

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR**

Case No.	Criminal Appeal No.799/1994
Parties Name	<i>Revatibai and others</i> vs. <i>State of Madhya Pradesh</i>
Date of Judgment	04/07/2019
Bench Constituted	Justice Sujoy Paul Justice B.K. Shrivastava
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Appellants: Shri S.C. Datt, Senior Advocate with Shri Siddharth Datt. Respondent: Shri Vrindawan Tiwari, Government Advocate.
Law laid down	<p>1. Section 164 Cr.P.C – Statement of doctor as witness cannot be discredited on the ground that it is not in accordance with opinion expressed in the medical jurisprudence books. Moreso, when relevant passage of the book was not brought to the notice of the Doctor while deposing the statement. Thus conviction of accused on this ground is not legally sustainable. <i>(Bhagwan Das and another vs. State of Rajasthan, AIR 1957 SC 589)</i> and <i>(State of Madhya Pradesh Vs. Sanjay Rai , (2004) 10 SCC 570)</i> relied on.</p> <p>2. Nature of death – Determination – There was bleeding from Nostrils and there was protruding of tongue. The blisters were also found on the body of deceased. Symptoms and injuries of this nature shows that the nature of death was homicidal in nature. The death of the deceased cannot be treated as a natural</p>

death by any process of reasoning or by any stretch of imagination. (*Mulak Raj & Others vs. State of Haryana , (1996) 7 SCC 308*) relied on.

3. Section 106 of Evidence Act – The burden to establish any fact which is specially within the knowledge of any person/accused, is cast on the person concerned/accused and if he fails to establish or explains those facts, an adverse inference of fact may arise against him. *Held* – The governing principle is that when an incriminating circumstance is put to the accused and the accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. (*See: Collector of Customs Vs. D. Bhoormal , (1974) 2 SCC 544*).

4. Section 106 of Evidence Act – The prosecution established the entire chain of events because of which deceased died. The missing link as projected by the appellants was the reason of death. Missing link of chain of circumstances is also established because the appellants did not offer any explanation regarding injuries and cause of death of deceased in their S.313 of Cr.P.C. statement . Hence, the appellants must be held guilty under Section 302 of IPC. *Anjanappa vs. State of Karnataka, (2014) 2 SCC 776* relied on

5. Murder in dwelling house – Last seen together – Where allegation against the accused is regarding murder of his wife and prosecution has established the fact that shortly before the commission of crime, they were seen together or the offence has taken place in the dwelling home where husband also

normally resided, it has been consistently held that if the accused does not offer any explanation, how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. *(See - Trimukh Maroti Kirkan Vs. State of Maharashtra, (2006)10 SCC 681)*

6. Ingredients of Section 304-B IPC – The following ingredients are to be satisfied – (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband, and (iv) such cruelty or harassment must be in connection with the demand of dowry.

7. Ss. 113-A & 113-B of Evidence Act – Difference – The words "shown" and "deemed" employed in Section 304-B of IPC should be read as "proved" and "presumed" respectively. It was held that difference between Sections 113-A and 113-B of evidence act were marked and it was held that Section 113-A confers a discretion on a Court to draw presumption in case of suicide, Section 113-B mandatorily requires the Court to draw an adverse inference presuming guilt of accused in a case of dowry death. *(Sher Singh Vs. State of Haryana , (2015) 3 SCC 724) relied on.*

8. Section 2 of the Dowry Prohibition Act-any money or property or valuable security demanded by any of the persons at or before or at any time after the marriage which is reasonably connected to the death of a married woman, would

	necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise. (<i>Rajinder Singh vs. State of Punjab (2015) 6 SCC 477</i>) relied on.
Significant paragraph numbers	16, 20, 23, 24, 33, 36, 37, 40

J U D G M E N T
(04/07/2019)

Per Sujoy Paul, J.

This criminal appeal filed under Section 374(2) of the Code of Criminal Procedure(Cr.P.C.) is directed against the judgment dated 07.07.1994 passed in Sessions Trial No.145/1993 by learned First Additional Sessions Judge, Shahdol. The particulars of the offences and sentence imposed upon the appellants are as under:

CONVICTION	SENTENCE
U/s 302/34 IPC	Imprisonment for life and fine of Rs.100/-. In default S.I. for one month.
U/s 304-B/34 IPC	RI for 10 years and the fine of Rs.100/-. In default SI for one month.
U/s 498A IPC	RI for 3 years and fine of Rs.100/-. In default SI for one month.
U/s 201 IPC	RI for 3 years and fine of Rs.100/-. In default SI for one month.
Appellant No.2 Ramdayal is also convicted U/s 203 IPC	RI for 2 years and fine of Rs.100/-. In default SI for one month.

