

1 Criminal Appeal No.594/1999
(Hakamsingh and another Vs. State of M.P.)

HIGH COURT OF MADHYA PRADESH
BENCH INDORE

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

CRIMINAL APPEAL NO.594/1999

.....Appellants: Hakamsingh and another

Versus

.....Respondent : State of M.P.

Shri Brajendra Mishra, learned counsel for the appellants.
Shri Bhuwan Deshmukh, Public Prosecutor for respondent/State.

Date of hearing : 16/08/2018

Date of judgment : 21/08/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T
(21/08/2018)

This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 22-4-1999 passed by Additional Sessions Judge, Ujjain in S.T. No.434/1994, by which the appellants have been convicted under Sections 304-B, 498A and 201 of I.P.C. and have been sentenced to undergo the sentence of rigorous imprisonment of 7 years, 2 years and a fine of Rs. 500/- and 2 years and a fine of Rs. 200/- respectively, with default imprisonment.

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2. The necessary facts for the disposal of the present appeal in short are that on 3-7-1994, Pura, the Chowkidar of village Chirmiya gave an information to B.S. Parmar, SHO, police station Mahindpur to the effect that, the deceased Chandarbai, the wife of the appellant Hakam Singh had died, however, the reasons of her death, could not be ascertained. In the morning, the mother of the deceased was insisting that the father of the deceased should be called and the postmortem of the dead body should be done, but the appellants did not adhere to the request of the mother of the deceased and have performed the last rites. The deceased Chanderbai was not sick. Merg enquiry No.16/1994 was registered and the statements of Kamlabai, the mother of the deceased, Balu Singh, the father of the deceased and other witnesses were recorded. It was alleged by the mother of the deceased, that the deceased had injuries on her body and also asserted that the deceased did not die because of any ailment. It was also stated by Kamlabai, that the appellants, inspite of repeated demands, did not wait for the father of the deceased to come and also did not get the postmortem of the dead body of the deceased done and cremated the deceased in haste and accordingly, the police registered the F.I.R. in crime no.124/1994 against the appellants and Puralal for offence under Sections 304B, 498A and 201/34 of I.P.C. and after concluding the investigation, filed a charge sheet against the appellants and co-accused Puralal for offence under Sections 304B, 498A and 201/34 of I.P.C.

3. One complaint was also filed by the police under Section 176 of I.P.C. and the said case was also committed to the Sessions Court and the said case, i.e S.T. No.82/1998, was clubbed with the trial of S.T. No.434/1994.

4. The Trial Court framed charges under Sections 304B, 201 and 498A of I.P.C.

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5. The appellants and the co-accused Puralal abjured their guilt and pleaded not guilty.

6. The prosecution in order to prove its case, examined Pura (P.W.1), Harishchand (P.W.2), Kamla bai (P.W.3), Sunderbai (P.W.4), Ramibai (P.W.5), Mankunwarbai (P.W.6) Gathabai (P.W.7), Nanuram (P.W.8), Mangilal (P.W.9), B.B. Singh Parmar (P.W.10) and H.S. Kushwah (PW.11). The appellants examined Bahadur Singh (D.W.1) and Ram Singh (D.W.2) in their defence.

7. The Trial Court by judgment and sentence dated 22-4-1999, passed in S.T. No.434/1994, convicted the appellants for offence under Sections 498A, 304B and 201/34 of I.P.C. and acquitted the co-accused Puralal of all the charges. Since the acquittal of the co-accused Puralal has not been challenged, either by the prosecution or by the complainant, therefore, any reference to the co-accused Puralal, would be for considering the allegations against the appellants.

8. It is not out of place to mention here that the appellant no.2- Ambaram, died during the pendency of this appeal and his appeal has been dismissed as abated and his name has been deleted from the array of appellants in the cause title.

9. Challenging the conviction and sentence passed by the Court below, it is submitted by the Counsel for the appellants, that the prosecution has failed to prove that the deceased was ever maltreated by the appellants. The prosecution has also failed to prove that the marriage of the deceased had taken place with the appellant no.1 Hakam Singh, within 7 years of marriage. The prosecution has also failed to prove that the deceased was harassed by the appellants, soon before her death.

