

IN THE HIGH COURT OF MADHYA PRADESH**AT JABALPUR****BEFORE****HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)****ON THE 17th OF MARCH, 2023****CRIMINAL APPEAL No. 1786 of 2014****BETWEEN:-**

1. MANENDRA SINGH S/O MOHAN SINGH, AGED ABOUT 29 YEARS, OCCUPATION: JAIL SUPERINTENDENT VILL. KHUTEHI, DISTRICT REWA, (MADHYA PRADESH)

2. HARI SINGH S/O AMAR SINGH, AGED ABOUT 29 YEARS, 62-B VANDANA NAGAR INDORE (MADHYA PRADESH)

3. MOHAN SINGH S/O RAM PRATAP SINGH, AGED ABOUT 56 YEARS, OCCUPATION: TAHSILDAR, TAHSIL ROUN, DISTT. BHIND, M.P. R/O VILL. KHUTEHI DISTT. REWA, (MADHYA PRADESH)

4. JAGENDRA SINGH S/O MOHAN SINGH
PARIHAR, AGED ABOUT 37 YEARS,
OCCUPATION: PATWARI AMALKI VILL.
KHUTEHI DISTT. REWA (MADHYA
PRADESH)

5. SMT. SHRADDHA SINGH W/O
JAGENDRA SINGH, AGED ABOUT 31 YEARS,
OCCUPATION: EXCISE SUB INSPECTOR
DISTT. SATNA VILL. KHUTEHI DISTT. REWA
(MADHYA PRADESH)

.....APPELLANTS

*(BY SHRI MANISH DATT – SENIOR ADVOCATE WITH SHRI SIDDHARTH K
SHARMA - ADVOCATE)*

AND

THE STATE OF MADHYA PRADESH,
THROUGH P.S. CITY KOTWALI, DISTRICT
KHANDWA (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ADITYA GUPTA – PANEL LAWYER FOR THE STATE)

&

(SHRI SHIVAM SINGH – ADVOCATE FOR THE OBJECTOR)

Reserved on : 02.03.2023

Pronounced on : 17.03.2023

This Criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, *Hon'ble Shri Justice Rajendra Kumar (Verma)* delivered the following :

JUDGMENT

This criminal appeal has been preferred under Section 374 (2) of the Cr.P.C, 1973 against the judgment dated 30.06.2014 passed by First Additional Sessions Judge, Khandwa District Khandwa (M.P.) in ST No.169/2010 whereby, learned Sessions Judge found the appellants guilty for the offence punishable as under :-

S.NO.	NAME OF APPELLANT	CONVICTION UNDER SECTION	SENTENCE	FINE	IMPRISONMENT IN LIEU OF FINE
1	MANENDRA SINGH	306 OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		304-B of IPC	RI FOR 10 YEARS	NA	NIL
		498-A OF IPC	RI FOR 2 YEARS	Rs.10,000/-	3 MONTHS RI
		120-B OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		3 / 4 OF DOWRY PROHIBITION ACT	RI FOR 1 YEAR	Rs.10,000/-	1 MONTH RI
2.	HARI SINGH	306 OF IPC	RI FOR 7 YEARS	Rs.50,000/-	6 MONTHS RI
		304 - B	RI FOR 7 YEARS	NIL	NIL
		498 – A	RI FOR 1 YEARS	Rs.10,000/-	1 MONTH RI
		120-B	RI FOR 7 YEARS	Rs.50,000/-	6 MONTHS RI

		3 / 4 OF DOWRY PROHIBITION ACT	RI FOR 1 YEAR	Rs.10,000/-	1 MONTH RI
3	MOHAN SINGH	306 OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		304 - B of IPC	RI FOR 10 YEARS	NA	NIL
		498-A OF IPC	RI FOR 2 YEARS	Rs.10,000/-	3 MONTHS RI
		120-B OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		3 / 4 OF DOWRY PROHIBITION ACT	RI FOR 1 YEAR	Rs.10,000/-	1 MONTH RI
4	JAGENDRA SINGH	306 OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		304-B of IPC	RI FOR 10 YEARS	NA	NIL
		498-A OF IPC	RI FOR 2 YEARS	Rs.10,000/-	3 MONTHS RI
		120-B OF IPC	RI FOR 10 YEARS	Rs.50,000/-	1 YEAR RI
		3 / 4 OF DOWRY PROHIBITION ACT	RI FOR 1 YEAR	Rs.10,000/-	1 MONTH RI
5.	SHRADDHA SINGH	306 OF IPC	RI FOR 7 YEARS	Rs.50,000/-	6 MONTHS RI
		304 - B	RI FOR 7 YEARS	NIL	NIL
		498 – A	RI FOR 1 YEARS	Rs.10,000/-	1 MONTH RI

		120-B	RI FOR 7 YEARS	Rs.50,000/-	6 MONTHS RI
		3 / 4 OF DOWRY PROHIBITION ACT	RI FOR 1 YEAR	Rs.10,000/-	1 MONTH RI

2. The case of the prosecution in nutshell is that on dated 05.05.2009, the engagement ceremony was organized of the appellant No.1 with the deceased Shweta Singh wherein amount of Rs.10,00,000/- was demanded from PW-1 and was given by him thereafter again an amount of Rs.5,00,000/- and Bolero Jeep was given on dated 16.06.2009 on the occasion of Tilak Ceremony, thereafter, marriage of the appellant No.1 was solemnized with the deceased at Bhopal on dated 22.06.2009. After solemnization of marriage deceased Shweta Singh went to Rewa with her in-laws wherein appellants No .2 to 5 is alleged to have taunted her for not bringing 50 tola gold jewellery and amount of Rs.2,00,000/- and Rs.1,00,000/-, thereafter, it was alleged that illicit relation of the appellant No.1 was there with one Smriti Singh and after the harassment meted out to the deceased in the hands of the appellants, it is so alleged that deceased committed suicide by hanging herself at the District Khandwa residence where appellant No.1. On the basis of aforesaid, Merg No.86/2009 (Ex. P-106C) was registered thereafter statements were recorded and accordingly police of Police Station City Kotwali, District Khandwa registered an FIR (Ex.P-29) on Crime No.750/2009 for the offence punishable under Section 306, 498-A of IPC and 3/4 of Dowry Prohibition Act,1961. During investigation, the investigating agency prepared spot map, recorded the case diary statements of the witnesses and after following the due process, filed the charge-sheet before the competent Court of law against the appellants.

3. Appellants were charged for offence punishable under Sections 120-B, 304-B in alternative 302, 306, 498-A of IPC and Section 3/4 of Dowry Prohibition Act, 1961. The appellants abjured their guilt and took a plea that they have been falsely implicated in the present crime and prays for trial.

4. In support of the case of the prosecution, the prosecution has examined as many as 24 witnesses namely (PW-1) Raghvendra Singh (Father of deceased), (PW-2) Piyush Kumar Singh (Brother of deceased), (PW-3) Sushila Singh (Mother of deceased), (PW-4) Dr. T.P. Singh (Uncle of deceased and Son of real Maternal Uncle of father of deceased), (PW-5) Sudhir Singh, Forest Officer (Ranger) (Subordinate employee of deceased's father PW-1), (PW-6) Ku. Bhawna Patidar (Friend of deceased), (PW-7) Dr. Bhushan (Medical Officer), (PW-8) Akhilesh Ku. Khare, SDO (Forest) (Neighbour and Departmental Friend of father of deceased), (PW-9) Ramesh Kumar Channa, (PW-10) Govardhan Prasad (Waiter of Hotel Kalindi Palace, Bhopal), (PW-11) Firdiyus Toppo (Head Constable), (PW-12) Balvir Singh, (PW-13) Dr. M. Ubeja (Pregnancy Check-up Dr. of deceased at Khandwa), (PW-14) Ravindra Bhagat, Constable, (PW-15) Bhakti Soni (Junior Telecom Officer of BSNL), (PW-16) K.S. Bhooriya, D.S.P. (Investigating Officer), (PW-17) Hushain Chacha, (PW-18) Balram Singh Pandav, Constable, (PW-19) Phooldar, Additional Tehsildar, (PW-20) Mukesh Kumar Vaishya, C.S.P., Khandwa, (PW-21) Suresh Kumar Nasheene, D.S.P., (PW-22) Saiyad Ajajuddin, Senior Scientist Officer, (PW-23) Champalal Solanki, Head Constable and (PW-24) Ramvishal Tiwari, ASI. Thereafter, examination of appellants were done under Section 313 of Cr.P.C. The appellants have pleaded their false implication in the matter. In support of their defence, they examined 13 witnesses namely (DW-1) Umesh Gandhi, DIG (Jail), (DW-2) Diwakar Singh Sikarwar, Psychologist, (DW-3) Ramesh Kumar Nigam (Retired Sub Engineer), (DW-4) Rajkumar Tripathi, Sub Jail Superintendent, Circle Jail Seoni, (DW-5) Laxmi Bai (Maid of appellant), (DW-6)

Pooran Singh, Jail Prahri, (DW-7) Umakant Sharma, Revenue Inspector, (DW-8) Shri V.K. Pandey, Assistant District Excise Officer, (DW-9) Shri Sanjay Tiwari, Assistant Excise Commissioner, Gwalior, (DW-10) Shri Sohail Ali, Secretary, Revenue Board, (DW-11) Shri Radheshyam Vijayvargi, Jail DIG (Law), (DW-12) Shri Sudheer Saryam, Assistant Grade-III, Jail Headquarter, Bhopal, (DW-13) Shri Anant Kumar Pandey, Accountant, Jail Headquarter, Bhopal.

