

**Judgement Reserved on 12.11.2018
Judgement Delivered on 10.12.2018**

Court No. - 1

Case :- CRIMINAL APPEAL No. - 923 of 2014

Appellant :- Chaturanan

Respondent :- State Of U.P.

**Counsel for Appellant :- Sanjay Kumar Yadav, Bhaiya Ram
Maurya, Ganesh Mani**

Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Dinesh Kumar Singh-I,J.

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

1. Heard Sri Ravindra Sharma, learned Amicus Curiae appearing on behalf of the appellant and Sri A.R. Chaurasia, learned A.G.A. for the State.
2. This Criminal Appeal has been preferred against the judgement and order dated 17.01.2014 passed by Special Judge (E.C. Act) Additional Session Judge, Mainpuri in Session Trial No. 673 of 2008, State Vs. Chaturanan under Section 302, 304-B and 498-A I.P.C. and Section ¾ D.P. Act, P.S. Bichhwa, District Mainpuri pertaining to Case Crime No. 308 of 2008 whereby the accused appellant has been convicted under Section 304 B and 498 A I.P.C. and Section ¾ D.P. Act and has been awarded life imprisonment under Section 304-B I.P.C. three years R.I. and fine of Rs. 3000/- and in default of payment of fine, three months additional imprisonment under section 498-A I.P.C. and one year S.I. fine of Rs. 2,000/- and in default of payment of fine, two months additional imprisonment under Section ¾ D.P. Act and further directed that all the sentences shall run concurrently.
3. In brief, the facts of the case are that brother of the deceased, Avnish (P.W.-1) had married his sister, Smt. Jwala Mukhi in the year 2002 with appellant, Chaturanan S/o Jamwant R/o Karimganj, P.S. Bichhwa, Pargana,

Tehsil and District Mainpuri according to Hindu Rites. The appellant (Chaturanan), father-in-law, mother-in-law, brother-in-law and sister-in-law of the deceased all had demanded from the deceased a colour T.V. and Hero Honda Motorcycle many times. About six months prior to lodging the written report on 4.06.2008, because of non fulfilment of the said demand of dowry, she was thrown out of her matrimonial home by the accused persons and had been threatened that if she would not bring these articles, she would be killed. These accused, after the deceased having reached her matrimonial home, were continuously harassing her physically and on 03.06.2008 at about 12:00-01.00 p.m., an information was communicated to P.W.1 that his daughter had been strangulated to death by appellant, Chaturanan (husband), Jamwant (father-in-law), wife of jamwant, Karnweer Singh (mother-in-law), son of Jamwant (brother-in-law), Devrani (wife of Karnweer) all residents Mauja Karimganj, P.S. Bichhwa, District Mainpuri.

4. P.W. 1, Avnish Kumar gave a written report (Exhibit Ka-1) dated 4.06.2008 to S.P., Mainpuri wherein Case Crime No. 308 of 2008 was registered under Section 498-A, 304-B I.P.C. and ¾ D.P. Act against appellant no.1, Chaturanan, father-in-law, Jamwant, Mother-in-law, Karnweer and Devrani on 4.06.2008 at 11.30 a.m. and its chick F.I.R. (Exhibit Ka-12) was prepared and entry of this case was made in G.D. dated 4.6.2008 at Report No. 16 (Exhibit Ka-13) at 11:30 hours. The investigation of the case was handed over to Circle Officer, Vikram Singh, P.W.5 because Circle Officer concerned was sick. He visited the spot where Nayab Tehsildar, Mahendra Singh Kulshreshtha prepared Panchayatnama of the deceased (Exhibit Ka-2). He recorded the statement of the informant and at the instance of informant and other villagers present there, inspected the place of occurrence and prepared its site-plan (Exhibit Ka-10), thereafter, C.O., Rahul Kumar returned after his treatment and conducted the remaining investigation. Dr. Subodh Kumar, P.W.4 along with Dr. Lakan Singh conducted the post-mortem of the deceased on 4.06.2008 whose dead body was received in sealed condition from Nayab Tehsildar, Bichhwa in which following ante-mortem injuries were found on the person of the deceased:-

- (i) Contusion of 4 cm.x1.5 cm. present over right side of the neck, 4

cm. below right ear.