10. *Per contra*, it is submitted by the Counsel for the State that the prosecution has proved beyond reasonable doubt that the marriage of the deceased with the appellant no.1, took place within 7 years of her death. The deceased was harassed and

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maltreated by the appellants because of non-fulfillment of their demand of dowry and the deceased was treated with cruelty just soon before her death.

11. Heard the learned Counsel for the parties.

12. Pura (P.W.1), is the Chowkidar who had given information to the police. This witness has turned hostile and has also stated that he had never given the information to the police. Although this witness did not support the prosecution story, but surprisingly, he was not declared hostile by the prosecution. In cross examination by the appellants, it has been admitted by this witness, that the age of the deceased at the time of death was 20 years. The Supreme Court in the case of **Rajaram Vs. State of Rajasthan** reported in **2005 SCC (Cri) 1050** has held that in case the witness is not declared hostile by the prosecution, then the evidence of such witness would be binding on the prosecution.

13. Harishchand (P.W.2) was the Patwari of village Chirmiya. He had prepared the *Nazari Naksha*, Ex. P.1 and P.3. He has further proved the Khasra Panchsala as Ex. P.2.

14. Sunderbai (P.W.4) has also not supported the prosecution case and was declared hostile and although she was cross examined by the Public Prosecutor, but nothing could be elicited from her cross examination, which may support the prosecution case.

15. Ramibai (P.W.5) has also not supported the prosecution case and was declared hostile and although she was cross examined by the Public Prosecutor, but nothing could be elicited from her cross examination, which may support the prosecution case.

16. Mankunwar bai (P.W.6) has also not supported the prosecution case and was declared hostile and although she was cross examined by the Public Prosecutor, but nothing could be elicited from her cross examination, which may support the

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prosecution case.

17. Gathabai (P.W.7) has also not supported the prosecution case and was declared hostile and although she was cross examined by the Public Prosecutor, but nothing could be elicited from her cross examination, which may support the prosecution case.

18. Nanuram (P.W.8) has also not supported the prosecution case and was declared hostile and although he was cross examined by the Public Prosecutor, but nothing could be elicited from his cross examination, which may support the prosecution case.

19. Kamlabai (P.W.3) is the mother of the deceased. She has stated that the deceased was married to the appellant no.1, about 3 years back. The appellants were harassing her and were demanding Rs.10,000/- and 2 tolas of gold. This was told by the deceased, however, this witness could not satisfy the demand of the appellants and accordingly, she did not send the deceased to her matrimonial house. Thereafter, Puralal, Nanuram came to take the deceased back, but this witness initially, refused to send the deceased to her matrimonial house, but when they gave assurance to this witness, then the deceased was sent, however, she died within 14 days thereafter. In the morning at about 4 A.M., four persons came to her house and informed that the deceased has expired. Thereafter, this witness along with Sunderbai, Ramibai went to the house of the appellants, where they found that the deceased was lying dead and had injuries on her neck and the neck was moving freely on either side. Thereafter, she requested the appellants to get the postmortem of the dead body of the deceased done, however, they did not do so and cremated the dead body and thereafter they came back. She had also told about the demand of dowry to her husband and her mother-in-law Maina bai; unfortunately both have expired. This witness was

