

Court No.87

A.F.R.

Reserved on 29.07.2020

Delivered on 29.09.2020

Criminal Appeal No. 5050 of 2006

Ram Ajour Appellant

Vs

State of U.P. Respondent

For Appellants	:	Sri Sheetala Prasad Pandey
For Respondent	:	Ms. Archana Singh, AGA

Hon'ble Ramesh Sinha, J.

Hon'ble Raj Beer Singh, J.

Per: Raj Beer Singh, J. for the Bench

1. This Criminal Appeal has been preferred against judgment and order 07.08.2006 / 08.08.2006 passed by learned Additional Sessions Judge / FTC, court No. 3, Basti in Session Trial No. 267 of of 2004 (State Vs. Ram Ajour and another), Police Station Dudhara, District Basti, whereby accused-appellant Ram Ajour has been convicted under sections 498A, 304-B of Indian Penal Code (hereinafter referred as IPC) and Section 4 of Dowry Prohibition Act (hereinafter referred as DP Act) and he was sentenced to three years rigorous imprisonment along with fine of Rs. 2000/- under Section 498-A IPC, life imprisonment under section 304-B IPC and one year rigorous imprisonment along with fine of Rs. 2000/- under Section 4 DP Act. All the sentences were directed to run concurrently.

2. Accused appellant Ram Ajour is husband of deceased Vimla Devi. As per first information report, prosecution version is that marriage of the accused-appellant Ram Ajour was solemnized with deceased Vimla Devi (daughter of informant Daya Ram) about six years prior to the incident and that informant Daya Ram has given dowry like clothes, utensils and and watch etc. in the marriage. After marriage, accused-appellant Ram Ajour and his family members

used to harass the deceased on account of dowry. They used to demand a golden chain and colour TV as additional dowry. Meanwhile, accused-appellant has also developed illicit relations with one widow lady namely Kismati Devi. Accused-appellant Ram Ajor used to beat the deceased at instance of said Kismati Devi. When deceased told these facts to her maternal family, her father has given a buffalo and some cash to the appellant but he was still not satisfied and continued to harass the deceased. On 21.06.2004 at around 10:00 AM while the deceased has gone for collecting grass (fodder), she was done to death by accused-appellant and alleged Kismati Devi.

3. Perusal of record shows after alleged incident on 21.06.2004, accused-appellant has given an information to the police vide application exhibit Kha-1 on 21.06.2004 stating that when his wife has gone to collect grass in jungle, she has got herself hanged by neck's noose of her 'saari' on a katahal tree. Thereafter, police have reached at the spot. Inquest proceedings were conducted by S.I. Motilal vide inquest report exhibit Ka-8 and dead body of the deceased was sealed and it was sent for post-mortem.

4. Post-mortem on the body of the deceased was conducted by PW-4 Dr. Mohd. Iqbal on 22.06.2004 vide post-mortem report exhibit Ka-2. Deceased Vimla has sustained following injuries:-

- (i) Contusion 8 cm x 8 cm over front of left shoulder.
- (ii) Contusion 5.6 cm x 5.2 over mid part of left neck.
- (iii) Contusion 6.2 cm x 4.8 cm over mid part of right neck.
- (iv) Contusion 7.2 cm x 7 cm over left cheek.

The membranes and brain of deceased were congested. Similarly, larynx, trachea and bronchi, Liver, spleen and kidney were also found congested.

Cause of death was due to asphyxia as a result of strangulation.

5. On 23.06.2004 informant Daya Ram has submitted a tehrir exhibit Ka-1 at the police station alleging facts as mentioned earlier and on that basis case was registered on 23.06.2004 by 16:30 hours under Section 498A, 304B IPC and ¾ DP Act against accused-appellant Ram Ajor and co-accused Kismati Devi vide FIR exhibit Ka-6.

