Sandeep Kumar vs The State Of Uttarakhand on 2 December, 2020

Equivalent citations: AIR 2021 SUPREME COURT 691, AIRONLINE 2020 SC 872

Author: K.M. Joseph

Bench: Aniruddha Bose, K.M. Joseph, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1512-1513 OF 2017

SANDEEP KUMAR AND OTHERS ... APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND AND ANOTHER ... RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. The appellants, who were charged with the offence punishable under Section 304B of the Indian Penal Code (hereinafter referred to as “IPC”) stood acquitted of the said charge by learned sessions judge, Haridwar.

However, in appeal carried by the complainant/respondent No.2 herein, the verdict of acquittal was set aside and the appellants after conviction under section 304-B of IPC stand sentenced to undergo imprisonment for life.

2. We heard Siddharth Dave, learned senior counsel for the appellants. Shri Krishnam Mishra, learned counsel for the first respondent-state and Shri Sanjay Kumar Dubey, learned counsel for the second respondent.

3. On the basis of the complaint, by second respondent dated 23.01.2011 at 5.00 pm, an FIR was lodged. This led to the appellants finally being charge sheeted for having committed the offence under Section 304B of the IPC. Th e facts stated in the FIR read inter alia as follows:

> The daughter of the second respondent was married to the first appellant on 10.12.2009. After few days of the marriage the appellants who are the husband, father-in-law and mother-in-law of his deceased daughter started harassing her for dowry. About one month ago, his daughter and son
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> -in-law came to his house and remained there for two days. On both these days his son-in-law, namely, the first appellant demanded from him, his sons and sons' wives a sum of Rupees ten lakhs within 10 to 15 days for the construction of the house. The second respondent expressed his inability. Thereafter, seeing tears of his daughter who said that her parents must pay the amount otherwise they will kill her, she was sent away after being consoled. Thereafter, his daughter is alleged to have phoned him, his family and his relatives thereby informing them that her husband, mother-in-law and father-in-law were torturing her for money and they are provoking her to commit suicide. On 23.01.2011 at about 9.30 am, he received phone call from his deceased daughter to come at Haridwar otherwise they will kill her on that day. So, they went there. The dead body of the daughter was found in the car given by them in marriage. The death of the daughter was caused by poison and the appellants were responsible.

4. In the charge-sheet, it is, inter alia, stated that on the basis of investigation and evidence given by the witnesses and the recovery of the material from the spot, which contains the vomiting of the deceased and was cleaned by the accused, thus, on the basis of the evidence, offence under Section 304B was proved.

5. Before the trial Court, the prosecution examined 11 witnesses. The appellant examined four witnesses DW 1 to DW 4. Some documents including FSL Report, were produced.

THE PROSECUTION EVIDENCE

6. PW1 is none other than the father of the deceased. He deposed, inter alia, as follows:

> The appellants and other relatives had come before the marriage and they did not make any demand of dowry from him. In the marriage they gave Alto Car but they demanded Santro Car. He arranged for Santro car. He spent Rupees fifteen lakhs. At the marriage there was no dispute. After the marriage when they came for meeting, at that time also, there was no demand for dowry. The deceased got opportunity for admission in B.Ed. before marriage. After marriage, these persons (the appellants) asked to complete B.Ed. and the expense has to be borne by him. Thus, on appellants wishes, he bore the expense. After one month the daughter came and the appellants said that their marriage could have been arranged for 20-25 lakhs. Upon being confronted with this, the appellants stated that the mistake has been committed and they will not say such words. Thereafter, the deceased used to say in between that the appellants are demanding ten lakhs. Before 3 to 4 months he received phone call from deceased that the appellants are pressing her to take poison forcefully and

asking for ten lakhs. He made phone calls to the relative of the first appellant and asked him to intervene. The middle man who arranged the marriage, was contacted (Be it noted that the middle man is not examined). He has further deposed that upon bringing these facts by them and the son (PW2) and asking as to why he should not file complaint to the Police, the second appellant said that he will manage the Police and again 1st appellant apologised. They all live together in one house. Again, about one month ago, the first appellant came to his house along with deceased and he started demanding ten lakhs for the construction of the house and said that they will return the money. First appellant remained in the house for two days. Deceased also told him to arrange the money otherwise the appellants will kill her. He pawned ornaments of his wife and paid Rs. one lakh to his daughter and son-in-law. They went back. On 23.01.2011, in the morning at 09.30 a.m., the fateful day, he received a call from deceased asking him to come Haridwar otherwise the appellants will kill her. He called his youngest daughter (PW4). She, on phoning, was told by sister of Appellant No.1, that the condition of deceased was not good. She told the appellant's sister to take the deceased to hospital. They reached Haridwar where the deceased lived at about 3.00 pm. The dead body of the deceased was lying in the Santro car. He first made a call at number 100 which was received by the Police Station, Roorkee. He also made phone call to the Police Station, Ranipur on the basis of the number given by the police but the police had already reached the spot before him. At the time of marriage, he has taken a loan of Rupees two lakhs from his PF account. PW 1 has four children and the deceased was the last one. In 2009, he was receiving Rs.10,000/- after deduction. The first appellant is Software Engineer. He denies that no demand was made. He does not know whether the second appellant got Rs.35 lakhs when he retired in July as General Technician in BHEL. The registration of the Santro car stood in his name. He denies that he used to use Santro car for business and used to give occasionally to his daughter and first appellant. He admits having got the car released from the court. After the marriage he has gone 2-3 times to the house of second appellant and stayed there. After the marriage of the deceased, he and his family members used to talk to the deceased daughter. He is unable to say on which date, month and year the deceased told him that the appellants are saying that they were getting 20-25 lakhs in the marriage. Thereafter, he said that it was one year after the marriage and in 2011 (It be noted that in chief examination, PW1 says that the deceased told him about it one month after marriage). The deceased had told him regarding the demand for money 5-6 months of her reaching her in-laws and during this period, she had told him more than 10 times. He has never met Mahavir Singh. He has not told that when the deceased told regarding taking of salfas (some kind of poison). In 5 to 6 months, 10 phone calls came from the in-laws' house. He is unable to say whether the appellant has done medical examination of his daughter on 1.12.2010 from DW1-Dr. K.K. Agarwal, Haridwar and on 18.12.2010 got her X-ray from Super Pathology, Shivalik Nagar, Haridwar and her investigation got done on 11.5.2010 or that she was got treated from Dr. Mamta Tyagi. He does not know that the illness of his daughter was got treated from her parental house. The first appellant was B.Tech. He denies that the first appellant informed him on 23.9.2011

that the condition of his daughter is not good. The suggestion is put that the phone was switched off.

PW 1 states he does not know whether first appellant took his daughter to Satbadi Hospital when her condition became serious. He further deposes to say he does not know whether the first appellant took her from Satbadi Hospital to District Hospital where she was treated. He does not know whether on the advice of District Hospital, the first appellant took his daughter to Jolly Grant Hospital, BHEL. He admits that on the date of incident, when he reached his daughter's house, they did not ask from the appellants as to how his daughter had died. The suggestion is put that Police had come on the basis of information of the first appellant which was denied. He denies that the marriage was performed without any dowry and in a simple manner. He stated that the in-laws of his daughter were not present when he reached there.

