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AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL APPEAL No. - 205 of 1996

Shiv Narain @ Surya Narain

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s) : Anil Srivastava, Amit Srivastava
Counsel for Respondent(s) : Govt. Advocate,

Along with :

Criminal Appeal No. 177 of 1996:

1. Jai Narayan

Versus

State of U.P.

Criminal Appeal No. 178 of 1996:

2. Ram Lal and another

Versus

State of U.P.

Court No. - 32

HON'BLE MANOJ BAJAJ, J.

1. Appellants namely, Shiv Narain @ Surya Narain, Jai Narayan, Ram Lal and Pateshwar are aggrieved against the judgment of conviction dated 30.4.1996 and order of sentence dated 13.5.1996 passed by Additional Sessions Judge-II, Faizabad in Sessions Trial No. 225 of 1992, arising out of Case Crime No. 1508 of 1991, registered at Police Station Kotwali Nagar, District Faizabad, whereby they have been convicted under Sections 498-A, 304-B, 201, 120-B IPC, and sentenced to seven years rigorous imprisonment under Section 304-B I.P.C., two years rigorous imprisonment under Section 498-A IPC, two years rigorous imprisonment under Section 201 IPC and seven years rigorous

imprisonment under Section 304-B read with Section 120-B IPC., respectively. The sentences have been ordered to run concurrently.

2. The above F.I.R. was registered on the basis of a written complaint dated 2.10.1991 given by Medhi Lal Maurya to SHO, Police Station Kotwali Nagar, Faizabad, who alleged that his daughter namely, Urmila aged 21 years was married four years back with Shiv Narain @ Surya Narain resident of Mohalla Khurdabad, Police Station Kotwali Nagar, District Faizabad and was residing in her matrimonial home. In this marriage, the complainant had given sufficient dowry as per his capacity, but Urmila's step mother-in-law Darshna, husband-Shiv Narain, two cousins of her late father-in-law namely, Ram Lal and Shyam Lal, who were residing together were not happy and used to harass and taunt Urmila for dowry. In this regard, complainant's daughter had informed him, and he had expressed his inability to meet their demand. For this reason, the complainant's daughter Urmila was murdered on the intervening night of 19/20th September, 1991 by the above accused persons in connivance with Jai Narayan s/o Ram Lal and Pateshwar, who is maternal uncle (*Mausa*) of Shiv Narain and they also resided with Shiv Narain. After committing murder, in order to cause disappearance of evidence, the dead body of Urmila was thrown in the well. On 20.9.1991, his son-in-law Shiv Narain had given an information to police about missing of Urmila, and the complainant tried to search her. After recovery of the dead body from the well and gathering information from other persons, the complainant gave an application dated 24.9.1991 to the Senior Superintendent of Police, Faizabad, but no action was taken upon the same, therefore, another application dated 27.6.1991 was given to District Magistrate, Faizabad. Broadly, on these allegations, the above case was registered against the accused persons namely, Shiv Narain, Darshana Devi, Ram Lal, Shayam Lal, Jai Narayan and Pateshwar for the alleged commission of offences punishable under Sections 498-A, 304-B, 201, 120-B I.P.C.

3. After registration of the F.I.R., the investigation in the case was conducted by Investigating Officer namely, Sri Hariram Singh (P.W.-6),

who recorded the statements of the complainant- Medhi Lal Maurya and other formal witnesses. During investigation, the victim's postmortem report dated 21.09.1991 was collected and site plan was also prepared. Finally, the charge sheet was filed against all the accused persons under Section 173(2) Cr.P.C. thereby sending them to face prosecution for commission of offences punishable under Sections 498A, 304B, 201 and 120B I.P.C.

