
Santosh Vs State of U.P.

Criminal. A. No. 655 of 2000

Court: Allahabad High Court

Date of Decision: Feb. 21, 2014

Acts Referred:

Constitution of India, 1950 " Article 20#Criminal Procedure Code, 1973 (CrPC) " Section 313#Evidence Act, 1872 " Section 106, 113B, 114#Penal Code, 1860 (IPC) " Section 302, 304B, 498A

Citation: (2014) 2 ACR 1474

Hon'ble Judges: Anil Kumar Sharma, J

Bench: Single Bench

Advocate: Vishnu Prakash Srivastava, S.C. Tiwari and S.K. Kushwaha, Advocate for the Appellant; Nikhil Chaturvedi, Advocate for the Respondent

Judgement

Anil Kumar Sharma, J.

Heard learned counsel for the appellants, learned A.G.A. for the State at length and perused the original record of the case.

2. Appellants have challenged their conviction for the offence punishable under Sections 304B and 498A, I.P.C. and sentence awarded to them by

Sri Harish Chandra the then VIIIth Addl. Sessions Judge, Kanpur Nagar in S.T. No. 920 of 1996, vide judgment dated 18.2.2000.

3. At the outset learned counsel for the appellants has made a statement at Bar on 12.2.2014 that the appeal of appellant No. 2 Bhanner has

become infructuous as he has been released from jail after serving out the sentence awarded to him by the trial court. This contention of the learned

counsel is supported by the reports of Senior Superintendent of Central Jail, Fatehgarh dated 5.8.2008 and the Chief Metropolitan Magistrate,

Kanpur Nagar dated 12.8.2008.

4. The facts of the case germane to the appeal are that complainant Chhangu son of Bhaggu, resident of Bakauli, P.S. Malwa, District Fatehpur

submitted a written report on 18.5.1996 at 11.30 p.m. in P.S. Maharajpur, District Kanpur Nagar, wherein he has stated that the marriage of his

grand daughter Pushpa aged about 21 years was solemnized about three years ago with Santosh son of Bhadai. After marriage her husband and

brother-in-law (Jeth) Bhanner repeatedly made demand of a cycle in dowry and they used to beat her. Dhunnoo son of Panja, resident of village

Baniyan Khera, P.S. Kalyanpur, District Fatehpur whose daughter is married with Preetam, elder brother of Santosh has informed him that as

Santosh and Bhanner did not get cycle in dowry, they have killed Pushpa and hanged her by neck with Dhanni (wooden log) of the roof. On the

basis of this report a case at Crime No. 116 of 1996, under Sections 498A and 304B, I.P.C. was registered at P.S. Maharajpur, district Kanpur

Nagar investigation whereof was entrusted to C.O., Maharajpur. The police reached at the spot, prepared a site plan and found that the deceased

was hanging with Dhanni of the roof, her head being one and half feet below the roof and both the feet were 1-1/2 feet above the floor. The dead

body was taken down and 23 pieces of broken bangles were recovered from the spot. Tehsildar Basant conducted inquest and he dictated the

inquest report to S.I. Daya Ram. The dead body was sent for autopsy in a sealed condition alongwith usual papers. Dr. Ram Lakhan Verma

conducted post-mortem examination of the corpse of Smt. Pushpa Devi on 9.5.1996 at 1.45 p.m. He found that the deceased was average built,

rigor mortis has passed of from the extremities, right eye was closed and the left was bulging out. Mouth was open and tongue was protruding out.

Blood was coming out from both nostrils and mouth. Post mortem staining on whole of back, buttock and thigh were present, abdomen was

dissented, blisters were present, skin had peeled at places, skull hairs were loose, nails were cyanosed and face was congested. The doctor found

the following ante-mortem injury on the person of the deceased:

Ligature mark 34 cm. x 3 cm. around the neck, 3 cm. below right ear and 4 cm. below left ear. Ligature mark is horizontal abrasion ecchymosed

at edges of ligature marks were found.

In the internal examination fracture of hyoid bone on right side was found. Trachea, larynx, both kidneys, gall bladder, spleen were soft and

congested, both chambers of heart were empty, uterus was empty. In the opinion of the doctor the deceased suffered death due to asphyxia as a

result of strangulation about 1-1/2 day before. The Investigating Officer after completing the investigation submitted charge-sheet against the

appellants.