7. PW 2 is the brother of the deceased. He stated that the appellants used to taunt his sister regularly. Mother-in-law and father-in-law never give full food to his sister. Four months before the incident the first appellant along with his sister asked for ten lakhs. He says after pawing the ornaments of his wife he paid one lakh. He refers to the phone call of 23.1.2011 from the deceased. He says from the perusal of the dead body it seemed his sister died due to poison. He is unable to explain why the statement that his father has spent 15 lakhs during the marriage is not found in his statement under Section 161 CrPC though he has mentioned it. Another omission marked is about the statement imputed to the in-laws of his sister (appellant 2 and 3) that they used to ask for dowry and that the marriage of their son could have taken place in rupees 20-25 lakhs. They have not made any complaint against the appellants anywhere apart from the complaint made on the date of the death. He had not talked on phone to his sister on 23.1.2011 nor her in-laws talked on that day. Even though he had a mobile phone with him, no talks with sister and in- laws took place. While sitting in the car during the 4-5 hours of journey, they talked only with sister near Roorkee. She had called. Her voice was very low. From Roorkee it took about 1½ to 2 hours to reach Haridwar. His father made a phone at 100 number from the car. Roorkee is about 100 kilometres from the house of PW2. They were not invited when the second appellant retired from BHEL for the farewell function and therefore none reached from their family (Be it noted that PW1 has categorically said that he was invited for the party). He had good talks with the deceased. He does not remember the month, date when the deceased told about the demand for Rs.10 lakhs but it was made in 2010. He says that his sister has no such disease and therefore they did not take any treatment before marriage. The suggestion is clearly put to him that the appellant had taken the deceased to three hospitals on 23.01.2011. When the phone from the deceased was received at Roorkee from there about 1½ to 2 hours was taken in reaching the house of the accused persons.

8. PW 3, a relative of PW 1 (brother-in-law) states that after demand for Rs. 10 lakhs and payment of Rs.1 lakhs by PW1 also, there was demand and torture by the appellants. He has not seen any torture of the deceased with his own eyes. Even after knowing about the harassment and torture by the in-laws he has never gone to the house of the appellants either by himself or with PW1 or any other person.

9. PW4 is the sister of the deceased. She has said that the appellants 2 and 3 used to torture her for money and they did not allow her to see television and asked her to bring television from their parent's house. She made a phone call at 10 am on 23.01.2011 which is answered by the sister of the first appellant and she told that the condition of the deceased was bad and upon being asked to take her to the hospital appellant's sister said that till now they have not taken her to the hospital. She says that she is the youngest. She has her mother. She said that before one month from her death, the deceased has come to her house. The omission in her 161 statement about deceased telling her parents about torture and demand for money is brought out. She reiterates this was mentioned to the Police. Another omission which is noted is regarding the alleged statement made by her to the Police that a phone call from PW1 (her father) that he has asked her to make a phone at the landline number of the in-laws house of the deceased. She has never seen from her own eyes anybody beating her sister. She further says she does not how the death of her sister occurred (Even though in chief examination she has deposed that her sister was killed for the demand of dowry). She says her sister was very sensitive. She says that the appellants committed murder of her sister and that they used to demand dowry. The omission in her 161 statement about the appellant having murdered the deceased is brought out. She denies that the appellants were present in the house when they reached on 23.01.2011.

10. PW 5 is the doctor who conducted post mortem. He deposed that the body of the deceased was stiff. Post Mortem was conducted on 24.01.2011 at 11.00 am. Therefore, the time of the incident was within 24 hours. There was no mark of any injury on the dead body. All organs were found congested. The viscera was preserved. The death of the deceased was possible on 23.01.2011 from 2.30 pm to 3.00 pm. In cross examination he states as follows:

> After the post mortem, he was not definite about the cause of death, and therefore, in order to know he had preserved and sealed the viscera and one piece of liver and spleen. The present case being of the sensitive nature, a panel of doctors with utmost care and caution conducted the post mortem. It was sought to be confirmed whether there was any external injury on the body of the deceased or strangulation or whether the marks of the death was concealed or not. Next, he says that on account of food poisoning, the organs may be congested and death could have taken place due to Tuberculosis, as due to Tuberculosis, the internal organs could be congested.

THE TWO INVESTIGATING OFFICERS

11. PW10 started investigation on 23.01.2011. He took the statement of Smt. Imlesh (aunt of deceased)(who was examined as PW6) and also PW4 (sister of deceased). On 05.03.2011, on being promoted, he was transferred. In his cross-examination, he says that he had started investigation on the same day (23.01.2011) after 5:00pm. When he went for inspection of the place of occurrence, at that time, the door was not locked and no accused was present in the house. He says that he has not specified in the diary that the accused was searched in the house and they did not meet him. The place of occurrence is Shivalik Nagar. There are several houses in the locality of different persons near the house of the accused. He admits that he has not inquired regarding the incident from any neighbourhood person. He further states that he had not collected any evidence regarding the

demand of dowry from any independent person. There is no mention about any reason in the arrest of the accused persons in Exhibit Ka-15. He continued with the investigation till 03.03.2011. He deposes that the complainant (PW1) had given the statement that before one month, the first appellant had reached their house along with the deceased and he stated that he was constructing a second house for rent purposes and therefore Rs. 10,00,000/- was demanded which he will return. PW2 has not told him that his father had spent Rs. 15,00,000/- according to his capacity. It is correct, he says that in the cause of death of Priyanka, the word 'dowry' has not been used. It is further stated that Smt. Imlesh (the aunt of the deceased and examined as PW6) has not used the word 'dowry' in harassing the deceased by her in-laws. Smt. Imlesh has not stated to him in the statement that father-in-law has ever harassed her for dowry. He admits as correct that during investigation, the first appellant informed him that he had taken the deceased for medical treatment in different hospitals. This fact came to him in the knowledge from his statement. PW10 admits that he had not done any investigation from any hospital regarding the treatment of the deceased and the cause of death. He is unable to give the reason as to why he did not do it.

12. PW11 is the investigating officer who took over the investigation on 05.03.2011 from PW10. He says that on 18.04.2011 after recording the statement of the witnesses and on the evidences available he submitted the charge sheet against the appellants. He has also not done investigation by way of recording any statement of any neighbour. He admits that it is necessary that the death should be unnatural for submitting a charge sheet under Section 304-B. In the opinion of PW5 doctor who conducted the post mortem, the cause of death was unknown. He preserved viscera to know the reason for death. When he is asked as to whether till the filing of the charge sheet, he was having any reliable evidence for unnatural death of the deceased, his answer is only he was having oral evidence. When he is further questioned as to what evidence was available with regard to which witness regarding unnatural death, he responds by deposing that when she died, the deceased was not with her family members. At that time all the three appellants were with her. Therefore, it was not possible to record the oral evidence of the accused persons. He admits that it is correct that no public witness was found regarding the unnatural death during investigation. PW10 has recorded the statement of first appellant that he has taken the deceased to hospital, deposes PW11. He submits that this came to his knowledge after perusal of the investigation done by the previous investigating officer. He also did not record the statement of any doctor of the aforesaid hospitals and he did not interrogate.

