# Ashok Kumar vs State Of Haryana on 8 July, 2010

## Equivalent citations: AIR 2010 SUPREME COURT 2839, 2010 AIR SCW 4651, AIR 2011 SC (CRIMINAL) 862, 2010 (4) AIR KANT HCR 41, (2010) 4 MAD LJ(CRI) 259, (2010) 3 BOMCR(CRI) 40, 2010 CALCRILR 3 62, (2010) 47 OCR 766, (2010) 3 RECCRIR 900, (2010) 4 KCCR 236, 2010 ALLMR(CRI) 2642, 2010 (12) SCC 350, (2010) 93 ALLINDCAS 129 (SC), 2011 (1) SCC (CRI) 266, (2010) 2 CRILR(RAJ) 676, (2010) 3 CHANDCRIC 188, (2010) 70 ALLCRIC 639, (2010) 3 ALLCRIR 3193, (2010) 3 CURCRIR 188, (2010) 4 RAJ LW 2865, (2010) 2 DMC 291, 2010 CRILR(SC&MP) 676, (2010) 2 UC 1081, (2010) 2 ALD(CRL) 548

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## Bench: Swatanter Kumar, B.S. Chauhan

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1489 OF 2004

Ashok Kumar ....Appellant

Versus

State of Haryana ....Respondent

JUDGMENT

Swatanter Kumar, J.

1. Inter alia but primarily the appellant has raised a question of law in the present appeal. The contention is, that every demand by the husband or his family members cannot be termed as `dowry demand' within the meaning of Section 2 read with Section 4 of the Dowry Prohibition Act, 1961 (for short referred to as `the Act') and consequently, the death of the deceased cannot be termed as a `dowry death' within the ambit and scope of Section 304-B of the Indian Penal Code (for short `the Code') and, as such, the conviction and order of sentence passed against the appellant is liable to be set aside.

2. It is a settled canon of criminal jurisprudence that the question of law has to be examined in light of the facts and circumstances of a given case. Thus, reference to the facts giving rise to the present appeal would be necessary.

3. Vipin @ Chanchal @ Rekha, the deceased and Ashok Kumar, the appellant herein, were married on 9th October, 1986. Harbans Lal, the father of the deceased had given sufficient dowry at the time of her marriage according to his means, desire and capacity. But, the appellant and his family members i.e. Mukesh Kumar, the brother of the appellant and Smt. Lajwanti, the mother of the appellant were not satisfied with the dowry. They allegedly used to harass and maltreat the deceased and used to give her beatings. They had demanded a refrigerator, a television etc. One week prior to the date of occurrence, the deceased came to the house of her father at Kaithal and narrated the story. She specifically mentioned that her husband wanted to set up a new business for which he required a sum of Rs. 5,000/-. The father of the deceased could not manage the same due to which the appellant and his family members particularly, Lajwanti and Mukesh alleged to have burnt the deceased by sprinkling kerosene oil on her as a result of which the deceased died in the hospital at about 4.00 p.m. on 16.05.1988. The father of the deceased received information of the incident from his sister's son Subhash Chand. Neither the appellant nor his family members informed him about the said demise.

The father of the deceased moved a complaint (Ex. PA) before SI Randhir Mohan who made endorsement (Ex. PA/1) on the basis of which FIR (Ex. PU) was recorded. This was done by SI Randhir Mohan on the basis of ruqa (Ex. PQ) received on 16.05.1988 at about 5.45 p.m. The deceased was brought to the hospital as a burnt case in gasping condition and she expired in casualty. The said officer went to the General Hospital, completed the proceedings under Section 174 of the Criminal Procedure Code (for short `the Cr.PC') and during those proceedings he recorded the statements of Lajwanti, mother in law of the deceased, Ram Lal, father in law of the deceased, Khem Chand, Harbans Lal and one Arjun Dass. Thereafter, the body was sent for postmortem which was handed over to Hanbans Lal, after the post mortem. The complaint was made by Harbans Lal (PW-1) on 17th May, 1988. Site Plan (Ex. PW) as well as the photographs (Ex. P-14 to P-17) and their negatives (Ex. P-18 to P-21) were prepared by Photographer Satish Kumar (PW-10). Ex. P6 was also taken into possession which was half burnt small tin, containing 3 litres of kerosene oil under Ex. PH which was sealed. Certain other goods like hammer (Ex. PK), broken piece of a wooden door (Ex. P-11), half burnt match stick, match box etc (Ex. P-12) were also taken into possession.

