

Smt. Manju Devi (Jethani) And 2 Others vs State Of U.P. on 3 December, 2018

Author: Ramesh Sinha

Bench: Ramesh Sinha

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Court No. - 1

Case :- CRIMINAL APPEAL No. - 5315 of 2015

Appellant :- Smt. Manju Devi (Jethani) And 2 Others

Respondent :- State Of U.P.

Counsel for Appellant :- Sukhvir Singh

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Dinesh Kumar Singh-I,J.

(Delivered by Hon'ble Dinesh Kumar Singh-I,J.)

1. Heard Sri M.B. Mathur, learned counsel for the appellants and Sri Jai Narain, learned A.G.A. for the State and perused the record.

2. This criminal appeal has been preferred against the judgment and order dated 20.10.2015 passed by Additional District and Sessions Judge/F.T.C., Court No. 1, Ballia in Sessions Trial No. 169 of 2013 (State Vs. Krishna Kumar Yadav and others), whereby all the accused have been held guilty and awarded following punishment and all the sentences are directed to run concurrently.

Sr. No. Name 304-B IPC 498-A IPC 4 D.P. Act 201 IPC Manju Devi Life imprisonment 2 Years R.I., Fine Rs. 2000/-, In default of payment of fine, additional imprisonment of 6 months 1 Year R.I., Fine Rs. 1000/-, In default of payment of fine, additional imprisonment of 3 months

Ashok Kumar Life Imprisonment 2 Years R.I., Fine Rs. 2000/-, In default of payment of fine, additional imprisonment of 6 months 1 Year R.I., Fine Rs. 1000/-, In default of payment of fine, additional imprisonment of 3 months 2 Year R.I., Fine Rs. 2000/-, In default of payment of fine, additional imprisonment of 6 months Krishna Kumar Yadav Life Imprisonment 2 Years R.I., Fine Rs. 2000/-, In default of payment of fine, additional imprisonment of 6 months 1 Year R.I., Fine Rs. 1000/-, In default of payment of fine, additional imprisonment of 3 months 2 Year R.I., Fine Rs. 2000/-, In default of payment of fine, additional imprisonment of 6 months

3. The facts in brief of this case are as follows. PW-1- Har Narayan Yadav, who is father of the deceased- Sheela, had married his daughter in the year 2008 with the appellant- Krishna Kumar Yadav (appellant no. 3) S/o Yugul Kishor, after having given dowry as per his means but the said appellant and his family members were not satisfied with the same and were demanding more money to be given for purchase of plot in District- Ballia and for this they were continuously harassing his daughter as phone calls were being received regularly from his daughter's side in this regard and she used to say that she needed protection. PW-1- Har Nayaran Yadav, some times used to tell Yugul Kishor Yadav (father of Krishna Kumar Yadav), R/o Village- Bajra Ke Tola, P.S. Bairiya, that he should keep patience but he had started telling his daughter that her father had got the money of pension released and, hence he should procure money from him so that plot could be purchased. His daughter used to explain him that he had two other sisters and a brother, who were to be married and were being given education but being annoyed, Krishna Kumar Yadav (appellant no. 3), Ashok Yadav (appellant no. 2), (Jeth of the deceased) and Yugul Kishor (father-in-law of the deceased) and Smt. Manju Yadav (appellant no. 1), mother-in-law of the deceased, all together hatched conspiracy to eliminate his daughter in the intervening night of 19/20.8.2012 and finally murdered her and cremated her in company with their friends and, thereafter, sent information to the informants house and after receiving said information when the family members of the informant reached village Bajra Ke Tola, then the villagers there told that they had heard some noise in the house of accused-appellants but nothing much was revealed.

4. Having written this report (Ext. Ka-1), the same was given at P.S. Bairiya and Case Crime No. 316 of 2012, u/s 498A, 304B, 201 IPC and 3/4 D.P. Act was registered against Krishna Kumar Yadav, Ashok Yadav, Manju Devi, Yugul Kishor (father-in-law of the deceased), Indu Devi W/o Sri Narayan Yadav, Kamla Devi, all R/o of village Bairiya on 24.8.2012 at 09:40 a.m., chick F.I.R. of which is Ext. Ka-5 and entry of this case was made in G.D. (Ext. Ka-6) at report no. 16, time 9:40 hours on 24.8.2012 and the case was assigned to C.O. Alok Kumar Jaiswal (PW-6) for investigation in this case, who made inspection of the place of occurrence at the instance of informant and prepared site plan (Ext. Ka-2). He after having perused marriage card, recorded statements of Ram Kumar Pandey, Pandit, who performed the marriage and witness Umesh Yadav, who was mediator of the marriage. On 26.9.2012, he recorded statements of Susheela Yadav (PW-4), Raju Yadav (PW-2), Fagu Yadav, Ishwar Dayal Yadav, Bakey Ram Yadav and accused Yugul Kishor Yadav, witness Ram Narayan Yadav, accused Kamli Devi (wife of the Yugul Kishor Yadav) and after having found

sufficient evidence on record submitted charge sheet (Ext. Ka-3) against Krishna Kumar Yadav, Ashok Kumar Yadav and thereafter after having recorded statements of accused Manju Devi on 15.2.2013, the same day submitted charge sheet (Ext. Ka-4) against her also. The chick F.I.R. and the G.D. which were prepared by Constable Mohorir Banarasi Ram, was also proved by PW-3, who had remained posted with him.