6. Investigation was conducted by PW-5 Ashok Kumar, Circle Officer, Mehdawal, Basti. During course of the investigation site plan exhibit Ka-3 was prepared and statements of witnesses were recorded. After completion of investigation, charge sheet was filed against accused appellant Ram Ajour and co-accused Kismati Devi.

7. Trial court framed charges under Section 498-A, 304-B IPC and Section 3/4 of DP Act against the accused-appellant and co-accused Kismati Devi. In order to bring home guilt of the accused persons, prosecution has examined six witnesses.

8. Accused persons were examined under section 313 Cr.P.C., wherein accused-appellant Ram Ajour took the plea that his marriage was solemnized with deceased about 7-8 years ago and after death of his wife Vimla Devi, informant Daya Ram was making illicit demand of money from him and when he declined, a false case was lodged against him.

9. In defence evidence, accused-appellant Ram Ajour himself has appeared as DW-1. One constable Devi Sharan Pandey was examined as DW-2.

10. After hearing and analysing evidence on record, accused-appellant was convicted under Section 498-A, 304-B IPC and section of 4 of DP Act and sentenced as stated in opening paragraph of this judgment whereas co-accused Kismati Devi was acquitted.

11. Being aggrieved by the impugned judgment and order, accused-appellant has preferred this criminal appeal.

12. Heard Sri Sheetala Prasad Pandey, learned counsel for appellant and Ms. Archana Singh, learned A.G.A. for the State and perused the record.

13. Learned counsel for the appellant has not disputed the findings of facts and he has confined his arguments only regarding quantum of sentence.

14. Though this appeal is being pressed on behalf of appellant on the quantum of sentence only, however, we have gone through the entire evidence.

15. Informant/PW-2 Daya Ram has deposed that the marriage of his daughter Vimla was solemnized with accused appellant Ram Ajour in month of June, 1998 and he has given dowry articles like bicycle etc.. After some time,

his daughter has told him that accused-appellant was making demand of golden chain and colour TV and on that account he used to harass and beat her. When his son Surya Bhan used to visit matrimonial home of deceased, she used to tell him that about torture meted out to her on account of dowry demand. She has also told that accused-appellant Ram Ajor has developed illicit relations with one widow lady Kismati Devi. PW-2 Daya Ram further stated that his daughter Vimla has given birth to three children and at the time of her death, her youngest daughter was aged only 2-3 months. One week prior to the incident, Surya Bhan has visited her matrimonial home and Vimla Devi has told him about harassment on account of dowry. On 21.06.2004 PW-2 Daya Ram was informed by his sister that his daughter Vimla Devi has been done to death by accused persons. PW-2 Daya Ram and his family members went there and they were informed by the villagers that when Vimla Devi has gone to collect grass, she was murdered by accused persons.

16. PW-1 Surya Bhan, who is brother of deceased, has also made a similar statement and stated that the marriage of deceased was solemnized with accused-appellant on 20.06.1998. After some months of marriage, when she came back to her paternal home, she told about demand of colour TV and golden chain being made by the accused-appellant and also stated that in case the demand is not fulfilled, her husband has threatened to kill her. Deceased has also told that appellant Ram Ajor was having some affair with one Kismati Devi. PW-1 Surya Bhan and his father have tried to make the appellant understand by saying that after some time, they will fulfil his demands and that they have also given one buffalo and Rs.2000/- cash to him but despite that accused-appellant continued to harass the deceased. PW 1 has further stated that he has visited his sister only one week prior to the incident and she told that she was being beaten and harassed by the accused-appellant. He furtherstated that on 21.06.2004 when Vimla has gone to collect grass, she was done to death by the accused persons by pressing her neck.

17. PW-3 Kesra Devi is sister of first informant and she has also deposed that accused appellant used to harass the deceased on account of dowry.

