

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.18 of 2021**

Arising Out of PS. Case No.-60 Year-2018 Thana- BADHAILA District- Rohtas

=====

Ramesh Pandey, Son of Late Harihar Pandey, Resident of Village-
Maghiwan, P.S.- Baghila, District- Rohtas.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

=====

with

CRIMINAL APPEAL (DB) No. 54 of 2021

Arising Out of PS. Case No.-60 Year-2018 Thana- BADHAILA District- Rohtas

=====

Laxmi Kant Pandey, S/O Ramesh Pandey, R/O Village- Maghiwan, P.S.-
Baghila, District- Rohtas

... ... Appellant

Versus

The State of Bihar

... ... Respondent

=====

*Indian Penal Code---section 304B, 34---Code of Criminal Procedure---
section 313---Indian Evidence Act---section 113B---appeal against
conviction on allegation of dowry death---per the allegation, the victim,
died within three months of her marriage by sustaining severe burn injuries
and her burnt body was found in the house of the appellants who are the
husband and father-in-law of the deceased---Findings: though in the
present matter the informant's daughter died an unnatural death by
sustaining burn injuries within 7 years of her marriage but this Court finds
no cogent material to form the opinion that the deceased was subjected to
cruelty in the form of burn injuries by the appellants themselves soon
before her death and, hence, the prosecution is not entitled to get the
benefit of presumption under Section 113B of the Evidence Act---It is a
settled principle of law that if two views are available in the light of the
evidences, one pointing to the guilt of the accused and other towards
his/her innocence then the view which is favourable to the accused should
be adopted as the paramount consideration of the court of law must be to
prevent the miscarriage of justice---an electronic message which is said to
have been sent by the deceased herself just some hours before the
commission of the occurrence, was not brought on record by way of
electronic evidence---the ocular evidence shows that there is some*

educational qualification gap in between the deceased and her husband which might have led the deceased to commit suicide---the non-mentioning of the FIR number in the inquest report and postmortem report despite the FIR having been registered prior to the preparation of these reports as claimed by the prosecution coupled with the three days' delay in sending the FIR to the concerned jurisdictional Magistrate has not been explained----the prosecution is unable to prove that the deceased was subjected to cruelty soon before her death due to non-fulfilment of the demand of dowry----appellants are entitled to get the benefit of doubt---judgment and order impugned convicting and sentencing the appellants for the charged offence are set aside---appeal allowed---appellants acquitted. (Para- 18, 33, 36, 37)

AIR 2004 SC 1731, (2003) 8 SCC 180, (1994) 5 SCC 188Relied Upon.

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Baghila, District- Rohtas

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :
(In CRIMINAL APPEAL (DB) No. 18 of 2021)

| | | |
|-------------------|---|---------------------------------|
| For the Appellant | : | Mr. Ajay Kumar Thakur, Advocate |
| | | Mr. Ajay Kumar Tiwari, Advocate |
| For the State | : | Ms. Shashi Bala Verma, Addl. PP |
| For the Informant | : | Mr. Arvind Kr. Pandey, Advocate |

(In CRIMINAL APPEAL (DB) No. 54 of 2021)

| | | |
|-------------------|---|---------------------------------|
| For the Appellant | : | Mr. Ajay Kumar Thakur, Advocate |
| | | Mr. Ajay Kumar Tiwari, Advocate |
| For the State | : | Ms. Shashi Bala Verma, Addl. PP |
| For the Informant | : | Mr. Arvind Kr. Pandey, Advocate |

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 01-08-2024

Both the appeals have arisen out of the same judgment, so they are being decided together by a common judgment.

2. Heard Mr. Ajay Kumar Thakur, learned counsel



assisted by Mr. Ajay Kumar Tiwari, learned counsel for the appellants, Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State and Mr. Arvind Kr. Pandey, learned counsel for the informant.

