



GAHC010195572023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./325/2023

ACHINTA DEKA
S/O LATE GAURI DEKA,
VILL.- KHUDRA ANRIKHOWA, P.O. AND P.S.- SARTHEBARI, DIST.-
BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P., ASSAM.

2:RABIN DAS
S/O LATE DHARMESWAR DAS

VILL.- NOONMATI
NO. 1 SALBARI
P.O. AND P.S.- NOONMATI
DIST.- KAMRUP (METRO)
ASSAM
GUWAHATI- 781020

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(CrI.)/810/2023

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Advocate for : MR. N N B CHOUDHURY
Advocate for : appearing for THE STATE OF ASSAM AND ANR.

B E F O R E

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Dates of hearing : 21.12.2023, 22.01.2024, 25.01.2024, 30.01.2024, 20.02.2024 & 22.02.2024.

Date of Judgment: 28.06.2024

J U D G M E N T & O R D E R (C A V)

Heard Mr. NNB Choudhury, learned counsel for the appellant. Also heard Mr. D. Das, learned Addl. Public Prosecutor for the State respondent and Mr. R. Boruah, learned counsel appearing for the informant.

2. This is an appeal under Section 374 (2) of the Code of Criminal Procedure, 1973



(Cr.PC) for setting aside the Judgment dated 26.07.2023 and the subsequent Order dated 27.07.2023 passed by the learned Addl. Session Judge (FTC) Barpeta in Sessions Case No. 184/2021 (Arising out of GR Case No. 3519/2020) and Sarthebari PS Case No. 279/2020 convicting the appellant under Sections 306/304B of Indian Penal Code (IPC) and sentencing him to undergo Rigorous Imprisonment for 10 years under Section 304B of the IPC and to undergo RI for 10 years and to pay fine of Rs. 10,000/- (Rupees Ten Thousand) only, in default, of payment of fine to undergo SI for another period of 6 months under Section 306 of IPC.

3. The case of the prosecution is that on 06.08.2020, the Police received information that the deceased is found hanging in the house of the accused and accordingly registered Unnatural Death Case (UD Case) vide No. 23/2020 and visited the place of occurrence and got the inquest over the dead body. Subsequently, **PW-1** lodged an FIR on 06.08.2020 alleging inter alia that the accused alongwith his father and mother have been torturing his daughter (deceased) both physically and mentally by demanding dowry after few days of their marriage. It is further alleged that after receiving dowry, the accused did not stop torturing the deceased, for which the deceased ultimately left the house of the accused and started staying with the informant. It is further alleged that after assurance given by the alleged husband not to torture the deceased, the informant left the deceased in the house of the accused on 03.08.2020 and on 04.08.2020 at about 8:00/8:30 in the night, the deceased called the informant and told him that the accused threatened to kill her. It is further alleged that on 05.08.2020 at 5:45/5:50 AM, the father of the accused informed the informant that his daughter expired. It is further alleged that after going to the house of the accused, the informant found the deceased hanging in their bed room. Accordingly, a case was registered under Sections 302/34 of the IPC.

4. Upon registration of the FIR, Police started recording the statement of witnesses



and search for the accused but could not find him. On 13.10.2020, the accused surrendered at the Police Station and upon arresting him, the Investigating Officer forwarded him to the judicial custody. On the conclusion of the investigation, the Investigating Officer submitted charge-sheet and thereafter, the Trial Court framed charge against the accused under Sections 306/304B of the IPC.

5. The prosecution examined 12 witnesses and the accused was also examined under Section 313 Cr.PC, wherein he denied the incriminating circumstances and refused to adduce evidence in defence. The Trial Court upon conclusion of the trial and hearing found the accused guilty under Sections 304B/306 IPC and accordingly convicted him.

6. Mr. NNB Choudhury, learned counsel for the accused submits that the GD Entry based on which the investigation was started was not exhibited and hence, fatal to the prosecution case. He further submits that the inquest over the body was done on the basis of such GD Entry and that the FIR was lodged thereafter. He further submits that there is no direct evidence to show that the accused instigated the deceased to commit suicide and hence, no case of abetment is made out. He further submits that the prosecution has failed to prove the ingredients prerequisite to constitute an offence under Section 304B of the IPC. He further submits that though **PW-1** has stated in his evidence-in-chief that the accused used to physically and mentally torture the deceased, later on, during cross examination, he admitted that when he had left his daughter/deceased at the house of the accused on 03.08.2020, he saw convivial family atmosphere in the house of the accused. He further submits that **PW-6**, who is the sister-in-law of the accused stated in her examination-in-chief that the deceased after coming back to the house of the accused on 03.08.2020 told her that since her husband had spent so much of money in her treatment and there was no sign of her improvement, as such, she desired not to live long. He further submits that the



prosecution as such has not been able to prove the case beyond reasonable doubt and hence, the conviction is *per-se* bad in law.

