

**IN THE HIGH COURT OF MADHYA PRADESH****AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR****ON THE 3rd DAY OF APRIL, 2025****CRIMINAL APPEAL No. 67 OF 2000****SULTAN KHAN AND ANOTHER***Versus***STATE OF MADHYA PRADESH****Appearance:**

Shri S.K. Vyas, senior advocate with Shri Harshvardhan Pathak and Ms. Nivedita Sharma advocates for the appellants.

Shri Santosh Singh Thakur Public Prosecutor for respondent/State.

JUDGMENT

This criminal appeal under Section 374 of the Code of Criminal Procedure, 1973 is filed assailing the judgment of conviction and order of sentence dated 3.1.2000 passed by the learned Vth Additional Sessions Judge, District Ujjain in S.T. No. 55 of 1998, whereby appellants Sultan Khan and Niyaz Bi were convicted for offence punishable under Section 304 B of IPC and Section 498 A of IPC and were sentenced for rigorous imprisonment for 7 years each for both the offences as the offence punishable under Section 498A of IPC is minor offence comprised in the offence punishable under Section 304B of IPC

2 The exposition of facts, giving rise to the present appeal, is as under:-



a. It is undisputed that Sehraj Bi was married to Anwar Khan, son of accused Sultan Khan and Niyaz Bi, around two years before her death. Sehraj Bi died on 19.10.1997 at the residential house of the accused.

b. As per the case of prosecution, Allahuddin son of Chand Khan informed P.S. Ingoriya of District Ujjain on 19.10.1997 that Pankaj son of Manak has informed him that Sehraj Bi was daubing the mud at home. She suddenly fell down unconscious and died. The P.S. Ingoriya registered unnatural death intimation No. 21 of 1997. The dead body of Sehraj Bi was forwarded for postmortem examination. Dr. S.K. Shrivastava, on postmortem examination opined *vide* postmortem examination report (Ex.P-5) that Sehraj Bi has died due to cardio respiratory failure following suspected poisoning. Her viscera was preserved and forwarded for chemical analysis. The Scientific Officer of State Forensic Science Laboratory, Sagar *vide* report dated 21.1.1998 (Ex.P-1) opined that the viscera of deceased Sehraj Bi contains *organo chloro* insecticide *endosulfan*. The statements of relatives of deceased were recorded. They alleged that Sultan Khan and Niyaz Bi had harassed Sehraj Bi over demand of Rs. 25,000/- to purchase land. Sehraj Bi had committed suicide feeling distressed by the harassment. Gafuran Bi, mother of deceased submitted application dated 24.10.1997 (Ex.D-2) to SDO (P) Badnagar. P.S. Ingoriya registered FIR Ex. P- for offence punishable under Section 306 of IPC against Sultan Khan and Niyaz Bi. Sultan and Niyaz Bi were apprehended. The statements of witnesses were recorded. On completion of investigation, final report was submitted.



c. Learned Judicial Magistrate First Class, Badnagar committed the case for trial to the Court of Sessions *vide* order dated 10.2.1998. Learned Vth Additional Sessions Judge *vide* order dated 29.4.1998 framed charges for offence punishable under Section 304 B in the alternative Section 306 of IPC and Section 498 A of IPC against accused Sultan Khan and Niyaz Bi. After conclusion of trial and hearing both the parties, learned Vth Additional Sessions Judge, Ujjain convicted both the accused for offence punishable under Section 304 B of IPC and Section 498 A of IPC acquitting them from charge of offence punishable under Section 306 of IPC and sentenced them as stated in para 1 of the judgment.

3 Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 03.01.2000, present appeal is filed assailing the judgment on following grounds:-

(i) The impugned judgment is contrary to the law and facts on record.

(ii) Learned trial court committed error in not considering the fact that report is delayed by five days. The statement under Section 161 of Cr.P.C. were not recorded immediately after the incident.

(iii) Learned trial Court committed error in not considering the major contradiction and inconsistency in the evidence of prosecution witness. The witnesses are highly interested and inimical towards the appellants.

