

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

<b>Criminal Appeal No.</b>	<b>978 of 2015</b>
<b>Parties Name</b>	<p>1.Pushpendra, S/o Aditya Prasad Pandey, aged about 36 years.</p> <p>2.Ku. Jyoti, D/o Aditya Prasad Pandey, aged about 27 years.</p> <p>3. Aditya Pandey, S/o Manmohan Ram, aged about 60 years.</p> <p>4. Smt. Ratan Kumari, W/o Aditya Prasad Pandey, aged about 55 years.</p> <p>All R/o Kathura P.S. Mada, District Singrauli (M.P.)</p> <p style="text-align: center;"><b>Vs.</b></p> <p>The State of Madhya Pradesh through Police Station Mada, District Singrauli (M.P.)</p> <p style="text-align: center;">&amp;</p>
<b>Criminal Appeal No.</b>	<b>982 of 2015</b>
<b>Parties Name</b>	<p>Anjani Kumar Pandey, S/o Late Ramvaran Pandey, aged about 61 years, R/o Village Harrai, District Singourli (M.P.)</p> <p style="text-align: center;"><b>Vs.</b></p> <p>1.Pushpendra, S/o Aditya Prasad Pandey, aged about 36 years.</p> <p>2. Smt. Ratan Kumari, W/o Aditya Prasad Pandey, aged about 55 years.</p> <p>3. Aditya Pandey, S/o Manmohan Ram, aged about 60 years.</p> <p>4.Ku. Jyoti, D/o Aditya Prasad Pandey, aged about 27 years.</p> <p>All R/o Kathura P.S. Mada,</p>

	District Singrauli (M.P.)
<b>Bench Constituted</b>	Hon'ble Shri Justice S.K.Seth & Hon'ble Shri Justice Anurag Shrivastava
<b>Judgment delivered by</b>	<b>Hon'ble Shri Justice Anurag Shrivastava</b>
<b>Whether approved for reporting</b>	Yes/No
<b>Name of counsels for parties</b>	<p><b>Counsel for the appellants in Cr.A. No.978/2015.</b></p> <p>Shri S.C. Datt, Senior Advocate with Shri Siddharth Datt, Advocate.</p> <p><b>For respondent/State:</b> Shri S.K. Rai, Government Advocate.</p> <p><b>For Objector:</b> Shri K.K. Pandey, Advocate.</p> <p><b>Counsel for the appellant in Cr.A. No.982/2015</b></p> <p>Shri K.K. Pandey, Advocate.</p> <p><b>For the respondent:</b></p> <p>Shri S.C. Datt, Senior Advocate with Shri Siddharth Datt, Advocate.</p>
<b>Law laid down</b>	
<b>Significant paragraph numbers</b>	

**J U D G M E N T**  
**(01.03.2018)**

By this common judgment both the Criminal Appeal Nos 978/2015 and 982/2015 are being decided.

**2.** The Criminal Appeal No.978/2015 under Section 374(2) of Cr.P.C. has been preferred by appellants/accused persons against the judgment and conviction dated 24.03.2015 passed by Additional Sessions Judge Singrauli (M.P.) in Sessions Trial No.318/2010, whereby the each appellants No.1, 3 & 4 have been convicted for offences punishable under Section 304-B and 498-A of IPC and awarded the sentence in graver offence Section 304-B of IPC, R.I. for seven years and also convicted under Section 4 of Dowry Prohibition Act and sentenced to R.I. for two years and fine of Rs.1,000/-. Appellant No.2 Ku. Jyoti has been convicted for offence punishable under Section 498-A of IPC and awarded sentence of R.I for three years and fine of Rs.1,000/- and convicted under Section 4 of Dowry Prohibition Act and awarded sentence of R.I. for two years and fine of Rs.1,000/-, with default stipulations.

**3.** In Criminal Appeal No.982/2015 under Section 378(1) of Cr.P.C. complainant Anjani Prasad Pandey challenged the acquittal of Ku. Jyoti under Section 304-B of IPC and also prayed for enhancement of sentence inflicted by trial Court on respondents/accused persons.

