

V.K.Mishra & Anr vs State Of Uttarakhand & Anr on 28 July, 2015

Author: R. Banumathi

Bench: R. Banumathi, R.K. Agrawal, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1247 OF 2012

V.K. MISHRA & ANR.

...Appellants

Versus

STATE OF UTTARAKHAND & ANR.

...Respondents

With

CRIMINAL APPEAL NO. 1248 OF 2012

RAHUL MISHRA

...Appellant

Versus

STATE OF UTTARAKHAND & ANR.

...Respondents

J U D G M E N T

R. BANUMATHI, J.

These appeals arise out of the judgment dated 26.09.2011 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No.42 of 2002, whereby High Court confirmed the conviction of the appellants under Section 304B, 498A IPC and under Sections 3 and 4 of the Dowry Prohibition Act and the sentence of imprisonment for life was imposed on each of them.

2. Brief facts which led to filing of these appeals are as under:-

Deceased-Archana was given in marriage to accused Rahul Mishra on 28.06.1997. Before marriage and after the engagement, Dr. Hirday Narayan Tripathi, father of the deceased, had given a sum of Rs.50,000/- each on three occasions and Rs.63,200/- on 11.07.1997 and also gifted jewellery worth Rs.2,00,000/- to Archana. Archana, after return from honeymoon, visited her parents house and complained several times to her father, mother and brother about the continuous harassment and torture meted out to Archana by her in-laws and husband and that they used to abuse her in

connection with demand of dowry. Between 09.08.1997 to 10.08.1997, Archana visited her parents house. On 09.08.1997, Archana informed her brother- Santosh (PW-2) about the demand of Rs. 5,00,000/- by the appellants and PW- 2 told Archana that he will talk to the appellants. On 10.08.1997, appellant Rahul came to Archana's house and had taken back Archana to his house. On 10.08.1997, PW2-Santosh Kumar visited the house of the accused and tried to pacify the accused regarding their demand of Rs. 5,00,000/-; but the accused persisted in their demand. On 13.08.1997, PW1-Dr. Hirday Narayan Tripathi visited various institutions to find job for Archana. On the same day, Archana was admitted in the hospital as a suspected case of poisoning and she died due to poisoning. Law was set in motion by PW1-Dr. Hirday Narayan Tripathi and on the basis of the complaint, FIR was registered against the accused in FIR Case No.571/1997 under Sections 306 and 498A IPC at P.S. Kotwali, Dehradun. After investigation, charge-sheet was filed and charges were framed against the appellants-accused by the trial court under Sections 304B, 498A IPC and under Sections 3 and 4 of the Dowry Prohibition Act.

3. To substantiate charges against the accused, prosecution has examined 14 witnesses. When the accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances, the accused denied demand of any dowry and pleaded that they are innocent. Upon consideration of evidence, trial court-Additional Sessions Judge, Dehradun vide judgment dated 04.02.2002 convicted the appellants under Section 304B IPC and sentenced them to undergo rigorous imprisonment for life. The appellants were also convicted under Section 498A IPC and each of them was sentenced to undergo rigorous imprisonment for three years with a fine of Rs.2,000/- each with default clause. They were also convicted under Sections 3 and 4 of the Dowry Prohibition Act and were sentenced to undergo rigorous imprisonment for one year with a fine of Rs.1,000/- each with default clause. All the sentences were ordered to run concurrently.

Aggrieved by the verdict of conviction, the appellants preferred an appeal before the High Court which came to be dismissed confirming the conviction and sentence imposed on the accused by the trial court.