5. After committal of the case to the Court of Session charges for the offence punishable under Sections 498A, 304B, I.P.C. were framed against

the appellants, who abjured their guilt and claimed trial.

6. In support of the charges the prosecution has examined complainant Chhangu P.W. 1, Mahadev P.W. 2, S.I. G.S. Chauhan P.W. 3, Dr. Ram

Lakhan Verma P.W. 4, Tehsildar Basant P.W. 5, Circle Officer K.D. Bhardwaj P.W. 6 and S.I. Daya Ram P.W. 7.

7. In their statement u/s 313, Cr. P.C. both the accused/appellants have admitted marriage of the deceased with accused/appellant Santosh about

three years ago from the incident. They have denied the allegations regarding demand of dowry or harassment and torture of the deceased on this

score. Accused/ appellant Santosh has stated that he was out of village and reached there on getting information. He does not know how she has

committed suicide. Accused/appellant Bhanner has stated that he has been implicated on account of enmity, because talks of his marriage with

elder sister of the deceased began but could not be materialised.

8. In defence the accused/appellants have examined Smt. Bhagwan Dei D.W.-1, Dhunnoo D.W.-2 and Babban D.W.-3.

9. Learned trial court after hearing parties counsel has convicted and sentenced the accused/appellants as noted above. Aggrieved they have come

up in appeal.

10. Since as per the statement of learned counsel for the appellant the appeal of appellant No. 2 Bhanner has become infructuous, so we have to

examine only the case with regard to appellant No. 1 Santosh, who is husband of deceased.

11. Learned counsel for the appellant has argued that the appellant resides at the house of her maternal aunt Smt. Bhagwan Dei in Unnao and is

engaged as rickshaw puller. He was not present at the spot; that he never demanded any cycle either from the deceased or her family members,

nor any complaint was ever made by the deceased prior to the incident; that no independent witness has been examined in support of the charge

and lastly it has been submitted that there are material contradictions in the testimony of prosecution witnesses.

12. Per contra, learned A.G.A. has supported the impugned judgment and order.

13. Before proceeding further it would be appropriate to narrate in brief the statements given by the prosecution and defence witnesses in their

examination-in-chief.

14. Complainant Chhangu P.W. 1 has stated that deceased Pushpa was his granddaughter. Her father Sukhdeo is engaged in tailoring in Koirali

(M.P.), however, his family resided in the village. The marriage of Pushpa was solemnized three years prior to the incident with Santosh resident of

Bhairampur, P.S. Maharajpur. He is residing with his unmarried elder brother Bhannar. After marriage Pushpa went to her matrimonial home her

husband Santosh and brother-in-law Bhanner complained of giving less dowry and asked her to bring a cycle in dowry from her parents, else they

would kill her. They pacified the deceased. After marriage she came to his house 10-12 times and every time she complained of the misbehaviour

and ill-treatment of the accused persons. He has further stated that once he had gone with mediator Shivpal and requested the accused persons to

which they gave assurance for not saying anything to Pushpa. On 18.5.1996, he got information that both the accused on account of not getting

cycle have killed Pushpa and tying her with Dhanni have run away after breaking the western wall of the room. On getting this information from

Dhannoo whose daughter has been married with Preetam, (elder brother of Santosh) he alongwith his sons Mahadev and Deshraj reached at the

house of the accused and found his grand daughter hanging with roof. He dictated the report to Mahadev and submitted at the police station which

has been proved as Ext. Ka-1. He has further stated that the inquest of the dead body of his grand daughter was conducted by the Tehsildar and

the Sub-Inspector of Police in his presence and they seized the broken glass bangles and nylon rope from the spot through memo which is Ext.

Ka-2 and bears his signature.

