sister-in-law allegedly taunted her for not bringing sufficient dowry and demanded Rs. 1 lakh in cash, a motorcycle and an LED television from her parents. Soni Kumari allegedly informed her mother about the dowry demands and also stated that she was being assaulted by her husband and in-laws and feared that they might kill her if the demands were not fulfilled. Subsequently, on 04.07.2015 at about 6:30 P.M., the informant allegedly received information over mobile phone No. 8406005545 that her daughter, Soni Kumari, had been brutally murdered by her husband, father-in-law, mother-in-law and sister-in-law. Thereafter, on 05.07.2015, the informant submitted a written application before the S.H.O., Khagaria Police Station, alleging the aforesaid offence against the accused persons.

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5. On the basis of aforesaid written information of the informant Khagaria P.S. Case No. 451/2015 was registered and after completion of investigation, investigating officer submitted charge sheet against the accused persons and cognizance was taken by the learned CJM, Khagaria on 12.04.20216 and finally the case was committed to the court of Session on 12.04.2016.

6. After commitment, learned trial court explained charges to appellants/accused, on the basis of materials collected during investigation, which they pleaded "not guilty" and claimed trial.

7. To substantiate its case, the prosecution has examined altogether ten prosecution witnesses and two defence witnesses, which are as under:-

Sr. No(s).	**Prosecution Witnesses**
P.W. 1	Sapna Kumari
P.W. 2	Sulekha Devi
P.W. 3	Sunita Devi
P.W. 4	Vijay Prasad
P.W. 5	Laxmi Kumari Malakar
P.W. 6	Anand Kumar
P.W. 7	Komal Kumari
P.W. 8	Jagat Ranjan
P.W. 9	Shatrughan Malakar
P.W. 10	Moti Kumar
Defence Witnesses	

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D.W. 1	Dr. Sambart Kumar
D.W. 2	Dr. Manish Kumar

8. The prosecution has also relied upon the following documents as to substantiate its case and exhibits from defence also, which are as under:-

Exhibit No(s).	**List of documents.**
Exhibit-1	Signature of informant Sunita Devi on her written application.
Exhibit-2	Signature of Sunita Devi on inquest report.
Exhibit-2/1	Signature of Vijay Prasad in inquest report.
Exhibit-3	Fardbeyan in the writing of P.W. 6.
Exhibit-4	Report of Forensic Science Lab Bihar, Patna.
Exhibit-5	Postmortem Report of deceased Soni @ Rubi Kumari.
Documents exhibited on behalf of defence.	
Exhibit-A	Prescription of Soni Kumari dated 30.03.2014.
Exhibit-A/1	Prescription of Soni Kumari dated 24.10.2014.
Exhibit-A/2	Prescription of Soni Kumari dated 23.04.2015.
Exhibit-A/3	Prescription of Soni Kumari dated 16.05.2015.
Exhibit-B	Prescription of Rubi Devi dated 04.07.2015.
Exhibit-X	Prescription of Meena Devi wife of Balmukund Malakar issued by Sadar Hospital, Khagaria

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9. After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused persons including appellants/accused were recorded under Section 313 of the Cr.P.C. which was denied in totality by showing complete innocence.

10. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellants/convicts, in aforesaid terms. Being aggrieved of which present appeal was preferred.

11. Hence, the present appeal.

Argument on behalf of the appellants/convicts

12. Learned counsel appearing for the appellants submitted that the basic ingredients of Section 304-B IPC have not been established. It is submitted that the mere fact as deceased died within seven years of her marriage, cannot by itself constitute a dowry death. It is further submitted that the evidence regarding demand of dowry is general and omnibus and that there is no reliable evidence showing that soon before the death the deceased was subjected to cruelty or harassment in

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connection with, demand for dowry.

