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HIGH COURT OF CHHATTISGARH AT BILASPUR

Coram: Hon'ble Mr.T.P.Sharma &  
Hon'ble Mr.R.L.Jhanwar, JJ.

(84)

Criminal Appeal No.789 of 2006

Jagat Ram and another

Versus

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-  
T.P. SHARMA  
Judge

Hon'ble Mr.R.L.Jhanwar

*g agree*  
Sd/-  
R.L. Jhanwar  
Judge

Post for Judgment on : 30/11/2009

Sd/-  
T.P. SHARMA  
Judge



AFR

(85)

HIGH COURT OF CHHATTISGARH AT BILASPURCriminal Appeal No.789 of 2006

CORAM: HON'BLE MR.T.P.SHARMA &  
HON'BLE MR.R.L.JHANWAR, JJ.

APPELLANTS  
(In Jail)

1. Jagat Ram Sahu S/o Panchram Sahu, aged about 66 years R/o Village - Urla P.S. Poolgaon Dist.Durg (C.G.)
2. Dileshwar @ Monu S/o Jagat Ram Sahu aged about 25 years R/o Village-Urla P.S. Poolgaon Dist.Durg

Versus

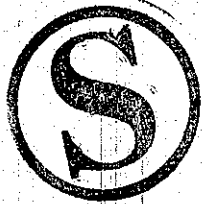
RESPONDENTState of Chhattisgarh, Through P.S.-  
Poolgaon, Dist.Durg (C.G.)(CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL  
PROCEDURE, 1973)Present:-

Mr.Arun Kochar, counsel for the appellants.

Mr.Ashish Shukla, Government Advocate with Mr.Sandeep Yadav,  
Deputy Government Advocate for the State/respondent.JUDGMENT(Passed on 30<sup>th</sup> November, 2009)

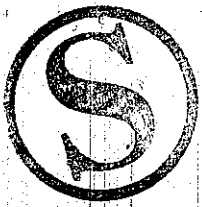
The judgment of the Court was delivered by T.P.Sharma, J.:-

1. By this appeal, the appellants have challenged the legality and propriety of the judgment of conviction & order of sentence dated 20.3.2006 passed by the Fifth Additional Sessions Judge, Durg, in Sessions Trial No.137/2005 whereby & whereunder learned Fifth Additional Sessions Judge after holding the appellants guilty for causing dowry death and murder of Anita, wife of appellant No.2 Dileshwar, convicted for the offence punishable under Section 304-B and 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a



fine of Rs.1000/-, in default of payment of fine to further undergo rigorous imprisonment for 6 months on each count for each offence.

2. Judgment & order are challenged on the ground that without there being any clinching and credible evidence, the Court below has convicted and sentenced the appellants as aforementioned and thereby committed illegality.
3. Case of the prosecution in brief is that deceased Anita, wife of appellant No.2 Dileshwar and daughter-in-law of appellant No.1 Jagat Ram married with Dileshwar in the year 2003. She was residing with the appellants in their house. On 15.4.2005 at about 6.30 p.m. she received burn injuries in the house of the appellants. She was shifted to District Hospital, Durg for immediate treatment. She was examined by Dr.A.K.Mishra (PW-12) vide Ex.P/17. She was burn up to 98%. At about 7.20 p.m., intimation was sent to the police vide Ex.P/5. Present appellant No.2 also received burn injuries. She was examined by Dr.A.K.Mishra (PW-12) vide Ex.D/6. He was burn up to 30%. Discharge ticket of appellant Dileshwar is Ex.D/4. During the course of treatment on 16.4.2005, the police requested the Executive Magistrate for recording dying declaration of injured Anita vide Ex.P/26 and also requested the doctor for examination of the injured Anita as to whether she is in a position to give statement vide Ex.P/25. The doctor has examined and certified that she is in a position to give the statement. Her dying declaration was recorded by Executive Magistrate Ashokkumar Shrivastava (PW-9) vide Ex.P/11 in which she has specifically deposed that her husband and father-in-law have set her ablaze. During course of treatment she died on 16.4.2005 at about 8.40 p.m. Death was intimated by the doctor to police vide Ex.P/24. On the basis of intimation (Ex.P/24), police station-Durg recorded merg intimation vide Ex.P/22 and registered merg was recorded vide Ex.P/23. F.I.R. was recorded vide Ex.P/27. After summoning the witnesses vide Ex.P/10, inquest over the body of deceased Anita was prepared vide Ex.P/1A. Dead body was sent for autopsy to District Hospital, Durg vide Ex.P/12. Autopsy was conducted by