4. Thereafter, the case was committed to the Sessions Court and the charges against the accused persons were framed vide order dated 23.7.1992 for alleged commission of offences punishable under Sections 498A, 304B, 201, 304B/120B I.P.C. The appellants-accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove the guilt of the accused persons had examined eight witnesses namely, Medhi Lal (P.W.-1), S.I. Santosh Kumar Yadav (P.W.-2), Ram Prasad (P.W.-3), Smt. Phoolmati, wife of Medhi Lal (P.W.-4), Dr. Vijay Kumar (P.W.-5), Investigating Officer Sri Hariram Singh (P.W.-6), Constable Hausila Prasad Awasthi (P.W.-7) and Constable Jai Prakash Upadhyay (P.W.-8). Besides, the prosecution also adduced documentary evidence i.e. applications to District Magistrate, Faizabad (Exb.Ka-1 and Exb.Ka-2), written complaint to Police (Exb.Ka-3), Panchayatnama/ inquest report (Exb.Ka-4), sketch of dead body (Exb.Ka-5), Challan of dead body (Exb. Ka-6), Sample seal (Exb.Ka-7), letter for conducting post mortem (Exb.Ka-8 and Exb.Ka-9), Post-mortem Report (Exb.Ka-10), site plan (Exb.Ka-11), Charge-sheet (Exb.Ka-12), Nakal Rapats (Exb.Ka-13 and 14).

6. After completion of the prosecution evidence, the separate statements of accused-appellants were recorded under Section 313 Cr.P.C., who denied the prosecution case and stated that they have been falsely implicated.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court vide judgment dated 30.4.1996 proceeded to convict the appellants-accused under Sections 498-A, 304-B, 201 and

304-B read with 120-B IPC, and through the order dated 13.5.1996 sentenced them to seven years rigorous imprisonment under Section 304-B I.P.C., two years rigorous imprisonment under Section 498-A IPC, two years rigorous imprisonment under Section 201 IPC and seven years rigorous imprisonment under Section 304-B read with Section 120-B IPC. The sentences have been ordered to run concurrently.

8. Aggrieved against the judgment of conviction dated 30.4.1996 and order of sentence dated 13.5.1996, the appellants preferred these separate appeals.

9. The appeals filed by other convicts abated as a result of their death during pendency of their appeal(s).

10. Mr. Amit Srivastava, learned counsel for the appellants has argued that the complainant's daughter died on the intervening night of 19th/20th September, 1991 and her dead body was recovered on 21.9.1991 from the well situated adjacent to the house of the appellant-Shiv Narain @ Surya Narain, and the report regarding her missing was given to the police on 20.9.1991. Learned counsel submits that the inquest report was prepared on 21.9.1991 and before that the complainant alongwith other relatives had arrived at the matrimonial home of the deceased, but no suspicion regarding commission of any offence was ever expressed by him at that stage.

11. Learned counsel for the appellants further argued that the last rituals of the deceased were performed, wherein her parents and other relatives were present, therefore, it is evident that the registration of F.I.R. against the accused persons on 2.10.1991 is an afterthought to falsely implicate the husband and his relatives. Learned counsel submits that the delay in lodging F.I.R. has not at all been explained by the complainant, much less by producing the complaint dated 24.9.1991 allegedly given to the Senior Superintendent of Police, Faizabad. Learned counsel has referred to the contents of the F.I.R. and other material on record to point out that the allegations regarding harassment meted out to the daughter of the complainant by the accused persons are

vague and no particulars of any demanded articles, time and place are contained in the final charge sheet submitted by investigating officer and the demand of scooter for husband was introduced during trial when the testimonies of complainant (P.W.-1) and his wife (P.W.-4) were recorded.

12. Learned counsel for the appellants has argued that the daughter of the complainant was living happily in her matrimonial home and she in her lifetime never lodged any complaint in any manner whatsoever to allege her harassment for demand of dowry. According to learned counsel, the complainant and his wife have alleged that the demand of scooter raised by the accused as a dowry was informed by their daughter when she had visited her parental home, but the father or the mother never gave any complaint to the police and decided to falsely implicate the accused persons after the unfortunate accidental death of their daughter. Learned counsel submits that the victim died of a solitary head injury i.e. a fracture of skull, as she might have accidentally fallen in the well and her head struck against the tubewell pipe resulting in her instant death. In this regard, learned counsel has drawn the attention of the Court to the testimony of Dr. Vijay Kumar (P.W.-5), who conducted the postmortem of the deceased. Learned counsel submits that the husband had been taking care of his wife and had also got her admitted to a training course of stitching and embroidery in Awadh Industrial Training Institute, Mohalla Shahabganj, Faizabad and this fact is also admitted by her father (P.W.-1) in his cross-examination.