3. The appeals have been filed against the judgment of conviction dated 10.07.2020 and order of sentence dated 13.07.2020 passed by the learned Additional District & Sessions Judge-XIII, Rohtas at Sasaram, in Sessions Trial Case No. 180 of 2019 arising out of Baghaila P.S. Case No. 60 of 2018, whereby and whereunder both the appellants have been convicted for the offence under Section 304B read with Section 34 of the Indian Penal Code (in short 'IPC') and both of them have been ordered to suffer imprisonment for life for the offence punishable under Section 304B of IPC.

Prosecution Story:-

4. The substance of the prosecution story is as follows:-

As per the informant, who happens to be father of the deceased, he married his daughter namely, Suman Kumari Pandey, to the appellant Laxmi Kant Pandey on 11.05.2018 and whenever, he and his family members visited *sasuraal* of the deceased, the accused/appellants demanded two lacs rupees, a gold chain, stabilizer, an inverter and Dish TV etc. from them



and his daughter was being tortured by them in respect of these demands and on 09.08.2018, when he went to *sasuraal* of his daughter on the occasion of *Teez* festival then the appellants and other accused, who are in-laws of the deceased, picked up an argument with him in the context of their dowry demands and then the appellant Laxmi Kant Pandey, his agnate, namely, Birendra Pandey and his wife Guriya Devi and some others arrived there and all of them threatened him to face dire consequences and asked him to fulfill their demands at the earliest and also asked him to transfer the ownership of a vehicle in the name of the appellant Laxmi Kant Pandey and further, threatened that it would not be in the interest of his daughter if their demand of gold chain was not fulfilled. After hearing this, he returned back and on the very next day i.e. 10.08.2018, he received a message on his mobile phone number sent by his daughter by using her mobile phone revealing that her mother-in-law had created a tension in her matrimonial house on account of the demand of a *Saree* and she had been restrained from talking to her parental family members and her father-in-law said that from now, her brother had to search an another man to marry her and also said that her father would have to come with ten persons and from them, he would get a written



and signed paper before allowing her to return back to her parental house. The informant further alleged that the message was sent at 9:35 A.M. but he saw the message at 1:00 P.M. and thereafter, he rushed to *Majhiaawn* village (*sasural* of the deceased) and found his daughter lying in the Courtyard (*Aangan*) in burnt condition and thereafter, he and his son went to the police station and submitted an application (Exhibit-1) for lodging the FIR.

5. With the above allegations, the informant filed a written FIR (Exhibit-1) at Baghaila police station, on that basis, the formal FIR bearing Baghaila P.S. Case No. 60 of 2018 was registered under Section 304B read with Section 34 of IPC against the accused which set the criminal law in motion.

6. After the completion of the investigation, the police submitted chargesheet against the appellants and the investigation was kept pending against the rest accused, thereafter, the cognizance of the alleged offence was taken by the learned Magistrate and then, the case of the appellants was committed to the Court of Sessions for trial.

7. The Appellants stood charged for the offence punishable under Section 304B read with Section 34 of IPC and the same was explained to them in hindi to which they denied and claimed to be tried for the said offence.



8. During the trial, the prosecution examined altogether 7 witnesses who are as under :-

| | | |
|--------|------------------------|------------------------------------|
| P.W. 1 | Ajay Kumar Pandey | Victim’s elder brother |
| P.W. 2 | Mithilesh Kumar Pandey | Victim’s younger brother |
| P.W. 3 | Dhiraj Kumar Chaubey | Victim’s cousin (Phuphera) brother |
| P.W. 4 | Dr. Sri. Bhagwan Singh | Doctor |
| P.W. 5 | Sunil Pandey | Victim’s uncle |
| P.W. 6 | Nand Bihari Pandey | Informant-victim’s father |
| P.W. 7 | Anil Kumar Pandey | The Investigating Officer |