7. In support of the aforesaid submission he relies on the following cases:

- 1) ***Charan Singh @ Charanjit Singh Vs. State of Uttarakhand, reported in 2023 SCC Online SC 454.***
- 2) ***State of West Bengal Vs. Indrajit Kundu & Ors, reported in (2019) 10 SCC 188, paragraph Nos. 11, 12, 13 & 17.***
- 3) ***Sanju @ Sanjay Singh Sengar Vs. State of M.P, reported in (2002) 5 SCC 371, paragraph Nos. 12, 13 & 14.***
- 4) ***Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605, paragraph Nos. 13, 16, 17, 19 & 21.***
- 5) ***Uma Devi Vs. State of Government of NCT of Delhi, reported in 2020 SCC Online Del 573, paragraph Nos. 14, 15, 16, 17, 18, 19, 24, 26 & 27.***
- 6) ***Mani Vs. State, reported in 2014 (2) MBN (CR) 410, paragraph Nos. 39, 40, 41, 42, 43, 44, 45, 47, 50, 51 & 52.***
- 7) ***SS Chheena Vs. Vijay Kumar Mahajan & Another, reported in (2010) 12 SCC 190, paragraph No. 25.***
- 8) ***Amalendu Pal @Jhantu Vs. State of West Bengal, reported in (2010) 1 SCC 707, paragraph Nos. 12, 13, 18, 21 & 22.***
- 9) ***Nitai Dutta Vs. State of West Bengal, reported in (2005) 2 SCC 659, paragraph Nos. 5 & 6.***
- 10) ***DabuMundu Vs. State of Tripura, reported in (1991) 1 GLR 293,***



paragraph No. 7.

- 11) Yogest @Sachin Jagdish Joshi Vs. State of Maharashtra, reported in (2008) 10 SCC 394, paragraph No. 16.**
- 12) Krishna Kanta Das Vs. State of Assam, reported in (2005) 1 GLR 64, paragraph No. 11.**
- 13) Harjinder Singh @ Bholu Vs. State of Punjab, reported in (2004) 11 SCC 253, paragraph No. 11.**
- 14) Brijpal Singh & Others Vs. State of UP & Others, reported in 1994 Supp (1) SCC 566, paragraph Nos. 6 & 7.**
- 15) Rohtash Vs. State of Haryana, reported in (2012) 6 SCC 596, paragraph Nos. 15, 16, 18, 19 & 28.**
- 16) State of Rajasthan Vs. Rajendra Singh, reported in (2009) 11 SCC 106 paragraph No. 7.**
- 17) Khalik Khan Vs. State of MP, reported in (2003) 11 SCC 19, paragraph No. 6.**
- 18) Uma Kant & Another Vs. State of Chattisgarh, reported in (2014) 7 SCC 405, paragraph Nos. 24, 25, 28 & 27.**
- 19) Ram Lakhan & Others Vs. State of UP, reported in (1996) 9 SCC 204, paragraph No. 4.**
- 20) Raju @Balachandran Vs. State of Tamil Nadu, reported in (2012) 12 SCC 701, paragraph No. 24.**
- 21) Raja Ram Vs. State of Rajasthan, reported in (2005) 5 SCC 272, paragraph Nos. 8, 9 & 10.**
- 22) Pratap Singh & Another Vs. State of MP, reported in (2005) 13 SCC 624, paragraph No. 18.**



23) *Rupon Basumatary & Another Vs. State of Assam, reported in 2008 (Suppl) GLT 310.*

24) *Reena Hazarika Vs. The State of Assam, reported in (2019) 13 SCC 289, paragraph Nos. 19 & 20.*

25) *Rabindra Kumar Dey Vs. State of Orissa, reported in (1976) 4 SCC 233, paragraph No. 6.*

26) *Mousam Singha Roy & Others Vs. State of W.B, reported in (2003) 12 SCC 377, paragraph Nos. 27 &28.*

8. Mr. D. Das, learned Addl. PP, Assam, on the other hand submits that the prosecution has clearly proved the materials required to bring home the charge of Section 304B IPC and therefore, the conviction ought not be interfered with. He further submits that the ingredients of Section 304B are that there is an unnatural death and the same is within 7 (seven) years of her marriage and that it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or her in-laws in connection with any demand for dowry. He further submits that under Section 113B of the Indian Evidence Act, 1872, the Court shall presume that such person had caused the dowry death if the ingredients of Section 304B are present. He further submits that in the present case, the death of the deceased is caused by hanging, which is not under normal circumstances and within 7 (seven) years of her marriage and from the evidence of **PW-1**, it is evident that the accused physically and mentally tortured the deceased in connection with demand for dowry. He accordingly submits that the prosecution has proved that there are materials to show that soon before the death of the deceased, she was subjected to cruelty in connection with demand for dowry and hence, it will be deemed under section 113B of the Evidence Act that the accused has committed the dowry death of the deceased. In support of the following submission, he relies upon the following cases:-



