

(AFR)(Reserved)
Court No. - 46

[Case :- CRIMINAL APPEAL No. - 917 of 2006]

Appellant :- Sanjay Kumar

Respondent :- State of U.P.

Counsel for Appellant :- Satish Chandra Misra, Dileep Kumar, Pramod Kumar Pandey, R.B. Chaudhary, R.Bhargava, Rajrshi Gupta, Shesh Narain Mishra

Counsel for Respondent :- Govt. Advocate

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Vikas Kunvar Srivastav, J.

{As per Vikas Kunvar Srivastav, J.}

1. The instant Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 24.01.2006 passed by the learned Additional Sessions Judge, Court no. 6, Basti in Sessions Trial No. 276 of 2000, under Sections 498-A, 304-B of Indian Penal Code, 1860 read with Section 3/4 of Dowry Prohibition Act.
2. On behalf of accused-appellant, learned Amicus Curiae Sri Pramod Kumar Pandey argued the case whereas the State-respondent is represented by the learned Additional Government Advocate Ms. Arti Agarwal.
3. Vide impugned judgment of conviction and order of sentence, dated 24.01.2006, the appellant is convicted under Sections 498-A, 304-B IPC read with Section 3/4 of Dowry Prohibition Act, Police Station Lalganj, District Basti and sentenced with life imprisonment under Section 304-B IPC. Under Section 498-A IPC two years rigorous imprisonment and fine of Rs. 2000/-; in default of payment of fine six months additional rigorous imprisonment. Under Section 3/4 of the Dowry Prohibition Act one year rigorous imprisonment. All the sentences are to run concurrently.

FACTUAL MATRIX OF THE CASE

4. Briefly stating the prosecution case as emerges from the written information dated 27.08.2000 submitted in the Police Station Lalganj, District Basti by the brother of the deceased, is that the informant's sister was married with the accused-appellant Sanjay Kumar, resident of village Dei Saar, Police Station Lalganj, District Basti, approximately 5 years ago (27.08.2000). It is complained that Sanjay Kumar and his father Daya Shanker and mother Dhanpati @ Kanchan were not satisfied with the gifts and dowry given to them at the time of marriage, therefore demanded '*Rajdoot*' motorcycle in dowry repeatedly. The father of the informant had already died and the family of the informant was not sound financially, therefore, they could not fulfil the demand of motorcycle in dowry. Due to this, the accused persons, Sanjay Kumar and his parents were harassing his sister, the deceased Islawati Devi. On the complaint made by the informant's sister, the informant met her in-laws with folded hands and told that he was not in a position to gift motorcycle in dowry. Being annoyed by the denial, the accused persons, on 27.08.2000, caused death of Islawati, informant's sister by burning her. After getting information of the incident when the informant, Mani Ram Chaudhary reached at the matrimonial house of his sister and asked the accused Daya Shanker, he told that she had died.
5. The First Information Report was lodged on the said information registering the criminal Case No. 98 of 2000 on 27.08.2000 at about 9:35 p.m. against Sanjay Kumar (the present appellant), Daya Shanker and Dhanpati Devi (the parents of the appellant Sanjay Kumar). On 29.08.2000, the informant Mani Ram Chaudhary applied to add the name of Ram Singh S/o Daya Shanker, brother of the accused-appellant Sanjay Kumar as an accused making harassment and cruelty committed on the deceased Islawati Devi in connection with the demand of dowry.

6. After registering the First Information report, the Investigating Officer reached at the spot of the incident, collected the plain and blood stained soil, other material and articles found near the dead body including one plastic container of kerosene oil of half a litre, the ash of the spot and prepared the relevant memos on 08.08.2000.
7. The inquest proceeding was conducted on 28.08.2000 and concluded on the same day at about 1:00 p.m. The Investigating Officer formed an opinion that the death was caused by burning and sent it for post-mortem with constables Ram Narain Singh and Sriram Pandey on the same day.
8. The plea of alibi is taken by learned the Amicus Curiae on behalf of the accused-appellant Sanjay Kumar.
9. The post-mortem was conducted on 29.08.2000 at about 4:00 p.m. The age of the deceased was mentioned about 26 years. The doctor opined that the death occurred 2-3 days ago. Following ante-mortem injuries were reported:
 1. *Contusion on left side of face 6cm x 4cm just interior to left ear.*
 2. *Contusion on the back of head 5cm x 4cm.*
 3. *Contusion upper part of chest 22cm x 15cm.*
 4. *Contusion 6cm x 4cm front of upper left arm found above left elbow.*
10. After collecting incriminating material from the spot of the incident, recording evidence of witnesses, the Investigating Officer concluded the investigation and submitted the chargesheet, whereupon after hearing the parties, charges against three accused persons, namely Sanjay Kumar, Daya Shanker and Dhanpati Devi @ Kanchan were framed on 22.02.2001 and subsequently in a separate Sessions Trial against Ram Singh bearing Sessions Trial No. 247 of 2001 also charges were framed on 23.10.2001 under Sections 498-A, 304-B IPC read with Section 3/4 of Dowry Prohibition Act.