9. In documentary evidence, the prosecution proved the following documents and got them marked as exhibits which are as under : -

| | |
|--------------|---|
| Ext. 1 | The written report |
| Ext. 1/1 | Signature of one Nand Bihari Pandey(informant) on written report |
| Ext. 2 | Signature of one Mithilesh Kumar Pandey on the inquest report |
| Ext. 2/1 | Signature of Nand Bihari Pandey (informant) on the inquest report |
| Ext. 3 & 3/1 | Signature on the seizure list |
| Ext. 4 & 4/1 | Signature of one Anil Kumar Pandey on the formal FIR |
| Ext. 5 | Formal FIR |

10. The prosecution also produced one article/object which was marked as ‘Material Exhibit -1’.

11. After the completion of the prosecution evidence, the statements of the appellants were recorded under Section 313 of Code of Criminal Procedure (in short ‘Cr.P.C.’) in which they denied the main circumstance appearing against them from the prosecution’s evidences but they did not take any specific defence in their statements.



12. In defence evidence, the appellants examined 2 persons who are as under : -

| | |
|--------|-------------------|
| D.W. 1 | Santosh Kumar Rai |
| D.W. 2 | Smt. Mamta devi |

Submissions on behalf of the appellants : -

13. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellants submits that neither the appellants nor their family members demanded any dowry from the deceased, in fact, the informant’s daughter (deceased) was not happy at her *sasuraal* and also she was a short tempered lady and one day prior to the alleged occurrence, the informant went to the *sasuraal* of the deceased on the occasion of *Teej* festival with some gifts. Thereafter, some hot discussions took place in between the informant and his daughter and the next day, the informant’s daughter committed suicide by setting herself ablaze and at that time, any member of her in-laws’ family was not present there and in this regard, the evidence of two defence witnesses D.W.-1 and D.W.-2 is very relevant. It is further submitted that the alleged text message, which is said to have been sent by the deceased to her father’s mobile phone number on the day of occurrence some hours before the commission of the alleged occurrence, does not show that the appellants had been torturing the deceased for the demand of Rs. 2,00,000/- and



household articles as alleged in the FIR and she simply revealed some domestic issues in that message which are not sufficient to draw the inference that the appellants had been torturing her regularly for their alleged demands. There is sufficient evidence to form an opinion of innocence of the appellants in the alleged occurrence. Though against the appellants there is one circumstance as to unnatural death of the deceased in their house but it is a settled principle of law that where two views are possible from the evidences then the view which is in favour of the accused and shows his/her innocence, must be adopted by the Court of law.

14. Learned counsel further submits that all the witnesses produced by the prosecution are family members of the informant and not a single person belonging to the vicinity of the place of occurrence was produced and examined and in the inquest report and postmortem report, there is no details of the FIR No. which shows that these documents had been prepared before the registration of the FIR and the same is sufficient to prove the FIR being an ante-dated document and further the delay of three days took place on the part of the Investigating Officer in sending the FIR to the court of Magistrate which also makes the prosecution's allegation highly



suspicious. In support of this submission, learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of **Meharaj Singh (L/Nk.) vs. State of U.P.** with analogous Cr. Appeal No. 288/1994 titled as Kalu vs. State of U.P. and Others reported in (1994) 5 SCC 188.

Submissions on behalf of the prosecution : -

15. On the contrary, Mr. Arvind Kumar Pandey, learned counsel appearing for the informant submits that the deceased died within three months of her marriage by sustaining serious burn injuries and since the time of her marriage, she was being subjected to dowry demand by the appellants and their family members and in this regard, the evidence of P.W.-1, P.W.-2, P.W.-3, P.W.-5 and P.W.-6 is relevant and their evidence has fully established the allegation that the appellants had not been permitting the deceased to return back to her parental house since the time of her marriage till her death on account of non-fulfillment of their dowry demand and there is sufficient evidence to prove that the deceased was subjected to physical cruelty by the appellants by causing burn injuries to her soon before her death, so, the prosecution is entitled to get the benefit of presumption under section 113B of the Indian Evidence Act.

16. Ms. Shashi Bala Verma, learned Additional Public



Prosecutor appearing for the State adopts the above submissions made by the informant's counsel.