Dr. Padmakar Mishra (PW-17) vide Ex.P/29. 100% burn injuries were found over the body of deceased Anita. Death was as a result of primary neurogenic shock as a result of burn. Burn piece of cloth, broken piece of bangles and match box were recovered from the spot vide Ex.P/3. Container containing kerosene, burn piece of curtain, burn piece of lungi and white shirt were also recovered from the spot vide Ex.P/4. Articles of dowry were seized from accused/appellant No.2 Dileshwar vide Ex.P/6. On 15.4.2005 rooms which were used by the appellant Dileshwar and deceased Anita were sealed vide Exs.P/7 and P/8. Spot map was prepared by investigating officer vide Ex.P/18. Spot map was also prepared by Patwari vide Ex.P/2. The accused were arrested vide Exs.P/19 and P/20. Seized articles were sent for chemical examination vide Ex.P/21.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short 'the Code') where mother of the deceased has stated that the deceased has given oral dying declaration and has told to her mother namely, Suman Bai that the appellant has caused burn injuries to the deceased. After completion of investigation, charge sheet was filed in the Court of the Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of the Sessions Judge, Durg from where Fifth Additional Sessions Judge, Durg received the same on transfer for trial.
5. In order to prove the guilt of the appellants, prosecution examined as many as 17 witnesses. Statements of the accused/appellants were also recorded under Section 313 of the Code where they denied the circumstances appearing against them and claimed innocence and false implication in the crime in question.
6. After affording an opportunity of hearing to the parties, Fifth Additional Sessions Judge has convicted and sentenced the appellants as aforementioned.



7. We have heard Mr.Arun Kochar, counsel for the appellants and Mr.Ashish Shukla, Government Advocate with Mr.Sandeep Yadav, Deputy Government Advocate for the State and perused the judgment impugned and record of the Court below.
8. Learned counsel for the appellants vehemently argued that though the deceased Anita, wife of appellant No.2 Dileshwar and daughter-in-law of appellant No.1 Jagat Ram Sahu, died within 7 years of her marriage as a result of burn injuries sustained by her in the house of the appellants in abnormal circumstances but the same is not sufficient for drawing inference that the appellants have caused dowry death of the deceased or have caused homicidal death of the deceased. The prosecution is required to prove its case beyond all shadow of doubt. Learned counsel further argued that the case of the prosecution rests on dying declaration of the deceased (Ex.P/11), but recording of dying declaration is suspicious. Prosecution has not proved genuineness and truthfulness of dying declaration. On the other hand, appellant No.2 Dileshwar @ Monu, husband of the deceased has also received burn injuries while he was saving the deceased. He was also admitted in the hospital and was also examined by Dr.S.R.Churendra (PW-11) vide Ex.P/15. Appellant No.2 has taken the deceased from house to hospital for her treatment shows that appellants have not caused any fatal injury to the deceased with intent to causing homicidal death of the deceased, therefore, conviction & sentences imposed upon the appellants under Section 302/34 of the Indian Penal Code are not sustainable under the law. Learned counsel also argued that only on the ground that the deceased Anita was married to appellant No.2 in the year 2003 and died on 16.4.2005 within 7 years of her marriage in abnormal circumstances as a result of burn injuries is not sufficient for drawing interference that appellant No.2, who is husband and appellant No.1 who is father-in-law of the of the deceased, have caused dowry death of the deceased. In absence of any evidence of cruelty or torture in connection with demand of dowry committed by the



appellants soon before her death. After death of the deceased, their maternal relatives with a view to implicate the appellants have deposed relating to demand of dowry against the appellants.

9. Learned counsel placed reliance in the matter of **Mohd. Iqbal alias Baratu v. State of Chhattisgarh**<sup>1</sup> in which this Court has held that the Court is required to satisfy that the deceased was in a fit state of mind to make statement and dying declaration was true, voluntary and not influenced by any extraneous consideration. Learned counsel further placed reliance in the matter of **Santosh v. State of Chhattisgarh**<sup>2</sup> in which this Court has also held that in the absence of any evidence of torture and cruelty in connection with demand of dowry soon before the death of the deceased, conviction under Section 304-B of the Indian Penal Code is not sustainable. Learned counsel also placed reliance in the matter of **State of M.P. v. Raghuvver Singh and others**<sup>3</sup> in which the High Court of Madhya Pradesh has held that if no certificate by doctor that person giving statement was fully fit to give statement, same cannot be considered as evidence for convicting accused. Learned counsel further placed reliance in the matter of **Laxmi Narayan Giri and others v. The State of Madhya Pradesh (now State of Chhattisgarh)** vide judgment dated 26.7.2006 passed in Criminal Appeal No.2441 of 2000 in which this Court has held that the prosecution is required to prove the fact that dying declaration was voluntarily and truth and was given in a fit state of mind.