4 On these grounds, it is requested that appeal be allowed and the impugned judgment be set aside.

5 Learned counsel for the appellants, in addition to the grounds mentioned in the appeal memo submits that learned trial Court committed error in convicting the appellants on sole testimony of Gafuran Bi (PW-9), mother of deceased. There are material contradictions and



inconsistencies in the evidence of Gafuran Bi. The prosecution had failed to prove that Sehraj Bi died otherwise than in natural circumstances. There is no evidence regarding harassment over demand of dowry soon before her death. Therefore, offence punishable under Section 304 B or Section 498 A of IPC was not made out from the evidence on record.

6 *Per contra*, learned counsel for the State opposes the appeal by submitting that learned trial Court had convicted the appellants on the basis of evidence on record and given proper reasons for conclusion. The appeal is meritless.

7 Heard both the parties. Perused the record.

8 The Supreme Court in case of *Parvati Devi v. State of Bihar, (2022) 14 SCC 500*, held as under-

13. As can be seen from the aforesaid provision, for convicting the accused for an offence punishable under Section 304-BIPC, the following pre-requisites must be met:

- (i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;
- (ii) that such a death must have occurred within a period of seven years of her marriage;
- (iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and
- (iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

16. In *Maya Devi v. State of Haryana* [*Maya Devi v. State of Haryana, (2015) 17 SCC 405 : (2018) 1 SCC (Cri) 768*], it was held that :

“23. To attract the provisions of Section 304-B, 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 or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304-BIPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by



the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. 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.” [Also refer to G.V. Siddaramesh v. State of Karnataka[G.V. Siddaramesh v.State of Karnataka, (2010) 3 SCC 152 : (2010) 2 SCC (Cri) 19] andAshok Kumary.State of Haryana[Ashok Kumar v.State of Haryana, (2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] .]

17. Section 304-B IPC read in conjunction with Section 113-B of the Evidence Act leaves no manner of doubt that once the prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, soon before her death, the court shall proceed on a presumption that the persons who have subjected her to cruelty or harassment in connection with the demand for dowry, have caused a dowry death within the meaning of Section 304-B IPC. The said presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of Section 304-B IPC have not been satisfied.

9 The points for determination in the present appeal are as under:-

1. Whether Sehraj Bi had died within 7 years of her marriage and her death has occurred otherwise than under normal circumstances?
2. Whether accused Sultan Khan and Niyaz Bi had subjected their daughter-in-law Sehraj Bi to cruelty or harassment for or in connection with demand of dowry soon before her death?

POINT FOR DETERMINATION No.1 - REASONS FOR CONCLUSION

10 Gafuran Bi (PW-9) mother of deceased, Hamid (PW-10) and Mohd. Hussain (PW-11) brothers of deceased, Bashir (PW-12) father of deceased have stated that Sehraj Bi was married to Anwar Khan, son of accused, Sultan Khan and Niyaz Bi, two years prior to her death, the accused did not challenge this fact, therefore, the prosecution has proved beyond doubt that Sehraj Bi had died within two years of her marriage with Anwar Khan son of appellants. Appellant Sultan Khan his father-in-law of Sehraj Bi and appellant Niyaz Bi is mother-in-law of Sehraj Bi.



11 Sub Inspector Lal Singh Yadav (PW-7) deposed that on 19.10.1997 around 17:30 hours, Allahuddin son of Chand Khan reported that Sehraj Bi aged around 18 years has died. He registered unnatural death intimation (Ex.P-7) and informed SDO (P) Badnagar. The SDO (P) Raghuvir Singh (PW-13) deposed that during inquest of unnatural death intimation No. 21 of 1997, he prepared *Panchanama* (Ex.P-3) of dead body of Sehraj Bi and forwarded it for postmortem examination. Chandra Kumar (PW-3) and Ahmad Khan (PW-4) corroborated the *Panchanama* (Ex.P-3).

12 Senior Scientific Officer, Prakash Chand Dube (PW-8) deposed that he had examined the scene of crime on 19.10.1997 around 20:00 hours. The dead body of Sehraj Bi was placed on a cot. Her lips were light blue coloured. There was no traces of vomit or poisonous substance on the spot of incident. The spot of the incident was found to be disturbed. It was informed that the young lady did not have any disease or ailment. She suddenly fell unconscious and died, therefore, death was suspicious.