13. Learned counsel for the appellants has argued that the allegations in the F.I.R. by complainant describe the death of his daughter as homicidal and according to complainant, the dead body was thrown in the well with an object to cause disappearance of the evidence, but the charge sheet against the accused persons was filed for the alleged commission of offences punishable under Sections 498-A, 304-B, 201, 120-B I.P.C. He submits that the version of complainant is apparently false and has not been completely believed by the police while registering the F.I.R. and submitting the final charge sheet under Section 173(2) Cr.P.C. against the accused persons. Learned counsel submits that

evidence relied upon by prosecution is not enough to draw the presumption contained under Section 113-B Indian Evidence Act, 1872 as the alleged harassment for demand of dowry is not proved, therefore, the conviction of the appellants through the judgment of conviction dated 30.4.1996 is against the law and evidence on record.

14. Learned counsel for the appellants has relied upon the judgment of Hon'ble Supreme Court in *Karan Singh Vs. State of Haryana, 2025 INSC 133* and *Mahesh Kumar Vs. State of Haryana (2019) 8 SCC 128* to contend that in the absence of any evidence that the wife was harassed on account of dowry demand soon before her death, the offence punishable under Section 304-B I.P.C. would not be made out for lack of necessary ingredients. He has drawn the attention of the Court to the impugned judgment of conviction dated 30.4.1996 and order of sentence dated 13.5.1996 to argue that the trial court has not carefully analyzed the material discrepancies and inconsistencies in the statements of prosecution witnesses, therefore, the said judgments be set aside, and the appellants be acquitted.

15. On the other hand, Ms. Shikha Sinha, learned A.G.A. has vehemently opposed the prayer, who has argued that the prosecution has produced convincing evidence to bring home the guilt of the accused persons beyond doubt and analyzing the same, the trial court has rightly convicted the appellants. Learned A.G.A. has argued that the marriage of complainant's daughter namely, Urmila was performed with Shiv Narain @ Surya Narain on 12.5.1987, but soon thereafter, the harassment of the wife began when the husband and other relatives collectively demanded scooter in dowry at *Khichdi Ceremony*, and since the wife met unnatural death within seven years of her marriage, therefore, the ingredients to constitute the offence punishable under Section 304-B I.P.C. are fulfilled, and proved by leading cogent evidence. Learned A.G.A. submits that the dead body of the complainant's daughter was thrown in the well with an object to eliminate the evidence and the charge no.3 in the order dated 23.7.1992 framing charges, the trial court refers the death of victim as murder.

16. Learned A.G.A. further argued that the delay in lodging the F.I.R. is very well explained by complainant as his earlier complaints (Exb.Ka-1 and Exb.Ka-2) given before the District Magistrate, Faizabad for registration of case were not acted upon, and finally the F.I.R. was registered on his another complaint dated 2.10.1991 given to the Station House Officer, Kotwali Nagar, Faizabad. Learned A.G.A. submits that Hari Ram Maurya, who is brother-in-law of the complainant had informed the police on 21.9.1991 itself regarding the unnatural death of complainant's daughter and the case diary no.16 was entered at 8:50 a.m., and in this regard, she has drawn the attention of the Court to the statement of Santosh (P.W.-2).

17. Learned A.G.A. further submits that Ram Prasad (P.W.-3) has also proved the pressure exercised upon the complainant by police officials on 2.10.1991 and in this regard, a telegram was sent by Ram Prasad (P.W.-3) to DIG, Faizabad. As per the statement of this witness, the complainant and other companions were illegally detained in the police station. Learned A.G.A. submits that if, the victim had fallen in the well accidentally, her stomach would be filled with water, but as per the postmortem report, no such evidence was found, therefore, according to learned A.G.A., the dead boy of the victim was thrown in the well after her homicidal death.