- (ii) Contusion 6 cm.x 2cm. present over left side of neck in upper part, 3 cm. from left ear.
- (iii) Contusion 4 cm.x 3 cm. present on back and outer part of right elbow joint.
- (iv) Contusion 3 cm.x 2 cm. present on back of left elbow joint.
- (v) Hyoid bone was found fractured and the cause of death was elaborated to be asphyxia as a result of anti-mortem throttling.

Rest of the challani documents are Photo Nash, Exhibit Ka-7, letter to C.M.O., Exhibit Ka-8, Form-13, Exhibit Ka-9, Marriage-Card, Exhibit Ka-3, '*Pili Chitthi*', Exhibit Ka-4, Lagan Patrika, Exhibit Ka-5.

5. After investigation, the Investigating Officer has submitted charge-sheet against appellant which is Exhibit Ka-11 and charges have been framed against accused appellant under Sections 302, 498, 304-B I.P.C. on 24.09.2008 to which he pleaded not guilty and claimed to be tried.

6. The prosecution to prove its case examined Avnish Kumar (informant) as P.W.-1, Smt. Sunita as P.W.-2, Brijesh Kumar as P.W.-3, Dr. Subodh Kumar as P.W.4, C.O. Vikram Singh as P.W.5, Constable Khushi Ram as P.W.6 and retired S.S.P., Vijay Bahadur as P.W.7, thereafter prosecution evidence was closed and the statement of appellant was recorded under Section 313 Cr.P.C. in which the accused stated that entire evidence produced from the side of prosecution was false and further stated that his parents had gone to see his elder sister, while his younger brother was in Delhi where he was employed and living with his wife and he himself was working in the field. He subsequently came to know that his wife had died and this information was received by him in the field. In defence, Ram Charan has been examined as D.W.1 and Ramanand as D.W.2.

7. Learned trial court after having heard both the sides, having gone through the evidence on record, convicted the accused appellant under the aforementioned sections and awarded the punishment mentioned above.

8. Learned counsel for the appellant during arguments has argued that

though as per F.I.R., marriage is stated to have been performed in the year 2002 but in-fact the marriage was performed in the year 2000 which has been proved on the basis of evidence adduced from the side of the defence, therefore, the conviction under Section 304-B I.P.C. would not be sustainable as the death of the deceased happened beyond seven years of her marriage. Further it is argued that the dead-body of the deceased was found beneath the thatched roof (Chappar) which was outside the house as is evident from the panchnama, therefore, it would not be treated to be a case of death of the deceased inside the house of the appellant so as to attract the provision of Section 106 of Evidence Act. Further It is argued that initially the charge was framed by the trial court under Section 302 I.P.C. on 24.09.2008 which was subsequently modified on 8.8.2014 by adding charges under Sections 498-A, 304-B I.P.C. and ¾ D.P. Act after evidence had come on record but after the alteration of charge, no witness was recorded from the prosecution side. It is further argued that the prejudice is caused to the accused side because the Investigating Officer who had conducted the investigation could not be examined because of having expired. The accused appellant has been held guilty despite the fact that he had taken the plea of alibi. There was proof given in that regard which has been erroneously disbelieved. Further it is argued that the evidence has come on record which does not suggest that there was any demand of dowry soon before the death of deceased which was an essential ingredient under Section 304-B I.P.C. and despite that, learned trial court has held the appellant guilty under that section. Further it was argued that the death of the deceased happened beyond seven years of marriage, was also sought to be proved by producing the copy of 'Kutumb Register' which is an admissible piece of evidence but the learned trial court has erroneously discarded the said evidence. Further it is argued that there was no evidence led by the prosecution side to prove cruelty for non-fulfilment of demand of dowry to have been made towards the deceased, therefore, no presumption under Section 113-B of Indian Evidence Act could have been drawn as has been done by the trial court. Based on these arguments, learned counsel for the appellant sought a clear acquittal of the accused-appellant, there being

no evidence against him.