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cross examined and admitted that the deceased was married when she was aged about 15-16 years and she expired about 5-6 years after her marriage. She denied the suggestion that the deceased was married when she was aged about 9-10 years. Immediately after the marriage, the deceased had gone to her matrimonial house and thereafter, this witness brought her back as per rites and rituals. The deceased thereafter stayed in her parental home for a period of 3-4 years. The deceased was aged about 20-21 years, at the time of her death. She on her own also stated that about 2 years prior to her death, the deceased had gone to her matrimonial house where she had stayed for months together. She further admitted that no dowry was given at the time of marriage, as the same is never given as per the customs, however, now the grooms have started demanding dowry. She further admitted that no report was ever lodged by them with regard to demand of dowry. However, she further admitted that the dowry was demanded about 3 years back from the date of deposition. She further admitted that even after receiving the information about the death of the daughter, her husband did not go to the matrimonial house of the deceased, as he was suffering from fever and had stated that he would come at a later stage. She further admitted that when she reached the matrimonial house of the deceased, then she saw that 12-15 persons were sitting there. However, she denied the suggestion that she was told by them that the deceased had vomited before her death. She further admitted that she did not call her husband and other relatives. She further denied that the last rites of the deceased were performed by the villagers. She further stated that she had seen about 5-6 injuries on the body of the deceased, but could not specify the situs of those injuries. She further stated that the F.I.R. was lodged by Babu Singh who has expired, however, could not specify as to when such report was lodged. She further admitted

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that except Babu Singh, she did not inform anybody about the death of Chanderbai. She also could not clarify as to whether Babu Singh had informed anybody regarding lodging of the F.I.R. or not.

20. Mangilal (P.W.9) is the maternal uncle of the deceased. He had stated that the deceased was married about 11-12 years back. As the deceased was being maltreated by the appellants, because of non-fulfillment of their demand of Rs.10,000/- and 2 tolas of gold, therefore, the deceased was not sent to her matrimonial house. Thereafter, Nanuram and Puralal, after giving assurance, took the deceased to her matrimonial house, where she died 12 days thereafter. He further admitted that inspite of the receipt of the information regarding death of the deceased, he came back from the midway as there was a possibility of dispute. He has further stated that he was informed by the deceased about the maltreatment. In cross examination, this witness has stated that the deceased had died in the year 1994, however, could not specify as to when she was married. However, stated that the deceased was aged about 19 years at the time of marriage. He also could not specify as to when the deceased had come back from her matrimonial house. This witness has further stated that about 6 months prior to her death, he was informed by the deceased about maltreatment. He further admitted that neither any report was lodged, nor any notice was given in this regard. He further admitted that he did not lodge the report and also did not go to the matrimonial house of the deceased, even after coming to know about her death. He has further stated that when he started for coming to the matrimonial house of the deceased, then Balu Singh met with him while he was on his way and he informed that the deceased has expired and thereafter, he was informed by Kamlabai (P.W.3) about the death of Chanderbai. Babu Singh had met him at about 3:30-3:45 P.M., whereas

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Kamlabai (P.W.3) had met him about 15 minutes thereafter. He came to Narayan for lodging the report and went to Mahidpur. When they reached police station, it was already evening. They met with the T.I. and the report was written by T.I. They stayed in the village Baloda, but did not inform anybody about the incident.

21. B.B.S. Parmar (P.W.10) was posted as S.H.O., Police Station Mahidpur and had conducted the merg enquiry. He fairly conceded that nobody had lodged the report, however, while he was on patrolling, he was informed by Pura, Chowkidar about the incident and accordingly, he had registered the merg. He further admitted that he had not conducted any enquiry as to when the marriage had taken place.

22. Thus, if the evidence of Kamla bai (P.W.3) and Mangilal (P.W. 9) is considered in the light of evidence of B.B.S. Parmar (P.W.10), it is clear that the evidence of Kamlabai (P.W.3) and Mangilal (P.W.9) that the F.I.R. was lodged by Babu Singh, appears to be false. Even the prosecution has not placed on record any F.I.R./report lodged by Babu Singh. Thus, it is clear that the claim of the witnesses that Babu Singh, the father of the deceased had lodged a F.I.R is wrong. However, it is clear that the Chowkidar had already informed the police about the death of Chanderbai and the police had already registered the merg enquiry, therefore, non-lodging of the F.I.R. by father of the deceased, may not be of very importance, but it definitely indicates towards the fact that the parents of the deceased, might not be suspicious about the death of the deceased. Furthermore, Kamlabai (P.W.3) has stated that Babu Singh did not go to the matrimonial house of the deceased as he was suffering from fever, whereas Mangilal (P.W.9) has stated that while he was on his way to the matrimonial house of the deceased, he was told by Babu Singh that the deceased has expired. Thus, it is clear that although the parents of the deceased were aware of the death of

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Chanderbai, but inspite of that Babu Singh did not go to the matrimonial house and did not attend the last rites of the deceased.