- 1) Smt. Suljina Dhan Vs. State of Assam, in Crl. A. (J) No. 94/2015.**
- 2) Anand Mohan Vs. State of Bihar, reported in (2012) 7 SCC 225, paragraph No. 28.**
- 3) Kans Raj Vs. State of Punjab & Ors, reported in AIR 2000 SC 2324, paragraph Nos. 7, 8, 9, 14 & 15.**
- 4) Vijay Pal Singh Vs. State of Uttarakhand, reported in AIR 2015 SCC 684.**
- 5) Trimukh Maroti Kirkan Vs. State of Maharashtra, reported in (2006) 10 SCC 681.**

9. Mr. R. Boruah, learned counsel for the informant also submits that the prosecution has proved the ingredients of Section 304B and as such the impugned conviction passed by the Trial Court warrants no interference from this Court.

10. I have heard the submissions made at the bar and have perused the materials available on record and also considered the decisions cited at the bar.

11. PW-1 is the informant and the father of the deceased. He deposed that his daughter was married with the accused in the year 2017 and that, after marriage, his daughter started living with the accused in his house. He further deposed that around 1 year after the marriage, the accused started demanding money as dowry and also started committing torture upon his daughter. He further deposed that the accused has assaulted his daughter many times for demand of money. He further deposed that his daughter could not handle the said torture and came back to his house to stay. He further deposed that after three months, the accused called his daughter and



requested her to come with a promise that he would not commit any torture.

12. PW-1 further deposed that on 03.08.2020, he brought back his daughter to the house of the accused and left her there. He further deposed that on 04.08.2020 at about 8:00 PM, he received a phone call from his daughter, informing him that she was being tortured again by the accused by threatening to kill her. He further deposed that he asked his daughter to somehow manage the night and that he shall go to her house on the next day. He further deposed that at about 5:00/6:00 AM, the accused elder's brother Amiya called him over phone informing that his daughter had hanged herself. He further deposed that accordingly, he came over to the house of the accused and saw his daughter in hanging condition. He further deposed that he noticed that the linen on the bed were crumbled as if some persons might have wriggled on it after making a quarrel and as such, he conjectured that his daughter was killed by someone. He further deposed that he suspected that the accused alongwith his mother, father & brother had committed the murder and hanged his daughter's dead body.

13. During **cross examination**, he clarified that the FIR was lodged on the following day of the death of his daughter. He further clarified that after marriage, his daughter mostly stayed in his house as she could not bear the torture of the accused and that during such stay, the accused did not took information of her. He further clarified that whenever the accused used to call his daughter, he used to ask her as to with whom she was roaming. He further clarified that he did not lodge any complain against the accused prior to his daughter's death, regarding physical and mental harassment. He further clarified that the accused called his daughter on her mobile phone and asked her to come back. He further clarified that on the day he left his daughter at the house of the accused, he saw convivial atmosphere in the house of the accused and that they had also fed him with lunch. He further clarified that one



eye of his daughter was cock-eyed slightly and she had allergic problem. He further clarified that when he came to the house of the accused on the day of her death, the accused came and fell down on his feet begging for pardon. He further clarified that upon seeing the dead body of his daughter, he suspected that his daughter had committed suicide. He further clarified that he did not see any sign of torture on her dead body. He denied the suggestions to the effect that the accused did not ask for any dowry money from his daughter and that the accused used to provide money to them and that his daughter was suffering from mental depression and that she was suffering from undiagnosed disease, for which she used to stay in his house for long time.

14. PW-2 is the son-in-law of **PW-1**, who deposed that the deceased and the accused marriage was solemnized in the month of April, 2017. He further deposed that deceased used to stay maximum time in the house of **PW-1** as there was family discord in the house of the accused. He further deposed that his wife told him that deceased was verbally abused and physically tortured for demand for money. He further deposed that in the month of August, 2020, he received a phone call from **PW-3** that the deceased had passed away due to hanging at her husband's house. He further deposed that on 03.08.2020 that **PW-1** had left her in the house of the accused and in the night of 04.01.2020, the occurrence took place. He further deposed that he alongwith **PW-1** and **PW-3** went to the house of the accused.

15. PW-2 has further deposed that they came there in a motor-vehicle and he saw Police who showed them the place where victim was lying hanging. He further deposed that he saw the victim's leg touching the side bar of the bed and her ankle touching the mirror of the Almirah and that there was no knot around the neck, in the rope by which she was hanging. He further deposed that the pillows and the linen on the bed were lying helter-skelter on the bed and there was mark of wriggling on the



bed as if someone had jostled on it. He further deposed that after sometime, the accused came out from another room crying.