9. Learned A.G.A. on the other hand vehemently argued that there is no infirmity in the impugned judgement because the deceased had died unnatural death in her matrimonial home within seven years of marriage, therefore, learned trial court has rightly held the appellant to be guilty being husband with the aid of presumption under Section 113-B of the Indian Evidence Act. There was sufficient evidence on record to the effect that a demand of dowry was made from the side of the appellant and for non-fulfilment of which, the deceased was eliminated.

10. Before taking up the points raised by the learned counsel for the appellant, it would be necessary to see as to what evidence has been brought on record by the prosecution side and also to see as to whether the same has been evaluated by the learned trial court in appropriate manner or not.

11. From the side of prosecution in support of the version given in F.I.R., the informant, P.W.1 has stated in examination-in-chief that the deceased was married on 21.05.2002 with accused-appellant after having been given the dowry as per capacity of the informant but the appellant and his family members were not satisfied with the same and were demanding a colour T.V. and Hero-Honda motorcycle and for non fulfilment of the said demand, they were harassing his sister who was being threatened to be killed. Regarding this, the deceased had made a complaint to him as well as her mother and there was one daughter born out of the wedlock. The deceased had been thrown out of maternal home once because of non fulfilment of dowry demand and when she was sent there again, the appellant and his family members murdered her. Information regarding murder of his sister was received by him on 3.06.2008 at 12' O clock through the mediator, Magan Lal who had broken this news that his sister was strangulated to death by appellant- Chaturanan, Jamwant, Draupadi, Karnveer and Seema.

12. Upon receiving this information, his mother, wife and other villagers i.e. Sardar Singh and Sher Singh also reached there and found that the dead-body of the deceased was kept beneath 'chappar' and the accused had run away from the spot. Further he stated that he had given written report about

this occurrence to S.P. in his hand-writing which is Exhibit Ka-1 and police of P.S. Bichhwa had filled up panchayatnama in his presence and during its being prepared, 'Nayab Tehsildar' had also arrived on the spot. At his instructions, the said panchayatnama was prepared and it was got signed by him also which is Exhibit Ka-2. Further he has stated that Exhibit Ka-3 is a marriage-card of the deceased although regarding this card, learned counsel for the appellant stated that it was not given to the police during investigation despite being demanded. Further this witness has stated that no list was prepared of the articles which was given in dowry and neither he had made any entry of such articles in written report given nor had he disclosed about this in his statement given to the Circle Officer as to what articles were given. Agan Lal was the mediator of the marriage. Deceased was the youngest sister aged about 20 years at the time of her marriage. Further he stated that from his village Sodhra, the village Karimganj is 47 Km. away where the deceased was married and he had gone there three-four times. After marriage, the deceased had also visited her parents' home 5-6 times. For the first time, she visited during 'Chauthi' and, thereafter she went back to her matrimonial home after about one year, thereafter again about 5 to 6 months after that, his sister had come to her parent's home. After being dispatched at the time of 'Chauthi', one year thereafter, 'Gauna' was done . It is wrong to say that one year after marriage a daughter was born to the deceased who died. In fact four years after marriage, a daughter was born to the deceased who is still alive and her name is Nandini. She resides in Karimganj and her age may be about four years approximately. When the deceased died, the said daughter must have been two years' old and he is not in a position to recognize her sister's daughter as he had seen her only one or two times in her sister's lap (*God*). Further he has stated that he has seen the house of the appellant where he lived jointly and subsequently he started living in which room, he could not say. Further he stated that he does not know as to in which room he was living and in which direction the said room was located. Further he stated that Mithilesh was married four years after marriage of Chaturanan and the demand of dowry was started to be made two years after the marriage of deceased with

appellant. At the time of marriage, Jamwant had 20 *Bighas* of land and a house of his own. The deceased had never complained to him that Chaturanan had illicit relationship with daughter of Virendra nor does he know as to how the deceased had died. In panchayatnama, it was written that she was murdered because of non fulfilment of demand of dowry and if the same was not written in the panchayatnama, he could not tell its reason. It was wrong to say that marriage of Chaturanan with the deceased was performed on 22.04.2000 and that the first daughter was born out of the wedlock on 10.05.2001; the date of marriage was not recorded in "Pili-chitti".