18. Learned A.G.A. submits that the medical evidence adduced during trial would show that the victim did not die by drowning and the cause of death according to Dr. Vijay Kumar (P.W.-5) was the head injury. Learned A.G.A. has relied upon the decisions of Hon'ble Supreme Court in *Vijay Pal Singh and others Vs. State of Uttrakhand, 2015 AIR Supreme Court 684* and *Dhian Singh and another VS. State of Pujnab, (2004) 7 Supreme Court Cases 759*, and submitted that the trial court has carefully analyzed the prosecution evidence in a proper manner and rightly drew the conclusion that the prosecution has proved the charges against the accused beyond doubt. Therefore, according to learned State counsel, the impugned judgment of conviction as well as order of

sentence do not call for any interference by this Court in exercise of appellate jurisdiction. She prayed that these appeals be dismissed.

19. Learned counsel for the parties have been heard and with their assistance, case file and the trial court record has been perused carefully.

20. According to the prosecution case, Urmila daughter of complainant-Medhi Lal (P.W.-1) went missing on the intervening night of 19/20th September, 1991 and G.D. entry no. 67 in this regard was entered on the basis of a complaint by her husband-Shiv Narain and later, on discovery of her dead body on 21.9.1991 another G.D. entry no.16 was entered at 8:50 a.m. on the basis of an information by Hari Ram Maurya s/o Ram Ratan (brother-in-law of complainant). The complainant alongwith his wife Phoolmati (P.W.-4) and other relatives also reached and found the dead body of Urmila in the well situated about 115 steps from her matrimonial home, which was pulled out from the well and inquest proceedings were conducted at around 1:10 p.m. At that stage, the complainant and his close relatives namely, Hari Ram Maurya-brother-in-law of complainant, Moti Lal Maurya-brother of complainant, Ram Milan Maurya-cousin of complainant as well as accused-Pateshwar Maurya s/o Banwari had expressed their opinion that probably the victim died of drowning, and no specific information was given in respect of her death. The inquest proceedings (Exb. Ka 4) were signed by all these persons.

21. The formal F.I.R. (Exb.Ka- 15) was registered on the basis of a written complaint dated 2.10.1991 given by Medhi Lal (P.W.-1), and though, the allegations related to the alleged commission of offence of murder, but no offence punishable under Section 302 I.P.C. was incorporated in F.I.R. and after completion of investigation, the charge sheet was filed against accused persons for commission of offences punishable under Sections 498-A, 304-B, 201, 120-B I.P.C.

22. Notably, the information regarding discovery of dead body of the complainant's daughter in the well was given to police by Hari Ram Maurya at 8:50 a.m. on 21.9.1991, who is brother of complainant's wife,

and on the same day the complainant along with relatives also reached the said place at around 9:00 a.m., but the formal complaint was given by him to the S.H.O. on 2.10.1991 for registration of case. According to the complainant (P.W.-1), he kept on visiting police station till 24.9.1991 for registration of F.I.R., and no action was taken by the police officials, therefore, his brother-in-law- Shiv Prasad (husband of his wife's sister) sent a telegram on 26.9.1991 to D.G.P. Lucknow, D.I.G. Faizabad and Superintendent of Police, Faizabad. Besides, he also sent his written complaints dated 26.9.1991 and 27.9.1991 Exb.Ka-1 and Exb.Ka-2, respectively, to District Magistrate, Faizabad, but despite that no F.I.R. was registered by police. However, it is also fairly admitted by P.W.-1 in his testimony that when he reached at the house of the accused, the police was already there, and similarly his wife in her deposition as P.W.-4 also deposed that she had informed the police about the involvement of accused persons in commission of alleged crime. But in the considered opinion of this Court, if, that was so, it does not appeal to prudence that at the time of inquest, the complainant and his close relatives mentioned the death of victim by drowning, and they had not levelled any kind of accusations of murder or dowry death against the accused persons.

23. Strangely, the complainant (P.W.-1) in his deposition before the trial court took a stand that after the postmortem, the dead body of his daughter was not given to him and was delivered to his son-in-law, who instead of cremating it threw the same in Saryu river, but the said stand does not find any support from any of his close relatives, much less his wife Phoolmati (P.W.-4), Hariram Maurya (brother of Phoolmati), Moti Lal (brother of complainant) and Ram Milan (cousin of complainant). The complaints dated 26.9.1991, 27.9.1991 and F.I.R. dated 2.10.1991 also do not contain this allegation that the dead body of his daughter was never cremated, whereas the accused in their explanation clearly stated that the dead boy of Urmila was cremated on 21.9.1991 on the river bank of Saryu. Even the official witnesses have also not supported the complainant's version in this regard.