23. Further, so far as the case of the prosecution that inspite of objection by Kamlabai (P.W.3) that the postmortem of the deceased should be performed, but still the last rites were performed is concerned, it is clear from the evidence of Kamla bai (P.W.3) that when she reached the matrimonial house of the deceased, she saw that 15-20 persons were sitting there and the dead body of the deceased was lying. Thus, it is clear that the appellants had informed their neighbours about the death of the deceased. Further, it is an admitted position that the parents of the deceased were informed by the appellants and they did not cremate the dead body, till the arrival of the parents of the deceased. Thus, it indicates towards the fact that there was no guilty consciousness on the part of the appellants, otherwise, they would have performed the last rites, even before the arrival of the parents of the deceased. Further, when the father of the deceased was aware of the death of the deceased, then it is surprising that he did not go to the matrimonial house of the deceased to see his daughter for the last time. Even Mangilal (P.W. 9) did not go to the matrimonial house of his niece even after getting the information about her death and claims to have returned back from the midway only on the apprehension that there might be a possibility of dispute. This conduct of Mangilal (P.W.9) cannot be said to be natural, because in fact there was no possibility of any dispute from the appellant side, unless and until certain objections are raised by the relatives of the deceased.

24. It is next contended by the Counsel for the appellant that the prosecution has failed to prove that as to when the marriage of the deceased took place with the appellant no.1 Hakam Singh. According to Kamlabai (P.W.3), the marriage of the deceased took

place when she was 15-16 years old, i.e. 6 years prior to her death, whereas Mangilal (P.W.9) has stated that the deceased was married to the appellant no.1 about 11-12 years back. Unfortunately, the Counsel for the appellant did not confront Kamlabai (P.W.3) with her case diary statement, in which she had stated that the deceased was married about 11-12 years back. Since, Kamla bai (P.W.3) has not been confronted with her case diary statement, therefore, the case diary statement of Kamla bai (P.W.3) cannot be taken into consideration. However, in absence of any specific evidence with regard to the fact as to when the marriage of the deceased took place, therefore, considering the evidence of Mangilal (P.W.9) that the deceased was married about 11-12 years back, this Court is of the considered opinion, that the prosecution has failed to prove that the marriage of the deceased took place within 7 years of marriage from the date of death, therefore, presumption under Section 113-B of Evidence cannot be drawn.

25. It is next contended by the Counsel for the appellants that the prosecution has failed to prove that the deceased was subjected to cruelty soon before her death. Once this Court has already come to a conclusion that the prosecution has failed to prove that the deceased was married within 7 years of marriage, therefore, the question of harassment or cruelty soon before her death, would not arise.

26. The Supreme Court in the case of **Bajinath and others Vs. State of Madhya Pradesh**, reported in **(2017) 1 SCC 101** has held as under :

(29) Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in

connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

(30) A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

(31) The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreased to gloss-over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

(32) This Court while often dwelling on the scope and purport of Section 304B of the Code and Section 113B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304B as in *Shindo Alias Sawinder Kaur and another Vs. State of Punjab* – (2011) 11 SCC 517 and echoed in *Rajeev Kumar Vs. State of Haryana* – (2013) 16 SCC 640. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to

cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao Vs. Yadla Srinivasa Rao – (2003) 1 SCC 217 to the effect that to attract the provision of Section 304 of the Code, 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”.

(33) Tested on the judicially adumbrated parameters as above, we are of the unhesitant opinion that the prosecution has failed to prove beyond reasonable doubt, cruelty or harassment to the deceased for or in connection with any demand for dowry as contemplated in either of the two provisions of the Code under which the accused persons had been charged. Noticeably, the alleged demand centers around a motorcycle, which as the evidence of the prosecution witnesses would evince, admittedly did not surface at the time of finalization of the marriage. PW-5, the mother of the deceased has even conceded that there was no dowry demand at that stage. According to her, when the husband (who is dead) had insisted for a motorcycle thereafter he was assured that he would be provided with the same, finances permitting. Noticeably again, the demand, as sought to be projected by the prosecution, if accepted to be true had lingered for almost two years. Yet admittedly, no complaint was made thereof to anyone, far less the police. Apart from the general allegations in the same tone ingeminated with parrot like similarity by the prosecution witnesses, the allegation of cruelty and harassment to the deceased is founded on the confidential communications by her to her parents in particular and is not supported by any other quarter.

The Supreme Court in the case of **Tarsem Singh Vs. State of Punjab** reported in **AIR 2008 SC 1454 = (2008) 16 SCC 155** has

held as under :

10. The materials on record are not sufficient to bring home the charges under Section 304B of the Indian Penal Code.

Section 304B of the Indian Penal Code reads as under:

"304B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The essential ingredients of the said offence are: (i) death of a woman must have been caused by any burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have been occurred within seven years of marriage (iii) soon before her death she was subjected to cruelty or harassment by her husband or relative of her husband; (iv) such cruelty or harassment must be in connection with the demand of dowry; and (v) such cruelty is shown to have been meted out to the woman soon before her death.

Explanation appended to Section 304B defines dowry to have the same meaning as contained in Section 2 of the Dowry Prohibition Act, 1961, which reads as under:

"2. Definition of 'dowry'.- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents 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) applied."

11. Parliament has inserted Section 113B in the Evidence Act, which reads as under:

"113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.-For the purposes of this section "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860)"

12. The necessity for insertion of the two provisions has been amply stated by the Law Commission of India in its 21st Report dated 10-8-1988 on "Dowry Deaths and Law Reform". Keeping in view the impediments in the pre-existing law in securing evidence to prove dowry-related deaths, the Parliament in its wisdom thought to insert a provision relating to presumption of dowry death on proof of certain essentials.

It is in this background that a provision of presumptive evidence by way of Section 113B in the Evidence Act has been inserted.

As per the definition of "dowry death" in Section 304B of IPC and the wording in the presumptive provision of Section 113B of the Evidence Act, one of the essential ingredients, amongst others, is that the 'woman' must have been "soon before her death" subjected to cruelty or harassment "for, or in connection with, the demand for dowry".

Presumption in terms of Section 113B is one of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be

raised only on proof of the following essentials:

(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 304B 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.

The Supreme Court in the case of **Bakshish Ram and another Vs. State of Punjab** reported in **(2013) 4 SCC 131** has held as under :

“16. The High Court, as a first Court of appeal, on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence. Mere reproduction of the assessment of trial Court may not be sufficient and in the absence of independent assessment by the High Court, its ultimate decision cannot be sustained. The same view has been reiterated by this Court in *Sakatar Singh v. State of Haryana* 2004 (11) SCC 291.

17. In *Arun Kumar Sharma v. State of Bihar* 2010 (1) SCC 108, while reiterating the above view, this Court held that: (SCC pp. 115-16, para 30)

“30....In its appellate jurisdiction all the facts were open to the High Court and, therefore, the High Court was expected to go deep into the evidence and, more particularly, the record as also the proved documents. Contrary to the above principle, we are satisfied that in the case on hand, the High Court failed to delve deep into the record of the case and the evidence of the witnesses. The role of the appellate Court in a criminal appeal is extremely important and all the questions of fact are open before the appellate Court. The said recourse has not been adopted by the High Court while confirming the judgment of the trial Court.

18. We have already noted Section 304B IPC and its essential ingredients. Section 113B of the Evidence Act is also relevant for the case in hand. Both Sections 304B and 113B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to compact the increasing menace of dowry deaths. Section 113B of the Evidence Act reads as under:

“113B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.’

Explanation.- For the purposes of this section, ‘dowry death’ shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)’

As per the definition of ‘dowry death’ in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been ‘soon before her death’ subjected to cruelty or harassment ‘for or in connection with the demand for dowry’. While considering these provisions, this Court in *M. Srinivasulu v. State of A.P.* 2007 (12) SCC 443 has observed thus: (SCC pp.446-47, para 8)

“8.... The presumption shall be raised only on proof of the following essentials:

(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. As discussed above, a perusal of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sibbo (PW-2) – mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellants, accidental death cannot be ruled out.

20. Another relevant aspect to be noted is that it was appellant No.1-husband of the deceased who took the deceased to the hospital and it was he who informed the police as well as parents of the deceased. It is also brought to our notice that he did not make any attempt to run away from the place of occurrence."

27. However, the next question for determination is that:-

“Whether the deceased was ever treated with cruelty or she was abetted by the appellants to commit suicide or not?”

28. Kamlabai (P.W.3) and Mangilal (P.W.9) have stated that the

appellants were demanding Rs.10000/- and 2 tolas of gold, therefore, they were harassing her. However, the prosecution has failed to prove beyond reasonable doubt that as to when such demand was made. The evidence led by the prosecution does not inspire confidence of this Court, as Kamla bai (P.W.3) has stated that during the period of last 2 years, the deceased had stayed in her matrimonial house on number of occasions for months together. Further, the mother, father and the maternal uncle of the deceased, did not lodge the F.I.R. at any point of time about the cruelty and surprisingly, they did not lodge the F.I.R. about the death of the deceased Chanderbai.

29. Thus, if the facts and circumstances of this case are considered, then it is clear that the death of the deceased took place after 7 years of marriage. The information with regard to the death of the deceased was given to the neighbourers as well as to the parents of the deceased. The appellants waited till the mother of the deceased arrived and did not cremated her dead body prior to arrival of her mother. The father of the deceased did not go to the matrimonial house of the deceased. Even the maternal uncle Mangilal (P.W.9) did not go the matrimonial house of the deceased. The mother, namely, Kamlabai (P.W.3), Babu Singh, the father of the deceased and Mangilal (P.W.9), the maternal uncle of the deceased, did not lodge the report with regard to the death of the deceased in other than normal circumstances. No report or complaint to even the elderly members of the society was ever made by the parents of the deceased with regard to the maltreatment by the appellants. The witnesses have also failed to point out as to when the deceased was treated with cruelty. There is nothing on record to show that the deceased was treated with cruelty soon before her death. There is nothing on record to corroborate the stand of Kamla bai (P.W.3) that she had ever demanded for postmortem of the dead body. The reasons for

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Babu Singh, the father of the deceased, for not going to the matrimonial house of the deceased, even after coming to know about the death of deceased have not been proved. The stand taken by Kamla bai (P.W.3) and Mangilal (P.W.9) in this regard are self contradictory in nature. The information of death of the deceased was timely given to her parents and even the neighbourers were informed by the appellants, which shows that the appellants did not have any guilty consciousness. Thus, considering the evidence which has been led by the prosecution, this Court is of the considered opinion, that the prosecution has failed to establish any charge against the appellants, beyond reasonable doubt, accordingly, they are acquitted of charge under Section 498-A, 304-B and 201/34 of I.P.C.

30. Resultantly, the judgment and sentence dated 22-4-1999 passed by Additional Sessions Judge, Ujjain in S.T. No. 434/1994 is hereby set aside.

31. The appellants are on bail. Their bail bonds and surety bonds stand discharged.

32. The appeal succeeds and is hereby **Allowed**.

(G.S. Ahluwalia)
Judge

Arun*

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(Hakamsingh and another Vs. State of M.P.)

HIGH COURT OF MADHYA PRADESH
BENCH INDORE

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

CRIMINAL APPEAL NO.594/1999

.....Appellants: Hakamsingh and another

Versus

.....Respondent : State of M.P.

Judgment post for 21/08/2018

(G.S. Ahluwalia)
Judge
20/08/2018