13. Learned counsel for the appellant has vehemently argued that 'pili-chitthi' which has been submitted from the side of the informant cannot be relied upon because the 'pili-chitthi' is always sent from the side of bride to the bride-groom's house, therefore, it could not have been in possession of the informant, therefore, the said document is a forged one. This witness has denied that the said 'pili-chitthi' was forged by him and that the demand of dowry was never made by the appellant and his family members and it was also wrong to say that the marriage had been performed 8 years prior to death of the deceased and also it was wrong to say that the deceased had committed suicide and false report was written by him.

14. From evidence which has been given by this witness, it has been admitted that neither before marriage, the demand of dowry i.e. Colour T.V. and Hero Honda Motorcycle was made nor was it made immediately after marriage rather the same was made two years after marriage and this witness was not able to state that soon before the death of the deceased, there was any demand of the aforesaid items. It becomes further clear because this witness has admitted that the daughter of the deceased, Nandini was very small aged about two years when he had last seen her with the deceased and he was not in a position to recognize her. It would suggest that this witness had not been to the house of the deceased for a long time which may be at least taken to mean that for one and half year, he had not visited the house of the deceased prior to the death of the deceased, therefore the deceased could not have told him about any demand of dowry made by the

appellant or his family members soon before her death.

15. 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 women 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 women soon before her death.

16. 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 his innocence.

17. 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.

18. The Supreme Court has held that the demand of dowry is required to be made soon before death for satisfying the essential ingredients to make out offence under Section 304 I.P.C. and, therefore, the entire evidence has to be read in totality to form an opinion as to whether there was consistent demand of dowry or not soon before the death of deceased which could have been a catalytic feature in unnatural death of the deceased.

19. As regards the marriage having been performed within seven years of death which is also a necessary ingredients for constituting an offence under Section 304-B I.P.C., this witness (P.W.-1) has stated that the marriage was performed on 21.05.2002 and not as stated by the appellant side, on 21.04.2000. From the side of informant to substantiate their statement, "Pili-Chitti", Exhibit Ka-4, the marriage-card, Exhibit Ka-3 and 'Lagan Patrika', Exhibit Ka-5 have been filed, out of which 'pili-chitthi' is not signed by the informant. We find that the said 'pili-chitthi' is written by Brijesh Kumar Mishra of Sodhra village which appears to have been signed by Kripa Ram Shakya who is informant's father, therefore, it would be treated to have been written from the side of father of the informant to the father of the appellant, Jamwant Singh. The argument to the effect that this 'pili-chitthi' could not be available with the informant side because it is written from the side of bride to the side of bride-groom does not appeal to us because whatever may have been the circumstances, it does appear that this letter is a genuine one although there may be a missing link how this came in possession of the informant side. Rest of the two papers are marriage-card as well as 'lagan patrika' as they are printed items, hence, they could not have been signed. On the other hand from the side of accused, it was stated that the family

register which has been produced from the side of appellant included the one year old daughter which was born on 10.05.2001 i.e. after marriage of deceased with accused appellant on 22.4.2000, but during arguments, attention has not been drawn of the Court towards the said document to prove that the name of the said daughter was also entered in any family register showing her existence on 10.05.2001. We do not find any such entry. Moreover the birth certificate of such a daughter ought to have been filed. Had that been proved by the defence side, it would certainly have an impact on the prosecution case with regard to proving that the marriage of the deceased was not performed within seven years of the death of the deceased, rather was performed beyond that, therefore, we believe the evidence produced from the side of prosecution and hold that the marriage between the deceased and appellant was performed on 21.05.2002.

