

Rajiv Singh vs The State Of Bihar And Anr on 16 December, 2015

Author: Amitava Roy

Bench: Amitava Roy, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1708 OF 2015
[ARISING OUT OF S.L.P. (CRL.) NO. 8111 OF 2014]

RAJIV SINGH

...APPELLANT

VERSUS

STATE OF BIHAR & ANOTHER
JUDGMENT

...RESPONDENTS

AMITAVA ROY,J.

Leave granted.

A fond honeymoon trip of a newly wed young couple met with a tragic end, with the mysterious disappearance of the wife from the company of her husband, in the train in which they were traveling on their way back home. The appellant, the husband, in the attendant facts and circumstances, stands arraigned and convicted under Sections 304B, 201, 498A of the Indian Penal Code (for short, hereinafter to be referred to as 'IPC') and has been sentenced to undergo rigorous imprisonment for varying terms for the offences involved. The High Court of judicature at Patna, having affirmed the conviction & sentence recorded by the learned trial court, the appellant seeks redress in the instant proceedings, challenge being laid to the judgment and order dated 16.05.2014 rendered in Criminal Appeal (SJ) No. 1169 of 2011.

A short preface to the dreadful episode is indispensable. Rani Archana Sinha (for short, hereinafter to be referred to as "Archana") got married on 29.04.2007 with the appellant according to Hindu rites and had duly joined the matrimonial home. Archana was a practicing advocate and had appeared in a competitive examination in which, as per the results declared on 10.08.2007, she was not selected. The couple planned their honeymoon trip to Darjeeling and proceeded thereto, by Capital Express on the same date. They alighted at New Jalpaiguri Station, and after visiting the places of their interest, as scheduled, they on 14.08.2007 boarded the same service for the return journey at 1500 hrs. As the facts have unfolded from the First Information Report lodged by the

appellant with the Mokamah G.R.P.S. on 15.08.2007, the couple had dinner at Katihar Junction at 2000 hrs whereafter they retired for the night in their respective berths No. 33 (appellant) and No. 35 (Archana) in coach S-1 of sleeper class approximately at 2100 hrs. As per the version of the appellant, he woke up at 0510 hrs on 15.08.2007 at Bakhtiarpur Station, to find that his wife was missing from her berth whereafter, he started searching for her on the running train. According to him, when the train reached Patna Junction, he looked for her in the other trains also thereat. His plea is that on being enquired, the passengers in his coach did affirm that the lady was available in the train upto 0400-0430 hours. It is the appellant's assertion that situated thus, he reported the matter first with the GRP, Patna and eventually lodged the First Information Report with Mokamah G.R.P.S..

This account of the introductory facts is available in the aforementioned First Information Report, in which noticeably, the appellant did disclose his presumption that his wife might have been kidnapped. This information was registered, as FIR No. 26/2007 dated 15.08.2007 under Section 365 IPC between 0400 PM to 0500 PM.

5. While the matter rested at that, on 18.08.2007 at 1430 hours, an information was laid by one Jagdish Chander Sharma resident of Village Daulatabad, P.S. Azam Nagar, District Katihar that on the same day at 1200 hours, he was informed by some children that a dead body was lying by the side of the railway track whereupon, he visited the spot and found the dead body of a female in a putrefied condition in a pit in a bush. According to him the body was lying prostate due to which the face was not visible. The informant opined that the death might have occurred due to fall from the train about four to five days back. He also described the wearing apparel of the dead body, to be "check green coloured salwar suite". He mentioned about detached hairs from the head which were of black colour.

6. An inquest of the dead body followed on 19.08.2007 at 10.10 PM and a report based thereon was prepared. The findings as recorded inter alia did disclose that nothing was clear with regard to the marks of assault or injury, as the dead body was in the process of rotting. While noting that both feet were "in semi absent position due to rotting", it was mentioned as well that the dead body wore "sky coloured white and pink check salwar and sameeze". It was inferred that the cause of death was due to fall from train.

7. Meanwhile, the parents of Archana having enquired on 15.8.2007, at about 11 A.M. about her whereabouts from the appellant, they had learnt that she had gone missing from the train. Having come to know that a dead body had been recovered as above, the brother of Archana, Mr. Ravi Shankar Prasad requested his cousin Akhilesh Kumar to identify the same proposing that he would also reach the place for the same purpose. Incidentally, the dead body had been recovered near the railway line at Azam Nagar, and in due course was brought to the Railway Police Station, Katihar at the first instance. As it would appear from the letter dated 14.09.2008 of Akhilesh Kumar, addressed to the Station House Officer, Railway Police Station, Mokamah, he on a survey of the dead body was of the opinion that it was not of Archana. According to Akhilesh Kumar, he along with others had visited the Sadar Hospital, Katihar to identify the body but failed to do so for the following reasons.

1. That the hair of head was missing.
 2. The face was comparatively small.
 3. There was no mole on the chick.
 4. The physique of the dead body was comparatively thin.
 5. Neither the bangles were found in the hands nor was it stated by the Jamadar of Azam Nagar that the same was found at the place of occurrence.
 6. There was no under garments on the body.
 7. There was simple salwar-suit on the dead body.
 8. The age seems to be less.
9. At that time I talked to cousin Ravi Shanker and aunt in relation to built up and appearances of the dead body many times and after due consideration with the officer in charge, Katihar GRPS, Jamadar Azam Nagar GRPS and Jamadar of Mokama GRPS I came to a conclusion that the dead body was not of Rani Archana.
8. The dead body was also subjected to post-mortem examination on 19.8.2007 in which it was noted that the same was in an advance stage of decomposition and that the right and left foot just below the ankle joint were absent. The exact cause of death could not be ascertained and the viscera was preserved for forensic test. The report prepared on the basis of the autopsy, however, recorded that the time lag between the death and post-mortem examination was more than six days, suggesting thereby that death had occurred on 13.8.2007 or prior thereto.
9. While the investigation on the report lodged by the appellant was underway, the mother of Archana, on 5.9.2007 lodged a complaint in the court of Chief Judicial Magistrate, Patna against the appellant, his parents, his brothers and sisters which was registered as Complaint Case No. 2544(C) of 2007. It was alleged therein that as reported by Archana, her in-laws had "greedy eyes" towards the wealth of her family and that at the matrimonial home, they used to ill-treat her and make her work as a domestic maid for all intents and purposes. Apart from being ridiculed for not getting selected in the judicial service examination to earn a living, her relevance in the nuptial house was also used to be questioned. According to the complaint, her in-laws instructed her to bring Rs. 2.50 lakhs from her parents so as to complete the construction of their house and also to furnish the same. Besides expressing serious apprehension in view of the sudden programme of the couple to visit Darjeeling without prior information to her, the complainant also accused the appellant and his family members of a conspiracy to eliminate Archana so as to facilitate the second marriage of his (appellant) with the prospects of earning handsome dowry.