5. The trial court framed charges against the appellants Krishna Kumar Yadav, Ashok Yadav and Manju Devi, under Sections 498-A, 304-B, 201 IPC and under Section 3/4 D.P. Act on 5.8.2013 to which the accused-appellants pleaded not guilty and claimed to be tried.

6. In order to prove the prosecution's case, from the side of prosecution Har Narayan Yadav as PW-1, Raju Yadav as PW-2, Visarjan Yadav as PW-3, Susheela Yadav as PW-4, Umesh Kumar Yadav as PW-5 and C.O. Ashok Kumar Jaiswal as PW-6, were examined and thereafter, the court itself examined Kapil Muni Yadav as C.W.-1, Ram Darash Yadav as C.W.-2 and Nirbhay Narayan Shukla as C.W.-3.

7. In support of prosecution's case as documentary evidence, written report (Ext. Ka-1), site plan (Ext. Ka-2), Charge sheets (Ext. Ka-3 and Ka-4), Chick F.I.R. (Ext. Ka-5), G.D. (Ext. Ka-6), were presented and proved. Thereafter, the prosecution evidence was closed and the statements of accused under Section 313 Cr.P.C. were recorded.

8. The accused-appellant Krishna Kumar Yadav has stated on 4.8.2015 and 28.9.2015 in defense that he had given information about death of Sheela (deceased) to the informant on 20.8.2012 pursuant to which the informant had come to his house village- Tola Ke Bairiya and after having seen the deceased, had given consent to cremate her body. Further he denied any demand of dowry having been made and stated that the entire prosecution evidence was false, in fact the deceased died due to pain in her abdomen as a result of ailment and when soon after her death information was sent to her parent's house, all of them had come and in their presence after having obtained their consent the last rites were performed according to Hindu customs. The informant is a greedy person who has lodged this false report being beguiled by others. He further stated that Susheela is younger sister of his wife Sheela, both of them had good relations with each other and used to share everything between them. The investigation was not properly done. The informant is a retired S.I. of Police Department, who due to his greediness and coming under influence of other person, has concocted a false version of prosecution and pressurizing the police department has got lodged this false case. He had very sweet relations with the deceased as he had assisted her in filling up form of B.Ed and had made the deceased nominee in his LIC policy and out of their wedlock one daughter Chiku was born, who was one and half year old at the time of incident.

9. The appellant Krishna Kumar Yadav has stated that during holidays, separate OPD register was used to be kept by Doctor and that the patient who used to be seen during holidays, the nature of illness of those patient used to be entered in such register. On 15.8.2012, due to OPD being closed, the OPD patients were not seen and due to that no entry could be made in OPD register, however, the entry with respect to the treatment of deceased might have been entered in private register of the doctor. He further stated that it was wholly wrong that on the basis of statement of CW-3-

Pharmacist Sri Shukla, the out door patient ticket (Ext. Kha-7) was a forged document because it has come in the statement of said witness that the residence of Dr. Mukund Lal was in Sonvarsha hospital itself and no page of the said register was certified. He has pleaded innocence and has stated that the parcha proving treatment having been given to the deceased by Dr. Mukund Lal has been proved by his domestic servant.

10. Appellant- Ashok Yadav, has stated in defense that all the evidence presented by the prosecution against him is false and further stated that after death of Sheela when information was sent by Krishna Kumar Yadav to the informant Har Narayan, he had come at the place of occurrence on 28.8.2012 at 6:30 a.m. and denied that any dowry was demanded. Further he stated that Sheela had died of ailment and her last rites were performed with the consent of her parents and other family members. In her last rite, all the relatives of the deceased from her parent's side were present. This accused also reiterated that the informant being a retired S.I. had lodged this false case due to being greedy under influence of outsiders. Further he stated that the deceased Sheela and Krishna Kumar Yadav were married on 24.4.2007 and prior to said marriage, since 2004 Krishna Kumar Yadav was living separate from his parents and his brothers. He is innocent and still lives separate from his own family.