11. The prosecution produced the following oral and documentary evidences before the trial Judge:

P.W.-1, the informant, Mani Ram Chaudhary (brother of the deceased)	Proved the written complaint (Ex. Ka.1) Proved the Application (Ex. Ka.2)
P.W.-2, Ram Karan (brother of the deceased)	
P.W.-3, S.K. Chaudhary	
P.W.-4, Malti Devi (Mother of the deceased)	
P.W.-5, Radhey Shyam	Proved Panchayatnama as Ex. Ka.
P.W.-6, Ram Narain Singh	
P.W.-7, Dr. P.N. Singh	Proved Post mortem report Ex. Ka-6.
P.W.-8, Diwakar Kumar, Sub Inspector	1. Proved the recovery memo of blood stained and plain earth. (Ex. Ka.-4) 2. Proved the recovery memo of Ash and Earth (Ex. Ka.-5)
P.W.-9, Chedhi Prasad Yadav, Station House Officer	
P.W.-10, Vidya Sagar Sharma, Head Moharrir	
P.W.-11, Sri Ram Pandey, Constable	
One witness in defence	
Arjun as D.W.-1	

12. After the prosecution witnesses, the accused persons were examined under Section 313 Cr.P.C. and ultimately the trial judge convicted the present accused-appellant Sanjay Kumar for the offence under Sections 498-A, 304-B IPC read with Section 3/4 Dowry Prohibition Act. The accused Daya Shanker and Dhanpati Devi @ Kanchan in Sessions Trial No. 276 of 2000 and Ram Singh in Sessions Trial No. 247 of 2001 were acquitted for all the charges levelled against them under Sections 498-A, 304-B IPC read with Section 3/4 of Dowry Prohibition Act. As such, the present

accused-appellant Sanjay Kumar is the sole accused before this court.

ARGUMENTS OF THE LEARNED COUNSELS

13. Learned Amicus Curiae on behalf of the accused-appellant argued that the factum of demand of dowry is not proved as the evidence with regard to the demand of dowry is lacking. There is no complaint either in the police station or any other Forum like village Panchayat or before the respected elders of the family of cruelty in connection with the demand of dowry either by the deceased Islawati or by her brother. For the first time after death of the deceased the allegations of demand of dowry came in the written information given by the brother of the deceased.
14. He further urged that even the inquest witnesses had not stated any sign of cruelty on the person of deceased just before her death. The deceased was reported to have been treated with cruelty and harassment by the informant on his own by reason of her death due to burning.
15. Learned Amicus Curiae further argued that no specific role of demand of dowry and committing cruelty in connection therewith to can be assigned to the accused-appellant. The informant, PW-1 and other witnesses of the fact have stated that the demand of dowry and cruelty committed in connection therewith was made by all the accused persons including the present accused-appellant, though there is no evidence exclusively against the present accused-applicant. Once on the same evidence when other accused persons were acquitted, the learned trial judge had committed an error in recording the conviction of the present accused-appellant Sanjay Kumar only. The learned trial judge thus has passed the impugned judgment of conviction and order of sentence dated 24.01.2006 without considering the material on record. The sentence is too severe being the maximum as provided under Section 304-B IPC which is disproportionate to the

guilt, if any. The prosecution had been unsuccessful in proving it's case beyond all reasonable doubt. No specific motive against the appellant is proved. On the basis of the contentions made by him, learned Amicus Curiae prays to set aside the judgment of conviction and order of sentence and to allow the appeal.