16. In his **cross-examination**, **PW-2** has clarified that the FIR was lodged against accused and his mother, elder brother and elder sister-in-law. He has also admitted that the eye of the deceased had slight infection, for which she underwent treatment and that over the matter of torture, his father-in-law counseled the accused a number of times asking him not to do so, and accused also had assured not to torture the victim. He accordingly clarified that because of this reason, they did not think of taking resort to Police earlier.

17. Another son-in-law of **PW-1**, i.e., **PW-3** while narrating the occurrence has asserted that the accused married his sister-in-law in the year 2017 as per social rites. He deposed that after the marriage, the accused and the deceased had some one or two years of peaceful conjugal life and after that, the accused started demanding dowry and money from the deceased. He further deposed that the deceased used to inform his wife that the accused used to torture her for demand of dowry. He further deposed that he came to know of it from his wife. He further deposed that the deceased used to come to her parent's house as the accused used to torture her for money and that she was reluctant to go back to the accused's house because of the atrocities of the accused. He further deposed that once the accused requested his father-in-law to bring back the deceased and assured his father-in-law that the accused would not commit physical torture to the deceased. He further deposed that on 3rd August, 2020, his father-in-law came to the house of the accused for leaving the deceased and that, on the same day, his father-in-law returned home leaving the deceased at the place of the accused. He further deposed that on the night of 4th August, 2020, the deceased called his father-in-law over phone informing that she was being tortured and that his father-in-law asked the deceased to manage that night and that in the morning he would go to her place. He further deposed that at about



5:45 AM on 5th August, 2020, the accused's elder brother Amiya Deka called his father-in-law informing that the deceased had hanged herself inside the room.

18. During his **cross examination, PW-3** clarified that whenever he used to visit the house of accused or his neighbour, he did not notice or hear about any sour relation between the accused and the deceased and that whenever he used to visit the house of the accused, the family members of the accused used to treat him with meal and he used to do fun at their house and that during his visit, the deceased never told him that she was being harassed by the accused demanding dowry or money. He further clarified that Police recorded his statement on 6th August at the Sarthebari P.S but he did not see the occurrence. He further clarified that he told the Police that he suspected that the deceased was killed by the accused and thereafter, hanged her. He admitted the suggestion that he did not tell the Police to have heard from his wife that the accused used to torture the deceased demanding money and dowry item. He further clarified that when they returned home after cremation, they discussed the matter amongst themselves and considering the entire circumstances of the death and suspecting that the deceased was killed and as such, they lodged this case. He also admitted to have not told the Police that the deceased used to come to her parent's house at Guwahati when being tortured by the accused and that she was reluctant to go back once she reached her parent's home. He further admitted to have not told the Police that in the night of 04.08.2020, the deceased called his father-in-law telling that the ordeal of torture that the accused was doing on her. He further admitted that he did not tell the Police that one foot of the deceased had been touching the edge of bed and that there was no knot in the rope and that the bed was in utter mess and that the linen were crumbled and that there was no sign that victim's leg touched the Almirah and showcase placed besides the dead body.

19. **PW-4**, who has conducted post mortem on the deceased body has deposed that on 05.08.2020, he examined dead body of the deceased and that in his opinion,



the death was occurred due to asphyxia as a result of ante-Mortem hanging and the time since death was 12-24 hours approximately.

20. In his **cross examination**, **PW-4** has clarified that except ligature mark, he did not find any other injuries in the dead body and he could not say if the deceased was suffering from depression.

21. **PW-5**, who is the cousin of the accused deposed that the deceased and the accused were married in the year 2017 and lived their conjugal life till the year 2019, i.e., till the death of the deceased. He deposed that the occurrence took place in the year 2019 i.e., when the first wave of covid was at its peak and that on that day, while he went out for morning walk, he heard the mother of the accused screaming that the deceased had hanged herself and that the mother of the accused always wake up the deceased in the morning. He further deposed that having heard the mother of the accused alongwith the nearby people, he also reached the house of the deceased. He further deposed that the deceased had told **PW-6**, wife of his elder brother, that since she was having lots of health issues for which the accused had to spent amount beyond his means, as such, she lost desire to live long.

22. In his **cross examination** by the prosecution side, **PW-5** has clarified that he did not tell the Police that after arrival of the deceased from Guwahati, he heard altercation between the accused and the deceased. He further clarified that he did not tell the Police about the illness of deceased and he saw the deceased the day she arrived from Guwahati, but that her health condition had deteriorated.