24. Ms. Shikha Sinha, learned A.G.A. relied upon the statement of witness (P.W.-3) namely, Ram Prasad to contend that he alongwith Hari Ram, Medhi Lal, Raj Kumar, Ram Garib and Shiv Prasad was called by police station at 9:00 a.m. and the police officer met the complainant and others at 5:00 p.m., who asked them to compromise and on refusal by complainant, they all were detained in custody, but in the considered opinion of this Court, the testimony of P.W.-3 lacks credence. This witness (P.W.-3) though accompanied complainant for meeting with the police officers, however, he was not in the police station at the time of meeting as he had left. Most importantly, none of the close relatives accompanying the complainant supported him, therefore, the argument that the delay in lodging the F.I.R. was because of pressure exercised by police is not worth acceptance. Concededly, the F.I.R. was registered on 2.10.1991 and the telegram (Exb.Ka-9) is almost of the same time, therefore, this Court has no hesitation in holding that the complainant and his close relatives, who were in touch with the police from the very beginning gave the formal application to the SHO with a delay of twelve days, which has not been sufficiently explained.

25. As per the allegations by complainant, the accused persons in connivance with each other had committed murder of his daughter Urmila on the intervening night of 19/20th September, 1991 and had thrown her dead body in the well to cause disappearance of evidence, but the police had registered the F.I.R. for commission of offence of dowry death etc. and offence punishable under Section 302 I.P.C. was not incorporated in the F.I.R. A reading of F.I.R. also reveals that the complainant came to learn about this crime on his inquiry from other persons and gave a complaint on 24.9.1991 to Senior Superintendent of Police, Faizabad, but the offence of murder was not even incorporated in the final report submitted against the accused persons under Section 173(2) Cr.P.C. Therefore, the trial court vide order dated 23.7.1992 did not frame any charge against the accused persons for commission of offence of murder punishable under Section 302 I.P.C., though, the 3rd charge under Section 201 I.P.C. refers to the offence of murder.

26. At this juncture, this Court deems it relevant to have a glance at the definition of culpable homicide as well as dowry death contained in respective Sections 299 and 304-B I.P.C., The same are reproduced below:-

“299. Culpable homicide.—

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

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 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.”

27. Further, Section 113-B Indian Evidence Act, 1872 attaches presumption against accused, for commission of dowry death, and the said section 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 purpose of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)]."

28. A reading of above sections would clearly show that the ingredients to constitute the offence punishable under Section 299 I.P.C. i.e. culpable homicide and Section 304-B I.P.C. i.e. "Dowry Death" are distinct and these offences are attracted in different set of facts. In the case of homicidal death, an overt act is attributed to the accused, who causes bodily injury to the victim with knowledge and intention that it would be sufficient to cause death of victim in the ordinary course of nature, whereas on the contrary, the offence of dowry death only contemplates unnatural death of wife, within seven years of her marriage, coupled with her harassment for demand of dowry by husband or other relatives soon before her death. If, the ingredients to constitute the offence of dowry death punishable under Section 304-B I.P.C. exist, the presumption contained in Section 113-B Indian Evidence Act, 1872 is attracted. In the present case, the bald allegations of complainant alone were not *prima facie* enough for taking cognizance of offence under Section 302 I.P.C., therefore, trial court rightly tried the accused persons for commission of offences punishable under Sections 498-A, 304-B, 201 and 120- B I.P.C.

29. The postmortem report (Exb.Ka) of the deceased also indicates that the victim died of solitary head injury, which was described as ante mortem in nature and as per the evidence of Dr. Vijay Kumar (P.W.-5), the said injury could be a result of fall in the well, if, the head would hit against tubewell pipe. Even if, for the sake of arguments it is assumed that Urmila was murdered, the prosecution is absolutely silent about the manner of commission of offence of murder, much less place of occurrence, and further if, the dead body was thrown in well, there is no medical evidence showing any postmortem injury on the dead body of