10. The complainant however admitted that on 12.8.2007, her daughter had called her to inform that she was at Manipal whereafter, she could not talk to her inspite of repeated attempts as her cellphone had remained switched off. The complaint revealed that it was on 15.8.2007 at about 11 A.M., after she had failed to talk to her daughter as her cellphone continued to be off, that she contacted the appellant who on being queried, replied that she had lost Archana. On this, the complainant's husband after ascertaining that the appellant was at Mokamah, advised him to report the incident to the Mokamah G.R.P.S. The complainant alleged that the appellant had in fact lodged the FIR with the Mokamah G.R.P.S. to save himself and his family members who were responsible for the episode. The complainant, apart from alleging, that the FIR had been lodged by the appellant to mis- guide the investigation, accused him and his family members of having murdered her daughter Archana, in course of the journey and disposed of her body so as to efface all incriminating evidence. She expressed reservation about the course and quality of the ongoing investigation and requested that the complaint be forwarded to the Gandhi Maidan Police Station for lodging it as FIR and to initiate a proper investigation in order to make the accused persons stand trial. The complaint was made under Sections 304B/201/120B/498A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

11. After the investigation that followed on the complaint, charge-sheet was submitted under Section 498A IPC against the appellant alone and the inquisition was kept pending against the other accused persons. As the materials on record would disclose, thereafter the learned Magistrate concerned, acting on an application filed under Section 323 Cr.P.C. on behalf of the prosecution and, being satisfied on a consideration of the further disclosures in the investigation, that prima facie a case against the appellant under Sections 498A/304B/120B/201/364 IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961 had been made out, committed it to the Court of Sessions. Charge was subsequent thereto framed against the appellant under Sections 304B/201/498A IPC and to which he pleaded "not guilty and claimed to be tried".

12. At the trial, the prosecution examined twelve witnesses whereafter the statement of the appellant was recorded under Section 313 Cr.P.C. The appellant also examined five witnesses in his defence. At the conclusion of the trial, the appellant was found guilty and was convicted under Sections 304B/201 and 498A IPC by the learned trial court and was sentenced to undergo R.I. for 10 years for the offence under Section 304B IPC and for two years each for the offences under Sections 201/498A IPC. For the offences under Sections 201/498A IPC, the trial court also imposed a sentence of fine of Rs. 5000/- each, in default whereof, the appellant was to suffer S.I. for one month. All the sentences were ordered to run concurrently.

13. Having unsuccessfully appealed before the High Court, the appellant seeks redress before this Court.

14. We have heard Mr. R. Basant, learned senior counsel for the appellant, Mr. Subramonium Prasad, learned senior counsel for the respondent No. 1 and Ms. Tanya Shree, learned counsel for the respondent No. 2.

15. Apt it would be to outline the rival contentions at the threshold in order to facilitate a correct insight into the evidence on record.

16. Referring to the provisions of the Indian Penal Code under which the appellant stands convicted, Mr. Basant has persuasively argued that in the facts and circumstances of the case, none of the ingredients of the offences with which the appellant had been charged, has been proved and thus, he is entitled to an honourable acquittal. The learned senior counsel has pleaded that the prosecution having failed to establish the death of Archana beyond all reasonable doubt and further that it was as a consequence of demand for dowry or harassment/cruelty arising therefrom or in connection therewith, the essential pre-requisites of the offences under Sections 498A/304B IPC had remained unproved. While stoutly disputing the identity of the dead body, recovered in the course of investigation to be that of Archana, learned senior counsel has urged that even assuming without admitting it was that of the wife of the appellant, in absence of any proof that it was not accidental but homicidal, the offence under Section 304B IPC cannot be said to have been established. According to Mr. Basant, even otherwise, the prosecution case as sought to be portrayed is inherently improbable and illogical in defiance of logic and thus ought to have been rejected outright by the courts below.

17. Elaborating the arguments in the above dimensions, learned senior counsel adverted, in particular to the testimony of PWs 5, 6 and 7 to the effect that Archana had been seen by them (the co-passengers) to be hale and hearty in the train till Katihar/Barauni stations much beyond Azamnagar near which the dead body was found. He also referred to the post-mortem report dated 19.8.2007 which recorded that the time lag between the death and the autopsy was more than six days, to assert that the dead body could not have been that of Archana as she was alive in the intervening night of 14.8.2007 and 15.8.2007. Apart from contending that the dead body was identified by Akhilesh, a relation of Archana, to be not that of her on a thorough examination thereof, which ruled out the probability that it was that of the wife of the appellant, the learned counsel has argued that the absence of any explanation whatsoever about the presence of poison in the dead body, did also conclusively evidence the fact that it was not that of Archana. The learned senior counsel referred to the discrepancy in the wearing apparels of the dead body and that of the wife of the appellant which, according to him, conjointly considered along with the other factors bearing on the identification of the dead body, authenticated in unmistakable terms that the corpse was not that of Archana. Mr. Basant dismissed the authenticity and the probative worth of the report of the DNA test on the ground that the same was neither conducted in an accredited laboratory as per the prevalent rules and procedure and also being bereft of any proof of the required scientific analysis of the sample being undertaken and the genuineness of the conclusion arrived at on the basis thereof. Apart from asserting that there was lack of authentic evidence with regard to drawal of the blood samples from the parents of the Archana for the DNA test, learned senior counsel also rejected the testimony of Dr. Shyam Bahadur Upadhyay (PW10), the then Director In-charge of Forensic Science Laboratory, Patna, Bihar (for short, hereinafter to be referred to as "FSL") to be wanting in credence, amongst others, in view of his admission that he was neither an expert in the domain of DNA test nor had received any training in that regard. Mr. Basant urged that the prosecution having offered to examine this witness, it would not be permitted to avail the benefits of Section 293 Cr.P.C. to accept the probative worth of the DNA report dehors the testimony

of PW10. According to Mr. Basant, even the parents and other relatives of Archana were not convinced that the dead body found by the side of the railway track in the vicinity of Azamnagar police station was that of hers and therefore had filed a writ petition before the High Court of Patna in the year 2008, which, however, stood dismissed on 8.9.2008.

18. Learned senior counsel for the appellant further urged that in absence of any convincing evidence on record that immediately before the incident, Archana had been subjected to cruelty/harassment by the appellant for or in connection with the demand for dowry, the charges relatable thereto are wholly unfounded. He argued that though in the course of evidence, it transpired that a personal diary of Archana had been retrieved, the same for inexplicable reasons had been withheld by the prosecution. Apart from contending that such an omission raises an adverse inference against the prosecution, the learned senior counsel also urged that the evidence with record to investments made in the Tata Mutual Fund by the brother of Archana is of no avail to the prosecution as the money invested had not been diverted to the appellant for his gainful use. Mr. Basant has argued that having regard to the proved circumstances pertaining to the travel of the couple in the train "Capital Express" up to Katihar/Barauni Stations in the night between 14/8/2007 and 15/8/2007 during which the Archana was found cheerful in the company of the appellant, the prosecution version of poisoning her by him and disposing of her body in the dead of the night unnoticed by any of the passengers in the compartment is wholly impossible, impracticable, unrealistic and thus, ought to be rejected in limine. Without prejudice to these pleas, Mr. Basant has maintained that the prosecution having utterly failed to prove that the wife of the appellant had died a homicidal death, his conviction under Sections 498A/304B/201 IPC by no means can be sustained in law, even assuming that the dead body was that of Archana.

19. To drive home the above points, learned senior counsel pressed into service the following decisions of this Court.

(i) Sultan Singh vs. State of Haryana (2014)14 SCC 664

(ii) Sher Singh @ Partapa vs. State of Haryana (2015) 3 SCC 724.