23. In his **cross examination** by the defence side, **PW-5** has clarified that his house and the house of the accused is adjacent and that they had a common courtyard. He further clarified that since the deceased was the wife of his younger brother, as such, he used not to talk to her too much for sheer respect and that the deceased had a good term with his wife and his sister-in-law/**PW-6** and that the



deceased never told them about any ill-treatment being meted out to her by the accused. He further clarified that the deceased used to talk about her ill health and that the deceased and the accused had a very cordial relation since the days of their marriage. He further clarified that since they had a common courtyard and as such, any kind of sound of altercation can be heard from his house. He further clarified that he told the Police to have not heard about any high intensity fight or altercation between the deceased and the accused. He did not tell the Police that prior to the occurrence, the accused and the deceased had a quarrel or altercation. According to him, the accused never asked for any dowry from the parent of the deceased. In their family, they did not practice dowry. On the day the deceased came home from Guwahati, he saw her health condition was not good and that when her father came to drop her, he came to his house and had a cup of tea but he did not tell him any complaint or grievance against the accused. He further clarified that on the previous night of the occurrence, he did not hear any dispute being held between the deceased and the accused and that none of the nearby people who had gathered at the place of the occurrence told him about any ill-treatment being given to the deceased from the family members of their house. He further clarified that since the deceased was suffering from various ailments, as such, he suspected that she might have committed suicide on account of untold bodily suffering and that none from their family ever taunted the deceased on her bad health.

24. PW-6, who is the wife of **PW-7** i.e. elder brother of the accused deposed that the deceased was physically very weak and that she used to tell her that she was suffering from internal illness and she got fed up to live with her illnesses. She also used to tell her that she had lost interest to live for which she advised her to consult a Doctor and that everything would be alright. She further deposed that since, their residences were within the same compound, as such, she used to frequently interact with her. She further deposed that the deceased went to her father's house for consulting Doctor and that since their father-in-law's yearly obsequies ceremony was



approaching, as such, the accused called the deceased to return home. She further deposed that the deceased came home on Sunday and stayed for Monday and on that night itself, she committed suicide. She further deposed that on the day the deceased arrived at home, she looked very feeble. She further deposed that the deceased told her that since her husband spent so much of money in her treatment and there was no sign of her improvement, as such, she desired not to live long.

25. In her **cross examination, PW-6** has explained that that since their houses are adjacent, as such, they being the women members of the family, they used to talk to each other very frequently and that she also used to converse with the deceased very frequently and during their conversation, the deceased never told her that the accused used to misbehave with her or had ill- treated her. She further clarified that she never saw any such misbehavior from the accused. She further clarified on the contrary, the deceased in her every talk used to say that her health condition was not so good and that she would not survive long. She further clarified that on the previous day of the occurrence when the deceased came home with her father, the informant i.e., the father of deceased told her that due to lock-down, they had faced economic problem and the health condition of the deceased had also not improved and that he also did not complain to them anything about the behavior of the accused. On the night of the occurrence also, the deceased chatted with her but she did not tell her anything ill about accused. She further clarified that because of her chronic illness, she had been suffering mentally and because of that reason, she committed suicide and that the accused never physically assaulted the deceased.

26. PW-7 (husband of PW-6), who is another brother of the accused deposed that most of the time, the deceased used to stay at her parent's house and that prior to the occurrence, the deceased was in the house of her parent for three months due to lock-down. He further deposed that since annual obsequies ceremony of her father-in-law was close at door, as such, accused asked her to come home and that she



came with her father at the house of accused and within two days of her arrival, she committed suicide. He further deposed that the deceased used to tell his wife i.e. **PW-6** that she was suffering from health issues and did not have much desire to live. He further deposed that they also noticed her deteriorating health condition and that she had become feeble.

27. In his **cross examination**, **PW-7** has clarified that there was cordial relation between the accused and the deceased and that there was no any discord between them and that he never saw accused taunting or ill behaving the deceased for her health.

28. **PW-8**, who is a neighbor of the accused has deposed that the accused married with the deceased some five years back and that they had a two years old daughter and that the deceased used to stay in her parent's home in most of the time and that around 1½ years back, the deceased came back from her father's house and stayed in the house of accused for one day and on the following morning, they heard that the deceased committed suicide. He further deposed that they were astonished as to why she had committed suicide as there was no quarrel or fight between her and her husband or other family members.

29. In her **cross examination** by the prosecution side, **PW-8** has denied the suggestion that he did not tell the Police that as per Mark-X, that after their marriage, the accused and the deceased sometimes used to quarrel and he heard of it that accused used to threat the deceased; that if the deceased went to her maternal house, then also, the accused used to give threat to the deceased and used to bring her back by applying threat; that she suspected that it was because of this reason that the deceased committed suicide.

30. In her **cross examination** by the accused, **PW-8** has clarified that after the marriage of the deceased to the accused, she met the deceased numbers of times and



that they also used to meet at the meeting of Self-Help Group and in the meeting also, the deceased used to share her feelings with her, wherein she never complained against the accused or his family members, whereas, she used to complain about her own health and that the deceased had poor eye vision and her physique was very weak. She further clarified that the deceased used to complain that because of her poor health, she lost hope to live long and that since despite treatment being provided to her, she did not regain health, as such, in numerous occasions, she expressed her desire to finish her life. She further clarified that they used to console her and counseled her not to think of finishing her life as she had a baby and that she never saw or heard of any fight or quarrel between the deceased and the accused and other in-laws. She further clarified that on the date of death of the deceased, her parent and other family members came but they had not complained of any ill behavior being meted out to their daughter and that on the previous night of the occurrence, she did not hear any quarrel between the deceased and her husband. She further clarified that she suspected that the deceased committed suicide because of her poor health and mental condition.