10. On the other hand, learned State counsel supported the judgment impugned and argued that deceased died within 7 years of her marriage in the house of the appellants in abnormal condition as a result of burn injuries. The appellants were under obligation to explain as to how she died. The prosecution has adduced clear and cogent evidence to prove the

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<sup>1</sup>2008 (I) Cr.C.P.(C.G.) 118

<sup>2</sup>2008 (I) Cr.C.P.(C.G.) 131

<sup>3</sup>2008 (II) Cr.C.P.(M.P.) 155



fact that soon before her death she has been subjected to torture and cruelty in connection with demand of money. Learned counsel further argued that the Evidence of maternal relatives who are natural witnesses have proved the fact beyond all shadow of doubt.

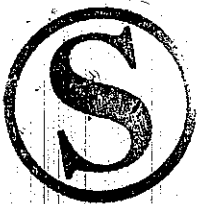
11. In order to appreciate the contentions of the parties, we have examined the evidence available on record. In order to attract the provisions of the offence of dowry death and murder of the deceased, prosecution is required to prove that the appellants have committed torture and cruelty soon before the death of the deceased in connection with demand of dowry and prosecution is also required to prove that the appellants have caused homicidal death of the deceased amounting to murder.

12. The case of the prosecution substantially rests on dying declaration (Ex.P/11) and oral dying declaration made by the deceased to her maternal relatives and the evidence of maternal relative of the deceased. In the present case, abnormal death of the deceased Anita as a result of burn injuries is not disputed by the appellants, otherwise also established by the evidence of Dr.A.K.Mishra (PW-12), Dr.Padmakar Mishra (PW-17), medical report (Ex.P/17) and autopsy report (Ex.P/29). Dr.A.K.Mishra (PW-12) has deposed in his evidence that on 15.4.2005 injured Anita was produced for medical examination. He was examined the body of Anita and found 98% deep burn injuries. Smell of kerosene was coming from the body of injured Anita. She was semi-conscious. He was admitted her in burn ward. Dr.Padmakar Mishra (PW-17) has deposed in his evidence that he has conducted autopsy of the body of Anita and found ante-mortem burn. Cause of death was neurogenic shock as a result of 100% injuries. These facts are sufficient to establish the fact that the deceased Anita died as a result of burn injuries.



13. In order to establish the complicity of the accused/appellants for causing dowry death and homicidal death amounting to murder of the deceased Anita, the prosecution has adduced oral dying declaration and dying declaration recorded and the evidence of demand of dowry soon before the death of the deceased. As regards dying declaration recorded by the Executive Magistrate Ashok Kumar Shrivastava (PW-9) vide Ex.P/11 is concerned, Assistant Sub Inspector Ramavtar Shukla (PW-15) has deposed in his evidence that he received telephonic information on 15.4.2005 that injured Anitabai has admitted in hospital in injured condition. He immediately reached to the hospital and tried for recording dying declaration, at that time, she was not in position to depose, then on 16.4.2005 again he inquired about the condition of the injured. On 16.4.2005, she was in position to state, then he sent requisition to the Executive Magistrate for recording dying declaration and also sent requisition to doctor for recording evidence of the injured vide Exs.P/25 and P/25, in which doctor has certified that injured was in a fit state of mind, then Ashok Kumar Shrivastava (PW-9) has recorded dying declaration of Anita. Ashok Kumar Shrivastava (PW-9) has deposed in his evidence that on 16.4.2005 he received requisition for recording dying declaration. Anita was admitted in the hospital. He went to burn ward of the hospital where injured Anita was taking her treatment. He asked from doctor and recorded her dying declaration vide Ex.P/11 in which she made statement that her husband Dileshwar and father-in-law Jagat Ram have set her ablaze. After recording dying declaration, he obtained thumb impression of Anita in Ex.P/11. Doctor was also present who told that injured is a fit state of mind. In his cross-examination, he has admitted that he is not mentioned the name of Anita below thumb impression. He has denied the suggestion that he has taken thumb impression of other person. He has also deposed that she was under treatment and one hand of injured Anita was clean and free, therefore, he has taken thumb impression of her hand which was free and clean. In para 4 of his cross-





examination, he has admitted that at the time of recording dying declaration, mother of the deceased, doctor and one nurse were also present. He has denied the suggestion that injured has not made any voluntarily statement and has recorded the statement at the instance of mother of the deceased.