13. It is submitted that P.Ws. 1, 2, 7, 9 and 10, who were cited by the prosecution, have not supported the prosecution case. According to learned counsel, the remaining witnesses are either close relatives or persons connected with the family and their evidence requires careful scrutiny. It is further submitted that P.Ws. 3 to 5 have attributed allegations generally against the **'accused persons'** without specifying the particular act of any individual appellant. It is submitted that so far as appellants Bal Mukund Malakar and Meena Devi are concerned, there is no specific and individualized allegation sufficient to sustain conviction.

14. Learned counsel further submitted that the medical evidence does not support the allegation of homicidal death. It is pointed out that during autopsy doctor did not find any significant external or internal injury, except two abrasions over the right wrist, which were capable of being caused in the course of breaking of bangles. It is submitted that the cause of death was not ascertained at the time of post-mortem and *viscera* was sent for forensic examination, reliance has also been placed upon the evidence regarding blood pressure of 60/40 and

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defence case is based upon cardiac attack.

15. It is further submitted that the Investigating Officer has not been examined during the course of trial. According to the appellants, such non-examination has caused prejudice because the defence was deprived of the opportunity to confront the material witnesses with their statements recorded during investigation and to bring contradictions on record relating to material aspects of the prosecution case.

16. In support of his submission Mr. Thakur relied upon the following legal reports of Hon'ble Supreme Court which are as under :-

(a). Sher Singh @ Partapa Vs. State of Haryana [(2015) 3 SCC 724],

(b). Baijnath Vs. State of Madhya Pradesh [(2017) 1 SCC 101],

(c). Sandeep Kumar Vs. State of Uttarakhand [(2022) 14 SCC 544],

(d). Nand Lal Vs. State of Chhattisgarh [(2023) 10 SCC 470],

(e). Rajesh Patil Vs. State of Jharkhand [(2013) 3 SCC 791],

(f). Kali Ram Vs. State of Himachal Pradesh [(1973) 2 SCC 808].

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17. Learned Additional Public Prosecutor appearing for the State, while opposing the appeals, submitted that deceased died within seven years of her marriage and her death occurred at her matrimonial home. It is submitted that the evidence of P.W. 3, P.W. 4 and P.W. 5 is sufficient to establish demand of dowry and harassment. It is further submitted that the statutory presumption under Section 113-B of the Indian Evidence Act, 1872 is attracted and the appellants have failed to rebut the same. Accordingly, it is submitted that no interference is required with the judgment of conviction.

18. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing for the parties.

19. As to re-appreciate the evidences, while disposing the present appeals, it would be apposite to discuss the evidences available on record, which are as under:-

20. P.W. 1 Sapna Kumari has not supported the prosecution version during trial and was declared hostile. Her testimony, therefore, does not furnish substantive support to the allegation of dowry demand or cruelty against any of the

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appellants. The prosecution has not been able to derive from her testimony any material which may independently connect the appellants with the alleged demand or harassment.

21. P.W. 2 Sulekha Devi has also not supported the prosecution case and was declared hostile. Her deposition does not provide corroboration to the allegations made by the informant. Thus, the prosecution cannot derive any independent support from her evidence for establishing the foundational facts required for Section 304-B IPC.

22. P.W.-3 Sunita Devi is the informant and mother of the deceased. Her evidence is naturally of significance and has therefore been carefully considered. She supported the allegation that her daughter was married with appellant Sri Ram Malakar on 28.11.2013 and that substantial articles were given at the time of marriage. She further stated regarding demand of Rs.1,00,000/- and alleged ill-treatment of her daughter. She has also stated that her daughter used to disclose about the demand and harassment.

22.1. At the same time, the manner in which the allegations are attributed to the appellants is material. The evidence of P.W. 3, in the relevant part, is substantially in terms

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of allegations against the **'accused persons'** collectively. The evidence does not consistently disclose a particular date, place or particular overt act of appellant Bal Mukund Malakar or appellant Meena Devi immediately preceding the death. The distinction is important because a conviction under Section 304-B IPC is not to be founded merely upon the relationship of the accused with the deceased.