4. After completing the investigation of the case and recording the statements of the relevant witnesses, the Investigating Officer submitted the charge sheet in terms of Section 173 of the Cr.PC. The case was committed to the Court of Sessions by the learned CJM vide his order dated 18th October, 1988 which framed the charge under Section 304-B of the Code read with Section 34 of the Code. Upon completion of the evidence of prosecution, statement of the accused under Section 313 of Cr.PC was recorded.

5. The learned Trial Court by a detailed judgment dated 13.01.1989/16.01.1989 held all the three accused viz., Ashok Kumar, Mukesh Kumar and Lajwanti, guilty of the offence punishable under

Section 304-B of the Code and vide order of the same date, sentenced the accused to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 3 months.

6. Aggrieved by the aforesaid judgment and order of sentence passed by the Trial Court, the accused filed an appeal before the High Court of Punjab and Haryana at Chandigarh, which was partially accepted. Lajwanti and Mukesh, the mother and brother of the accused Ashok Kumar, were acquitted of the offence under Section 304-B of the Code while the conviction of Ashok Kumar, accused was upheld and the order of sentence was also maintained by the High Court.

7. Aggrieved by the judgment of the High Court dated 16th December, 2003, Ashok Kumar, the appellant herein, has filed the present appeal. While impugning the judgment under appeal and besides raising the legal contention afore noticed, it is also contended that the Courts below have failed to appreciate the evidence in its correct perspective. The evidence brought on record clearly show that there was no connection between the death of the deceased and the alleged dowry demands or alleged cruelty. Further, it is contended that there was delay in registration of the FIR and no explanation has been rendered whatsoever in that behalf. The occurrence was dated 16.05.1988 at 4.00 p.m. and the FIR was lodged on 17.05.1988, while the deceased died in the hospital on 16.05.1988. Unexplained and inordinate delay in lodging FIR (Ex. PU) creates a serious doubt on the case of the prosecution. There were no specific allegations made in the FIR with regard to dowry and the allegations made, in any case, did not specify the basic ingredients of dowry demand. While criticizing the serious contradiction between the statements of prosecution witnesses, it is also contended that the prosecution has failed to prove its case beyond any reasonable doubt particularly, keeping in view the letters written (Ex. DB to DJ), no offence could be established against the accused and, as such, he is entitled to be acquitted.

8. On the contrary, it is argued on behalf of the State that by virtue of cumulative effect of the statements of Harbans Lal, the father of the deceased (PW-1), Krishna Rani, the mother of the deceased (PW-2) and Subhash Chand (PW-3) read in conjunction with documentary evidence and the statement of the Investigating Officer, the prosecution has been able to prove the charge beyond any reasonable doubt. It is contended that one witness, produced by the accused himself, has fully corroborated the case of the prosecution and, as such, the appellant was rightly convicted and sentenced by the Courts below and the judgment under appeal does not suffer from any legal or other infirmity. According to the prosecution, the appeal should be dismissed.

9. At the very outset, we would proceed to deal with the legal submissions made on behalf of the appellant. But before that, we must notice that the appellant was neither charged with the offence under Section 4 of the Act nor he has been found guilty of the said offence. Thus, the submissions have to be examined only from the point of view that the appellant has been convicted for an offence under Section 304-B of the Code and the provisions of the Act are relevant only for examining the merit or otherwise of the contention raised that the expression `dowry', as per explanation to the provisions of Section 304-B of the Code, has to be given the same meaning as in Section 2 of the Act.

10. The appellant was charged with an offence under Section 304-B of the Code. This penal section clearly spells out the basic ingredients as well as the matters which required to be construed strictly and with significance to the cases where death is caused by burns, bodily injury or the death occurring otherwise than under normal circumstances, in any manner, within 7 years of a marriage. It is the first criteria which the prosecution must prove. Secondly, that `soon before her death' she had been subjected to cruelty or harassment by the husband or any of the relatives of the husband for, or in connection with, any demand for dowry then such a death shall be called `dowry death' and the husband or the relative, as the case may be, will be deemed to have caused such a death. Explanation to this section requires that the expression `dowry' shall have the same meaning as in Section 2 of the Act. The definition of dowry under Section 2 of the Act reads as under :

> "In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly--
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> (a) by one party to a marriage to the other party to the marriage; or
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> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.--The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860)."