13 Dr. M.K. Pancholi (PW-5) deposed that he, alongwith Dr. S.K. Shrivastava, Dr. Sandhya Pancholi conducted postmortem examination of Sehraj Bi wife of Anwar Khan at Civil Hospital, Badnagar on 20.10.1997. It was opinion of the Panel that Sehraj Bi has died due to cardio-respiratory arrest. Her viscera was preserved for chemical analysis to ascertain the reason of death. Constable Ram Singh (PW-6) deposed that he has taken the container containing the viscera and content of stomach from civil hospital and deposited at Police station, Ingoriya which was seized *vide* seizure memo(Ex.P-1). The investigation officer Raghuvir Singh (PW-13) stated that he had forwarded the viscera for chemical analysis through the office of the Superintendent of Police. This



evidence remained un rebutted. As per chemical analysis report dated 21.1.1998, the Senior Scientific Officer on examination of viscera of Sehraj Bi, forwarded by P.S. Ingoriya in relation to crime No. 21 of 1997, opined that the viscera contains *organo chloro* insecticide *endosulfan*. Thus, it is proved beyond doubt that Sehraj Bi had consumed endosulfan insecticide which ultimately resulted in her death by cardio-respiratory arrest.

14 Learned counsel relying on the judgment of Division Bench of the High Court Madhya Pradesh in the case of *Neeraj Vs. State of M.P., 1991 Cri.L.J. 2549* contends that the contents of chemical analysis report (Ex.C-1) were not put to the accused in their examination under Section 311 of Cr.P.C., therefore, the same cannot be relied on for convicting the accused.

15 The chemical analysis report of the Scientific Officer, State Forensic Science Laboratory, Sagar was produced before the trial Court on 24.8.1998. A copy of report was given to learned counsel for the accused on same day and it was exhibited as Ex. C-1 in presence of learned counsel for the accused. Thereafter, all the prosecution witnesses were examined. There was no request by the accused, assailing the opinion of the Scientific Officer, to call him for the evidence. The accused were aware of the contents of chemical analysis report and opted not to assail it during trial. In view of this factual scenario, there appears to be no prejudice to the accused merely for the reason that the contents of chemical analysis report (Ex.C-1) were not put to them during examination under Section 313 of Cr.P.C. (*Nar singh Vs. State of Haryana 2015 Cr.L.J. 576; Paramjit Singh Vs. State of Uttarakhand (2010) 10 SCC 439* relied)

16 In view of above discussion, it is apparent that learned trial Court has committed no error in concluding that Sehraj Bi had died within two



years of her marriage and her death had occurred otherwise than under normal circumstances.

POINT FOR DETERMINATION No. 2- REASONS FOR CONCLUSION

17 Gafuran Bi (PW-9) mother of deceased Sehraj Bi deposed that Sehraj Bi went to her matrimonial home at village Paldona after marriage. She used to visit her. Sehraj Bi came to her house in the month of Chaitra. She stayed with her for a month. Sultan Khan, father-in-law of Sehraj came to take her back. Sultan Khan demanded Rs. 45,000/- to purchase land. She had given Rs. 20,000/- to Sultan Khan and promised to pay Rs. 25,000/- after harvesting the crop of Soyabean. Gafuran Bi (PW-9) alleged that Sultan Khan had demanded money to purchase land as they did not pay the dowry.

18 Gafuran Bi (PW-9) stated that her son Yusuf and his wife Munni Bai were at her home when she had paid Rs. 20,000/- to Sultan. A month after this incident, Sehraj Bi came to her house and told her that her father-in-law, Sultan Khan and mother-in-law, Niyaz Bi are harassing her over the remaining amount of Rs. 25,000/-. She was distressed. Her sister-in-law (Munni) consoled her and sent her back. Sehraj Bi came to her house and demanded the money twice thereafter but she was consoled and sent back. Hamid her brother had also went to meet her.

19 Munni Bi and Yusuf were not examined before the trial Court. Thus, the evidence of Gafuran Bi (PW-9) remained uncorroborated that she paid Rs. 20,000/- to Sultan Khan in presence of Yusuf and Munni Bi.

20 As per written complaint (Ex.D-2), Sehraj Bi had informed her friend Lata Bai with regard to harassment and demand of money by Sultan Khan. Gafuran Bi (PW-9) in cross-examination paras 20, 21, 22 and 23 had stated that Sehraj Bi had first informed her friend Lata. Lata



informed her that Sehraj Bi is harassed at her matrimonial home. Lata was not examined before the trial Court.