4. The learned counsel for the appellants contended that in the FIR lodged by the father of the deceased or in his earlier statement recorded by the police neither there was mention of any dowry demand made by the appellants nor of any harassment meted out to his daughter. It was contended that PW2-brother of the deceased made a false statement for the first time on 18.08.1997 i.e. five days after the death of Archana stating that the parents-in-laws of the deceased were raising dowry demand of Rs.5,00,000/- and also made allegations regarding cruelty and harassment in connection therewith. It was submitted that PW-2 kept silent for about eight days from the date of the alleged dowry demand and the cruelty and while so, the trial court and the High Court erred in placing reliance upon the evidence of PW-1 and PW-2 to record the verdict of conviction. It was contended that entire investigation was flawed as regards the suicide note and the letter written by the deceased to her brother-in-law and no detailed investigation was carried out viz. the inland

letter dated 10.08.1997 received by the deceased which according to the appellants contained threats from a dejected lover and sample of vomitus taken was either changed or tampered. It was vehemently contended that the courts below were not right in recording the conviction based on the evidence of PW-1, PW-2 and PW-3 which were purely hearsay and full of contradictions and thus lacked credibility apart from being clearly an afterthought.

5. Learned counsel for the respondents submitted that the prosecution adduced cogent and consistent evidence to prove the dowry demand and that deceased-Archana was highly educated girl and very sensitive who ended her life only due to the appellants' greed for dowry and the appellants subjecting her to cruelty and harassment in connection with the demand of dowry. It was submitted that upon proper appraisal of evidence, the trial court as well as the High Court rightly convicted the appellants and the verdict of conviction and sentence of imprisonment imposed on the appellants warrant no interference.

6. We have given our thoughtful consideration to the contentions urged by the counsel for the parties and perused the impugned judgment and the materials on record.

7. In order to attract application of Section 304B IPC, the essential ingredients are as follows:-

1. The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
2. Such a death should have occurred within seven years of her marriage.
3. She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
4. Such cruelty or harassment should be for or in connection with demand of dowry.
5. Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

On proof of the essential ingredients mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. 'Soon before' is a relative term and it would depend upon circumstance of each case and no strait-jacket formula can be laid down as to what would constitute a period 'soon before the occurrence'. There must be inexistence a proximate live link between the facts of cruelty in connection with the demand of dowry and the death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned it would be of no consequence. The evidence and material on record to be examined whether there is evidence to prove that 'soon before the occurrence', deceased-Archana was subjected to torture and harassment in connection with demand of dowry and whether the courts below are right in convicting the appellants under Section 304B IPC.

8. In his evidence, PW1-Dr. Hirday Narayan Tripathi, father of the deceased, stated Archana was highly educated girl i.e. M.Sc. B.Ed and that the marriage was solemnized with Rahul Mishra on 28.06.1997. He deposed that after the engagement of his daughter-Archana on 07.02.1997, demands of dowry started from the side of groom for a motor-cycle, a sum of Rs.2,00,000/- etc. In his evidence PW-1 stated that amount was given to the accused persons both before marriage and also after marriage-(a) Rs.50,000/- on 24.02.1997; (b) Rs. 50,000/- on 14.03.1997; (c) Rs.50,000/- on 05.05.1997 and (d) Rs.63,200/- on 11.07.1997 and that he raised money by sale of his land and by drawing money from his GPF. PW-1 further stated that the demands were raised for TV, washing machine, dining table, chairs and almirah etc. He has stated that his daughter came after three days of 'pagphera' and she told that the appellants are treating her cruelly demanding balance amount. PW-1 told his daughter that as he has no money, he will be paying them Rs.10,000/- from his salary. Archana asked her father to shut the mouth of the appellants by throwing money on their face by withdrawing the amount from her own account and accordingly they paid Rs.63,200/- to the appellants and the appellants still unsatisfied made demand for money for starting the new business. Deceased-Archana also told her parents over phone that her in-laws were pressurizing her for money in order to start a new business. PW-1 stated that in the last week of July 1997, the appellant V.K. Mishra telephonically demanded money for starting new business and due to PW-1's inability to fulfill the demand, the accused persons' attitude towards Archana worsened and they threatened her to throw out of the matrimonial house.