20. P.W.-2 Sunita, who is wife of P.W.-1, has also stated that the marriage of the appellant and the deceased was performed on 21.05.2002 and the appellant and his family members were not satisfied with the dowry which was given during the marriage and were demanding additional dowry in the form of colour T.V. and one Hero Honda Motorcycle and due to non fulfilment of the said demand, the deceased was being tortured and was threatened to be killed. All this used to be told by the deceased to her whenever she visited her home. One daughter was also born to the deceased and the deceased had been thrown out from the matrimonial home because of the demand not being fulfilled. Whenever the deceased visited her home, she used to be consoled and sent back to her matrimonial home. On 3.06.2008 at about 12 noon, the news was received from the mediator of the marriage that the deceased had been strangulated to death by appellant and his family members.

21. In cross-examination, this witness has stated that she does not know the exact date when 'gauna' ceremony had been performed. The demand of above-mentioned dowry was made first time two years after the marriage by appellant and other family members, thereafter dowry was never demanded. The deceased had visited her parent's home 5-6 times and at about same number of times, she had gone to her matrimonial home also. It was wrong

to say that appellant, Chaturanan was married to deceased on 22.04.2000 and that first daughter was born on 20.04.2001. She does not recollect as to what articles were given as dowry at the time of marriage but colour T.V., motorcycle and car were not certainly given and it was wrong to say that because of deceased being of hot temperament, she committed suicide.

22. Statement of this witness is believable to the extent that marriage was performed on 21.05.2002 between appellant and deceased as nothing in cross-examination has been elicited to make her statement doubtful, however, this witness has admitted that first time dowry demand was made after two years of marriage and, thereafter, it was never demanded. This statement makes it evident that soon before the death of deceased on 3.06.2008 , there does not appear to have been made any demand of dowry.

23. Now we would like to take up the statement of Brijesh Kumar, P.W.3 who is mediator of the marriage. He has stated that 'pili-chitti' bears his signature which is Exhibit Ka-4 and 'lagan-patrika' was also in his hand-writing which is Exhibit Ka-5. It is further stated that at the time of marriage, dowry was given and whatever was agreed upon, was given but the appellants and his family members were not satisfied with the same, therefore, they were demanding a colour T.V. and one motorcycle. Because of being mediator, the deceased had told him that the appellant and his family members used to make such demand. Regarding this matter, a panchayat was also held but the appellant and his family members did not concede and murdered her.

24. In cross-examination, this witness has stated that the 'pili-chitti' and 'lagan-patrika' are sent by bride side to the bride-groom side and the said letter remains with the bride-groom side. His statement was not recorded by the C.O. nor his name was there in F.I.R. as a witness. He was brought by informant to depose before court. For the first time, the dowry was demanded two years after marriage. He denied to have prepared Exhibit Ka-4 and Exhibit Ka-5 forgedly and has also denied that the said marriage was performed on 23.04.2000.

25. The statement of this witness appears to be reliable as regards marriage having been performed on 21.05.2002 and mere raising of doubt in

respect of 'pili-chitthi' being found with informant-side does not appear to be detrimental to the prosecution's case.

26. Dr. Subodh Kumar, P.W.4 has clearly stated that on 4.06.2008, he had conducted the post-mortem of the deceased and had found the hyoid bone fractured and has opined that deceased died due to having been throttled. She also had four anti-mortem injuries on her person in the region of neck and elbow. In cross-examination, he stated that there was no possibility of the deceased having committed suicide. He also admitted that it was possible that the injuries found on her person could have been caused by 'lathi' or 'brick' but she could not have died due to these injuries. From the statement of this witness, it is quite evident that he has ruled out the possibility of deceased having committed suicide rather he has a firm opinion that her death was homicidal one.

27. Rest of the witnesses are only formal witnesses who have proved other 'Chalani' documents, hence, their statements are not being dealt with at any length neither any such argument has been made from the side of learned counsel for the appellant which would necessitate that they be dealt with in depth.

28. Learned trial court has recorded that in the case at hand it was argued from the side of prosecution that in F.I.R., five accused were named while charge-sheet was submitted only against the present appellant. The trial court had summoned remaining four accused on an application under Section 319 Cr.P.C., but file of these four accused had been separated by order dated 11.10.2011 of the Court and, hence, there was case against appellant only for consideration.

