

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No. 886 of 2018

With

Cr. Appeal (DB) No.365 of 2018

(Against the judgment of conviction dated 14.02.2018 and the order of sentence dated 16.02.2018 passed by the learned Additional Sessions Judge-VII, Dhanbad in Sessions Trial No.95 of 2010)

Raja Ram Mandal, son of Gurupad Mandal, R/o Village Deoli, Mandal Tola,
P.O. + P.S. Govindpur, District Dhanbad, Jharkhand **Appellant**
[In Cr. Appeal (DB) No. 886 of 2018]

1. Gurupad Mandal, son of late Anil Mandal
2. Sandhya Mandal, wife of Sri Gurupad Mandal

Both resident of Village Deoli, Mandal Tola, P.O. + P.S. Govindpur,
District Dhanbad, Jharkhand **Appellants**
[In Cr. Appeal (DB) No.365 of 2018]

Versus

The State of Jharkhand **Respondent**
[In both cases]

CORAM: SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.

For the Appellant(s) : Mr. Mahesh Tewari, Advocate
[In both cases]
For the State : Mrs. Priya Shrestha, APP
[In both cases]

C.A.V. on: 22/04/2024

Pronounced on:06/05/2024

J U D G M E N T

Per: Subhash Chand, J.

1. Both these Criminal Appeals have been preferred against the judgment of conviction dated 14.02.2018 and the order of sentence dated 16.02.2018 passed by the learned Additional Sessions Judge-VII, Dhanbad in Sessions Trial No. 95 of 2010, whereby the learned trial Court has convicted the appellants under Sections 304(B)/34 of the Indian Penal Code and sentenced

them to undergo RI for ten years for the charge under Section 304(B)/34 of the Indian Penal Code.

2. Since both Criminal Appeals have been directed against the common impugned judgment, hence, both these appeals are being decided by this common judgment.

3. The brief facts of the prosecution case leading to these Criminal Appeals are that the *fardbeyan* of the informant Ram Kinkar Mandal was recorded by S.I., N. K. Prasad of Govindpur Police Station on 03.05.2009 wherein the allegations are made that the marriage of his sister was solemnized with Raja Ram Mandal about four years ago and after six months of marriage, the father-in-law Gurupad Mandal, mother-in-law Sandhya Mandal, *Dewar* Sukmar Mandal and husband Raja Ram Mandal began to subject her to cruelty for demand of dowry and for non-fulfilment of the same. For which, the sister of the informant had also complained to them in regard to subjecting her to cruelty. One motorcycle was demanded and a Hero Honda Motorcycle of red colour was also given. Again, after six months, a colour T.V. of L.G. Company was also demanded and his sister was also harassed for the same demand, therefore, a T.V. was also given. The sister of the informant was blessed with a son who is two years old. At present, his sister is pregnant by seven months and thereafter, the sister of the informant was tortured and harassed. Three times Panchayat was held in the village but the husband of the sister paid no heed. On 02.05.2009 at 08:00 O'clock in the evening, information was received from the villagers that his sister has died in her in-law's house. The informant along with his family members and persons of the village reached to her in-law's house and found the dead body lying in a room. All the

inmates of the in-law's house had fled away from the house. The persons of the locality told that there was dispute between his sister and the members of her in-law's house. The sister of the informant was throttled to death by all the family members of in-law's house for non-fulfilment of demand of dowry. On this written information, Govindpur P.S. Case No. 107 of 2009 was registered under Section 304(B)/34 of Indian Penal Code against the accused, namely, Raja Ram Mandal, Gurupad Mandal and Sandhya Mandal, Sukuma Mandal and Nirmal Mandal.

4. The Investigating Officer after having concluded the investigation, filed charge-sheet against the accused Raja Ram Mandal, Sandhya Mandal and Gurupad Mandal under Section 304(B)/34 of the Indian Penal Code to the Court of learned Magistrate Concerned, who committed the case for trial to the Court of learned Sessions Judge, who further transferred the same to the learned Sessions Judge, FTC-III, Dhanbad.

5. The learned Trial Court framed the charge against all the three accused persons under Sections 304(B)/34 of the Indian Penal Code and the same was explained to them, all the accused persons denied the charge and claimed to face the trial.