22.2. The alleged disclosures made by the deceased to her mother cannot be discarded merely because the witness is the mother of the deceased. At the same time, such evidence has to be examined with the same degree of care which the criminal standard of proof demands. The fact that a witness is a close relative neither makes the witness inherently unreliable nor dispenses with the requirement of a credible and proximate connection between the alleged dowry-related cruelty and the death.

23. In this context, the Hon'ble Supreme Court in **Nand Lal Vs. State of Chattisgarh, (2023) 10 SCC 470**, particularly in paragraph 32, has reiterated that the Court is concerned with the quality and not merely the quantity of evidence and that evidence of interested witnesses has to be examined in the light of its intrinsic worth and surrounding

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circumstances. The said principle does not mean that related evidence is to be rejected, but that it has to inspire confidence on a careful scrutiny. It Would be apposite to reproduce para no. 32 of **Nand Lal Case (supra),** which is as under :-

> **32.** Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in *Vadivelu Thevar* v. *State of Madras* [*Vadivelu Thevar* v. *State of Madras*, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614] , has observed thus : (AIR p. 619, paras 11-12)
>
> "*11*. … Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:
>
> (1) Wholly reliable.
>
> (2) Wholly unreliable.
>
> (3) Neither wholly reliable nor wholly unreliable.
>
> *12*. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

24. P.W. 4 Vijay Prasad has supported the allegation relating to demand of Rs.1,00,000/-, vehicle and LCD television. His evidence suggests that the vehicle and television

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were supplied, whereas the alleged demand of Rs.1,00,000/- remained. He has also referred to alleged torture of the deceased. However, his allegations regarding the acts of cruelty are again substantially collective in nature. The deposition does not furnish a clear and reliable individualized act of dowry-related cruelty against appellant Bal Mukund Malakar or appellant Meena Devi which can be connected with the death of the deceased.

25. P.W. 5 Laxmi Kumari Malakar has also spoken about demand relating to vehicle, television and Rs.1,00,000/-. She has stated about an occasion when the accused persons allegedly questioned why the money had not been brought and the deceased was allegedly manhandled. Her evidence, however, also requires careful examination to proximity. Significantly, when the deceased did not want to return to her matrimonial home, P.W. 5 specifically attributes the act of taking her back under pressure to appellant Sri Ram Malakar. This part of the evidence, even if accepted, does not by itself establish that immediately or soon before the death the deceased was subjected to dowry-related cruelty by all the appellants.

25.1. There is also a discrepancy regarding the date of marriage emerging from the testimony of P.W.-5, which is at variance with the date of marriage projected by the prosecution,

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i.e., 28.11.2013. This discrepancy may not, standing alone, demolish the prosecution case; however, where the prosecution evidence is otherwise general and lacks a proximate link between the alleged demand and death, such inconsistency assumes significance while assessing the overall reliability of the prosecution version.

26. P.W. 6 Anand Kumar is principally connected with the preparation and proving of the *written application/fardbeyan*. His evidence does not supply a distinct and individualized overt act of dowry demand or cruelty against the appellants so as to bridge the gap which otherwise remains in the evidence of P.Ws. 3 to 5.

27. P.W. 7 Komal Kumari has not supported the prosecution version and was declared hostile. Her evidence, therefore, does not furnish corroboration to the alleged demand or harassment.

28. P.W. 8 Dr. Jagat Ranjan is the doctor who conducted the post-mortem examination upon deceased. His evidence is of considerable importance because the nature of the death is one of the statutory ingredients of a prosecution under Section 304-B IPC. The post-mortem evidence does not disclose

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any significant external or internal injury on the body of the deceased, except two abrasions over the right wrist. The defence has pointed out that such abrasions could be caused by breaking of bangles.