9. PW-1 further stated that Archana feeling depressed and being a determined girl decided to take up a job and two or three days prior to 06.08.1997 in the night she came to her parental house to collect her certificates of educational qualification and other materials. PW-1 stated that on 13.08.1997 in search of job for his daughter he went to Central School and also Indian Institute of Petroleum and in the evening he wanted to inform his daughter about his efforts and that there being no vacancy. But before that PW-1 made a phone call to his wife who asked him to reach Doon Hospital immediately as Archana was seriously ill and when he reached the hospital, he was informed by the appellant V.K. Mishra that Archana consumed poison and died. PW-1 stated that his elder son-Santosh Kumar (PW-

2) returned from Bombay on 15.08.1997, who also informed him about the demand of Rs.5,00,000/- by the accused persons from Archana.

10. Evidence of PW-1-complainant is assailed by the appellants contending that in the complaint lodged by him it is not mentioned that any kind of dowry demand was ever made and that allegation of demand of dowry is flawed as the same was neither mentioned in the FIR nor in his statement recorded by the investigating officer. It was also submitted that the details of payment of dowry was also not made clear by PW-1 either in the FIR or in his statement and evidence in the Court is only an exaggeration and no weight could be attached to the same.

11. Of course, in the FIR, PW-1 had not given the details of the money paid to the accused. But in his complaint PW-1 had categorically stated that the appellants had been torturing Archana with their cruel behaviour and Archana complained the same to him and that he advised her to compromise with the situation and create a healthy atmosphere. In the FIR, though, there is no specific mention

about the demand of dowry, cruelty and torture alleged in the FIR could have been only in connection with demand of money or jewels. Marriage of Archana with accused-Rahul Mishra was solemnized only on 28.6.1997 and Archana was yet to settle down in the house of her in-laws. Both the families were almost of same social and economic status. It is not the case of the defence that the alleged cruelty could only be the matrimonial skirmishes due to normal wear and tear of the matrimonial house. As noticed earlier, money was given by PW-1 both prior to marriage and after the marriage on 11.07.1997 also. Viewed in that context, the alleged cruelty and torture could have been only in the context of demand of money or jewellery.

12. FIR is not meant to be an encyclopedia nor is it expected to contain all the details of the prosecution case. It may be sufficient if the broad facts of the prosecution case are stated in the FIR. Complaint was lodged within few hours after the tragic event. PW-1 has lost his young daughter just married before six weeks in unnatural circumstances. Death of a daughter within few days of the marriage, the effect on the mind of the father-PW1 cannot be measured by any yardstick. While lodging the report, PW-1 must have been in great shock and mentally disturbed. Because of death of his young daughter being grief stricken, it may not have occurred to PW-1 to narrate all the details of payment of money and the dowry harassment meted out to his daughter. Unless there are indications of fabrication, prosecution version cannot be doubted, merely on the ground that FIR does not contain the details.

13. Mr. K.T.S. Tulsi, learned Senior Counsel for the appellants submitted that FIR contains only allegations of torture and cruel behavior on the part of the appellants towards the deceased and in his statement recorded by the police under Section 161 Cr.P.C., PW-1 had not stated anything about the alleged dowry demand whereas in his statement recorded by the police, PW-1 had only stated about many restrictions imposed on his daughter due to which Archana felt suffocated. Contending that there were no allegations of cruelty in connection with dowry demand or any such conduct of the appellants which could have driven Archana to commit suicide either in the FIR or in the statement of PW-1 recorded on the next day by the investigating officer, the learned Senior Counsel urged and tried to persuade us to look into the statement of PW-1 recorded under Section 161 Cr.P.C.

14. Section 161 Cr.P.C. titled “Examination of witnesses by police” provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C. Section 162 Cr.P.C. reads as under:

162. Statements to police not to be signed—Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.

Explanation.- An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

15. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act;

(ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

16. Court cannot suo moto make use of statements to police not proved and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act that is by drawing attention to the parts intended for contradiction.