29. He has recorded in judgement that from perusal of written report, Exhibit Ka-1, it was evident that the occurrence happened on 3.06.2008 and for proving the offence under Section 304-B I.P.C., the prosecution was needed to prove that the marriage of the deceased was performed within seven years of her death. According to the written report, the deceased and appellant were married in the year 2002 while she was murdered by appellant and his family members on 3.06.2008 regarding which information was received. From the side of defence, a copy of the family

register was filed in which the death of the deceased is recorded to have taken place on 4.06.2008 and his first daughter is recorded to have died on 15.11.2001, therefore, on the basis of this document, it was proved that the deceased died on 3.06.2008 which date of death is also admitted to the defence side, in these circumstances, the copy of family-register which was filed from the side of defence becomes doubtful (although we do not find any such copy of family-register wherein such dates have been mentioned nor during arguments, either party pointed it out) because from the side of prosecution 'lagan-patrika', Exhibit Ka-5, marriage-card, Exhibit Ka-3 have been filed in which the date of marriage was recorded to be 21.05.2002 which is also proved by P.W.3 Brijesh Kumar, the mediator of the family. Further it is recorded that the prosecution side had argued that the said document was in possession of the deceased and the same was kept by her very carefully and prior to her death, she had handed over the same to the informant side, therefore, on the basis of these documents, the prosecution had been successful in establishing that the deceased was married to the appellant on 21.05.2002 and she died on 3.06.2008 which was within 7 years of her marriage and her death was unnatural. Further the trial court has held that as per F.I.R., the deceased was being demanded a colour T.V. and a Hero-Honda Motorcycle and for not bringing these articles, she was being thrown out of her matrimonial home and she was being tortured physically and on 3.06.2008, an information was received by informant side that his sister was murdered. To prove this version, P.W.-1 and P.W.2 have clearly stated that two years after the marriage, the appellant and his family members had started demanding the dowry. The deceased only after having been counselled by them, used to return to her matrimonial home hoping that things would settle down. Further it is recorded that the prosecution side had denied the suggestions made from the defence side that the deceased had committed suicide and that no dowry death was committed by them. From the site-plan and other evidence adduced, it is established that besides 'chappar', the appellant and his family members had also room available for residing therein, therefore, it is held that the defence side had failed to explain that if the deceased had committed suicide why would she not have

committed suicide in the room rather her dead body was found underneath 'chappar', therefore, the same could not be taken to be a suicidal death and the prosecution had established on the basis of post-mortem report, proved by P.W.4, that she had been strangulated to death and the anti-mortem injuries also indicates that it could not be a case of suicide and definitely she was strangulated to death. Further it is held that the conduct of the accused becomes very important in dowry death cases and in the case at hand, it has come on record that the accused side did not inform the informant or any person of his house about deceased having died. Some broken bangles were also stated to have been found by the doctor which also show that the deceased might have struggled to save herself before being killed and under these circumstances, learned trial court has held that the deceased died unnatural death within 7 years of her marriage having been strangulated to death and has held the accused-appellant guilty under Section 304-B, 498-A I.P.C. and 34 D.P. Act. We are of the opinion that the learned trial court has erred in giving such finding with regard to holding accused-appellant guilty under aforementioned sections because from the statements of P.W.1, 2 and 3 who are witnesses of fact, it has come on record that demand of dowry for the first time was made after two years of marriage and P.W.2 has further clarified that no demand thereafter was made, therefore, the essential ingredients to constitute an offence under Section 304-B I.P.C. that the demand of dowry had been made soon before the death of deceased is not satisfied here and this further finds support from the statement of P.W.-1 who is the first informant because he had not been to the house of appellant for about more than one and half year prior to the death of the deceased as he admitted that he was not in a position to recognize the daughter of the deceased. When there was no frequent visit from the side of the informant to the house of appellant how could it be that a demand was being made of aforementioned articles as an additional dowry and, accordingly, we hold that soon before death of deceased, it is not proved that any demand was made of aforementioned items in dowry. Further we are of the opinion that this is a case in which there was sufficient evidence on record to make out a case for conviction under Section 302 I.P.C. because the deceased died

inside house of the appellant which is a homicidal death as she was strangulated to death, therefore, the burden lay upon the appellant to explain as to how his wife died as per Section 106 of Indian Evidence Act. The onus is shifted upon the accused-appellant to explain as to under what circumstances, his wife was found dead inside house, which has not been done on his part.