The substantive sentences were directed to run concurrently.

2. Draped in brevity, the case of prosecution is that in the year 1990, marriage of deceased Uma Bai was solemnized with accused Shankardayal (appellant No.3). Uma Bai had studied upto Class IV. After marriage, she remained in the house of in-laws for about six

months and; thereafter, whenever she came to her parental house, she informed that her mother-in-law does not provide her food and water. They do not permit her to meet her husband Shankardayal and made her to sleep outside the house. The mother-in-law and brother-in-law used to assault her. Ramdayal (appellant No.2) twice visited the parents of Uma Bai and demanded Rs.25,000/- on the pretext that he does not have any source of livelihood. Shankardayal once visited in-laws house and demanded certain materials. Around one and half year before the date of incident, Uma Bai was taken to her parental house by mother-in-law Revatibai because of demand of money was not fulfilled by the parents of Uma Bai. The altercations during this visit were heard by neighbourer Domari Kumhar and Patia Kumhar. They also noticed the burning marks on the face of Uma Bai.

3. Uma Bai informed her parents that all the accused used to beat her for demand of money. They called her insane, made to sit in front of "Lobhan Dhuni". She was not permitted even to meet with the neighbourers. The father-in-law of his Uma Bai, died after the marriage. After getting this information of death, brother of Uma Bai, Harkishan had taken Uma Bai to her in-laws' house alongwith one Gendlal. Uma Bai informed Gendlal also about the demand of Rs.25,000/- by accused persons and their act of beating as stated hereinabove. Revatibai demanded Rs.25,000/- in front of Harkishan and stated that if he is not ready with the said amount, he may take back Uma Bai to her parental house. Upon receiving assurance from Harkishan that demanded amount shall be paid before the festival of Rakshabandhan, accused persons permitted Uma Bai to stay with them. Uma Bai died on 20.07.1993. Her body was found hanging with a sari/dhoti. Revatibai called Ramdayal and neighbourers. Accused Shankardayal on the said date went to Garasarai at around 8.00 a.m. Ramdayal informed Police Station, Karanpathar about the incident of

hanging of Uma Bai. In turn, *marg* intimation Exhibit P/1 was recorded. Sub Inspector Saleem Tigga (PW/16) visited the spot on the same date and; in the presence of witnesses, the dead body of Uma Bai was removed from hanging position and was taken for medical examination. Upon receiving information, brother of Uma Bai, Govind Prasad Chouksey(PW/5) lodged a written report dated 23.07.1993 to Police Station Incharge Benibari. After recording statements of witnesses under Section 174 on 29.07.1993, Crime No.42/93 was registered alleging offences under Section 302/201 IPC against the accused persons. As per prosecution story, Uma Bai sent two letters from in-laws house to parental house. Accused Ramdayal also wrote a letter to his in-laws. These three letters were seized from Ramkishan by police on 13.08.1993. The accused persons were arrested. The viscera of deceased was sent for chemical examination. After completion of investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Rajendragram and; in turn, it was committed to the Court of Session for trial.

4. The accused persons abjured the guilt. In their statements recorded under Section 313 Cr.P.C., they denied the allegations and story of prosecution and stated that Uma Bai was under '*pretbadha*' influence of evil spirits. After her treatment, she was sent to her parental house. She remained there for five-six months. After receiving information of death of her father-in-law, she came back to husband's house. On the date of incident, Revatibai was attending a function at neighbour Kunjbihari's house. Since Uma Bai was unwell, she did not go to attend the said function. When Revatibai came back at around 1:00 p.m. from Kunjbihari's house, she found Uma Bai was hanging in one room of the house. She shouted and called the villagers. Appellant Ramdayal was in the house and Shankardayal was in Garasarai.

5. The Court below framed five questions which required determination and answered the same against the appellants. The appellants were held guilty of offences mentioned herein above.

6. Shri S.C. Datt, learned senior counsel for the appellants submits that marriage of Uma Bai had taken place in the year 1990. The date of incident is 20.07.1993. The FIR was registered on 29.07.1993. The first contention of Shri Datt is that the court below has erred in holding that appellants are guilty under Section 302 IPC. By taking this Court to the statement of PW/8 Dr. Premkumar Mahor, it is argued that the expert witness clearly deposed that reason of death of Uma Bai cannot be stated with certainty.

7. The Court below relied upon a book namely; 'Medical Jurisprudence and Toxicology' and on the strength of this book opined that appellants are guilty of offence under Section 302 IPC. The appellants urged that in view of specific medical evidence, passage from the book of Medical Jurisprudence could not have been a reason to convict the appellants. Reliance is placed on **AIR 1957 SC 589** (*Bhagwan Das and another vs. State of Rajasthan*).