21. Hamid (PW-10), brother of deceased, deposed that Sehraj Bi came to their house six months after her marriage and informed that her father-in-law desires to purchase land and demanded Rs. 45,000/-. When Sultan Khan, father-in-law of his sister, came to take her back, they had paid Rs. 20,000/- to him and promised to pay Rs. 25,000/- after harvesting crop of Soyabean. Sehraj Bi went back with her father-in-law after taking Rs. 20,000/-. After four months, Sehraj Bi came to her mother and asked for the remaining Rs. 25,000/- and told that she is harassed by her father-in-law and mother-in-law for remaining amount. She complained that her father-in-law and mother-in-law are scolding her and threatening to divorce her. They consoled Sehraj Bi and sent her back to her matrimonial home. Hamid (PW-10) further deposed that he went to house of Sehraj Bi 2-3 months after her visit. Sehraj Bi again complained that her father-in-law and mother-in-law are pressurizing her for Rs. 25,000/-. She may consume poison and die. His sister died around 15 days thereafter.

22 The cross-examination of Hamid (PW-10) reveals that the statement regarding his visit to matrimonial home of Sehraj Bi is an exaggeration. In cross-examination para 7, Hamid stated that he did not inform his mother or police with regard to conversation with Sehraj Bi at her home. In para 11, Hamid specifically stated that his sister used to tell her mother and the mother thereafter told him about his sister. His sister never told him that her father-in-law and mother-in-law are demanding money. Whatever he had stated is based on information given by his mother. It goes to show that Hamid (PW-10) is a hearsay witness. He has



alleged the harassment by accused on information given by his mother Gafuran Bi.

23 Hamid (PW-10) in cross-examination paras 8, 11 and 12 stated that they have never made a complaint to police that his sister is being harassed for money. He never confronted husband or father-in-law of Sehraj Bi with regard to demand of money and harassment of his sister. He had never spoken to them in this regard. These statements in cross-examination of Hamid (PW-10) cast serious doubt on the veracity of allegations made by him in his examination-in-chief. Thus, evidence of Hamid (PW-10) regarding harassment by accused for money is not credible.

24 Gafuran Bi PW-9, in para 10 and 17 of her evidence, specifically stated that her husband Bashir Khan and son Mohd. Hussain was not aware of the harassment suffered by her daughter Sehraj Bi. They were informed after death of Sehraj Bi.

25 Mohd. Hussain (PW-11), brother of deceased, deposed that he lives with his father separately from his mother. When his sister visited mother, she informed that she is harassed at matrimonial home on demand of money. Her father-in-law and mother-in-law are demanding Rs. 45,000/-. His mother had paid Rs. 20,000/- to Sultan Khan and promised payment of Rs. 25,000/- after harvesting soyabean crop. The evidence of Mohd. Hussain is materially inconsistent with his previous statement (Ex.D-1). No such allegation is contained in his previous statement (Ex.D-1). Mohd. Hussain attempted to explain that he was distressed due to death of his sister, therefore, he could not state in his previous statement about demand of Rs. 45,000/-. In cross-examination para 9, Mohd. Hussain (PW-11) specifically stated that Rs. 25,000/- were not paid in his presence. When his sister boarded the bus, he came to know that Rs.



20,000/- have been given. Thereafter, he could not meet his sister. After death of his sister, his mother had informed about demand of Rs. 45,000/-.

26 Bashir Khan (PW-12), father of deceased Sehraj Bi, deposed that he came to know about death of Sehraj Bi at her matrimonial home in village Paldona. Sultan Khan threatened him to depose correctly. He came to know that Sehraj Bi is killed by poisoning. He is not aware why she was killed.

27 Chandra Kumar (PW-3), neighbour of Sehraj Bi, deposed that Sehraj Bi used to live in front of his house. He had never seen any quarrel of Sehraj Bi with Sultan or other family members. Ahmad Khan (PW-4), uncle of Sehraj Bi and witness of the Panchanama proceeding (Ex.P-3), deposed that he lives in the neighbourhood of Sehraj Bi at village Paldona. He used to visit her matrimonial home. He had never seen any quarrel or heard about the demand of dowry.