17. Section 145 of the Evidence Act reads as under:

145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his

attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction.

19. In the case at hand, PW-1 was not confronted with his statement recorded by the police under Section 161 Cr.P.C. to prove the contradiction nor his statement marked for the purpose of contradiction was read out to the investigating officer. When neither PW-1 nor the investigating officer were confronted with the statement and questioned about it, PW-1's statement recorded under Section 161 Cr.P.C. cannot be looked into for any purpose much less to discredit the testimony of PW-1 and the prosecution version.

20. PW-1 in his evidence clearly stated that one year before the marriage he had sold his land for Rs.2,50,000/- and he has stated that he withdrew the money from the banks three-four months prior to marriage. PW-1 further stated that he withdrew Rs.1,00,000/- from his G.P.F account one year before the marriage and deposited the money in his Central Bank Account, D.B.S. College Branch and whenever he needed, he used to withdraw money from his account. In his evidence, PW-1 has clearly narrated about the details of money paid to the appellants i.e. payment of amount of Rs.11,000/- and Rs.15,000/- was given on the occasion of 'Tika' ceremony', Rs. 50,000/- each paid on three different dates; fixed deposit amount of Rs.63,000/- left in the account of Archana which was matured was also withdrawn and paid to the appellants on 11.07.1997. Evidence of PW-1 regarding making payments to the appellants is cogent and consistent and is amply strengthened by the bank statements. Non-mention of details of money paid to the appellants and the demand of dowry and cruelty and harassment meted out to Archana in the statement of PW-1 does not affect the credibility of PW-1. As rightly observed by the High Court, it cannot be expected from a father to narrate everything when he himself was in agony due to death of his own daughter.

21. PW2-Santosh Kumar, brother of deceased-Archana is a Geologist working as a Surveyor in Tehri Dam. In Tehri, PW-2 has a quarter and his family resides with him at Tehri and sometimes at Dehradun. In August, as PW-2 has to go to Bombay for treatment of his wife, PW-2 took leave for four days from 11.08.1997 and he went to Dehradun on 07.08.1997. In his evidence, PW-2 stated that on 09.08.1997 his sister Archana came to the parental house and told him that she is continuously tortured by the appellants and that they are demanding dowry of Rs.5,00,000/- and asked him not to tell it to the parents as they will not be in a position to arrange such a big amount of Rs.5,00,000/- and will be worried. PW-2 further stated that in order to settle the matter amicably, on the evening of 10.08.1997 he went to the matrimonial house of his sister where he saw mother-in-law, father-in-law and husband of Archana scolding her for not bringing the amount of Rs. 5,00,000/-. The appellant-Neelima Mishra (mother-in-law), told PW-2 "...Santosh open your ears and listen if you do not return back immediately after arranging Rs.5,00,000/-, you keep your sister at your home....". PW-2 deposed that the appellant V.K. Mishra asked him about the saving details of PW-2 and all other brothers and their father. PW-2 tried to convince them politely and touched their feet but in vain. PW-2 stated that as he had to go to Delhi and then to Bombay and it was raining heavily and he rushed to the hotel, and stayed in the hotel for the whole night and next day in the night he took bus from Dehradun to Delhi and then reached Bombay by train on 13.08.1997. On 14.08.1997, PW-2 got the information that Archana died and on 15.08.1997, PW-2 came to Delhi by air and from Delhi to Dehradun by taxi. PW-2 stated that due to VIP visit he was not immediately examined by the police and that his statement was recorded only on 18.08.1997.