8. The argument of appellants is also based on 'Modi's Jurisprudence' (25th Edition) wherein the learned author has mentioned about the symptoms of strangulation other than hanging. The aspect of ligature mark on the neck in cases of hanging. Lyon's Medical Jurisprudence (10th Edition page 358) was relied upon to urge that normally in cases of strangulation, three aspects viz. (i) ligature mark; (ii) fingers or (iii) *bansjoda* (a pair of stick) are found. In the instant case, none of these three were found on the person of deceased Uma Bai. A chart mentioned at page 510 of Modi's Jurisprudence (Supra) is referred wherein the symptoms of hanging and

strangulation are mentioned in juxtaposition. In the statement of PW/8, it was mentioned that on the cheek of deceased, saliva was found flowing. It is urged that it is one of the symptom of hanging. Ancillary argument of learned senior counsel is that relevant passage of medical jurisprudence was not put to the Doctor (PW/8) during cross-examination, nor this was put by the Court by exercising powers under Section 165 of the Evidence Act. Thus, in view of any specific deposition by the doctor, the offence under Section 302 could not be established. The findings of court below are based on conjectures and surmises and not on the evidence on record. Thus, as per the appellants, findings in relation to offence under Section 302 of IPC must be interfered with.

9. The next attack of Shri S.C. Datt, learned senior counsel is on the findings of court below whereby offence under Section 304-B of IPC was found to be proved. By taking this Court to the said provision, it is submitted that unless the death is shown to be an unnatural death, the provision is not attracted. Reliance is placed on **AIR 1991 SC 1142 (*Akula Ravinder and others vs. State of Andhra Pradesh*)**. The charges framed by the Court below were relied upon to submit that said charges could not be established by prosecution beyond reasonable doubt. Coming back to the language employed in Section 304-B IPC, it is submitted that prosecution has miserably failed to establish that soon before the death of Uma Bai, she was subjected to cruelty or harassment by her husband or relatives of her husband. Similarly, the prosecution could not establish any live link between cruelty/harassment and demand of dowry. Learned senior counsel submits that necessary ingredients for attracting Section 304-B are totally missing. No cruelty caused to deceased soon before her death in relation to any demand of dowry could not be established. **AIR 2006 SC 680 (*Harjit Singh vs. State of Punjab*)** is relied upon

for this purpose.

10. Furthermore, it is argued that statement of brother of deceased PW/3 is vague in nature. It could not be established that demand of money falls within the ambit of 'dowry'. The deceased admittedly stayed in her parents' house for about one and half years. The other prosecution witness PW/4's deposition could not establish that alleged demand was made soon before the death of Uma Bai. The delay in recording the statement under Section 161 Cr.P.C. (9 days) is fatal. Statement of PW/5 (Brother of deceased) was relied upon in juxtaposition to the statement recorded under Section 161 Cr.P.C. to bolster the argument that there exists a material contradiction in the statements. This witness has improved a lot while deposing before the court. PW/6 (brother of accused) could not establish whether demand of money will fall within the ambit of 'dowry'. This statement shows that money was demanded for employment/business. Thus, this demand is not covered in the definition of 'dowry' and therefore Section 304-B IPC cannot be pressed into service. **AIR 2007 SC 763 (*Appasaheb and another vs. State of Maharashtra*)** was referred for this purpose. Learned senior counsel has taken pains to take this Court to the statements of PW/7, PW/11, PW/13 (Constable) and PW/15 Makhanlal. The argument advanced is that on the basis of these statements, neither offence under Section 302 nor under Section 304B could be established. PW/16 stated that while hanging, the head of Uma Bai was tilted towards left side. This is also one of the symptoms in cases of hanging.

11. The vague and general allegations cannot be reason to hold the appellants as guilty. The alleged demand of Rs.25,000/-, by no stretch of imagination, is covered under Section 304-B. **2015 (5) SCC 201 (*Major Singh and another vs. State of Punjab*)** was relied upon to contend that when such amount is demanded for opening shop, it does

not attract 304-B IPC. **2015 (3) SCC 724 (Sher Singh vs. state of Haryana)** was relied upon to show the requirements to attract Section 304-B and Section 113A and B of the Indian Evidence Act, 1972. Shri Datt urged that intimation given to the parents or to police by DW/1 that Uma Bai committed suicide cannot be used as substantive piece of evidence in view of **AIR 1957 SC 366 (Nisar Ali vs. State of U.P.)**. Shri Datt in support of his arguments also relied upon **2004 (10) SCC 570 (State of M.P. vs. Sanjay Rai)** and **2013 (3) SCC 684 (Vipin Jaiswal vs. State of Andhra Pradesh)**.