28.1. The doctor did not initially ascertain the cause of death and the *viscera* was sent for forensic examination. The defence has relied upon the medical evidence regarding blood pressure of 60/40 as indicative of shock and has also relied upon the subsequent forensic material to contend that the death was due to cardiac attack. This Court is not required to conclusively hold that the defence explanation is affirmatively established merely because such evidence has been brought on record. What is relevant is whether the medical evidence, taken with the other circumstances, affirmatively supports the prosecution allegation of a homicidal or otherwise unexplained death attributable to dowry-related cruelty. On that aspect, the medical evidence does not provide the necessary corroborative assurance to the prosecution case.

29. P.W. 9 Shatrughan Malakar has not supported the prosecution case and was declared hostile. His evidence also does not advance the prosecution case against any

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of the appellants.

30. P.W. 10 Moti Kumar has similarly not supported the prosecution version and was declared hostile. Thus, out of ten prosecution witnesses, five witnesses have not supported the prosecution case, while the substantive allegations are principally founded upon P.Ws. 3 to 5, whose evidence, as noticed above, requires scrutiny both as to the nature of the attribution and as to its proximity to the death.

31. It is settled that merely because a prosecution witness has been declared hostile, his entire evidence does not become non-existent. The Court is required to examine the admissible portion of the testimony and see whether any part of it inspires confidence or receives corroboration from other evidence. In the present case, however, the hostile witnesses do not furnish the missing corroborative link. The evidence which remains against the appellants has to stand on its own strength.

32. It is also relevant to notice that the prosecution case against the three appellants is not of the same evidentiary value. So far as appellant Sri Ram Malakar is concerned, P.W.-5 has made a specific attribution regarding taking the deceased back to the matrimonial home. But even such attribution has to

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be tested against the statutory requirement that the deceased must have been subjected, soon before her death, to cruelty or harassment by the husband or his relative for, or in connection with, any demand for dowry.

33. So far as appellants Bal Mukund Malakar and Meena Devi are concerned, the evidence of P.Ws. 3 to 5 is substantially collective. No specific act, particular incident or proximate conduct of either of them has been established by reliable evidence so as to connect either appellant with the alleged dowry-related cruelty soon before the death. The mere status of being father-in-law or mother-in-law cannot be treated as a substitute for proof of the statutory ingredients.

34. The prosecution also did not examine the Investigating Officer during trial. It is true that non-examination of the Investigating Officer is not an inflexible rule rendering every prosecution case liable to fail. Its effect depends upon the facts of the case. But where the prosecution witnesses have made general allegations, where material contradictions or omissions are relevant to the defence, and where the Investigating Officer is the witness through whom the previous statements could ordinarily be confronted in the manner known to

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law, the prejudice caused to the defence assumes importance.

35. The legal report of Hon'ble Supreme Court as available through **Rajesh Patil Vs. State of Jharkhand, (2013) 3 SCC 791** in paragraph 18, the Hon'ble Supreme Court recognized the prejudice which may result from non-examination of material witnesses, including the Investigating Officer, depending upon the nature of the defence and the evidence required to be tested. The principle is not that non-examination is automatically fatal, but that the Court must examine whether the omission has materially impaired the defence or the proof of the prosecution case. It would be apposite to reproduce para no. 18 of **Rajesh Patil Case (supra)**, which is as under:-

> 18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the

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> appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law.

36. In the present case, the non-examination of the Investigating Officer becomes relevant because the prosecution evidence which remains is substantially dependent upon the statements of close relatives and general allegations against several accused persons. The defence was deprived of the opportunity to test, through the Investigating Officer, the precise omissions and contradictions in such statements. This circumstance, therefore, cannot be brushed aside while determining whether the prosecution has established the case beyond reasonable doubt.

37. The central question now is whether the evidence on record satisfies the statutory ingredients of Section 304-B IPC, which is 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

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> cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.
>
> Explanation.—For the purposes of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.
>
> (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."

38. Section 113-B of the Indian Evidence Act, 1872 provides for a statutory presumption in relation to dowry death. However, the presumption is conditional and cannot be invoked merely because the death has occurred within seven years of marriage.