11. Appellant- Manju Devi has stated in defense that she has been falsely implicated and no demand of dowry was made by her and rest of the statements which have been made by other accused have been reiterated by her particularly the fact that she was living separate from the deceased and her husband and also stated that on 30.7.2012, she had gone to Punjab, Len Howrah for tying Rakhi and had returned from there only after death of the deceased on 25.8.2012. She also stated that the deceased was given treatment by the appellant Krishna Kumar Yadav.

12. Further Vinod Kumar Singh as DW-1, Kameshwar Prasad Yadav as DW-2, Ram Ji Yadav as DW-3, Ram Niwas Singh as DW-4 and Bhuvneshwar Yadav as DW-5, have been examined in defense from the side of the appellants.

13. Learned trial court after having considered the arguments as well as having perused the record has convicted the accused-appellants and awarded punishment as mentioned above, hence this appeal.

14. Learned counsel for the appellants has mainly hammered the point that there was no demand of dowry made from the side of the appellants because the marriage had been performed in the year 2008 while death of the deceased had occurred on 19.8.2012 and during this entire period not a single complaint was ever made at any P.S. or to any other higher authority of police with respect to demand of dowry. The deceased had died because of pain in her abdomen for which she was given treatment but she could not survive and soon after her death, the appellant Krishna Kumar Yadav had intimated the parents as well as other family members of the deceased, in response to which they had come to the place of incident and after having taken their consent the last rites were performed of the deceased. There is enough evidence adduced from the side of defense to prove that parents and other family members of the deceased had come to the place of incident and had participated in the last rites, including photographs were showing presence of the complainant side

but subsequently due to greediness of the first informant, who is retired police S.I., whole false story has been concocted only with a view to extorting money from the appellants. The accused-appellants are absolutely innocent and hence they deserve to be acquitted.

15. On the other hand, learned A.G.A. has vehemently argued that there is no infirmity in the impugned judgment as the learned trial court has rightly arrived on a conclusion that there was demand of dowry made from the side of appellants and for non-fulfilment of the same, deceased died within seven years of her marriage in her matrimonial home and hence with the aid of Section 113-B of the Indian Evidence Act, the conviction has been rightly made.

16. We have heard both the sides and have perused the entire record. It would be appropriate to go through the evidence to evaluate the evidence afresh and to see as to whether the findings of the learned trial court are in accordance with the evidence adduced from the side of prosecution and the defense is correct or not.

17. The informant (PW-1) has deposed that in the intervening night of 19/20.8.2012 occurrence had taken place. He has five daughters out of whom, one was married to Krishna Kumar Yadav. Smt. Manju Devi W/o Ashok Kumar, Indu Devi, W/o Sri Narayan Yadav, Ashok Kumar s/o Yugul Kishor, Yugul Kishor S/o Zalim, Kamla Devi (wife of Yugul Kishor) had killed his daughter Sheela because they wanted to purchase a plot. At the time of marriage, domestic items were provided in dowry by which they were not satisfied and all of them were demanding additional money for purchase of plot in District- Ballia. His daughter used to tell him on phone that she was being harassed and being threatened to be killed for non-fulfillment of the demand of dowry and that the said demand was being made by all the accused named above. He went to matrimonial home of his daughter many times to explain his position to them but they did not stop torturing his daughter, rather started saying to his daughter that her father had brought home his pension, therefore, she should press for money to be given but his daughter explained to them that her father had liability of marrying other sisters and brother who were also being given education which required money but to no avail, his daughter was murdered; after having cremated her, information of her death was sent to them. At that time he was not at home rather had gone to Gangapar village alempur at his sister's place in Bihar. After getting information, his nephew Raju S/o Bhulan, Visarjan S/o Amerika had gone to the house of accused persons and found that they were cremating body of his daughter and when they inquired from the persons nearby, they simply stated that there was some noise heard coming out of the house of the appellants and nothing much was revealed. When PW-1 returned from the place of his sister, on 23.8.2012 he was told by his nephews about all this and, thereafter, he had written a report and had handed over the same at P.S. which is Ext. Ka-1. In cross-examination, this witness has stated that he had retired from the post of S.I. and had not received any promotion but why he was not promoted, he could not tell its reason but he was never suspended. He retired on 31.7.2010 from District Sultanpur in June, 2011 and had not received his funds so far. At the time of his retirement, he had received about 14,00,000/- as fund amount but could not tell as to when the same was received. Further, he stated that he had told about amount of fund having been received by him to his son-in-law and had stated that the entire amount was not received by him but he does not recollect the date when he told him about this. His daughter was a graduate, who was told that he had not received full amount of fund. He had told his son-in-law about the fund in the month of