31. PW-9, who is the uncle of the accused and **PW-10**, who is another neighbour of **PW-1** has been declared as Hostile Witnesses by the prosecution.

32. PW-11, who is the Investigating Officer of this case has deposed that on 05.08.2020, the Officer-in-Charge Sarthebari PS received an information that one lady named Rupali alias Maina had hanged herself in the house of her husband and accordingly, a UD case was registered vide UD case No. 23/2020 and after taking charge of the investigation, he along a women Home Guard had gone to the place of the occurrence and informed the matter to the SDC Officer, Circle who had also come to the place of the occurrence. He further deposed that she had conducted inquest over the dead body of the deceased and that he examined some of the witnesses present near the place of the occurrence and that after the SDC officer conducted the



inquest report, the body was sent for post-mortem report. He further deposed that on 06.08.2020, the informant lodged an FIR against the accused and his family members and on the basis of that FIR, this case has been registered and he was entrusted with the charge of the investigation and he accordingly completed the investigation. He further deposed that on 13.10.2020, the accused surrendered at the Police Station and that he arrested and forwarded him to the Court and the accused was remanded to the judicial custody.

33. PW-12, Circle Officer, has deposed that on 05.08.2020 at about 11 AM, she conducted Inquest on the dead body of deceased in connection with Sarthebari UD Case No. 23/2020.

34. In her **cross examination**, she clarified that except the scarred off skin in the neck, she had not seen any other injury in the person of the deceased.

35. During examination of the accused under Section 313 Cr.PC, he explained that his wife/the deceased committed suicide, in which he has no role and further denied all the incriminating materials available against him.

36. To attract the provisions of Section 304B of the IPC, the main ingredients of the offence is: (a) That soon before the death of the deceased, she was subjected to cruelty and harassment in connection with the demand of dowry, (b) The death of the deceased woman was caused by any burn or bodily injury or other circumstance which was not normal, (c) Such death occurs within 7 (seven) years from the date of her marriage, (d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband, (e) Such cruelty or harassment should be for or in connection with demand of dowry, (f) It should be established that such cruelty and harassment was made soon before her death.

37. Therefore, to bring home the offence of Section 304B, the prosecution must first



establish the existence of the aforesaid ingredients. Once the aforesaid ingredients have been established, then, it shall be presumed under Section 113B of the Indian Evidence Act, 1872 that a person has committed the dowry death of a woman unless and until it is proved otherwise. However, before such presumption is drawn against the accused, the prosecution has to prove the existence of the ingredients constituting an offence under Section 304B. It is fundamental principle of criminal jurisprudence that an accused is presumed to be innocent and therefore, the burden lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution therefore, in a case of dowry death, described in Section 304B of IPC shall have to prove first beyond reasonable doubt that inter alia, the accused have subjected the victim to cruelty and harassment in connection with the demand of dowry soon before the death and within 7 (seven) years from the date of her marriage. This general burden never shifts and it always rest on the prosecution. However, once the aforesaid materials are established, the legal presumption provided under Section 113B shall be presumed against the accused. The onus thereafter lies on the accused to prove otherwise.

38. Reference is made to the decision of the Apex Court in the case of ***Kashmir Kaur and Anr. Vs. State of Punjab***, reported in ***AIR 2013 SC 1039***. Para 16 of the aforesaid judgment is reproduced hereunder for ready reference:-

“16. From the above decisions the following principles can be culled out:

(a) To attract the provisions of Section 304-B, IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of her marriage.



(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) 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.

(i) Therefore, the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one."

(j) However, the expression "soon before" should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

(k) Section 304-B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304-B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304-B were not satisfied.



(m) The specific-significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence."

39. Reference is also made to the decision of the Apex Court in the case of **V.K.Mishra & Anr. Vs. State of Uttarakhand & Anr.,** reported in **(2015) 9 SCC 588.** Paragraph Nos. 38 & 39 is reproduced hereunder for ready reference:-

"38. Where the prosecution has shown that 'soon before her death' the deceased was subjected to cruelty or harassment by the husband or in-laws in connection with demand for dowry, the presumption under Section 113B of Evidence Act arises and the Court shall presume that such person who had subjected the woman to cruelty or harassment in connection with any demand for dowry shall be presumed to have caused the dowry death. The presumption that arises in such cases may be rebutted by the accused.