20. In reply, Mr. Subramonium Prasad, learned senior counsel, leading the arguments on behalf of the respondents, urged that the charges leveled against the appellant had been duly proved and thus his conviction and sentence does not warrant any interference. Referring to the complaint filed by the mother of Archana, in particular and the statements on oath made by her parents and the brother i.e. PWs 1, 2 and 3, the learned senior counsel asserted that the same in totality did unambiguously demonstrate that soon after the marriage, Archana had been subjected to torture and ill-treatment for and in connection with the demand for dowry and that the charges qua the appellant pertaining thereto had been rightly leveled against him and proved at the trial. According to the learned senior counsel, even assuming that Archana had been found travelling with the appellant in the train till Katihar/Barauni, there was, admittedly, no endeavour on his part to stop the train at Bakhtiarpur when for the first time, it transpired that she was not aboard and had gone missing. Mr. Prasad has submitted that the conduct of appellant of travelling to Patna and returning to Mokomah to eventually lodge a belated FIR about the incident, is not only opposite to normal

human behaviour and reflexes, but also is a sinister index of his complicity in the crime. Besides underlining that the appellant had not even gone to see the dead body, the learned senior counsel pleaded that the delayed FIR by him was a strategic move to screen himself from the incident and divert the investigation in the wrong direction. Mr Prasad was critical as well of the manner in which the prosecution was conducted contending that no sincere effort was made to elicit the truth from the material witnesses including the co-passengers in the train which indicated a foul play to shield the appellant. Mr. Prasad argued that the evidence of PW10 would not exclude the applicability of Section 293 Cr.P.C. and thus the report of the DNA test (Exb. 14) establishing the identity of the dead body with Archana, could be acted upon independently to the said effect. Mr. Prasad urged that the mother of Archana being exasperated with the inaction of the investigating agency in diligently probing into the incident, did file a complaint on 5.9.2007. According to him, the writ petition seeking a writ of habeas corpus though can be construed to be a desperate initiative, induced by inconsolable parental susceptibilities, the same does not in any way detract from the charges leveled and proved against the appellant. The following decisions were cited to rest the submissions adverted to hereinabove.

1. Mohd. Imran Khan vs. State Government (NCT of Delhi) (2011) 10 SCC
2. State of Gujarat vs. Anirudhsing and another (1997) 6 SCC 514
3. Rajesh Kumar and another vs. State Government NCT of Delhi (2008) 4 SCC 493
4. State of H.P. vs. Mast Ram (2004) 8 SCC 660
5. Rattiram and others vs. State of Madhya Pradesh through Inspector of Police (2012) 4 SCC 516
6. Rohtas Singh & others vs. State & Another (2011) II AD (Delhi) 612 (High Court of Delhi)
7. Abeed vs. State of Karnataka (2015) 1 AKR 360 (High Court of Karnataka)

21. Though the courts below have on the evidence, oral and documentary adduced by the parties, recorded concurrent convictions against the appellant, having regard to the contentious assertions and being the final Court of adjudication, we feel inclined to undertake a summary scrutiny of the materials on record. This is more so, in view of the profuse reference to the evidence, by both the sides in the course of arguments.

22. Subhash Chandra Prasad (PW1), the father of Archana was at the relevant point of time, posted as Additional District & Sessions Judge, Gaya. He stated on oath that soon after the marriage, his daughter had disclosed to them that her in-laws were greedy by nature and did want lakhs of rupees in the form of dowry. The witness stated that his daughter alleged that her parents in-laws, husband and sister-in-law, used to compel her to do domestic works of all kinds and that her mother-in-law in particular, did ask her to bring Rs. 2.5 lakhs from her father so that the construction of their house could be completed and that the same could be furnished with the necessary household articles. This witness further stated that her daughter's sister-in-law used to taunt her. The witness

also stated about the demand for dowry being made by the appellant and her father and the insistence of the appellant to invest in mutual funds and to make him the nominee. He also stated about the purchase of units of Tata Mutual Fund by making the appellant as the nominee and transfer thereof to his joint account with Archana. The witness stated that the results of C.D.P.O. examination in which Archana had appeared were declared on 10.8.2007 in which she was unsuccessful. He expressed surprise at the sudden programme of the couple to take a tour when they received a phone call on 10.8.2007 from Archana that they were at Sikkim. The witness stated that thereafter his wife could not talk to Archana from 13.8.2007 as her cell phone was switched off. The witness also mentioned about the queries made by the appellant with his son Ravi Shankar Prasad (PW2) on 13.8.2007, as to whether the latter had purchased units of the mutual fund whereafter the couple became incommunicado till 15.8.2007 when, on being called, the appellant replied from his cell phone that Archana had gone missing. The witness testified that on enquiry, the appellant stated that he was then at Mokamah for which he was advised to file a complaint with Mokamah G.R.P.S.. The witness also admitted to have instructed the GRP personnel to detain the appellant by confiding in them that he had committed the murder of his daughter. The witness mentioned that on 16.8.2007 when he met the appellant, according to him, the appellant did not wear any feeling of pain or anguish and that he even declined to proceed to Darjeeling when offered, to search for his wife. The witness further stated that on being shown the photographs of the dead body recovered, he could not recognize as its face was dis-figured. He also deposed that the blood samples had been taken from him and his wife which after the necessary examination did match with the sample of the viscera and DNA of the dead body. According to the witness, his daughter had been murdered by forcefully administering poison to her by the appellant in connivance with his family members out of their greed for money and for re- marriage to ensure further dowry receipts. He proved the complaint filed by her wife Malti Devi (PW3) as Exh. 1. He admitted as well that the complaint had been drafted by his advocate on their instructions.

23. In cross-examination, this witness referred to a diary of Archana, which according to him, was made available during the investigation by the Mokamah G.R.P.S.. The witness stated that he had an opportunity to see the diary which was up to date till the incident. He denied the suggestion that the diary did indicate Archana's appreciation for the parents in-laws and the family. The witness however referred that Archana had written in the diary "circumstances does not permit me to live alive". He admitted that his wife had filed a writ petition before the High Court of Patna for having the case investigated by the CBI. He also admitted that Akhilesh Kumar Singh, who at the relevant point of time was S.H.O., Kishan Ganj and a relation of the family, had informed him that he could not recognize the dead body to be that of Archana. The witness expressed his ignorance as to who had taken the tissues of the dead body from the Katihar Hospital for DNA test. He admitted as well that the mutual fund investments had not been transferred to the account of the appellant or got encashed by him.

24. The evidence of Ravi Shankar Prasad (PW2), the brother of Archana is substantially in the same lines as that of his father, PW1. Apart from reiterating in general the narration made by his father with regard to the marriage of his sister with the appellant and the reported behaviour meted out to her in connection with dowry demands, this witness emphasized in particular with regard to the investments in TATA Mutual Fund said to have been made on the persistent insistences of the

appellant till the eve of the incident i.e. of 14.08.2007. In course of his testimony, this witness mentioned that he was at the relevant time posted as Territory Manager in Tata Mutual Fund, Branch Patna. Referring to a joint savings account of the couple in the State Bank of India, the witness imputed a design in the appellant so as to have the mutual fund investments transferred thereto and reap unlawful gain therefrom following the elimination of his wife. This witness also referred to a diary of Archana said to have been recovered from her matrimonial house, by the Mokamah G.R.P.S. in course of the investigation, where she had noted "I want to live alive". He admitted to have requested his cousin Akhilesh Kumar Singh to identify as to whether the dead body found in the vicinity of Ajamnagar Police Station was that of his sister and that it could not be done as the face thereof was distorted. He also adverted to the DNA test and the result thereof to the effect that the viscera of the dead body had matched with blood sample of his parents to authenticate that the preserved viscera was their generic product. He however mentioned that on 09.09.2007 the appellant had intimidated him and had also threatened to kill him unless the case was withdrawn but admitted that he had not lodged any complaint with the police with regard thereto. In cross-examination, this witness admitted that the money invested in the mutual fund was intact and had not been withdrawn by the appellant.

25. Malti Devi (PW3), the mother of Archana reiterated the version of her husband, PW1, with regard to the ill-treatment to which her daughter had been subjected during her stay in the matrimonial home. She admitted to have talked to her daughter on 12.08.2007 but could not on the two subsequent days i.e. 13.08.2007 and 14.08.2007 as her cell phones had been switched off. She referred to her conversation with the appellant on 15.08.2007 at about 11.00 am, on her call to him, to be told that Archana was missing. She reaffirmed that on hearing this, her husband PW1 had advised the appellant to lodge the information with Mokamah G.R.P.S., as he then was at that place.