30. From the side of appellant in defence two witnesses have been examined i.e. Ram Charan (D.W.-2) and Ramanand (D.W.-1) and Ram Charan has stated in examination-in-chief that he knows appellant very well, who is son of Jamwant and was married on 23.04.2000. He had gone in 'Barat' of appellant when he married deceased; two children were born out of the wedlock. The first daughter was born one and half years after the marriage who had died but the other daughter was alive. He was living separate from his parents, brother and sisters and his food was also being cooked separate. On 3.06.2008, father of appellant, Jamwant and his wife had gone to Aligarh to see their ailing daughter and younger brother of appellant was in New Dehli where he was employed, he was not in village on the date of incident. The ladies started raising alarm that wife of appellant had died then the appellant was called from his field. It could not be found as to how his wife died, whether she had committed suicide or was killed. The father-in-law of the deceased was informed about the death of the deceased and also the daughter-in-law's parents were also informed who had come there, where the dead body was kept. The appellant had never beaten his wife nor any demand of dowry had been made. In cross-examination, this witness has admitted that he has no knowledge as to how the deceased died. He admitted that appellant and the witness were living in the same village and there is only one or two houses between their houses. The marriage of appellant was not fixed in his presence, therefore, he could not tell whether any article was decided to be given in the marriage or not. He is of the same caste of which the appellant is and denied that because of being of same caste and neighbour, he is making false statement. The above statement of this witness does not inspire confidence as regards absence of the accused appellant on the date of occurrence from his house because he is

stated to be in field when the wife of the appellant died. No plausible explanation has been given regarding the death of the deceased by this witness.

31. D.W.2, Ramanand has stated that the appellant was married in April, 2000 with the deceased and he was living separate from his parents, brother and sisters and on 3.06.2008 around 9-10 a.m. when ladies started making noises, he reached near appellant's house and found that his wife was lying in dead condition and at that time, he (appellant) was irrigating his field. Appellant's father and mother had gone to the house of their daughter who was ailing while his brother was living in Delhi being employed there. He had never seen any quarrel taking place between the deceased and the appellant nor was she beaten by appellant or any of his family members. In cross-examination, this witness has stated that only on the noise having been heard about death of appellant's wife by him, he had reached the spot from the place where the noise was heard; his field is situated about 300 mts. away. He had seen the deceased before her death many times in last 13 years. There were number of wives of other persons who had died in 13 years but he had never gone to see any of them. He could not tell what used to happen to the deceased on daily basis. He had not received any summons from the court. The deceased was in healthy condition before her death and was not suffering from any ailment. How she died, he does not know.

32. From the above statement of this witness, it is apparent that even he has not given any cogent explanation about death of the deceased, therefore, it is evident from evidence which has been led from the side of accused that no reasonable explanation has been extended from the appellant's side about the death of the deceased, the onus of which was upon him.

33. Learned counsel for the appellant has relied upon **Sher Singh @ Partapa Vs. State of Haryana (2015) 3 SCC 724** in which in a case under Section 304-B I.P.C., it was held that the prosecution failed to show even by preponderance of probabilities that the deceased wife was treated with cruelty based on dowry demand by the appellant soon before her death, hence, burden of proving innocence would be shifted on the accused husband.

34. Other ruling which has been relied upon by the learned counsel for the appellant is **Rajiv Kumar Vs. State of Haryana (2013) 16 SCC 640** in which reliance has been placed upon para 24 of the judgement which is as follows:

“ In K. Prema S. Rao and Another, etc. v. Yadla Srinivasa Rao and Others, etc. [(2003) 1 SCC 217], this Court on similar facts has held that to attract the provisions of Section 304B, IPC, one of the main ingredients of the offence, which is required to be established, is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry” and this ingredient of the offence was not there in that case. This Court, however, held that it was not necessary to remit the matter to the trial court for framing a charge under Section 306, IPC, and the accused also cannot complain for want of opportunity to defend the charge under Section 306, IPC, if the facts found in evidence justify the conviction of the appellant under Sections 498A and 306, IPC instead of the graver offence under Section 304B, IPC. In that case, the three-Judge Bench of this Court held the appellant guilty of the offences under Sections 498A and 306, IPC instead of the graver offence under Section 304B, IPC.”