6. On behalf of the prosecution to prove the charge against the accused in oral evidence examined altogether eleven witnesses i.e. **P.W.-1, Ashok Mandal; P.W.-2, Gautam Mandal; P.W.-3, Nayan Mandal; P.W.-4, Bhawani Devi; P.W.-5, Saru Devi; P.W.-6, Sapan Kumar Sarak; P.W.-7, Ram Deo Mandal; P.W.-8, Chhotu Mandal; P.W.-9, Duryodhan Mandal; P.W.-10, Ram Kinkar Mandal and; P.W.-11, Nand Kishore Prasad;** and in documentary evidence the prosecution has adduced **Exhibit-1, Post-mortem examination report of deceased Chandrika Devi; Exhibit-2,**

Signature of P.W.-7, Ram Deo Mandal on the *fardbeyan*; Exhibit-2/1, Signature of P.W.-7 Ram Deo Mandal on the *fardbeyan*; Exhibit-2/2, Registration note on the *fardbeyan*; Exhibit-3, Signature of P.W.-10 Ram Kinkar Mandal on the written report; Exhibit 3/1, Signature of P.W. 10 Ram Kinkar Mandal on the written report and; Exhibit 3/2, Inquest report.

7. In documentary evidence the defence has adduced Exhibit-A, Memo of arrest of accused Raja Ram Mandal; Exhibit-A/1, Memo of arrest of accused Gurupad Mandal and; Exhibit-B, Xerox copy of challan of dead body of deceased for postmortem examination.

8. The statement of all the accused persons was recorded under Section 313 of the Code of Criminal Procedure, in which, all the accused persons denied the incriminating circumstances in the evidence against them and stated themselves to be innocent and they have been falsely implicated in this case.

9. The learned Trial Court after hearing the rival submissions of the learned counsel for the accused and learned counsel for the State, passed the impugned judgment of conviction dated 14.02.2018 and the order of sentence dated 16.02.2018 holding the accused persons guilty for the offence under Section 304(B)/34 of the Indian Penal Code and sentenced them as aforesaid.

10. Aggrieved from the impugned judgment of conviction dated 14.02.2018 and the order of sentence dated 16.02.2018, both these Criminal Appeals have been preferred on behalf of the accused on the ground that the impugned judgment of conviction and the order of sentence passed by the learned Trial Court is bad in the eyes of law and the same is not based on

proper appreciation of evidence. The findings recorded by the learned Trial Court is perverse. In view of the above, prayed to allow both these Criminal Appeals and set aside the impugned judgment of conviction and the order of sentence.

11. We have heard the rival submissions of the learned counsel for the appellants and learned APP for the State and perused the materials available on record.

12. In order to decide the legality and propriety of the impugned judgment of conviction and the order of sentence passed by the learned Trial Court, we scrutinize the evidence oral as well as documentary adduced on behalf of the parties on record, which are reproduced hereinbelow:

12.1 P.W.-1, Ashok Mandal, in his examination-in-chief says that Chandrika Devi was the sister of Ram Kinkar Mandal. She was married with Raja Ram Mandal three years ago. Chandrika Devi died in her in law's house. He had heard in regard to the occurrence from the villagers. Police did not interrogate him. **This witness was declared hostile.** In cross-examination, this witness denied the statement given under Section 161 of the Code of Criminal Procedure given to the Investigating Officer.

12.2 P.W.-2, Gautam Mandal, in his examination-in-chief says that Chandrika Devi was the wife of Raja Ram Mandal. The marriage had taken place 4-5 years ago. One and a half years ago, Chandrika Devi died. **He has heard that she died on account of hanging.**

12.3 P.W.-3, Nayan Mandal, in his examination-in-chief says that the occurrence was of one and a half years ago and *kirtan* was going on in the village on the date of occurrence. Chandrika Devi died in her in law's house. **Police came but did not interrogate him.** In the cross-examination, this

witness says that he did not see the occurrence.

12.4 P.W.-4, Bhawani Devi, in her examination-in-chief says that **Chandrika Devi was her younger sister and she was married four years ago with Raja Ram Mandal**. At the time of occurrence, her sister was pregnant. **Her sister was tortured by her mother-in-law, father-in-law, brother-in-law, sister-in-law and the husband for demand of dowry**. After having received the information, she also reached to the in-law's house of her sister along with 20-25 persons of the village. The members of in-law's house were making preparation for cremation of her sister. As soon as they reached to the house, all the inmates of in-law's house fled away. Her brother Ram Kinkar Mandal lodged the FIR. **Whenever her sister comes to her parental house, she used to make complaint of her in-laws. In cross-examination, this witness says police did not interrogate him**. She saw the dead body of her sister in the police station. She denied this suggestion that her sister was of loose temper and she committed suicide.