January-February of 2012. Further he stated that on 19.8.2012, he had gone to Village Salempur, Ara in District Bihar where weather had deteriorated, hence he had to return through (via) Baksar. His brother-in-law (jeeja) used to remain sick and he had gone to meet him there. He had died after his returning to his village. He had received information about death of his daughter Sheela but not in Salempur. At that time, his nephew and his sister did not have any mobile phone and he himself had not taken his mobile phone with him but wife of his nephew had mobile phone. At the time of death of deceased, all his nephews were in the village except to one or two. Prior to the death of Sheela, all his cases of Tehsil Bairiya used to be looked after by his son-in-law (accused appellant-Krishna Kumar Yadav). Prior to her death, Sheela was being harassed, therefore, he does not think that Krishna Kumar Yadav was a good person. Further he stated that he had engaged Ram Niwas as his counsel while Krishna Kumar Yadav was his junior but subsequently stated that he was his assistant. When he reached home, all were weeping and when news of death of his daughter reached, his youngest daughter- Susheela had given this news to him in the evening on phone on 19.8.2012 and, thereafter, he had given an application at P.S. for registering a case at 5:00 p.m. He had written the report at home and, thereafter, he had gone to P.S. next day i.e. on 24.8.2012 to obtain its copy and his statement was recorded by the circle officer there only at P.S. at about 10:00 a.m. and, thereafter, he did not meet the S.H.O.. Further he stated that on 24.8.2012, at about 12 noon, he had gone in the office of circle officer, Bairiya with a copy of Chick F.I.R. He had given application in the evening of 23.8.2012 but does not recollect the same but by that time the sun-set had happened. When Krishna Kumar Yadav demanded money for purchase of plot, when he had gone to explain to him, he does not recollect. Further he stated that till four days after the occurrence, he remained in his relation at Salempur and that the news of death of Sheela was received in the intervening night of 19/20.8.2012, none of his nephews had come to Salempur to give him this news. He still had one daughter left to be married. His eldest son Suresh lives at home and does domestic work. He is staying at home in his ancestral house in Chhapra and does not have any house or plot in any city. Further he stated that prior to the death of Sheela, last time she visited his home was on 10.2.2011 and six months thereafter a daughter was born to her but he does not know what was name of daughter of the deceased and at that time the deceased had stayed at his home for 15 to 20 days. Further he stated that he does not know as to who had come from the matrimonial home of the deceased to bring her back from his home but subsequently conceded that Yugul Kishor had come to take her back because after marriage Krishna Kumar Yadav had vowed not to visit his home. He denied that Krishna Kumar Yadav used to take his youngest daughter Susheela to enable her to appear in the examination of B.A. on his motor-cycle, rather stated that his nephews used to take Susheela for her examination. Further he stated that even prior to his retirement or his fund having been released, a demand for money to be given for purchase of plot, was being made from his daughter. The appellant Krishna Kumar Yadav is a law graduate and he is the best educated amongst his sons-in-law and was doing practise at Tehsil Bariya. He had gone to see him there and marriage were performed with much fanfare. Gauna was performed after two and 1/2 years after the marriage, his daughter returned from her matrimonial home in depressed condition but he had not written this in his written report (Ext. Ka-1), but he could not tell its reason. Further he stated that the daughter of Krishna Kumar was born on 10.2.2011 at his home and on that occasion, he had gone there without any clothes and all and showed ignorance that daughter of Sheela was born in Divyalok Sonvarsha Nursing Home and also showed his ignorance that the medical expenditure at the time of birth of deceased's daughter was borne by appellant