14. Mohan (PW-1), father of the deceased Anita, has deposed in his evidence that youngest son of appellant No.2 informed him about burn injuries of the deceased Anita. He went to the hospital along with his wife. In-law's has taken Anita to the hospital. Mother of appellant No.2 and mother-in-law of the deceased Anita was present in the hospital. Injured was unconscious. Injured Anita has deposed to his wife that both the accused persons have poured kerosene and set her ablaze. In para 25 of his cross-examination he has repeated that the accused persons have set her ablaze. Suman Sahu (PW-2), mother of the deceased Anita, has deposed in her evidence that after receiving information of the incident she went to the house of the appellant, but Anita was not present and persons present there were told her that Anita is admitted in hospital, then she went to the hospital. Anita was talking. On being asked by her, Anita made statement that her husband has set her ablaze. In para 6, she has deposed that police has also asked Anita, whom she told that her husband and father-in-law have set her ablaze. She has deposed in para 12 of her cross-examination that Tahsildar has also recorded statement of injured Anita, at that time she was present, but police officers were not present, doctor was also present. In para 15, she has denied the suggestion that she has tutored her daughter Anita to tell the name her husband and father-in-law that they have set her ablaze. As a result of such tutor, Anita made statement that her husband and father-in-law have set her ablaze.

15. Constable Jagdish Tiwari (PW-16) has deposed in his evidence that he has taken injured and appellant No.2 Dileshwar to the hospital for their examination. Dr.A.K.Mishra (PW-12) has admitted in para 2 of his evidence



that appellant No.2 Dileshwar came with his wife on 15.4.2005 at about 7.20 pm. whom he admitted in burn ward. Burn injuries was also found over the body of appellant No.2. He has also admitted to Dileshwar on the same day at about 7.25 pm. Dileshwar was burn up to 30%. He was examined Dileshwar vide Ex.D/4 and he has intimated the police relating to burn case vide Ex.P/5.

16. On close scrutiny, it is clear from the evidence of Mohan (PW-1), father of the deceased Anita, that in-law's had admitted Anita in the hospital. Mother of appellant No.2 and mother-in-law of the deceased was present in the hospital. Appellant No.2 husband of the deceased took her in the hospital for treatment. He also received burn injuries at the time of incident up to 30%. He was examined by doctor vide Ex.D/6. He was admitted in hospital in burn ward for further treatment. Mohan (PW-1) father of the deceased has deposed that deceased was telling to her mother that appellant No.2 Dileshwar has poured kerosene over her and set her ablaze. Suman Sahu (PW-2) has also deposed in para 3 that she went to hospital and asked to Anita about the incident, then she told that her husband has set her ablaze, but subsequently she made statement to the police that her husband and father-in-law set her ablaze. Ashokkumar Shrivastava (PW-9), Executive Magistrate who has recorded dying declaration vide Ex.P/11 has deposed that in the presence of her mother, injured Anita has made dying declaration that her husband and father-in-law have set her ablaze. Mohan (PW-1) father of the deceased has specifically deposed that in-law's of Anita had taken her to hospital and mother-in-law of the deceased was present in the hospital. Dr.A.K.Mishra (PW-12) who has examined appellant No.2 Dileshwar and deceased Anita has specifically deposed that appellant No.2 Dileshwar came with injured Anita whom he has examined and has admitted both the persons in the hospital in burn ward. Burn injuries of appellant No.2 Dileshwar was up to 30%. Constable Jagdish Tiwari (PW-16) has also deposed that he has produced Anita and Dileshwar vide Exs.P/16 and P/28 for examination.