12.5 P.W.-5, Saru Devi, in her examination-in-chief says that **Chandrika Devi was her daughter. After marriage, the members of in-law's house subjected her to cruelty. A demand of colour T.V. and motorcycle was made. For the same, she was subjected to cruelty. All the family members used to make demand. Her daughter had gone to participate in *kirtan* in the village and in the evening when she came, Raja Ram Mandal, Gurupad Mandal and Sandhya Mandal, all assaulted her and throttled her to death**. After having received the information of the death, they also reached to her in-law's house. **The demand of colour T.V. and motorcycle was made just after few days of marriage. A *panchayat* was also held in the village. In cross-examination, this witness says that police did not**

interrogate her. She did not see the occurrence from her own eyes.

12.6 P.W.-6, Dr. Sapan Kumar Sarak, in his examination-in-chief says that on 3rd May, 2009, he was posted as a tutor in Department of Forensic Medicine, PMCH, Dhanbad and at 12:30 pm, he conducted the postmortem of the body of deceased Chandrika Devi. On examination, he found the following antemortem external injuries over the person of deceased:-

I) Ligature mark – ¼” to ½” wide over larynx running obliquely upward and backwards towards left mastoid along with line of mandible on left and transverse and then obliquely upwards and backwards towards middle occiput on right with a gap of 6” on back. The mark found hard lathery and parchment like without any pattern and abrasion on margin.

II) Patter bruise- similar to lathi on rod.

- i) 1 ½” X ¾” over back of upper third of right thigh.*
- ii) 3” X ¾” with gap in middle of ¾” over inner side of lower third of right leg.*
- iii) 2” X 1½” over middle part outer side of left neck.*

III) Bruise-

- i) 4” X 2 ½” over back of right arm.*
- ii) 2 ½” X 1” over outer side of left upper arm.*
- iii) 2” X 1” over left Arm.*

IV) Swelling with bruise over frontal and parietal region of head. On incising the abovementioned bruises blood clots found in subcutaneous tissues and muscles. No evidence of saliva found over cloths or body.

On dissection:-

Ecchymosis with blood clots found beneath skull over frontal and parietal region of head. Skull found normal. Brain and meninges congested. Subcutaneous tissues beneath the ligature mark found dry, white and glistening. No abnormality found in the soft tissues of neck. Hyoid found intact and mucus membrane of larynx and trachea found congested. Both lungs found congested. Right ventricle of heart full of dark fluid blood and left empty.....

8. I found no mechanical injury on the neck except ligature mark.

9. Hyoid bone was not fractured in this case.

Cause of death was asphyxia as a result of hanging. Time elapsed since death as 18 to 24 hours. External wounds might be caused by hard and blunt substance except the ligature mark.

The **postmortem report** was in his pen and signature marked **Exhibit-1.**

12.7 P.W.-7, Ram Deo Mandal, in his examination-in-chief says that **Chandrika Devi was his daughter who was married six years ago with**

Raja Ram Mandal. Just after six months of marriage, the dispute arose. Her mother-in-law, father-in-law, brother-in-law and husband all began to torture her for dowry. He could not fulfil the demand of money made in dowry. Panchayat was also held but the inmates of the in-law's house made all the *panch* members to flee away. After having received the information from the villagers in regard to death of his daughter, he reached to her in-laws' house and found her dead body. All the family members of her in-law's house fled away. His son Ram Kinkar Mandal lodged the FIR. **He also put his signature on the *fardbeyan* marked as Exhibit 2/1.** In cross-examination, this witness says that the marriage of his daughter with Raja Ram Mandal was not a love marriage. The persons of the village had informed to him in regard to that of his daughter and not his son-in-law. Along with him, Shyam Kishore Mandal, Ram Kinkar Mandal, Dilip Kumar Mandal and Govardhan Mandal had reached to in-law's house of his daughter. No one accused were found present there and all fled away. Police came there and recorded *fardbeyan* of Ram Kinkar Mandal. He denied this suggestion that in this case a demand of Rs.2 lakhs was made for compromise by him. This suggestion was also denied that his daughter has committed suicide on account of trivial quarrel between her and her husband.