5. Learned trial Court after appreciating the oral as well as documentary evidence available on record, convicted the appellants as mentioned above in para 1. Being aggrieved by the said judgment and sentence, appellants have preferred this appeal for setting aside the impugned judgment and sentenced them from the charges levelled against them.

6. Learned Senior Counsel for the appellants submitted that learned trial Court had framed seven points for consideration. The point No.1 relates to nature of death of deceased. The learned trial Court from para 29 to 34 gave a finding that the deceased had died on account of strangulation which was found to be suicidal in nature which is clear from the post mortem report (Ex.P-4) as well as deposition of PW-7. Autopsy Surgeon wherein it is opined that no external injury was found on the person of deceased, which proves that no marpeet was done by accused persons. In regard to point No.2, the learned Senior Counsel submits that offence punishable under Section 306 of IPC, the learned trial Court from para 35 to 50 has found that ingredients of Section 306 of IPC are found to be proved. However, as per the deposition which is recorded before the learned trial Court which states that appellants were abetting the deceased to commit suicide (although the contradictions, omissions and improvements cannot be ignored which are carved in their testimony), the offence under Section 306 of IPC is not made out against the appellants. It is further submitted that it may be cause to commit suicide on account of sexual jealousy etc. but it cannot be equated with the abetment to

commit suicide. In this regard, learned Senior Counsel for appellants placed reliance on the law laid down by the Hon'ble Apex Court in cases of ***Pinakin Mahipatray Rawal Vs. State of Gujarat; (2013) 10 SCC 48, Ghusabhai Raisangbhai Chorasiya Vs. State of Gujarat; (2015) 11 SCC 753 and K.V. Prakash Babu Vs. State of Karnataka; (2017) 11 SCC 176.***

7. It is further contended by the learned Senior Counsel for appellants that appellant No.2 is not to be covered under Section 498-A of IPC because he is not relative of the appellant No.1 by blood, marriage or adoption. As referred to in Section 498-A of IPC in this regard, reliance is being placed on the judgment of Hon'ble Apex Court passed in case of ***U. Suvetha vs. State By Inspector of Police and another; (2009) 6 SCC 757 and Vijeta Gajra Vs. State of NCT of Delhi; (2010) 11 SCC 618.*** It is further submitted by the learned Senior counsel that a demand of dowry was made in the shape of cash as well gold ornaments is concerned it has been submitted in detail that the said finding of the learned Trial Court cannot said to be in accordance to the law for the simple reason that learned Trial Court has taken into account only examination in-chief of prosecution witnesses by totally ignoring the contradictions, omissions and improvements that have arrived at in their cross examination. That after going through the each and every prosecution witness has been drawn up wherein contradictions, omissions and improvements are shown. Thus, looking to the contradictions, omissions and improvements came in the testimony of prosecution witnesses, it is not proved that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry.

8. Learned counsel for the appellant has placed heavy reliance on the law laid down by the Hon'ble Apex Court in cases of ***Meka Ramaswamy Vs. Dasari Mohan and others; (1998) SCC (Cri) 604, Smt. Sarla Prabhakar Waghmare vs***

State Of Maharashtra And Others; 1990 Cr.L.J. 407, State of Himachal Pradesh Vs. NikkuRaml; (1995) 6 SCC 219, Biswajit Halder @ Babu Halder & Ors.vs. State of West Bengal, (2008) 1 SCC 202, Madivallappa V. Marabad and others; (2014) 12 SCC 448, S. Anil Kumar Alias Anil Kumar Ganna V. State of Karnataka; (2013) 7 SCC 219, Hiralal and another Vs. State (Government LCT) Delhi (2003) 8 SCC 80, Gurdeep Singh V. State of Punjab and others; (2011) 12 SCC 408, Shindo Alias Sawinder Kaur V. State of Punjab; (2011) 11 SCC 517, Baijnath and Others V. State of Madhya Pradesh; (2017) 1 SCC 101, Bibi Parwana Khatoon alias Parwana Khatoon and another V. State of Bihar; (2017) 6 SCC 792, Harjit Singh Vs. State of Punjab; (2006) 1 SCC 463, M. Srinivasulu V. State of A.P.; (2007) 12 SCC 443, Amar Singh Vs. State of Rajasthan; (2010) 9 SCC 64, Ananda Bapu Punde Alias Koli Vs. Balasaheb Anna Koli and others; (2017) 4 SCC 642, Bholu Ram V. State of Punjab; (2013) 16 SCC 421, Sher Singh Alias Partapa Vs. State of Haryana; (2015) 3 SCC 724 and Girish Singh V. State of Uttarakhand; (2020) 18 SCC 423.

9. It is further contended by the learned senior counsel that under the provisions of the section 479 of Cr.P.C , 1973, the presiding officer who has passed the impugned judgment and sentence was the interested party as where the appellant No.3 was posted as Tehsildar proceedings under the provisions of section 114 of MPLRC, 1959 were pending wherein presiding officer who has passed the impugned judgment and sentence was himself a party No. 1 and in this regard documents have been filed with I.A No.5089/2023 to show that presiding officer was demanding favour and the said impugned judgment and sentence has resulted in failure of justice to the appellants.

10. Per contra, it is submitted by the learned counsel for the State as well as counsel for Complainant/objector that prosecution has proved beyond reasonable doubt that death of the deceased took place within seven years of marriage and it is

further submitted that the cogent reasons have been assigned by the learned trial Court by placing reliance upon the evidence of prosecution witnesses. The deceased was harassed and maltreated by the appellants because of non-fulfilment of their demand of dowry and the deceased was treated with cruelty just soon before her death.

11. I have heard learned counsel for the parties at length and perused the materials available on record.

12. In the present case, the learned trial Court framed seven points for - consideration. The point No.1 relates to nature of death of the deceased. As far as with regard to point No.3 and 7 are concerned, these two points relate to dowry death as envisaged under Section 304-B of IPC. So far as the dowry death is concerned, the prosecution is obliged to prove that soon before her death, the woman was subjected to cruelty by her husband or any relative to her husband for, or in connection with demand of dowry. In explanation to this section, the legislature has explained that the term “dowry” has the same meaning as envisaged under Section 2 of Dowry Prohibition Act. It is settled principle of criminal jurisprudence that until and unless the prosecution places cogent and convincing evidence in such a manner that all the essential ingredient of alleged offence/section are made out, the accused/appellant cannot be liable for the same. By testing the above said ingredients under Section 304-B of IPC whether the findings recorded by the learned trial Court from para 51 to 69 can be said to be in accordance with law. Thus in order to appreciate the verdict of impugned judgement, it is profitable to go through the entire record of trial court and certain important aspects are as follows:-

13. **Findings of learned trial Court regarding the testimony of PW/1 Raghvendra Singh**

While considering Point No.3 and 7, in para-52 of the impugned judgment, the testimony of (PW-1) Raghvendra Singh, who is the father of deceased, the learned trial Court arrived at a conclusion that there is no effective cross-examination on behalf of the accused persons upon this witness.

14. Appreciation of testimony of (PW-1) Raghvendra Singh -

- I. The learned trial Court has not at all considered the statement of Raghvendra Singh (PW-1), who is the father of the deceased Shweta Singh. In para 19 of his cross-examination this witness has admitted that he is not having receipt of purchasing the gold ornaments which he gifted to his daughter in the marriage. Although he has stated that when ornaments were purchased, he did not remember because he often used to come to Rewa. The ornaments which he bought and which are mentioned in Ex. D/1, he is not having its bill.
- II. The suggestion which was given to him that the ornaments which have been described in (Ex.D-1) were in the ownership of appellant No.1 Manendra Singh were desired by him. That without preparing the seizure memo in that regard by police, the ornaments was given back to PW-1.
- III. PW/1 has admitted that the ornaments were given by police officers without obtaining any order from the Court. Further this witness has admitted on 18.12.2009 (The date when the deceased was found in hanging position in the official premises of Jailor in which the appellant No.1 Manendra Singh was serving) he did not give any list to the investigating agency by saying that he gave these ornaments to his deceased daughter Shweta Singh.