11. From the above definition it is clear that, `dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the Muslim Personal Law. All the expressions used under this Section are of a very wide magnitude. The expressions `or any time after marriage' and `in connection with the marriage of the said parties' were introduced by amending Act 63 of 1984 and Act 43 of 1986 with effect from 02.10.1985 and 19.11.1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression `in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression `in connection with the marriage' even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be `in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.

12. At this stage, it will be appropriate to refer to certain examples showing what has and has not been treated by the Courts as `dowry'. This Court, in the case of Ram Singh v. State of Haryana [(2008) 4 SCC 70], held that the payments which are customary payments, for example, given at the

time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression `dowry'. Again, in the case of Satbir Singh v. State of Punjab [AIR 2001 SC 2828], this Court held that the word `dowry' should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in connection with birth of a child or other ceremonies are not covered within the ambit of the word `dowry'. This Court, in the case of Madhu Sudan Malhotra v. K.C. Bhandari [(1988) Supp. 1 SCC 424], held that furnishing of a list of ornaments and other household articles such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the Act. The definition of `dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in the case of State of Andhra Pradesh v. Raj Gopal Asawa [(2004) 4 SCC 470].

13. The Courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of `dowry' under the Act. Section 4 of the Act is the penal Section and demanding a `dowry', as defined under Section 2 of the Act, is punishable under this section. As already noticed, we need not deliberate on this aspect, as the accused before us has neither been charged nor punished for that offence. We have examined the provisions of Section 2 of the Act in a very limited sphere to deal with the contentions raised in regard to the applicability of the provisions of Section 304-B of the Code.

14. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the Section is `soon before her death'. In our view, the expressions `soon before her death' cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.

15. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in the case of Tarsem Singh v. State of Punjab [AIR 2009 SC 1454], held that the legislative object in providing such a radius of time by employing the words `soon before her death' is to emphasize the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowry related cruelty or harassment inflicted on her. Similar view was expressed by this Court in the case of Yashoda v. State of Madhya Pradesh [(2004) 3 SCC 98], where this Court stated that determination of the period would depend on the facts and circumstances of a given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would

attract the provisions of this Section. However, there must be existence of proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.

16. The cruelty and harassment by the husband or any relative could be directly relatable to or in connection with, any demand for dowry. The expression `demand for dowry' will have to be construed ejusdem generis to the word immediately preceding this expression. Similarly, `in connection with the marriage' is an expression which has to be given a wider connotation. It is of some significance that these expressions should be given appropriate meaning to avoid undue harassment or advantage to either of the parties. These are penal provisions but ultimately these are the social legislations, intended to control offences relating to the society as a whole. Dowry is something which existed in our country for a considerable time and the legislature in its wisdom considered it appropriate to enact the law relating to dowry prohibition so as to ensure that any party to the marriage is not harassed or treated with cruelty for satisfaction of demands in consideration and for subsistence of the marriage.

17. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304-B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.

18. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in the case of Kaliyaperumal v. State of Tamil Nadu [AIR 2003 SC 3828], stated the following ingredients which should be satisfied :

> "4.....
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> 1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the

accused is being tried for the offence under Section 304-B, IPC).

2) The woman was subjected to cruelty or harassment by her husband or his relatives.

3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

4) Such cruelty or harassment was soon before her death."

19. In light of the above essential ingredients, for constituting an offence under Section 304-B of the Code, the Court has to attach specific significance to the time of alleged cruelty and harassment to which the victim was subjected to and the time of her death, as well as whether the alleged demand of dowry was in connection with the marriage. Once these ingredients are satisfied, it would be called the `dowry death' and then, by deemed fiction of law, the husband or the relatives would be deemed to have committed that offence. The learned counsel appearing for the appellant, while relying upon the case of Tarsem Singh (supra), contended that the concept of `soon before the death' is not attracted in relation to the alleged harassment or cruelty inflicted upon the deceased, in the facts of the present case. The oral and documentary evidence produced by the prosecution does not suggest and satisfy the essential ingredients of the offence.