Urmila. The presumption contemplated by Section 113-B Indian Evidence Act, 1872 is attracted only in case of dowry death, and if, the crime relates to the offence punishable under Section 302 I.P.C., the onus would lie only on the prosecution to establish the said charge, therefore, the argument advanced by learned A.G.A. that dead body was thrown in the well after the murder is not supported with any evidence. Consequently, the charge framed against the accused persons for alleged commission of offence punishable under Section 201 I.P.C. would also naturally collapse, in the absence of any evidence of murder of the victim. Even otherwise, it is not believable that the accused-husband would throw the dead body of his wife few steps away from his own house, therefore, not only the charge no.3 framed by the trial court vide order dated 23.7.1992 is erroneous being against the record of the case, the finding of guilt under Section 201 I.P.C. is also perverse.

30. Now, this Court deems it appropriate to examine the prosecution evidence to test the prosecution case in respect of the charge under Section 304-B I.P.C. One of the necessary elements required to be proved by prosecution is that the victim was harassed by accused persons soon before her death for demand of dowry. While examining the testimony of Medhi Lal (P.W.-1) and Phoolmati (P.W.-4) with regard to alleged harassment meted out to their daughter by accused Shiv Narain (husband) and his other relatives, this Court finds that according to the parents, their daughter Urmila was married on 12.5.1987 with Shiv Narain and soon thereafter, she was sent to her matrimonial home where she stayed for three days, and returned back to her parental home alongwith complainant and his son, who went to bring her back and their daughter stayed with the parents for a period of six months. According to parents, after six months when Ram Lal, Shyam Lal, Jai Narain, and Umesh (brother of Shiv Narain) alongwith others came to take back their daughter to the matrimonial home, Shiv Narain did not come, and at that stage, for the first time, all those persons had asked for scooter in dowry.

31. Thus, the evidence of parents would reflect that till November, 1987 the daughter had resided nearly two weeks in her matrimonial

home and the alleged demand of scooter was made by the accused collectively somewhere in November, 1987. Concededly, it is the case of parents that the accused did not demand anything else except scooter, and their daughter had actually informed them about the conduct of the accused, who harassed her for demand of dowry, but neither the F.I.R. nor the statement recorded during investigation contain any allegation that the accused were demanding scooter in dowry. This specific demand of scooter by accused was introduced only during recording of deposition of parents before the trial court.

32. Thereafter again, according to parents, their daughter resided in the matrimonial home for a period of two and half years i.e. from somewhere in January, 1988 to July, 1990, when she again went to her parental home for residing with parents for ten days. And after her return to matrimonial home in August, 1990, the complainant and his wife came to learn about her disappearance, but Urmila went missing in September, 1991. During cross-examination, complainant (P.W.-1) also admitted that a month before death of his daughter, he had visited her matrimonial home, but there is nothing in his deposition that at that stage, his son-in-law or others asked him for dowry, whereas mother of Urmila (P.W.-4) admitted in her cross-examination that after marriage of her daughter she never visited her matrimonial home.

33. Here, it is also relevant to note that Hari Ram Maurya (brother of Phoolmati-P.W.-4), who had given the information to the police about discovery of dead body of Urmila in the well, and had also signed the inquest proceedings did not appear in the witness box to support the stand of complainant or Phoolmati that Urmila was harassed for demand of dowry. Similarly, the other close relatives of complainant namely, Shiv Prasad (husband of Phoolmati's sister) and Ram Prasad (cousin of complainant), who had gone to bring back Urmila from her matrimonial home after her longest stay of two and half years were also not examined as witnesses by the prosecution to prove her harassment for demand of scooter in dowry.

34. That apart, the site plan (Exb.Ka-11) proved by the prosecution would also show that the house of accused Ram Lal and Shyam Lal are near the house of Shiv Narain s/o Dayaram and some part of the house was demolished near the well. It is the defence of the accused persons that as there was division in the joint property, the construction activities were going on and the victim might have accidentally fallen in the well, which resulted her death, and this raises a serious doubt in the prosecution case, particularly, when there is no evidence of murder. Complainant (P.W.-1) in his cross-examination also admitted that when he visited the matrimonial house of Urmila a month before her death, he noticed that some part of the house was demolished, however, according to him, no activity of construction was going on. The site plan reflects that the well had a water level of nine feet and the tubewell pipe was three feet above the water level, therefore, possibly the victim on her accidental fall struck her head against the pipe, and suffered only ante mortem injury causing her instant death.

35. As per the defence of the accused persons, Urmila was residing happily with her husband in matrimonial home and she was got admitted in Awadh Industrial Training Institute, Mohalla Shahabganj, Faizabad for training in the field of stitching and embroidery, and during cross-examination, complainant-P.W.-1 admitted this fact that his daughter studied in the institute from August, 1989 to July, 1990. This was the period when Urmila had stayed in her matrimonial home for a period of two and half years continuously.

36. Consequently, in the light of the sequence of events of stay of Urmila and absence of any complaint whatsoever during her lifetime, much less in respect of dowry demand, this Court finds that the evidence adduced by prosecution does not prove beyond doubt that the complainant's daughter was harassed for demand of dowry soon before her death.

37. As far as the accused-Pateshwar is concerned, there is no allegation against him for harassing Urmila for demand of dowry, who

was residing separately in another village and the allegations against him pertain to exercise of occult practices to kill Urmila, but in this regard, no evidence has been adduced by the prosecution. It is also admitted by material prosecution witness complainant (P.W.-1) that Pateshwar was residing in some other village. Likewise, the allegation of harassment for demand of dowry by complainant in the F.I.R. is attributed against Darshan, Shiv Narain, Ram Lal and Shyam Lal only and name of Jai Narain is introduced in the alleged commission of offence of murder of his daughter. Since, the said offence is not made out even according to the prosecution, therefore, the conviction of Pateshwar and Jai Narain only on the strength of criminal conspiracy for causing dowry death is otherwise not sustainable.

38. The judgment relied by learned A.G.A. in the case of ***Vijay Pal Singh*** (Supra) is not applicable as in the said case, the accused was held not guilty under Section 302 I.P.C., but convicted under Section 304-B I.P.C. whereas in the present case, no charge under Section 302 I.P.C. was framed against the accused persons and the prosecution has also failed to prove that soon before death, the victim was harassed for demand of dowry. Similarly, the judgment in ***Dhian Singh's*** case (Supra) also does not lend any support to the prosecution case as in the said case, the demand of dowry was proved, because through the mediation the wife was taken back to her matrimonial home, and two months thereafter, she died by suicide, but in the present case, no complaint of any kind was ever given during lifetime of Urmila alleging dowry demand.

39. In ***Karan Singh's*** case (Supra), the Hon'ble Supreme Court held that the presumption under Section 113-B Indian Evidence Act, 1872 will apply when it is established that soon before her death, the woman had been subjected by accused to cruelty or harassment for, or in connection with, any demand for dowry. In other words, the prosecution has to prove cruelty in order to attract Section 113-B Indian Evidence Act and in the absence of any such evidence, the presumption would not be available.

40. As already noticed, neither the prosecution submitted the charge sheet against the accused for commission of the offence punishable under Section 302 I.P.C. nor any charge was framed by the trial court, despite that the trial court wrongly held the accused persons committed murder of Urmila. The approach adopted by the trial court is apparently erroneous in law and perverse. A perusal of the impugned judgment of conviction dated 30.4.1996 and order of sentence dated 13.5.1996 would show that the trial court has not properly appreciated the prosecution evidence on record, which suffers from material discrepancies and inconsistencies, therefore, the impugned judgment of conviction and order of sentence are not sustainable.

41. Thus, in view of the above discussions, this Court has no hesitation in holding that the evidence adduced by the prosecution itself throws serious doubts on this case and the charges against the accused have not been proved beyond shadow of a doubt, and the benefit of doubt is extended to the accused persons.

42. Resultantly, the appeals succeed and the impugned judgment of conviction dated 30.4.1996 and order of sentence dated 13.5.1996 are hereby set aside, and the appellants Shiv Narain @ Surya Narain, Jai Narayan, and Pateshwar are hereby acquitted of all the charges. The bail bonds and surety bonds furnished by the appellants are ordered to be discharged.

43. The appeals are allowed. Record and proceedings be sent back to the trial court forthwith.

(Manoj Bajaj,J.)

August 21, 2026

P.S. Parihar