**4.** The case of prosecution in brief is that the marriage of deceased Shashi Pandey was solemnized with accused Pushpendra on 23.06.2007. Other accused Aditya Pandey and Smt. Ratan Kumari are father-in-law and mother-in-law of the deceased and Ku. Jyoti is her sister-in-law. Prior to marriage, at the time of Tilak ceremony (engagement) on 20.06.2007 father of deceased namely Anjani Kumar Pandey had given Rs.1,11,551/- as customary gift to accused Pushpendra. Being dissatisfied with the above amount,

Aditya Prasad Pandey made a demand of Rs.3,00,000/- and a Maruti car as dowry and threatened to break marriage if the demand is not meted out. As the father of deceased Anjani Pandey was not inclined to satisfy the demand he refused to marry his daughter with Pushpendra. A dispute arose there wherein relatives of both parties intervened and on their conciliation, Aditya Pandey agreed to marry his son without taking dowry. Thereafter, marriage was consummated on 23.06.2007 and deceased went to her marital home at village Kathura.

**5.** As per prosecution when deceased arrived at her marital home, her husband Pushpendra told her that your father had promised to give Rs.3,00,000/- and a Maruti car in dowry but gave only Rs.1,11,551/-. Therefore, next time when she will come to her marital home, she should bring the remaining part of money and maruti car from her father. Deceased tried to object against this demand, then Pushpendra beaten her. Other accused persons Aditya Pandey, Smt. Ratan Kumari, Ku. Jyoti also asked the deceased to fulfill the demand of dowry as mentioned above. The accused persons used to beat and harass the deceased for demand of dowry. The deceased informed her sister Shimla Pandey and brother Om Prakash who came after a week to take her back to her parental house. The deceased came to her parental house and stayed there for a week, then again went to her marital home and stayed there for twenty days. She informed to her parents and other family members that she was repeatedly harassed and beaten by the accused persons for demand of dowry. Till the month of February, 2008, the deceased visited her parental house 3-4 times and on each occasion, she made complaint of cruelty

and harassment meted out to her by accused persons for demand of dowry. In the first week of February, 2008 Pushpendra fell ill and hospitalized in Nehru Hospital Jayant for ten days. During this period, the deceased remained in hospital and looked after her husband. Thereafter, Pushpendra and deceased went to village Kathura on 17<sup>th</sup> February where deceased lived in her marital house till her death. During this period also deceased was subjected to cruelty by the accused persons for demand of dowry.

**6.** As per prosecution, on 29.02.2008 in the morning deceased fell down in a Well near her marital home. She was taken out from the well and brought to Nehru Hospital Jayant where the doctors found her "brought dead". The intimation of incident was given at police out post Jayant from the hospital, the police registered Marg Intimation Ex.P-5 and initiated the inquest. Rajendra Singh Baghel Tehsildar prepared panchnama Ex.P-3 of dead body and sent the body for postmortem. Dr. G.S Soni performed postmortem at District Hospital Baidhan and found the death of deceased was result of drowning in water. During inquest the spot map Ex.P-7 was prepared and a sample of water of well was collected and seized. In the inquest, it was found that deceased was subjected to cruelty and harassment for demand of dowry and a dowry death was committed by the accused persons. The police registered F.I.R. Ex.P-11 on 20.04.2008 and registered the offence, the statement of witnesses were got recorded and after completion of investigation, the charge-sheet has been filed against accused persons and brother-in-laws Pramod, Manoj of deceased before the Court.

**7.** The trial Court framed the charge of offence punishable under Section 304-B in alternative Sections 306 and 498-A of IPC and Section 4 of dowry prohibition Act against the accused persons Pushpendra, Ku. Jyoti, Aditya Pandey and Smt. Ratan Kumari. The accused persons abjured guilt and pleaded innocence.

**8.** In their defence it is submitted by the accused persons that they have never made any demand of dowry or practiced cruelty with the deceased. Deceased accidentally fell down in the well and died due to drowning. After the incident, the parents and other relatives of deceased arrived on the spot and remained present during inquest. They did not make any complaint to police regarding demand of dowry and cruel treatment to the deceased. It is further submitted that the father of deceased made a demand of Rs.10,00,000/- from the accused persons and threatened them to falsely implicate in the offence of dowry death, if his demand is not fulfilled. As accused persons had not fulfilled the demand, a false case has been filed against them.