39. Prosecution has established beyond reasonable doubts that 'soon before her death' Archana was subjected to cruelty and harassment by her husband and her in-laws in connection with demand of dowry. The accused were not successful in rebutting the presumption raised under Section 113B of the Evidence Act. Concurrent findings of the courts below convicting the appellants under Section 304B IPC is based upon proper appreciation of evidence and convincing reasons. The courts below rightly convicted the appellants under Sections 304B and 498A IPC and Sections 3 and 4 Dowry Prohibition Act and in exercise of jurisdiction under Article 136 of the Constitution of India, we find no ground warranting interference with the conviction of the appellants."

40. Reference is also made to the decision of the Apex Court in the case of **Indrajit Sureshprasad Bind & Ors. Vs. State of Gujarat,** reported in **(2013) 14 SCC 678.** Paragraph No. 9 is reproduced hereunder for ready reference:-

"9. To establish the offence of dowry death under Section 304B, IPC the



prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the deceased to cruelty or harassment in connection with demand of dowry soon before her death. Similarly, to establish the offence under Section 498-A, IPC the prosecution has to prove beyond reasonable doubt that the husband or his relative has subjected the victim to cruelty as defined in clauses (a) and (b) of the Explanation to Section 498-A, IPC. In the present case, the prosecution has not been able to prove beyond reasonable doubt that the appellants have subjected the deceased to any cruelty or harassment. Further, we have noticed from Ext. 31 written by PW 3 to the deceased on 25-04-2004 that after talking to the deceased on telephone, he was satisfied that she was living happily and was not being misbehaved with. No other material having come in evidence to establish that the appellants instigated the deceased to commit suicide, it is difficult for the Court to hold that the appellants had in any way abetted the suicide by the deceased on 18-05-2004."

- 41.** Therefore, before adverse presumption in terms of Section 113B of the Evidence Act is drawn against the accused for abetment of suicide, the prosecution must first prove beyond reasonable doubt the existence of the materials/ingredients of Section 304B of IPC.
- 42.** Keeping in mind the aforesaid principles, let me now apply the same to the facts and contexts of the present case.
- 43.** The prosecution has relied upon the evidences of **PW-1, PW-2** and **PW-3** mainly to establish that the accused has subjected the deceased to cruelty in connection with dowry within 7 (seven) years of marriage, soon before her committing the act of suicide.
- 44.** **PW-1** deposed that after 1 year of the marriage of his daughter with the accused, he started demanding money as dowry and also committed torture upon her including assault many times for demand of money, for which she came to stay in his house. It further appears that he further deposed that on 03.06.2020, upon the



accused having called her, he brought his daughter back to the house of the accused and left her there, whereupon on the same night, he received a phone call from his daughter informing him that she was being tortured again and that the accused has threatened to kill her. He though initially deposed that since the linen on the bed were crumbled as such, he conjectured that his daughter was killed by someone, however, it appears that later on he deposed that he suspects that the accused and his family members had committed the murder and hanged his daughter's dead body.

45. PW-2, who is one of his son-in-law though stated in his deposition that his wife told him that the deceased was verbally abused and also physically tortured for demand of money. However, his wife was not examined by the prosecution. Therefore, the testimony of **PW-2** which is based on what he heard from his wife, is a hearsay evidence. It is well settled law that oral evidence in the form of hearsay, i.e., a statement made by someone other than the witness who is testifying is not ordinarily admissible subject to certain exceptions i.e., *res gestae*, admissions and confessions and dying declarations etc. Hearsay evidence is generally not admitted as evidence mainly for lack of opportunity for cross examination. The wife of **PW-2** being available ought to have been examined by the prosecution and since the prosecution failed to bring the said person as a prosecution witness from whom the **PW-2** heard the factum of demand of dowry and torture by the accused to the deceased, such evidence of his is not admissible. Paragraph 7 of the decision of the Division Bench of this Court in the case of ***Santi Ram Deka Vs State of Assam*** reported in **2009 5 GLR 550**, which is reproduced hereunder for ready reference:

“7. Now, the issue before us whether the testimony of PW 2 to PW 5 can be accepted and acted upon in the context of killing of the deceased by the appellant. Evidence of these witnesses as stated herein before are 'hearsay'. Acceptability of the hearsay evidence legs behind if the person from whom the witness has heard is not put into the witness box for cross-examination on oath



by the prosecution by the adversary. 'Hearsay' sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares an information given by someone else. Although the term 'Hearsay' is excluded from the Act, it is in constant use in the law Courts. It has been said that there are important exceptions to the hearsay rule. The correct rule as to hearsay therefore is that statements, oral or written, reported to have been made by persons not called as witnesses are not admissible in evidence subject to certain exceptions. These exceptions are to be found in Sections 17-39 in the Evidence Act. Admissions and confessions are exceptions to the hearsay rules. For acceptance of hearsay evidence, a duty is cast upon the prosecution to put a person from whom witnesses heard into the witness box for cross-examination on oath. If a person from whom the witnesses knows or heard is not put into the witness box. The fact so heard, therefore, cannot be accepted in evidence unless, the person from whom such fact/facts is/are heard is put to cross-examination on oath."

