

SANJAY KUMAR JAIN

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v.

STATE OF DELHI

(Criminal Appeal No. 2400 of 2010)

DECEMBER 16, 2010

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**[DALVEER BHANDARI AND H.L. GOKHALE, JJ.]**

*Penal Code, 1860 – ss. 304B and 302 – Murder and dowry death – Death of married woman within fourteen months of marriage – Ante mortem bodily injuries on her body – Husband charged u/ss. 302 and 304B – Held: There was no consistency in the prosecution version with regard offence u/ s. 302 thus, accused cannot be convicted u/s. 302 – The parents of the deceased however testified that deceased was subjected to consistent cruelty and harassment by her husband in connection with demand for dowry soon before her death – Ingredients of s. 304B having been satisfied, husband convicted u/s. 304B and sentenced to 9 years rigorous imprisonment with fine – Dowry death – Evidence Act, 1872 – s. 113B – Crime against women.*

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**The appellant's wife died within the fourteen months of marriage. The prosecution alleged that the deceased was being subjected to consistent cruelty and harassment by the appellant for not bringing sufficient dowry which continued till her death. The post-mortem report revealed that the deceased bore ten ante-mortem injuries on her body. PW20, who conducted the post-mortem, opined that the death was caused due to asphyxia following strangulation by rope like material and the injuries were sufficient to cause death in the ordinary course of nature. The appellant was charged u/ss. 302 and 304B IPC. On basis of the post mortem report and the evidence of the parents of the deceased, the trial court convicted the appellant u/s. 302 IPC and sentenced**

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A him to life imprisonment. While convicting the appellant,  
the trial court did not discuss the alternative charge under  
section 304 IPC. The conviction u/s. 302 IPC was upheld  
by the High Court. The High Court also did not deal with  
the charge under section 304B IPC. Therefore, the  
B appellant filed the instant appeal.

Partly allowing the appeal, the Court

HELD: 1.1 In a case of circumstantial evidence, all  
circumstances must lead to the conclusion that the  
C appellant-accused was the only one who had committed  
the crime and none else. [Para 38] [1154-F-G]

1.2 There is no consistency in the prosecution  
version on the aspect that the door leading to the house  
D of the deceased had free access and possibility of any  
other person entering the house of the deceased cannot  
be ruled out; that the landlord had clear access to the  
house of the deceased and non-examination of the  
landlord created serious doubt in the prosecution  
version; that the injuries found on the body of the  
E appellant-accused remained unexplained and no  
question was put to the accused to explain the alleged  
injuries on the person; that there was a material  
contradiction as to the ornaments which the deceased  
was wearing and were missing from her body; that the  
F string and wicket (stump) were not seized by the  
Investigating Officer on the same day as they were lying  
near the dead body; that the string and the wicket (stump)  
were not sent to Central Forensic Science Laboratory  
(CFSL) despite the opinion of the doctor telling the  
G circumstances in favour of the accused for being used  
in the alleged crime; and that the string allegedly used  
for strangulating the deceased was 8 ½ inches in length  
and making it impossible to commit the offence in the  
manner alleged by the prosecution. [Para 39] [1154-G-H;  
H 1155-A-F]

1.3 In view of the infirmities in the prosecution's version, the conviction under Section 302 IPC cannot be sustained. The impugned judgment of the High Court and the judgment of the Additional Sessions Judge are set aside and the appellant is acquitted as far as his conviction under Section 302 IPC is concerned. [Para 40] [1155-G-H]

*C. Chenga Reddy and Ors. v. State of Andhra Pradesh* (1996) 10 SCC 193; *G. Parshwanath v. State of Karnataka* (2010) 8 SCC 593; *Varun Choudhary v. State of Rajasthan* JT 2010 (11) SC 419; *Ajay Singh v. State of Maharashtra* 2007 (12) SCC 341 – referred to.