28 In view of the above discussion, it is apparent that the prosecution mainly relies on the evidence of Gafuran Bi. Learned trial court also convicted the appellants relying on the evidence of Gafuran Bi (PW-9).

29 Now it is for consideration, whether the solitary evidence of Gafuran Bi (PW-9) is trustworthy?

30 The Supreme Court in the case of *Mahendra Singh and Others Vs. State of Madhya Pradesh (2022) 7 SCC 157*, while considering the appreciation of oral testimony of a witness referred to the dictum of law in *Vadivelu Thevar Vs. State of Madras AIR 1957 SC 614* and observed as under :

12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in the case of *Vadivelu Thevar (supra)*:

“*II.* ... Hence, in our opinion, it is a sound and well established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or



disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

13. It could thus be seen that this Court has found that witnesses are of three types, viz., (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the Court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the Court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

31 The Supreme Court in the case of *Sharad Birdichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116* deliberated upon psychology of the related witness and held as under :-

48. Before discussing the evidence of the witnesses we might mention a few preliminary remarks against the background of which the oral statements are to be considered. All persons to whom the oral statements are said to have been made by Manju when she visited Beed for the last time, are close relatives and friends of the deceased. In view of the close relationship and affection any person in the position of the witness would naturally have a tendency to exaggerate or add facts which may not have been stated to them at all. Not that is done consciously but even unconsciously the love and affection for the deceased would create a psychological hatred against the supposed murderer and, therefore, the court has to examine such evidence with very great care and caution. Even if the witnesses were speaking a part of the truth or perhaps the whole of it, they would be guided by a spirit of revenge or nemesis against the accused person and in this process certain facts which may not or could not have been stated may be imagined to have been stated unconsciously by the witnesses in order to see that the offender is punished. This is human psychology and no one can help it.



32 In the case of *Rai Sandeep Vs. State (NCT Delhi) (2012) 8 SCC 21*

the Supreme Court explained the terms “sterling witness” as under :-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a ‘sterling witness’ whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

33 The dismay, pain and agony of Gafuran Bi for loss of her young daughter can be inferred. Initially, she did not make any complaint immediately on death of her daughter, but after five days, instead of lodging of FIR, she submitted a written complaint (Ex.D-2), prepared by a lawyer, with the SDO(P) Badnagar that too after the statements during inquest. In para 29, Gafuran Bi (PW-9) stated that she demanded return of money from the accused after death of her daughter but they declined. In



view of these circumstances, the inconsistency in evidence of Gafuran Bi assumes significance.

34 There are material inconsistencies in the evidence of Gafuran Bi (PW-9) with reference to her earlier statements and the written report (Ex.P-2), regarding the amount paid and demanded, the time of payment of the money and the visit of her daughter Sehraj Bi complaining about harassment for money by the accused. The trial Court dismissed the defence contentions, citing human memory's fragility and Gafuran Bi's status as a rustic villager. The reasons assigned by the trial Court are not acceptable and appropriate since Gafuran Bi had made specific statement with regard to payment of Rs. 25,000/- in month of *Ashadh* in written complaint (Ex.D-2). Later, all the relatives of Sehraj Bi including Gafuran Bi have deposed that Rs. 20,000/- were paid in month of *Ashadh*, remaining amount of Rs. 25,000/- was to be paid after harvesting soyabean crops. Gafuran Bi (PW-9) deposed that her daughter had visited her for first time after six months of marriage, whereas, the month of *Ashadh* fell after three months of her marriage.

35 The investigation officer Raghuvveer Singh (PW-13) stated that he conducted *Panchnama* (Ex.P-3) in presence of Panch witness of the dead body of Sehraj Bi. During inquest proceeding, he recorded statements of Mohd. Hussain, Sultan Khan, Bizan, Niyaz Bi, Anwar Khan, Mahboob Khan and Ajij Khan. On 24.10.1997, Gafuran Bi submitted an application (Ex.D-2). He recorded statement of Gafuran Bi, Lata Bai, Amit, Hasina Bai and Munni and thereafter registered FIR (Ex. P-9). Constable Manohar (PW-2) stated that parents of the deceased and brother Hussain were present at the time of *Panchanama* and postmortem. Chandra Kumar (PW-3) and Ahmad (PW-4) deposed that parents and brother of deceased Sehraj Bi were present at the time of her final rites.