Consideration and Analysis : -

17. Heard both the sides, perused the evidences available on the case record of the trial court and also gone through the statements of the accused/appellants recorded by them under section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.').

18. The present matter relates to dowry death and as per the allegation, the victim, who happened to be daughter of the informant, died within three months of her marriage by sustaining severe burn injuries and her burnt body was found in the house of the appellants. The informant alleged that Laxmi Kant Pandey, husband of the deceased (appellant in Cr. App (DB) No. 54 of 2021) and Ramesh Pandey, father-in-law of the deceased (appellant in Cr. App (DB) No. 18 of 2021), had been torturing the deceased/victim for the demand of Rs. 2,00,000/- (Rupees two lacs), a gold chain, stabilizer, an inverter and Dish TV and they were not permitting the victim to visit her parental house and on 09.08.2018, the father of the deceased (informant) went to *Majhiaawn* village (मझिआंव) which is sasuraal of the deceased on account of *Teej* festival and on that occasion also,



the appellants and their other family members again made their demand of the alleged articles and threatened the informant to face dire consequences if their demand was not fulfilled. On next day (i.e. 10.08.2018) the deceased sent a message to the informant on his mobile phone giving the information that her mother-in-law had created a discord (कलह) in the house on account of a *saree* demand and she had been restrained by her in-laws from talking with her parental family members and they said to her that from now her brother would have to search another man for her remarriage and she would be permitted to return back at her parents' house only when her father would bring 10 persons with him and make a paper with their signatures.

19. On the other hand, the main defence taken by the appellants is that the deceased was a beautiful and educated lady while her husband was not as educated as she was, so, the deceased was not satisfied with her husband and finally, she committed suicide by pouring kerosene oil over her body and setting herself on fire.

20. The first and foremost contention raised by the appellants' counsel is that as per the formal FIR and the evidence of the Investigating Officer, who was examined as



P.W.-7, the FIR was registered on 10.08.2018 at 14:10 hrs and the investigation was started on the same day at 14:35 hrs but in the inquest report as well as in the postmortem report, there is no details of the FIR No. while the inquest report was also prepared on 10.08.2018 at 15:20 hrs and the postmortem examination was done on the same day at 23:00 hrs, so, not disclosing the FIR No. shows that the FIR was registered after preparation of the inquest report and postmortem report of the deceased. In this regard, learned counsel has drawn the attention of this Court to the statement of the Investigating Officer (P.W.-7) made by him in his cross-examination. We find substance in the said contention as P.W.-7 (I.O.) stated in his cross-examination that the FIR was registered on 10.08.2018 at 14:10 hrs and the police station is situated 6 kilometers away from the place of occurrence and he started the investigation on the same day at 14:35 hrs after registering the FIR. He further stated that the FIR was sent to the court on 13.08.2018.

21. Here, it is important to mention that the Investigating Officer (P.W.-7) was the then Station House Officer (in short 'SHO') of the concerned police station and he himself started the investigation into the alleged incident. As P.W.-7 was the senior-most police officer in the *Baghaila* police



station, so from him, it could not be expected to leave the relevant columns of the inquest report and postmortem report blank in which the FIR No. of the case was required to be mentioned and if the FIR had been registered before preparation of the said documents then it appears that the SHO intentionally left the relevant columns of both the documents blank with an ulterior motive and the same lead us to form an opinion that the inquest report was prepared immediately after the occurrence and the postmortem examination was also done on the same day of occurrence and only thereafter, the FIR was registered after thought as the same was sent to the concerned Magistrate after three days i.e. on 13.08.2018, from its registration.

22. On this aspect of the matter, the observation of the Hon'ble Supreme Court made in the case of **Mehraj Singh** (supra) is being reproduced as under : -

“ **12.**With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even



though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR.”

23. Here, it is important to mention that the informant (P.W.-6) has got education up to matriculation and as per P.W.-6, he and his son Mithilesh Kumar Pandey went to the police station to lodge the FIR and he got the FIR written by his son. The informant and his son Mithilesh Kumar Pandey both are educated up to 10th and 12th standard respectively but the circumstance why the informant got his FIR written by his son despite he himself being an educated person, has not been explained.