17. These facts clearly show that in-law's of Anita had taken her to hospital from their house. Appellant No.2 also received 30% burn injuries at the time of incident. He was admitted in hospital along with his wife Anita. Mother-in-law of the deceased was present in the hospital, but from perusal of oral dying declaration and dying declaration recorded by the Executive Magistrate it appears that Anita has made statement in first time that her husband has set her ablaze and second time her husband and father-in-law have set her ablaze. Oral dying declaration and dying declaration recorded by the Executive Magistrate are self-contradictory and considering the fact that Anita was admitted in hospital by her husband appellant No.2, oral and dying declaration recorded does not appear natural. If some person will cause injury to another person with intent to homicidal death, then at least he will not took care for her treatment or he will not take the injured to hospital to save her life. These evidence and circumstances are sufficient to discard oral dying declaration and dying declaration recorded by the Executive Magistrate that the appellants had set her ablaze or they have caused fatal injuries for causing her homicidal death.

18. According to the evidence of the prosecution, deceased Anita was married to appellant No.2 in the year 2003 and incident took place on 15.4.2005 within two years of her marriage. Crucial question for consideration for commission of dowry death in the present case is whether soon before the death of the deceased she was subjected to torture and cruelty by the appellants in connection with demand of dowry. Mohan (PW-1) father of the deceased Anita has deposed in para 3 that appellant No.2 is labour. He has visited the house of the appellants many times. He has deposed in paras 2 and 9 of his evidence that the appellants used to beat and torture the deceased and used to demand money. Suman Sahu (PW-2) mother of the deceased Anita has deposed in para 9 that on 14.4.2005 her daughter came with appellant No.2 and at the time of return she demanded Rs.1000/- from her, but at that time she was not having money, therefore,

she has not given the said amount. Manrakhan (PW-3) neighbour of father of the deceased Anita has deposed in his evidence that whenever deceased came to her parents house he asked about behavior of the appellants, then she used to tell him that her in-law's, especially husband used to torture in connection with demand of money. The evidence of Mohan (PW-1) reveals that thrice her daughter has demanded Rs.1000/-. The appellant No.2 used to demand money through his wife. In his detail cross-examination, he has deposed in para-15 that thrice her daughter came and demanded money, but he has not given the same to her. In para 25, he has deposed that he has given articles at the time of marriage and appellant No.2 used to commit torture upon the deceased in connection with demand of money. In para 26, he has denied the suggestion that list of articles (Ex.P/14A) is forged document. In para 29, he has deposed that even the deceased has told to her mother and neighbour that husband and father-in-law always to harass in connection with demand of money.

19. Defence has cross-examined Suman Sahu (PW-2) in detail. In her detail cross-examination, she has deposed in para-9 that her daughter demanded Rs.1000/- and she has stated this fact to the police, but this fact has not been mentioned in Ex.D/2, her police statement. Hostile witness Manrakhan (PW-3) neighbour of father of the deceased has also deposed in para 4 of his evidence relating to demand of money. He has also deposed in para 8 of his cross-examination that Anita told him relating to torture and demand after 8 to 9 months of her marriage. According to the evidence of Mohan (PW-1), appellant No.2 is labour, but in para 22 of his evidence he has admitted that appellant No.2 Dileshwar was working in B.R.P. and his salary was Rs.6000/- per month. He has also admitted in para 10 of his evidence that he is working in hotel. Suman Sahu (PW-2) mother of the deceased has admitted in para 8 of her evidence that he used to work for cleaning and washing of the house (झाड़ू-पोछा). It shows financial status of the parents of the deceased. It appears that financial status of

status of the parents of the deceased is low. Financial status of the appellants is also low.

20. In the present case, parents of the deceased have not deposed or blamed upon the appellants that they have demanded motorcycle, freeze, T.V, car etc. to mother and father of the deceased, but mother and father of the deceased have deposed that appellant No.2 husband of the deceased used to demand money through his wife and his wife used to demand Rs.1000/-. Financial status of the parties finds support from list of articles and money given at the time of marriage by different persons. Mohan (PW-1), Suman Sahu (PW-2) and Manrakhan (PW-3) have not stated anything to show that the appellants used to demand dowry, but it shows that appellant No.2 Dileshwar used to demand money through his wife deceased Anita amounting to Rs.1000/- and the same was difficult for them to provide to their daughter.
21. In absence of any ingredient of demand of dowry in specific term, it is difficult to hold that the appellants have demanded dowry. There is some improvement in the evidence of Mohan (PW-1) and Suman Sahu (PW-2) relating to demand, but there are consistency in their evidence, even corroborated by evidence of hostile witness Manrakhan (PW-3). Mohan (PW-1) and Suman Sahu (PW-2) are father and mother of the deceased
22. In case of dowry death or offence punishable under Section 306 of the Indian Penal Code, normally evidence from matrimonial house is not available and same can be inferred and proved by the evidence of parents and relatives of the deceased and their evidence cannot be discarded only on the ground that they are father, mother and close relatives or interested in the conviction after abnormal death of their daughter.
23. Demonstrably, part of evidence of Mohan (PW-1) and Suman Sahu (PW-2) relating to pouring of kerosene and setting ablaze to their daughter is false, but only on the ground that part of the evidence of these witnesses are false and exaggerated, their entire evidence cannot be discarded. It is