12. To sum up, it is urged that the necessary ingredients of 'cruelty', 'demand of dowry', and element of 'soon before death' etc. could not be established beyond reasonable doubt. The demand of dowry must have a clear nexus with the marriage. On the basis of general allegations and without attributing any specific act, the appellants cannot be held guilty.

13. *Per contra*, Shri Vrindawan Tiwari, learned Government Advocate relied upon Exhibit P/1, the intimation given to parents by brother-in-law of deceased on 20.07.1993. It is submitted that the information itself shows that reason of death was shown to be suicide by Uma Bai which shows that it was an unnatural death. The other defence witnesses also deposed the same before the Court and therefore it was rightly held by the Court below that the death of Uma Bai was otherwise than the normal circumstances and within seven years of her marriage. The letters of deceased Exhibit P/5 and Exhibit P/6 make it clear the demand of dowry and cruelty shown was soon before the death of Uma Bai. Indisputably, Uma Bai died in the house of appellants. In their statements recorded under Section 313 Cr.P.C., the appellants have not chosen to state the reason of death. This is an important circumstance against the appellants. Section 113-B of Evidence Act creates a fiction against the appellants in a matter of this

nature. The Court below has passed the judgment after thorough scrutiny and appreciation of evidence. No interference is required on this well reasoned judgment.

14. No other point is pressed by learned counsel for the parties.

15. We have heard the learned counsel for the parties at length and perused the record.

16. The first limb of argument of Shri Datt was that the operative reason for holding the appellants as guilty is based on a passage from a book of medical jurisprudence. The opinion expressed in the book cannot become basis for holding the appellants as guilty under section 302 of IPC. Moreso, when relevant passage of the book was not brought to the notice of the Doctor while deposing the statement. We find substance in this argument to the extent that statement of a witness cannot be discredited on the ground that it is not in accordance with opinion expressed in the books. In *Bhagwan Das (supra)*, the Apex court took the said view which was followed in *Sanjay Rai (supra)*. Thus conviction of appellants on this ground is not legally sustainable.

17. In the instant case, indisputably, Uma Bai was found hanging at the residence of her in-law's/ appellants within 7 years of her marriage. As per statement of Doctor P.W.8, which was corroborated by other evidence, three red wound on the chin, three dark red wounds on calf muscle were found on the person of the deceased. Red fluid was coming out of her nostril. The colour of skin at the neck wherefrom deceased was hanging by a "Sari" was found to be white. On the upper side of right leg three injuries in blue colour were found.

18. The appellant contended that as per the opinion expressed in

Modi's Jurisprudence, the symptom of dribbling out of Saliva out of the mouth down on the chin is a symptom of hanging. Thus prosecution failed to establish by leading any cogent evidence that death of deceased was either because of strangulation or because of other injuries found on the body mentioned hereinabove.

19. Dr. Prem kumar Mahor (P.W.8), Assistant Surgeon deposed that the neck of dead body of Uma Bai was covered by a yellow silk Sari. The portion of neck where Sari was tight, became white whereas colour of remaining portion of the body was dark blue. The white circle at the neck which was in white colour was about 2 inch in width. There were blisters on the inner portion of thighs, abdomen and upper portion of the body. Skin of both the buttocks was removed. Three deep blue injury marks were present on the right leg. The red fluid was coming out of the private part. The body started decomposing. It was clearly stated that since body started decomposing, reason of death could not be stated. In Para-7 of his statement, he stated that in cases of hanging, the head of the deceased tilts to one side, tongue comes out and body starts decomposing. In Para-2 of statement, he stated that *tongue came out and red fluid was coming out from her nostril*. The doctor further deposed that presence of ligature marks depends on the duration of hanging, weight of deceased and material by which person is being hanged. He further stated that the white mark on the neck shows that there was no blood circulation in the said place. He, in great detail, stated that if hanging body was touching any surface/wood, it may cause abrasion and will not cause blue injury mark.

20. The statement of Dr. Prem Kumar Mahore (PW/8) shows that there was bleeding from Nostrils. In addition, there was protruding of tongue. The blisters were also found on the body of Uma Bai. The Apex Court considered these symptoms in *(1996) 7 SCC 308 (Mulak*

Raj & Others vs. State of Haryana) and opined as under:-

"Bleeding from nostrils showed that the death had occurred from asphyxia which was of forceful nature, i.e., the patient must have tried hard to breath. The protruding of the tongue showed that the deceased tried to breath hard or if something was introduced into the mouth or the mouth was closed and the patient might have tried to breath hard to overcome the obstruction and the tongue may have come out. Or if something was introduced into the mouth and if that thing was taken out after death, the tongue will come out. If an alive person is burnt there is bound to be blister formation. But there will be no blister at all if the dead body is burnt, because blister formation is sign of life. Nothing substantial could be brought out in his cross examination. In view of this evidence it becomes clear that deceased Krishna Kumari had died a homicidal death and the burnt injuries found on her dead body were post mortem and not ante mortem."