26. According to this witness, when they met the appellant at Mokamah G.R.P.S., they found the appellant to be normal with no expression of any distress or anguish on his face. She also referred to a dead body found by the Mokamah G.R.P.S. in course of the investigation and admitted to have sent Akhilesh Kumar to identify the same. The witness stated that Akhilesh Kumar however could not identify the dead body whereafter post-mortem examination was conducted thereon on 19.08.2007. The witness also mentioned about the DNA test conducted by comparing the viscera and their blood samples which revealed that the dead body was that of their daughter. She proved the complaint filed by her on 05.09.2007 and admitted that the same had been drafted by their advocate on their instructions. She denied the suggestion that she had not stated before the Investigating Officer about the dowry demands made by the appellant and his family members and the ill-treatment to which Archana had been subjected. According to this witness, the blood samples for DNA test from her and from her husband were taken at Rajvanshi Hospital.

27. Krishan Tiwari (PW4), who was a passenger in the Capital Express on 14.08.2007 stated that he had been allotted seat No.43 of coach No. S-1 in which a couple had been travelling as well. He stated to have seen the couple together upto Barsoi Station and that he disembarked at Barh, his destination. He testified that on being shown some photographs by the police, he could identify the lady to be one aboard the Capital Express that evening. On cross-examination, this witness stated that the station Barsoi lies on the way to Katihar. He stated that he did not see the lady either

resentful, belligerent or weeping so long as he was present in the compartment.

28. Sujit Dokania (PW5) also stated on oath to have been travelling by the same train from Kishanganj to Patna on 14.08.2007. He affirmed that his berth No. was 44 and Coach No. was S-I. According to him he was traveling with his brother Sumit Dokania, PW6. The witness stated that after having meal, they had retired for the night. According to this witness, he was awakened by shouts at Bakhtiarpur at about 4.00/4.30 a.m. whereafter he came to learn that the wife of one passenger had gone to the toilet but had not returned and was not traceable. He also confirmed, on being shown the photographs that the couple therein were the appellant and his wife. He also identified the appellant in court. According to the witness, the wearing apparel of the lady was of light green colour. In cross-examination, this witness affirmed that the couple were sitting on their berths at Katihar and that both were behaving normally.

29. Sumit Dokania (PW6), reiterated the version of his brother PW5 who also could recognize the couple when was shown their photographs and identified them to be that of the appellant and his wife, who were traveling along with them in the train on 14.08.2007.

30. Naveen Kumar Misra (PW7) also stated on solemn affirmation that he was traveling on the same train on Berth No.35 in coach No. S-1. He stated that a couple was traveling on berth Nos. 33 & 36. According to this witness, he had gone to sleep at about 7/8 p.m. and woke up in the mid- night and got down at Barauni. He also confirmed that the couple in the photographs as shown to him, to be those traveling in the train that day. This witness mentioned to have seen the lady to be going to the toilet at about 12 o' clock in the night and had returned and had sat on berth No.

55. While stating that the lady was sitting on Berth No.55 at the time when he got down at Barauni, the witness reiterated that she had been wearing a light green colour salwar suit. He also stated that the couple had been conducting themselves normally.

31. Dr. Ram Rekha Sharan (PW8) was on 19.08.2007 posted as Medical Officer at Katihar Sadar Hospital and had performed the post-mortem examination of the dead body. This witness stated with reference to the records that the body was almost decomposed with maggot formation. He further mentioned that there was absence of hair and disfigurement of the face and that the right and left foot below the ankle joint were absent. According to him, the exact cause of death could not be ascertained and thus the viscera was preserved for forensic tests. He also confirmed that sample for DNA test was also preserved. In his opinion, the time lag between the death and the post-mortem examination was more than six days. He testified further that he had not found the external signs of Sulphas in the dead body.

32. Alakh Deo Sharma (PW9), who was posted as ASI at Azam Nagar Police Station on 18.08.2007 deposed, that one Jyotish Chandra Sharma had at 1.00 P.M. on that day, informed that a dead body of a female was lying in a bush, about 250 yards east of the southern railway line and near his village Daulatabad. The witness stated that, on receiving this information, the police arrived at the site and recovered the dead body which was by then infested with insects. He deposed that the dead body was thereafter sent to the Katihar Sadar Hospital for post-mortem. He mentioned in categorical

terms, that the place where the dead body was found in the bush was at a distance from the eastern railway line nearly 2 KM from village Daulatabad and 2 KM from Azam Nagar Railway Station under P.S. Azam Nagar. According to this witness, no blood mark was found at that place and that the dead body was lying prostrate. This witness however mentioned that the dead body had on it clothes of white and pink colour. In cross-examination, the witness stated about the visit of Akhilesh Kumar, cousin of Ravi Shankar (PW2), the brother of Archana at Katihar Station for identifying the dead body and that on closely examining it, he had opined that it was not that of Archana. The witness, referring to his case diary also testified that the clothes found there on, when shown to the family members of Archana, they confirmed that the same were not hers. The witness stated as well that nobody had come to claim the dead body.

33. Shyam Bihari Upadhyay (PW10), who on 05.06.2008 was the Director In- charge, Forensic Science Laboratory, Bihar, Patna, has proven the DNA report, Exb. 8. He deposed that the samples of the viscera of the dead body and the blood collected from the parents of the Archana were received in connection with Gandhi Maidan P.S. Case No. 308 of 2007 by his office on 05.06.2008. He testified that the three samples were analyzed and the test revealed that the viscera tissue were the generic product of the DNA profile of the blood samples of the parents of Archana. The witness stated that the report was prepared by one Sanjay Kumar, computer staff on his instruction and had been signed by one Shiv Kumar, technician of FSL and also counter signed by him. He explained that due to lack of infrastructure in the FSL, Patna, outsourcing of the sample for analysis was a usual process. He deposed that the technician Shiv Kumar had been trained at Lab India, Gurgaon, by the Directorate of Forensic Science, Ministry of Home Affairs, Government of India, and that the data collected from the tests conducted was bought back to the FSL, Patna, whereafter the report was issued after due analysis by him and Shiv Kumar. PW10 also proved exhibit 15, the FSL report to the effect that the viscera of the dead body also contained poisonous contents like aluminum phosphate and LARAZEPAM, commonly known as ACTIVAN .

34. In cross-examination, this witness conceded that he was not an expert in DNA discipline and that he had not received any training in that field. While affirming that the samples of viscera and of the blood of the parents of Archana had been received from Katihar Sadar Hospital, Patna, he admitted as well that the same were not accompanied by any authentication card for DNA test. He admitted that as per the processual norms, such an authentication card was required to be sent along with samples, which ensured the sanctity thereof. That an authentication card also used to carry the photograph of the person giving the samples for DNA testing was admitted. He also stated that as per the procedure to be followed, the L.T.I. of the person giving the sample for DNA test is to be taken in presence of an independent witness and is to be countersigned by the doctor drawing the samples. The witness disclosed that due to lack of facilities in the FSL, Patna, the DNA test had to be carried out elsewhere. He admitted that there was a direction of the Additional Director, CID that the samples should be sent only to the government laboratory in case there was no infrastructure to conduct the analysis in the FSL. According to him, he opted to prefer a private laboratory, Lab India, Gurgaon, for the DNA test as his staff was trained thereat. The witness also admitted that he was not an expert in serology and that his evidence was not in that capacity but as the Director of the FSL. He disclosed that Shiv Kumar, who had been sent to the Lab India to be associated with the analysis for the DNA test, had received training in the said laboratory from 16 to 18th July, 2008, i.e. for two

days. He also stated that Shiv Kumar had conducted the test with the help of the technician of the Laboratory, Lab India, Gurgaon, and that he was also accompanied in the process by one Santosh Kumar, a technician of the FSL, Patna. He admitted that the DNA was not conducted in his presence. He conceded that he was not an expert in Toxicology and was thus not in a position to state anything relating to that field of science.