12.8 P.W.-8, Chhotu Mandal, in his examination-in-chief says that the occurrence is of four years ago. He also went to the house of Raja Ram Mandal and found the dead body of his wife and an iron rod was also lying there besides the dead body. Blood was also there. All the family members of Raja Ram Mandal had fled away. How the deceased died, he is not aware. **Police did not interrogate him. This witness was declared hostile and**

denied the statement given under Section 161 of the Code of Criminal Procedure to the Investigating Officer.

12.9 P.W.-9, Duryodhan Mandal, in his examination-in-chief says that he heard in regard to death of wife of Raja Ram Mandal in her in-law's house. How she died, he is not aware. **This witness was declared hostile. In cross-examination, he denied the statement given under Section 161 of the Code of Criminal Procedure.**

12.10 P.W.-10, Ram Kinkar Mandal, in his examination-in-chief, says that Chandrika Devi was his sister. **She was married seven years ago. After 2-3 months of marriage, dispute began between his sister and the members of in-law's house. A demand of Hero Honda motorcycle was made. He paid Rs.55,000 to Raja Ram Mandal. Again, after one month, his sister complained over the phone to him.** He also gave 50 kg rice, 50 kg wheat flour, 10 kg oil and other household articles. On 02.05.2009, his sister had gone to participate in a *kirtan* and when she came from there, the persons of the village told that his sister was killed by the members of her in-law's house. His *fardbeyan* was recorded and he identifies his signature on the *fardbeyan* marked Exhibit 2. In cross-examination, this witness says that the marriage of his sister with Raja Ram Mandal was not a love marriage rather this marriage was solemnized in a temple where all the family members and relatives of both sides attended the same. This witness denied this suggestion that both father and mother of Raja Ram Mandal were not happy with this marriage and, therefore, they separated themselves from Raja Ram Mandal. **He never gave any information to the police in regard to the harassment being made by the members of in-laws house to his sister.** He denies this suggestion that a demand of Rs. 2 lakhs was made to settle the dispute by

way of compromise and subsequently, a motorcycle, which was given was also taken back by him.

12.11 P.W.-11, Nand Kishore Prasad, the Investigating Officer, in his examination-in-chief says that on 03.05.2009, he was posted as S.I. at the police station concerned. He recorded the *fardbeyan* of Ram Kinkar Mandal which bears his signature and also the signature of witness Ram Deo Mandal. The investigation in this case crime was handed over to him. Formal FIR was also prepared on the basis of *fardbeyan* by Raj Kumar Pandey, which is in his pen and signature and he identified the same marked Exhibit 4. The inquest report was prepared by him, carbon copy of the same is on record, therein signature of Ram Kinkar Mandal and Shyam Kishore Mandal. He identified the same marked Exhibit 3/2. He recorded the restatement of informant and inspected the place of occurrence. **On the dead body of the deceased, there was ligature mark on neck and there were bruises on her arms and legs as well. No ceiling fan or any other material was found by him at the place of occurrence rather it appeared that after committing murder the body was placed in that room.** He recorded the statement of the witnesses Bhawani Devi, Ram Deo Mandal, Saru Devi, Ashok Mandal, Nayan Mandal, Gautam Mandal, Subhash Mandal, Duryodhan Mandal and Chhotu Mandal and received the postmortem report filed the charge-sheet. In cross-examination, this witness says that **he did not investigate on this point where the murder was committed and, thereafter, the dead body was placed in the room at the place where he had seen the dead body.** There was no rope, rod or any other article at the place of occurrence. **Ram Kinkar Mandal did not tell him that he had given Rs.55,000/- rice, wheat flour or other household**

articles. He also stated that Ram Kinkar Mandal denied in his restatement that his sister had gone to see the *kirtan* and their Raja Ram Mandal brought her, beating her and after ten minutes thereof, his sister died.

13. Herein it would be relevant to give the statutory provisions which are reproduced as under:

13.1 Section 304B of the Indian Penal Code, 1860 reads as under:

“304B. 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 purposes 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.]”