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duty of the Court to separate truth of grain from the chaff of falsehood if possible.

24. While dealing with the question of reliability of the evidence of the person who has exaggerated and patiently given false statement up to some extent, the Apex Court in the matter of **Laxman and others v. State of Maharashtra** <sup>4</sup> has held that witnesses cannot be branded as liars in toto and their testimony rejected outright even if parts of their statements are demonstrable incorrect or doubtful. Relevant portion reads as under:

*"Before we discuss the evidence further, we may observe that Professor Munsterberg in a book called "On the Witness Stand" (p.51), "Law and the Modern Mind" (see: 1949 ed. P.106) gives instances of experiments conducted by enacting sudden unexpected preplanned episodes before persons who were then asked to write down, soon afterwards, what they had seen and heard. The astounding result was:*

*"Words were put into the mouths of men who had been silent spectators during the whole short episode; actions were attributed to the chief participants of which not the slightest trace existed; and essential parts of the tragic-comedy were completely eliminated from the memory of a number of witnesses".*

*Hence, the Professor concluded: "We never know, or imagine". Witnesses can not, therefore, be branded as liars in toto and their testimony rejected outright even if parts of their statements are demonstrably incorrect or doubtful. The astute judge can separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted or acted upon. It is sound commonsense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim: "falsus in uno falsus in omnibus"*

25. Statements of Mohan (PW-1) and Suman Sahu (PW-2) satisfy the aforesaid test and their part of the statements can be safely relied upon,

<sup>4</sup> AIR 1974 SC 308



especially relating to regular demand of money of Rs.1000/- shows that they have not exaggerated while making their statements and even this meager amount for general people was not possible to provide for them. Statements of Mohan (PW-1) and Suman Sahu (PW-2) corroborated by Manrakhan (PW-3) inspire confidence and trustworthy and can be safely relied upon after separating the part relating to pouring of kerosene and setting ablaze.

26. In the present case, evidence of Mohan (PW-1) and Suman Sahu (PW-2) reveal that appellant No.2 Dileshwar and the deceased visited to their house. She used to tell demand of money. Deceased burnt on 15.4.2005 and even according to the statement of Suman Sahu (PW-2) on 14.4.2005, just two days before the incident, appellant No.2 and the deceased visited her house and at that time the deceased demanded Rs.1000/-, but the same was not available to her, therefore, she has not given the same and on 15.4.2005 she committed suicide.

27. These evidence are sufficient for drawing inference that on the ground of demand of money regularly, the deceased compelled to end her life and ultimately she ended her life.

28. In case of domestic violence or harassment, normally the effected persons i.e. daughter-in-law does not report or inform anyone about the harassment or tortuous attitude of her husband or in-law's to other persons but as and when she gets the opportunity, she informs about it to her parents. The parents of the bride normally do not react immediately but wait for an opportune time, in the hope of amicable settlement between the parties and to avoid future complications which may arise in future. But when the matter becomes intolerable then the daughter-in-law or the effected lady discloses the tortuous attitude of her husband and in-law's, to the police, neighbour and other persons related to her to get the dispute resolved with their intervention.



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29. The evidence of Mohan (PW-1) and Suman Sahu (PW-2) substantially reveal that appellant No.2 Dileshwar husband of the deceased used to commit torture upon the deceased and demanded money through his wife the deceased from the parents but the evidence relating to appellant No.1 father-in-law of the deceased is not sufficient for drawing inference that appellant No.1 also used to demand money through the deceased and committed cruelty upon her. The evidence of Mohan (PW-1), Suman Sahu (PW-2) and Manrakhan (PW-3) are sufficient for drawing inference that even just one day before the incident on 14.4.2005, appellant No.2 husband of the deceased went to his in-law's house along with the deceased where deceased asked for Rs.1000/- and it was not possible for the mother of the deceased to give. They came back to their house and second day the deceased received burn injury up to 100% and died as a result of 100% burn injuries shows instant cause for ending her life and regular harassment upon her. The entire evidence of the prosecution is sufficient for drawing inference that the deceased has committed suicide and present appellant No.2 Dileshwar is the person who has committed torture in connection with regularly demand of money but not sufficient for proving such cruelty against appellant No.1 Jagat Ram.