13. It is necessary now to notice the evidence adduced by appellants. DW1 is Dr. K.K. Aggarwal, Retired Chief Medical Officer and Physician, BHEL, at Shivalik Nagar. He deposed that on 01.12.2010, the deceased went to him with the complaint of dry cough. He advised blood investigation. She was suffering from Eosinophilia. Exhibit-Kha-1, is the original Medical Prescription by DW1. She was treated from 01.12.2010 to 19.12.2012. in cross-examination he states that Eosinophilia may be caused due to change in weather. By increase in Eosinophilia, it may cause cough, sneezing and breathing problem. Several persons are suffering from disease of higher Eosinophilia.

14. DW2 is a Gynaecologist working in Lilavati Hospital, Shivalik Nagar. She has passed M.B.B.S. and B.G.O. Degree. On 11.05.2010, Priyanka (the deceased), aged 24 years, went to her for

treatment. She complained of pain in her stomach and discharge of white fluid. She was old patient of Tuberculosis (TB), which was told by her. She remained in her treatment from 11.5.2010 to 14.5.2010. The patient was having weight of 39 kilograms and her weight was below normal limit. She proved the original prescription as Exhibit-Kha-2.

15. In cross-examination she states as follows:

> She complained of stomach pain and discharge of white fluid. She asked the patient to come on 15.05.2010 at 12.00 p.m.. Thereafter, the patient did not go to her. It was correct, she says, that the disease, which was treated by her, was cured within four to five days. Then she says that, it is possible that the patient may be cured, and therefore, she did not come on 15.05.2012. She volunteered further that she called the patient on 15.05.2010 but she did not return. She does not know why. She further states that it is correct that it was told by the patient upon her query that she was suffering with the disease of TB and took treatment for nine months. She does not treat TB. The treatment, which she gave, has no relationship with TB. It is correct that TB may be cured after taking treatment for six months or nine months. She deposed that it is wrong to state that the patient, who is suffering pain in stomach, since several days, and eat very less, therefore, his weight may reduce. This is after admitting that the patient had complained for stomach pain.
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> 16. DW3 is the Head of the Department of Education Faculty in a College. He has deposed, inter alia, that the deceased got admission in college in 2008-09 and completed the course for the year 2009-2010. The attendance of the deceased was more than 75 per cent.

Thus, she appeared in the examination in August, 2010. She also appeared for the practical examination on 16.11.2010.

17. In cross-examination, inter alia it is brought out that her attendance fell drastically after December, 2009, and that, it was more than 99 per cent, prior to December.

18. DW4 is a Medical Practitioner since 1987 in a Nursing and Maternity Home at Meerut Road, Mawana, Meerut District. She has passed M.B.B.S. and B.G.O.. On 02.06.2007, the deceased came to her and she remained under her treatment. She told about her disease of TB. Thereafter, the patient went to her on 02.12.2009. On that day she told that she is about to marry on 10.12.2009, thus, she wanted to postpone her periods, for which, she gave her medicines. Thereafter, the deceased went to her on 31.08.2010. The patient told about the history of Coax (TB of stomach). The original prescription for the three dates were marked as Kha- 5, 6 and 7, respectively. On 02.06.2007, she advised the patient, on her prescription, for blood test and x-ray of chest. She prescribed medicines for Anaemia because the patient told about TB earlier. Therefore, she advised blood test and x-ray to confirm whether TB had been totally cured or not. But the patient did not bring any x-ray or blood report.

19. In cross-examination she says that she is a Gynaecologist. On 02.06.2007, the deceased came to the hospital with the disease of weakness. In her medical history, she has stated about TB for last ten years. She states that it is correct that after ten years, and till coming to her, the deceased never told about symptoms of such disease. If the patient takes complete treatment for three years, there is no possibility for the said disease. She says that during the two and a half years, between 02.06.2007 and 02.12.2009, and after 02.12.2009, the deceased never complained about TB. On 31.08.2010, DW4 did not investigate for TB symptoms nor any complaint about it. TB may be caused in the chest, stomach or any other organ. It is further stated that from 02.06.2007 to 31.08.2010, Priyanka (the deceased), was regularly coming to DW4 for treatment for three years. She ends her deposition by stating that during the three years period, the deceased never complained about TB nor she found any symptoms under investigation.

20. The analysis of the above evidence would reveal the following:

> DW1 treated the deceased from 01.12.2010 to 19.12.2010. The deceased was suffering from high Eosinophilia. She had complained of dry cough.

DW2, a Gynaecologist, treated the deceased from 11.05.2010 to 14.05.2010. The deceased complained of pain in the stomach and discharge of white fluid. The deceased told the Doctor that she was an old patient of TB. Markedly, the deceased was found to have weight of only 39 kilograms, which was found to be below the normal limit. DW4, again another Gynaecologist, also treated her on 31.08.2010. The Doctor clearly deposed about the patient telling about the history of TB in the stomach. While DW1 and DW2 are from Haridwar, where the appellants reside, it is noteworthy that DW4 practised at Mawana, Meerut where the deceased had her paternal home. The evidence of DW4 would show that the deceased was under treatment of DW4, for 3 years from 02.06.2007 to 31.08.2010. On 02.06.2007, the Doctor advised her to go in for blood test and x-ray of chest to confirm whether she was cured, the DW4 is categoric that she did not bring any x-ray or blood report. It is within little over a month, from the date of treatment of DW1 and within a few months of treatment of DW4, that the deceased passed away in January, 2011 on 23.01.2011.

21. We may also notice that in the Van Nostrand's Scientific Encyclopaedia (3rd Edition). It is stated, inter-alia, as follows:

> Tuberculosis: A chronic or acute infectious disease caused by an invasion of the body by the Bacillus tuberculosis. It may exist without causing symptoms (inactive tuberculosis) or with symptoms (active tuberculosis). The symptoms of tuberculosis depend on the organ involved, the virulence of the strain of tubercle bacilli and the resistance of the individual infected. Almost any organ or tissue of the body may be attacked by the tuberculosis process, although the commonest site is the lungs.
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> We notice that in the discussion relating to pulmonary Tuberculosis, it is, inter alia, stated as follows:

Some individuals are unable to handle the infection, and in spite of good treatment early in the disease they go on to develop severe symptoms and widespread, often fatal, tuberculosis. Others are able to keep a small lesion localized, and in the course of a year of treatment complete healing may be accomplished.

The complications of pulmonary tuberculosis are associated with spread of the disease to near and distant organs. In some instances, the pulmonary disease may b quite minor, and the first manifestation may occur when urinary tract, or abdominal, tuberculosis begins to cause symptoms. The various forms of abdominal tuberculosis are treated with x-ray and ultra-violet light as well as the usual general measures.

The prognosis in tuberculosis depends on many factors. The type, duration and extent of disease when treatment is begun, the resistance of the patient to the tubercle bacillus are of prime importance. Early treatment increases the percent of cures enormously. The importance of continuation of treatment, usually for a minimum of 2 years, cannot be overestimated. Since relapses are relatively common even after apparent cure, restriction of activities and regular check-up examinations for a period of years are essential.