- IV. In para 22 of his cross-examination Raghvendra Singh PW/1 further admitted that it is in his personal knowledge that appellant No.1 Manendra Singh (husband of the deceased) is having his own Swift Car.
- V. Though in examination in chief PW/1 Raghvendra Singh (Father of the deceased) in his examination in chief has deposed that the accused persons made a demand to provide Bolero Jeep which was provided to them, however, the Jeep is in the name of Raghvendra Singh (PW/1) the other papers of Bolero Jeep are also in his name. In para - 22 PW/1 has admitted that appellant No.3 Mohan Singh is having his own Ambassador Car as well as official government vehicle is provided to him. Mohan Singh (father-in-law of deceased) is serving on the post of Tahsildar and he is having his own Ambassador Car prior to the marriage of deceased and appellant No.1 Manendra Singh (husband) is having his own Swift Car. This witness has admitted that 3rd appellant Mohan Singh is serving on the post of Tahsildar but he has put his ignorance that government vehicle is provided to Tahsildar.
- VI. In para 23 of his cross-examination PW/1 Raghvendra Singh admitted that he bought TVS Scooty in 2008 or 2009 earlier to the marriage of his daughter deceased Shweta Singh, which was being used by Shweta regularly as well as by family members of PW/1. Similarly the computer which was given to the appellants was an old one and was being used by the family members of PW/1, namely, Piyush (Son of PW/1) and Shweta (deceased) before her marriage. In same para 23 PW/1 has further admitted that one year prior to the marriage of the deceased he was having one computer in his house and this old

computer was given to Manendra Singh (husband), Mohan Singh father- in- law of deceased. In the same para he has stated that in the month of July or August 2009 when appellant No.1 Manendra Singh was posted at Bhopal at that juncture PW/1 gave fridge and TV.

- VII. In para-24 of his cross-examination PW/1 has deposed that Rs. 10,00,000/- were given to accused persons by taking loan from relatives and friends. Further he has deposed in same para 24 that so as to give Rs. 5,00,000/- to the accused persons, he withdrew some amount from GPF part final and some money was withdrawn from LIC and some of the money he withdrew by taking loan from post office and PPF final part. In the same para 24 PW/1 Raghvendra Singh has admitted that he did not inform the investigating agency how he managed the amount of Rs. 10,00,000/- and 5,00,000/- because the investigating agency did not ask any question from me in this regard. He has categorically admitted that how he managed to collect Rs.10,00,000/- and Rs.5,00,000/- is being stated in the Court very first time.
- VIII. In Para 13 of cross examination, PW-1 stated that when the engagement of deceased finalised, accused namely Mohan Singh was posted at Bhind as Tehsildar, Co-accused Jagendra Singh was posted at Rewa as Patwari and another co-accused Shradha Singh at Satna as Sub-inspector of Excise department.
- IX. In para 32 of his cross-examination PW/1 has stated that after the engagement appellant Mohan Singh, Manendra Singh and Jagendra Singh made demand of Rs.10,00,000/- and Rs.5,00,000/-.Eventually,

PW/1 sent Rs.10,00,000/- through Dr Tej Pratap Singh (T.P. Singh) PW/4 by taking loan from him by requesting him to give that amount in the house of Manendra Singh at Rewa, but in the cross examination PW/4 Dr. T.P. Singh has denied and stated that he has not given Rs.10,00,000/- to PW/1 Raghvendra Singh for giving it to the accused in Rewa. However, why this fact did not find place in his police statement Ex. D/2 he cannot state the reason. Further, he has admitted that in the last week of May, Mohan Singh, Jagendra Singh, Hari Singh came to his home at Bhopal and demand of Rs. 5,00,000/- was not stated to him in his police statement Ex. D/2.

- x. Similarly, the factum of making demand of gold chain for all family member on the occasion of 'Dwarchar', but since he could not manage to provide gold chain to every family members at that time, therefore, he only gave one gold chain to Mohan Singh (father in law of deceased), does not find place in his case police statement Ex. D/2 and the reason he cannot say.
- xI. In para-33 of his cross-examination PW/1 Raghvendra Singh has admitted that 5th appellant Smt. Sharadha Singh (*Jethani* of deceased) did not attend the marriage at Bhopal. This witness put his ignorance that on 23rd June, 2009 said accused Sharadha Singh went to attend her duty at Satna at 7 O'clock in the morning. Although he himself stated that the deceased told him that Jeth, Jethani Saas, Sasur, Nandoi, all of them were in the home but this fact find place in case diary statement Ex. D/2.

15. Findings of learned trial Court regarding testimony of Piyush Kumar Singh PW/2-

- I. In Para 57th learned Trial Court has considered only the examination in chief part of this witness and in para 58 straightway learned trial Court came to the conclusion that in defence no cross examination was put forth and the defence did not put any cross examination.
- II. The learned Trial Court in para 57 held that looking to the statement made by this witness in para 2 of his examination in chief that appellant No.1 Manendra Singh kept Smriti Singh in his official residence at Bhopal by hiding her. This was seen by PW/2's parents (also the parents of the deceased). Further in the same para of his examination in chief PW/2 Piyush Kumar Singh (brother of deceased) that when appellant No.1 Manendra Singh had gone for the preparation of his Public Service Commission Exam at Delhi, during that period he carried away said 6th accused Smriti Singh (who later on discharged) with him and stayed with her for fifteen days at Delhi. Further, PW/2 says that when his deceased sister Shweta became pregnant at that juncture appellant No.1 deceased husband Manendra Singh was continuously saying to her for abortion. Despite the Doctors refused for abortion.
- III. In para 58 the learned trial Court by taking into consideration of the testimony of this Witness PW/2 Piyush Kumar Singh in para 3 of his examination in chief was saying to the deceased to get done the abortion and should live separately from him. The learned trial Court by taking into consideration para 4 of the examination in chief of this witness has given the finding that on 17.12. 2009 in between 6 to 6:30

pm (soon before the death) the deceased on phone told this witness that she is very much in trouble and by weeping she told that appellant No.1 Manendra Singh told that if you do not get the pregnancy aborted, he will kill her. Eventually, this witness PW/2 stated this fact to his father Raghvendra Singh PW/1 on phone.

- IV. The learned trial Court simply by saying that on aforesaid statements made in examination in chief from para 1 to 4 the appellants did not chose to cross-examine. Which is a glaring mistake on the part of the learned trial Court? The approach so adopted by it is wholly unwarranted under the law because the learned trial Court has not at all considered the contradictions, omissions, and improvements.

16. Appreciation of testimony of (PW-2) Piyush Singh-

- I. PW-2 has deposed that it is wrong to say accused persons never made demand of Bolero Vehicle. He has also denied the suggestion that the factum of making of demand of Bolero Vehicle has been thrust. By his own this witness has deposed that appellant No.3 Mohan Singh made his signature on delivery chalan of vehicle on 15.06.2009 (no delivery chalan is on record and was never exhibited) although PW/2 has admitted that said Bolero Vehicle was bought in the name of his father and his name is being continued even today. This witness has also admitted that the insurance of the vehicle is also in the name of his father. Although this witness has denied the suggestion that on delivery chalan of Bolero Vehicle Mohan Singh ever signed. It be noted that the examination in chief of PW/2 was recorded on

25.03.2011 and the cross-examination was deferred for the next date. The cross-examination of this witness was started on 19.05.2011.

- II. In para -12 of his cross-examination, he has admitted that earlier the statement which he has made in Court (i.e. in examination in chief) he did not give any statement of the list of ornaments. The factum of handing over all the ornaments by Superintendent of Police to his father has been admitted by this witness. This witness has further stated that no list of ornaments was prepared by him.
- III. In para-13 of his cross examination he has admitted that for three hours neither this witness nor his father lodged any report. Further he has admitted that Superintendent of Police entrusted the ornaments to his father those ornaments they carried with them and came to forest rest house. In cross examination para -13 a question were put to this witness that who wrote the report this witness or his father? In answer to the said question PW/2 deposed that first of all his father went inside and lodged the report and thereafter he lodged the report.
- IV. In para 15 of his cross examination this witness PW/2 Piyush Kumar Singh has admitted that factum of making of demand of Rs.10,00,000/- and Rs.5,00,000/-, total fifteen lacs which was given to the accused persons did not find place in Ex. D/15 and he never stated such a statement to police in Ex. D/15. Further this witness has admitted that he did not state to the police in his police statement Ex.D/15 that on the second day his sister became ready to go at the home and eventually along with mother and father she did go the government official residence of appellant No.1 Manendra Singh and

she found that appellant No.1 Manendra Singh hide the presence of discharged accused No.6 Smriti Singh in one room and locked it from outside, as a result of which the parents of PW/2 went away without entering inside the home. All these facts, this witness never stated to police in his police statement Ex.D/15.

- v. Although this witness admitted that his second statement was recorded after two months on 11.02.2010. Further this witness has categorically admitted that his sister told him that on her mobile phone accused Smriti Singh was giving threat to her and was forcing to obtain divorce from appellant No.1 Manendra Singh because she wants to marry him, was never stated by this witness PW/2 to police in his police statement Ex.D/15.
- vi. This witness has admitted that he never told to investigating agency in his police statement Ex. D/15 that his sister (deceased) told him to install the songs in his Nokia Mobile Phone in which she has inserted his SIM having no. 94065 – 43637. PW/2 further admitted that he installed the software of voice recording in the phone of his sister (deceased). This witness further admitted that in his police statement Ex.D/15 he never told to investigating agency that whenever she interacts with any other persons or any call is received by her, those conversations will be saved in her mobile phone. This fact also did not find place in case diary statement Ex. D/15 that earlier to 17.12.2009 (the date when deceased put her life to an end). Whenever Manendra used to call his sister by sending SMS troubling her and gave threat to his sister all those conversations and SMS were saved in said mobile. This witness has further admitted that all these facts have been stated

by him in his second statement to the police dated 11.02.2010 for the first time.

- vii. In para 16 of police statement Ex. D/15 this witness has admitted that he did not state to police personnel that his sister deceased told him that song be installed in mobile phone. He has also deposed that in SIM number 940654 3637 he installed voice recording software but this statement does not find place in police statement Ex.D/16. Similarly in his police statement Ex. D/15 PW-2 told to the officer who recorded the police statement that whoever will call his sister (deceased) or if she interact with some other person automatically the voice is saved in her mobile. Further he has deposed that earlier to 17/12/2009 (date of death of deceased) appellant No.1 Manendra Singh, whenever he used to call the deceased and sent SMS to her and give threat to the deceased all those conversations were saved in the mobile. This witness on his own deposed that he stated to police persons all these facts. He has admitted that for the first time on 11.2.2010 he has stated this fact to police persons.
- viii. In para 19 appellant No.1 Manendra Singh carried discharged accused No.6 Smriti Singh to Delhi. This fact was told by his sister (the deceased) in the month of October. On being asked by this witness to the deceased how she came to know that her husband appellant No.1 Manendra Singh carried discharged accused No.6-Smriti Singh as his wife, with him, the deceased told that her husband Manendra Singh (appellant No.1) told her that he carried Smriti Singh with him and they stayed in Delhi for 15 days.

- IX. In para- 21 this witness PW/2 has deposed that software voice recording was installed only in the mobile having SIM number 940654 3637 when it was given to deceased. The deceased was aware that it contains voice recording software.
- X. In para-22 this witness has admitted that third accused Mohan Singh (father-in-law of deceased) handed over horoscope to get horoscope matched with that of deceased Shweta. Although suggestion has been denied by this witness that Mohan Singh told his father that Manendra Singh is 'Manglik' and if the horoscope did not match life of wife will be put in danger. Further this witness has stated that his father did not get horoscope match is not correct. By his own, this witness has stated that his father got the horoscope matched with each other.
- XI. However, the statement of PW/2 in para 22 is altogether different from the statement made by his father PW/1 Raghvendra Singh. In this regard para-28 of the testimony of PW/1 Raghvendra Singh is to be taken into consideration in which he has stated that Mohan Singh did not tell that after the horoscope are matched by astrologer thereafter only the ring ceremony will be solemnised.
- XII. Further PW/1 in para-28 has deposed that on account of 'Manglik' several persons who contacted with appellant No.1 did not match on account of Manendra Singh being Manglik. Further PW/1 has admitted in para-28 that Astrologer matched horoscope of Manendra Singh and Shweta and stated that they are matching with each other. Further in the same para-PW/1 says that Manendra Singh is 'Manglik'. This fact is incorrect.

- XIII. In para-28 PW/2 has deposed and admitted that appellant No.2 Hari Singh is a resident of Indore but he has put his ignorance that he is dealing with real property. However, PW/1 Raghvendra Singh in his cross-examination para- 43 has put his ignorance that appellant No.2 Hari Singh is the resident of Indore.
- XIV. In para-29 of cross examination of PW/2, he has admitted that appellant No.2 Hari Singh is not the real son- in- law of appellant No.3 Mohan Singh (father-in-law of the deceased). On being cross examined by the Counsel for the appellant No.5 Smt. Shraddha Singh in para-31 PW/2 has admitted that on the festival of Bhaidooj of Deepawali, the deceased did not come to Bhopal.
- XV. In para-32 this witness has admitted that appellant No.5 Smt. Shraddha Singh is serving on the post of Excise Sub-Inspector. This witness put his ignorance that w.e.f. 24.11.2009 to 29.11.2009 appellant No.5 Smt. Shraddha Singh was on leave to appear in PSC examination. This witness has categorically admitted that w.e.f 25.11.2009 sister of deceased was residing with him at Bhopal. This suggestion was put to him that during this period, appellant No.1 Manendra Singh was at Rewa was denied by this witness, however this witness has put his ignorance that he had no knowledge that the appellant No.1 examination centre was at Rewa and he did go to appear in the examination at Rewa.
- XVI. By confronting his case diary statement Ex.D/15 this witness has admitted that he did not say this fact to police that appellant No.1 Manendra Singh was pressurizing deceased to do a job.

17. Findings of learned trial Court regarding testimony of Sushila Singh (PW-3)-

- i. In para 59 it has been held by learned Trial Court that there is no cross examination upon testimony of Sushila Singh which is all together incorrect because there are several contradictions, omission and improvements came in the statement of PW/3 Sushila Singh which are given in detail in below paras. In para -3 of the deposition of PW/3 Sushila Singh that deceased Shweta came to his Nuptial (Maika) home on the festival of Raksha Bandhan and told that her husband, father in law insisted to bring gold chain, necklace and mangalsutra otherwise she is not required to come. PW/3 has stated that she gave all these items to the deceased.
- ii. In para 4 of his examination- in- chief PW/3 has deposed that her son- in- law was posted as Superintendent in Khandwa. She has further deposed that Manendra Singh and Mohan Singh made demand of Scooty and computer and this demand was fulfilled. On 6th October deceased telephoned PW/3 that husband and father in law is teasing her. Her sister also told this witness that her sister- in- law (Nanad) Bindu and her brother- in- law (Nandoi) Hari Singh came to Khandwa. Eventually her father- in- law told to give her own room to Nanad and Nandoi and she should sleep outside the room. This witness also stated in para-4 about the illicit relations of her son – in - law with Smriti Singh who is younger sister of appellant No.5 Smt. Sharadha Singh.

18. Appreciation of testimony of (PW-3) Sushila Singh-

- I. In para 11 of her cross examination, this witness has deposed that payment of Rs. 10 lacs was fulfilled in the last week of May. This witness has denied suggestion that they are not having any capacity to give Rs. 10 lacs and therefore sum of Rs. 10 lacs were never given to accused persons. According to her statement Rs. 10 lacs her husband managed by taking loan from bank, some money was taken from his friend and some amount was withdrawn from G.P.F. and LIC. The question was put to this witness that her husband was not having any capacity to pay Rs. 10 lacs. In answer to this question she has admitted that at that juncture her husband was not having capacity to give the said amount, but, because in laws were making demand to pay, eventually her husband managed to give Rs. 10 lacs to them.
- II. In para 12 of her cross examination this witness has deposed that she did not say to her husband that because the accused persons are demanding Rs. 10 lacs, therefore marriage be broken out should not be solemnized. She has also deposed that till Rs. 10 lacs was given, the ring ceremony was not performed. This witness did not say to her husband that because accused persons are making demand of Rs. 10 lacs therefore ceremony 'Tilak' should not be performed.
- III. In para 13 of her cross examination she has admitted that making of payment of Rs. Ten lacs and five lacs and a vehicle was demanded earlier to 'Tilak' ceremony. In same para this witness has deposed that after giving Rs. 10 lacs when again demand of Rs. Five lacs and vehicle was made she did not insisted her husband, that now the accused persons are making demand further of Rs. Five lacs and a vehicle, therefore we should not perform the ceremony of 'Tilak'. She

has further deposed that my husband took loan of Rs. Five lacs but from whom it was taken she cannot say.

- IV. In para- 15 of her cross examination this witness has deposed that her police case diary statement was taken on 27.12. 2009. A question was put to PW/3 that did she explain to police that why she is giving statement after delay of 10 days. In answer to this question, this witness has deposed that when she came to Khandwa at that time she gave her statement to police. The explanation was given in the answer that on account of ritual ceremony of the death of the deceased she did not give her statement to the police but why this fact did not find place in her police statement Ex. D/16, she cannot state the reasons.
- v. In para- 16 she has deposed that on 27.02.2009 she gave her statement to police and on that day her husband and son Piyush also came. She has also deposed that on 27.10 2009 Dr. J.P. Singh and one Advocate Agarwal Sahab also accompanied them to Khandwa. On being confronted to her that Advocate Agarwal Sahab is the same person who is present in the Court, she admitted and stated that advocate Agarwal has come along with her from Bhopal. She has further stated that Advocate Agarwal is her 'Samdhi' and has not come to give any statement. She has admitted that Advocate Agarwal is present in the Court as her Counsel. In cross examination in para-20 this witness has deposed that I.G. Police Shri P.L. Pandey also came in the marriage of deceased. She has further admitted that I.G. Shri P.L. Pandey is having sweet and cordial relation with complainant party and with her because he was classmate of her 'Jeth'.

- VI. In para-20 of her deposition she has deposed that although she was having knowledge that accused persons were making payment of Rs. Five lacs from them which they gave on 16.06.2009 but she did not state this statement to police in her police case diary statement Ex. D/16 although she has stated these facts to police, but why it was not written by the Investigating Officer she cannot say.
- VII. In para-25 of her cross-examination she has put her inability that appellant No.5 Smt. Shraddha Singh is serving in Excise Department. Before the marriage of her daughter and at the time of death of deceased, Shraddha Singh was posted in Satna district. A question was put to this witness in para 25 that by her own she has stated that Smt. Shraddha Singh was coming oftenly but this fact was stated on 27.12.2009 to police?. In answer to this question she has admitted if this fact was not written by police in her police statement Ex.D/16 and she cannot state any reason.
- VIII. In cross-examination para-26 this witness has deposed that ring ceremony was solemnized on 5.5.2009 and a demand of Rs. Ten lacs was made on 7 or 8 May and demand of Rs. Five Lacs was made in the last week of May. She has further deposed that at the time of making demand of Rs. Five Lacs, AC, Bolero Vehicle was demanded.
- IX. A question was put to her that at the time when Rs. Ten Lacs was demanded at that time only A.C., Vehicle Bolero was demanded. In answer to this question, she deposed that demand of vehicle was made.

- x. In para-30 of her cross examination this witness has admitted that demand of vehicle, scooty and a computer which was made by first accused Manendra Singh and 3rd accused Mohan Singh, but they were not brand new and were old and were being used by her family members earlier to the marriage the deceased. She has further admitted that her husband PW-1 Raghvendra and all the three sons were using these items.
- xI. In para 31 of her cross examination a question was put to this witness that in the transcript of voice recording which took place between 15.12. 2009 and 17.12.2009, the factum of staying outside the room stated by Mohan Singh to the deceased to give her room to Mohan Singh. In answer, she has admitted that this incident occurred on 06.10.2009. The transcripts are exhibited D/17 to D/20. Again question was put to her that in Exs.D/17, 18, 19, 20, the factum that any accused was harassing deceased Shweta on 17.12.2009 and she was in fear did not find place. In answer to this question it has been deposed by her in the transcript that Shweta did not say this fact. Again, a question was put to her that in the transcript, the factum of carrying some girl by accused Manendra Singh and they stayed in a hotel and a hotel bill was recovered from the bag did not find place. In answer to this she has deposed that all these facts were stated by deceased to her father. Again a question was put to her that on 17.12.2009 at 6 PM Shweta was under fear did not find place in transcript Ex.D/19 and D/20. In answer to this question this witness deposed that when she interacted with the deceased on 17/12/2009 an impression was given to her that deceased was under fear.

- XII. In para 32 of her cross-examination she deposed that she did not remember as to whether she is okay. In reply she told that she is okay. A question was put to her on 17/12/2009 she asked the deceased whether she is O.K., in reply deceased told that she is okay and PW/3 stated that okay all is well now ? In answer to this question this witness stated that if she would have asked the deceased about her welfare she must have told it but she did not remember this fact today.
- XIII. In para-33 she has admitted in her cross examination that in transcript Ex. D/20 from portion A to A, B to B, C to C, D to D and E to E was exhibited. A question was put that in Ex. D/20 B to B, C to C and D to D are correctly written. In answer to this question, she has deposed if it is in the tape recorded version it must be correct.
- XIV. In her cross examination para 37 on being cross examined by Counsel of 5th accused Smt.Shraddha Singh she has admitted in her police statement in Ex. D/16 that on 13/11 2009 accused Manendra Singh sent deceased through her driver at home but why this fact did not find place in Ex.D/16 she can't state the reasons.
- XV. In her cross examination at para 38 this witness has put her ignorance that from 17/ 12/ 2009 to 19/ 12/ 2009 first accused Manendra Singh was required to attend the training at lok Nayak Jaiprakash Institute of Criminology and Forensic Science at Delhi.
- XVI. In para 39 this witness has put her ignorance that fourth accused Jagendra Singh was required to appear in PSC examination. She has put her ignorance that Manendra Singh and Jagendra Singh were to appear in the interview of MPPSC on 7/9/2010 she has also put her

ignorance that roll number of Jagendra Singh was 129544 and that of Manendra Singh was 129521.

19. In para 60 to 69 the Trial Court gave a finding that deceased was having pregnancy of about three and half months and it appears that deceased came to know about the illicit relation of Manendra Singh and discharged accused Smriti Singh. The illicit relation between them is proved from the evidence which is produced by the prosecution. However, the learned trial court has totally ignored the cross examination of PW/1, PW/2 and PW/3 and has given said finding only on the basis of the statement made by the witnesses in their examination- in- chief by completely ignoring the contradictions, omissions and improvements which are carved from the testimony of above said witness which dismantles the entire structure of alleged illicit relation between appellant No.1 Manendra Singh and discharge accused Smriti Singh.

20. That, as per the statement of PW-1 Raghvendra Singh wherein he has stated that amount of Rs.10,00,000/- was taken from PW/4 for giving to the appellants whereas PW-4 Dr. T.P. Singh in para 6 of his cross examination has admitted that amount of Rs. 10,00,000/- was never given by him to the PW-1 for giving to the appellants.

21. The learned trial Court on the basis of testimony of Lakshmi Bai (defence witness no. 5) who was employed as domestic help in the official residence given to Manendra Singh at Khandwa, has not been relied upon for the simple reason that she used to come only for one or two hours in the morning and for one or two hours in the evening and therefore it is difficult to hold that the relations between the deceased and appellant No.1 Manendra Singh were bad. Although, it has come in the testimony of witness Lakshmi Bai that during her presence both husband and wife were interacting with each other and the interaction was full of love and affection and they were also exchanging laughter with each other.

22. By placing reliance upon the testimony of (PW-12) Balvir Singh as well as Govardhan Prasad (PW/10), the learned trial Court has come to the conclusion from the testimony of these witnesses also the factum of illicit relation between Manendra Singh and Smriti Singh stands proved. However, at this juncture it would be condign to state that without considering the contradictions, omissions and improvements the trial Court has bluntly placed reliance upon the testimony of these two witnesses Balvir Singh (PW -12) and Govardhan Prasad (PW-10).

23. Balvir Singh (PW/12) is residing in Delhi and is property broker and this has been admitted by him in para-4 of his cross examination as well as it has been so stated in the column of occupation after taking oath. In answer to the examination-in-chief this witness has stated that in August, 2009 Manendra Singh and Shweta Singh, who is wife of Manendra Singh, came to meet him. Since this witness has stated name of deceased Shweta Singh, therefore, his statement cannot be ignored which dismantles the entire case of prosecution. This witness was never declared hostile and no question was put to him that Smriti Singh and not Shweta Singh who came to Delhi. The Hon'ble Apex 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. In answer to the question in examination-in-chief this witness specifically stated that Shweta Singh who is wife of Manendra Singh came to take room. Although, in para 2 of his examination-in-chief this witness has stated that investigating agency consisting of one double star Police Officer and a Constable came to Delhi and showed 4 to 5 photographs and asked whether he can identify these photos. By identifying two photographs this witness told that these two persons came and were residing at the place where Mr. Channa told. On showing Ex. P/6 photograph to him a question was put to this witness that affixed photographs are of Smriti Singh? This witness told that she is Shweta and by

seeing photograph of Manendra Singh he told that this photograph is of Manendra Singh. Ex. P/6 bears his signatures.

24. In para -8 of his cross examination, This witness has put his ignorance and has deposed that he cannot say in the month of September to whom he gave the rooms to other persons nor he cannot state the names of those persons because in Delhi, since he is property broker, he often provides rooms on rent. He could not remember to whom the rooms were given in the month of October and November, 2009 and from where the guests staying in those rooms came. In the month of December 2009 and January, 2010 to how many customers he provided rooms to them he cannot say. Thus, when for other persons he cannot say and he did not remember to whom room on rent was given and where those persons were coming from, how with certainty this can be said that in August, 2009 by naming Manendra Singh and fictitious name of Shweta Singh two persons came and stayed in the room which was provided by him.

25. The factum of referring name of (Rajendra Singh not examined) and further the fact that the customer was sent by Rajendra Singh to provide house on rent, this witness has admitted all these facts/were stated by him in his statement under Section 161 of Cr.P.C. to the police which is Ex. D/25. Although he has insisted to record all these facts but the Investigating Officer told that he has already written the entire statement and now they are not required to rerecord the new version.

26. In para-10 of his cross examination this witness has stated this fact that the police showed four to five photographs to him and out of those photographs he identified two photographs. But why this fact is not mentioned in his statement recorded under Section 161 Cr.P.C. statement Ex. D/25 he cannot say. In para 11 of his cross examination this witness has admitted that the customer (Smriti Singh and Manendra Singh) was never brought to Delhi and showed by investigating agency to him. He has stated that only photograph of these two persons were

shown to him. In para 12 of his cross-examination this witness has admitted that the law prevailing in Delhi is that if any new tenant is inducted the necessary information of that tenant is to be given in concerning police station. Further he has also admitted that necessary 'IDs' are also taken from them and they are forwarded to concerning police station because in police, the name of tenant, his permanent residence, how many room are given to them and what are ID proofs are mandatory, but why this was not done this can only said to Mr. Channa.

27. So far as the statement of Ramesh Kumar Channa (PW/9) is concerned, it transpires that he is resident of Delhi and is doing his service to serve the human. A question was put by Public Prosecutor to this witness whether he knows any person by the name of Manendra Singh. In answer to this, he deposed one person from Bhopal came to us who was brought by property dealer one Sardar Ji and he does not remember the name of that Sardar Ji. Rs. 6,000/- rent was fixed for one month to the premises which was being provided to them. The said Sardar Ji took Rs. 6,000/- from him and Rs. 3,000/- was given to this witness by said Sardar Ji towards his commission. In para-2 of his examination in chief this witness has deposed that no police verification of those two persons who came to reside was done. He was not earlier acquainted to the person to whom he gave the house on rent and now he cannot identify him because on account of duration of two years by showing the accused persons who were standing in dock, this witness stated that he cannot identify the person to whom he gave house on rent. In para-3 of his examination in chief again he deposed that today he cannot identify the accused person in the dock.

28. It is condign to mention that since neither appellant No.1 Manendra Singh nor discharged co-accused Smriti Singh were earlier known to this witness, therefore, it was incumbent upon investigating agency to hold TIP so as to take out

grain from chaff that appellant Manendra Singh and Smriti Singh are the same persons who came together at Delhi.

29. This witness was declared hostile; however, merely because this witness was declared hostile his statement cannot be straightway thrown away. In cross-examination para-5 this witness has admitted that the Sardar Ji who brought the said person who came to obtain the house on rent, no rent agreement was executed nor any receipt was given to them. He has admitted that in Delhi there is law if new tenant is inducted police verification is to be performed to concerning police station. He has deposed that he did not inform to concerning police station about staying of two persons to whom the house was provided.

30. The (PW-10) Govardhan has been cited to identify appellant No.1 Manendra Singh and discharged co-accused No.6 Smriti Singh. This witness has stated that he is serving on the post of waiter in Hotel Kalindi Palace, New Market, Malviya Nagar, Bhopal for last 10 to 12 years. In this regard para -1 of his Examination-in-Chief is to be seen. The Public Prosecutor by showing two photographs to this witness put a question to him that whether he identifies these two photographs, in answer he replied in affirmative and stated they were staying in Room No. 106 and he served them for two days. He has deposed that they stayed in the said room from 13 to 15 November, 2009. The name of male was Manendra Singh and his wife's name was Neha Singh. Upon Panchama Ex. P/7, he put his signatures which are A to A, B to B and C to C.

31. It is very important and pertinent to mention here and which goes to root of the matter that learned Public Prosecutor did not get appellant Manendra Singh identified who was present and brought from jail on 06.08.2011, the date when the statement of this witness was recorded why dock identification was not made. It raises heavy doubt upon the truthfulness of this witness. In para-2 of his cross examination certain questions were put to him so as to test his memory because in

very definite version this witness is deposing in his examination in chief that appellant No.1 Manendra Singh and discharged co-accused Smriti Singh came on 13th of November and stayed in the hotel up to 15, but in the question put to this witness in cross examination in para 2 so as to testify his memory, he totally failed. In this para this witness has stated and admitted that on 11th and 12th, November, 2009 in how many rooms of the hotel he served, he cannot say. He also stated that he does not remember that on 16th and 17th November, 2009 he served in which room of hotel. Further he put his inability and said that he did not remember that on 11, 12, 16 and 17 of November, he served for how many customers and he cannot say their names. Further, he was cross examined that he cannot say on 11th and 12th for how many customers he arranged room and kept their luggage he put his inability. He has admitted that on 16th and 17th November 2009 for how many customers he arranged the rooms and kept their luggage he cannot say. Although this witness remembers the date 13th to 15th November when appellant Manendra Singh and discharged co-accused Smriti Singh stayed but he does not remember about other customers and their names also. Hence this witness cannot be said to be reliable witness.

32 In para 3 of his cross examination, this witness has admitted that if any customer stays in a hotel first of all identity card is demanded and thereafter room is given to him. By his own he has deposed that the customer who is having no identity card or any luggage, the room is provided to him without identity card. He has further admitted that he did not see ID of Manendra Singh and Smriti Singh.

33. Hence, the findings which have been arrived by the learned trial Court from paras 60 to 69 holding that the appellant No.1 Manendra Singh was having illicit relations with discharged accused No.6 Smriti Singh and they were staying in hotel room at Bhopal and Delhi, although it is not at all proved and by ignoring the contradictions, omissions and improvements which are carved out from the above

said witness it has been emphatically proved that factum of illicit relations between Manendra Singh and Shweta Singh are not at all proven. The learned trial Court has given its own assumption and presumption rather the evidence on record to hold about alleged illicit relationship. The findings of the learned trial Court are thus perverse.

34. Hence, it cannot be said that on account of illicit relations between appellant No.1 Manendra Singh and discharged co-accused Smriti Singh (who is sister of 5th accused Smt. Shraddha Singh w/o Jagendra Singh), the deceased put her life to an end, hence the findings of the learned trial Court is not only perverse but it had deviated from well settled law to marshal the evidence of prosecution witness vis-a-vis other witness and defence witness as well as ignoring the contradictions, omission and improvements which have come in the testimony of PWs and thus said finding cannot stand in the eye of law. In this regard it would be profitable to refer the law laid down by the Hon'ble Hon'ble Supreme court in the case of *Pinakin Mahipatray Rawal Vs. State of Gujarat; (2013) 10 SCC 48, Ghusabhai Raisangbha iChorasiya Vs. State of Gujarat; (2015) 11 SCC 753 and K.V. Prakash Babu Vs. State of Karnataka; (2017) 11 SCC 176*. In *K.V. Prakash Babu Case* held that:-

“15. Slightly recently in Ghusabhai Raisangbhai Chorasiya v. State of Gujarat[4], the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below:-

“True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in Pinakin Mahipatray Rawal (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted.”

16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behavior that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-

marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.”

Therefore, in this instant case if this Court presume for the sake of arguments, there is an illicit relationship between Manendra Singh and Smridhi Singh even then such presumption of so called illicit relationship is not a ground to convict the appellants u/s 306 of IPC.

35. So far as the findings of learned trial Court that a demand of dowry was made in the shape of cash as well as gold ornaments is concerned, it has been submitted in detail that the said finding of the learned Trial Court cannot said to be in accordance to the law for the simple reason that learned Trial Court has taken into account only examination in-chief of prosecution witnesses by totally ignoring the contradictions, omissions and improvements that have arrived at in their cross examination. Hence it is evident from the above paragraphs of each and every prosecution witness wherein contradictions, omissions and improvements are shown. Thus, looking to the contradictions, omissions and improvements which came in the testimony of prosecution witnesses, it is not proved that soon before her death, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand of dowry.

36. Learned trial Court in para 69 gave a finding that the deceased was beaten but neither in the post mortem report nor autopsy surgeon Dr. Bhushan (PW/7) found any external injury on the person of the deceased. Hence, the finding of the learned Trial Court that deceased was beaten soon before her death is perverse.

37. Although under Section 113-B of the Evidence Act which speaks about presumption as to dowry death, there is presumption that a woman was subjected to cruelty or harassment for or in connection with any demand of dowry the Court

shall presume that such person had caused dowry death, but at the same time it is to be remembered that this is presumptive evidence only which is always rebuttal. That apart the initial burden to prove the case rest upon the shoulders of the prosecution and if prosecution successfully proves beyond all reasonable doubt, then only burden shifts upon shoulders of defence to rebut presumption. However, in the present case as stated hereinabove in great detail, the prosecution has utterly failed to prove its case beyond all reasonable doubt and, therefore, presumption as envisaged under Section 113-B of the Evidence Act has no relevance in the present factual scenario. The Hon'ble Apex court in the cases of ***Baijnath and Others V. State of Madhya Pradesh; (2017) 1 SCC 101*** held that:-

*“(35) 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*

304B 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”.

Thus, in the light of above pronouncement, first of all prosecution is obliged to prove its case beyond all reasonable doubt and thereafter only onus of proof will shift upon defence. In details herein above it has already been considered that the prosecution has utterly failed to prove its case and hence initial burden of proving has not been discharged by the prosecution and therefore the onus is never shifted upon the defence.