(Emphasis supplied)

In view of this judgment, symptoms and injuries of this nature shows that the nature of death was homicidal in nature. The death of Uma Bai cannot be treated as a natural death by any process of reasoning or by any stretch of imagination.

21. The death of deceased Uma Bai had taken place in the last room of appellant's house. The appellants have not given any explanation as to how she sustained injuries described above. They answered the relevant incriminating questions put to them by the court under section 313 Cr.P.C in negative. In other words, reason of death, cause of injuries were not described by the appellants. Indeed, they decided to keep mum on this aspect by stating that they are not aware about the injury marks and reason of death.

22. The Apex Court had taken note of frequent flow of cases of killing of bride in complete secrecy inside the house and opined that it is very difficult for the prosecution to lead evidence in this regard. In **2006(10) SCC 681 (Trimukh Maroti Kirkan Vs. State of Maharashtra)** it was held as under : 13,14,21.

"13. The demand for dowry or money from the

parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonise a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315 : (1944) 2 All ER 13 (HL)] — quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* [(2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within

the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

21. In a case based on circumstantial evidence where no eyewitness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See State of T.N. v. Rajendran [(1999) 8 SCC 679 : 2000 SCC (Cri) 40] (SCC para 6); State of U.P. v. Dr. Ravindra Prakash Mittal [(1992) 3 SCC 300 : 1992 SCC (Cri) 642 : AIR 1992 SC 2045] (SCC para 39 : AIR para 40); State of Maharashtra v. Suresh [(2000) 1 SCC 471 : 2000 SCC (Cri) 263] (SCC para 27); Ganesh Lal v. State of Rajasthan [(2002) 1 SCC 731 : 2002 SCC (Cri) 247] (SCC para 15) and Gulab Chand v. State of M.P. [(1995) 3 SCC 574 : 1995 SCC (Cri) 552] (SCC para 4).]”

23. The *ratio decidendi* of this judgment was followed by Apex Court in **2007(12) SCC 288 (Swamy Shraddananda Vs. State of Karnataka)**, **2009(6) SCC 61 (Narendra Vs. State of Karnataka)**, **2016(13) SCC-12 (Jamnadas Vs. State of Madhya Pradesh)** and by Division Bench of this Court in **2018 SCC Online MP-904 (Smt. Sudama Bai Vs. State of Madhya Pradesh)**. As per principle laid down in the case of **Trimukh Maroti (supra)**, it is the duty of the court to ensure that no innocent man is punished. Similarly, court is under an obligation to ensure that a guilty man does not escape appropriate punishment. The courts considered the impact of section 106 of the Evidence Act which says that any fact which is specially within the knowledge of any person, the burden of proving that fact is

upon him/them. On the principle underlying section 106, the burden to establish those facts is cast on the person concerned and if he fails to establish or explains those facts, an adverse inference of fact may arise against him (*See: 1974(2) SCC 544 Collector of Customs Vs. D. Bhoormal*). Thus, governing principle is that when an incriminating circumstance is put to the accused and the accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

24. Similarly, in cases where allegation against the accused is regarding murder of his wife and prosecution has established the fact that shortly before the commission of crime, they were seen together or the offence has taken place in the dwelling home where husband also normally resided, it has been consistently held that if the accused does not offer any explanation, how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. (*See: para-22 of judgment of Trimukh Maroti (supra)*).

25. In *1992(3)SCC-106 (Ganeshlal Vs. State of Maharashtra)*, the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under section 313 Cr.P.C. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of accused persons but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. Vs. Dr. Ravindra Prakash Mittal (1992(3) SCC-300)*, the defense of husband was that the wife had committed suicide and that he was not at home at that time. The letters written by

the wife to her relatives showed that the husband ill treated her and their relations were strained coupled with further evidence which showed that both of them were in the same house in the previous night. The chain of circumstances were held to be complete by holding the husband as guilty of murder of his wife and judgment of High Court was reversed whereby husband was acquitted. In the instant case also, the deceased Uma Bai had written letters Ex.P/4 and P/5 mentioning about demand of money and cruelty caused to her by appellants because of inability to pay the said amount. We will deal with this aspect separately at appropriate place in this judgment.

26. The Apex Court in *Jamnadas (supra)* held that (i) Appellants have failed to disclose as to how deceased has died which was specially within their knowledge; (ii) it is nobody's case that any outsider came in the house; (iii) false explanation was given in their statement under section 313 of Cr.P.C.