18. PW-4 Dr. Mohd. Iqbal has conducted post mortem.

19. PW-5 Ashok Kumar, Circle Officer has conducted investigation and PW-

6 Head Constable Daya Shanker Yadav has recorded FIR and he has also proved inquest report by way of secondary evidence.

20. In defence evidence, accused-appellant Ram Ajour, himself appeared in to witness box as DW-1 and he stated that on day of incident, while he was present at a tea shop, one girl has informed that his wife Vimla has got herself hanged at a Katahal (jackfruit) tree in jungle. He reached at the spot and brought down her dead body from the tree and police was informed by him vide exhibit Kha-1.

21. DW-2 Constable Devi Sharan Pandey has stated that on 21.06.2004 at 16:05 hours Ram Ajour has submitted a tehrir, which was registered in general diary vide entry exhibit Kha-1.

22. Close scrutiny of evidence shows that marriage of deceased with accused appellant has taken place in June, 1998 and alleged incident took place on 21.06.2004 and thus, it is quite apparent that deceased has suffered death otherwise than under normal circumstances within seven years of her marriage. In fact, this fact is not disputed that incident in question took place within seven years of the marriage of deceased. There is clear and consistent evidence that after marriage, accused-appellant used to demand golden chain and colour TV as additional dowry and on that account he harassed the deceased. PW-1 Surya Bhan and PW-2 Daya Ram have made quite clear and cogent statements. They have been subjected to cross-examination but no such adverse fact could emerged so as to affect the substance of their testimony. PW-1 Surya Bhan is brother of deceased and PW-2 Daya Ram is father of deceased and thus, it is quite natural that deceased would tell them about the harassment meted out to her. In dowry death cases direct ocular testimony is rarely available and in most of such offence direct evidence is hardly available and such cases are usually proved by circumstantial evidence. No material contradiction or inconsistency could be pointed out in their testimony. No doubt the first information report was lodged after two days of incident and it is also evident from defence evidence that after the incident, accused-appellant has informed the police, however the same would not affect the credibility of PW-1 Surya Bhan and PW-2 Daya Ram, whose statements appear quite consistent and cogent. In such matters mere delay of two days in lodging the first information report can not

be given much importance, particularly when the statements of material witnesses appear reliable.

23. A reading of Section 304-B I.P.C. would show that when a question arises whether a person has committed the offence of dowry death of a woman that all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage and the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty soon before her death shall be presumed to have caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. (Hem Chand v. State of Haryana reported in [(1994) 6 SCC 727])

In case of *Kashmir Kaur Vs. State of Punjab, AIR 2013 SC 1039*, Hon'ble Apex Court held that in a case of trial for dowry death the essential ingredients to attract the provisions of section 304-B I.P.C. for establishing offence are (a) that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry, (b) the death of the deceased woman was caused by any burn or bodily injury or some other circumstance, which was not normal, (c) such death occurs within seven years from the date of her marriage, (d) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband, (e) such cruelty or harassment should be for or in connection with demand of dowry, and (f) it should be established that such cruelty and harassment was made soon before her death.

The necessary ingredients to prove the offence of dowry death punishable under section 304-B IPC have been discussed by the Hon'ble Apex Court time and again. In case of *Rajender Singh Vs State of Punjab Criminal Appeal No. 2321 of 2009*, the Hon'ble Apex Court held as under (para 9 & 10):

"9, The ingredients of the offence under Section 304-B have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

10, This has been the law stated in the following judgments:

Ashok Kumar v. State of Haryana, (2010) 12 SCC 350 at pages 360-361; Bachni Devi & Anr. v. State of Haryana, (2011) 4 SCC 427 at 431, Pathan Hussain Basha v. State of A.P., (2012) 8 SCC 594 at 599, Kulwant Singh & Ors. v. State of Punjab, (2013) 4 SCC 177 at 184-185, Surinder Singh v. State of Haryana, (2014) 4 SCC 129 at 137, Raminder Singh v. State of Punjab, (2014) 12 SCC 582 at 583, Suresh Singh v. State of Haryana, (2013) 16 SCC 353 at 361, Sher Singh v. State of Haryana, 2015 1 SCALE 250 at 262."