30. In the present case, the appellants have been convicted under Section 304-B of the Indian Penal Code, but the evidence adduced on behalf of the prosecution reveals that the act of appellant No.2 Dileshwar squarely falls under the category of abetment & instigation for commission of suicide punishable under Section 306 of the Indian Penal Code although no specific charge under Section 306 of the Indian Penal Code has been made against appellant No.2 Dileshwar. But in this case, sufficient opportunity has been given to the appellants to meet the charge of harassment & torture and the appellants had cross-examined the witnesses at length to discredit their evidence relating to harassment & cruelty. Offence under Section 306 of the Indian Penal Code is a minor offence included in the case of dowry death punishable under Section 304-B of the Indian Penal



Code and if sufficient opportunity has been given to the appellant/accused, in suitable cases even in the absence of specific charge, accused may be held guilty for commission of offence under Section 306 of the I.P.C. In the case of *Hira Lal and others v. State (Govt. of NCT), Delhi*<sup>5</sup> the Apex Court has held that even in case of charge under Section 304-B of the I.P.C., the accused may be held guilty for commission of offence under Section 306 of the I.P.C., even in absence of specific charge. Paras 15 & 16 of the judgment in the matter of *Hira Lal (supra)* read thus:

"15. It may be noted that though no charge was framed under Section 306 IPC, that is inconsequential in view of what has been stated by a three-Judge Bench of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao*<sup>6</sup>.

16. On the facts of the case even though it is difficult to sustain the conviction under Section 304-B IPC, there are sufficient materials to convict the accused-appellants in terms of Section 306 IPC along with Section 498-A IPC."

31. After appreciating the evidence available on record, learned Fifth Additional Sessions Judge has convicted and sentenced the appellants as aforementioned, but has not considered contradictory statements relating to dying declaration, attempt for saving the deceased by the appellants by taking her for immediate treatment to the hospital and absence of ingredient of demand of dowry by the appellants and thereby committed illegality. The evidence adduced on behalf of the prosecution clearly shows that the appellants have not committed homicidal death amounting to murder of deceased Anita and complicity of appellant No.1 Jagat Ram relating to commission of dowry death or commission of cruelty upon the deceased, but the evidence adduced on behalf of the prosecution is sufficient for drawing inference that appellant No.2 Dileshwar husband of the deceased Anita is the person who has aided or instigated/abated the suicide of deceased Anita and as a result of such aid or instigation/abatement, Anita compelled to suicide and ended her life.

<sup>5</sup> (2003) 8 SCC 80

<sup>6</sup> (2003) 1 SCC 217 : 2003 SCC (Cri) 271



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32. For the foregoing reasons, conviction & sentences imposed upon appellants under Section 302/34 of the Indian Penal Code are not sustainable. The evidence adduced on behalf of the prosecution against appellant No.1 Jagat Ram relating to commission of dowry death is also not sustainable, but the evidence adduced on behalf of the prosecution against appellant No.2 Dileshwar is sufficient for proving the offence punishable under Section 304-B of the Indian Penal Code.

33. Consequently, the appeal is partly allowed. Conviction & sentence imposed upon appellant No.1 Jagat Ram under Sections 302/34 and 304-B of the Indian Penal Code are hereby set aside. He be set at liberty at once and be released if not required in any other case. Conviction & sentence imposed upon appellant No.2 Dileshwar under Section 302/34 of the Indian Penal Code is also set aside. However, conviction of appellant No.2 Dileshwar under Section 304-B of the Indian Penal Code is modified and instead thereof, he is convicted under Section 306 of the Indian Penal Code.

34. As regards the question of sentence is concerned, taking into consideration the death of young woman in early part of life as a result of torture committed by appellant No.2 Dileshwar, he is sentenced to undergo rigorous imprisonment for 7 years. He is in custody since 18.5.2005, he is entitled for set off as per law.

Sd/-  
T.P. SHARMA  
Judge

30-11-2009

Sd/-  
R.L. Jhanwar  
Judge

30-11-2009