22. Evidence of PW-2 is assailed contending that PW-2 did not allege any dowry demand prior to 09.08.1997 and the alleged demand of dowry is clearly an afterthought. It was contended that the stay of PW-2 in hotel at Dehradun on the night of 10.08.1997 and till his departure to Delhi on 11.08.1997, despite his parents' house being situated at Dehradun is unnatural and PW-2 is not a reliable witness. PW-2's evidence is further assailed contending that PW-2 could not have met his sister on 09.08.1997 nor he visited Archana's matrimonial house on 10.08.1997 as he was granted leave only from 11.08.1997 to 14.08.1997 and his presence in Dehradun on 09.08.1997 and 10.08.1997 is highly doubtful. Evidence of PW-2 is further assailed contending that his parental house situated at Dehradun, it is quite unnatural that PW-2 claims to have stayed in a hotel at Dehradun and strangely after the alleged demand of Rs.5,00,000/-, strangely PW-2 did not choose to contact his parents and informed them about the alleged demand even though PW-2 stayed in hotel at Dehradun till 11.08.1997. It was submitted that PW-2 had not taken written permission from his department to leave the project station at Tehri prior to 11.08.1997 and stay of PW-2 in hotel which is only 4-5 kms. away from his parental house raises serious doubt about his testimony. It was further submitted that statement of PW-2 that there was a dowry demand of Rs.5,00,000/- was recorded only on 18.08.1997 whereas PW-2 returned to Dehradun even on 15.08.1997.

23. Contentions urged assailing credibility of PW-2 do not merit acceptance. PW-2 in his evidence had clearly stated that he had come to Dehradun from Tehri on 7.08.1997 and was in his parents house till 3.00 pm on 10.08.1997 when he left for the hotel. PW-2 clearly explained the reason for his stay at hotel stating that distance of his father's house from Dehradun bus stand is 4-5 kms. and as he wanted to settle the matter with the in-laws of his sister-Archana about their additional demand of dowry for Rs.5,00,000/-, he left his home to the hotel with his luggage at 3.00 o'clock

perhaps to settle the matter with in-laws of Archana and in order to save time to take the bus on the night of 10.08.1997, PW-2 might have stayed in the hotel at Dehradun. In his evidence, PW-2 clearly stated that he had taken permission to be away from Tehri from 07.08.1997 to 10.08.1997 and that he took leave from 11.08.1997 for three-four days to go to Bombay in connection with his wife's treatment in Bombay. PW-2's evidence that he met Archana at their parental home on 09.08.1997 and that Archana informed him about the demand of Rs.5,00,000/- and cruelty meted out to her and that he proceeded to the house of the appellants to settle the dispute amicably is quite natural and inspires confidence. PW-2 acted like a loving brother and probably he did not want to give tension to his old parents and on seeing the urgency of the matter, went to the appellants' house to convince them. By perusal of evidence of PW-2, it is seen that he remained consistent throughout his cross-examination and nothing substantial was elicited to discredit his version. Merely because PW-2 has not produced documents showing the permission granted to him to be away from the headquarters Tehri from 07.08.1997 to 10.08.1997, version of PW-2 cannot be doubted. The reasons stated by PW-2 for his stay in hotel is quite convincing and the contention assailing the credibility of PW-2 was rightly rejected by the trial court and the High Court.

24. It has been further contended on behalf of the appellants that there was delay in recording the statement of PW-2 by the investigating officer and therefore his evidence should be viewed with suspicion, especially when he did not disclose about the alleged dowry demand before he left for Dehradun or till his statement was recorded by the police. In this context as pointed out earlier, PW-2 went to Mumbai for treatment of his wife and on 14.08.1997 he was informed about death of Archana and on the next day he returned to Delhi by air and from Delhi he reached Dehradun by taxi. In his evidence PW-2 stated that the police being busy in the programme of Ms. Mayawati, the then Chief Minister of Uttar Pradesh on 17.08.1997, the police did not examine and record his statement and it was only on 18.08.1997 his statement was recorded by the investigating officer. Considering the evidence of PW-2, it cannot be said that the prosecution was deliberately taking time with a view to concoct a false case and decide about the shape to be given to the case. It is pertinent to point out that on the delayed examination of PW-2, no question was put to the investigating officer (PW-14) by the defence. Had such question been put to PW-14, he would have certainly explained the reason for not examining PW- 2 from 15.08.1997 to 17.08.1997. Having not done so, the appellants are not right in contending that there was delay in recording the statement of PW-

2.