39. The legal report of Hon'ble Supreme Court as available through **Sandeep Kumar Vs. State of Uttarakhand, (2022) 14 SCC 544,** where in paragraph 36, the Hon'ble Supreme Court has stated the ingredients of Section 304-B IPC and has specifically observed that Section 113-B of the Evidence Act comes into operation when the foundational ingredients are established, including the fact that soon before the death the deceased was subjected to cruelty or harassment on account of dowry demand. It would be apposite to reproduce para no. 36 of

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the **Sandeep Kumar Case (supra)**, which is as under:-

> ***The findings by the High Court in the impugned judgment*** **[*Harendra Singh Pal* v. *Sandeep Kumar*, 2017 SCC OnLine Utt 1942]**
>
> **36.** Though at the solemnization of marriage, there is no discussion of dowry, however, after 2-3 months, the accused and his family members (appellants) started demanding dowry. Thereafter, reference is made to PW 8, who deposed that panchas opined that it was a case of poisoning. The High Court finds that the evidence of DW 1 does not reveal that the deceased was suffering from tuberculosis and that she had eosinophilia. Referring to the evidence of DW 2 Dr Mamta Tyagi, the High Court says that the deceased was only complaining of stomach ache and discharge of white fluid. The patient has never told the doctor about her tuberculosis. The treatment also did not relate to the tuberculosis. The doctor has admitted that tuberculosis can be cured after six to seven months of treatment. The High Court, thus, concludes that it is in evidence of DW 1 and DW 2 that the deceased was not suffering from tuberculosis. Thereafter, the High Court goes through evidence of DW 4 and finds that the doctor had admitted that once the treatment was taken ten years back for tuberculosis, there was no question of recurrence of the disease. The deceased had gone to her on 2-12-2009 for the postponement of her menstrual cycle and the marriage took place on 9-12-2009. The deceased has never told the symptoms of tuberculosis after 2-12-2009.

40. The expression **'soon before'** does not mean

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'immediately before'. However, this principle cannot be stretched to dispense with proximity altogether. In **Sher Singh @ Partapa Vs. State of Haryana**, **(2015) 3 SCC 724**, in paragraph 16, the Hon'ble Supreme Court explained that the demand should not be stale and that the cruelty or harassment must retain a continuing causal or live link with the death. It would be apposite to reproduce para no. 16 of the **Sher Singh Case (supra)**, which is as under:-

> **16.** As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word "shown" is used as synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word "deem" to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333] and *State of T.N.* v. *Arooran Sugars Ltd.* [(1997) 1 SCC 326] , requiring

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the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304-B IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely,

(*i*) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,

(*ii*) within seven years of her marriage,

(*iii*) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,

(*iv*) in connection with any demand for dowry, and

(*v*) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word "soon" finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but

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> should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word "deemed" was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.

41. The same principle has been reiterated through the legal report of Hon'ble Supreme Court in **Rajinder Singh Vs. State of Punjab**, **(2015) 6 SCC 477**, paragraph 24, where the

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Hon'ble Supreme Court held that the word **'soon'** is a relative expression and that what is required is that the demand should not be stale but should be a continuing cause for the death. It would be apposite to reproduce para no. 24 of **Rajinder Singh Case (supra)**, which is as under:-

> 24. We endorse what has been said by these two decisions. Days or months are not what is to be seen. What must be borne in mind is that the word "soon" does not mean "immediate". A fair and pragmatic construction keeping in mind the great social evil that has led to the enactment of Section 304-B would make it clear that the expression is a relative expression. Time-lags may differ from case to case. All that is necessary is that the demand for dowry should not be stale but should be the continuing cause for the death of the married woman under Section 304-B.

42. The legal report of Hon'ble Supreme Court as available through **Baijnath Vs. State of Madhya Pradesh**, **(2017) 1 SCC 101**, from paragraphs 29 to 32, the Hon'ble Supreme Court has explained that the presumption under Section 113-B of the IPC is founded upon proof of cruelty or harassment, or in connection with, demand for dowry and that the foundational facts must first be established by the prosecution. It would be apposite to reproduce para no(s). 29 to 32 of **Baijnath Case (supra)**, which is as under:-

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29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30 [**Ed.** : Para 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./93/2016 dated 3-7-2017.] . A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often

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practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overeased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty.

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

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> death" she was subjected to cruelty and harassment "in connection with the demand for dowry".

43. The statutory scheme does not reverse the ordinary criminal burden at the very threshold. The prosecution must first establish the facts which activate the presumption. Only thereafter does the statutory presumption operate. This principle is also consistent with the broader criminal jurisprudence expressed by the Hon'ble Supreme Court in **Kali Ram Vs. State of Himachal Pradesh**, **(1973) 2 SCC 808**, paragraph 23, that the accused is presumed innocent until the prosecution establishes guilt and that even where a statutory presumption exists, the prosecution must first prove the facts necessary for drawing that presumption. It would be apposite to reproduce para no. 23 of **Kali Ram Case (supra)**, which is as under:-

> 23. Observations in a recent decision of this Court, *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033] to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show

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> him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

44. In the present case, there is no dispute that the marriage was within seven years of the death, but that circumstance by itself does not complete the offence under Section 304-B IPC. The prosecution must establish the remaining ingredients, particularly the nature of the death and, more importantly in the facts of the present case, the existence of dowry-related cruelty or harassment soon before the death and the proximate or live link between such conduct and the death.

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45. On careful consideration of the evidence of P.Ws. 3, 4 and 5, this Court finds that the prosecution has established allegations of demand in a broad and general manner. What is lacking is reliable evidence demonstrating a continuous and proximate course of dowry-related cruelty immediately preceding the death. The evidence does not disclose with sufficient clarity the last incident of dowry demand, the date of such incident, the person who made the demand, the specific act of cruelty committed thereafter and its proximity to the death.

46. The expression **'soon before'** is a relative expression, but it is not an expression which permits the Court to dispense with a live link altogether. The prosecution has to establish that the alleged cruelty was not a stale or isolated event but continued as a proximate cause connected with the death. The evidence in the present case does not satisfactorily establish that link.

47. The prosecution version also requires consideration in the light of the medical evidence. The post-mortem report does not record injuries of such nature as would independently corroborate the allegation of physical violence resulting in death. The two abrasions on the right wrist, in the circumstances available on record, do not by themselves establish

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that the deceased was assaulted in a manner causing her death. The doctor did not initially ascertain the cause of death. The defence material, including the treatment records and medical evidence, provides an alternative explanation which cannot be termed fanciful.

48. It is not the requirement of criminal law that the accused must establish the defence version with the same standard as the prosecution. Where the prosecution evidence itself, fails to establish the foundational facts and the defence version introduces a reasonable possibility consistent with innocence, the resulting doubt must ensure to the benefit of the accused.

49. The constitutional dimension of criminal adjudication cannot lose the sight of Article 21 of the Constitution of India, which protects life and personal liberty and requires a fair procedure, in accordance with law. A criminal conviction, carrying serious consequences upon personal liberty and reputation must, therefore, rest upon evidence satisfying the standard prescribed by criminal law. Article 14 also embodies the principle that State action affecting liberty must conform to non-arbitrariness and fairness. The statutory presumption under Section 113-B of the Indian Evidence Act is a legislative aid to

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the prosecution, it cannot be converted into a substitute for proof of the foundational circumstances which Parliament has made conditions for its operation.

50. The presumption of innocence is not a mere technical formula. It is a fundamental principle of criminal jurisprudence. In **Kali Ram Case (supra)**, paragraph 23, the Hon'ble Supreme Court has emphasized that the burden of proving guilt rests upon the prosecution and that where material consistent with innocence reasonably exists, the accused is entitled to acquittal.

51. It is equally settled that suspicion, however grave, cannot take the place of proof. A court of criminal jurisdiction has to distinguish between a case which raises suspicion against an accused and a case in which the evidence establishes guilt beyond reasonable doubt. The former cannot be converted into the latter merely because the death is unfortunate or occurred within the matrimonial home.

52. The death occurred within seven years of marriage is undoubtedly a circumstance which requires serious judicial scrutiny, but the statutory provision requires something more. If the Court were to treat the period of marriage and the

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place of death as sufficient, the words relating to cruelty, harassment, dowry demand and **'soon before her death'** would lose their independent statutory meaning. Such an interpretation would not be consistent with the scheme of Section 304-B IPC.

53. The evidence against appellant Sri Ram Malakar, considered at its highest, shows allegations of dowry demand and an occasion where he took the deceased back to her matrimonial home. However, there is no sufficient reliable evidence establishing that the alleged dowry-related cruelty continued as a proximate and live cause up to the death. The prosecution, therefore, has not proved the essential statutory ingredients beyond reasonable doubt.

54. As regarding appellant Bal Mukund Malakar and appellant Meena Devi, the evidentiary deficiency is more pronounced. The allegations against them are substantially omnibus. No specific and proximate act of dowry-related cruelty or harassment has been established against either of them. The principle of constructive or common liability cannot be used to fill the evidentiary gap in the foundational ingredients of Section 304-B IPC.

55. Section 34 of the IPC also cannot be employed

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as a device to cure the failure of the prosecution to prove the substantive ingredients of the offence. Common intention is a principle of joint liability, it does not dispense with proof of the act and circumstances constituting the substantive offence. When the prosecution fails to establish the very ingredients of dowry death against the individual accused, Section 34 of the IPC cannot independently create the missing foundation.

56. The evidence of the related witnesses has not been discarded merely on the ground of relationship. Rather, their evidence has been assessed on the touchstone of consistency, specificity, corroboration and proximity. The prosecution has to succeed on the strength of its own evidence. The fact that the allegation is made by a mother or another relative does not lower the burden of proof resting upon the prosecution.

57. The five hostile witnesses also assume significance in the overall evaluation. Their hostility does not by itself destroy the prosecution case, but their failure to support the allegation means that the corroborative support expected from the prosecution’s own witnesses is absent. The remaining evidence, therefore, has to be sufficiently cogent on its own. In the present case, the remaining evidence does not cure the

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defects already noticed.

58. It is also material that the prosecution did not examine the Investigating Officer. In a case where the surviving substantive evidence is general and collective and where the defence specifically relies upon omissions and contradictions, the inability to confront the witnesses through the Investigating Officer causes a degree of prejudice which has to be taken into account while determining whether the prosecution has established the case beyond reasonable doubt. The principle noticed in **Rajesh Patil Case (supra)**, paragraph 18, is therefore relevant on the facts of the present case.

59. The criminal process also requires that every incriminating circumstance which is proposed to be relied upon must have been fairly put to the accused in accordance with Section 313 of the Cr.P.C. The Hon'ble Supreme Court in **Sukhjit Singh Vs. State of Punjab, (2014) 10 SCC 270**, paragraphs 10 to 14, has emphasized that Section 313 of the Cr.P.C. is not an empty formality and that material incriminating circumstances must be put to the accused so that he gets a fair opportunity to explain them. The present judgment, however, does not rest solely on Section 313 of the Cr.P.C. the principal reason for interference is the failure of the prosecution to

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establish the foundational ingredients of Section 304-B IPC. It would be apposite to reproduce para no(s). 10 to 14 of **Sukhjit Singh Case (supra)**, which is as under:-

> 10. On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav* v. *State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.
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> **11.** In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh* v. *State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)
>
> "*30*. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording

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is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953

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Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

"*8*. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box."

13. The aforesaid principle has been reiterated in *Ajay Singh* v. *State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

"*14*. The word 'generally' in sub-section (1)(*b*) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the

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> section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."
>
> 14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction.

60. The appellate court, while exercising jurisdiction under Section 374(2) of the Code, is required to re-appreciate the entire evidence. The appellate scrutiny is not confined to the reasons assigned by the trial court. The Court has to determine whether the conviction is sustainable on the evidence legally available on record and whether the prosecution has discharged the burden imposed upon it by law.

61. On a cumulative appreciation of the evidence, this Court finds that the prosecution has succeeded in

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establishing the factum of marriage within seven years and has brought on record allegations of dowry demand through P.Ws. 3 to 5, but the prosecution has not established beyond reasonable doubt that soon before her death the deceased was subjected to cruelty or harassment by the appellants, or in connection with, demand for dowry in such a manner as to maintain the requisite proximate and live link with her death.

62. Consequently, the foundational facts necessary for invoking the presumption under Section 113-B of the Indian Evidence Act have not been established. The statutory presumption, therefore, cannot be raised against the appellants. The burden cannot be shifted to the accused in the absence of proof of the very circumstances which activate the presumption.

63. The medical evidence, the absence of significant injuries, the unresolved cause of death at the stage of post-mortem, the defence medical material, the collective nature of the allegations, the absence of a clear proximate incident of dowry-related cruelty soon before the death, the lack of individualized allegations against the father-in-law and mother-in-law, the hostile evidence of P.Ws. 1, 2, 7, 9 and 10 and the non-examination of the Investigating Officer, when considered cumulatively, create a reasonable doubt which cannot be brushed

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aside in a criminal trial.

64. This Court is conscious of the social object behind the enactment of Section 304-B IPC. The provision was introduced to address the serious social evil of dowry deaths and to ensure that cases in which direct evidence is ordinarily difficult to obtain do not fail merely because of the nature of the domestic setting, but the social purpose of a penal provision cannot authorize the Court to dilute the statutory ingredients or the constitutional requirement of a fair criminal adjudication.

65. The law laid down in **Sher Singh Case (supra)** and the subsequent decisions makes it clear that the prosecution has to first prove the concomitant circumstances of dowry death. Once those circumstances are established, the statutory presumption has substantial force. In the present case, the first stage itself has not been crossed. The prosecution has not supplied the necessary factual foundation for the statutory presumption.

66. The principle of benefit of doubt is not an artificial benefit created for the accused. It is the consequence of the prosecution’s failure to prove guilt according to the standard prescribed by criminal law. As observed in **Kali Ram Case**

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(supra), where two views are reasonably possible on the evidence, the view favorable to the accused must be adopted.

67. In the facts of the present case, it may be a case which gives rise to suspicion regarding the circumstances surrounding the death of Soni Kumari @ Rubi Kumari, but it is not permissible to convert grave suspicion into proof of dowry death in the absence of the necessary foundational evidence. The prosecution has to answer the material question as to what was the last dowry-related demand or act of cruelty, who committed it, when it occurred, and how it retained a proximate and live connection with the death. The evidence on record does not answer these questions with the degree of certainty required in a criminal prosecution.

68. Hence, in view of the aforesaid discussion, it appears that the prosecution fails to establish its case beyond reasonable doubt against the appellants. The benefit of doubt must, therefore, be extended to them.

69. Accordingly, both these appeals stand allowed.

70. The impugned judgment of conviction dated 03.08.2017 and order of sentence dated 04.08.2017 passed by learned Fast Track Court-I, Khagaria in Sessions Trial No.105 of

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2016/94 of 2017, arising out of Khagaria P.S. Case No.451 of 2015 corresponding to G.R. Case No.1730 of 2015, are hereby quashed and set aside.

71. Resultantly, the appellant **Sri Ram Malakar in Criminal Appeal (SJ) No.2688 of 2017** and appellants **Bal Mukund Malakar and Meena Devi, in Criminal Appeal (SJ) No.2469 of 2017** are acquitted of the charges levelled against them by the learned trial court, extending benefit of doubts.

72. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds and sureties. Fine, if any, deposited by the appellants, be returned to them forthwith in accordance with law.

73. Let a copy of this judgment along with the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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