24. As per the prosecution story, the informant, his sons and other relatives went to the matrimonial house of the deceased 4-5 times for bringing the deceased back to her parental house but on every occasion, the appellants and their family members did not permit her to go with them. The allegation shows that the accused/appellants had been torturing the deceased since the time of her marriage and she was not



being permitted to return back to her parents' house (*maika*) despite four to five times requests having been made by her father, brothers and her relatives. P.W.-1, brother of the deceased, stated in his cross-examination that the appellants' act as to not allowing the deceased to go back to her parental home on several occasions, was not informed to anyone and in this regard, no panchayat meeting was held in *Majhiaawn* village. From this evidence, it appears that the prosecution party remained silent despite the appellants' constant conduct of not permitting the deceased to return back to her parental house and the same creates a doubt in the prosecution's story.

25. As per the evidence of P.W.-1 and P.W.-2, who happen to be brothers of the deceased, the accused/appellants forcefully kept the motorcycle of P.W.-1 when he went to the *sasuraal* of the deceased and thereafter the accused/appellants made pressure upon him to transfer the ownership of the said motorcycle in the name of appellant Laxmi Kant. So in view of the allegation, the snatched motorcycle ought to be in the possession of the appellants when the alleged occurrence took place but in this regard, there is no material or any evidence and even the evidence of the Investigating Officer does not reveal any fact to support the allegation as to the motorcycle of P.W.-1



being in the possession of the accused when the police party inspected the place of occurrence.

26. The prosecution has placed reliance upon the text message which is said to have been sent by the deceased on the day of occurrence by using her own mobile phone number to the mobile phone number of the informant and the witnesses of the prosecution also highlighted the said messages in their evidence. In this regard, the evidence of P.W.-6 and P.W.-7 is relevant.

27. P.W.-6/informant stated in his cross-examination that he gave his mobile phone to the SHO and showed him the victim's message and also gave the message in printed form to the SHO. While the Investigating Officer (P.W.-7) deposed in his cross-examination that he did not find any mobile phone of the informant and the deceased, hence, he did not seize the same. So, reliance can not be placed on the electronic message which is said to have been sent by the deceased on the day of occurrence to the mobile phone of the informant rather on the other hand, the contradiction in between the evidence of the Investigating Officer and the informant regarding the said text message creates a serious doubt in the prosecution's allegation.

28. It came in the evidence of the prosecution witnesses that the deceased was a graduate and beautiful lady



while her husband Laxmi Kant Pandey was not having much education in comparison to the education of his wife and his livelihood was depending on traditional religious works as well as agriculture during the relevant period. Though a gap in the educational qualification in between the spouses cannot always be a ground for committing suicide in every matter but in some cases, where the spouses have rural background, such gap may cause frustration to one or both the spouses leading him/her to commit suicide and the said circumstance is in favour of the accused/appellants.

29. As per the evidence of the Investigating Officer (P.W.-7) who inspected the place of occurrence, the dead body of the deceased was found in burnt condition in her *sasuraal's house* near her room's gate and the household articles including pillows, bedsheet, curtains, etc. were found in burnt condition and a five litre almost empty container having about 50 ml kerosene oil was also found in the room and as per the FIR, the informant reached at the *sasuraal* of the deceased within one hour after seeing the message sent by his daughter on his mobile phone and when he reached at the *sasuraal* of the deceased, he did not find any family member of the in-laws of the deceased and only find the dead body of the deceased in burnt condition.



30. The defence witness D.W.-2 stated that she used to visit the house of the appellants and on the day of occurrence, she visited the appellants' house to take money from them but at that time, she did not find anyone in their house and some ladies told her that the wife of Laxmi Kant Pandey (appellant) had committed suicide. The evidence of this witness as well as the informant suggests that the appellants or any member of their family were not present in the house when the deceased sustained burnt injuries and the said circumstance as well as burning of curtains, bedsheet, pillows and other articles in the bedroom of the deceased suggests that the deceased might have committed suicide.