25. It cannot be held as a rule of universal application that the testimony of a witness becomes unreliable merely because there is delay in examination of a particular witness. In *Sunil Kumar & Anr. vs. State of Rajasthan*, (2005) 9 SCC 283; it was held that the question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a core of witness to falsely support the prosecution case. As such there was no delay in recording the statement of PW-2 and even assuming that there was delay in questioning PW- 2, that by itself cannot amount to any infirmity in the prosecution case.

26. PW3-Sharad Kumar Tripathi, another brother of the deceased narrated the incident that took place on 13.08.1997 in the evening at about 3.10 p.m. a phone call was received by him from the appellant-Rahul Mishra who asked him to reach his home immediately with my father and disconnected the phone. PW-3 stated that he heard voices of scolding and crying someone from background and so he called him and appellant-Rahul Mishra received the phone and asked him to come immediately with his father and disconnected the phone. When PW-3 called again, appellant V.K. Mishra came on line, who shouted at PW3 at a very high tone asking him to take his sister and that they will not keep her. When PW-3 reached there, one of the tenants in the appellants' house told him that white froth was coming out of Archana's mouth and that she was taken to Doon Hospital and PW-3 rushed to the hospital where he came to know that Archana consumed 'Baygon' poison and died of poisoning.

27. Vijay Kumar Sharma (PW-6), tenant-neighbour of the accused, has stated that he has never heard any shouting, screaming from the house of the appellants and the couple was living happily. Placing reliance upon the evidence of this witness, appellants contended that had there been any dowry demand, there would have been disharmony among the couple which would have definitely been known to neighbours like PW-6. It is to be noted that in a case where demand of dowry is alleged such demands are confined within the four walls of the house and known only to the members of both sides of the family. In such cases, independent and direct evidence with regard to the occurrences is ordinarily not available. That is why the Legislature has introduced Sections 113A and 113B in the Evidence Act by permitting presumption to be raised in certain circumstances. Evidence of PW-6, in our view, does not in anyway advance the case of the appellants.

28. Defence placed much reliance upon three documents: (i) the suicide note written by the deceased; (ii) inland letter allegedly found in the trunk and lapses in the investigation and (iii) the letter said to have been written by the deceased victim to her brother-in-law. The appellants vehemently contended that PW-14-investigating officer failed to carry out fair investigation regarding the above three documents and submitted that those three documents become more vital on account of belated and self-contradictory evidence with regard to demand of dowry.

29. Mr. Mukesh Giri, learned Addl. Advocate General appearing for the State, and Mr. Ratnakar Dash, learned Senior Counsel appearing for the informant submitted that the appellants have fabricated three letters probably on legal advice and produced the same at a belated stage while making application for bail and the appellants have not taken any steps to prove the genuineness of the documents and rightly those documents were rejected by the trial court as well as by the High Court.

30. So far as the suicide note is concerned, Archana is said to have stated that she is taking the step "suicide" because her mental condition is not good and that nobody should be held responsible for her act. It is pertinent to note that suicide note was not discovered during investigation but it was later produced by the appellants. When PW-1 (father of Archana) was confronted with the suicide note, PW-1 denied it to be in the hand writing of Archana. Appellants have not taken steps to prove the suicide note to be in the hand writing of Archana. Even assuming the suicide note to be true, the fact remains that the death of Archana was unnatural. The contents of the suicide note does not

affect consistent version of PW-1 and PW-2.

31. Another document relied upon by the appellants is an inland letter dated 10.08.1997 purportedly written by a person with whom Archana is said to have had love affair. According to the appellants Archana had love affair before her marriage with a boy who after Archana's marriage started blackmailing her to reveal the love affair and the alleged abortion and due to this reason Archana became upset and committed suicide by consuming poison. Paper No.7 Kha/1 was submitted to the court of sessions during the hearing of bail application of the accused. Learned Senior Counsel for the accused Mr. Luthra and Mr. K.T.S. Tulsi contended that investigating officer had not taken any efforts to investigate about this significant lead which would have knocked the foundation of the complainant's case raising bonafide doubts. Assailing the credibility of the investigation, interalia, the following contentions were raised:

(a) There was no investigation about the classmates or friends from whom the identity of the writer of the letter could have been established;

(b) Investigating officer had neither tried to ascertain the date, time and place of movement of the deceased-Archana during her stay at the house of her parents nor did he ascertain the people who visited her when she was at home nor whom the deceased visited while she was there;

(c) Though in the letter it was stated that Archana's brother-Santosh knows about the affair there was no investigation by PW-14 in this regard;

(d) The investigating officer did not make any efforts to establish the identity of purported friend one Singh Sahib referred to in the letter nor any effort made to recover the letters mentioned in the said inland letter Kha7/1.

Contending that investigating officer made no efforts to conduct an impartial investigation, the learned Senior Counsel submitted that the investigating officer made no efforts to conduct impartial investigation which coupled with the embellishments in the prosecution case regarding the demand of dowry raise serious doubts arise about the prosecution case. Learned Senior Counsel further submitted that there is a serious lapse on the part of the investigating officer in ascertaining the truth which entitles the accused to urge the Court to draw an adverse inference against the prosecution and investigation under Section 114(g) of the Evidence Act and placed reliance upon the judgments of this Court in *Tomaso Bruno & Anr. vs. State of U.P.*, (2015) 1 SCALE 498 and *Mussaiddin Ahmed vs. State of Assam*, (2009) 14 SCC 541.

32. Refuting the contention of the appellants on the lapses in the investigation and contending that any lapse in the investigation does not affect the core of the prosecution case, the respondents have placed reliance upon the judgment of this Court in *State of Karnataka vs. K. Yarappa Reddy*, (1999) 8 SCC 715, wherein this Court held as under:

“.....It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case....”

33. Inland letter Kha7/1 was not discovered during investigation but the same was produced by the accused in a bail application filed on 29.08.1997. Thereafter on the request made by the accused, investigating officer was directed to investigate upon the same. As noticed earlier, the inland letter was not discovered during the investigation; but brother-in-law of Archana is said to have discovered the inland letter and also the letter allegedly written by Archana to her brother-in-law from the suitcase of deceased-Archana. Brother-in-law who is said to have discovered those letters was not examined in the court. No explanation is forthcoming from the accused as to why the same was not handed over to the investigating officer. We have also perused the original of the inland letter and the postal seal in the said letter was not clear. In his evidence PW14- investigating officer had specifically stated that he tried to ascertain from which post office the inland letter was dispatched but he could not identify the same. When the seal on the inland letter was not clear, investigating officer cannot be faulted in conducting further investigation in connection with the said inland letter. The fact that it was produced on 29.08.1997 along with the bail application raises doubts about the genuineness of the said inland letter. When bail application was filed, by that time possibly there would have been legal advice and deliberations. The possibility of such an inland letter being fabricated to create evidence to make a possible defence cannot be ruled out and rightly the courts below recorded concurrent findings rejecting the said letter.

34. Deceased-Archana was an educated girl. If really she was in love with a boy, she could have married him even against the wishes of her parents. As to the genuineness of the inland letter, as pointed out by the trial court, it is difficult to believe that deceased Archana had preserved the same so that it may reach the hands of her husband and her in-laws. Considering the defence plea regarding the inland letter, the trial court rightly observed that it is natural that a sensible lady after marriage would not have kept it so safely.