35. Citing above rulings, it was argued by learned counsel for the appellant that the appellant could not have been convicted under Section 302 I.P.C. ,when the trial court has held him guilty under Section 304-B I.P.C. and it has been proved from evidence on record that even offence under Section 304-B I.P.C. is not proved. The above citation in this case does not appear to apply because in the above-mentioned case, the charge was framed under Section 304-B I.P.C. and when the offence was not found to have been made out under Section 304-B I.P.C. but was found to have been made out under Section 306 I.P.C. which is of lesser punishment, it was found by the Hon'ble Apex Court that there would be no illegality if the appellant was held guilty under Section 306 I.P.C. though there was no charge framed under that section. In the case at hand, we have found that the wrong interpretation of evidence has been made by the learned trial court and consequently it is being held by us that the accused has been held guilty wrongly under Section 304-B instead of under Section 302 I.P.C.

36. Learned counsel for the appellant has relied upon **M. Srinivasulu Vs. State of U.P. (2007) 12 SCC 443** in which the deceased was alleged to have committed suicide by setting herself ablaze because of persistent ill treatment meted out to her by accused No.1 (husband of the deceased) and accused no.2 (mother-in-law of the deceased) but it was found that the

grievance of the deceased was not regarding the demand of dowry but that she was forced to marry against her wish as she wanted to continue her studies and, therefore, it was held that the trial court as well as the High Court convicted the accused appellant wrongly under Sections 498-A and 304-B I.P.C. picking one line from one place and another line from another place and concluded that there was no demand of dowry and, accordingly, the impugned judgement was set-aside.

37. We find that no benefit of this ruling may be given to the accused appellant because we have already made thorough appreciation of the evidence on record and have come to the conclusion that the offence has been committed by the appellant not under Section 304-B I.P.C. rather the same has been found to have been committed under Section 302 I.P.C.

38. As per provision under Section 106 of the Indian Evidence Act, we find that the learned trial court erred in convicting the accused appellant under Section 304-B I.P.C. rather the trial court ought to have convicted the accused appellant under Section 302 I.P.C. and the other two sections i.e. 498A and 3/4 D.P. Act are also not made out as the prosecution has failed to prove that any demand of dowry had been made and since we find that convicting the appellant under Section 304-B I.P.C. was not in accordance with law, therefore, we also conclude that the conviction under Section 498-A I.P.C. and 3/4 D.P. Act also would not sustain. Therefore, we hold the accused-appellant guilty under Section 302 I.P.C. Since the accused has been awarded life imprisonment under Section 304-B I.P.C. which is also the minimum punishment under Section 302 I.P.C., we are of the opinion that no prejudice would be caused to the accused appellant, if he is held guilty under Section 302 I.P.C. and is awarded the same punishment i.e. life imprisonment and Rs. 5,000/- as fine and in default of payment of fine, with two months further imprisonment to meet the ends of justice.

39. It is also evident that the entire evidence was led by the prosecution under Section 302 I.P.C. initially and, therefore, the full opportunity was extended to appellant side and the evidence which had been produced during trial was also put to him under Section 313 Cr.P.C., hence in holding the

accused appellant guilty under Section 302 I.P.C., no prejudice would be caused to him. We order accordingly.

40. The appellant is in the jail and he shall serve the sentence awarded to him.

41. This Appeal is accordingly dismissed.

42. Let a copy of this judgement be transmitted to the learned lower court for immediate compliance.

43. Sri Ravindra Sharma, learned Amicus Curiae shall be paid fee according to the rules of the court within one month from today.

(Dinesh Kumar Singh-I,J.) (Ramesh Sinha,J.)

Order Date:- 10.12.2018
A. Mandhani