24. Keeping the aforesaid legal position in mind, it may be seen that in the instant case, it is not disputed that deceased died of strangulation within seven years of her marriage. However, there is no evidence that deceased was done to death by the accused-appellant and in view of defence evidence, it appears that she was found hanging on a tree, while she has gone to collect grass. Here it would be pertinent to mention that even death by suicide also falls within the ambit of "death otherwise than under normal circumstances " as contemplated under section 304-B (1) of IPC. In case Smt. Shanti and anr. vs. State of Haryana {1991(1) SCC 371} and in Kans Raj vs. State of Punjab and ors. {2000(5) SCC 207} the Hon'ble Apex Court has held that suicide is one of the modes of death falling within the ambit of Section 304-B IPC. In the instant case it is clear from post-mortem report of deceased that she died of strangulation. Thus it clear that death of deceased was "otherwise than under normal circumstances". The evidence of PW-1 Surya Bhan and PW-2 Daya

Ram, who are brother and father of deceased, make it clear that deceased was being harassed on account of demand of a golden chain and colour TV. In this regard the statement of PW 1 is consistent with FIR and his previous statement and it is amply corroborated by PW 2. There are no reasons to disbelieve their evidence. Thus, from the evidence on record, the prosecution has proved that the deceased suffered unnatural death within 7 years of her marriage and that she was treated with cruelty in relation to demand of dowry.

25. At this stage it would be pertinent of mention that Section 113-B of the Evidence Act mandates that the Court has to raise the statutory presumption in a case where it is shown that soon before her death such woman has been subjected to cruelty or harassment for or in connection with any demand of dowry.

In case of *Banshi Lal Vs. Hate of Haryana, AIR 2011 SC 691* has held that the court has to analyse the facts and circumstances as leading to death of the victim and decide if there is any proximate connection between the demand of dowry and act of cruelty or harassment and the death. Meaning thereby cruelty or harassment with regard to demand of dowry soon before death is a crucial ingredient to be proved by prosecution before attracting any provisions of section 304-B I.P.C.

In *Mustafa Shahdal Shaikh Vs. State of Maharashtra, AIR 2013 SC 851* it was observed by the Hon'ble Apex Court that "soon before death" means interval between cruelty and death should not be much. There must be existence of a proximate and live links between the effect or cruelty based on dowry demand and the concerned death. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

Similarly in *Kaliyaperumal Vs. State of Tamil Nadu, AIR 2003 SC 3828* it was held that that the expression 'Soon before her death' used in the substantive section 304-B I.P.C. and section 113-B of the Evidence Act is present with the idea of proximity text. No definite period has been indicated and the expression "soon before hear death" is not defined. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case.

Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

The Hon'ble Supreme Court in ***Prem Kumar vs. State of Rajasthan*** 2009 (3) SCC 726 held:-

"Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials: (1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.) (2) The woman was subjected to cruelty or harassment by her husband or his relatives. (3) Such cruelty or harassment was for, or in connection with, any demand for dowry. (4) Such cruelty or harassment was soon before her death.

It was held that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The expression 'soon before' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the aforesaid presumption operates. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It was further observed that it would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act.

26. In the case in hand, as pointed out earlier, both PW 1 Surya Bhan and PW 2 Daya Ram have made consistent statements that since after some time of marriage, deceased was continuously being harassed on account of dowry demand of golden chain and colour TV. PW 1 Surya Bhan has stated that his father has given a buffalo and cash of Rs 2000/ to accused-appellant for purchasing a TV but despite that he continued to harass the deceased. PW 1 has