27. In the light of this legal position, it is clear like noon day that in the present case also it was incumbent upon the appellants to explain about incriminating circumstances put to them by the court under section 313 of Cr.P.C. In absence of any explanation coming forward from appellants in this regard, it is an important circumstance and link of the chain which was missing in the present case. The court below considered the statement of P.W.8 and other statement of witnesses and came to hold the there were several injuries on the person of the deceased. The court below considered the statement of Narendra Pratap (PW/1), Head Constable who deposed that the police report was written by him as per narration of Ramdayal. After reading the report Ex.P/1 he signed on the said report (Ex.P/1). Loknath (P.W.2) stated that the deceased died because of hanging on 20.7.1993. Ramkishan Chouksey (P.W.3), brother of Uma Bai stated that when on the third occasion, Uma Bai came to her parents' house from in-law's

house, she stated that her mother-in-law is demanding Rs.25,000/- from her and directed her to bring that money while returning to in-law's house. Uma Bai also stated that Shankar Dayal, Ram Dayal and mother-in-law used to beat her. She was even subjected to torture by putting burn marks on her chin. He said that burn marks were visible on the chin of Uma Bai. This witness, in great detail, narrated that his family could not arrange the amount of dowry aforesaid demanded by appellants. After great amount of persuasion, Ram Dayal took Uma to his house but soon thereafter, Revati Bai (mother-in-law) herself took her to parental house and stated that only when said amount is paid, they will take Uma Bai back. On 20.7.1993, father-in-law of Uma Bai died. The brother of Uma Bai Harkishan took Uma Bai to appellants' house but appellants were not ready to keep her there because of non-fulfilling the demand of money. On getting an assurance from Harikishan that said amount shall be paid before the festival of 'Rakshabandhan', they permitted Uma Bai to stay back in the in-law's house. Fifteen days thereafter, they received information through wireless that Uma Bai committed suicide by hanging. The witness narrated about the condition of body of deceased and injury marks which corroborates the medical evidence. This witness proved the letters of Uma Bai Ex.P/5 and P/6 and identified the hand writing and signature of his sister. Ex.P/7, a letter written by appellant No.2 Ram Dayal was also proved by the witness. In cross-examination, this witness admitted that Shankar Dayal, husband of Uma was unemployed after the marriage. However, it is clearly stated that reason for demand of money was not narrated by the appellants.

28. Gendlal (P.W.4) deposed that Uma was his sister-in-law. Uma Bai told her that appellants used to beat her for the demand of Rs.25000/-. He supported the statement of P.W.3 that even at the time of there visit to appellants house after death of Uma's father-in-law,

they demanded money and an assurance was given that amount will be paid before 'Rakshabandhan'. Another brother of Uma Bai P.W.5 and P.W.6 deposed in the same line and their statements are also in conformity with the statement of P.W.3.

29. Patiya Bai (P.W.7) stated that in her presence, mother-in-law of Uma Bai while visiting Uma's parental house stated that Uma Bai may be sent to in-law's house only when Rs.25,000/- is arranged. This witness also stated in specific that burn marks on the chin of Uma Bai were seen by her and Uma Bai informed her that this was caused by the appellants.

30. Ganesh Prasad Pandey (P.W.9) is Headmaster of the school where Uma Bai had studied. He produced the admission register to show that Uma Bai had studied for some time in the said school.

31. Rajaram Sharma (P.W.10), Patwari proved the spot map (Ex.P/15) whereas Girish Kumar Shukla (P.W.11) deposed that one piece of 'Payal' was recovered by him from Shankardayal. Komal Prasad (P.W.12) is the seizure witness of said 'Payal'. Ishwar Das (P.W.13) is a Constable who had taken the dead body of Uma Bai for postmortem. Kishorilal (P.W.14) is a Constable who proved the seizure of packets. Makhanlal (P.W.15) is relative of appellants who did not support the story of prosecution in its entirety. Saleem Tigga (P.W.16), Sub Inspector was the first police official who reached to the spot where Uma Bai was hanging. He, in the main examination and during cross-examination stated that head of Uma Bai was tilted towards left side and door of the room where Uma Bai was hanging was bolted from outside. He found burn marks on the chin of Uma Bai.