46. **PW3**, who is his another son-in-law though stated in his examination-in-chief that after one or two years of the accused and deceased marriage, the accused started demanding dowry and money from the deceased and that the deceased used to inform his wife about the same. However, during cross examination, he admitted the fact that he did not tell the Police during investigation that he heard from his wife that the accused used to torture the deceased demanding money and dowry item. Further, his wife has also not been examined by the prosecution. The testimony of **PW-3** if is analyzed carefully, cannot be also relied upon either in as much as the implicating statements against the accused made in the Court were not disclosed before the Investigating Officer during examination under Section 161 Cr.PC, i.e., at the earliest opportunity.

47. Therefore, the said two witnesses could not have been relied by the Trial Court.



48. On the contrary, 4 (four) of the Prosecution Witnesses, who have not been declared as hostile witnesses have stated that since the deceased was having lot of health issues, for which the accused had spent huge amount of money, she lost desire to live long.

49. PW-5, stated that the deceased had told **PW-6** that since she was having lot of health issues for which accused had to spent amount beyond his means, as such, she lost desire to live long and that she never told **PW-6** about any ill treatment being made out to her by the accused. In fact, he also asserted during cross examination that the accused and the deceased had a cordial relationship since the days of their marriage and though they shared a common courtyard, he has never heard any sound of altercation from the house of the accused in this regard.

50. PW-6 corroborates the deposition of **PW-5** to the effect that the deceased used to tell her that she was suffering from internal illness and she got fed up to live with her illness. She further stated that when the deceased told her that she has lost interest to live, she advice her to consult a Doctor. She further stated that on the day the deceased committed suicide, she arrived from her father's home and she looks very feeble and on that day also, the deceased told her that since her husband spend so much money in her treatment and there was no sign of her improvement, as such, she desires not to live long.

51. During **cross examination**, she further clarified that on the night of the occurrence, though the deceased chatted with her, she never mentioned anything ill about the accused.

52. PW-7, who is the husband of **PW-6** also corroborated the deposition of **PW-6** to the effect that the deceased used to tell his wife that she was suffering from health issues and did not have much desire to live.



53. That apart, **PW-8**, who is a neighbour of the accused stated in her deposition that there was no quarrel or fight between the deceased and the accused and other family members. She further stated in her cross examination that the deceased whom she used to meet on several occasions at the meeting of their self help group, never complained about the accused or other family members, however, she used to complain about her health for which she lost hope to live long. She further clarified that the deceased expressed her desire to finish her life as despite treatment being provided to her, she did not regained health and that she alongwith others used to console her and counsel her to not think of finishing her life as she has a baby.

54. A reading of the aforesaid evidences indicates that the factum of demand of dowry and torture as stated by **PW-1** has not been supported by the other prosecution witnesses. The testimony of **PW-1**/informant is contrary to the testimony of other prosecution witnesses. In fact, the other prosecution witnesses as discussed above have categorically deposed that the deceased lost the desire to live due to her physical health condition. Hence, two versions, one favorable to the accused and the other against the accused is set out by the prosecution witnesses themselves. Therefore, there is doubt with regard the factum of demand of dowry and torture thereof by the accused.

55. Having discussed all the witnesses, I am of the firm opinion that the whole case of the prosecution rest on suspicion and it is trite law that mere suspicion is not enough to convict the accused person.

56. Therefore, a reasonable doubt rises in the mind of this Court as whether the accused has demanded dowry from the deceased and committed torture thereof in relation to such demand. When such doubt rises, the accused has to be acquitted for in that event the prosecution failed to prove conclusively the guilt of the accused.



57. Thus, the prosecution has failed to establish the basic ingredient of Section 304B as regards torture and harassment in relation to dowry demand. Therefore, the legal presumption as provided in Section 113B of the Indian Evidence Act cannot be drawn against the accused. Hence, no case under Sections 304B/306 IPC is made out against the accused.

58. In view of the aforesaid, the findings of the Trial Court and the order convicting the accused under the aforesaid Sections, i.e., 304B and 306 IPC is totally erroneous and perverse.

59. As such, the impugned Judgment dated 26.07.2023 and Consequential Order dated 27.07.2023 passed by the learned Addl. SJ (FTC) Barpeta in SC No. 184/2021 (a/o GR Case 3519/2020 and Sarphebari P.S. Case No. 279/2020) convicting the appellant/accused under Sections 304B/306 IPC is set aside and quashed.

60. Resultantly, the accused/appellant stands acquitted of the charges framed against him and he shall be released from the jail forthwith.

61. Let Registry issue necessary release warrant to the Police Superintendent of Jail concerned.

62. Accordingly, this Criminal Appeal stands disposed of.

63. Send back the LCR.

JUDGE

Comparing Assistant