38. The learned Trial Court on the points for consideration no. 2 has found that ingredients of Dowry Prohibition Act, 1961 is proved. In detail it has been considered herein above while considering the submissions in respect to points nos. 3 and 7 for consideration which relates to dowry death. The contradictions, omissions and improvements which have come in the testimony of prosecution's witnesses have to be treated for the purpose of point for consideration which relates to Dowry Prohibition Act, 1961. That apart, when there is no evidence on record to show that the demand of dowry was made by the appellants, and the appellants were harassing by their cruel behaviour with the deceased, charges are not proved. Merely because certain articles were given in marriage as a customary and rituals that cannot be equated with demand of dowry.

39. That the finding of the Learned Trial Court as regards to para 22 is concerned that since the requisite certificate was not obtained therefore conversation which took place between deceased and his family members as well as transcript of the conversation which took place between them which are exhibited documents cannot be taken into consideration. However, in this regard it would be profitable to refer the law laid down by the Hon'ble Supreme Court in

the case of *Vikram Singh @ Vicky Walia and another Vs. State of Punjab and others; (2017) 8 SCC 518 and Arjun Pandit Rao Khotkar v. KailashKushanRaoGorantyal and ors reported in 2020 (7) SCC 1*. The decision in the case of *Arjun Pandit Rao Khotkar(supra)* is of three judge bench decision. In this decision in para 73.2 on page 63 the Apex Court has made clarification referred to above is that the required certification under Section 65-B (4) is unnecessary if Original Document itself is produced. This can be done by the owner of a laptop computer, computer, tablet or even a mobile phone to be placed in Court.

40. Looking to the above said decision of three judge of Supreme Court, no certificate was required, since admittedly, the mobile phone of the deceased was seized seizure memo is (Ex.P/2) and mobile phone produced in the Court is marked as Article B. Looking to the transcript of the conversation of the deceased which took place between her and PW/2 Piyush as well as PW/3 Sushila Singh which are exhibited documents (Ex. P/32-46). Nowhere it has come that appellants were mal-treating her and were harassing for or in connection with the demand of dowry.

41. Thus, from every angle exhibited documents in respect to the conversation which took place by deceased with her family members and their transcript which are exhibited documents, no where she has stated that just before suicide that she is being harassed for or in connection with dowry by the accused persons. Even unproved documents of prosecution can be relied upon by the accused persons in this regard reliance is being placed upon the law laid by this Hon'ble court *1992 (1) MPVB (Madhya Pradesh Vidhi Bhaskar) 290 para-6,1997 (2) MPWN 214, decision has been reproduced in toto,1993 (2) MPLJ 532 para 3,1994 MPLJ 879,ILR (2012) MP 135 (DB) and 2014 (3) MPJR 146* wherein it has been categorically held that with respect to a document which is prosecution document

but remains unproved, the legal position appears to be that prosecution cannot utilise that document for proof of its story but it would be wrong to deny the defence its user if it supports the defence in the manner.

42. One important fact which cannot be marginalized and blinked away that on the person of the deceased not even single external injury was found and the story put forth by the prosecution that she was beaten before her death cannot be allowed to remain stand. In this regard the evidence of autopsy of surgeon (PW/7) Dr. Bhushan has been seen. That apart witness of *Panchnama* of the dead body is Pholdar (PW/19), who is additional Tahsildar, who in his examination-in-chief has stated that no external injury was found upon the person of the deceased.

43. The prosecution has examined Balram Singh, Constable (PW/18) who has proved transcripts etc. Ex.P-32 to Ex.P-46 and for that it has already been stated herein above that all those transcripts are not at all against accused persons.

44. That as per the statement of (PW-21) Dy. SP Suresh Kumar (who is another investigating officer) in his cross-examination this Investigating Officer has admitted that whatever was deposed by the witnesses as it is, was recorded by him and whatever they have stated apart from the statement which this I.O. has recorded, that statement they have not given in 161 Cr.P.C. recorded by this I.O. Hence, it can be safely inferred that testimony of Investigating Officer will override the evidence of prosecution witnesses deposing that they deposed to the Investigating Officer certain facts in their police case diary statement and if those statement do not find place in their 161 Cr.P.C. statement they cannot say. Contradictions, omissions and improvements which have come in the testimony of prosecution witnesses create heavy doubt and no credence can be given to these statements and the benefit would go in favour of the accused.

45. It is well settled law that due consideration should be given to the defence witnesses. It is also equally well settled law that defence is not obliged to prove its case beyond all reasonable doubts. Defence is found probable; therefore, benefit will always go to the accused persons.

46. Diwakar Singh (DW/2) is the witness who has deposed that the relation between the deceased and accused were cordial and they were enjoying their matrimonial life with full joy. The deceased became pregnant and in this regard both of them were quite happy. In para-8 this witness has deposed that in Barat ceremony the ladies did not go therefore the participation of appellant No.5 Shraddha Singh in Barat is not at all proved.

47. Ramesh Kumar Nigam (DW/3) is the witness so as to prove that appellant No.5 Shraddha Singh was residing at Satna as she was serving on the post of Excise Sub-Inspector and appellant Jagendra Singh was also residing with her and was serving on the post of Patwari at Rewa and was travelling up and down to discharge his official duties. This witness is the landlord of appellant No.5 Shraddha Singh.

48. This witness has further deposed that appellant No.5 Shraddha Singh did not go to Bhopal in marriage ceremony although one week earlier to the marriage ceremony, 'Tilak' ceremony was performed at Rewa where the appellant No.5 Shraddha Singh had gone in the evening to Rewa and came back in the morning to Satna.

49. Rajkumar Tripathi (DW/4) is Deputy Superintendent Jail. He has deposed that relation between appellant Manendra Singh and Shweta Singh was quite cordial. They used to interact with each other in the drawing room. They were not quarrelling with each other. When deceased was residing at Khandwa, she told him that she is having certain skin problem and treatment of some Doctor at Bhopal is

being taken by her. Not only this, upon asking by the deceased, he suggested the name of Dr. Shroff who was Skin Specialist and the deceased being treated by said doctor. The deceased also told this witness earlier to 4-5 days of her death if husband or wife is having 'mangal dosh' what would happen. She further told her husband that Manendra Singh had 'Mangal dosh'. In para-6 of his deposition this witness has deposed that because Manendra Singh was going to Delhi for training he was carrying the deceased with him, however, since he came to know that his training has been cancelled they cancelled their reservation.

50. Another defence witness is Laxmi Bai (DW/5) although the prosecution was obliged to examine this witness because her statement was recorded u/s. 161 of Cr.P.C but it has already stated hereinabove that the prosecution did not examine her. This witness has deposed that the relations between accused and deceased were quite cordial and they were eating the meals in one thali where they were exchanging laughter also between them. Her testimony cannot be thrown away merely because this witness used to visit only for one or two hours. It is submitted that if the relation were very bad and not cordial, during this period also they will quarrel in presence of domestic servant.

51. Another defence witness is Pooran Singh DW/6. This witness is serving on the post of Jail Parhari and was residing where deceased and accused persons were residing in the jail premises. This witness has also deposed the relation between accused and deceased were quite cordial and they were residing with love and affection by enjoying their matrimonial bondage. They were also going for roaming in the evening. In this regard paras- 2 to 6 of the testimony of this witness is to be seen. In para- 6 again he deposed that accused and deceased used to go to purchase different types of items in the market.

52. Other witness is V.V. Pandey (DW/8) who is serving on the post of Assistant Excise Inspector. This witness has proved that throughout appellant No.5 Shraddha

Singh while serving on the post of Deputy Excise Inspector was residing in Satna and in this regard this witness has also given his certificate. The testimony of this witness in para 2 to 5 is to be seen which proves the innocence of appellant No.5 Sharadha Singh.

53. Sanjay Tiwari DW/09 is another witness serving on the post of Assistant Commissioner Excise. This witness has also deposed that appellant No.5 Shradha Singh was throughout in Satna where she was residing where she served on the post of Excise Inspector.

54. Other witness Radhe Shyam Vijaywargiya (DW/11). This witness has also proved that appellant No.1 Manendra Singh was throughout in Khandwa.

55. The arguments raised by the learned senior counsel as regards to conviction of appellant No.2 as mentioned above is concerned, in this regard, relation of deceased is to be seen with the appellant No.2. The argument is undoubtedly correct because to be covered under section 498-A of IPC one has to be relative of the husband by blood, marriage or adoption. In this regard the law laid down by the Hon'ble Apex court in the case of *U. Suvetha vs. State By Inspector of Police and another; (2009) 6 SCC 757* and *VijetaGajra Vs. State of NCT of Delhi; (2010) 11 SCC 618* is relevant wherein it has been categorically held that reference to the word relative in section 498- A of IPC would be limited only to blood relations or the relations by marriage. As the appellant No.2 was not the relative of the husband nor he is having any blood relation or the relation by marriage, therefore, there is no question of prosecution under Sections 306, 304-B, 498-A, 120-B of IPC and 3/4 Dowry Prohibition Act, 1961.