35. Insofar as the letter allegedly written by the deceased to Rahul's brother-in-law, like two other documents, this letter was also not recovered during investigation but produced by the accused along with the bail application. Having written such a letter to her brother-in-law, it is strange that without posting the same, the deceased would have kept the letter in the suitcase. When confronted with the letter, PW-1 denied it to be in the hand writing of Archana. The accused had also not taken any steps to send the documents to hand writing expert for obtaining the opinion of the hand writing expert by summoning the admitted writings of deceased-Archana. If the investigating officer

had omitted to do the investigation regarding the documents produced by the accused in the court, the accused could have taken steps to prove the documents to substantiate their defence. Having not done so, the accused cannot turn round and contend that there were lapses on the part of the investigation which vitally affect the prosecution case.

36. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions.

37. In *Sher Singh @ Partapa vs. State of Haryana*, (2015) 1 SCR 29, it had been held therein that the use of word 'shown' instead of 'proved' in Section 304B IPC indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, 'shown' will have to be read up to mean 'proved' but only to the extent of preponderance of probability. Thereafter, the word 'deemed' used in that Section is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The 'deemed' culpability of the accused leaving no room for the accused to prove innocence was, accordingly, read down to a strong 'presumption' of his culpability. The accused is required to rebut this presumption by proving his innocence. The same view was reiterated in *Ramakant Mishra @ Lalu etc. vs. State of U.P.*, 2015 (3) SCALE 186.

38. Where the prosecution has shown that 'soon before her death' the deceased was subjected to cruelty or harassment by the husband or in-laws in connection with demand for dowry, the presumption under Section 113B of Evidence Act arises and the Court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused.

39. Prosecution has established beyond reasonable doubts that 'soon before her death' Archana was subjected to cruelty and harassment by her husband and her in-laws in connection with demand of dowry. The accused were not successful in rebutting the presumption raised under Section 113B of the Evidence Act. Concurrent findings of the courts below convicting the appellants under Section 304B IPC is based upon proper appreciation of evidence and convincing reasons. The courts below rightly convicted the appellants under Sections 304B and 498A IPC and Sections 3 and 4 Dowry Prohibition Act and in exercise of jurisdiction under Article 136 of the Constitution of India, we find no ground warranting interference with the conviction of the appellants.

40. For the offence under Section 304B IPC, the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 304B IPC thus prescribes statutory minimum of seven years. In *Kulwant Singh & Ors. vs. State of Punjab*, (2013) 4 SCC 177, while dealing with dowry death Sections 304B and 498A IPC in which death was caused by poisoning within seven years of marriage conviction was affirmed. In the said case, the father-in-law was about eighty years and his legs had been amputated because of severe diabetes and

mother-in-law was seventy eight years of age and the Supreme Court held impermissibility of reduction of sentence on the ground of sympathy below the statutory minimum.

41. As per prison records, the accused-Rahul Mishra is in custody for more than five years which includes remission. Bearing in mind the facts and circumstances of the case and the occurrence was of the year 1997 and that the accused Rahul Mishra is in custody for more than five years, interest of justice would be met if life imprisonment awarded to him is reduced to imprisonment for a period of ten years. Appellants V.K. Mishra and Neelima Mishra, each of them have undergone imprisonment of more than one year. Appellants No. 1 and 2 are aged about seventy and sixty four years and are said to be suffering from various ailments. Considering their age and ailments and facts and circumstances of the case, life imprisonment imposed on appellants V.K. Mishra and Neelima Mishra is also reduced to imprisonment of seven years each.

42. In the result while we uphold the conviction of the appellants under Section 304B IPC and other offences, sentence of life imprisonment imposed on Rahul Mishra is reduced to ten years. So also the sentence of life imprisonment imposed on V.K. Mishra and Neelima Mishra is reduced to seven years each. The conviction of the appellants for other offences and sentence of imprisonment imposed on each one of them are confirmed. Judgment of the High Court shall stand modified to the above extent and the appeals partly allowed and disposed off.

.....J. (T.S. THAKUR)J. (R.K. AGRAWAL)J. (R. BANUMATHI) New Delhi;

July 28, 2015