**9.** The prosecution has examined 17 witnesses in its support whereas the accused persons had examined 9 witnesses in their defence.

**10.** Heard arguments and perused the record.

**11.** The first question for consideration arises as to whether the death of deceased was homicidal or accidental or she has committed suicide ? It is not disputed that on 29.02.2008 at village Kathura the deceased fell down in the public Well situated near the house of accused persons. She was taken

out of the Well and brought to Nehru Hospital Jayant where doctors found her brought dead. Rajan Singh Baghel Tahsildar (PW-10) deposed that during inquest, on 29.02.2008 he prepared panchnama Ex.P-3 of dead body of deceased Smt. Shashi and sent the body for postmortem to District Hospital Baidhan.

**12.** Dr. G.S. Soni (PW-7) deposed that on 29.02.2008 at District Hospital Baidhan he had conducted postmortem of deceased Smt. Shashi Pandey and found following injuries :-

- (I) Abrasion and bruises 2 x 1.5 inch below chin.
- (ii) Abrasion 1 x .5 inch over right knee.
- (iii) Abrasion 1 x .5 inch over left knee.
- (iv) Abrasion 6 x 4 inch below injury No.3.

On internal examination it was found that white froth was present in trachea.

Left chamber of heart was empty and right was filled with dark froth and blood. In the stomach brown colour water was present. No internal injuries were found. It is opined by the doctor that cause of death was asphyxia due to drowning in the water. The statement of doctor is duly corroborated by the postmortem report Ex.P-5 given by him. In cross-examination, this witness has not made any contradictory statement. He has clarified that the injuries found on person of body of deceased were superficial in nature. The doctor has preserved the Visera and femur bone of the deceased for diatom test. In the FSL report Ex.P-10, nothing was found adverse to postmortem report and it is opined by the doctor that as the cause of death is clearly established, therefore, there is no need to conduct diatom test. The postmortem report ruled out any possibility in respect of theory that deceased was done to death earlier

and thereafter her body was thrown into Well. In view of aforesaid evidence it is rightly proved by the trial Court that the deceased died due to drowning in the water which is not a normal death.

**13.** It is settled law that in order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have been occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

**14.** It is also important to consider the provisions of Section 113-B of Evidence Act which reads 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 purpose of this section “dowry death” shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”



Section 113-B of the Act enjoins a statutory presumption regarding dowry death. It is held in case law **Bajnath and others Vs. State of M.P. (2017) 1 SCC 101** that mere factum of unnatural death in matrimonial home within seven years of marriage is not sufficient to convict accused under Section 304-B and 498-A IPC. Only when if prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under Section 113-B can be invoked.

**15.** In view of aforesaid principle, we will consider the evidence adduced by the parties to find out whether the deceased was subjected to cruelty or harassment in connection with dowry soon before her death.

**16.** It is not disputed that the marriage of Puspendra with the deceased Smt. Shashi was solemnized on 22.06.2007 at village Kathura. The father of deceased Anjani Pandey (PW-8) deposed that prior to marriage on 20.06.2007, he went village Kathura to perform Tilak ceremony. In the Tilak, he had given Rs.1,11,551/-, a gold ring and a gold chain. This gift could not satisfy the accused Aditya Pandey and he had made a demand of Rs.3,00,000/- and a Maruti car. As Anjani Pandey was not inclined to fulfill the demand, he told Aditya Pandey that if he would raise the demand of dowry like this, he would not marry his daughter. Thereafter, with the intervention and negotiation of the relatives, Aditya Pandey agreed to marry his son without making any demand of dowry. This fact is verified by the other witnesses Ram Ketran Dubey (PW-6), Chitrakoot Dubey (PW-5), Chandrakesh Dubey (PW-4) Om Prakash (PW-3), Smt. Angarmati (PW-13) and Jai Prakash Pandey (PW-14). It is further admitted by Anjani Pandey (PW-8), Smt. Angrmati Pandey (PW-13), Jai Prakash Pandey (PW-14) that after Tilak ceremony, the accused persons had not made any demand of dowry and marriage was

consummated without any dispute. Thus, it is proved that although the accused Aditya Pandey had made the demand of dowry at the time of Tilak but later on he gave up the demand on advise of relatives and the marriage was performed without any demand of dowry.

**17.** After the marriage deceased Smt. Shashi went to her marital home at village Kathura first time on 23.06.2007. After six days, her sister Ku. Shimla Pandey (PW-2) and Om Prakash (PW-3) went village Kathura to bring back the deceased. Shimla and Om Prakash deposed that at that time, their sister the deceased had informed them that her husband, mother-in-law, father-in-law and sister-in-law Jyoti are demanding Rs.3,00,000/- and a Maruti car in dowry. When she objected to it, her husband had beaten her. Accused Jyoti and mother-in-law Smt. Ratan Kumari were making complaint to Ku. Shimla regarding insufficient dowry and told her that her father had not given the dowry as promised by him. This fact is verified by Anjani Kumar Pandey (PW-8) and Smt. Angarmati (PW-13), the parents of deceased by stating that when deceased returned home first time from her marital home, she told them that the accused persons are making demand of Rs.3,00,000/- and Maruti car in dowry and used to harass and beat her.

**18.** Anjani Kumar Pandey (PW-8) deposed that after staying for a week in the parental home, deceased again went to her marital home and lived there for about 20 days and returned back. She informed that after three days, Pushpendra went to join his service but he had insisted his sister Jyoti to make demand of dowry regularly from the deceased in his absence. Jyoti and her mother-in-law used to make demand of dowry and harass her, Jyoti used to pull her hairs and throw her plate of meal. They used to beat her. The similar fact has been narrated by Ku.

Shimla Pandey (PW-2), Angarmati (PW-13), Jai Prakash Pandey (PW-14) and Om Prakash (PW-3).

**19.** From the testimonies of prosecution witnesses Anjani Pandey (PW-8), Smt Angarmati (PW-13), Jai Prakash Pandey (PW-14) and Ku. Shimla Pandey (PW-2), it appears that the deceased lived in her parental house for a week then she went to her marital home and lived there for about 2 – 2 ½ months and returned back, at this time also she made the complaint of harassment and cruel treatment meted to her by accused persons for demand of dowry.

**20.** Shimla Pandey (PW-2) further deposed that the deceased stayed in her parental house for a week then again went to her marital home. After two months, she met the deceased in a function at the house of Amresh. Deceased told her that Jyoti had beatn her and caused burn injuries by a firewood. This fact is also corroborated by statement of Smt. Angarmati (PW-13) who met the deceased in the house of Amresh Pandey. Shimla Pandey (PW-2) and Om Prakash (PW-3) deposed that in the first week of February, they met the deceased in the house of Rakesh, where she had made the complainant against her father-in-law, mother-in-law and sister-in-law by stating that they used to made demand of dowry and beat her.

**21.** It is not disputed that in the first week of February, Pushpendra Dubey, the husband of deceased, fell sick and hospitalized at Nehru Hospital Jayant. He remained admitted there for about 10-12 days, during this period the deceased stayed with her husband in the hospital and looked after him. Thereafter, she went to her marital home with her husband where on 29.02.2008 she died.

**22.** it is argued by learned counsel for the accused persons that at the time of inquest, the parents and relatives of the deceased were present but no one had lodged the report of incident to police. The marriage was solemnized without any dispute or demand of dowry. There are material discrepancies occurred in the testimony of prosecution witnesses. All the main prosecution witness PW-2, PW-3, PW-4, PW-6, PW-8, PW-13 and PW-14 are near relatives of the deceased. Their police statements have been recorded after a delay of two months. From the statement of Investigating Officer it is found that despite the repeated call of the Investigating Officer, the prosecution witnesses did not come forward to give their statements. This creates doubt on their testimony. The prosecution witnesses had tried to falsely implicate Manoj Pandey, Pramod Pandey who are the brother-in-laws of the deceased living in other city. They also tried to implicate elder brother and Bhabhi of Pushpendra who are living separately in other house. The husband of deceased was employed in other city and after a few days of marriage he went there and returned in the first week of February when he fell ill. Therefore, it is not possible for him to practice cruelty with the deceased. The prosecution witnesses are highly interested and trying to falsely implicate all the family members. There is no evidence to prove that deceased was subjected to cruelty for demand of dowry soon before her death. The trial Court on erroneous appreciation of evidence has held the accused persons guilty for commission of alleged offence.

**23.** considering the arguments of learned counsel for the accused persons and perusal of record it is found that the deceased was the daughter of PW-8 and PW-13. Other witnesses PW-14, PW-2, PW-3 are her real brothers and sisters. Although they are close relatives and appears to be interested witness but only on this ground, their testimony cannot be disbelieved. They are the close relatives, therefore, it is quite natural that the

deceased might have narrated them about her living condition and treatment given by her in-laws. In this sort of offence which is committed within four walls of the house, we cannot expect the corroboration from the independent witness. Sometimes considering the prestige of family and to save family life, the woman does not make any report to police and do not publicly talk about her home affairs.

**24.** It is settled law that merely because in a murder case, prosecution witnesses were interested and inimical, that by itself is no ground to reject their testimony in *toto*. The evidence of interested witnesses should however be scrutinised with care. Close relationship of the witness with the injured is not sufficient to suspect credibility and desirability subjecting the testimony of the evidence of the relatives to close and severe scrutiny arises only when it is shown that there was likelihood of an attempt to falsely implicate an accused but where the incident had taken place in the broad day-light and there was no reason to falsely implicate the accused, the testimony of the interested witness could not be brushed aside. Where the evidence of eye witness is cogent and acceptable, it cannot be rejected for little discrepancies or on cryptic observation of general nature that it appears to be suspicious or in absence of strong reason and also where it is corroborated.

**25.** In ***Appa Bhai Vs. State of Gujarat AIR 1988 SC 696*** observed that

“The witnesses now a days go on adding embellishment to their version perhaps for the fear of their testimony being rejected by the Court. The Courts however, should not disbelieve the evidence of such witnesses altogether, if they are otherwise trustworthy.”

In another case law ***State of U.P. Vs. Anil Singh AIR 1988 SC 1998*** Hon'ble Apex Court observed that

“With regard to false hood stated or embellishment added by the prosecution witnesses, it is well to remember to them that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. Invariably the witnesses add embroidery to prosecution story perhaps for the fear of being disbelieved, but that is no ground to throw the case overboard, if true in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that inconsistencies of falsehood are so glaring as utterly to destroy confidence in witness.”

**26.** In the present case, from the prosecution evidence it is proved that the deceased was married on 23.06.2007 and died on 29.02.2008 just after eight months of the marriage. During this period, she mostly lived in her marital home. During this period she visited her parental home about four times and at every time, she complained of cruelty and harassment meted out to her by the accused persons in connection with demand of dowry. The demand of dowry was also made in presence of Ku. Shimla (PW-2) and Om Prakash (PW-3) when they went to bring back the deceased first time from her marital home. There is no material discrepancies found in the testimonies of witnesses PW-2, PW-3, PW-8, PW-13 and PW-14 who are the parents, and brother and sister of the deceased. They corroborates each other on every material particulars. Much weight cannot be given to minor discrepancies in their testimonies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. A written complaint Ex.D-7 made by Anjani Pandey shows that this complaint

has been given to police on the next date i.e. 28.02.2008 of the incident. The defence has relied upon this report. Therefore, it cannot be said that the father of deceased has not made any complaint to the police. Therefore it can not be said that no complaint has been made to police by parents of deceased. Simply on the ground of delayed recording of police statement we cannot reject the testimony of the witnesses. Thus, from the evidence on record it is established that the deceased was continuously harassed and subjected to mental and physical cruelty for demand of dowry by her husband, mother-in-law, father-in-law and sister-in-law till February, 2008. Thus, it is rightly found proved by the trial Court that soon before her death, deceased was subjected to cruelty and harassment for demand of dowry by her husband and mother-in-law and father-in-law. The prosecution witnesses has categorically deposed that accused Jyoti has been continuously harassing and practicing cruelty with the deceased for demand of dowry. The deceased had made complaint against her to the witnesses Shimla Pandey (PW-2), Om Prakash (PW-3), Anjani Pandey (PW-8) when she met them at the house of Amresh Pandey and Rakesh during the month of December and February. This establishes the fact that the deceased was subjected to cruelty for demand of dowry by Ku. Jyoti also soon before her death.