56. It is further contended by the Senior Counsel for the appellants that the prosecution has failed to prove that the deceased was subjected to cruelty soon before her death. In this respect, it is necessary to go through the following

important verdict on this point. Essential ingredients of Section 304-B of IPC as noticed by the Hon'ble Apex Court in case of **Major Singh and another Vs. State of Punjab; AIR 2015 SC 2081** has held as under:-

“to attract conviction under Section 304-B of the IPC, the prosecution should adduced evidence to show that soon before her death the deceased was subjected to cruelty on her aspect”. There must always be proximate and live-link between the effects of cruelty based on dowry demand and the concerned death.”

57. Once this Court has already come to a conclusion that the prosecution has failed to prove that the deceased was subjected to cruelty or harassment soon before her death for or in connection with any demand for dowry, therefore, the question of harassment or cruelty soon before her death, would not arise. It would be profitable to refer the judgment of Hon'ble Supreme Court in the case of **Bajnath 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 inspire 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.

58. 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.

59. The Hon’ble Supreme Court in the case of **Hiralal and another Vs. State (Government LCT) Delhi (2003) 8 SCC 80** in para 9 as here under:-

“9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”.

The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession”. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. 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.”

60. In the back drop of the aforesaid discussion, this Court finds support from the law laid by the Hon’ble Apex court as well as by this Hon’ble court related to the factual position of this present case, this Court disbelieve the said incidence as

according to them, the statement of witnesses qua the establishment of committing guilty for demand of dowry against the deceased are not reliable and trustworthy. There is nothing on record to elicit any positive action of possibility proximity done by the appellants against the deceased soon before her death. To bring home an offence under Section 304-B of IPC. It is an obligation of the prosecution to prove in those cases where death of a woman occurs within seven years of her marriage, that soon before her death, she was subjected to cruelty or harassment by her husband or any other relative, in connection with a demand of dowry. Mere making of a demand is not only the pre requisite for proving an offence under Section 304-B of IPC. The prosecution was thus supposed to prove that the demand made by the appellant was coupled with a harassment or cruelty in connection with demand. Unnatural death can be called a dowry death only if, after making a demand of dowry, the appellants perpetuates cruelty on the victim so that the demand made by him is got fulfilled by perpetuation of cruelty on the victim. If the alleged demand of dowry is not coupled with cruelty, harassment or any other such act on the part of appellant, section 304-B of IPC would not be made out. In this case, none of the three-witness stated that cruelty was perpetuated on deceased or she was harassed by the appellants or by any other relative for not fulfilling the demand soon before her death.

61. Moreover, the learned trial Court has totally overlooked the omissions and contradictions of prosecution witnesses which are material in nature. The evidence on record qua the cruelty and alleged illicit relations are not a direct evince, on the contrary, hearsay evidence which are not admissible in accordance of law.

62. The best evidence in this instant case is recording of the conversation of the deceased through her mobile phone wherein the recording software installed by PW-2 brother of deceased. Since it is the best evidence to get the truth and learned trial Court has rejected due non compliance of procedural requirement of section

65-B of the Evidence Act, 1872. It is settled principle of law that procedural law is only to aid in justice not an obstruction for the administration of justice. In this aspect Hon'ble Supreme Court laid down the principles:-

63. In Saiyad Mohd. Bakar El-Edroos v. Abdulhabib Hasan Arab, (1998) 4 SCC 343, [DB] The Supreme court held that :-

8. A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.

Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272, [5 J. CONSTI. BENCH]

26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice...

31.With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. ...

In the backdrop of aforesaid judgements, Even if the conversation of deceased will take as it is, the essentials ingredients of section 304-B of IPC” soon before her death she was subjected to cruelty or harassment” is missing and in such situation this court consider conviction of appellants under Section 304-B of IPC was totally illegal and unjust, the conviction seems to be result of a callous criminal justice system where neither prosecutor discharge his duty in an impartial manner nor the judge consider it as his duty to see what offence was made out and everyone acted in a mechanical manner.

64. The other question arises whether appellants could be convicted under Section 306 of IPC i.e. for the offence of abetment of suicide since the deceased committed suicide within six months of her marriage. In order to convict a person for abetment of suicide, a part from providing suicide, it has to be proved that appellant/accused was instrumental in commission of suicide. Section 113-A of the Evidence Act which raises a presumption regarding abetment of suicide in respect of a married woman read as under:-

“113A. Presumption as to abetment of suicide by a married woman. —When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

A perusal of above section would show that abetment of suicide of a married woman by relatives would be presumed by the Court if it is shown that her husband or such other relative of her husband had subjected her to cruelty. In the present case, there is not an iota of evidence in respect of cruelty perpetuated upon the victim either medical or oral evidence. And proceeding with the above

understanding law and applying the ratios to the facts in the present case, what is apparent is that no overt act or illegal omission is seen from the appellant's side, in taking due care of his deceased wife. The evidence also does not indicate that the deceased face persistent harassment from husband. Nothing to this effect is testified by the parents or any prosecution witnesses. The learned trial court speculated on the unnatural death and without any evidence concluded only through conjectures, that the appellants are guilty of abetting the suicide of his wife. I therefore consider that the appellants could not have been convicted even under Section 306 of IPC.

65. Every suicide after marriage cannot be presumed to be a suicide due to dowry demand. The tendency of the Court should not be that since a young bride has died after marriage, now, somebody must be held culprit and the noose must be made to fit some neck.

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

“113-B. 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 304-B of the Indian Penal Code (45 of 1860)’ As per the definition of ‘dowry death’ in Section 304-B IPC and the wording in the presumptive Section 113-B 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'.

67. Adversarial system of trial being followed in this country has turned most of the trial court judges into umpires and despite having sufficient power to ask questions to the witnesses and to find out truth, most of them do not ask questions to the witnesses to know the truth. In fact, the witnesses are left to the Advocates and the Judges just sit and watch. This tendency of being only umpires works heavily against the poor who are normally not defended by Advocates of competence and standing, as they cannot afford their fee. The Trial Courts, therefore, must shed their inertia and must intervene in all those cases where intervention is necessary for the ends of justice. In order to convict the appellant u/s 306 of IPC, there must be an instigation which is intentional to bring the case under the privy of section 306 of IPC. In the instant case, there is nothing on record to instigate the deceased to commit suicide.

68. The appellants can be convicted and punished only when by leading cogent evidence, the prosecution proved its case to the hilt. As noticed above, the prosecution could not establish its case beyond reasonable doubt. The evidence must be of sterling quality and should be of a nature that a conclusion can be drawn that appellants and appellants alone 'must' have committed the offence and not that appellants perhaps/might have committed the offence. The prosecution could not satisfy the aforesaid litmus test in the instant case.

69. The order of conviction can be based only on legal evidence and not on hypothetical propositions or unwarranted inference. A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence. In this case, there is no satisfactory proof to make out the charges against the appellants. Therefore, the appellants are entitled for acquittal.

70. After perusal of evidence on record, this court has considered view that the prosecution has utterly failed to meet out the essential ingredients of section 304-B, 306, 498-A, 120-B, 3/ 4 Dowry Prohibition Act, 1961 since the evidence lead by prosecution is mostly hearsay evidence and the best evidence i.e. conversation of deceased “soon before her death” nothing depicts any sort of demand of dowry and cruelty thereof. Moreover, the other relative of husband of deceased like Co-accused Jogendra Singh was posted at Rewa, M.P. and Shradha Singh was posted at Satna, M.P. which are far place from the place of incident. There are no specific allegations against such co- accused persons. It is also true that in such type of cases, there is a tendency to falsely implicate other relatives of husband and this case is also not an exception of such tendency. Moreover, there is no specific evidence lead by the prosecution relating to conspiracy hatched by the appellants. In the aforesaid circumstances the allegations of criminal conspiracy punishable u/s 120-B is also cannot sustained. It is pertinent to mention here that in the absence of essential ingredients of convicted section, the learned trial court has ignored the omission and contradictions of oral evidence lead by prosecution as well as wrongly rejection the conversation of deceased which was recorded before her death particularly when the mobile phone itself submitted before the trial Court. In Such a situation, there is no requirement of furnishing the certificate of section 65 -B of The Evidence Act, 1872.

71. Thus, considering the evidence which has been led by the prosecution as the learned trial court committed grave error in ignoring and glossing over various contradictions in the testimonies of the witnesses, 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 charges under Sections 306, 304-B, 498-A, 120-B, 3/ 4 Dowry Prohibition Act, 1961. The appellants are acquitted from all the charges appended against them.

72. Resultantly, the judgment and sentence dated 30.06.2014 passed by First Additional Sessions Judge, Khandwa in S.T. No. 169/2010 is hereby set aside.
73. The appellants are on bail. Their bail bonds and surety bonds stand discharged and the fine amount paid, if any, be returned to the appellants.
74. The appeal succeeds and is hereby **allowed**.
75. A copy of this order is sent to the court below concerned.
76. Record is sent back to the concerned trial court.
77. Certified copy, as per rules.

(RAJENDRA KUMAR (VERMA))
JUDGE

DevS