2.1 In the instant case, though the appellant was also charged under Section 304B, but in view of his conviction under Section 302 IPC, the trial court did not proceed with the charge under Section 304B IPC. [Para 41] [1156-A-B]

2.2 The marriage took place on 20.02.1990 and the appellant's wife died on 10.4.1991 because of ten *ante mortem* bodily injuries which were found on her body at the time of her death. PW 2-father of the deceased and PW 3-mother of the deceased were examined. They categorically stated that the deceased was subjected to consistent cruelty and harassment by her husband in connection with demand for dowry. PW2 deposed that on demand from the appellant, he was given Rs.15,000/- on one occasion and later gave Rs.10,000/-. According to him, there was consistent harassment on account of demand for dowry all through. P.W.3 stated that the appellant used to harass and beat her daughter in connection with the demand of dowry. Thus, the appellant's continuously harassing and beating the deceased in connection with demand of dowry clearly falls within the four corners of the Section 304B IPC. [Para 42] [1156-G-H; 1157-A-B]

A *Ashok Kumar v. State of Rajasthan* (1991) 1 SCC 166 – referred to.

B 2.3 A proper analysis of Section 304B IPC and Section 113B of the Evidence Act, would show that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution is under an obligation to rule out any possibility of natural or accidental death. Where the ingredients of Section 304B IPC are satisfied, the Section would apply. If death is unnatural, either homicidal or suicidal, it would be death which can be said to have taken place in unnatural circumstances and the provisions of Section 304B would be applicable. The death, otherwise than under normal circumstances, under Section 304B IPC would mean the death not in usual course, either natural or accidental death. [Paras 48 and 49] [1159-C-E]

*The State of Punjab v. Iqbal Singh and Ors.* (1991) 3 SCC 1 – referred to.

E 2.4 The evidence on record of the case clearly lead to the conclusion that all the three ingredients necessary in order to bring home the guilty under Section 304B IPC are available in full measure in the instant case. The deceased was subjected to cruelty and harassment by the appellant-husband and the harassment was in connection with the demand of dowry. The victim (deceased) died within one year and two months of the marriage. On proper analysis of the entire evidence on record, it is abundantly proved that the appellant was clearly guilty of committing an offence under Section 304B IPC. [Paras 51 and 52] [1160-B-C]

H 3. The conviction of the appellant under Section 302 IPC is set aside, but, in the facts and circumstances of the instant case, the appellant is convicted under Section

304B IPC and sentenced to 9 years rigorous imprisonment with fine of Rs.10,000/-. [Para 53] [1160-D-E] A

**Case Law Reference:**

(1996) 10 SCC 193	Referred to	Para 15	B
(2010) 8 SCC 593	Referred to	Para 16	
JT 2010 (11) SC 419	Referred to	Para 17	
2007 (12) SCC 341	Referred to	Para 25	C
(1991) 1 SCC 166	Referred to	Para 45	
(1991) 3 SCC 1	Referred to	Para 47	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2400 of 2010. D

From the Judgment & Order dated 12.11.2009 of the High Court of Delhi at New Delhi in Criminal Appeal No. 63 of 1997.

U.N. Bachawat, Alok Bachawat, Hara Prasad Sahu, Sankalp Kashyap, K.V. Bharathi Upadhyaya for the Appellant. E

P.P. Malhotra, ASG J.S. Attri, Anjani Aiyagari, Chetan Chawla, Gaurav Sharma, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by F

**DALVEER BHANDARI, J.** 1. Leave granted.

2. This appeal arises out of the judgment and order of the High Court of Delhi passed in Criminal Appeal No.63 of 1997 dated 12.11.2009. G

3. The brief facts giving rise to this appeal are as under:

The appellant Sanjay Kumar Jain was married to Smt. Anju Jain (since deceased) on 20th February, 1990. After marriage, H

A only both of them started residing at house No.2803, Gali No.6,  
Chander Puri, Kailash Nagar, Delhi. It is the case of the  
prosecution that the deceased was harassed for insufficient  
dowry and the harassment continued till her death. Admittedly,  
Smt. Anju Jain died within one year and two months of marriage  
B on 10.4.1991.

4. A call was received from one Nanak Chand, P.W.1 on  
10.4.1991 at 8.50 p.m. at the police control room about the  
murder of the deceased and accordingly DD Entry No.11A was  
recorded. On reaching the spot, the police found Sub-Inspector  
C Budh Sain along with police staff was already present there. A  
bunch of keys was provided by neighbour Sadhna PW8 and  
one of the keys fitted the lock and after opening the door, they  
climbed to the first floor where the appellant and the deceased  
D resided. The dead body of the deceased was found lying on  
the floor. At the scene of the crime, broken bangles were found  
lying on the floor and a hair strand was also found on the chest  
of the deceased. Rukka was sent by making endorsement on  
the DD to the police station and on this basis FIR No.83 of 1991  
E was registered. The inquest proceedings were conducted  
through the area Sub-Divisional Magistrate and the spot was  
photographed whereafter the body of the deceased was sent  
for post-mortem.

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5. Dr. L.K. Barua, P.W. 20 who conducted the post-mortem  
F found ten ante-mortem injuries on the body of the deceased and  
the cause of the death was opined as asphyxia following  
strangulation by rope like material and the injuries were  
sufficient to cause death in the ordinary course of nature.

6. The parents of the deceased Mohan Lal, P.W. 2 (father)  
G and Raj Bala, P.W. 3 (mother) were examined and in their  
statements it was clearly stated that the deceased was  
continuously being harassed on account of insufficient dowry.

7. Mohan Lal, P.W.2 in his statement clearly stated that:  
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"On the demand of accused, I paid a sum of Rs.15,000/- at one time and Rs.10,000/- another time after about 6/7 months of marriage of my daughter with the accused. The accused demanded the said amount as he started tent business." A

He further stated that: B

"The accused again started harassing my daughter and used to compel her to bring money from her parents. My daughter had told the said facts to me." C

In the cross-examination, Mohan Lal, P.W.2 also stated that:

"I had given the amount of Rs.10,000/- and Rs.15,000/- to the accused out of my saving which was lying in my house and also by taking some amount from my friends." D

In the cross-examination, he further stated that:

"My daughter had met me in my house about 1 or 1½ months prior to her death. Even at that time she told me that the accused used to harass her and she was perturbed and she told me that she was hard of money and the accused had again demanded money from her. She did not tell the particular amount which the accused had demanded." E

8. Similarly, Raj Bala, P.W.3, the mother of the deceased also clearly stated in the statement that: F

"Deceased Anju was my daughter and she was married with the accused on 20.2.90. My daughter used to tell us that accused Sanjay used to harass her because of insufficient dowry. She also used to tell us that accused used to give her a beating and that the accused used to demand money. The accused demanded a sum of Rs.50,000/- but my husband had paid Rs.25,000/- to the H

A accused once after 14 months of marriage of my  
daughter.”

B 9. It is abundantly clear from the statements of P.W.2 and  
P.W.3 that the deceased was harassed on account of dowry  
right from the point of marriage till her death.

C 10. The appellant was charged under sections 302 and  
304B of the Indian Penal Code. The trial court held that the  
charge under section 302 IPC was established against the  
accused, therefore, there was no necessity to discuss the next  
D alternative charge under section 304B IPC. In the impugned  
judgment, the High Court also did not deal with the charge under  
section 304B IPC. The trial court on the basis of evidence and  
other material on record found the appellant guilty under  
Section 302 IPC. He was convicted and was awarded life  
imprisonment. The conviction was upheld by the High Court.  
The appellant aggrieved by the impugned judgment of the High  
Court has preferred this appeal

E 11. We have heard the learned counsel for the parties at  
length.

F 12. Mr. U.N. Bachawat, learned senior counsel, who  
appeared on behalf of the accused/appellant submitted that in  
this case the prosecution has failed to establish the motive for  
committing the crime.

G 13. He submitted that it is well settled law that in a case  
of circumstantial evidence, the circumstances from which the  
conclusion of guilt is to be drawn should in the first instance be  
fully established and all the facts so established should be  
consistent only with the hypothesis of the guilt of the accused.  
Again the circumstances should be of a conclusive nature and  
they should be such as to exclude every hypothesis but the one  
proposed to be proved. In other words there should be a  
complete chain of evidence so far complete as not to leave any  
H reasonable ground for a conclusion consistent with the



innocence of the accused and it must be such as to show that within human probability the act must have been done by the accused. Mr. Bachawat submitted that motive to commit crime acquires greater significance in a case based entirely on circumstantial evidence. The prosecution in this case has failed to establish the motive, therefore, the courts have to be extremely careful in convicting an accused in a case of circumstantial evidence without any motive.

14. Mr. Bachawat also submitted that apart from the fact that there is no eye witness in this case, there is also no scientific evidence to connect the accused with the crime. The prosecution failed to establish the motive behind the commission of the offence of murder of the deceased.

15. This court in the case of *C. Chenga Reddy and Others v. State of Andhra Pradesh* (1996) 10 SCC 193 held as under:

“In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. ....”

16. In the case of *G. Parshwanath v. State of Karnataka* (2010) 8 SCC 593 this court has observed as under:

“In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one

A or more of these facts by itself or themselves is/are not  
decisive. The facts established should be consistent only  
with the hypothesis of the guilt of the accused and should  
exclude every hypothesis except the one sought to be  
proved. ... .. There must be a chain of evidence so  
B complete as not to leave any reasonable ground for the  
conclusion consistent with the innocence of the accused  
and must show that in all human probability the act must  
have been done by the accused, where various links in  
chain are in themselves complete, then the false plea or  
C false defence may be called into aid only to lend  
assurance to the court."

17. Both the above cases were followed in the latest case  
in *Varun Choudhary v. State of Rajasthan* JT 2010 (11) SC  
D 419 para 23.

18. Mr. Bachawat further submitted that the prosecution  
examined a neighbour Sadhna, P.W.8 who stated that the  
accused and the deceased lived happily. The relevant part of  
the statement reads as under:

E "I know the accused for the last about 12/13 years. Anju  
used to come to my house sometimes. I have never seen  
any quarrel between the accused and the deceased. I have  
always seen them living merrily."

F 19. Mr. Bachawat also contended that according to the  
testimony of Mohan Lal, P.W. 2, it is abundantly clear that the  
said demand cannot be termed as dowry demand as the said  
amount was paid for the business purpose.

G 20. Learned senior counsel for the appellant submitted that  
the accused appellant along with his wife was living on the first  
floor of the house No.2803, Kailash Nagar, Delhi as a tenant.  
The house had three doors on the ground floor, out of which  
one door which leads to staircase was in possession of the  
H appellant. The other two doors were meant for the landlord

which were under the lock and key of the landlord. From one door out of these two doors, which were under the occupation of the landlord, any one could have an access to the first floor i.e. the tenanted premises whereas the case of the prosecution was that the door was locked and had to be opened by the police after getting report from Nanak Chand, P.W.1.

21. Mr. Bachawat referred to the statement of Sadhna, P.W. 8 in which she stated that there was no lock on the door of the staircase. However, two locks were found affixed on the two doors of the ground floor of the house. The door of the staircase which was in possession of the accused appellant was found bolted from inside. Sadhna P.W.8, stated as under:

“I had given bunch of keys to brother of Sanjay and one key out of the said bunch was operative on the lock fixed on the ground floor door. Due to which ground floor door was opened. Other way also leading to the first floor of the house. In fact, the door of the staircase meant for the accused was in the street, which was locked and the other way to the said staircase was in the room at ground floor which was in possession of the landlord. So we went upstairs after opening the lock of ground floor as stated by me earlier through the way. There we found Anju lying dead. Several persons had collected there. The key which was in my bunch and with which the said lock was opened was not of the said lock. It was operative by chance. I had taken back my said key thereafter from Baldev.”

22. According to Mr. Bachawat there is major contradiction as regard to two doors which were under occupation and use of the landlord. As per the site plan, one door, i.e., the door from the gallery was bolted from inside whereas, according to Sadhna, P.W. 8, both the doors which were in the occupation and use of the landlord had locks on them. Mr. Bachawat referred to the following observation of the High Court:

“If the scene of the crime is carefully analysed, it is obvious

A that there was no get-away passage for a third person to  
have committed the crime and disappear from the scene.  
The main access was found locked for which the key was  
provided by the appellant. The other access through the  
B staircase was found bolted from inside. Thus the appellant  
alone had an access to the place of occurrence, which  
factor itself is sufficient to prove his guilt.”

23. According to the learned counsel for the appellant, the  
above observations of the High Court are contrary to the  
evidence on record for the following reasons:-

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A. The prosecution has miserably failed to prove as  
to which of the three doors was allegedly opened  
by the key provided by the accused:-

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i. it is clear from the statement of PW8 that the  
door i.e. the main access meant for the  
accused was bolted from inside and was not  
locked from outside therefore this door  
cannot be the door which was opened with  
the key provided by the accused as held by  
E the High Court.

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ii. It is further clear from the statement of  
Sadhna PW8, that on 10.4.91 she had given  
a bunch of keys to Baldev, PW12 i.e. the  
brother of accused and one key out of said  
bunch was operative on the lock fixed on the  
ground floor door due to which ground floor  
door was opened and they went on the first  
floor. Probably this door was the one which  
lead to the gallery and then to the first floor.  
Thereafter this witness had taken back the  
said bunch from Baldev, PW12. Therefore,  
when this door was already opened on  
10.4.91 and there is no evidence that on the  
same lock was put back, either the door

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- would have been left unlocked or would have been locked by the police by putting some other lock, giving no occasion for the accused to apply the alleged key on the lock on 13th. Thereafter, this door also cannot be the one which was opened with the key provided by the accused. A B
- iii. That the third door was the door of the room under the lock and key of the landlord and from there was no access to the first floor, therefore, this door also could not be the door which was opened with the key provided by the accused. C
- B. That from the statement of Sadhna PW8 it is abundantly clear that Sadhna PW8 also had an access to the house in as much as the lock was opened by a key provided by Sadhna, which worked by chance. This fact goes to show that the lock was such that it could be opened by any key and therefore anybody could have a free access to the house after opening the lock with the same key. D E
- C. That from the statement of Sadhna PW8 it is also evident that the landlord also had the access to the other two rooms, which were locked from outside. Rather the lock on the two doors were that of the landlord and he was in possession. In view of the above stated facts the landlord was a very material witness and his non-examination creates a serious dent in the prosecution case. There is no explanation or attempt on behalf of prosecution to show as to why the landlord was not produced and examined. F G
- D. As per site plan Ex. PW22/B the room on the first floor, where the deceased was found dead, had two H

A windows one bolted from inside and the other window i.e. W2 was open and it opened on Chajja, therefore giving an easy access to a stranger. The important aspect has not been noted and considered by the Id. trial court and the High Court.

B E. It is alleged that on 13th the appellant opened the lock after taking out the key from his pocket. If the accused had the key with him it would have been found in his personal search which must have been taken at the time of his arrest in view of the provision contained in section 51 Cr.P.C. which preceded the journey to his house for recovery of wicket and string, a fact evident from the statement of Ravi Dutt PW 22 quoted hereinbelow:

D "After recording disclosure statement of accused, I arrested him in his case. It is correct that after arresting accused I took him to the house of accused for search."

E 24. Mr. Bachawat submitted that the injuries found on the body of the appellant as per the MLC (Ex.P.W. 14/A) have not been explained.

F 25. He further stated that no question was put to the accused to explain the alleged injuries on his person as to how and when and the manner in which the allege injuries were caused. As per the settled law of this court the question for statement under section 313 Cr.P.C. must be framed in such a way so as to enable the accused to know what he is to explain. He referred to the judgment of this court in *Ajay Singh*

G *v. State of Maharashtra* 2007 (12) SCC 341 wherein the Court has held as under:

H "The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an

explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the question must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

.....He must be question separately about each material substance which is intended to be used against him. The questioning must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstances should be put simultaneously and separately in a way that even an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand."

26. Mr. Bachawat submitted that the only questions put to the accused under section 313 Cr.P.C. are as under:

Q.8 It is further in evidence against you that your two hairs of head Ex.P8 were also seized and taken into possession vide memo Ex.PW 4/E and you were also sent for medical examinations vide ML CEX PW 14/A, what you have to say?

Ans.8 It is correct that two hair from my head were plucked by police. Rest 'I' do not know.

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A Note: It is of significant relevant to note that Q.8 was put to the accused under section 313 Cr.P.C. to connect the accused with the alleged crime. DNA report as regards the hair found from the Chest of the deceased and hair taken from the scalp of the accused was called for.

B 27. Mr. Bachawat contended that The High Court in its impugned judgment as regards this DNA report has observed as under:

C “The DNA report had not been filed in this behalf. In our considered view this fact itself cannot belie the story of the prosecution though the availability of the DNA report would have strengthened the prosecution story.”

D 28. Thereafter, Mr. Bachawat further contended that the High Court in the above situation ought to have necessarily inferred and presumed that the seized hair from the chest of the deceased was not of the accused as such the accused is not the author of the crime.

E 29. Mr. Bachawat referred to the following question put to the accused under the statement recorded under section 313 Cr.P.C.:

F Q.23 It is further in evidence against you that on 13.4.1991 you were medically examined by the doctor at SDN Hospital, Shahdara, vide MLC No.1276 Ex. PW14/A, what you have to say.

Ans.23 I was medically examined.

G 30. Mr. Bachawat also submitted that the as per MLC following injuries were found on the appellant:

1. Scratch mark over Rt. Knee and Lt. knee joint (Brown coloured).
  2. One small bruise (blackish red) over exterior aspect
- H



of Lt. Wrist Joint.

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3. One scratch mark (pin point) reddish over radial margin of Rt. Thumb.

4. Linear 2-3 pinkish 5-6 cms below Rt. interscapular region.

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5. Small irregular 1-2 pinkish bruise over Lt. Scapula region.

31. The learned senior counsel for the appellants referred to the statement of Dr. L.K. Barua, P.W.20 who conducted post-mortem examination on the body of the deceased and found the following injuries:

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1. Multiple prominent abrasions were present on front and sides of the neck, extending from sub-mental area to the supra-external notch. The abrasions were also present on both mandibular areas. The abrasions in front and on the right side showed four prominent ligature marks almost parallel to each other and were placed horizontally. The margins of these abrasions were seen fusing at their outer ends on the right side of the neck. The linear abrasions were also seen on the left side of the neck but were comparatively faint in comparison to right side. The width of ligature abrasions varied from .06 c.m. to 1.2 c.m. The areas in between the individual marks also showed multiple small abrasions and bruising with evidence of grazing. On the back side of the neck a narrow interrupted abrasion mark could be seen running horizontally.

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2. One small bruising was seen on left side front of upper part of chest just below the middle part of collar bones of size 3 c.m. x 2.5 c.m.

3. One abrasion on right side front of the chest just

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- A below the medial third of right collar bone of size 3 c.m. x 1.8 c.m.
4. One abrasion of size 1 c.m. x 0.5 c.m. were seen on the right shoulder stop.
- B 5. Small abrasion size 0.5 c.m. x 0.2 c.m. were seen on the left shoulder top.
6. Small abrasion size 2 c.m. x 1 c.m. on the medial aspect of right arm.
- C 7. Abrasion size 2 c.m. x 1.5 c.m. on the medial aspect of right elbow.
8. Small linear abrasion were seen o the left forearm on its dorsal aspect of size 0.5 c.m. x 0.2 c.m. It was crecenenestic in side and are possibly nail marks.
- D 9. Abrasion size 3.2 c.m. x 3 c.m. were seen in front and side of the nose.
- E 10. Abrasion size 3 c.m. x 2 c.m. were seen on the left cheek prominent.

32. Mr. Bachawat further submitted that the recovery of the ornaments is to be discarded as a matter of law. The recovery of ornaments is not admissible in evidence as the same is not effected under section 27 of the Evidence Act inasmuch as the disclosure statement was recorded before the arrest was made, a fact evident from the following extract of the testimony of Ravi Dutt PW22:

G "After recording disclosure statement of accused, I arrested him in this case. It is correct that after arresting accused I took him to the house of accused for search."

H 33. Learned senior counsel for the appellatant contended that the High Court erred in not noticing these facts. He also submitted that there are material contradictions as to the

ornaments which the deceased used to wear and which were missing from her body. According to Mohan Lal, P.W. 2, the deceased used to wear golden ear-rings, golden ring, silver pajeb and silver mangalsutra. When he saw the deadbody of the deceased, he saw that mangalsutra, ring and ear-rings were missing from her body. Similarly, Raj Bala P.W.3 submitted that her daughter used to wear ear-rings of gold, ring of gold, nose pin of gold and silver necklace and the same were missing from her body.

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34. According to Constable Anil Kumar, P.W.9, one ring of rolled gold, one pair of pajeb and four toe-rings (bichhuas) which the deceased was wearing was removed from her body. He produced the above stated articles before Ravi Dutt Inspector, who had converted the broken bangles and ring, pajeb and toe-rings into two separate pulandas and sealed with the seal of GSS and took the possession of the said articles vide memo Ex.P.W.9/A.

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35. Ramesh Kumar, P.W. 25 stated that sixth pulanda was containing one gold ring, one pair of pajeb but Jagdish Chand PW4 and Jukmal Chand Jain, PW5 deposed that the said gold ring was recovered from a pit near the railway track at the instance of appellat.

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36. According to Mr. Bachawat the string and cricket wicket (stump) are planted. Had these articles been there the investigating officer who had reached the spot on the 10th itself would have definitely seized the same. The place was accessible inasmuch as they had not locked and sealed the premises so that nobody could have an access to the said office. There is no explanation on behalf of the prosecution for this illegality.

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37. Mr. Bachawat submitted that had these articles such as cricket wicket (stump) and string (narrah) been used in the alleged crime there ought to have been the finger prints of the assailant and they must have been blood stained in view of the

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A injuries suffered by the deceased. In this regard, the opinion of the doctor is worth noting.

Dr. L.K. Barua, P.W. 20 deposed as under:

B "I did not find any mark of blood or parts of skin in the string. I did suggest the police that the nurrah Ex.16 be also sent to CFSL for opinion.

C I am not competent to give an opinion which my CFSL render in this particular situation. I did not indicate in my opinion whether there was skin or blood mark on this nurrah. I did not put any mark of identification on this stump Ex.p.7. On naked eye, I did not find mark of blood or skin and only CFSL could say about this. I do not want to give opinion as to what could be the role of stamp in the present situation.

D Not sending these articles to CFSL despite the opinion of the doctor is telling circumstance in favour of the accused and these articles cannot be attributed to the accused for being used in the alleged crime.

E That the string (narah) alleged used for strangulating the deceased was eight and a half inches in length (as per Ex.PW4/C) making it impossible to commit the offence in the manner alleged by the prosecution."

F 38. We find some merits in the statements of the learned senior counsel for the appellant that in a case of circumstantial evidence all circumstances must lead to the conclusion that the accused appellant was the only one who had committed the crime and none else.

G 39. On following aspects there is no consistency in the prosecution version:

H (1) The door leading to the house of the deceased had free access and possibility of any other person

entering the house of the deceased cannot be ruled out. A

(2) The landlord had clear access to the house of the deceased and non-examination of the landlord creates serious doubt in the prosecution version. B

(3) Injuries found on the body of the accused/appellant remained unexplained. No question was put to the accused to explain the alleged injuries on the person. C

(4) There is a material contradiction as to the ornaments which the deceased was wearing and were missing from her body. C

(5) The string and wicket (stump) were not seized by the Investigating Officer on the same day as they were lying near the dead body. D

(6) The string and the wicket (stump) were not sent to Central Forensic Science Laboratory (CFSL) despite the opinion of the doctor telling the circumstances in favour of the accused for being used in the alleged crime. E

(7) The string (narrah) allegedly used for strangulating the deceased was 8 ½ inches in length and making it impossible to commit the offence in the manner alleged by the prosecution. F

40. In view of the aforementioned infirmities in the prosecution's version the conviction under Section 302 of the Indian Penal Code cannot be sustained. Consequently, the impugned judgment of the High Court and the judgment of the Additional Sessions Judge are accordingly set aside and the appellant is acquitted as far as his conviction under Section 302 of the Indian Penal Code is concerned. G

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A 41. Now the question arises is whether the appellant can  
be convicted under Section 304B of the Indian Penal Code?  
In the instant case the appellant was also charged under  
Section 304B, but, in view of his conviction under Section 302  
of the Indian Penal Code the trial court did not proceed with  
B the charge under Section 304B of the Indian Penal Code.  
Section 304B reads as under:

**"304B. Dowry death**

C (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  
D 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.

E 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).

F (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.

G 42. In the instant case the marriage took place on  
20.02.1990 and Anju died on 10.4.1991 because of ten *ante*  
*mortem* bodily injuries which were found on her body at the  
time of her death. Anju died within seven years of her marriage.  
In the instant case the father of the deceased Mohan Lal, P.W.2  
and the mother of the deceased Raja Bala, P.W.3 were  
examined. They have categorically stated that the deceased  
H was subjected to consistent cruelty and harassment by her

husband in connection with demand for dowry. PW2 deposed that on demand from the appellant, he was given Rs.15,000/- on one occasion and later gave Rs.10,000/-. According to him, there was consistent harassment on account of demand for dowry all through. P.W.3 had stated that the appellant used to harass and beat her daughter in connection with the demand of dowry. In this view of the matter, the appellant's continuously harassing and beating the deceased in connection with demand of dowry clearly falls within the four corners of the Section 304B of the Indian Penal Code. A B

43. Section 304B of the Indian Penal Code was inserted by the Dowry Prohibition (Amendment) Act, 1986 with a view to combating the increasing menace of dowry death. It provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under the 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 shall be guilty under Section 304B of the Indian Penal Code. It is most unfortunate that instances of dowry death are rapidly increasing. C D E

44. This dowry system is a big slur and curse on our society, democracy and the country. It is incomprehensible how such unfortunate and condemnable instances of dowry deaths are frequently occurring in our society. All efforts must be made to combat and curb the increasing menace of dowry death. F

45. This court in *Ashok Kumar v. State of Rajasthan* (1991) 1 SCC 166 has laid down as under:

"... ..Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously because it is basically an economic problem of a class which suffers both from ego and complex. Unfortunately, the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference H

A between luxury and essential goods appear to be luring even the new generation of youth, of the best service, to be as much part of the dowry menace as their parents and the resultant evils flowing out of it. How to curb and control this evil? Dowry killing is a crime of its own kind where  
B elimination of daughter-in-law becomes immediate necessity if she or her parents are no more able to satiate the greed and avarice of her husband and their family members, to make the boy available, once again in the marriage market. Eliminate it and much may stand resolved automatically. ... ..”  
C

D 46. The legislature was seriously concerned about this unfortunate reality of our society and to curb and combat increasing menace of dowry deaths with a firm hand the Dowry Prohibition Act, 1961 was enacted with the following objects and reasons:

E “The object of this bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was  
F by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs. 2000. Such a provision appears to be necessary to make the law workable.”

H 47. In *The State of Punjab v. Iqbal Singh and Others*



(1991) 3 SCC 1 this Court observed that crimes are generally committed in the privacy of residential homes and in secrecy and it is difficult to get independent direct evidence in such cases. That is why the legislature has, by introducing Sections 113A and 113B in the Evidence Act, tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established that the unfortunate event has taken place within seven years of the marriage.

48. On proper analysis of Section 304B of the Indian Penal Code and Section 113B of the Evidence Act, it shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution is under an obligation to rule out any possibility of natural or accidental death. Where the ingredients of Section 304B of the Indian Penal Code are satisfied, the section would apply. If death is unnatural, either homicidal or suicidal, it would be death which can be said to have taken place in unnatural circumstances and the provisions of Section 304B would be applicable.

49. The death, otherwise than under normal circumstances, under Section 304B of the Indian Penal Code would mean the death not in usual course either natural or accidental death. Section 304B creates a substantive offence. The necessity for insertion of the two provisions has been amply enumerated by the Law Commission of India in its 21st Report, dated 10.08.1988 on 'Dowry Deaths and Law Reform'. This has been primarily done because of the pre-existing law in securing evidence to prove dowry related deaths.

50. In order to bring home the guilty under Section 304B of Indian Penal Code the following ingredients are necessary:

- (1) The victim was subjected to cruelty or harassment by her husband or his relatives.
- (2) Such cruelty or harassment was for, or in connection with any demand for dowry.

A (3) Such cruelty or harassment was done within seven years of the marriage.

B 51. Evidence on record of this case clearly lead to the conclusion that all these three ingredients are available in full measure in this case. The deceased was subjected to cruelty and harassment by her husband, the appellant herein and the harassment was in connection with the demand of dowry.

C 52. In the instant case the victim (deceased) died within one year and two months of the marriage. On proper analysis of the entire evidence on record it is abundantly proved that the appellant was clearly guilty of committing an offence under Section 304B of the Indian Penal Code.

D 53. Consequently, we deem it appropriate to set aside the conviction of the appellant under Section 302 of the Indian Penal Code but in the facts and circumstances of this case we proceed to convict the appellant under Section 304B of the Indian Penal Code and sentence him to 9 years rigorous imprisonment and fine of Rs.10,000/-. In case of non-payment of fine, the accused would further undergo imprisonment for two months.

E 54. As a result, this appeal is partly allowed and disposed of accordingly.

N.J.

Appeal partly allowed.