31. Section 113-B of the Evidence Act raises a presumption as to dowry death. Section 113B 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 had 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).]”

Section 304 B IPC is reproduced hereunder:-

“[304B. 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 purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 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.]”

32. In the case of **Kunhiabdulla v. State of Kerala** reported in **AIR 2004 SC 1731** the Hon’ble Supreme Court has observed in paragraph ‘11’ as under:-

“**11.** 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. 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 the presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon 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 its 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 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.”

33. So far as the presumption under Section 113B of the Indian Evidence Act is concerned, though in the present matter the informant’s daughter died an unnatural death by sustaining burn injuries within 7 years of her marriage but in view of the above discussed facts and circumstances coming out of prosecution evidences, this Court finds no cogent material to form the opinion that the deceased was subjected to cruelty in



the form of burn injuries by the appellants themselves soon before her death, so, on account of lacking of this main ingredient, the prosecution is not entitled to get the benefit of presumption under Section 113B of the Indian Evidence Act.

34. It is a settled principle of law that if two views are available in the light of the evidences, one pointing to the guilt of the accused and other towards his/her innocence then the view which is favourable to the accused should be adopted, as the paramount consideration of the court is to ensure that miscarriage of justice should be prevented and a miscarriage of justice arising from the acquittal of the guilty is no less than the conviction of an innocent. In this regard, the observation made by the Hon'ble Apex Court in the case of **State of Rajasthan vs. Raja Ram reported in (2003) 8 SCC 180** is important and the same is being reproduced as under : -

“ 7.The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.....”

35. And further in view of the principles laid down by the Hon'ble Apex Court in the case of **Meharaj Singh (L/Nk.)**



(supra), the delay in sending the FIR to the Magistrate and absence of FIR No. in the inquest report and postmortem report also gives rise to the inference that the FIR of the instant matter was prepared later on with an afterthought.

Conclusion : -

36. After having discussed the evidences of both the sides available on the case record of the trial court, we find that there are some strong circumstances going against the prosecution. Firstly, an electronic message which is said to have been sent by the deceased herself just some hours before the commission of the occurrence, was not brought on record by way of electronic evidence, secondly, the ocular evidence shows that there is some educational qualification gap in between the deceased and her husband which might have led the deceased to commit suicide and thirdly, the non-mentioning of the FIR number in the inquest report and postmortem report despite the FIR having been registered prior to the preparation of these reports as claimed by the prosecution coupled with the three days' delay in sending the FIR to the concerned jurisdictional Magistrate and fourthly, the absence of the accused/appellants in the house during the relevant time when the deceased got burn injuries. These circumstances are persuading us to form an opinion of innocence in favour of the appellants. The evidence led on behalf of the prosecution, though,



are showing some circumstances against the appellants such as that the appellants were not allowing the deceased to go back her parental house and that she had sustained serious burn injuries within three months of her marriage, the prosecution is unable to prove that the deceased was subjected to cruelty soon before her death due to non-fulfilment of the demand of dowry.

37. It is a settled principle of law that if two views are possible from the evidences, one pointing to the guilt of the accused and other towards his/her innocence then the view which is favorable to the accused should be adopted as the paramount consideration of the court of law must be to prevent the miscarriage of justice. Accordingly, we find that in the instant matter, the appellants are entitled to get the benefit of doubt and we find it appropriate to make our opinion of the innocence of the appellants in the alleged crime as the same would serve the justice. As such, the judgment and order impugned convicting and sentencing the appellants for the charged offence are set aside and the appellants are hereby acquitted of the offence for which they were charged and held guilty by the learned trial court. In the result, these appeals stand allowed.

38. The appellants are in jail, hence, they are directed to be released henceforth, if their custody is not required in other case.



39. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

40. Let the LCR be sent back to the trial court concerned forthwith.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

annu/-

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| AFR/NAFR | AFR |
| CAV DATE | NA |
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