35. Kalpana Kumari (PW11), the Investigating Officer, narrated the steps taken by her in the course of investigation and stated that she submitted a charge-sheet against the appellant under Section 498-A/34 IPC and had continued with the process thereafter. She stated about the collection of the sample of the viscera of the dead body and also that she had applied for obtaining the blood specimens of the parents of Archana by filling an application before the CJM, Patna. According to her, on the permission so granted by the court on 30.05.2008, she accompanied the parents of Archana to the Rajvanshi Hospital, where their blood samples were collected by Dr. Ashok Kumar and Dr. Ajit Kumar. She stated that thereafter, she made an application to the Director, FSL, Patna for DNA test and subsequent thereto forwarded the sample of the viscera and of the blood drawn from the parents of Archana. According to her, on receipt of the report of the DNA test and on completion of the investigation, she submitted charge-sheet under Sections 304B and 201 IPC as well against the appellant.

36. In cross examination, this witness with reference to the case diary, stated that the complainant, Malti Devi (PW3) and her husband PW1 had been in continuous touch with the investigation carried out in Mokamah G.R.P.S. case. She stated that there was no allegation of demand of dowry from Archana or her parents or that the appellant had ever harassed her for dowry. She stated by referring to the case diary that the complainant PW3 had not expressed anything about the appellant as to any demand for dowry or any cruel treatment to Archana. She also made a mention of a diary of Archana produced by Mokamah G.R.P.S. and stated that though she had demanded the same, it was not made available to her. The witness also confirmed with reference to the case diary that PW1, the father of Archana had not made any allegation against the appellant with regard to demand of dowry or cruelty to her. The witness also stated that PW1 had not made any statement that the appellant had asked him to purchase units of Mutual Fund amounting to Rs. 5,00,000/-. That he also did not make any statement that the appellant had opened any joint account in the name of Archana and himself in the State Bank of India Branch at Exhibition Road, Patna on 21.07.2007 was made as well. The Investigating Officer also deposed that on enquiries being made by her in the neighborhood of the place of the incident as well as from the tenants of the house of the appellant nobody did complain of any harassment meted out to Archana by the appellant and his family. She also failed to recollect as to whether she had put her signatures on the envelope carrying the samples, as a witness. She however candidly admitted that she had not recorded in the case diary that she had put her signatures on the envelope containing the blood samples. She also stated that the envelope carrying the blood samples was sent by her directly to the FSL and not through the court. The Investigating officer though mentioned that she along with the parents of Archana had been to Rajvanshani Nagar Hospital, Patna on 4.6.2008 and that Ashok Kumar and Ajit Kumar had collected their (parents of Archana) blood samples in a sealed cover, she admitted to have omitted to mention in the case diary that the samples were taken in her presence by the doctor.

37. Shambu Prasad Tiwari (PW12), Assistant Sub Inspector of Police, Mokamah G.R.P.S. produced the articles sealed in connection Mokamah G.R.P.S. Case No. 26 of 2007 which included a pair of brown coloured sleepers and ladies purse containing Rs. 134 in cash together with a face cream, comb, bindi, mirror and a hair band.

38. In his statement under Section 313 Cr.P.C., the appellant categorically denied the veracity of the evidence with regard to alleged pressurization of Archana to bring Rs. 2.5 lakhs from her parents for the construction of their house and the ill-treatment meted out to her collectively by him and his parents and relatives. He also denied the imputation to have taken Archana to Darjeeling without the permission of her parents. He also denied the accusation that he had planned the tour with an ulterior motive and that to secure the same, he had got purchased units of mutual fund by the brother of Archana to be eventually appropriated by him. He denied as well the evidence, that he had opened a joint account with Archana to facilitate the deposit of the investments in mutual funds and had pressurized her parents for making deposits with regard thereto. In specific terms, he particularly denied the allegation that on their way back from the tour on 14.8.2007 by Capital Express, he had committed murder of Archana and had thrown her dead body on the railway tracks near Daulatabad which fell within the limits of Azamnagar Police Station. He also stoutly refuted the imputation that he had made Archana to consume poisonous substance on the way from New Jalpaiguri by the Capital Express so as to facilitate her murder. He however admitted to have lodged a complaint with the Mokamah G.R.P.S. which was registered as Mokamah G.R.P.S. Case No. 26 of 2007 which he asserted to contain the true version of the episode. He expressed ignorance about the DNA test report and denied the allegation of conspiracy with his parents and other relations to murder Archana for greed of money. To the charge that he had not gone to identify the dead body, he stated that he had been prevented from doing so being detained by the Mokamah Police. He alleged that his father-in-law, who was at the relevant time, posted as Additional District Judge had misused his office and had in connivance with the railway police got a wrong report submitted against him under Sections 182/211 of IPC.

39. The evidence of the defence witnesses Shiv Kumar (DW1), Suman Sinha (DW3) is in essence to the effect that the couple had been living a happy married life in the marital home. Nazir Hussain (DW2), who was at the time of his deposition, Service Manager in the State Bank of India, branch at Exhibition Road, Patna stated against any deposit in the joint account of the appellant and Archana from Tata Mutual Fund. Kundan Kumar Singh (DW4), who at the relevant point of time, was posted as SHO, Mokamah G.R.P.S., testified with reference to his case diary that the appellant on 15.8.2007 had lodged a written report at 11.40 A.M. on the basis of which Mokamah G.R.P.S. case No. 26 of 2007 under Section 365 IPC was registered . He stated that in course of investigation that followed he recorded the statements of PWs 1,2 & 3 on 16.8.2007 in course whereof Ravi Shankar Parsad (PW2), the brother of Archana had disclosed that there was no dissension between the parties. He also mentioned that Subhash Chander Prasad (PW1), father of the Archana had stated that he did not doubt his son-in-law, the appellant. The witness also deposed that the father of Archana did not give any statement to the effect that appellant used to harass his daughter and used to demand dowry. While affirming from his case diary, that PWs 5,6 and 7 were indeed amongst the passengers who were traveling in the Capital express on 14.8.2007, he also mentioned that the TTE of the coach S-1 Hari Shankar Prasad had stated that Archana was wearing a green coloured dress. He also

mentioned that Naveen Kumar Mishra (PW7) also reaffirmed that Archana was wearing a green coloured dress. He with reference to the case diary confirmed the version of Akhilesh Kumar that the dead body of the female was not that of Archana.

40. Bajrang Singh (DW5) was on 15.8.2007 posted as ASI at Mokamah G.R.P.S. and was ordered, as a part of investigation to visit, New Jalpaiguri, Gangtok, and Darjeeling to enquire about the missing female. He stated that photographs of the couple had been given to him for the purposes of the enquiry and that on the investigation being made, the proprietors/managers of the concerned travel agencies and hotels at these places confirmed that the couple had availed their services/facilities between 11.8.2007 and 14.8.2007. This witness stated to have recorded the statements of Hari Shankar Prashad, TTE of coach S-1 of Capital Express on 14.8.2007 who recognized the couple from the photograph and affirmed that he had seen both of them travelling up to Katihar. He proved his case diary as Exh. 24.

41. Having regard to the overall factual conspectus the searching queries warranted for the judicial scrutiny in the attendant facts and circumstances can be listed as hereunder:

Whether Archana had died out of burns or bodily injuries or whether her death had occurred otherwise than in normal circumstances? If such death is proved, whether it could be accidental and neither suicidal nor homicidal?

Whether soon before her death, she had been subjected to cruelty and harassment by the appellant and any of his relatives for or in connection with demand for dowry?

42. Undisputedly, the marriage of the couple had been solemnized on 29.4.2007 and thus the unfortunate incident had occurred within seven years therefrom. They had been returning from their honeymoon trip when the catastrophe intervened. That in the fateful evening of 14.8.2007 they were travelling by Capital Express which they had boarded at New Jalpaiguri and were heading for their nuptial home at Patna is not in dispute. The train schedule of Capital Express which they had availed, is a part of the record. The authenticity of the train schedule of Capital Express has not been controverted. As has been adverted to hereinabove, the prosecution witnesses PWs 5, 6 and 7, who were also travelling in the same compartment, had seen the couple together up to Katihar/Barauni. Kishan Tiwari (PW4), who was also a passenger, had seen her till Barauni junction. The dead body of female, sought to be identified to be that of Archana by the prosecution was recovered by the railway track in a bush near Azamnagar Police Station.

43. A cursory glance of the train schedule would disclose that the distance between Azamnagar junction and Katihar junction is about 43 K.M.s and the time taken to cover the same is 1 hour 49 minutes. In between Katihar junction and Barauni junction, there are 12 stations. Between Barauni junction and Bakhtiarpur junction, there are amongst others, Mokamah junction and Barh. The train schedule further evinces that the distance between Bakhtiarpur junction and Patna junction is 45 k.m. which the train is to cover in 1 hour 23 minutes.

44. If the testimony of PWs 5, 6 and 7 in particular is to be believed, Archana was with her husband, the appellant, in the train till Barauni junction which is several stations away from Azamnagar Station and distanced by a journey of approximately 6 & 1/2 hours. Axiomatically therefore, from the consistent evidence of these witnesses, who have not been declared hostile by the prosecution, it is very unlikely that the dead body recovered near Azamnagar station could have been, to start with, that of Archana.

45. Noticeably, neither the parents of Archana nor any of her family members had claimed that the dead body is of hers. Significantly as well, the letter dated 14.9.2008 addressed by Akhilesh Kumar Singh, to the Station House Officer, Mokamah G.R.P.S., divulges in clear terms that on repeated survey of the dead body, he had in clear terms opined that it was not of Archana and had cited as many as nine reasons in support of his unqualified conclusion to that effect. These having been once extracted hereinabove, for the sake of brevity the repetition thereof is avoided. Suffice it to mention, the reasons cited touch upon the physical features as well as the wearing clothes of the dead body in support of the said deduction. It is worthwhile to notice that Akhilesh Kumar had not been examined by the prosecution for reasons best known to it.

46. The finding recorded in the post-mortem report as to the probable time of death also compounds the mounting difficulties of the prosecution. Apart from being silent about the cause of death of the female whose dead body was subjected to autopsy, it is mentioned in no uncertain terms that time lag between the death and the post-mortem examination was more than six days. Arithmetically, thus death had occurred to the female concerned prior to 13.8.2007 which argumentatively as well suggests to rule out the possibility that it was that of Archana as she was alive and travelling in Capital Express in the intervening night of 14.8.2007 and 15.8.2007 much past the Azamnagar Station. Dr. Ram Rekha Suma PW8), who had conducted the post-mortem, has also affirmed in his testimony, the margin of time between the death and the post-mortem examination of the dead body to the above effect.

47. Apart from the above, there is inconsistency in the discrepancy of the wearing apparels of Archana and that of the dead body. Whereas PWs 5,6 and 7 have in unison deposed that she had been wearing a green coloured salwar suit, the inquest report on the dead body disclosed that a white and pink salwar sameej was found on the dead body. Whereas the prosecution had made an endeavour to prove that the wearing clothes of the dead body were that of Archana, her family members on being shown the same, had in categorical terms denied that those were hers as is evident from the testimony of Alakh Dev Sharma (PW9), SI, Azamnagar Police Station.

48. It is a matter of record that the report of the FSL did disclose that the viscera of the dead body did contain highly poisonous substance as mentioned therein. Having regard to the fact that Archana, in the company of the appellant, while travelling throughout the evening and as seen by the prosecution witnesses PWs 5,6 and 7 was overall in a normal state, neither restive nor irritating, pungent or sick, it was the burden of the prosecution to establish as to how and when she was administered poison, in order to substantiate that the dead body recovered was of hers. There is no semblance of either an endeavour or any evidence in this regard.

49. The above notwithstanding the sheet anchor of the prosecution case is the report of the DNA test to the effect that the sample of the tissue of the viscera of the dead body was the generic product of the parents of Archana. The relevant extract of the report Exh.14 is extracted hereinbelow.

“ From the above analysis, it is concluded that D.N.A. profile to the exhibit marked ‘A’ is generic produced of D.N.A. profile of exhibits marked ‘B’ and ‘B1’.”

50. This report has been sought to be proved through Dr. Shyam Bahadur Upadhyay (PW10), who on the date of the receipt of the sample was the Director In-charge, FSL, Patna. Significantly, though in terms of Section 293 Cr.P.C. the report being one from the government scientific expert, the same could have been per se used as evidence in the trial by the trial court in its discretion, the prosecution had voluntarily offered this witness to prove the same. A bare perusal of the contents of the report as a whole, however, does not disclose any scientific data on which the above conclusion had been arrived at. It is also patent from the testimony of PW10 that the samples were not analyzed at the laboratory of FSL, Patna but had been forwarded to a private laboratory i.e. Lab India. It has been admitted by the witness, that he has no expertise in the discipline of DNA test/serology and he himself was not present when the analysis was conducted. He admitted to have sent a technician named Shiv Kumar, who had taken two days training in the same laboratory, to undertake the exercise. The prosecution has omitted to examine Shiv Kumar to establish clearly the process that was pursued to conduct the analysis. The evidence with regard to collection of blood samples of the parents of Archana is shaky and unconvincing as well. The samples, as the PW11 Investigating Officer has admitted, have been forwarded by her directly without routing the same through the court. The witness(PW10) has admitted as well, that in case facilities for such analysis are not available with the FSL, Patna, as per the prevalent official terms, the same should be got tested in another government laboratory.

51. The evidence of this witness thus does not provide the details of the tests undertaken in support of the conclusion as recorded in the report. The samples were not accompanied by the authentication card for DNA test as was necessary. This assumes significance as the authentication card has to have the photograph of the person(s) offering the samples for DNA test. This witness conceded that he was not deposing as an expert of DNA but in the capacity of Director, FSL alone. The DNA test report and the evidence of PW10, in view of the shortcomings and deficiencies noticed hereinabove, thus fail to inspire the confidence of this Court to accept the same as the basis to hold that the dead body was that of Archana.

52. The above factors, if taken cumulatively, we are constrained to hold that the prosecution has failed to prove beyond reasonable doubt that the dead body retrieved from the bush near the railway tracks in the vicinity of Azamanagar Police Station was that of Archana.