16. Learned Additional Government Advocate Ms. Arti Agarwal replying the arguments made by learned Amicus Curiae on behalf of the accused-appellant argued that the prosecution has successfully proved all the ingredients to constitute the presumptive offence under Section 304-B IPC with regard to dowry death, namely:
 - (I) unnatural death of the wife ;
 - (ii) death within 7 years of marriage ;
 - (iii) demand of dowry and ;
 - (iv) cruelty done with the deceased in connection with demand of dowry soon before her death.
17. Learned AGA contended that on the date of the incident, the deceased, "Islawati" was a young lady of 26 years of age. Undoubtedly, her death was unnatural as is evident from the post-mortem report. The injuries apart from burn injuries found in the arm of the person of the deceased show that the deceased was subjected to brutality and cruelty soon before her death. Learned AGA has further contended that the post-mortem report reveals that the deceased was strangulated before her death as hyoid bone was broken. She further contended that the dead body was found in the matrimonial house of the deceased Islawati of which the accused appellant was a normal resident. No plausible explanation could be given by him. He rebut the presumption against him. The material circumstances were enough to presume it is a case of dowry death against the accused-appellant. The defence has remained unsuccessful in eliciting any fact during cross-examination of the prosecution witnesses which may be considered as the fact sufficient to rebut the presumption.

18. The plea taken in defence of alibi had not been proved by the defence during trial. The prosecution had established it's case beyond all reasonable doubt against the appellant, therefore there may not be any interference with the judgment of conviction and order of sentence. The appeal deserves to be dismissed.

[DISCUSSIONS]

LAW RELATING TO DOWRY DEATH

19. From the facts, circumstances of the case and evidences on record, the case against the present accused-appellant is of dowry death which is a presumptive offence under Section 304-B IPC. For the purpose of easy reference in discussions, Section 304-B IPC be quoted hereunder:

[304-B. Dowry death.—“(1)Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. Explanation. For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

20. As can be seen from the aforesaid provision, for convicting the accused for an offence punishable under Section 304B IPC, the following pre-requisites are required to be met:

- (i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;
- (ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband soon before her death and ;

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

21. The explanation appended to Section 304B IPC states that the word “dowry” shall have the same meaning as provided in Section 2 of the Dowry Prohibition Act, 1961 which reads as follows:

“2. Definition of ‘dowry’ - *In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly –*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.”

22. The presumption of dowry death arises when the death caused is unnatural within 7 years of the marriage in the matrimonial home and soon before the unnatural death of the wife, there is evidence of cruelty committed on her before her death in connection with the demand of dowry. It would also be pertinent to reproduce Section 498-A IPC as under:

“Section 498A in The Indian Penal Code

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to

meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

23. In this connection to appreciate the nature of presumption, we find it relevant to note Section 113-B of Indian Evidence Act, 1972 as under:

"Section 113B in The Indian Evidence Act, 1872

[113B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation.—For the purposes of this section, "dowry death" shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).]

WHETHER DEATH CAUSED WITHIN 7 YEARS OF MARRIAGE

24. According to the case of the prosecution, the marriage of deceased Islawati with appellant Sanjay Kumar was solemnized 5 years prior to the incident dated 27.08.2000. The written information of the incident has proved by the brother of the deceased Mani Ram Chaudhary (PW-1) and marked as Exhibit Ka-1. PW-1 categorically stated in the examination in chief that the marriage of his sister, the deceased, was solemnized 5 years ago and denied the suggestion that he gave statement to the Investigating Officer that the deceased got married in the year 1988.

25. PW-2, Ramkaran, another brother of deceased Islawati also stated that the marriage was solemnized approximately 5 years ago from the date of incident. In the course of cross examination, it was suggested that this witness in his previous statement to the Investigating Officer stated that the marriage of his sister Islawati was solemnized in the year, 1988 and the ritual of "Gauna" was performed in the year, 1995. PW-2 denied that no such statement

was given to the Investigating Officer. Apart from this suggestion, nothing could be elicited by the learned defence counsel to establish the marriage of the deceased Islawati with the accused Sanjay in the year, 1988.