In the latest edition, the 10th edition of the same work, we notice the following:

If the disease is left untreated, very serious complications can occur. Sometimes patients are hospitalized during the initial stages of therapy. The administration of drugs for about two weeks usually markedly reduces the ability of the patient to infect others. Persons with nonpulmonary tuberculosis are considerably less infectious than those with the pulmonary form and thus sometimes can be managed entirely as outpatients.

The rise of incidence of TB commencing in the mid 1980s generally is attributed to two causes, each of which has had a measurable effect:

1. An increased resistance shown by M. tuberculosis to the drugs administered. Current research is illustrating the veracity of the cause.

2. xxx xxx xxx THE FINDINGS BY THE SESSIONS JUDGE.

22. The telephonic call, which is made by PW1 on the fateful day cannot be treated as First Information Report and it is just an information given to the police and the FIR marked in the case is that what he had given after seeing the dead body of his daughter. The deceased was married to the first appellant on 10.12.2009. She died on 23.01.2011. The death was within seven years of marriage. The prosecution was unable to prove that the deceased died due to poison. From the search in the house of the deceased, no poisonous substance was found. It is also found that in the Wiper by which vomiting of the deceased was wiped (referred to in the charge sheet noted by us at para 4 of this judgment) it was not proved that this was only poison. In the viscera also, there is no

poison. Though there was a long gap in sending the viscera, the appellants could not be blamed for the same. Though, the deceased died at a very young age of 28 years, there is a history of tuberculosis before marriage. He refers to the evidence of the doctors which we have already referred to and also the information provided by the first appellant that he had taken the deceased to the hospital. It was the duty of the investigating officer to record the statements of the last treating doctor. It cannot be said that deceased died due to poison. No injury was found on the body of the deceased as per the inquest report and post mortem. The oral evidence adduced by the prosecution itself ruled out physical cruelty in connection with the dowry.

23. PW1 and PW2 had deposed about the demand of Rs. 10 lacs. The Sessions Judge even finds that apart from the fact that the said fact is not clearly proved and there are many interpretations about the same asking for such an amount by the accused (first appellant), after the marriage and when he assured that he will return the same, it cannot be a demand for dowry. The Court took the view that all the witnesses admitted that before the marriage and at the time of marriage, there was no demand for dowry by the appellants. Even when she came home, immediately after the marriage, there was no demand for dowry. The Court notes the following contradictions in evidence of PW1 and PW2. PW1 has deposed that one month before the incident, the first appellant and the deceased came to the house at Mawana. There, the first appellant demanded Rs. 10 lacs. PW1 expressed inability. But he pledged ornaments of his wife and gave Rs. 1 lakh. PW2, his son, on the other hand, says that four months before the date of an incident, the first appellant and the deceased came to their house at Mawana and they demanded for Rs. 10 lacs. He pledges the jewellery of his wife and gave Rs. 1 lakh. PW3 has developed this theory further and deposed that PW1 had pledged the jewellery of his daughter-in-law and gave Rs. 1 lakh to the first appellant. This is not the version of either PW1 or PW2. On the basis of contradictions, he finds that there is neither demand for Rs. 10 lacs by the first appellant nor was Rs. 1 lakh given. The deceased was found doing her B.Ed.. DW3, who is the official of the college, has deposed about the deceased attending the college and also the attendance which we have already referred to. It is admitted that while doing B.Ed., the deceased remained with her parents as the college was nearby. She visited her home so many times. There is no report to the police in regard to the harassment for dowry. As told by the deceased regarding the taking of Salfas (poison), it is noted as a serious matter, in which case, the report should have not been lodged which is admittedly not the case. There is no reference as to the date of demand. The car was found registered in the name of PW1. The application for the release of the car which had been taken into custody was made by PW1. This falsified the case of gift set up by the prosecution. The taking of help for some purposes would not fall within dowry (this is with respect to the demand for Rs. 10 lacs). There is ample evidence to show that the deceased was a patient of Tuberculosis and also suffering from Eosinophilia and stomach ache. This may be the cause of her death. It has been found that this is not a dowry death. There is no charge under the Dowry Prohibition Act and Section 498A of the Indian Penal Code and the only charge under Section 304-B not being proved, the appellants were acquitted. THE FINDINGS BY THE HIGH COURT IN THE IMPUGNED JUDGMENT.

24. Though at the solemnization of marriage, there is no discussion of dowry, however, after 2-3 months, the accused and his family members (appellants) started demanding dowry. Thereafter, reference is made to PW8, who deposed that Panchas opined that it was a case of poisoning. The

High Court finds that the evidence of DW1 does not reveal that the deceased was suffering from Tuberculosis and that she had Eosinophilia. Referring to the evidence of DW2- Dr. Mamta Tyagi, the High Court says that the deceased was only complaining of stomach ache and discharge of white fluid. The patient has never told the doctor about her Tuberculosis. The treatment also did not relate to the Tuberculosis. The doctor has admitted that Tuberculosis can be cured after six to seven months of treatment. The High Court, thus, concludes that it is in evidence of DW1 and DW2 that deceased was not suffering from Tuberculosis. Thereafter, the High Court goes through evidence of DW4 and finds that the doctor had admitted that once the treatment was taken ten years back for Tuberculosis, there was no question of recurrence of the disease. The deceased had gone to her on 02.12.2009 for the postponement of her menstrual cycle and the marriage took place on 09.12.2009. The deceased has never told the symptoms of Tuberculosis after 02.12.2009. The High Court finds as follows:

> "It is thus, evident from the statements of DW1 Dr. K.K. Aggarwal, DW2 Dr. Mamta Tyagi and DW4 Dr. Neera Chandra that Priyanka was not suffering from tuberculosis. She was never treated by them for tuberculosis. DW1 Dr. K.K. Aggarwal has treated Priyanka for common ailment. DW2 Dr. Mamta Tyagi has admitted that the treatment given to Priyanka has nothing to do with tuberculosis"
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> 25. The deceased was never taken to any hospital.

According to the investigation officer, she was taken to various hospitals though there is no record. It is further pointed out that when specific question was put to the accused under Section 313 CrPC, as to how the deceased was recovered from the car parked in front of their house, a simpliciter denial was made. Thereafter, we may notice paragraph-34:

> "There is ample evidence on record that the accused were demanding dowry from the deceased. The parents of the deceased were not in a position to meet the illegal demand of dowry. It has come in the FIR that it was the case of poisoning. PW3 Sohan Singh has noticed that body has turned blue. PW5 Dr. Ashok Kumar has admitted that on the opening of body, internal organs were congested, which could be due to poisoning. Merely the fact that poison was not found on the Viscera vide exhibit 55 Ka/4, it cannot be said that deceased was not administered poisoning."
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> 26. Then the High Court refers to the judgment of this Court in Anant Chintaman Lagu v. State of Bombay1. This Court therein held that in any case of poison, the three elements must be established:
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> 1. Death took place by poisoning.
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> 2. The accused had the poison in his possession.
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> 3. The accused had an opportunity to administer the poison to the deceased.