53. The authorities cited on behalf of the respondents with regard to the applicability of Sections 293 Cr.P.C. in support of the probative worth of the DNA test report sans the evidence of PW10 are distinguishable on the facts and are thus of no avail to them. The prosecution having examined PW10, it not only suggests that it was unsure of the DNA test report by itself, further it having taken that initiative, it cannot be permitted to forsake the testimony of this witness and fall back only on

the report in support of its case. As it is the DNA test report being bereft of the particulars of the tests conducted and the results thereof permitting the conclusion arrived at, is not a self contained one and ipso facto also does not meet the requirements of an expert opinion to decisively conclude that the dead body was that of Archana. It would thus be wholly unsafe to rely on this document to conclude that the dead body was that of Archana. Consequently, on the basis of the investigation and the materials produced, the prosecution has failed to prove the factum of death of Archana.

54. Before parting with this issue, it would be relevant to record as well that Malti Devi (PW3) the mother of Archana had also filed a writ petition seeking a writ of habeas corpus in the year 2008 before the High Court at Patna which on 8.9.2008, having regard to the ongoing investigation in the Gandhi Maidan P.S. Case No. 208 of 2007, was dismissed. This move on the part of the PW3 though understandably was a desperate bid to locate her missing daughter, is equally suggestive of the fact that she along with her family was not fully convinced that the dead body was that of hers.

55. Be that as it may, to complete the adjudicative pursuit, it would next be relevant to assay the aspect of cruelty or harassment to Archana by the appellant or his family members for or in connection with any demand for dowry soon before the incident of her mysterious disappearance. A plain perusal of the testimony of the investigating officers involved, indicates that prior to the complaint dated 5.9.2007, no allegation of cruelty or harassment for or in connection with dowry demand had been made against the appellant or his family members. The testimonies of Kalpana Kumari (PW11) and Kundan Kumar Singh (DW4) in particular are in ample support of this determination. Even the contents of the complaint dated 5.9.2007 do not unassailably establish cruelty or harassment for or in connection with dowry demand as contemplated by Sections 398A and 304B IPC when juxtaposed with the testimony of the PW11 and DW4. Both the father and the brother of Archana in their depositions have admitted as well that the money invested in the mutual funds had neither been withdrawn by the appellant nor had been diverted for his use or appropriation. Queerly, a diary said to have been written by Archana had been seized by the police in the course of investigation by Mokamah G.R.P.S. and was claimed to have been seen by PW1 as well. This diary has not been produced at the trial and as complained by the Kalpana Kumari (PW11), Investigation Officer, it had not been handed over to her as well even when sought for. In this premise, the improvement in the versions of Subhash Chandra Prasad (PW1), Ravi Shankar Prasad (PW2) and Malti Devi (PW3) with regard to demand for dowry and ill-treatment do not commend for acceptance. All these, in a way fade into insignificance as well in the face of failure of the prosecution to prove the death of Archana.

56. Having regard to the contents of the complaint dated 5.9.2007, there have been visible improvements with regard thereto at the trial which make these imputations untrustworthy on this ground also. Though the conduct of the appellant in not informing the parents of Archana in time about the episode and in lodging the complaint at Mokamah G.R.P.S. belatedly has been severely condemned and viewed to be a part of the plot to cover up his misdeeds in collaboration with his family members, we are constrained to conclude that in absence of any overwhelming evidence in support of such perception, such an indictment cannot be entertained. Besides the fact that individuals react differently at varying situations, it was not unlikely that the appellant having found Archana missing from her berth while the train was nearing Bakhtiarpur, in the early morning, he

had made frantic searches for her in the train and in the process, had reached Patna junction. His version that he being in a bewildered and anxious state of mind had been directed at Patna to lodge the FIR at Mokamah G.R.P.S. eventually did file his complaint, there cannot per se be brushed aside to be a contrivance on his part to delay or misdirect the investigation in the matter. Incidentally, the mother of Archana had talked to him over cell phone while he was at Mokamah and on the instructions of Subhash Chandra Prasad (PW1), the complaint was lodged at Mokamah G.R.P.S.. The statement of Ravi Shankar Prasad (PW2) that he had been threatened by the appellant to withdraw the case also does not merit acceptance as he had admitted that he neither informed about this intimidation to the police nor did he take follow up steps in connection therewith.

57 Even assuming that the suggested case of the prosecution is that the appellant had administered poison to Archana after the train had reached Katihar junction and that thereafter he had disposed of her moribund body out of the running train, it is very unlikely that these activities would have gone unnoticed by any of the passengers in the packed compartment of a sleeper coach. This is also in view of the short duration runs of the train through the intervening stations with intervals of an average of 15 minutes in between, in course whereof it might have stopped to enable the passengers to alight and disembark. In all, in our comprehension, such a proposition is wholly incredible and in defiance of logic.

58. In the facts of the present case, the presumption engrafted under Sections 304B IPC and 113B of the Indian Evidence Act is not available to the prosecution as the essential foundational facts to trigger such presumption have remained unproved. The prosecution has failed to establish beyond reasonable doubt the death of Archana. To reiterate, the evidence as a whole bearing on dowry demand and harassment or ill-treatment in connection therewith, is also not convincing.

59. On a cumulative scrutiny of the evidence on record, we are thus constrained to hold that in the facts and circumstances of the case, the prosecution has failed to prove the charge under Sections 304B/498A/201 IPC against the appellant. The courts below, in our estimate, have failed to examine and evaluate the evidence on record in the right perspective both factual and legal and thus have grossly erred in returning a finding of guilt against him on the above charges.

60. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well established cannon of criminal justice is “fouler the crime higher the proof”. In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

61. The above enunciations resonated umpteen times to be reiterated in Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan (2013) 5 SCC 722 as succinctly summarized in paragraph 21 as hereunder:

“21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved and “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.” [Emphasis laid by the Court]

62. In supplementation, it was held in affirmation of the view taken in *Kali Ram vs. State of H.P.* (1973) 2 SCC 808 that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

63. In terms of this judgment, suspicion, howsoever grave cannot take the place of proof and the prosecution case to succeed has to be in the category of “must be” and not “may be”. a distance to be covered by way of clear, cogent and unimpeachable evidence to rule out any possibility of wrongful conviction of the accused and resultant mis-carriage of justice. For this, the Court has to essentially undertake an exhaustive and analytical appraisal of the evidence on record and register findings as warranted by the same. The above proposition is so well-established that it does not call for multiple citations to further consolidate the same.

64. Whereas in *Sultan Singh* (supra), this Court had propounded that a presumption under Section 113-B of the Evidence Act is attracted only in case of suicidal or homicidal death and not in the case of an accidental death, it was proclaimed in *Sher Singh* (supra) that the harassment and cruelty by the husband has to have a perceptible connection with the dowry demand for his prosecution and punishment under Section 304B IPC.

65. In his treatise, “The Law of Evidence”, Professor Ian Dennis while dwelling on the theme of allocation of burden in criminal cases, elaborated on the significance and purport of presumption of innocence and the general rule of the burden of proof. While reiterating the fundamental notion of criminal jurisprudence, that a person is presumed to be innocent until proven guilty and that the burden of proof in a criminal case is on the prosecution to establish the guilt of accused beyond

reasonable doubt, the author underlined that the acknowledged justification of such presumption is that the outcome of a wrong conviction is regarded as a significantly worse harm than wrongful acquittal.