13.2 Section 113B of the Indian Evidence Act, 1872 reads as under:

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

14. From bare perusal of Section 304B of the Indian Penal Code, it is evident that the prosecution is obliged to prove **(i) the death of a woman was caused by burn or bodily injury or had occurred otherwise than under the normal circumstances (ii) Such death should have occurred within seven years of her marriage (iii) the deceased was subjected to cruelty or harassment by her husband or by the relative of her husband (iv) such cruelty or harassment should be in connection with the**

demand of dowry (v) such cruelty or harassment of the deceased should have been subjected soon before her death.

15. From the prosecution evidence, **it is proved that the death of the sister of the informant was within seven years of marriage.** It is also proved from the prosecution evidence that the death of the sister of the informant was unnatural death as proved from the testimony of **P.W.-6, Dr. Sapan Kumar Sarak**, who has stated that there was ligature mark on the neck of the deceased and there were multiple patterns of bruise on her body parts. The cause of death has been opined asphyxia as a result of hanging. He has proved the postmortem report of deceased marked Exhibit-1. Moreover, the inquest report of the deceased was also prepared, which has been proved by **P.W.-11, Nand Kishore Prasad who is Investigating Officer** and marked Exhibit 3/2 and as per inquest report, there was ligature mark on the neck of deceased and also there were external injuries. **Therefore, the unnatural death of deceased is proved from the prosecution evidence.**

15.1 So far as the demand of dowry made by the appellants and for non-fulfilment of the same subjecting her to cruelty is concerned, on this issue the prosecution witnesses i.e. **P.W.-4, Bhawani Devi, sister of deceased; P.W.-5, Saru Devi, mother of deceased; P.W.-7, Ram Deo Mandal, father of deceased and, P.W.-10, Ram Kinkar Mandal, brother of deceased**, all have stated that after few days of marriage, dispute was arose between the deceased and the members of in-laws house for demand of dowry and the deceased was also subjected to cruelty for non-fulfilment of the same. This evidence is also on record that in fulfilling this demand of dowry, one motorcycle and colour T.V. were also given. After giving the colour T.V. and

the motorcycle, there is sweeping and bald allegations that further the deceased was tortured by the members of in-law's house.

15.2 Learned counsel for the appellants has submitted that the testimony of these witnesses i.e. **P.W.-4, Bhawani Devi; P.W.-5, Saru Devi; P.W.-7, Ram Deo Mandal and, P.W.10, Ram Kinkar Mandal** cannot be relied upon reason being they are **interested witness**. This contention made by learned counsel for the appellants **is not found tenable because in case of a dowry death, the members of the parental house are the natural witnesses, who can depose in regard to the demand being made and harassment by the members of in-law's house to the deceased. As such, their testimony cannot be discarded being relative and interested witness.**

15.3 The Hon'ble Supreme Court in the case of *State of Karnataka by Gandhinagar P.S. Vs. M.N. Basavaraja & Ors.* reported in (2024) LiveLaw SC 293 held that the evidence of family members in a dowry case cannot be discarded saying that they are interested witness. Paragraph No. 12 reads as under:

“12. The next argument that PWs 1, 10 and 12 are interested witnesses and hence their evidence lacks credence has been advanced only to be rejected. A lady facing harassment and cruelty owing to her or her family's failure to meet dowry demands would more often than not confide in her immediate family members. If the evidence of the family members in a case of dowry death is to be discarded on the ground that they are interested witnesses, we wonder who would be the reliable witness to testify for bringing the culprit to book. We have no hesitation in rejecting the argument as one wholly without substance.”

15.4 Therefore, this ingredient of Section 304B of Indian Penal Code is also fulfilled from the prosecution evidence.

16. To prove the charge under Section 304B of Indian Penal Code, the prosecution has also to prove that there was harassment or torture in pursuance of demand of dowry soon before death.

16.1 In the case in hand, all the prosecution witnesses i.e. **P.W.-4, Bhawani Devi; P.W.-5, Saru Devi; P.W.-7, Ram Deo Mandal and, P.W.10, Ram Kinkar Mandal** have nowhere mentioned the date when the demand for dowry was made. It came in evidence that after few month of marriage, the demand of dowry was made and for non-fulfilment of the same, the deceased was subjected to cruelty and harassment. Further, there is evidence that to fulfil the demand of dowry, one motorcycle and the colour T.V. was also given. On this issue the evidence of **P.W.-10 (the informant), Ram Kinkar Mandal** becomes relevant. This witness has stated that after two to three months of marriage, dispute began to arise between his sister and members of her in-laws' house. Her brother-in-law, father-in-law, mother-in-law and her husband made demand of Hero Honda Motorcycle. He gave Rs. 55,000/- to Raja Ram Mandal and after one month of the fulfilment of the demand of motorcycle, still his sister was subjected to cruelty.