Thereafter, there is reference to case law. The Court then finds as follows:

"(42). In the instant case, the prosecution has proved the case based on entirely circumstantial evidence. The chain is complete from the date of telephonic call received by PW1 Harendra Singh from his daughter till the recovery of body in Santro car on 23.01.2011. The plea taken by the accused is false and it is a vital link to prove circumstantial evidence on which the present case rests.

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1 AIR 1960 SC 500

(44). In the present case, the deceased was in the house of accused at the time of her death. It was for the accused to explain satisfactorily the circumstances under which the victim died on 23.01.2011. PW3 Sohan Singh has also deposed that the accused ran away from the spot. It was a case of homicide by poisoning. The accused were required to explain under Section 106 of Cr.P.C., the circumstances in which the death of Priyanka was caused and her dead body was recovered from the rear set of the car parked in front of their house. It has also come on record that the husband of Priyanka-deceased and other family members were residing in the same house."

27. With regard to medical opinion, it was found that the opinion of the doctor cannot affect the value of deposition of truthful eyewitness. It is found that the appellants have failed to rebut the presumption under Section 113B of the Evidence Act.

28. Then the Court finds that the prosecution has duly proved that the deceased was killed due to cruelty and harassment for dowry and that it proved the ingredients of cruelty and harassment in connection with the demand for dowry immediately before the death. Thereafter, we may notice:

> "(60). The dead body of Priyanka was recovered from the rear seat of Santro car, as per the statements of PW1 Harendra Singh, PW2 Sandeep, PW3 Sohan Singh and PW8 Puran Singh Rana. The accused have not given any explanation why the dead body of Priyanka was lying in the car. The accused have not explained the circumstance why the dead body was lying in the car, even, in the statement recorded under Section 313 of Cr.P.C.
>
> (61). Learned Trial Judge has overlooked this very vital fact that the dead body of Priyanka was recovered from the rear seat of the car and to which no explanation whatsoever has been given by the accused." (Emphasis supplied) Finally, we notice:
>
> "(64). In the present case, the statements of DW1 Dr. K.K. Aggarwal, DW2 Mamta Tyagi and DW4 Dr. Neera Chandra do not inspire confidence. They have issued false certificates to save the accused.

Priyanka-deceased was never suffering from tuberculosis. This tendency on the part of private practitioners to issue false certificate is required to be curbed." (Emphasis supplied)

29. On this basis, the appellants were found guilty under Section 304-B read with Section 498A and Sections 3 and 4 of the Dowry Prohibition Act. Thereafter, by exercising power under Section 362 of the CrPC and noticing that there is an error in that the appellants were also wrongly convicted under Section 498A of IPC and Sections 3 and 4 of Dowry Prohibition Act. The conviction thereunder was ordered to be deleted. Thereafter, the appellants were sentenced to undergo imprisonment for life under Section 304-B of IPC.

30. We have heard learned senior counsel for the appellants, Shri Siddharth Dave, Shri Krishnam Mishra, learned counsel for the first respondent-State and Shri Sanjay Kumar Dubey, learned counsel for PW1(father of the deceased) and the appellant before the High Court.

31. Learned senior counsel for the appellants submitted that there is absolutely no basis for the High Court to reverse the judgment of acquittal rendered by the learned Sessions Judge, overlooking the well-settled principles in regard to the approach to be made by the Appellate Court, when there is an acquittal by the Trial Court. Apart from initial presumption, it is elementary that the acquittal of the accused by the Trial Court completely reinforces the presumption and there is a double presumption of innocence. The Appellate Court will interfere with the acquittal only if the judgment of the Trial Court is perverse, he points out. He would urge that the deceased was indeed taken to the doctors when her condition was noticed. He submitted that for a conviction under Section 304B, the fundamental basis is to be the unnatural death of the woman within seven years of her marriage among other elements. But in this case, the prosecution has not proved that the death was unnatural. She was taking treatment. The findings of the Sessions Judge to the effect that there was demand for dowry, could not be acted upon, has been jettisoned without any basis. The deceased weighed just 39 kilograms, an unerring pointer to both her illness and her health condition, in 2010, a few months before her death. No poisonous substance was found in viscera, he poses the question as to on what basis, the High Court could have entered the verdict of guilt after reversing the judgment of the learned Sessions Judge. No poison was found in the house of the appellants. There were no marks of any injury as already noted. There is no demand for dowry right from the beginning. The first appellant had informed the Police. They had not run away. Reliance is placed on the evidence of PW11-I.O. besides the evidence of PW1. There was no basis to draw the inference which is drawn on the basis that the body was found in the rear portion of the car. He drew support from the Judgment of this Court in Chhotan Sao and another v. State of Bihar2.

32. Per contra, the learned counsel for the State pointed out that there was demand for dowry and harassment after few months of marriage. Even in the questioning by the Court under Section 313, the denial by the first appellant would show that he was complicit in the crime. The finding of the dead body in the rear of the car in front of the house, is emphasized. 2(2014) 4 SCC 54

33. Shri Sanjay Kumar Dubey, appearing for respondent No.2, sought to support the impugned judgment. He referred to the entry in the General Diary indicating that the phone call was made on 23.01.2011 pointing to the events showing the complaint voiced over phone by the deceased. He

pointed out the affidavit by appellant No.2, wherein he states that the deceased died of poisoning. This suffices to show that the death was unnatural attracting Section 304B. The alleged contradictions in the deposition of prosecution witness is also sought to be explained.

The learned Senior Counsel for the appellant would point out that no reliance should be placed on statement in the Affidavit of the second appellant in the Bail Application about the death being a suicide. This is not part of the evidence.

ANALYSIS

34. Though, since long, the law declaring the narrowing of appellate court's jurisdiction in regard to scope of interference with a verdict of acquittal, is settled, we may only refer to one decision. In Ghurey Lal v. State of Uttar Pradesh3, after an exhaustive review of case law, this Court laid down, as follows:

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue.

It is not enough for the High 3 (2008) 10 SCC 450 Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-

settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

> 1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

35. It is well to remember that while the search of the truth and adjudicatory function of the judiciary are not strange bedfellows, these self-imposed limitations on the pursuit are based on the nature of jurisdiction. Every deviation from such limits could indeed result in grave injustice requiring correction to prevent miscarriage of justice. Excess of jurisdiction can have very serious repercussions, particularly when, what is involved is, personal liberty, which is inevitably at stake in a criminal trial.

36. We have set out the findings of the Trial Court. The charge is one under Section 304B. The ingredients of the offence are well-settled. A marriage performed within seven years before the death of the wife. The death must be unnatural. Soon before the death, the deceased wife must have been at the receiving end of cruelty or harassment, on account of demand for dowry. It is described as dowry death. The relatives concerned, including husband, become liable. Section 113B of the Evidence Act comes to the rescue of the prosecutor by providing for a presumption that a person has caused dowry death if, it is shown that soon before her death, she was subjected by such person for cruelty or harassment for or in connection with demand for dowry.