32. A careful reading of these statements coupled with the findings

of court below shows that court below has not erred in holding that prosecution has proved it beyond reasonable doubt that appellants consistently demanded money from deceased and her family members and Uma Bai was subjected to cruelty in relation to said demand of money. Uma Bai in her letters Ex.P/5 clearly described the same. A careful reading of first letter Ex.P/5 shows that, she requested her brother on 10.1.1992 to take her back to parental house. It is mentioned that she was subjected to cruelty, beating etc. at her in-laws house. She was even not provided with material of daily use like oil, soap etc. She requested her brother to take her to parental house as early as possible. In the second letter written on 15.7.1993 (Ex.P/6 written by her before five days of the death), She requested the brother Ramkishan and other brothers to immediately take her back to parental house. She clearly narrated that Harikishan left her to in-law's house on 09.07.93 and since then in-laws are harassing and beating her, telling her to ensure that Rs.25,000/- are delivered to them otherwise they will murder and hang her. She expressed her fear that she may not survive till *Rakshabandhan* and she may be murdered any time. She further narrated that perhaps she will not be able to meet her mother again because a day before, her husband, mother-in-law and brother-in-laws have brutally beaten her because of which she is under severe pain. These letters Ex.P/5 and P/6 were duly proved before the court below. The handwriting in these letters were found to be of Uma Bai. There exists a corroboration of Harikishan's statement with the contents of letter Ex.P/6 which shows that after leaving Uma Bai at in-law's house by Harkishan, she was subjected to cruelty in relation to demand of money. Her fear expressed in Ex.P/6 became true within a week and she was found hanging in the house of in-law's.

33. The prosecution established the entire chain of events because

of which Uma Bai died. The missing link as projected by the appellants was the reason of death. At the cost of repetition, that missing link or chain of circumstance is also fulfilled because the appellants did not offer any explanation regarding injuries and cause of death of Uma Bai. In *Anjanappa vs. State of Karnataka (2014) 2 SCC 776*, the Apex Court opined as under:-

*"30. Besides, the conduct of the appellant speaks volumes. He was absconding and could be arrested only on 19-02-1992. Moreover, in his statement recorded under Section 313 of the Code he has not explained how the deceased received burn injuries. He did not set up the defence of alibi. It was obligatory on him to explain how the deceased received burn injuries in his house. His silence on this aspect gives rise to an adverse inference against him. **It forms a link in the chain of circumstances which point to his guilt.**"*

(Emphasis Supplied)

In the light of aforesaid analysis, the appellants must be held guilty for committing offence under Section 302 r/w Section 34 of IPC.

34. Another limb of argument of learned senior counsel is relating to applicability of Sec.304-B of IPC. Learned Senior counsel urged that since husband of Uma Bai was unemployed and money was demanded for his livelihood, it will not fall within the four corners of definition of 'Dowry'. Certain judgments are relied upon for this purpose. In the case of *Sunil Bajaj Vs. State of M.P., AIR 2001 SC 3020*, the prosecution could not establish the demand of dowry and the factum of subjecting the deceased to cruelty for or in connection with dowry. No evidence of any relative or neighbour of parties about cruelty caused to deceased could be led. In the letter written by deceased, demand of money by accused persons was not mentioned. No evidence was led that cruelty was in relation to demand of money. This judgment has no application in the factual matrix of the present

case where brothers of deceased in no uncertain terms, deposed about demand of dowry and cruelty and harassment caused to Uma Bai for non-payment of the same. Pertinently, Uma Bai herself in the letter Ex.P/5 and P/6 narrated about cruelty and harassment in relation to demand of money. In the case of *Appa Saheb (supra)*, the demand of money was for meeting domestic expenses and cruelty caused to the deceased in relation to such demand was not established. In this backdrop, it was held that Section 304-B is not attracted. *AIR 2015 SC-1359 = (2015) 6 SCC 477 (Rajinder Singh Vs. State of Punjab)*, a three judge Bench of Supreme Court held that in the said judgments in *Appa Sahib* and *Vipin Jaiswal's case (supra)* (followed in *Kulwant Singh and others Vs. State of Punjab, 2013(4) SCC 177*) law has not been correctly laid down.

35. Even otherwise, the case of *Vipin Jaiswal (supra)*, the husband demanded money to purchase computer, six months after the marriage. The demand was for starting his own business. The wife committed suicide. In her suicide note she stated that she committed suicide on her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was taking the extreme step as she was fed-up with her own life. In this peculiar factual backdrop, it was held that said demand of money does not fall within the ambit of dowry demand. This judgment cannot be pressed into service in the present case.

36. The appellants could not establish that demand of Rs.25000/- was because of unemployment of husband of deceased or for starting any business etc by him. The definition of "dowry" as per Dowry Prohibition Act, 1961 is very wide. Any property, valuable security agreed to be given directly or indirectly is covered whether such demand is at or before or any time after the marriage provided it is in connection with the marriage of the parties. In the case in hand, as

noticed, the appellants consistently demanded Rs.25,000/- from Uma Bai and her brothers. Uma Bai was left at her parental house by mother-in-law because she did not pay Rs.25,000/-. Left with no option, the brothers of deceased agreed to pay said amount to appellants before the festival of *Rakshabandhan*. Thus, such demand of money which has connection with the marriage is squarely covered in the definition of "Dowry". We find support in our view from the judgment of *Rajinder Singh (supra)* wherein it was held that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage *which is reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.*

37. This is trite that in order to attract section 304-B IPC, the following ingredients are to be satisfied- (i) the death of a woman must have been caused by burns or bodily injury or otherwise then under normal circumstances; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband, and (iv) such cruelty or harassment must be in connection with the demand of dowry.