26. PW-3 Shyam Karan Chaudhary, brother of the deceased Islawati in his cross examination has specifically stated with the marriage of deceased Islawati was solemnized with accused Sanjay in the year, 1995. This witness also stood firmly in the cross examination with regard to the period of marriage.
27. PW-4 Malti Devi W/o Shyam Karan (PW-3) who sister-in-law of deceased Islawati also stated she got married before the marriage of deceased Islawati and that she came to her in-laws house before the marriage of the deceased. She was examined before the trial court on 17.05.1995 and stated that the marriage of deceased was solemnized approximately 9 years ago from the date she was examined. PW-4 also stated that she had witnessed the marriage of the deceased. Nothing could be carved out by the learned counsel for the defence in contradiction to the statement of other witnesses with regard to the period of marriage of deceased Islawati with accused Sanjay Kumar.
28. All the four witnesses of fact are consistent in proving the marriage of the deceased Islawati with accused Sanjay Kumar approximately 5 years ago from the date of the incident. The prosecution, thus, became successful in proving the incident of bride burning as informed by the first informant, PW-1, occurring within a period of five years' of matrimonial life of the deceased Islawati with accused Sanjay Kumar.

DEMAND OF DOWRY

29. The fact of demand of dowry can be disclosed most probably and very naturally by the sufferer i.e. the wife (In the present case deceased Islawati) herself and the inmates of her paternal house

like her mother, brother or other near relatives with whom she might have shared the fact of demand having been made to her. In the case before us, PW-1, PW-2, PW-3 are the brothers of the deceased and PW-4 is her sister-in-law (wife of the brother of the deceased, namely, Shyam Karan). Narrating their conversation with the deceased during her life time the witnesses have stated before the court with regard to demand of motorcycle in dowry. PW-1 stated that their father had died before the marriage of Islawati and according to their financial capacity, they had given sufficient dowry in the marriage but the accused Sanjay Kumar, his parents and one real uncle Ram Singh were pressing the demand for motorcycle in the dowry. PW-1, the elder brother of the deceased with folded hands met the in-laws of his deceased sister and begged pardon for not fulfilling their demand of motorcycle in dowry and requested not to torture his sister in connection with their unfulfilled demand but they continued torturing and treating the deceased Islawati with cruelty in connection with their unfulfilled demand and ultimately P.W.-1 got the information of his sister's death by burning in her in-laws house. When he reached to the matrimonial house of the deceased, her father-in-law Daya Shanker met and told his sister had died. He immediately moved to the police station, gave the written information of the incident to lodge the First Information Report. This witness when confronted stated that before the marriage, no terms of dowry were settled but when his sister came from her matrimonial house to her paternal home, she told about the demand of motorcycle in dowry. P.W.-1 was further confronted as to when the said demand was made, he replied that the demand was made in the very year in which the marriage of Islawati was solemnized. This witness in the cross examination, thus, had proved that the demand of motorcycle in dowry was made to the deceased Islawati soon after her marriage.

30. Contrary to this proved fact when the accused persons were confronted with the same, they simply stated that marriage of

Islawati with accused Sanjay Kumar was solemnized 8 years ago from the date of alleged incident. Except this bare statement under Section 313 Cr.P.C., neither any inconsistency could be carved out in the cross examination of prosecution witness that the solemnization of marriage 8 years prior to the date of the incident nor the accused had adduced any evidence to prove their version.

31. In the cross examination of P.W.-1, it has come that the deceased Islawati was educated up to 10th standard, a query was then made to PW-1 whether any letter was written by her in relation to the demand of dowry which he denied. But P.W.-2 also denied the suggestion that letter was not written as there was no such demand nor any cruel treatment in connection with demand of dowry was ever made to her.
32. So far as the threat of life if the demand of motorcycle as dowry is concerned, PW-4, the sister-in-law of the deceased stated that deceased Islawati when visited her house, shared the trouble she was facing relating to the demand of dowry and cruel treatment by her in-laws in connection with the said demand. P.W.-4 stated that the deceased also shared the threat given to her that if the demand of motorcycle was not fulfilled, she (Islawati, the deceased) would be killed and second marriage would be performed. In the cross examination also P.W.-4 stood uncontradicted and consistent with her statement as to the threat of life to deceased Islawati. The other witnesses of fact PW-2 and PW-3 also stated that the deceased had shared threat to her life given by the accused persons in case the demand of motorcycle in dowry was not fulfilled. PW-2 and PW-3 Shyam Karan stated that their younger brother Mani Ram (PW-1) used to visit their sister in her matrimonial house frequently and he then became conversant with the fact of demand of dowry and subsequently killing of deceased. By oral evidence, the witnesses PW-1, PW-2, PW-3 and PW-4 had proved the demand of motorcycle in dowry and also

torture and beating of the deceased in connection with the said demand.

33. Anything contrary to the said proved facts could not be carved out. Even no evidence had been adduced in defence.

UNNATURAL DEATH AND MEDICAL EVIDENCE

34. The witnesses of fact, namely, PW-1 to PW-4 proved that they came to know that her sister was burnt and killed by her in-laws when PW-1 rushed to know about the well being of her sister and reached her matrimonial house, her father-in-law informed that she had died. Neither the accused informed the unnatural death of the deceased nor they took her to the hospital to get her all possible treatment. This conduct is also a relevant fact which lead to an inference that the unnatural death was caused due to burn injuries caused by her in-laws and the motive was unfulfilled demand of motorcycle in dowry.
35. The inquest of the dead body after registration of the First Information Report on 27.08.2000 was done on 28.08.2000. The informant of the incident was Mani Ram Chaudhary PW-1 and no male from the matrimonial house of the deceased. The spot of the incident of burning and death of the deceased, as described in the inquest report, is the matrimonial house of the deceased. The *prima facie* reason of unnatural death is assigned in the inquest report to the accused that they caused death by burning. The inquest proceeding is proved by the witness of the inquest, namely, Radhey Shyam as PW-5. He proved his signature on the inquest proceeding marked as Exhibit Ka-3. This witness also proved the collection of blood stained soil from the spot of the incident and plain earth soil therefrom by the Investigating Officer. The memo of the aforesaid is proved by him as Exhibit 3Ka/5. This witness has further stated that on the spot, at the time of the inquest, a container of kerosene oil was also found and the recovery memo was prepared by the Investigating Officer and he witnessed the

recovery by making the signature on memo marked as Exhibit 3K/6. Apparently, according to this witness, no apparent injury was found on the burnt body but in view of the fact, collecting blood stained soil from the spot, the aforesaid portion of the statement suffers from obscurity. The body was, however, sent for the post-mortem.

36. The post-mortem examination was done on 29.08.2000 about 4:00 p.m. The doctor PW-7 observed that the dead body was 2 to 3 days old and the deceased was about 26 years of age. He observed the condition of the body as follows:

“Body swollen, both eyes, skin peeled off at places bulges out conjunctiva congested. Tongue protruded out of mouth 4cm in length. Abdomen burst open, intestine coming out. Protruded tongue is blackened due to partial burn. Tip of the tongue lacerated. Indentation of teeth present in lower surface of tongue.”

37. The ante-mortem injuries found on the body are:

- (I) contusion on the left side of the face of 6cmx4cm just interior to left ear
- (ii) contusion on the back of head 5cmx4cm
- (iii) contusion upper part of chest 22cmx15cm
- (iv) contusion 6cmx4cm front of the upper left arm from above left elbow.

38. The doctor had opined that post-mortem burn was present all over the body. Scorching of hair present on the head scalp, most of hair were completely burnt. The smell of kerosene oil present on scalp hair and remaining part of cloth. The right cornua of hyoid bone was fractured. Extravascular of blood muscles present. On the internal examination of the dead body, the doctor found a wound on the head, the liquification of the brain started. No smoky particles were present in the Bronchi. Lungs were congested, pericardium congested, heart both chambers empty, the abdominal was ruptured and intestines were coming out. Stomach empty, saces and pulpy matter present in small intestine gas faecal matter

present. Putrifacation of liver started. The doctor had opined that the death of the deceased was caused by result of asphyxia due to strangulation of neck. This report was proved by doctor as Exhibit K-6

39. In the cross examination, PW-7 had denied any ligature mark on the neck of the deceased and no mark of fingers or thumb were also found.
40. The burn injuries and scars on the dead body were opined by PW-7, the doctor as post-mortem injuries i.e. subsequent to the killing of the deceased. On a suggestion, the doctor stated that if after death clothes of the deceased caught fire, post mortem burn could occur. It is also apparent from the internal examination that there were no smoke particles in the bronchea. This clearly shows that when the body was being burnt, the victim was not in a vital condition or alive so as to inhale the smoke particles. Likewise, the autopsy finding post-mortem burn all over body. Ante-mortem injuries found on the person of the deceased is attributable to the violent death. The presence of accelerants used and violent signs are factors indicating 'post mortem burning' following homicidal death. The above fact reflecting from the post-mortem examination and the opinion of doctor clearly proved the homicidal death of the deceased and, thereafter, burning of the dead body by the accused.
41. On going through the report of the inquest coupled with the post-mortem examination, it is established that the deceased was first beaten brutally then she was strangulated and finally when she died, her body was tried to emulate in fires pouring kerosene oil on it. The ante-mortem injuries mentioned in the post-mortem report, collection of blood stained soil reported in the inquest by the Investigating Officer are sufficient to establish the offence of torturing, beating and cruelly committed on the deceased soon before her death by the accused. The ante-mortem injuries reveal

that the deceased was subjected to extreme cruelty soon before her death, particularly in proximity to the death caused by the accused.

42. The Import of the provisions of Section 498A, 304-B IPC and Section 113-B of the Indian Evidence Act has been explained in several decisions of the Apex Court. In **Bansi Lal Vs. State of Haryana [(2011) 11 SCC 359]**, it has been held that:

"17. While considering the case under Section 498-A (Sic. Section 304-B), cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused should make life of the deceased miserable which may force her to commit suicide."

43. In **Maya Devi and Anr. Vs. State of Haryana [(2015) 17 SCC 405]**, it was held that:

"23. To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty or harassment "for, or in connection with the demand for dowry". The expression "soon before her death" used in Section 304-IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is "soon before her death", no definite period has been enacted and the expression "soon before her death" has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term "soon before her death" is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence."

44. On the basis of the evidence led by the prosecution, we find that there is sufficient linking of the chain of circumstances which

produce the following picture of the entire incident from the very inception till the end, namely:-

- (I) The deceased "Islawati" was married with accused Sanjay S/o Daya Shanker and Dhanpati 5 years prior to the date of the incident occurred on 28.07.2000;
- (ii) The body of the deceased was found in the matrimonial house of the deceased in the burnt state and there are consistent evidence that the death was caused otherwise than under normal circumstances;
- (iii) The deceased was at her matrimonial house prior and at the time of her death;
- (iv) The information of the death of the deceased was not given to her brother;
- (v) The deceased was subjected to assault and cruel treatment by the accused person who is her husband;
- (vi) The act of cruelty and harassment was in connection with the demand of dowry and was made soon before her death.

NO EXPLANATION BY THE ACCUSED

45. All the incriminating circumstances were put to the accused-appellant Sanjay who while denying them being false offered an explanation that he was falsely implicated due to enmity. To the question as to whether he wanted to produce any defence, the answer was 'yes'. However, no defence was produced by accused Sanjay. The defence witness D.W.-1 was produced to support of plea of alibi of co-accused Ram Singh who is not before us. Absolutely no explanation was offered by the appellant Sanjay as to what had happened in the house on the fateful day, admittedly wherein he was present.

46. It is proved that the deceased was normally living in her matrimonial house with her husband accused Sanjay Kumar prior

to the incident in question, her dead body was found with several wounds, injuries and signs of torture and beating on it including the evidence of strangulation and the death was caused by asphyxia which is proved. In such circumstances what happened in the matrimonial house with the deceased and how the wounds and injuries were sustained on the person of the deceased as ante-mortem injuries are the facts, particularly within the knowledge of the accused-Sanjay as there is absolutely no evidence on record nor it was alleged that he was not present in the house on the fateful day when the deceased was alive just prior to the incident, no explanation at all had been offered by the accused despite opportunity given to him.

47. The prosecution has discharged its initial burden beyond all reasonable doubt that the murder of deceased Islawati was committed in the secrecy of her matrimonial house wherein accused Sanjay was normally residing with her. The dead body was found with signs of beating and cause of death reported is asphyxia by strangulation. The presence of accused with the deceased when she was alive is proved beyond doubt. Resultantly, under Section 106 of Evidence Act, 1872, there is a corresponding burden on the accused-husband to give cogent explanation as to how the crime was committed. The appellant cannot get away by keeping mum.

48. In the Case of **Trimukh Maroti Kirkan Vs. State of Maharashtra** [(2006) 10 SCC 681], the Apex Court in para 14 and 15 has held as under:

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not

escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* quoted with approval by Arijit Pasayat, J. in *State of Punjab vs. Karnail Singh* (2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

"(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

49. In view of the above discussions based on the proved circumstances from documentary and oral evidences, we are of the opinion that in the present case, all the ingredients of Section 304-B read with Section 498-A IPC and Section 113-B of the Indian Evidence Act are satisfied and there are sufficient evidence and material for presumption of dowry death of deceased Islawati at the hands of accused Sanjay, her husband.

GENUNIETY OF INVESTIGATION

50. Since the learned counsel for the appellant vehemently argued stating that the investigation conducted by the I.O. in-genuine, we think the same to be evaluated in the light of oral and documentary

evidences on record. The written information of the incident was given by reasonable promptness to the police station Lalganj, District Basti, the submission of written information is proved by Maniram, the first informant as P.W.-1. The G.D. entry of police station of F.I.R. is also at serial no.32 on 27.08.2000 at about 21:35 P.M. The chik F.I.R. was prepared and copy of the same was provided to the informant is also proved whereupon Ex. 3 Ka-17 was endorsed. After registering the F.I.R. bearing Case Crime No.288 of 2000, under Sections 498-A, 304-B of Indian Penal Code, 1860 read with Section $\frac{3}{4}$ of Dowry Prohibition Act against the present accused-applicant and another accused, the family members, the Circle Officer started investigation on the same day. Inquest proceeding was conducted, the body of the deceased Islawati was sent for post mortem by S.D.M. Vinay Shanker Choubey. The relevant papers were filled up by the S.I. Narain Singh, who is examined as P.W.-9. He has proved the said document as Ex. 3Ka. The collection of blood stained soil, plain soil in the presence of witnesses under their signatures proved in the Court by the witness P.W.-9 as Ex. 3 Ka-5. The container of kerosene oil bearing half liter kerosene oil was also collected before the witness and memo was prepared in the Court. This is proved as Ex. 4 Ka-6. As such, lodging of the first information report and investigation was started promptly without any unreasonable delay. Inquest proceeding and report is also proved by Constable Sri Ram Pandey who reproduced into writing the contents of report on the dictation of SDM, Vinay Shanker Choubey.

51. On the basis of above discussions, we do not find any force in the appeal. The same deserves to be dismissed. The judgment can not be interfered on the argument as to the disproportionate quantum of punishment. The dowry death being a long standing social event and the dowry death of the deceased in the instant case being pestiferous committed in a scheme of the most brutal

manner and cruelty by the covetous husband, the punishment of life imprisonment, in our considered opinion, is the proportionate punishment.

52. We find no substance in the submissions of the learned Amicus so as to interfere in the judgment of conviction and order of sentence dated 24.01.2006 passed by the trial court.

OPERATIVE

53. On the discussions made hereinabove, we do not find any force in the appeal of "Sanjay Kumar" filed against the judgment of conviction and order of sentence dated 24.01.2006 passed by the learned Additional Sessions Judge, Court no. 6, Basti in Sessions Trial No. 276 of 2000, under Sections 498-A, 304-B of Indian Penal Code, 1860 read with Section 3/4 of Dowry Prohibition Act. The appeal accordingly, deserves to be dismissed and is hereby **dismissed**.

54. The appellant Sanjay Kumar is in jail. Certified copy of the judgment be sent to the court below for necessary action and forwarding to the concerned Jail Superintendent where the accused appellant, Sanjay Kumar is detained.

55. Lower court record be sent back to the District Judgeship, Basti, immediately.

56. Before parting with the matter we would like to appreciate the sincerity, commitment and enthusiasm of Sri Pramod Kumar Pandey, learned Amicus Curiae for the accused-appellant who with all reasonable promptness has prepared the case and argued vehemently on all the relevant issues. In our judgment, we recommend to pay Rs.12,000/- as remuneration to him. The payment be made by the registry at the earliest.

Order Date :- 24/05/2022

kkv/

[Vikas Kunvar Srivastav,J.] [Mrs. Sunita Agarwal,J.]