37. In this case, as regards the demand for Rs.10 lakhs by the first appellant, there are three striking features. PW1, the complainant and the father of the deceased, deposes that about one month before the death, the deceased and the first appellant came to him at Mawana and first appellant sought Rs.10 lakhs from him and that they will return the money. He being moved by the tears in his daughter’s eyes, pawned his late wife’s jewellery, raised one lakh and gave to the appellant and his daughter. However, PW2, his son, deposed that it was four months before the death that the deceased and the first appellant came to their house at Mawana, asked for Rs.10 lakhs. He sets up

the version that he raised one lakh by pawning his wife's ornaments. Thus, the versions of PW1 and PW2 both as regards time of demand and the manner of raising Rupees One lakh, appear to be clearly contradictory. What is more significant is the further contradiction introduced by PW3 who is the brother-in-law of PW1. He deposes that two months from the incident, he had gone to the home of PW1, who informed him that the in-laws of the deceased are demanding Rs.10 lakhs for the construction of the house for the purpose of rent. PW1 showed his inability. It is important to notice what PW3 next says:

> "Thereafter, the in-laws of Priyanka (the deceased) started torturing her badly".

38. What follows next is the last nail in the coffin of the prosecution version, which completely falsifies what both PW1 and PW2 has deposed. PW3 states that PW1, after pawning ornaments of his son's wife, paid Rs.1 lakh to the first appellant. The learned Sessions Judge entered findings noting these contradictory versions. He also finds that if the father-in-law is approached for a sum of money after the marriage, on the basis that it will be returned back, it may not amount to a dowry demand.

39. It is to be noted that PW1 has admitted that there was no demand for dowry before or at the time of marriage. The marriage took place on 10.12.2009. The death was on 23.01.2011. Though PW1, PW3, PW4 and PW6 have spoken about harassment on account of dowry, the learned Sessions Judge did not find material reliable. It is to be noted that the version about the demand for Rs.10 lakhs is found wholly unacceptable. The Trial Court has the advantage of watching the demeanor of the witnesses.

40. The I.Os- PW10 and PW11, have not made any enquiry from the neighbours of the appellants. The deceased was attending the B.Ed course as seen from the evidence of DW3. No complaint, whatsoever was given by PW1 to PW3 to any authority. We do not see any material except the testimony of PW1 to PW3 and PW6, which did not, at any rate, inspire the confidence of the Trial Court. It does not also commend itself to us either.

41. PW6, aunt of the deceased also has given evidence in support of the prosecution. The forensic report is dated 28.3.2014. It states that metallic poisons, Ethyl Alcohol, Methyl Alcohol, cyanide, phosphides, Alkaloids, Barbiyurates, Tranquilizers and Pesticides were not detected in the exhibits.

DID THE APPELLANTS RUN AWAY?

42. The incident took place on 23.01.2011. PW1 deposed that on the said date the Police had taken in their custody the Santro car before PW1 because in the car the dead body of the deceased was kept. Next, he says that the first appellant was present.

43. Next the appellant would point out the statement of PW 11, the second investigating officer. He deposed in answer to the question in cross examination as to the oral evidence of which witness was available regarding unnatural death, that at the time of death all the accused were with her. Therefore, it was not possible to record the oral evidence of the appellants.

44. Further the evidence of PW9, police officer, is to the effect that on 24.1.2011 he arrested the appellants from their house at L-84, Shivalik at 6.45 pm.

45. No case is thus made out for drawing any inference against the appellants.

46. PW1 has deposed that the Police had already reached the spot before him. Appellants have a case that they had informed the police. No doubt, the respondent No.2 has sought to rely upon an entry in the general diary suggesting that PW1 had called from his mobile number that his daughter informed that in- laws have killed her by giving poison and he is reaching at her home and he may also be provided help. In fact, this is a document which is produced by the second respondent before this Court in the petition to produce additional documents. It is not marked as such. But when PW9 is examined, he refers to the carbon copy of the Report No.28. However, he says he was not present at the Police Station at the time of Report. We do not see anything turning on it at any rate to advance the prosecution version.

THE LAW ABOUT POISONING: APPLICATION TO FACTS

47. The High Court refers to the oft quoted decision of this Court in Anant Chintaman Lagu v. State of Bombay4. In the said case, three tests came to be reiterated, as necessary to establish in a case of poisoning.

1. Death took place on account of poisoning

2. The accused had the poison in his possession

3. The accused had an opportunity to administer the poison 4 AIR 1960 SC 500

48. In fact, in the said case wherein the conviction of the appellant was affirmed by a majority of 2:1., the appellant was a medical doctor. He was found in the company of the deceased on a train and when the deceased was taken to the hospital also, his presence was noted. The deceased was left behind gold ornaments and valuables by her late husband. Although there was no scientific evidence to show poisoning, the court relied upon a number of circumstances which in the main was conduct of the appellant which has been detailed in paragraph-74 of the judgment pointing to poisoning of the deceased by the appellant. In this context we notice the following statement of the law contained in paragraphs-59 and 68.

“59. The cases of this Court which were decided, proceeded upon their own facts, and though the three propositions must be kept in mind always, the sufficiency of the evidence, direct or circumstantial, to establish murder by poisoning will depend on the facts of each case. If the evidence in a particular case does of not justify the inference that death is the result of poisoning because of the failure of the prosecution to prove the fact satisfactorily, either directly or by circumstantial evidence, then the benefit of the doubt will have to be given to the accused person. But if circumstantial evidence, in the absence of direct proof of the three elements, is so decisive that the court can unhesitatingly hold that death was a result of administration of poison (though not

detected) and that the poison must have been administered by the accused person, then the conviction can be rested on it.

xxx xxx xxx xxx

68. Circumstantial evidence in this context means a combination of facts creating a net-work through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt. To rely upon the findings of the medical man who conducted the post-mortem and of the chemical analyser as decisive of the matter is to render the other evidence entirely fruitless. While the circumstances often speak with unerring certainty, the autopsy and the chemical analysis taken by themselves may be most misleading. No doubt, due weight must be given to the negative findings at such examinations. But, bearing in mind the difficult task which the man of medicine performs and the limitations under which he works, his failure should not be taken as the end of the case, for on good and probative circumstances, an irresistible inference of guilt can be drawn."

49. Next, we may notice the judgment of this Court rendered by a Bench of three learned judges in Sharad Birdhichand Sarda v. State of Maharashtra5. We notice only paragraph 165. The same reads as follows:

"165. So far as this matter is concerned, in such cases the court must carefully scan the evidence and determine the four important

circumstances which alone can justify a conviction:

> (1) there is a clear motive for an accused to administer poison to the deceased, (2) that the deceased died of poison said to have been administered, (3) that the accused had the poison in his possession, (4) that he had an opportunity to administer the poison to the deceased."

50. In this case, there is no evidence at all that the deceased died of poisoning. Secondly, there is no evidence to show that the appellants had poison in their possession. Thus, even proceeding on the basis that being the wife and daughter-in-law who was living (1984) 4 SCC 116 with them that the appellants may have had the opportunity to administer poison, the other two tests are not satisfied. The police did not recover any poison from the appellants or their house. As already noticed the FSL report categorically rules out the presence of any poison. As regards the appellants not being found with any poison, we no doubt notice the view taken by a Bench of two learned judges and reported in Bhupinder Singh v. State of Punjab6. The same reads as under:

> "24. From the foregoing cases, it will be seen that in poison murder cases, the accused was not acquitted solely on the failure of the prosecution to establish one or the other requirement which this Court has laid down in Dharambir Singh case [Criminal Appeal No. 98 of 1958, decided on 4- 11-1958 (SC)] . We do not also find any case

> where the accused was acquitted solely on the ground that the prosecution has failed to prove that the accused had the poison in his possession. The accused in all the said cases came to be acquitted by taking into consideration the totality of the circumstances including (1988) 3 SCC 513 insufficient motive, weakness in the chain of circumstantial evidence and likelihood of the deceased committing suicide.

25. We do not consider that there should be acquittal or the failure of the prosecution to prove the possession of poison with the accused. Murder by poison is invariably committed under the cover and cloak of secrecy. Nobody will administer poison to another in the presence of others. The person who administers poison to another in secrecy will not keep a portion of it for the investigating officer to come and collect it. The person who commits such murder would naturally take care to eliminate and destroy the evidence against him. In such cases, it would be impossible for the prosecution to prove possession of poison with the accused. The prosecution may, however, establish other circumstances consistent only with the hypothesis of the guilt of the accused. The court then would not be justified in acquitting the accused on the ground that the prosecution has failed to prove possession of the poison with the accused.

26. The poison murder cases are not to be put outside the rule of circumstantial evidence. There may be obvious very many facts and circumstances out of which the court may be justified in drawing permissible inference that the accused was in possession of the poison in question.

There may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused. The insistence on proof of possession of poison with the accused invariably in every case is neither desirable nor practicable. It would mean to introduce an extraneous ingredient to the offence of murder by poisoning. We cannot, therefore, accept the contention urged by the learned counsel for the appellant. The accused in a case of murder by poisoning cannot have a better chance of being exempted from sanctions than in other kinds of murders. Murder by poisoning is run like any other murder. In cases where dependence is wholly on circumstantial evidence, and direct evidence not being available, the court can legitimately draw from the circumstances an inference on any matter one way or the other."

51. We may notice that referring to the view taken in Bhupinder Singh v. State of Punjab (supra) as above, another Bench of two learned judges of this Court in Jaipal v. State of Haryana7 and after setting out the 4 circumstances which were laid down by this court in (2003) 1 SCC 169 Sharad Birdhichand Sarda v. State of Maharashtra (supra) this Court held as follows:

> "28. We may hasten to add that the availability of the third piece of evidence as necessary to establish the case of murder by poisoning has been doubted in some of the later decisions. To wit, in Bhupinder Singh v. State of Punjab [(1988) 3 SCC 513 : 1988 SCC (Cri) 694 : AIR 1988 SC 1011] it has been held that there may be very many facts and circumstances proved against the accused which may call for tacit assumption of the factum of possession of poison with the accused, and therefore, the insistence on proof of presence of poison with the accused is neither desirable nor practicable. Anant Chintaman Lagu v. State of Bombay [AIR 1960 SC 500 : 1960 Cri

> LJ 682] is a case peculiar to its own facts and this Court by a majority of 2:1 held that even in the absence of a decisive finding as to the exact cause of death and on a finding that the death of the victim was the result of the administration of some unrecognized poison or drug which would act as a poison, a finding as to guilt can be arrived at based on circumstantial evidence. It was a case of extreme cunning and premeditation.

The conduct of the accused after the death of his wife was unusual and abnormal and was so knit together as to make a network of circumstances pointing only to his guilt. Still the majority opinion observed: (AIR p.

523, para 68) "68. Circumstantial evidence in this context means a combination of facts creating a network through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt." In the present case we do not find any abnormality in the conduct of the accused. He is an educated person, a teacher. If only he had administered any poison to the deceased he would not have gone to the private clinic and government hospital where poisoning as a cause of death would be immediately known or at least strongly suspected by the doctor attending on the victim. Rather the accused wanted to be in the company of the deceased and to have her treated. He attended on her at Navjeevan Hospital and took her to Civil Hospital."

52. This court also explained the view taken in Anant Chintaman Lagu v. State of Bombay8. Again, in Shanmughan vs. State of Kerala9 the decision in AIR Bhupinder Singh v. State of Punjab (supra) came to be noticed. It was a case where death by poisoning was not in dispute. The only dispute was whether it was homicidal or suicidal. The court took note of the injuries which were found on the deceased. The victim 8 AIR 1960 SC 116 9 AIR 2012 SC 1142 had died of cyanide poison which is a highly corrosive poison. The evidence of PW7 in the said case was that the injuries could be due to forcible administration of the poison. The accused was specifically questioned about the injuries for which he had no answer. It was in these circumstances that the court after referring to paragraph-25 of Bhupinder Singh v. State of Punjab (supra) found that it was a case of poisoning. As far as the facts of the present case is concerned, we have noticed that there is absolutely no evidence relating to poison in relation to the deceased. Were it a case of forcible poisoning, by using a corrosive poison, there would been some marks. There are none. If it were forcible poisoning by using any kind of poison, there would be struggle and resistance from the victim. In this regard, PW1 is to be believed on 23.01.2011 at 9:30, he received a phone call from his daughter who, asked him to reach Haridwar, otherwise these people will kill her. Also, in the charge-sheet the prosecution proposed to prove its case based apart from the oral evidence the material recovered from the spot containing the vomiting of the deceased, which was cleaned by the accused. However, as noticed by the Learned Sessions Judge, the prosecution was unable to prove the presence of poison in the cleaning material referred to as the wiper.

53. We find ourselves unable to subscribe to paragraph-42 in the impugned judgment that the chain is complete from the time of the telephone call received by PW1 from his daughter till the recovery of the body in the Santro car. We are unable to appreciate the circumstances as unfolded on the morning of 23.1.2011 which allegedly started from the phone call of the daughter of PW1 as

thereafter the only other circumstance, is the recovery of the body in the rear seat of the Santro car. The existence of any circumstances, as would fulfil the requirement, as laid down by this court in paragraph-59 in Anant Chintaman Lagu v. State of Bombay (supra), are not present. In paragraph-34 of the impugned judgment, the High Court refers to the FIR to notice that it is a case of poisoning. It further refers to the evidence of PW5-Medical Doctor that he admitted that on opening the body, the internal organs were congested, which could be due to poisoning. In this regard it may be noticed that PW5 has stated that he was not definite about the cause of death. He has further stated that on account of food poisoning the organs may be congested. Even more importantly, the doctor has opined that the death could have taken place due to Tuberculosis as in the case of Tuberculosis, the internal organs can be congested. The High Court has not referred to this part of the evidence, namely, that the congestion of internal organ could be due to Tuberculosis. Still further, there is a case for the appellants that food poisoning is to be distinguished from administering of poison and what the doctor has referred to is food poisoning. The High Court finds that merely because poison is not found, it cannot be said that deceased was not administered poison.

54. At this juncture, though if in a given case, there is clinching evidence which establishes poisoning, it may be true that absence of poison in the viscera may not be decisive. That is not the position in the facts of this case. It is true that the division bench of the High Court also refers to Modi's Medical Jurisprudence and Toxicology wherein the author has stated as follows:

> "It is possible that a person may die from the effects of a poison and yet, none may be found in the body after death if the whole of the poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system by the kidneys and other channels. Certain vegetable poisons may not be detected in the viscera, as they have no reliable tests, while some organic poisons, especially the alkaloids and glucosides, may be oxidation during life or by putrefaction after death, be split up into other substances which have no characteristic reactions sufficient for their identification.
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> Modi saw cases in which there were definite signs of death from poisoning, although the Chemical Examiner failed to detect the poison in the viscera preserved for chemical analysis. It has, therefore, been wisely held by Christison that in cases where a poison has not been detected on chemical analysis, the judge, in deciding a charge of poisoning, should weigh in evidence the symptoms, postmortem appearances and the moral evidence."

55. There are no symptoms, which point to poisoning. Nothing in the post mortem appearance is brought out to show poisoning. The evidence of witnesses do not establish poisoning.

56. It is to be noticed that there is no evidence in this case which could have persuaded the High Court to conclude that there were compelling reasons to interfere with the acquittal by the High Court. The appreciation of the evidence of the witnesses by the trial court unless it is found to be a

case of misreading of the evidence or are based on an erroneous understanding of the law, could not have been interfered with. When the High Court records that there is ample evidence on record that the accused were demanding dowry from the deceased, it is done without noticing the features in regard to the demand for Rs.10 lakhs. As far as the other evidence is concerned, the evidence has not been accepted by the trial court as inspiring confidence. At best it could be said that there were two views possible. Even if that were so, it did not furnish a ground to the High Court to overturn the judgment of the trial court containing the findings which we have referred to. We do not think that this is a case where the finding of the trial case could be characterised as perverse.

57. There is a contention raised by the second respondent that no reliance can be placed on the deposition of DW2 and DW4 that the deceased told these doctors that she was suffering from Tuberculosis as it was hearsay.

58. No such contention is raised before the trial court or before the High Court. Therefore, we need not really deal with it. However, we may only notice the view taken by the Privy Council in Subramanian vs. Public Prosecutor10. In the said decision the appellant was tried for being in possession of ammunition illegally. His defence was that he had 10 1956 (1) WLR 965 been captured by terrorists and he was put in duress. Evidence of the conversation by the terrorists was shut out by the court on the basis that it constituted hearsay. The Privy Council did not approve of the said view. It laid down as follows:

> "In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may no be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes.
>
> 59. Even if we were to follow the said principles the statement attributed to the deceased that she had told the doctors (DW2 and DW4) about her having suffered from TB is admissible for the fact of her having stated so even if it is not admissible for the truth of the statement. That apart, the action of the Medical Practitioner in acting upon it, by way of prescribing medicines and ordering blood test and x-ray would appear to be relevant and admissible. The appellants in their questioning under Section 313 CrPC, set up the case of TB. We need not probe the matter further including the aspect as to whether the matter may be relevant under Section 32 of the Evidence Act.

> 60. We may also draw support from the decision of this Court, relied upon by the appellant in Chhotan Sao v.

State of Bihar (supra) and reported in (2014) 4 SCC

54. This was a case in fact where except for the cause of death all other facts necessary to prove the offence under Section 304B of the IPC stood proved. This Court, however, proceeded to hold as follows:

> 12. No doubt the prosecution has adduced sufficient evidence to establish all other facts necessary to prove the offence under Section 304-B IPC except the cause of death. As seen from the trial court judgment there are no injuries on the body of the deceased.

Even according to the first information report the death was caused due to poisoning which the deceased was compelled to consume. In such circumstances, the non-examination of the doctor who conducted the post-mortem coupled with the failure to produce the forensic laboratory report regarding the examination of viscera of the deceased leaves a gaping hole in the case of the prosecution regarding the nature of the death of Babita Devi.

13. The learned counsel for the State placed reliance on the decision of this Court in Bhupendra v. State of M.P. [(2014) 2 SCC 106: (2014) 1 SCC (Cri) 1: (2013) 13 Scale 552], to which one of us, Ranjana Prakash Desai, J., was a party. In the said case, no doubt this Court held that the production of chemical examination report is not mandatory. The Court held as follows:

> (SCC p. 112, para 23).
>
> "23. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B IPC or under Section 306 IPC takes place; in a case of an unnatural death inviting Section 304-B IPC (read with the presumption under Section 113-B of the Evidence Act, 1872) or Section 306 IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary." On the facts of that case, this Court reached to the conclusion that there was sufficient evidence on record to come to the conclusion that the death was due to poisoning.
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> 61. We are of the view that second respondent should not be permitted to draw support from the statement in the Affidavit of the second appellant accompanying the Bail Application of his wife to the effect that the deceased herself took poison. Quite clearly, this is not evidence in the trial, as such.

> 62. As already noticed, in this case, apart from the fact that prosecution has not been able to establish that the cause of death was unnatural, the case setup about the demand of Rs. 10 lakhs by accused appears to be riddled with irreconcilable contradictions. Neither the post-mortem nor the Forensic Lab Report shows any poisoning. No poison has been recovered at all from the house of the appellants. There are no marks of injury at all on the deceased. Even the material (wiper) recovered, according to prosecution, and which allegedly was used to clean vomit of the deceased, did not disclose any poison. The statement of Medical Practitioner (DW2) that the deceased was having weight of 39 kilograms and weight below normal as on 11.05.2010 cannot be ignored. Equally, the evidence of DW4 that the Doctor has prescribed medicine for Anaemia because the deceased had told about Tuberculosis earlier also, cannot be ignored. Evidence as to advice to the deceased in 2007 to undergo blood test and the x-ray, to confirm whether TB has totally cured or not and that the patient did not bring any x-ray or blood report, cannot be overlooked.

Section 113B of Evidence Act may not apply in this case for the reason that in order that Section 113B applies, there must be evidence that soon before the death of the person, which proves that the person, who is alleged to have caused death, treated the deceased with cruelty or harassed her or in connection with a demand of dowry. We have noticed the state of the evidence in this regard. We are also of the view that there was no justification at all for the High Court, in the facts of this case, to have overturned acquittal by the Trial Court.

63. The High Court, in our view, without any justification, reversed the acquittal. The High Court has sought to draw support from the circumstance that the dead body of the deceased was recovered from the car. The first appellant has a case that he has taken the deceased to certain hospitals. There is also a case that they themselves notified the Police. We find it certainly not a circumstance so as to draw an inference that the deceased died an unnatural death or that the appellants administered poison to her. We would think that the High Court has clearly erred in interfering with the acquittal of the appellants by the High Court. The appeals are only to be allowed. We thus allow the Appeals. The impugned judgment of the High Court is set aside and the judgment of the Sessions Judge is restored. The first appellant who is in custody shall be released unless his custody is required in any other case. As the appellants 2 and 3 are already on bail, their bail bonds shall stand discharged.

.....J. (ROHINTON FALI NARIMAN) .....J. (K.M. JOSEPH) .....J. (ANIRUDDHA BOSE) NEW DELHI;

DECEMBER 02, 2020.