**27.** The expression soon before her death has occurred in Section 304-B of IPC does not imply "immediate before her death". In case law **Rajinder Singh Vs. State of Punjab 2015 AIR SCW 1663** Hon'ble Apex court while considering the expression soon before her death in Section 304-B of Penal Code observed as under:-

**22.** In another recent judgment in *Sher Singh v. State of Haryana*, 2015 (1) SCALE 250 : (2015 AIR SCW 716), this Court said:

“We are aware that the word 'soon' finds place in Section 304B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past; but should be the continuing cause for the death under Section 304B or the suicide under Section 306 of the IPC. Once the presence of these concomitants are established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt.” (at page 262)

**28.** Prosecution witness Om Prakash (PW-3) has stated that on 28.01.2008 the deceased came to his Pathology Centre with her husband and informed that she was beaten by her mother-in-law and Jyoti for demand of dowry. This show that deceased was continuously harassed and ill treated by her in-laws in connection with demand of dowry. In defense the accused persons had tried to establish that after the death of the deceased, her father made a demand of Rs.10 Lacs and threatened to falsely implicate the accused persons. We do not find any iota of truth in this defense and we agree with the trial Court who after assailing the evidence of defense witness disbelieved their testimonies in this regard.

**29.** Thus, from the evidence available on record, it is proved that deceased was subjected to cruelty for demand of dowry soon before her death. Therefore, a presumption under Section 113-B of Evidence Act can be drawn against the accused persons and we can presume that the accused persons have caused the dowry death. This is a rebuttable presumption, and now the burden lies upon the accused persons to prove that the death of a woman was under normal circumstance i.e. natural or accidental. Hon'ble Apex Court in case law **Hira Lal Vs. State (Govt. of NCT) of Delhi (2003) 8 SCC 80** in para 9 observed as under :



"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 circumstance'."

**30.** In case law **Nallam Veera Styandam Vs, Public Prosecutor (2004) 10 SCC 769** Hon'ble Apex Court while dealing with applicability of Section 304-B of IPC in the case of accidental death observed in para 5 as under :-

"5 ... It is true from the evidence led by the prosecution it has been able to establish that the appellants were demanding dowry which was a harassment to the deceased. It is also true that the death of the deceased occurred within 7 years of the marriage, therefore, a presumption under Section 113-B of the Evidence Act is available to the prosecution, therefore, it is for the defence in this case to discharge the onus and establish that the death of the deceased in all probability did not occur because of suicide but was an accidental death"

The similar principle has been reiterated in case law **Suresh Kumar Vs. State of Haryana (2013) 16 SCC 353**, wherein the court observed as under :-

"We are, of course, bound by the decision of a larger Bench of this Court in Shamnsaheb **M. Multtani vs. State of karnataka, (2001) SCC (Cri) 358** . Following that decision, we must hold that the initial burden of proving the death of a woman within seven years of her marriage in circumstances that are not normal is on the probability; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that eventually leads to woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the prosecution, a reverse onus is put on the accused to prove his innocence by showing, inter alia, that the **death was accidental.**"

**31.** Thus, keeping in view the presumption under Section 113-B of Evidence Act, the burden shift upon the accused persons to

prove in rebuttal that the death of deceased was either natural or accidental. Although the prosecution witnesses Ku. Shimla (PW-2), Om Prakash (PW-3), Anjani Pandey (PW-8), Smt. Angarmati Pandey (PW-13) and Jai Prakash (PW-14) deposed that deceased was beaten and killed and thereafter thrown into the Well, but these witnesses were not present on the spot at the time of incident. Therefore, their statements in this regard are only an opinion which cannot take the place of evidence. The prosecution has examined Babu Lal (PW-15) as witness to the incident. Babu Lal deposed that at the time of incident at around 9:00 O'clock in the morning he was cutting grass near the Well. The deceased Shashi Pandey came to take bath and fetch water from the Well. She had placed her foot on a wooden log, kept over the peri-feri of Well and started pulling the rope attached to the bucket in order to take the water. Meanwhile, her leg slipped from the wooden log and she fell down in the Well. Seeing the incident, Babu Lal raised alarm for help, hearing this Aditya Pandey, Pushpendra, Girdhari and Chotte Lal arrivd there. Babu Lal and Chotte Lal entered in the Well and took out the deceased by a cot. She was drowned in the water and became unconscious. She was taken to hospital where doctor found her dead. In cross-examination, the statement of this witness remained unchallenged. The prosecution has not declared this witness hostile. The statement of Babu Lal is also corroborated by the spot map Ex.P-7 wherein the Investigating Officer has indicated the spot from where this witness had seen the incident. The defence witness Chotte Lal Pandey (DW-3) also corroborates the testimony of Babu Lal. He has also stated about the accidental fall of the deceased in the Well. The

prosecution witness Babu Lal had verified the presence of DW-3 on the spot at the time of incident.

**32.** Prosecution witness Babu Lal is an independent witness, the prosecution has relied upon his testimony. He has not been declared hostile. Therefore, his testimony is binding upon the prosecution. **Hon'ble Apex Court in case law Rajaram Vs. State of Rajasthan (2005) 5 SCC 272 and Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi) (2005) 5 SCC 258** that the accused can rely on the evidence of prosecution witness who is not supporting the prosecution case if said witness was not declared hostile by the prosecution. The injuries noticed on person of body of deceased were superficial and could be caused during fall in the Well or during rescue of the deceased. Doctor has not given clear opinion about the age of the injuries. Therefore, it could have been caused due to so many reasons. The trial Court on erroneous appreciation of the evidence arrived at the conclusion that the death of deceased was either homicidal or she might have committed suicide. This finding cannot be sustained. Thus, we can rely upon the testimony of witness Babu Lal (PW-15) and it is found proved that the deceased had accidentally fell into the Well and died due to drowning. Her death was an accidental death, therefore, the presumption drawn under Section 113-B of Evidence Act is successfully rebutted by the defense. Consequently, it is not proved that the accused persons have caused a dowry death and the offence under Section 304-B of IPC is not proved beyond reasonable doubt against them.

**33.** From the evidence on record, it is duly proved that deceased was subjected cruelty in connection with demand

of dowry by the accused persons. The trial Court on proper appreciation of evidence held them guilty for commission of offence punishable under Section 498-A of IPC and Section 4 of Dowry Prohibition Act. We affirm the findings recorded by the trial Court in this regard.

**34.** The Criminal Appeal No.978/2015 preferred by the accused persons is partly allowed and conviction and sentence of appellants/accused persons Pushpendra, Aditya Pandey and Smt. Ratan Kumari under Section 304-B of IPC is set-aside and they are acquitted of the charge of aforesaid offence.

**35.** The conviction and sentence of appellants/accused persons Pushpendra, Ku. Jyoti, Aditya Pandey and Smt. Ratan Kumari, awarded by the trial Court for the offence punishable under Section 498-A of IPC and Section 3 & 4 of Dowry Prohibition Act, is affirmed and confirmed. They all are convicted under Section 498-A of IPC and sentenced to undergo R.I for 3 years and fine of Rs.1000/- and also under Section 4 of Dowry Prohibition Act and sentence to undergo imprisonment for 2 years and fine of Rs.1000/-. In default of payment of fine they shall suffer 1 month imprisonment. The bail bonds of appellants/accused persons stand cancelled. They are directed to surrender before trial Court to serve out the remaining part of the sentence.

**36.** In regard to Criminal Appeal No.982/2015 preferred by the complainant we have already discussed the evidence adduced by the parties and arrived at the conclusion that the charge of dowry death punishable under Section 304-B of IPC is not proved beyond reasonable doubt against the

accused persons. They are held guilty under Section 498-A of IPC and sentenced to maximum punishment by the trial Court. Therefore, the present appeal is dismissed.

**(S.K.Seth)**  
**Judge**

**(Anurag Shrivastava)**  
**Judge**

haider