20. Similarly, reference was also made to the judgment of this Court in the case of Appasaheb v. State of Maharashtra [(2007) 9 SCC 721], to substantiate the contention that there was no co-relation between giving or taking of the property with the marriage of the parties and, as such, the essential ingredients of Section 2 of the Act were missing. Accordingly, it is argued that there was no demand of dowry by the appellant but it was merely an understanding that for his better business, at best, the amounts could be given voluntarily by the father of the deceased. This fact was further sought to be substantiated while referring to the following abstracts of the judgment in the case of Appasaheb (supra):

"6.....The learned trial Judge then sought clarification from the witnesses by putting the following question:

"Question: What do you mean by `domestic cause'?

Answer: What I meant was that there was a demand for money for defraying expenses of manure, etc. and that was the cause."

In the very next paragraph she stated as under:

"It is not true to suggest that in my statement before the police I never said that ill-treatment was as a result of demand for money from us and its fulfilment. I cannot assign any reason why police did not write about it in my statement."

xxx xxx xxx xxx

> 9. Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.
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> 11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. and Chemical and Fibres of India Ltd. v. Union of India[(1997) 2 SCC 664].) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

21. On the contrary, the learned counsel appearing for the State while relying upon the judgment of this Court in Devi Lal v. State of Rajasthan [(2007) 14 SCC 176], argued that the relatives and, particularly the father of the deceased, had specifically mentioned the acts of harassment and, in any case, the statement of the sister of the deceased, who was produced by the accused as his defence witness, itself clinches the entire issue and, therefore, the offence under Section 304-B of the Code is made out. It was also contended that an absolute accuracy in the statement of witnesses is not a condition precedent for conviction. He relied upon the following dictum of the Court in Devi Lal's case (supra) :

> "25. Indisputably, before an accused is found guilty for commission of an offence, the court must arrive at a finding that the ingredients thereof have been established. The

> statement of a witness for the said purpose must be read in its entirety. It is not necessary for a witness to make a statement in consonance with the wording of the section of a statute. What is needed is to find out as to whether the evidences brought on record satisfy the ingredients thereof."

22. Now we may proceed to discuss the evidence led by the prosecution in the present case. In order to bring the issues raised within a narrow compass we may refer to the statement of the accused made under Section 313, Cr.PC. It is a settled principle of law that dual purpose is sought to be achieved when the Courts comply with the mandatory requirement of recording the statement of an accused under this provision. Firstly, every material piece of evidence which the prosecution proposes to use against the accused should be put to him in clear terms and secondly, the accused should have a fair chance to give his explanation in relation to that evidence as well as his own versions with regard to alleged involvement in the crime. This dual purpose has to be achieved in the interest of the proper administration of criminal justice and in accordance with the provisions of the Cr.P.C. Furthermore, the statement under Section 313 of the Cr.PC can be used by the Court in so far as it corroborates the case of the prosecution. Of course, conviction per se cannot be based upon the statement under Section 313 of the Cr.PC.

23. Let us examine the essential features of this section and the principles of law as enunciated by judgments of this Court, which are the guiding factor for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any, enquiry or trial but still it is not strictly an evidence in the case. The provisions of Section 313 (4) of the Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in as evidence for or against the accused in any other enquiry or trial for any other offence for which, such

answers may tend to show he has committed. In other words, the use of a statement under Section 313 of Cr.PC as an evidence is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of Vijendrajit Ayodhya Prasad Goel v. State of Bombay [AIR 1953 SC 247], the Court held as under:

> "3. .....As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under Section 342 as supporting the prosecution case concerning the possession of the godown.
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> The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under Section 342 did not consist of two portions, part inculpatory and part exculpatory.
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> It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

24. From various answers given by the accused to the Court in his statement recorded under Section 313 of the Cr.P.C., it appears that the death of the deceased is not disputed. The allegation with regard to cruelty was denied. However, besides denying the case of the prosecution, the appellant took the stand that he was falsely implicated in the crime. According to him, the deceased was not happy with the marriage inasmuch as she was in love with some other boy and wanted to marry him which was not permitted by her family and that is why she committed suicide. As would be evident from this admitted position, the death of the deceased by burning is not an issue. The limited question was whether the deceased committed suicide simplicitor for the reasons given by the accused or in the alternative, the prosecution story, that it was a dowry death relatable to the harassment and cruelty inflicted upon her by the accused and his family members, is correct.

25 In the postmortem report it was noticed that the cause of death was shock and dehydration which resulted from extensive burn injuries, which were ante-mortem. The postmortem report (Ex. PO) and the body sketch (Ex. PO/1) clearly demonstrate that practically the entire body had been affected by the burn injuries. The prosecution had examined Harbans Lal, the father of the deceased (PW-1), who stated that immediately after the marriage of deceased with the accused, both were living happily and he had given dowry according to his capacity, but six months after her marriage,

her husband and her in-laws started teasing her and giving taunts that she had not brought T.V. and Fridge etc. in the dowry and whenever she used to come to him she mentioned about the same and 20 days prior to her death she had told him that she was being troubled for a sum of Rs. 5,000/- so that her husband could change to a new business and while consoling her, he told her that he would arrange for the money in some time and took her at the house of her in-laws 7-8 days prior to her death. He also stated that Ashok Kumar, the accused, Lajwanti, the mother-in-law of the deceased and Mukesh, brother-in-law of the deceased, used to give her beatings and he had filed the complaint (Ex.PA). Ex.PB and Ex. PC were the letters which he had given to the police, however, this witness was cross-examined and confronted with Ex. PA, where the allegation about T.V. and Fridge etc. had not been recorded. He voluntarily stated that his son- in-law (the accused) used to deal in vegetables but he wanted to change to Kariyana business, and that is why he wanted a sum of Rs. 5,000/-. Smt. Krishna Rani, the mother of the deceased, was examined as PW-2. She admitted that a child was born from the marriage. She had also corroborated the statement of PW 1. According to her, Lajwanti told that the deceased had expired. Subhash Chand (PW-3) stated that he had informed Harbans Lal (PW-1) about the death of the deceased due to burn injuries and stated that they (the husband of the deceased and her in-laws) used to ill-treat the deceased and were demanding dowry. However, he did not refer to the demand of Rs. 5,000/-, as stated by other witnesses. To prove the case Karta Ram, SI (PW-6), Darshan Lal, H.C. (PW-7), Ranbir Mohan, SI (PW-8), the police officials, were also examined by the prosecution apart from Kharati Lal, Kariyana Merchant (PW-4). Dr. Manjula Bansal, Medical Officer, Civil Hospital, Jind (PW-5), was examined to prove the death of the deceased which was caused by burn injuries.

26. The accused had led defence and examined as many as six witnesses. Dr. Bhushan Aggarwal, Incharge Swami Salagram Ashram Charitable Hospital, Jind (DW-1) was examined to primarily show that a child was born on 30th August, 1987. Vijay Laxmi (DW-3) and Lekh Raj (DW-4) were examined to show that there were no dowry demands and Harbans Lal, the father of the deceased had not complained to them about the same at any point of time. But, the most important witness examine by the accused was Vijay Laxmi (DW-3), who is the daughter of Harbans Lal, aged about 14 years. She mentioned that the letter (Ex. DJ) was written by her and she stated that sometimes Ashok Kumar, the accused used to take the deceased to her father's house. She admitted that two days prior to writing of the letter (Ex. DJ), her sister and sister's son had come to her house and she stated that whatever is written in the letter is correct. But, in her cross-examination, she stated as under:

> "Whenever my sister visited our home after marriage, she would complain that her husband and in-laws demanded dowry and also they used to give her beating. She came to our home 20 days prior to her death. At that time she told that her in-laws etc. were demanded a T.V. and Rs.5,000/-. My father took her to her husband's home. My sister was not suffering from my disease. She was having good health."

27. The above statement of this witness (DW-3) in cross- examination, in fact, is clinching evidence and the accused can hardly get out of this statement. The defence would be bound by the statement of the witness, who has been produced by the accused, whatever be its worth. In the present case, DW-3 has clearly stated that there was cruelty and harassment inflicted upon the deceased by her

husband and in-laws and also that a sum of Rs. 5,000/- was demanded. The statement of this witness has to be read in conjunction with the statement of PW-1 to PW-3 to establish the case of the prosecution. There are certain variations or improvements in the statements of PWs but all of them are of minor nature. Even if, for the sake of argument, they are taken to be as some contradictions or variations in substance, they are so insignificant and mild that they would no way be fatal to the case of the prosecution.

28. This Court has to keep in mind the fact that the incident had occurred on 16.05.1988 while the witnesses were examined after some time. Thus, it may not be possible for the witnesses to make statements which would be absolute reproduction of their earlier statement or line to line or minute to minute correct reproduction of the occurrence/events. The Court has to adopt a reasonable and practicable approach and it is only the material or serious contradictions/variations which can be of some consequence to create a dent in the case of the prosecution. Another aspect is that the statements of the witnesses have to be read in their entirety to examine their truthfulness and the veracity or otherwise. It will neither be just nor fair to pick up just a line from the entire statement and appreciate that evidence out of context and without reference to the preceding lines and lines appearing after that particular sentence. It is always better and in the interest of both the parties that the statements of the witnesses are appreciated and dealt with by the Court upon their cumulative reading.

29. As already noticed, the expression `soon before her death' has to be accorded its appropriate meaning in the facts and circumstances of a given case. In the present case, there is definite evidence to show that nearly 20-22 days prior to her death the deceased had come to her parental home and informed her father about the demand of Rs. 5,000/- and harassment and torture to which she was subjected to by the accused and her in-laws. Her father had consoled her ensuring that he would try to arrange for the same and thereafter took her at her matrimonial home 7-8 days prior to the incident.

30. On face of the aforesaid evidence read in conjunction with the statement of DW-3, we are convinced that ingredients of Section 304B have been satisfied in the present case. It was for the accused to prove his defence. He had taken up the stand that the deceased was in love with another boy and did not want to marry the accused and the marriage of the deceased with the accused being against her wishes was the real cause for her to commit the suicide. However, he has led no evidence in this regard and thus, the Court cannot believe this version put forward by the accused.

31. The argument raised on behalf of the appellant that there was inordinate and unexplained delay in registering the FIR is without any substance. The incident occurred at 4.00 p.m. on 16.05.1988 whereafter the family of the deceased was informed. It is a normal conduct of a normal person that the entire concentration would be upon looking after and saving the deceased rather than to run up to the police or other persons instantaneously. Unfortunately, she died at 9.00 p.m. on the same day and the FIR was lodged on the next day i.e. on 17.05.1988. The purpose of raising such a contention is to show and prove that there was a planned effort on the part of the complainant or the prosecution to falsely implicate the accused. Here, such a situation does not exist. We have already noticed that the complaint (Ex.PA) has been lodged resulting in registration of FIR (Ex. PU) at 7.30

p.m. on 17.05.1988 which obviously means that the complainant had reached the police station even prior thereto. The conduct of the complainant and the witnesses is in line with the behaviour of a person of common prudence and the facts and circumstances of the case clearly demonstrate proper exercise of due diligence on the part of these witnesses. Firstly, the complainant family got the information of the death of the deceased from a relative named Subhash Chand (PW-3) and, thereafter, they must have tried to get the body subjected to the postmortem and have the same released for performing the last rites. The incident occurred on 16.05.1988 and the FIR was registered on 17.05.1988, therefore, there was no abnormal or inordinate delay in lodging the FIR in the facts of this case. Even if we presume the delay, it is not of such a nature that would entail any benefit to the accused. Thus, in our view, there is no inordinate or unexplained delay in lodging the FIR.

32. Having found no infirmity in the concurrent judgments of the learned Sessions Judge and the High Court, we see no reason to interfere in these judgments in law or on facts. Thus, we sustain the conviction of the accused.

33. Coming to the question of quantum of punishment, there are few factors of which we must take note of. It is not even the case of the prosecution that at the time of occurrence, the accused-appellant was present at home and he failed to protect or save the deceased from burning which caused her death. Secondly, the marriage itself has survived for a short period of nearly one and a half year. The cruelty and harassment to the deceased was stated to be caused by Lajwanti, the mother in law of the deceased and Mukesh, the brother in law of the deceased. As already noticed, Lajwanti and Mukesh have been acquitted by the High Court for total lack of evidence. Neither the State nor the complainant has preferred an appeal against judgment of acquittal. The accused is a young person of 48 years. Keeping in view the facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India to do complete justice, we are of the considered view that ends of justice would be met by awarding him the minimum sentence provided in law, i.e. 7 years of rigorous imprisonment. Resultantly, the appeal is partially accepted and the accused-appellant is awarded sentence of 7 years rigorous imprisonment for an offence under Section 304-B of the Code.

34. The appeal is disposed off in the above terms.

35. The accused is on bail. His bail bonds and surety stand discharged. He be taken into custody to undergo the remaining period of his sentence.

.....J. [ DR. B.S. CHAUHAN ] .....J. [ SWATANTER KUMAR] New Delhi July 8, 2010