38. Shri Datt, learned senior counsel placed heavy reliance on the judgment of *Akula Ravinder (supra)* during the course of arguments and argued that in the said case also, the reason of death of deceased could not be established. Hence, there was no evidence establishing that death was an unnatural death. Therefore, Section 304-B IPC is not attracted. A careful reading of this judgment shows that during the examination of accused under Section 313 Cr.P.C., there was not a slightest indication given to him about incriminating circumstances

and about the fact that death could be due to poisoning. In this backdrop, it was held that Section 304-B IPC was not met out. At the cost of repetition, in our considered view, in the present case incriminating circumstances were brought to the notice of the appellants by the Court below while examining them under Section 313 Cr.P.C., but no explanation were offered by them regarding the multiple injuries and cause of death of Uma Bai. Thus, aforesaid judgment is of no assistance to the appellants in the present case.

39. For the foregoing analysis, we are unable to persuade ourself with the argument of the appellants that death of Uma Bai can be said to be under normal circumstances. Similarly, in the case of *Major Singh* (supra), the prosecution could not lead evidence as to demand of dowry or cruelty, nor could establish that deceased was subjected to dowry harassment soon before her death. In this case, the letter of Uma Bai (Ex.P/6) was written within a week before the date of her death and the death was certainly otherwise than under normal circumstance. Soon before that, the demand of Rs.25,000/- was made by appellants from Uma Bai and her brothers. They caused cruelty on her in relation to demand of dowry soon before the death. Since amount could not be arranged by them, Uma Bai was again subjected to cruelty. Hence, this judgment is also of no help to the appellants.

40. In *Harjeet Singh* (supra), no evidence of cruelty and harassment in connection with demand of dowry could be established. In this backdrop, it was held that no case under Section 304-B of IPC was made out. As held by us, a live connection between cruelty and demand of dowry is duly established in this case. Such demand of money is covered in the definition of 'dowry'. No doubt, in *Sher Singh* (supra), the Supreme Court poignantly held that Section 304-B needs interpretation in context of purpose of enactment. The words "shown" and "deemed" employed in Section 304-B should be read as

"proved" and "presumed" respectively. It was held that difference between Sections 113-A and 113-B were marked and it was held that Section 113-A confers a discretion on a Court to draw presumption in case of suicide, Section 113-B mandatorily requires the Court to draw an adverse inference presuming guilt of accused in a case of dowry death. It was further held that once initial burden is discharged by prosecution, initial presumption of innocence of accused would be replaced by deemed presumption of guilt of accused. Burden/onus would then be shifted on accused to rebut that deemed presumption of guilt by proving beyond reasonable doubt his innocence. In this case, prosecution has clearly established before the Court below that death of Uma Bai is in abnormal circumstances and, therefore, burden was shifted on the appellants to prove their innocence. Moreso, when on the body of deceased, several injuries were found, cause of which were required to be explained by the appellants.

41 It is worth noting that a Division Bench of A.P. High Court in *Public Prosecution High Court of A.P.Hyd.-1989 CrLJ 2330* held that cases of suicide are also covered under Section 304-B of IPC because same is otherwise than under normal circumstances. The Apex Court also took the same view in *Satvir Singh and others Vs. State of Punjab-AIR 2001 SC 2828* and *Sher Singh (supra)*.

42. Looking from any angle, it is clear that necessary ingredients for holding appellants as guilty under Sections 302 read with Section 34, 304-B, 498-A and 201 IPC were available against the appellants. In addition, appellant No.2 was rightly held guilty under Section 203 IPC. It be noted that no amount of arguments were advanced by appellants attacking the findings of Court below in relation to Section 201 and 203 IPC.

43. In view of foregoing analysis, we are unable to hold that

appellants are innocent and Court below has committed any error in passing the impugned judgment dated 07.07.1994 in ST No.145/1993. In our considered opinion, the Court below has rightly held that prosecution has satisfactorily and beyond reasonable doubt established their case before the Court below. Considering the aforesaid, we find no reason to interfere in the impugned judgment. The appellants shall undergo the remaining jail sentence. Resultantly, the appeal fails and is hereby dismissed.

(Sujoy Paul)
Judge

(B.K. Shrivastava)
Judge