36 Learned counsel for the appellants strenuously contended that the statements of witness recorded under Section 174 of Cr.P.C. during the inquest proceeding were deliberately suppressed in trial. Learned counsel referred to the order dated 10.12.1997 passed by learned Sessions Judge, Ujjain (Ex.D-4) to contend that the appellants were granted anticipatory bail because during inquest proceeding, the parents and brother of deceased in their statement on 20.10.1997 suspected none and have expressed that there was no issue at matrimonial home of Sehraj Bi.

37 Thus, the relatives of Sehraj Bi were present at the time of autopsy and final rites. They did not make any complaint regarding harassment or demand of money by father-in-law or mother-in-law of Sehraj Bi. They did not allege harassment for money in the inquest statements. The allegations were first made in the written complaint dated 24.10.1997 submitted by Gafuran Bi to SDO (P) Badnagar. In view of the aforesaid factual scenario, the possibility cannot be ruled out that the allegation of harassment for money was made after premeditation and consultation. It creates doubt on veracity of the allegations.

38 Gafuran Bi PW-9, in cross-examination in para 28 and 29 stated that her daughter asked for money to purchase land. Her daughter told her that she and her husband desire to live separate from her in-laws. They will purchase land and live peacefully. This indicates a different aspect of the allegations concerning the demand for funds. The possibility cannot be ruled out that Sehraj Bi desired to live separate from her in-laws and wanted to purchase land, so she was pressing her mother to provide money. It is pertinent to note that no allegation is ever made against husband of Sehraj Bi. Further, Gafuran Bi had stated that she had paid Rs. 20,000/- to Sultan Khan by hands of Sehraj Bi but there is no positive evidence that Sultan Khan had ever demanded the money directly from



Gafuran Bi or other relatives. None of the witnesses had stated that they confronted Sultan Khan or Niyaz Bi regarding demand of money. Learned trial Court brushed away this material circumstance lightly on the ground that Gafuran Bi is rustic villager, therefore, on such statement her evidence cannot be discarded.

39 Gafuran Bi (PW-9) deposed that Sehraj Bi came to her for last time around 25 days before her death. Hamid (PW-10) had stated that he visited matrimonial home of his sister fifteen days before her death when she complained about harassment by the accused, but this statement was found to be unworthy of credence in earlier discussion at para 21 of the judgment. Thus, the evidence on record shows that the deceased had met her relatives, specially, mother Gafuran Bi almost a month before her death. When she was promised payment of the remaining amount after harvesting soyabean crops. There is no evidence on record that the crop of soyabean was harvested any time before death of Sehraj Bi. The prosecution has failed to present the circumstances which prompted, triggered or compelled Sehraj Bi to consume poison. There is no evidence of communication of Sehraj Bi with her mother or other relatives soon before her death in this regard. Therefore, the live and proximate link between the demand of money by the accused and the death of Sehraj Bi was not established by the prosecution.

40 In view of above discussion, the sole testimony of Gafuran Bi is not fully reliable and trustworthy, therefore, corroboration in material particulars was needed. The appreciation of evidence on record manifests that Hamid (PW-10), Mohd. Hussain (PW-11) and Bashir (PW-12) are hearsay witness. Other witness and circumstances do not corroborate testimony of Gafuran Bi. Learned trial Court committed an error in relying on uncorroborated testimony of Gafuran Bi to conclude that



Sultan Khan and Niyaz Bi had harassed Sehraj Bi for money. Prosecution had failed to establish the foundational facts that Sehraj Bi was subjected to harassment and cruelty by Sultan Khan and Niyaz Bi for or in relation to demand of dowry soon before her death. Consequently, learned trial Court committed error in convicting the accused Sultan Khan and Niyaz Bi for offences punishable under Section 304 B and 498 A of IPC.

41 Thus, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 03.01.2000 passed by the learned Vth Additional Sessions Judge, District Ujjain in S.T. No. 55 of 1998 is set aside. The appellants-Sultan Khan and Niyaz Bi are acquitted of the charges of aforesaid offences. They shall be set at liberty forthwith. Their personal bond and surety bond stand discharged. The accused/appellants shall be entitled for remittance of fine amount, if deposited. The order of trial court with regard to disposal of property is affirmed.

42 A copy of this judgment be forwarded to the trial Court alongwith the original record forthwith.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE