

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.539 of 2019

Arising Out of PS. Case No.-150 Year-2015 Thana- DANAPUR District- Patna

=====

VIKKI KUMAR Son of Shankar Rai Resident of Village- Gajadhar Chak, Gola Road, Police Station- Danapur, District- Patna.

... ... Appellant/s

Versus

THE STATE OF BIHAR

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 47 of 2019

Arising Out of PS. Case No.-150 Year-2015 Thana- DANAPUR District- Patna

=====

Etwari Devi Shankar Rai @ Uday Shankar Rai Village - Gajadhar Chak Gola rd.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 81 of 2019

Arising Out of PS. Case No.-150 Year-2015 Thana- DANAPUR District- Patna

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UDAY SHANKAR RAI @ UDAY SHANKAR PRASAD Late Lal Munni Rai R/o village- Gajadhar Chak, gola road P.S- Danapur

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

Acts/Sections/Rules:

- Sections- 304B/34 and 302/34 of I.P.C.
- Section-106, 113B of Evidence Act

Cases Referred:

- Bakshish Ram & Ors. Vs. State of Punjab, reported in (2013) 4 SCC 131
- Shivaji Chintappa Patil Vs. State of Maharashtra, reported in (2021) 5 SCC 626

Appeal - filed against judgement of conviction whereby accused have been convicted for the offence under Sections- 304B/34 and 302/34 of I.P.C.

Held - Prosecution has duly proved the demand of Rs. 50,000/- as dowry by the accused soon before the incident. (Para 27)

There was a sign of struggle prior to the death of the deceased. Thus, we are of the view that the prosecution has duly proved all the ingredients of Section-304B of I.P.C. (Para 28)

Deceased died at her matrimonial house i.e. at the house of the appellant. She died within a period of 3-4 years of her marriage. Therefore, it is for the appellant to prove, by leading cogent evidence, that the said house was not shared by him with the deceased at the relevant point of time or that at the time of incident he was not present in the house or even in the locality. - Appellant has not taken any defence. Even it is not the case of the appellant that the deceased committed suicide. Thus, we are of the view that the provisions contained in Section-106 of the Evidence Act would be attracted (Para 30)

Appeal is dismissed. (Para 38)

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Gola Road, Police Station- Danapur, District- Patna.

... .. Appellant/s

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CRIMINAL APPEAL (DB) No. 47 of 2019

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Etwari Devi Shankar Rai @ Uday Shankar Rai Village - Gajadhar Chak Gola
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... .. Appellant/s

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with
CRIMINAL APPEAL (DB) No. 81 of 2019

Arising Out of PS. Case No.-150 Year-2015 Thana- DANAPUR District- Patna

UDAY SHANKAR RAI @ UDAY SHANKAR PRASAD Late Lal Munni
Rai R/o village- Gajadhar Chak, gola road P.S- Danapur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 539 of 2019)
For the Appellant/s : Mr. Sumeet Kr. Singh, Advocate
Ms. Alka Singh, Advocate
Mr. Shriram Singh, Advocate
For the State : Mr. Bipin Kumar, APP
For the Informant : Mr. Sudhanshu Bhushan, Advocate
(In CRIMINAL APPEAL (DB) No. 47 of 2019)
For the Appellant/s : Mr. Sumeet Kr. Singh, Advocate
Ms. Alka Singh, Advocate
Mr. Shriram Singh, Advocate
For the State : Mr. Binod Bihari Singh, APP



For the Informant : Mr. Sudhanshu Bhushan, Advocate
(In CRIMINAL APPEAL (DB) No. 81 of 2019)
For the Appellant/s : Mr. Sumeet Kr. Singh, Advocate
Ms. Alka Singh, Advocate
Mr. Shriram Singh, Advocate
For the State : Mr. Binod Bihari Singh, APP
For the Informant : Mr. Sudhanshu Bhushan, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-07-2024

The present appeals have been filed under Section- 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the impugned judgment dated 12.12.2018 and order of sentence dated 17.12.2018, passed by the learned Additional Sessions Judge-II, Danapur in Sessions Trial No. 87 of 2017, arising out of Danapur P.S. Case No. 150 of 2015 dated 16.03.2015, corresponding to G.R. Case No. 914 of 2015, whereby the appellants/accused have been convicted for the offence under Sections- 304B/34 and 302/34 of I.P.C. and sentenced to undergo imprisonment for life u/S-304B/34 of I.P.C. and imprisonment for life and to pay a fine of Rs. ten thousand each u/S- 302/34 of I.P.C.

2. At the outset, learned counsel for the appellants informs that appellant Etwari Devi (in Cr. Appeal (D.B.) No.47 of 2019) and appellant Uday Shankar Rai @ Uday Shankar Prasad (in Cr. Appeal (D.B.) No. 81 of 2019) have died during



the pendency of the present appeals.

3. As such, Cr. Appeal (D.B.) No. 47 of 2019 and Cr. Appeal (D. B.) No. 81 of 2019 stand abated.

4. Heard Mr. Sumeet Kumar Singh, learned counsel for the appellant in Cr. Appeal (D.B.) No. 539 of 2019, assisted by Ms. Alka Singh and Mr. Shriram Singh, and Mr. Bipin Kumar and Mr. Binod Bihari Singh, learned A.P.P's. for the respondent-State and Mr. Sudhanshu Bhushan, learned counsel for the informant.

5. The brief facts leading to the filing of the present appeal are as under:

“The informant’s sister Malti Kumari, aged 25, was married to Vikki Kumar, S/o- Shankar Rai, R/o- Gola Road, Gajadhar Chak about 3-4 years ago. A few days after the marriage, the in-laws started demanding dowry and harassing his sister in various ways. Vikki Kumar S/o- Shankar Rai, Etwari Devi, wife of Shankar Rai and Shankar Rai S/o- unknown, were mainly involved in the harassment who had demanded dowry of Rs. 50,000/- about eight days ago and had threatened of dire consequences if the said demand was not fulfilled. On 16.03.15, the above named persons murdered his sister for dowry and hanged her body to the fan.”



6. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 87 of 2017.

7. Learned counsel for the appellant mainly submits that the prosecution had examined only interested witnesses who are the near relatives of the deceased. The prosecution had failed to examine the independent witnesses to support the case of the prosecution. It is further submitted that there are major contradictions and inconsistencies in the depositions of the prosecution witnesses. Learned counsel further submits that, though it has been alleged by the informant, P.W. 1, that the appellant had demanded Rs. 50,000/- for running business, no complaint was lodged by him for the torture meted to his sister for non-fulfilment of the demand. It is further submitted that P.W. 1 has specifically admitted during cross-examination that he has no proof of demand made by the parents of the present appellant. At this stage, learned counsel has also referred to the



deposition of P.W. 2 Manisha Devi, who is the sister-in-law of the deceased. The said witness has stated during cross-examination that, at the time of marriage, Vikki Kumar (appellant) was unemployed and for that her sister-in-law was not satisfied with the marriage. Learned advocate also pointed out from the cross-examination of P.W. 4 Sita Devi (mother of the deceased) that the said witness has also stated that deceased was not happy with the marriage as her husband was unemployed at the time of marriage. It is further submitted that, as per the deposition of P.W. 4, deceased used to visit his parents' house at intervals with her husband for an hour and used to come back with him. Learned counsel, therefore, contended that the allegation with regard to demand of dowry by the present appellant is not duly proved.

8. Learned advocate would further submit that even the prosecution has failed to prove the ingredients of provisions contained in Section-304B of I.P.C. by leading cogent evidence. The prosecution has failed to point out that there was cruelty and harassment in connection with demand for dowry soon before the death of the deceased, despite which the Trial Court has recorded the conviction of the appellant for the offence punishable under Section-304B of I.P.C. Learned counsel, at this



stage, has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Bakshish Ram & Ors. Vs. State of Punjab**, reported in **(2013) 4 SCC 131**.

9. Learned advocate Mr. Sumeet Kumar Singh for the appellant further submits that, in the present case, there is no eye-witness to the incident in question and the case of the prosecution rests on the circumstantial evidence. It is contended that it is true that the death of the deceased was caused in her matrimonial house, i.e. at the residential place of the appellant. However, it is the duty of the prosecution to first discharge the burden of proof under Section-106 of the Evidence Act and only thereafter it is for the accused to prove his innocence. In the present case, the prosecution has failed to discharge the burden and, therefore, provision contained in Section-106 of the Evidence Act would not be attracted.

10. Learned advocate thereafter referred to the deposition given by P.W. 5, the doctor who had conducted the *post mortem* of the dead body of the deceased. It is submitted that, as per the opinion given by the doctor, the cause of death is asphyxia leading to cardio-respiratory arrest as a result of hanging caused by soft ligature. At this stage, it has been contended that there is a difference between homicidal hanging



and suicidal hanging and the symptoms of both are different. In support of the said contention, learned counsel has referred to **“A Text Book of Medical Jurisprudence and Toxicology, 27th Edition, written by Jaising P. Modi.** Learned counsel has more particularly referred Chapter-19, page-456 of the said book. Learned counsel has supplied relevant pages of the said chapter.

10.1. After referring to page-456 of the said book as well as the deposition given by P.W. 5, it is contended that the present is a case of suicidal death and not of homicidal death, as alleged by the prosecution. Learned counsel, therefore, urged that the Trial Court has committed serious error while convicting the appellant for the offence punishable under Section-302 of I.P.C.

10.2. Learned counsel has thereafter placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Shivaji Chintappa Patil Vs. Stated of Maharashtra**, reported in **(2021) 5 SCC 626**. Learned counsel for the appellant, therefore, urged that the present appeal be allowed and the impugned judgment and order be quashed and set aside.

11. On the other hand, learned A.P.Ps. as well as learned counsel for the informant, have vehemently opposed the present appeal. It has been mainly contended that the



prosecution-witnesses have supported the allegation levelled by the informant in the *fardbeyan*. Specific allegation with regard to demand of dowry four days prior to the incident has been levelled by the informant. Merely because no complaint was given for such demand of Rs. 50,000/-, benefit of the same may not be given to the appellant/accused. It is contended that when the amount of Rs. 50,000/- was not given to the appellant two to four days before the incident, the incident in question took place. At this stage, learned counsels have referred to the inquest report of the dead body of the deceased. In the inquest report, it has been stated in Column-4 “Hanging from the ceiling fan hook in the room, feet touching the bed, complexion fair, eyes open, black tongue protruded, right fist clinching black hair.

12. It is also contended that the medical evidence also suggests that the deceased was ill-treated by the appellant and in-laws in connection with the demand for dowry soon before her death. Learned counsels, therefore, urged that the prosecution has proved the ingredients of Section- 304B of I.P.C. by leading cogent evidence. Unnatural death has been caused within a period of 3-4 years of the marriage of the deceased with the appellant and, therefore, the presumption made under Section-304B of I.P.C. and Section-113B of Evidence Act would



be attracted.

13. Learned counsels further submit that from the deposition of the prosecution-witnesses, including the Investigating Officer coupled with the inquest report, it is revealed that the dead body was hanging from the ceiling fan hook in the room, feet touching the bed, complexion fair, eyes open, black tongue protruded, right fist clinching black hair.

14. It is submitted that, thus, looking to the said evidence, it is clear that the present is not a case of suicide, rather it was a homicidal death. It is further submitted that from the deposition given by the doctor, P.W. 5, who had conducted the *post mortem* of the dead body of the deceased, that the prosecution has duly established that the present is a case of homicidal death and, therefore, the prosecution has proved the case against the appellant for commission of offence under Section 302 of I.P.C. beyond reasonable doubt. At this stage, it is submitted that the appellant has failed to discharge the burden of proof under Section-106 of Evidence Act. It is submitted that the appellant has not taken the defence before the Trial Court that the present is a case of suicide. No suggestion was made to that effect to the prosecution-witnesses nor such defence was taken even while giving statement under Section-313 Cr.P.C. before



the Court. Learned counsels, therefore, urged that the Trial Court has not committed any error while passing the impugned judgment and order. Learned counsels, therefore, urged that the appeal be dismissed and the judgment of conviction and order of sentence passed by the learned Trial Court be affirmed.

15. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

16. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

17. Before the Trial Court, prosecution examined 7 witnesses. Defence has also examined 1 witness.

18. P.W. 1 Pankaj Kumar has stated in his examination-in-chief that he has lodged this case. Malti Devi was his sister who was married to Vikki Kumar of Gola Road, Danapur in 2011 and was residing in her in-laws' house. Vikki Kumar started demanding dowry. His parents, Uday Shankar Ray and Etwari Rai also started demanding dowry and used to torture her for non-fulfilment of the demand. Lastly they demanded Rs. 50,000/-. After 2-4 days, the Ward Councilor



informed that his sister has committed suicide by hanging herself to the fan. When he went there, he saw his sister hanging with the fan and her legs were touching the ground. He adds that the legs were touching the bedstead. Thereafter, the S.H.O. came at the spot, unfastened the dead-body and took it to Danapur Hospital. The *post mortem* of his sister was conducted in the hospital in his presence. Darogaji recorded his statement. Fardbeyan was recorded by S.I. Naveen Kumar. He put his signature on the same. He identifies his signature (Ext. 1). Darogaji had recorded his re-statement. He identifies accused Vikki Kumar, Etwari Devi and Uday Shankar, present in court.

18.1. In his cross-examination he has stated that he had not witnessed the incident. He was informed about the incident on telephone by the Ward Councilor at about 6:00 p.m. However, he does not remember either the name of the Ward Councilor or the phone number. He reached Gajadhar Chak within half an hour, but he does not remember the time. By the time he reached there, about 100 people had gathered around the scene. He had gone to Gajadhar Chak alone. He has further stated that Vikki Kumar had demanded Rs. 50,000/- for running business. No complaint was lodged for the torture meted to his sister for non-fulfilment of the demand. He has no proof of



demand made by the parents of Vikki Kumar. He has also stated that police had already arrived at the scene of occurrence before he reached there. The dead-body was unfastened in his presence by cutting the rope with a knife by the S.H.O. of Danapur P.S. and the dead-body was taken to Danapur Hospital. The police could not record his statement at the place of occurrence rather his statement was recorded at the hospital at 8-9 O'clock. His re-statement was recorded about a week later. He has admitted to have stated in his statement and re-statement that when he reached at the place of incident, he saw his sister hanging with the fan and her legs were touching the bedstead. He has denied the suggestion that his sister was not killed, rather she had committed suicide by hanging herself and the accused persons have been falsely implicated in the present case with ulterior motive.

19. P.W. 2 Manisha Devi has stated in her examination-in-chief that Malti Devi was her sister-in-law (Nanad). She was married to Vikki Kumar in 2011. She has stated that Malti Devi was regularly tortured on the pretext of non-fulfilment of demand of dowry and now she is no more. Though they had paid part of the demanded money, but the accused started demanding more and more. On being informed



by the police, her mother-in-law Sita Devi, sister-in-law Manju Devi, Shanti Devi and Sunti Devi had gone to Danapur Hospital. Before that she and her mother Urmila had gone to the in-laws' place of Malti Devi. She saw Malti Devi hanging with the fan and the Police unfastened her sister-in-law. Police had enquired her at the hospital. She identifies accused Vikki, Shankar Singh and mother of Vikki (name not known).

19.1. In her cross-examination, she has stated that the present case has been lodged by her husband. At the time of marriage, Vikki was unemployed and for that her sister-in-law was not satisfied with the marriage. She has further submitted that her sister-in-law died after three and a half years of her marriage. During this period, she used to come to her parental house at intervals on being requested. Her husband used to take her back. Lastly she came to her parental house two months before her death. This witness has stated that she had not seen the incident with her own eyes. The family members had participated in the last rites of her sister-in-law. The statements of this witness, her husband, her mother-in-law and *Bhagina* Dhananjay Kumar were recorded at the hospital. The name of her cousin brother who had informed about the death of her sister-in-law is Anil Kumar. This witness has stated that she had



stated before the police that the in-laws of her sister-in-law did not treat her well and used to taunt and beat her. They also used to demand money and on non-fulfilment of the demand, they used to beat her. Before her death, they demanded heavy amount which could not be fulfilled. She has denied the suggestion that the accused persons had not killed Malti Devi and the husband of this witness has falsely implicated the accused persons in the present case for some ulterior motive.

20. P.W 3 Dhananjay Kumar has stated in his examination-in-chief that Malti Kumari was his maternal aunt (Mausi). She was married to Vikki Kumar in Danapur. After 5-6 months of the marriage the in-laws, such as Vikki Kumar, his father Shankar and his mother Etwari Devi, started demanding dowry and used to torture her on that ground. On 15.03.2015 his maternal uncle (Mama) Pankaj Kumar informed him that the in-laws of Malti had killed her and hanged her body with the fan. He saw Malti Kumari dead. Police had reached at the scene. Police had enquired of him regarding the incident. He has identified accused Vikki Kumar, Shankar Rai and Etwari Devi, present in Court.

20.1. In his cross-examination, he has stated that Pankaj Kumar, the informant, is his maternal uncle (Mama).



When he visited the in-laws' place of Malti Kumari, she was not ever beaten in his presence. He has admitted to have stated before the police that 5-6 months after the marriage Vikki Kumar, his father Shankar Rai and his mother Etwari Devi started torturing Malti for dowry. He has also admitted to have stated before the police that accused persons demanded the amount between Rs.10,000/- to Rs. 50,000/- and used to torture her for non-fulfilment of the same. He has denied the suggestion to have given false deposition, being the *Bhagina* of the informant.

21. P.W. 4 is Sita Devi. She has stated in her examination-in-chief that Malti Kumari was her daughter who was married to Vikki Kumar 7 years ago. Vikki Kumar, his father Shankar Rai and his mother Etwari Devi used to demand dowry and torture her to extract the dowry. They also used to threaten that if the demand is not fulfilled, they would either kill Malti or contract re-marriage of Vikki. She has further stated that the husband and his parents killed Malti and hanged her body. She had gone to the in-laws' place of Malti and saw injuries of blows on her hands and legs and the body was hanged to the fan with the help of scarf (*Dupatta*). Police had also seen the body hanging. The police just asked her name and nothing else. She



has identified accused Shankar Rai, Etwari Devi and Vikki Kumar, present in Court.

21.1. In her cross-examination, she has stated that out of four daughters, all married, Malti Devi was the youngest. Malti Devi was not happy with the marriage as her husband was unemployed at the time of marriage. Malti Devi used to visit her parents' house at intervals with her husband for an hour and used to go back. She had not witnessed the incident. When she reached the place of occurrence, she saw the hands and legs of Malti injured. She had not lodged any complaint for the demand of dowry and torture. She was informed about the incident by some person from Danapur on the telephone of her son Pankaj Kumar at 06:00 p.m. She went to Danapur alone on the advice of her son Pankaj Kumar. She had never visited the in-laws' place of her daughter before. Sari and blouse of her daughter were smeared with blood. Blood had also spilled on the bed and earth. The legs were hanging over the ground. She did not see anybody bringing the dead-body down to the ground. She had not gone to the hospital. She returned after seeing her daughter at 09:00 p.m. She has denied to have falsely deposed on the instruction of her son Pankaj Kumar or that her son has falsely implicated the accused persons for some ulterior motive.



22. P.W. 5 Vimal Kumar Chaudhary has stated in his examination-in-chief that on 17.03.2015 he was posted at Danapur Sub-Divisional Hospital. A Medical Board was constituted for the postmortem. In that Board besides him, Dr. Vivek Kumar and R. Avinash Kumar Singh also were with him. On 17.03.2015 at 07.15 A.M. he conducted the *post mortem* of dead body of Malti Devi, age about 25 years W/o Vikki Rai, village- Gola Road, Gajadhar Chak, P.S. Danapur, Patna and found following findings:-

External finding: Rigor mortis present, eye closed, mouth closed, face congested, both conjunctiva congested. A ligature mark 3/4" with present over the thyroid cartilage passing obliquely towards mastoid process, interrupted nape of neck and lat. aspect right side of neck behind pinna.

On dissection :-

- (i) Ligature mark-underline tissue looks white and glistering.
- (ii) Larynx and trachea- mucosa congested. Left corn of thyroid bone fractured.
- (iii) Chest-both lungs congested.

On dissection:- dark red liquid comes out.

Heart-Right chamber contains blood, left empty.

Abdomen- all viscera congested. Stomach contains undigested food.

Uterus- does not contain any product of conception.

Time lapse since death: 24 hours of postmortem.

Opinion- In our opinion cause of death is asphyxia leading to cardio- respiratory arrest as a result of hanging caused by soft



ligature.

He has identified the *post mortem* report to be in his pen and signature (Exhibit-2).

22.1. In his cross-examination, he has stated that:-

3. The Board was constituted on 17.03.2015.
4. At present he has no proof regarding the constitution of the Board.
5. He had conducted the *post mortem*.
6. He identified the dead body at the instance of police.
7. Rigor mortis appears after two to four hours.
8. After 24 hours of death *rigor mortis* begin to disappear.
9. From the upper part of the body *rigor mortis* begins first disappears.
10. In hanging the cause of death becomes due to asphyxia.
11. No other reason may be except asphyxia in hanging.
12. He did not find cervical vertebra fracture.
13. He did not find have mark of ligature redish.
14. He did not find any material of ligature.
15. He can differentiate between homicidal hanging and suicidal hanging.
16. In homicidal hanging sign of struggle will be.
17. In his *post mortem* report, he has not written type of hanging.
18. There are so many other reason for cardio respiratory arrest.
19. Soft ligature means that there is no cut mark on ligature side.
20. In hard ligature there is bruises and abrasion present.
21. Soft ligature is possible by tying Dhoti and Saree in the neck.
22. He did not mention the colour of dead body.
23. He has not written in his *post mortem* report the condition of tongue of dead body.



24. It is not true to say that his *post mortem* report is not scientific.

23. P.W. 6 Avinash Kumar Singh has stated in his examination-in-chief that on 17.03.2015 he was posted at Sub-Divisional Hospital, Danapur as a Medical Officer. That very day, he did *post mortem* of dead body of Malti Devi W/o Vikki Rai. A Board of three doctors was constituted for the *post mortem* of dead body of Malti Devi. Doctor Vimal Kumar Chaudhary and Dr. Vivek Kumar were in that Board. From the *post mortem* report of dead body of Malti Devi he was also agree. He put my signature on the *post mortem* report. He has identified the postmortem report of dead body of Malti Devi. He has also identified his signature and that of of Dr. Vivek Kumar on this postmortem report (exhibit 2/1).

24. P.W. 7 Shrinivas Rai has stated in his examination-in-chief that on 16.03.2015 he was posted as an S.I. at Danapur Police Station. He was on evening patrolling duty. He got a wireless message at 18.15 hours when at Nasriganj that a lady at Gajadhar Chak in Gola Road has hanged herself. He also got instruction to verify the same and to do the needful. Thereafter he, with the police force, reached Gajadhar Chak. There, in the upper storey of the double storied building of Uday Shankar Rai, he found a dead body hanging with the ceiling fan



tied with a scarf and he informed about the same to S.H.O. and other senior officers. He sent the dead body for *post mortem* to Danapur Sub-divisional Hospital after preparing the inquest report in the ample source of light in presence of two independent witnesses. In his further examination, he has identified the inquest report attested by Sandeep Kumar Singh Inspector of Police, Danapur (Ext. 3 on protest). He has also identified the dead body challan (Ext.4 on protest). On his information, the police officers reached the place of occurrence and seizure list was prepared by A.S.I. Naveen Kumar Rai (Ext.5 on protest). He started investigation on 16.03.2015 after taking the charge of investigation and proceeded to village- Gola Road, Gajadhar Chak. Place of occurrence could not be inspected as the relatives of the deceased were upset. He recorded the re-statement of Pankaj Kumar, the informant, the next day i.e. on 17.03.2015 wherein he has supported the version given in the F.I.R. He inspected the place of occurrence with him. In para-14, he has described the place of occurrence. He found the dead body hanging with the ceiling hook and legs touching the bed. There was none at the place of occurrence to give statement.

24.1. In his cross-examination, he has stated that on 18.03.2015, he recorded the statements of witnesses Manisha



Devi, Sita Devi and Dhananjay Kumar and procured the *post mortem* report. On 31.05.2016, he submitted charge-sheet against the F.I.R. accused Vikki Kumar, Uday Shankar Rai and Etwari Devi under Section-304B/34 of I.P.C. He has identified the original charge-sheet prepared by him (Ext.-8). He neither arrested the accused persons nor recorded their statements. He has stated in his further cross-examination that he did not mention the name of the informer. He had not taken the signature of anybody on the inquest report. He has stated that he had drafted the dead body challan. He has stated that on seizure-list exhibit, there is overwriting on number 5 as 17. Though there is overwriting in the date, but the date is 16 itself. In paragraph-3 of the case diary, it is mentioned that he did not visit the place of occurrence with reason. He did not record the statement of any nearby resident. He has stated in para-11 of the case diary that nothing worth mention was found at the place of occurrence. He had not recorded the statement of any witness in Danapur Sub-divisional Hospital. Sita Devi had not stated to have been Malti Devi hanging from fan. She had stated that she was informed by her son Pankaj Kumar on phone. Sita Devi further stated that when she came Gajadhar Chak, she found her daughter dead. He stated that witness Dhananjay Kumar had not seen the deceased



Malti Devi hanging from fan. He has stated in paragraph 29 of the case diary that till 03.04.2015, *post mortem* was not received as out of three doctors, one had not signed it. However, in paragraph 33 he has mentioned that he received the post mortem report on 29.04.2015. The informant in his fardbeyan or re-statement had not stated that when he went to the place of occurrence, he had seen his sister hanging from the fan and her legs were touching the bedstead. Witness Manisha Devi had stated that in-laws of the deceased used to assault or ill-treat the deceased. Sita Devi had not stated to him that her son-in-law Vikki Kumar and his parents used to threaten to kill the deceased or get the Vikki Kumar re-married, if the demand is not fulfilled. He has further stated that neither he nor any other policeman had released the dead body by cutting the rope. He had submitted the charge-sheet on the command of his senior officials. He has denied the suggestion to have done faulty investigation.

25. Evidence of D.W. 1 Deepak Kumar need not be gone into as he is a formal witness to Ext.-A and Ext.-B, the original receipt of fixed deposit of Rs. 14,000/- in Sahara India, Danapur and the certificate issued by the Branch Manager of Sahara India, Danapur.

26. We have considered the submissions canvassed



by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution before the Trial Court and also perused the documentary evidence exhibited.

27. From the evidence led by the prosecution before the Trial Court, it would emerge that the informant, P.W. 1, has specifically alleged while giving *fardbeyan* that there was a demand of Rs. 50,000/- as dowry from the informant and his family members by the appellant and his family members eight days prior to the incident in question. Threat of dire consequences was also given. P.W.1 to P.W. 4, though relatives of the deceased, have specifically deposed before the Trial Court that Rs. 50,000/- was demanded by the appellant and when the said amount was not paid within 2 to 4 days, the incident in question took place. Thus, the prosecution has duly proved the demand of Rs. 50,000/- as dowry by the accused soon before the incident. It is further revealed from the evidence that the prosecution witnesses, including P.W. 1 and P.W. 7, the I.O., that the body was hanging with the fan and her legs were touching the bedstead. Further, from the inquest report, Exhibit-3, also it is revealed that the dead body was hanging with the fan and her legs were touching the bedstead. Thus, the prosecution has proved that the deceased died an unnatural death within a period



of 3-4 years from the date of her marriage. At this stage, it is also relevant to note from Column-4 of the inquest report, exhibit-3, that right fist was clinching black hair.

28. Thus, from the aforesaid evidence, it can be said that there was a sign of struggle prior to the death of the deceased. Thus, we are of the view that the prosecution has duly proved all the ingredients of Section-304B of I.P.C.

29. As discussed hereinabove, from the deposition given by the prosecution-witnesses, including the I.O. and from the inquest report, it is revealed that the dead body was hanging with the fan and her legs were touching the bedstead, and, therefore, from the aforesaid piece of evidence it is evident that the death is not a suicidal death and more particularly when right fist was clinching black hair soon before her death and, therefore, it is not correct on the part of the appellant to contend that the present is a case of suicidal death and not homicidal one. At this stage, we would like to refer the deposition of P.W. 5 Dr. Vimal Kumar Chaudhary, the doctor who conducted the *post mortem* of the dead body of the deceased. The said witness has specifically recorded in external finding that *rigor mortis* present, eye closed, mouth closed, face congested, both conjunctiva congested. A ligature mark 3/4" with present over



the thyroid cartilage passing obliquely towards mastoid process, interrupted nape of neck and lat. aspect right side of neck behind pinna. Further, the doctor has also stated that, in the case of homicidal hanging, sign of struggle will be there. Further, the *post mortem* report also suggests left corn of thyroid bone fractured. Thus, from the deposition given by the doctor and the symptoms which are referred in the **Modi's Medical Jurisprudence and Toxicology** coupled with the other evidence, including the inquest report, the prosecution has proved that the present is a case of homicidal death.

30. In view of the aforesaid, we are of the view that the prosecution has discharged the burden of proof that the present is a case of homicidal death and, therefore, the burden would shift on the accused to point out that he is not connected with the incident in question. At this stage, it is to be borne in mind that the deceased died at her matrimonial house i.e. at the house of the appellant. She died within a period of 3-4 years of her marriage. Therefore, it is for the appellant to prove, by leading cogent evidence, that the said house was not shared by him with the deceased at the relevant point of time or that at the time of incident he was not present in the house or even in the locality. Further, while giving statement under Section-313



Cr.P.C. before the Court, the accused/appellant has not taken any defence. Even it is not the case of the appellant that the deceased committed suicide. Thus, we are of the view that the provisions contained in Section-106 of the Evidence Act would be attracted in the facts of the present case.

31. At this stage, we would like to discuss the judgment rendered in the case of **Bakshish Ram (supra)** in which the Hon'ble Supreme Court has observed in **para-8** as under:-

“8. In order to appreciate the only evidence of Sibbo (PW 2), it is useful to refer the definition of “dowry death” under Section 304-B IPC which reads as under:

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

Explanation.—For the purpose of this sub-section, ‘dowry’ shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

A perusal of Section 304-B clearly shows that if a married woman dies otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before



her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused the death. The conditions precedent for establishing an offence under this section are:

- (a) that a married woman had died otherwise than under normal circumstances;
- (b) such death was within seven years of her marriage; and
- (c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.

This section will apply whenever the occurrence of death is preceded by cruelty or harassment by the husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.”

32. Keeping in view the aforesaid observation made by the Hon’ble Supreme Court, if the evidence, as discussed hereinabove, is examined, we are of the view that the prosecution has proved the ingredients of Section-304B of I.P.C.

33. In the case of **Shivaji Chintappa Patil (supra)**, the Hon’ble Supreme Court has observed in **para-13 to 23** as under:-

“13. In the present case, PW 6 Dr Kishor Patki has been examined as a medical expert. He has conducted the autopsy along with his Senior Medical Officer Dr Tamboli. In the advance death certificate (Ext. 15), issued on 24-3-2003, under the signature of PW 6, the probable cause of death was “asphyxia due to strangulation”. However, in the post-mortem report (Ext. 16) which is signed by Dr Kishor Patki as well as Dr Tamboli on 19-6-2003, the cause of death was “cardiorespiratory arrest due to asphyxia due



to hanging”. The only explanation for inordinate delay of almost 3 months in signing the post-mortem report as given in his evidence by PW 6 is that he was busy in some other work.

14. It will be relevant to refer to cross-examination of PW 6:

“It is correct that in both cases of suicidal or homicidal hanging the ligature mark around the neck shall go upwards ears. It is correct that while issuing advance death certificate I did not consult Senior Medical Officer and after consulting of Senior Medical Officer and going through the books I concluded that it was a case of hanging. Article 1 can be used for suicidal hanging and in case of homicidal hanging or homicidal strangulation the bodily resistance would have reflected other recorded in my presence wise.”

15. It is thus clear, that the medical expert has admitted that in both the cases of suicidal or homicidal hanging, the ligature marks around the neck shall go upwards ears. He has further admitted that after consulting his Senior Medical Officer and going through the books, he concluded that it was a case of hanging. He has further admitted that Article 1 which is a rope, which is found on the spot, can be used for suicidal hanging. He has further admitted that in case of homicidal strangulation, the bodily resistance would have been reflected.

16. It will be apposite to refer to the judgment of this Court in *Eswarappa* [*Eswarappa v. State of Karnataka*, (2019) 16 SCC 269 : (2020) 2 SCC (Cri) 277] , wherein this Court relied on *Modi's Medical Jurisprudence and Toxicology* and observed thus : (SCC p. 271, para 7)

“7. In *Modi's Medical Jurisprudence and Toxicology*, 23rd Edn., p. 572 it is observed as follows:

‘Homicidal hanging, though rare, has been recorded. Usually, more than one person is involved in the act, unless the victim is a child or very weak and feeble,



or is rendered unconscious by some intoxicating or narcotic drug. In a case, where resistance has been offered, marks of violence on the body and marks of a struggle or footprints of several persons at or near the place of the occurrence are likely to be found.’

None of the well-known signs referred to by the learned author are present in this case.”

17. In the present case also, admittedly, there are no marks on the body which would suggest violence or struggle. In any case, the medical expert himself has not ruled out the possibility of suicidal death. On the contrary, the post-mortem report shows, that the cause of death was “asphyxia due to hanging”.

18. In the light of this evidence, we find, that the trial court as well as the High Court have erred in holding, that the prosecution has proved that the death of the deceased was homicidal.

19. That leads us to the reliance placed by the High Court as well as the trial court on the provisions of Section 106 of the Evidence Act. In *Subramaniam* [*Subramaniam v. State of T.N.*, (2009) 14 SCC 415 : (2010) 1 SCC (Cri) 1392] , this Court had occasion to consider the similar case of the husband and wife remaining within the four walls of a house and death taking place. It will be relevant to refer to the following observations of this Court : (SCC p. 426, para 23)

“23. So far as the circumstance that they had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within the four walls of a house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in the absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that



the husband and the husband alone was responsible therefor.”

20. In *Subramaniam* [*Subramaniam v. State of T.N.*, (2009) 14 SCC 415 : (2010) 1 SCC (Cri) 1392] , reliance was placed on behalf of the State on the judgments of this Court in *Trimukh Maroti Kirkan v. State of Maharashtra* [*Trimukh Maroti Kirkan v. State of Maharashtra*, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] and *Ponnusamy v. State of T.N.* [*Ponnusamy v. State of T.N.*, (2008) 5 SCC 587 : (2008) 2 SCC (Cri) 656] This Court observed thus : (*Subramaniam case* [*Subramaniam v. State of T.N.*, (2009) 14 SCC 415 : (2010) 1 SCC (Cri) 1392] , SCC p. 428, para 26)

“26. In both the aforementioned cases, the death occurred due to violence. In this case, there was no mark of violence. The appellant has been found to be wholly innocent. So far as the charges under Section 498-A or Section 4 of the Dowry Prohibition Act is concerned, the evidence of the parents of the deceased being PW 1 and PW 2 as also the mediators, PWs 4 and 5 have been disbelieved by both the courts below. That part of the prosecution story suggesting strong motive on the part of the appellant to commit the murder, thus, has been ruled out.”

21. It will also be relevant to refer to the following observations of this Court in *Gargi* [*Gargi v. State of Haryana*, (2019) 9 SCC 738 : (2019) 3 SCC (Cri) 785] : (SCC p. 775, para 33)

“33.1. Insofar as the “last seen theory” is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on the assumption that Section 106 of the Evidence Act [“**106. Burden of proving fact especially within knowledge.**—When any fact is especially within the



knowledge of any person, the burden of proving that fact is upon him.”] directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in *Sawal Das v. State of Bihar* [*Sawal Das v. State of Bihar*, (1974) 4 SCC 193 : 1974 SCC (Cri) 362] in the following : (SCC p. 197, para 10)

‘10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.’”

22. It could thus be seen that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused.

23. In the present case, as discussed hereinabove, the prosecution has even failed to prove beyond reasonable doubt, that the death was homicidal.”

34. In the aforesaid decision, the Hon’ble



Supreme Court has discussed in the above paragraphs with regard to the facts of the said case and thereafter referred to **A Text Book of Medical Jurisprudence and Toxicology, 27th Edition, written by Jaising P. Modi** and thereafter observed that none of the well-known signs referred to by the learned author are present in the said case. However, we have already discussed in detail with regard to marks of struggle which is reflected from Column-4 of the inquest report, Exhibit-3, coupled with the fact that the dead body was hanging with the fan and her legs were touching the bedstead.

35. Further, so far as the observation made in para-22 of the aforesaid decision is concerned, with regard to Section-106 of the Evidence Act, it is relevant to note that from the evidence led by the prosecution, prosecution has proved beyond reasonable doubt that the present is a case of homicidal death and, therefore, when the appellant husband and the deceased were staying under the same roof, burden of proof would be on the appellant/accused to explain the cause of death and prove the manner in which the incident took place. In the present case, the appellant has failed to discharge such burden. Thus, we are of the view that the aforesaid decision would not render any assistance to the appellant/accused in the facts of the



present case.

36. We have also gone through the reasoning recorded by the Trial Court while passing the impugned judgment and order.

37. We are of the view that the Trial Court has not committed any error while convicting the accused/appellant. Hence, no interference is required with the same by this Court in the present appeal.

38. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.07.2024
Transmission Date	24.07.2024