16.2 From the evidence adduced on behalf of the prosecution, only this fact is proved that the **deceased was subjected to cruelty for demand of dowry after few months of marriage, which had been solemnized four years ago from the date of occurrence and the informant has also fulfilled this demand for motorcycle and the colour T.V. which were made at the interval of six months, both were fulfilled by the parents of the deceased.**

16.3 After fulfillment of this demand of colour T.V and the motorcycle, there is neither any allegation in the FIR itself nor there is any evidence whether any kind of further demand was made for dowry and whether for non-fulfilment of the same, she was harassed or subjected to cruelty. All the prosecution witnesses i.e. **P.W.-4, Bhawani Devi; P.W.-5, Saru Devi; P.W.-7, Ram Deo Mandal and, P.W.10, Ram Kinkar Mandal** in their testimony have nowhere stated that after fulfilment of demand of motorcycle and the colour T.V., any further demand for dowry was made and the harassment of deceased was also made in connection with any unlawful demand for dowry.

17. To complete the offence under Section 304B of Indian Penal Code, the prosecution has to prove that “soon before” the death, there was harassment of deceased based on demand of dowry. There is no straight jacket formula to lay down the period soon before death, it depends upon the facts and circumstances of each case; but the harassment based on non fulfilment of demand of dowry should be in continuity having nexus and proximate live link ultimately resulting in unnatural death of victim.

17.1 In this case, after fulfilment of demand of motorcycle and colour T.V., no further demand for dowry was made. There is no evidence in regard to any harassment based on demand of dowry made on behalf of the appellants-convicts. The death of the deceased, which was caused on 02.05.2009 is certainly unnatural; but no evidence is adduced on behalf of prosecution to show the nexus or proximate cause of this unnatural death having connection with the harassment made for non-fulfilment of demand of dowry.

18. The conjoined reading of **Section 304B** of the **Indian Penal Code, 1860** and **Section 113B** of the **Indian Evidence Act, 1872** also shows that **there must be material to show that soon before death, the victim was subjected to cruelty or harassment based on demand of dowry.**

18.1 The Hon'ble Supreme Court in the case of "***Shamnsaheb M. Multtani Vs. State of Karnataka***" reported in **(2001) 2 SCC 577** has elucidated the requirement of Section 304B of the Indian Penal Code read with Section 113B of the Indian Evidence Act contrasted with Section 113A of the Evidence Act. Paragraph Nos.27 to 30 read as under:

"27. The postulates needed to establish the said offence are: (1) death of a wife should have occurred otherwise than under normal circumstances within seven years of her marriage; (2) soon before her death she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry. Now reading Section 113-B of the Evidence Act, as a part of the said offence, the position is this: If the prosecution succeeds in showing that soon before her death she was subjected by him to cruelty or harassment for or in connection with any demand for dowry and that her death had occurred (within seven years of her marriage) otherwise than under normal circumstances "the court shall presume that such person had caused the dowry death".

28. Under Section 4 of the Evidence Act "whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved". So the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the court. However it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. He can discharge such burden either by eliciting answers through cross-examination of the witnesses of the prosecution or by adducing evidence on the defence side or by both.

29. At this stage, we may note the difference in the legal position between the said offence and Section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute-book without any practical use till 1983. But by the introduction of Section 113-A in the Evidence Act the said offence under Section 306 IPC has acquired wider dimensions and has become a serious marriage-related offence. Section 113-A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused

can persuade the court against drawing a presumption adverse to him.

30. But the peculiar situation in respect of an offence under Section 304-B IPC, as discernible from the distinction pointed out above in respect of the offence under Section 306 IPC is this: Under the former the court has a statutory compulsion, merely on the establishment of two factual positions enumerated above, to presume that the accused has committed dowry death. If any accused wants to escape from the said catch the burden is on him to disprove it. If he fails to rebut the presumption the court is bound to act on it.”