Krishna Kumar and his family members. Further he stated that no money was spent at the time of birth of daughter of the deceased by him. The daughter of the deceased is still staying with appellants and later on he stated that he had no knowledge about her nor did he try to know about it as to who was bringing her up, although he stated that he had gone to see her many times but still could not tell her name. Further he stated that demand for money to be given for purchase of plot was being made not from the time when he retired, rather the same was being made soon after marriage was performed but when he retired the said demand was exacerbated and despite knowing that demand of dowry was an offence, he did not make any complaint about it through anyone. He also stated that whenever he called her daughter on occasions of marriage etc., she used to visit his home and due to being harassed for demand of dowry, he never brought his daughter to his home, although he stated that he kept explaining his position to the accused side in this regard. He denied that financial condition of appellant Krishna Kumar Yadav was better than his own at the time of marriage. Further he stated that he had gone to his relation's place on 19.8.2013 (appears to be wrong as it should be 19.08.2012) leaving his mobile phone bearing no. 9451996874 and on this very mobile no., he was called by Yugul Kishor (father of appellant Krishna Kumar Yadav) and upon receipt of this information his two nephews namely Raju Yadav and Visarjan had gone there and also Kapil Muni who was his brother had also gone there. He does not know whether Krishna Kumar Yadav had participated in last rites of the deceased or not. Further he stated that incident is of intervening night of 19/20.8.2013 (appears to be wrong and it should be 19/20.8.2012) while when he returned home on 23.8.2013, then he was told about it by his nephews and brother. His brother Kapil Muni did not tell him that he was present at the time of last rites on the Ghat (cremation ground), rather stated that when they were returning after cremation then Kapil Muni met them. He denied that on the date of incident, he, his daughters, his son Surendra, brother Kapil Muni, son-in-law Umesh had participated in last rites of the deceased- Sheela on 20.8.2013 (should be 20.8.2012) on the banks of river Ghagra. When he returned home, his son told him that they were waiting for him for lodging the report but, he did not mention about it in the F.I.R. nor did he state so in his statement under Section 161 Cr.P.C. Further he stated that the house of the appellants is near river Ghagra (Sarju) and after seeing photographs (Ext. Kha-1)), he stated that two persons who were sitting in round circle made in the said photo were his brother-in-law Ram Darash Yadav and brother Kapil Muni whom he recognises. In photograph Ext. Kha-2, he stated that the dead body which was shown in it was that of his daughter and near funeral pyre, the mediator of marriage and his son-in-law Umesh Yadav were seen in the said photo whom he recognises. In third photograph (Ext. Kha-3) he also stated that Mahawar was put on the feet of the deceased and 'mukhagni' was given by Krishna Kumar Yadav and behind him was his father Yugul Kishor and he denied that he had gone to the cremation ground and returned soon from there with an intention to extort money from the appellants to lodge an F.I.R. even prior to the funeral pyre was being set. Further he stated that he has no knowledge that Krishna Kumar Yadav had any L.I.C. Policy or not and whether deceased Sheela was a nominee in that. He also does not know that appellant Krishna Kumar Yadav had got a B.T.C. form filled by the deceased Sheela in the year 2010 and was deliberately concealing about it. But he did recognize that the admission form of B.Ed. of 2013, Indira Gandhi Rashtriya Mukta Vishwavidyalaya, Kaidan Gadhi, New delhi, photo pasted on that was of his daughter (deceased). He also showed ignorance about the treatment being given to his daughter by Dr. Rakesh Singh at his clinic between 27.2.2012 to 5.3.2012 and also showed ignorance that prior to the incident, his daughter suffered pain in abdomen and was having vomiting because

of which she was taken to Community Health Clinic in Kasba Ballia for treatment where on 10.8.2012 till 15.8.2012, treatment was given to her and on 15.8.2.12 her medicines were changed and denied that her daughter died a natural death due to pain in abdomen and that his brother and other relatives have participated in her cremation. Further he denied that younger brother of Krishna Kumar Yadav namely Deepak was doing any job after having completed M.B.A. and there was any proposal of marriage of his younger daughter with Deepak and when it was denied, being aggrieved this false case has been lodged and also to earn illegal money, out of the said episode, this false case has been lodged.

18. Learned counsel for the appellants after having pointed out the aforementioned relevant statements argued that this witness was deliberately concealing the true facts because he was informed immediately after death of the deceased on 19/20.8.2012 and pursuant to that he along with his nephews, brother and other relatives had come to the house of the appellants where they participated in the last rites of the deceased which were performed with their consent which is evident from the fact that F.I.R. was lodged with a delay of four days as the same was got written on 24.8.2012 at 9:45 a.m. after much deliberations and only with a view to extorting illegal money due to greediness of PW-1. His testimony is wholly unreliable because of delay in F.I.R. and his admission that he never made any complaint with regard to demand of extra money being made neither soon before the death of the deceased nor after her marriage for the purchase of plot by the appellants side. His conduct has also been pointed out to be not appropriate because he admitted that deceased had given birth to a daughter and on that occasion, he had not gone there with any clothes and all nor had spent a singly penny on that happy occasion which is unnatural. He has also admitted the presence of above mentioned relatives in the photographs which are alleged to have been taken on the cremation ground which shows their presence and it was pointed out that no post-mortem was done in this case only because the deceased died as a result of pain having suffered by her in abdomen for which she was given treatment and if the complainant side had any suspicion about the death of the deceased to have happened in some other manner they could have resisted cremation on the spot and could have pressed that post-mortem be got conducted to ascertain the cause of death but nothing such has happened. He also argued that deliberately PW-1 is showing his presence at his relative's place on the date when incident happened only to explain the delay in lodging the F.I.R. which was lodged after much deliberation though information was transmitted to him promptly. It is also reflected from the statement of PW-1 that the deceased was even got BTC form filled up by her husband and her husband had even named her in LIC policy as a nominee which all indicates that they were having good relationship and there was nothing abnormal between them and even daughter which was born out of the wedlock was still staying with the appellants, therefore, from the statement of PW-1, it does not appear that there was any demand of dowry made, from the side of the appellants. It is also apparent from the statement of above witness that there is no consistency in his statement due to various discrepancies as to when actual demand of said dowry was made, whether at the time when he got the funds released after retirement or soon before death of the deceased and due to this, the statement made in examination-in-chief in the light of discrepancies which have been elicited in cross-examination, does not appear to be a believable statement in respect of demand of dowry and other material particulars.

19. PW-2, Raju Yadav has stated that the deceased was his cousin sister. On 19/20.8.2012, he had received a phone call from Krishna Kumar Yadav regarding illness of deceased and at that time, informant was not at home as he had gone to his relation's place in Ara. In response to the said information, he had not gone to the matrimonial home of the deceased, as he had gone for tuition and he also does not have knowledge as to who had gone from his home. The informant had retired from the post of S.I. on 20.8.2012 but he had no knowledge that Krishna Kumar Yadav, Ashok Kumar, Manju Devi and other family members were asking for money from Sheela for purchase of plot. The father of Sheela had not told him about any such demand nor did he know as to how Sheela died in her matrimonial home or how her cremation was done. This witness was declared hostile and was cross-examined by the learned ADGC (criminal). In cross-examination, he has stated that his father had five brothers and all were staying together; no demand of money was made by Krishna Kumar, Ashok Kumar and Manju Devi for purchase of plot from him or his family members nor does he have any knowledge about it. The deceased was not being harassed by anyone in her matrimonial home. He has shown ignorance that she was being treated in Sonvarsha Government hospital for pain in abdomen. After having seen Ext. Kha-1, he stated that in the said photograph uncle- Kapil Muni, Phoopa- Ram Darash were appearing and in Ext. Kha-2, he recognized the dead body of the deceased Sheela placed on funeral pyre and near which was present Umesh Yadav, who was mediator of the marriage. The information on phone call was received from Bajra Ke Tola that Sheela was sick, in this regard the ladies at home had told him. The statement of this witness appears to be believable because he seems to be genuinely saying that in photographs mentioned above, his relatives were present at the time of cremation of the deceased and that he had no knowledge about demand of dowry having been made.

20. PW-3, Visarjan Yadav has stated that the informant is his uncle, he has no knowledge as to how the deceased died but he does know that a night prior to 20.8.2012, she had died in her matrimonial home, information about which was received next day in the morning and pursuant to that he had gone to see her but she was not found there. No one had given any information about her death. He had no knowledge as to whether any noise was heard coming out of the house of deceased, though this witness was declared hostile and was cross-examined by the learned A.D.G.C. in which he has not supported the prosecution version rather, stated that Krishna Kumar and Sheela had a daughter and they were living happily. He used to go there to matrimonial home of the deceased but would never know that any harassment was being made for demand of dowry. His statement does not appear to suffer from any infirmity and appears to be creditworthy statement.

21. PW-4 Susheela Yadav, sister of the deceased has also stated that no demand of money was made by the accused persons for purchase of plot from his sister and father. She was told that in the intervening night of 19/20.8.2012 her sister died due to pain in abdomen in a Government hospital for which she was being treated in Government hospital Sonvarsha and she also stated that the Krishna Kumar Yadav and his family members had given information about death of Sheela and in response to that Raju and Visarjan Yadav had gone there from complainant's side to the deceased matrimonial home. The report regarding death of her sister was lodged by her father at P.S. concerned regarding which her father had told her that the same was got lodged by him at the instance of some villagers and the deceased was not eliminated for demand of any money for purchase of plot not being fulfilled. This witness was also declared hostile but in cross-examination,

learned A.D.G.C. could elicit nothing which would discredit her statement in examination-in-chief.

22. PW-5 Ashok Kumar Yadav is son-in-law of the informant, who has also stated that informant had told him that due to being beguiled by some other persons, he had lodged the F.I.R., against appellants. His wife Geeta had told him that the deceased Sheela had suffered pain in abdomen 7-8 days prior to her death and was being treated in Sonvarsha Government hospital. Information about death of Sheela was given by Krishna Kumar Yadav in the morning about 5:00 a.m., to the complainant side and he was also informed about it and pursuant to that he had participated in her last rites. He denied that any demand of money was being made for purchase of plot by the accused side and for non-fulfilment of which she was eliminated. After being declared hostile, nothing could be elicited from his cross-examination to discredit his testimony in the examination-in-chief which is found to be creditworthy.

23. PW-6, C.O., Alok Kumar Jaiswal is a formal witness who has proved C.D., site plan and other formal documents, hence his statement does not require to be dealt with at length.

24. Court itself has examined Kapil Muni Yadav as C.W.-1, who is brother of the informant, who has stated that appellant Krishna Kumar Yadav is an Advocate in Bairiya Tahsil where he contests revenue cases. Out of the wedlock of Krsihna Kumar and Sheela one daughter Chicku was born, who lives with grand-parents. The deceased was never given any kind of torture or subjected to any kind of harassment for demand of dowry and had died a natural death due to abdominal pain regarding which information was given by Krishna Kumar timely and he had participated in her last rites.

25. Similarly, C.W.-2 Ram Darash Yadav has been examined by the court on its own who is brother-in-law of the informant, who has given same statement as given by C.W.-1 with respect to the death of the deceased and regarding dowry demand.

26. C.W.-3, Nirbhaya Kumar Shukla has been examined by the court but his statement is admitted by the learned counsel for the appellant to be not revelant because an effort was made by the trial court to see whether the deceased was admitted or got treated at C.H.C. Sonvarsha or not, on the basis of any entry found in the register there, but this witness had stated that no such entry was found on 10.8.2018 which could show that Sheela Devi was given treatment there.

27. In defense, from the side of appellants, Vinod Kumar Singh has been examined as D.W.-1 who has stated that he is resident of the same village and that Ashok Kumar Yadav was living separate from Krishna Kumar Yadav from last 10 years and father of Manju Devi lived in Howrah where Manju Devi had gone on 30.7.2012 on the occasion of Rakshabandhan. The death of wife of Krishna Kumar had happened due to abdominal pain in the intervening night of 19/20.8.2012 and on that day in the morning he had gone to his house where father of the deceased Har Narayan, uncle of the deceased Kapil Muni and cousin brother etc. were present and her dead body was taken for cremation at the banks of river Sarju. He denied that any demand of dowry was ever made nor any harassment for the same was made by the appellants and denied that being resident of same village, he is giving false statement.

28. D.W.-2 Kameshwar Prasad has stated that he resides near the house of the appellants. The wife of the deceased and his wife were friends of each other. In the night of 19/20.8.2012, the deceased died natural death due to abdominal pain and upon information being sent to deceased parents, relatives from there side had come to attend the funeral. The father of the deceased Har Narayan Yadav had returned without reaching Ghat. When he was at the door of Krishna Kumar on the date of incident, he came to know that wife of Ashok i.e. Manju had gone to his father's place i.e. Howrah on the occasion of Rakshabandhan and that wife of Krishna Kumar was already running sick, who was being treated in Government hospital Sonvarsha and she died because of abdominal pain.

29. DW-3 Ramji Yadav has stated that Krishna Kumar was living separate two years prior to year 2007 and that deceased had died due to abdominal pain, a natural death. In cross-examination, he has stated that the deceased was never tortured for any kind of dowry and both the husbands and wife were having sweet relations with each other.

30. D.W.-4 Ram Niwas Singh, Advocate who is a senior of the appellant Krishna Kumar, has stated that Krishna Kumar was known to him very well. He used to look after of all the cases of informant at Tahsil, Bairiya and used to do pairvi in them. Prior to 19.8.2012, the relations between them were very good. He had never heard that Krishna Kumar was making any demand from informant about purchase of plot. He also stated that he has knowledge that wife of Krishna Kumar died due to abdominal pain in the intervening night of 19/20.8.2012.

31. PW-5, Bhuvneshwar Yadav has stated that he is a private servant of Sonvarsha hospital. On 10.8.2012, Krishna Kumar had visited Sonvarsha hospital with the deceased who had pain in her abdomen and Dr. Mukund Lal had given her medicines. Parcha (Ext. Kha-7) which was written by Dr. was in his hand writing. On 15.8.2012, again Krishna Kumar had brought the deceased for change of medicines and then he was told that if she did not get well, the next week, ultra-sound would be done. In cross-examination this witness has stated that he has no knowledge as to where the said doctor is right now but in August, 2012, he was working with the said doctor. He also know wife of Krishna Kumar because he is resident of adjoining village .He had seen the said doctor's writing and was well verse with the writing and signature and the said parcha was written by hm in his hand writing only.

32. We find that the sole testimony in this case against the accused-appellants is that of PW-1, who is father of the deceased.

33. Before dealing with the subject, we would like to point out here as to what are the essential ingredients of Section 304-B IPC. The Hon'ble Apex Court in V.K. Mishra and another Vs. State of Uttarakhand and another along with connected Appeal, (2015), 9 SCC, 588 has clarified that in order to attract application of Section 304-B IPC, the essential ingredients are as follows; (i) The death of a woman should be caused by burn or bodily injury or otherwise than under a normal circumstance; (ii) Such a death should have occurred within seven years of her marriage; (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband; (iv) Such cruelty or harassment should be for or in connection with demand of dowry; (5) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

34. On proof of the essential ingredients mentioned above, it becomes obligatory on the court to raise a presumption that the accused caused dowry death. A conjoint reading of Section 113-B of Evidence Act and Section 304-B IPC, shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. "Soon before" is a relative term and it would depend upon circumstance of each case and no straight jacket formula can be laid down as to what would constitute a period "soon before the occurrence". There must be in existence, proximate live link between the facts of cruelty in connection with demand of dowry and the death. If the alleged incident of cruelty is remote in time and had become stale enough not to disturb mental equilibrium of the women concerned, it would be of no consequence. Use of word "shown" instead of "proved" in Section 304-B IPC indicates that the onus cast on the prosecution would stand satisfied on the anvil of a mere preponderance of probability. In other words, "shown" will have to be read up to mean "proved" but only to the extent of preponderance of probability. Thereafter, the word "deemed" used in that Section is to be read down to require an accused to prove his innocence, but beyond reasonable doubt. The word "deemed" culpability of accused leaving no room for the accused to prove its innocence, has been thus read down to strong "presumption" of his culpability. The accused is required to rebut his presumption by proving its innocence.

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

36. In this case, we find that on the basis of evidence adduced, all the witnesses have turned hostile except PW-1, who has stated that demand of dowry being asked for from the deceased by the appellants for purchase of plot which was exacerbated when an amount of Rs. 14,00,000/- was released to the PW-1 on his retirement as post retiral benefits. In cross-examination, the statement of PW-1 is not found to be creditworthy in respect of the said demand because neither any fixed amount has been disclosed by him which was being demanded nor could it be established from his statement as to whether the said demand was made prior to release of the said fund or subsequent to the release of that fund and number of discrepancies have been noticed in his statement in this regard. The death has occurred in the intervening night of 19/20.8.2012 while marriage was performed on 29.4.2007. There is no evidence on record to the effect that soon before her death on 19/20.8.2012 any such demand was made nor any specific amount is disclosed of such demand which was being demanded, hence, there is absolute vagueness with regard to demand of dowry. As regards unnatural of death, it is apparent that no post-mortem was conducted in the present case of the deceased on account of complainant side having been convinced that she had died a natural death due to abdominal pain, although not very convincing evidence has come on record showing that she was got treated in any recognized hospital for the said ailment but it is noticed that often such things happen that acute pain in abdomen may arise due to bursting of appendix etc. which may result in death of a patient. Although nothing much could come to light in the present case in this regard as to how death happened but the sole reason of the death of the deceased is being referred to be abdominal pain by almost all witnesses, some of whom belong to village of the

appellants also who are their neighbours. All of them have witnesses that relationship between the deceased and the appellant no. 3 (Krishna Kumar Yadav) were sweet and there was no question of any demand of dowry being made nor any harassment was ever heard being made. Therefore, in absence of any post-mortem having been conducted the court has no option but to believe the version of defense that the deceased died a natural death due to abdominal pain because of which complainant side did not press for post-mortem to be conducted.

37. It is apparent that no charge under Section 302 IPC was made in the present case, although, the same ought to have been framed by the learned trial court but we find that in the circumstances that all the close relatives of the deceased side had attended the cremation of deceased which is admitted from the side of witnesses of prosecution itself, hence even if the photographs which were discarded by the learned trial court on the basis of negatives not being supplied, we come to the conclusion that finding given by the trial court in this regard that the said photographs do not appear to be genuine, because at least these photographs could be taken to be corroborative piece of evidence which is supported by the oral evidence by the prosecution side that the relatives of the deceased had attended funeral. Had there been any suspicion with respect to death of the deceased having taken place under suspicion circumstances, it was bounden duty on the part of the complainant side to stop cremation proceedings and press for the post-mortem to be conducted which was not done in the present case, hence we believe that there does not appear to be any mischief with regard to the death of the deceased. It appears to be a normal death due to some ailment. As regards the offence u/s 201 IPC, we find that there is no evidence on record which could be taken to prove that the body of the deceased was cremated only with a view to removing the evidence of the offence under Section 304-B IPC as the cremation was done with consent of the complainant side. Therefore, even offence u/s 201 IPC is not found to have been proved. Similarly, the charges under Section 3/4 of the D.P. Act also do not stand proved in view of the statement mentioned above of all of the prosecution witnesses.

38. In view of above, we come to the conclusion that the finding given by the learned trial court of holding the accused-appellants guilty under the aforementioned Sections, is erroneous and is not based on proper appreciation of evidence on record, therefore, the conviction needs to be set aside and is, accordingly, set aside. Accused-appellants are on bail, their sureties stands discharged.

39. It is further directed that all the appellants shall furnish bail bonds with sureties to the satisfaction of the court concerned in terms of provisions of Section 437-A Cr.P.C.

40. Let the lower court record be returned to the trial court along with a copy of this judgment for necessary information and compliance.

(Dinesh Kumar Singh-I, J.) (Ramesh Sinha, J.) Order Date :- 3.12.2018/A.P. Pandey