66. Viewed from the moral and political perspectives, it has been observed that in liberal states, the rule about the burden of proof has been elevated to the status of fundamental human right encompassing the assurance of liberty, dignity and privacy of the individual and from this standpoint it is essential that the state should justify fully its invasion of the individual's interest by proving that he had committed an offence, thereby abusing the freedom of action accorded to him or her by the liberal state. The significance of such presumption finds insightful expression in the following extract of State Vs. Coetzee [1997] 2 L.R.C.593, South African Constitutional Court in the words of Sachs,J.:

“There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any balancing enquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences massively outweighs the public interest in ensuring that a particular criminal is brought to book Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system. Reference to the prevalence and severity of a certain crime therefore does not add anything new or special to the balancing exercise. The perniciousness of the offence is one of the givens, against which the presumption of innocence is pitted from the beginning, not a new element to be put into the scales as part of a justificatory balancing exercise. If this were not so, the ubiquity and ugliness argument could be used in relation to murder, rape, car-jacking, housebreaking, drug-smuggling, corruption... the list is unfortunately almost endless, and nothing would be left of the presumption of innocence, save, perhaps, for its relic status as a doughty defender of rights in the most trivial of cases.” The quintessence of the philosophy embedded in the above extract is that the presumption of innocence serves not only to protect a particular individual on trial but to maintain public confidence in the enduring integrity and security of the legal system.

67. The evidence adduced by the prosecution dominantly is circumstantial in nature with no direct proof of the perpetration of the alleged offence by the appellant. It is a trite proposition, judicially evolved, that circumstantial evidence if it is to form the basis of conviction must be such so as to rule out every possible hypothesis of innocence of the accused and must without any element of doubt unerringly point to such culpability. This enunciation has stood the test of time over the years and the five golden principles propounded by this Court in Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116 (paragraph 153) which still authoritatively govern the process of appreciation of the circumstantial evidence and constitute the acid test to determine the guilt or innocence of an accused person, are quoted hereunder:

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

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* where the following observations were made: (SCC p. 807, para 19) “19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.” (emphasis in original) (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.” The theory of “last seen together” as an incriminating factor qua the appellant is, thus of no avail to the prosecution having regard to the state of evidence on record.

68. The following extract from paragraph 1504 of *Corpus Juris Secundum*, Volume 23, in our comprehension synthesises the pronounced judicial opinion with regard to the quality of circumstantial evidence to decisively prove and establish the guilt of an accused person in a criminal case. “While in order to sustain a conviction on circumstantial evidence, all of the circumstances proved must be consistent with guilt[1], circumstantial evidence will not support a conviction if it is merely consistent with guilt[2] or creates merely a suspicion of guilt[3]. If the circumstantial facts proved can be reconciled either with the theory of innocence or with the theory of guilt, the theory of innocence must be adopted and any conviction must be reversed[4], even though the theory of guilt is the more probable[5]. In other words, in circumstantial evidence cases, if the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury must necessarily entertain a reasonable doubt[6].

69. In the wake of the determination made hereinabove, we are of the unhesitant opinion, that it would be wholly unjustified to uphold the conviction of the appellant for the offences charged on the basis of the evidence, oral and documentary adduced by the prosecution. We are thus inclined to exonerate him of the charges. The appeal thus succeeds. The conviction and sentence of the appellant is set-aside and he is ordered to be set at liberty, if not wanted in a connection with any other case.

70. Judicial restraint albeit a self imposed regulation, is the hallmark of functional propriety ensuring uniformity in approach and certitude in curial determinations.

71. Distraught though one would be, by the calamitous incident, judicial adjudication has to be assuredly guided by the recognized legal dicta and cannot be swayed by emotional or sentimental surges. Justice has to be administered essentially in accordance with law and uninfluenced by individual predilections, notions, and prejudices. Be that as it may, judged on the touch stone of the acknowledged and time tested fundamental principles of criminal jurisprudence, we cannot, but have to conclude that the charge against the appellant has remained unproved.

72. Before parting, we cannot but wish to dwell on a substantially disquieting feature of the case namely; the shoddy, casual, laconical and insensitive investigation conducted by the police. In course of our adjudicative audit, several shortcomings and pitfalls in the process have been noticed. To recall, the diary of Archana, though seized, had not been produced at the trial. The evidence of Akhilesh Kumar, who had opined that the dead body was not that of Archana, was withheld. Ashok Kumar and Ajit Kumar who supposedly had drawn the blood samples of parents of Archana have not been examined. Shiv Kumar, Technician, FSL, Patna who, as claimed by the prosecution, had conducted the DNA test, was not produced. The DNA test was not carried out in a government laboratory and instead was done at a private laboratory in violation of the norms. Dr. Shyam Bahadur Upadhyaya (PW10), who was examined in connection with the DNA test, admittedly had no expertise in the line and his evidence is, thus, for all intents and purposes of no utility. No searching effort was made by the Investigating Officer to ascertain when and how and by whom poison was administered as found in the viscera of the dead body. Investigation is also wanting in the matter of identification of the dead body and the prosecution relied on inferences, conjectures and surmises to connect the appellant with the crime. The investigation in the case, therefore, has left gaping cracks in it incapable of being sealed or mended.

73. The investigating agency as the empowered mechanism of the law enforcing institution of the State is entrusted with the solemn responsibility of securing the safety and security of the citizens and in the process, act as the protector of human rights. The police force with the power and resources at its disposal is a pivotal cog in the constitutional wheel of the democratic polity to guarantee the sustenance of an orderly society. It is usually the first refuge of one in distress and violated in his legal rights to seek redress. The police force, thus is bestowed with a sacrosanct duty and is undisputedly required to be impartial, committed and relentless in their operations to unravel the truth and in the case of a crime committed, make the offender subject to the process of law. The investigating agency, thus in the case of a probe into any offence has to maintain a delicate balance of the competing rights of the offenders and the victim as constitutionally ordained but by no means can be casual, incautious, indiscreet in its approach and application. A devoted and resolved intervention of the police force is thus an assurance against increasingly pernicious trend of escalating crimes and outrages of law in the current actuality.

74. As a criminal offence is a crime against the society, the investigating agency has a sanctified, legal and social obligation to exhaust all its resources, experience and expertise to ferret out the truth and bring the culprit to book. The manifest defects in the investigation in the case demonstrate an inexcusable failure of the authorities concerned to abide by this paramount imperative.

75. This Court, amongst others, in *Amitbhai Anilchandra Shah vs. Central Bureau of Investigation and another* (2013) 6 SCC 348, while underlining the essentiality of a fair, in-depth and fructuous investigation had observed that investigating officers are the kingpins in the criminal justice system and reliable investigation is a leading step towards affirming complete justice to the victims of the case. It was ruled that administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It was held that the daunting task, though a compelling responsibility, is vested on the court of law to protect and shield the rights of both. That a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court was emphatically underlined. We are left appalled by the incomprehensible omissions of the investigating agency in the instant case and we would expect and require that the authorities in-charge of ensuring fair, competent and effective investigation of criminal offences in particular would take note of this serious concern of the Court and unfailingly take necessary remedial steps so much so that these observations need not be reiterated in future entailing punitive consequences.

.....J. (V. GOPALA GOWDA)J. (AMITAVA ROY) NEW DELHI;

DECEMBER 16, 2015.

[1] *Fla-Garcia v. State*, 899 So. 2d 447 (Fla. Dist. Ct. App. 4th Dist. 2005) *Tenn – State vs. Toomes*, 191 S.W.3d 122 *Va-Tooke v. Com.* 47 Va. App. 759, 627 S.E.2d 533 (2006) [2] *N.Y.-People vs. Squillante*, 18 Misc. 2d 561, 185 N.Y.S.2d 357 (Sup 1959).

[3] *Va.-Littlejohn v. Com.*, 24 Va. App. 401, 482 S.E.2d 853 (1997) [4] *U.S.-U.S. v. Reveles*, 190 F.3d 678 (5th Cir. 1999).

[5] *N.C.-State vs. Potter*, 252 N.C. 312, 113 S.E.2d 573 (1960).

[6] *Miss. –Shields v. State*. 702 So. 2d 380 (miss. 1997).