19. The Hon’ble Supreme Court in the case of “***Shindo Vs. State of Punjab***” reported in **(2011) 11 SCC 517** held that the death of victim was unnatural one and took within seven years of marriage but the third ingredient that the demand for dowry made soon before death was not proved. Hence, presumption under Section 113B of the Indian Evidence Act cannot be raised against accused. Paragraph No. 9 reads as under:

“9. We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly, in a case of dowry death under Section 304-B, a presumption of Section 113-B, Evidence Act, does arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been made soon before the death has not been proved. In this view of the matter the presumption under Section 113-B of the Evidence Act cannot be raised.”

19.1 The Hon’ble Apex Court in the case of ***Tarsem Singh Vs. State of Punjab*** reported in **AIR 2009 SC 1454** held that the presumption shall be raised only on proof of the following essentials: (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death. Paragraph No. 13 reads as under:

“13. The materials on record are not sufficient to bring home the charges under Section 304-B of the Penal Code. Section 304-B of the Penal Code reads as under:

“304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purposes 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.”

The essential ingredients of the said offence are: (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.”

19.2 The Hon’ble Supreme Court held in the case of ***Raja Lal Singh Vs. State of Jharkhand*** reported in ***AIR 2007 SC 2154*** held that “soon before death” do not necessarily mean immediately before her death. This phrase is elastic expression and can refer to a period either immediately before death of deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related to harassment or cruelty inflicted on her. Paragraph No. 18 reads as under:

“18. It may be mentioned that the words “soon before her death” do not necessarily mean immediately before her death. As explained in Satvir Singh (supra) this phrase is an elastic expression and can refer to a period either immediately before the death of the deceased or within a few days or few weeks before death. In other words, there should be a perceptible nexus between the death of the deceased and the dowry related harassment or cruelty inflicted on her.”

19.3 The Hon’ble Supreme Court in the case of ***Satbir Singh Vs. State of Haryana*** reported in ***(2021) 6 SCC 1*** has defined the phrase “soon before” in Section 304B of IPC and held that it is relative term which is required to be

considered under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time limit. In relation to dowry death circumstances showing that the existence of cruelty or harassment to the deceased are not restricted to the particular instance but normally referred to course of conduct. Such conduct may be spread over a period of time. Thus, a proximate and live link between the fact of cruelty based on dowry demand and consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and date of death should not be too remote in time which under the circumstances be treated as having become stale enough.

Paragraph Nos.16 and 38.3 read as under:

“16. The aforesaid position was emphasised by this Court in Kans Raj v. State of Punjab⁵, wherein the three-Judge Bench held that : (SCC pp. 222-23, para 15)

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

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

19.4 The Hon’ble Supreme Court in the case of ***Balwant Singh Vs. State of Punjab*** reported in **(2004) 7 SCC 724** held that soon before death in dowry death, facts and circumstances must show existence of proximate live link between the fact of cruelty or harassment for and in connection with the dowry demand and death of victim where deceased not shown have been

subjected to cruelty or harassment by her husband for at least 15 months prior to her death held Section 304B of the Indian Penal Code not attracted.

Paragraph No. 11 reads as under:

“11. Since one of the ingredients of the offence under Section 304-B is that such cruelty should have been meted out to the deceased soon before her death, it is for the prosecution to establish affirmatively that the victim was subjected to cruelty and harassment based on dowry demand soon before her death. In the instant case, we find that at least for a year and three months before her death there is no evidence to even remotely suggest that the victim was subjected to cruelty or harassment of the nature specified in Section 304-B IPC. The proximity test is, therefore, not satisfied. We, therefore, hold that there is not sufficient evidence on the basis of which conviction under Section 304-B IPC can be founded.”

19.5 The Hon’ble Supreme Court in the case of ***Maya Devi Vs. State of Haryana*** reported in **(2015) 17 SCC 405** at paragraph No. 30 held as under:

“30. The keywords under Section 113-B of the Evidence Act, 1872 are “shall presume” leaving no option with a court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her. In the case on hand, the accused persons failed to prove beyond reasonable doubt that the deceased died a natural death. When Kavita allegedly committed suicide, her husband, Appellant 2, though he was not present in the house, was present in his office at M.D. University, Rohtak at the relevant time but he did not make any sincere effort to take her to the hospital which was very near to the place of the incident. Similarly, Appellant 2 got the deceased examined by DW 2 in order to create an impression that she was struggling with chronic depression but the truth floated upon the surface when the deceased reveals that the accused persons were maltreating her and she had started picking up the ideas of suicide. Lastly, Appellant 2 falsely informed the court that having learnt about the death of his wife Kavita, he left for Delhi to inform her family members. In fact, the accused never went to Delhi and the complainant received a telephonic message from an unknown person regarding the death of his daughter. So far as Maya Devi, Appellant 1 herein is concerned, there is no denying the fact that she was working as a teacher in a government school and she was not present at the relevant time at the place of incident but it is very much clear from the evidence on record that both the accused persons had a dominating role in the entire episode and she had always accompanied her son, Appellant 2 herein to the house of the complainant (PW 3) for the dowry demands. The presumption under Section 113-B of the Act is mandatory may be

contrasted with Section 113-A of the Act which was introduced contemporaneously. Section 113-A of the Act, dealing with abetment of suicide, uses the expression “may presume”. This being the position, a two-stage process is required to be followed in respect of an offence punishable under Section 304-B IPC: it is necessary to first ascertain whether the ingredients of the section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having caused a dowry death. From the evidence on record, we are of the opinion that in the present case Kavita died an unnatural death by committing suicide as she was subjected to cruelty/harassment by her husband and in-laws in connection with the demand for dowry which started from the time of her marriage and continued till she committed suicide. Thus, the provisions of Sections 304-B and 498-A IPC will be fully attracted.”

20. Since the prosecution has not proved from the evidence that the deceased was subjected to **cruelty or harassment in connection with demand of dowry soon before** her unnatural death in her matrimonial house within seven years of marriage. The statutory presumption under Section 113B of the Indian Evidence Act cannot be applicable. This presumption will arise only when the prosecution has proved all the ingredients of the offence of Section 304B of the Indian Penal Code. The learned Trial Court has wrongly raised the presumption against the appellant convict without giving its finding in regard to the commission of offence under Section 304B of the Indian Penal Code.

20.1 The Hon'ble Apex Court in the case of *Shindo @ Sawinder Vs. State of Punjab* reported in *(2011) 11 SCC 517* held that the prosecution must spell out ingredient of offence under Section 304B of the Indian Penal Code and then only a presumption arises under Section 113B of the Evidence Act. Herein the death of victim was unnatural one which took place seven years of marriage but the third ingredient that any demand for dowry had been made soon before death was proved against the appellants and relatives of

he husband of deceased, hence, the presumption under Section 113B cannot be raised against them. Paragraph No.9 reads as under:

“9. We also notice that the High Court was dealing with an appeal against acquittal. Undoubtedly, in a case of dowry death under Section 304-B, a presumption of Section 113-B, Evidence Act, does arise against the accused. However, the presumption is relatable to the fact that the prosecution must first spell out the ingredients of the offence and then only can a presumption arise. In the present case we find that the death was an unnatural one and had taken place within seven years of the marriage but the third ingredient that any demand for dowry had been made soon before the death has not been proved. In this view of the matter the presumption under Section 113-B of the Evidence Act cannot be raised.”

21. In view of the above analysis of the evidence on record, we are of the considered view that the prosecution has failed to prove its case beyond all shadow of reasonable doubt and the judgment of conviction and the order of sentence passed by the learned Trial Court is based on perverse finding and the same needs interference and both Criminal Appeals deserves to be allowed.

22. Accordingly, both Criminal Appeals are **allowed** and the impugned judgment of conviction dated 14.02.2018 and the order of sentence dated 18.02.2018 passed by the learned Additional Sessions Judge-III, Dhanbad in Sessions Trial No. 95 of 2010 are **set aside**.

23. All these appellants are **acquitted** from the charges levelled against them.

24. The appellant, namely, Raja Ram Mandal in Cr. Appeal (DB) No.886 of 2018 is in custody and he is directed to be released forthwith, if not wanted in any other case.

25. The appellants, namely, Gurupad Mandal and Sandhya Mandal in Cr. Appeal (DB) No.365 of 2018 are on bail. Their bail bonds are hereby cancelled and the sureties are discharged from the liabilities.

26. Pending Interlocutory Application(s), if any, also stands disposed of.

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

(Subhash Chand, J.)

Per Ananda Sen, J. : I agree

(Ananda Sen, J.)

*Jharkhand High Court, Ranchi
Dated: the 6th May, 2024,
Madhav/Rashmi/- **A.F.R.***