stated that he often used to visit the matrimonial home of deceased to enquire her well being but she used to tell him that she was being harassed for dowry and that only one week prior to the incident, he has visited the matrimonial home of his sister and she has told she was being beaten for dowry and she has also shown injuries suffered by her. This version is amply supported by PW 2 Dayaram. The accused-appellant has not taken any such specific plea that PW 1 did not visit his house one week prior of incident. Thus it is apparent that there is evidence that till one week prior of the incident, the deceased was continuously being harassed for demand dowry. There is absolutely nothing to indicate that this cruelty and harassment has ever ceased till the incident. Considering entire evidence, it is manifest that there is a proximate connection between the demand of dowry and act of cruelty / harassment and the death of deceased. The interval between cruelty and death of deceased is not much and such gap has to be examined in the attending facts and circumstances of the matter. In view of evidence there appears a proximate and live link between the effect or cruelty based on dowry demand and the death of deceased. As observed by the Hon'ble Apex Court, the determination of the period which can come within the term "soon before" is to be determined by courts, depending upon facts and circumstances of each case and it normally imply that the interval should not be much between the concerned cruelty or harassment and effect of cruelty based on dowry demand and the concerned death. Considering the evidence in light of peculiar facts and circumstances of the instant case as well as the position of law, it is established that the deceased was continuously being harassed on account of dowry demand of golden chain and colour TV and there is evidence that till one week prior of the incident, deceased was continuously being harassed for demand dowry. As noticed earlier there is absolutely nothing to indicate that this cruelty and harassment has ever ceased till the incident. Considering entire evidence, it is manifest that there is a proximate connection between the demand of dowry made by the accused-appellant and act of cruelty or harassment and the death of deceased. There is a live link between the effect or cruelty meted out to the deceased based on dowry demand and the death of deceased. Thus, it established that deceased was subjected to cruelty or harassment by her husband / accused-appellant in connection with demand for dowry and that such cruelty or harassment was

soon before her death. In view of the evidence, the presumption enshrined under section 113-B Evidence Act can safely be raised against accused-appellant appellant.

27. Applying the presumption enshrined under section 113-B Evidence Act, once the initial burden of showing that the woman was subject to cruelty or harassment for or in connection with any demand of dowry soon before her death is discharged by the prosecution, the Court has to presume that such person has caused a dowry death. In *Yashoda v. State of M.P.* (2004) 3 SCC 98, the Hon'ble Apex Court held that once the ingredients of Section 304-B IPC are fulfilled, the onus shifts to the defence to produce evidence to rebut the statutory presumption and to whom that the death was in the normal course with which the accused were not connected. The Court observed:

"13.....Once the prosecution proves the facts which give rise to the presumption under Section 304-B IPC, the onus shifts to the defence and it is for the defence to produce evidence to rebut that presumption. The defence may adduce evidence in support of its defence or may make suggestions to the prosecution witnesses to elicit facts which may support their defence. The evidence produced by the defence may disclose that the death was not caused by them, or that the death took place in normal course on account of any ailment or disease suffered by the deceased or that the death took place in a manner with which they were not at all connected. In the instant case if the defence wanted to prove that the deceased had suffered from diarrhoea and vomiting and that resulted in her death, it was for the defence to adduce evidence and rebut the presumption that arose under Section 304-B IPC. The defence could have examined the doctor concerned or even summoned the record from the hospital to prove that in fact the deceased has suffered such ailment and had also been treated for such ailment."

28. So once the court raises presumption under section 113-B Evidence Act, the court has no option but to presume that the accused had caused dowry death unless the accused disproves it. It is a statutory compulsion on the Court. However, it is open to the accused to adduce such evidence for disproving the said compulsory presumption, as the burden is unmistakably on him to do so. In the instant case, the accused-appellant has failed to rebut the said presumption. As stated earlier, from evidence on record it is established that deceased Vimla was subjected to cruelty or harassment by her husband / appellant in connection

with the demand for dowry and that such cruelty and harassment was soon before her death. It is also established that deceased suffered death otherwise than under normal circumstances within seven years of her marriage. In view of the evidence on record coupled with presumption prescribed under section 113-B Evidence Act, we reach to conclusion that conviction of accused-appellant under section 498-A, 304-B IPC and section 4 DP Act is based on evidence and accordingly conviction of accused-appellant for said charges is hereby affirmed.

29. So far as quantum of sentence is concerned, it was submitted by learned counsel for the appellant that the trial court has awarded maximum sentence ie imprisonment for life, without considering the relevant facts and the sentence awarded to accused-appellant is quite excessive and arbitrary. It was stated that marriage of deceased has taken place six years prior of the incident and that soon after the incident, accused-appellant himself has informed police vide exhibit kha-1. Out of this wedlock, they were blessed with three children and appellant has to take care of them. The accused-appellant has not caused any injury to the deceased and that she committed suicide by hanging on a tree. Lastly it was submitted that accused-appellant is in jail since last 16 years as he was never granted bail. It was submitted that sentence already under gone by the accused-appellant is more than sufficient and deterrent for the crime of accused-appellant.

30. It is settled legal position that appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of offence and the manner in which it was executed or committed. It is obligation of Court to constantly remind itself that right of victim, and be it said, on certain occasions persons aggrieved as well as society at large can be victims, never be marginalised. The measure of punishment should be proportionate to gravity of offence. Object of sentencing should be to protect society and to deter the criminal in achieving avowed object of law. Further, it is expected that Courts would operate the sentencing system so as to impose such sentence which reflects conscience of society and sentencing process has to be stern where it should be. The Court will be failing in its duty if appropriate punishment is not awarded for a crime, which has been committed not only against individual victim but also against society to which criminal and

victim belong. Punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, enormity of crime warranting public abhorrence and it should 'respond to society's cry for justice against the criminal'. [Vice Sumer Singh Vs. Surajbhan Singh and others, (2014) 7 SCC 323, Sham Sunder Vs. Puran, (1990) 4 SCC 731, M.P. Vs. Saleem, (2005) 5 SCC 554, Ravji Vs. State of Rajasthan, (1996) 2 SCC 175].

31. Hon'ble Apex Court in the case of **V.K. Mishra & Anr. Vs. State of Uttarakhand & Anr., 2015 Law Suit (SC) 665** in para nos. 40 and 41 of the judgment has held as under:-

"40. For the offence under section 304-B IPC, the punishment is imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. Section 304B IPC thus prescribes statutory minimum of seven years. In Kulwant Singh & Ors. vs. State of Punjab, (2013) 4 SCC 177, while dealing with dowry death Section 304B and 498A IPC in which death was caused by poisoning within seven years of marriage conviction was affirmed. In the said case, the father-in-law was about eighty years and his legs had been amputated because of severe diabetes and mother-in-law was seventy eight years of age and the Supreme Court held impermissibility of reduction of sentence on the ground of sympathy below the statutory minimum.

41. As per prison records, the accused-Rahul Mishra is in custody for more than five years which includes remission. Bearing in mind the facts and circumstances of the case and the occurrence was of the year 1997 and that the accused Rahul Mishra is in custody for more than five years, interest of justice would be met if life imprisonment awarded to him is reduced to imprisonment for a period of ten years. Appellants V.K. Mishra and Neelima Mishra, each of them have undergone imprisonment of more than one year. Appellants No. 1 and 2 are aged about seventy and sixty four years and are said to be suffering from various ailments. Considering their age and ailments and facts and circumstances of the case, life imprisonment imposed on appellants V.K. Mishra and Neelima Mishra is also reduced to imprisonment of seven years each."

Hon'ble Apex Court in the case of **Hem Chand Vs. State of Haryana, [(1994) 6 SCC 727]** in para no. 7 of the judgment has held as under:-

"7. Now coming to the question of sentence, it can be seen that Section 304-B I.P.C., lays down that "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." The point for consideration is whether the extreme punishment of imprisonment for life is warranted in the

instant case. A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death shall presume to have caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B I.P.C. also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection With the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. It is also important to note in this context that there is no charge under Section 302 I.P.C. The trial court also noted that there were two sets of medical evidence on the file in respect of the death of the deceased. Dr. Usha Rani, P.W. 6 and Dr. Indu Latit, P.W. 7 gave one opinion. According to them no injury was found on the dead body and that the same was highly decom-posed. On the other hand, Dr. Dalbir Singh, P.W. 13 who also examined the dead body and gave his opinion, deposed that he noticed some injuries at the time of re-post mortem examination. Therefore at the most it can be said that the prosecution proved that it was an unnatural death in which case also Section 304-B I.P.C. would be attracted. But this aspect has certainly to be taken into consideration in balancing the sentence to be awarded to the accused. As a matter of fact, the trial court only found that the death was unnatural and the aspect of cruelty has been established and therefore the offences punishable under Section 304-B and 201 I.P.C. have been established. The High Court in a very short judgment concluded that it was fully proved that the death of the deceased in her matrimonial home was a dowry death otherwise than in normal circumstances as a result of cruelty meted out to her and therefore an offence under Section 304-B I.P.C. was made out. Coming to the sentence the High Court pointed out that the accused-appellant was a police employee and instead of checking the crime he himself indulged therein and precipitated in it and that bride killing cases are on the increase and therefore a serious view has to be taken. As mentioned above Section 304-B I.P.C. only raises presumption

and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment for life should be in rare cases and not in every case."

In the case of **G.V. Siddaramesh Vs. State of Karnataka, 2010 3 SCC 152**, while allowing the appeal filed by the accused only on the question of sentence, the Court altered the sentence from life term to 10 years on more or less similar facts, Hon'ble Apex Court held as under:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

Recently in **Criminal Appeal No. 724 OF 2019 Kashmira Devi Versus State of Uttarakhand & Ors, decided on 28.01.2020**, Hon'ble Apex Court reduced the sentence of life under section 304-B IPC to imprisonment for 7 years. In that case, the marriage of deceased was solemnised four years prior of incident and that deceased died of burn injuries. The Hon'ble Apex Court observed as under:

"Having arrived at the above conclusion the quantum of sentence requires consideration. The High Court has awarded life imprisonment to the appellant on being convicted under Section 304B IPC. The minimum sentence provided is seven years but it may extend to imprisonment for life. In fact, this Court in the case of Hem Chand Vs. State of Haryana (1994) 6 SCC 727 has held that while imposing the sentence, awarding extreme punishment of imprisonment for life under Section 304-B IPC should be in rare cases and not in every case. Though the mitigating factor noticed in the said case was different, in the instant case keeping in view the age of the appellant and also the contribution that would be required by her to the family, while husband is also aged and further taking into consideration all other circumstances, the sentence as awarded by the High Court to the appellant herein is liable to be modified."

32. Applying the principles of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of the instant case

including the fact that accused-appellant Ram Ajor in custody since last 16 years, we are of the considered opinion that the ends of justice would meet, if we reduce the sentence of the appellant from life imprisonment to that of already undergone by the accused-appellant. In our view, this case does not fall in the category of a "rare case" as envisaged by the Apex Court so as to award maximum sentence of life imprisonment. That apart, it may also be observed that while awarding life imprisonment, the trial court did not assign any reasons.

33. According sentence of life imprisonment awarded by the trial for the offence under section 304-B IPC is reduced and the accused-appellant Ram Ajor is sentenced to the period already undergone by him. The sentences awarded under section 498-A IPC and Section 4 of Dowry Prohibition Act by the trial court, are upheld. As accused-appellant is in custody since last 16 years, thus, accused-appellant Ram Ajor be released forthwith, if not wanted in any other case.

34. Appeal is partly allowed in above terms.

35. It is further directed that the accused appellant shall furnish bail bond with surety to the satisfaction of the court concerned in terms of the provision of Section 437-A of Cr.P.C.

35. Let the lower court record be transmit to the trial court concerned for its information and compliance.

Dated:29.09.2020

Mohit Kushwaha

(Raj Beer Singh, J.) (Ramesh Sinha, J.)