15. Mahadev P.W. 2 has stated that Pushpa was his niece, whose father Sukhdev was engaged in tailoring business in Madhya Pradesh and his

family was residing with them in the village. About three years prior to the incident. Pushpa was married with accused Santosh resident of village

Bhairampur. His brother Bhanner was also residing with him. After marriage when Pushpa went to her in-laws both the accused complained about

the dowry and taunted that even a cycle was not given by them. He has further stated that Pushpa came their house 10-11 times after the marriage

and every time she complained about the misbehaviour of both the accused. They contacted Shiv Pal, the mediator in the marriage who talked with

the accused persons and they assured them not to harass the deceased any more. However, the atrocities of the accused on Pushpa continued. On

18.5.1996, Dhannoo came to their village and informed that the accused persons have killed the deceased and have hanged her with Dhanni of the

roof. On this information he alongwith his father, brother and mother of the deceased went at the house of the accused persons and found Pushpa

hanging with Dhanni by a nylon rope. There was no cot or support beneath her. Thereafter they had gone to the police station, where he wrote

down the report on the dictation of his father. Inquest on the dead body was conducted by the police and the rope, pieces of bangles were seized

from the spot.

16. S.I. J.S. Chauhan P.W. 3 has stated that on 18.5.1996 while he was posted as Head Moharrir in P.S. Maharajpur he has prepared check

report No. 66 on the basis of written report of Chhangu and has entered the case at Crime No. 116/96, under Sections 498A and 304B, I.P.C.,

in the G.D. report No. 42 at 23-30 hours. The check report and copy of G.D. have been proved as Ext. Ka-2 and Ka-3 respectively.

17. Dr. Ram Lakhan Verma P.W. 4 has deposed that on 19.5.1996 he was posted as Medical Officer in K.P.M. Hospital, Kanpur Nagar and on

that day at about 3.00 p.m. he has conducted post-mortem examination of the dead body of the deceased Smt. Pushpa Devi, which was brought

in a sealed condition by constables Asha Ram and Ram Bahadur Singh. Dr. Verma has proved the contents of post-mortem examination report as

Ext. Ka-4 which has been reproduced above in paragraph 3 of the judgment. He has concluded that the death of the deceased was not suicidal,

but was homicidal and she could have suffered death on account of throttling the neck in the night of 17/18.5.1996.

18. Tehsildar Basant P.W. 5 has stated that on 19.5.1995 he was posted as Tehsildar in Kanpur Nagar and on that day he has conducted inquest

on the dead body of Smt. Pushpa Devi in village Bhairampur, P.S. Maharajpur. The inquest report and related papers were dictated by him to SI

Daya Ram. These documents have been proved as Ext. Ka-5 to Ka-10 respectively. He has lastly stated that the sealed body of the deceased

was sent for post-mortem examination through constables Asha Ram and Ram Bahadur Singh.

19. Circle Officer K.D. Bhardwaj P.W. 6 has stated that on 19.5.1996 he was posted as CO., Maharajpur and on that day he took over the

investigation of this case. On account of his injured right hand finger he dictated the case diary to constable Daya Shanker Pandey. After

interrogating the complainant and the witnesses he inspected the place of occurrence, got site plan prepared and seized the broken bangles of the

deceased and rope tied in her neck. Sri Bhardwaj has proved investigatory formalities till submission of the charge-sheet against the

accused/appellants in his deposition.

20. S.I. Daya Ram P.W. 7 has stated that on 19.5.1996 he was posted as Sub-Inspector in P.S. Maharajpur. On that day on the dictation of the

Tehsildar at the spot in village Bhairampur, P.S. Maharajpur he has prepared the inquest report of deceased Smt. Pushpa Devi, whose dead body

was hanging with a rope. 23 pieces of broken bangles were taken by the police from the spot and its memo is Ext. Ka-2.

21. Smt. Bhagwan Dei D.W. 1 has stated that accused Santosh is son of her sister and Bhanner @ Devi Prasad is his brother. Her sister had four

sons and they resided separately. Santosh was married with Pushpa. Neither Santosh nor Bhanner had demanded any cycle from family members

of deceased Pushpa. Accused Santosh prior to 18.5.1996 was residing with her in Unnao and was doing labour by pulling rickshaw. On

18.5.1996 at about 4.00 p.m. Dhunna informed about death of Pushpa at about 4.00 p.m. and Santosh immediately left for his house. After about

2-3 hours she also went at the house of Santosh and found that the dead body was kept on the ground and the police was completing the

formalities.

22. Dhunnoo D.W. 2 has, stated that on 18.5.1996 he did not come to the complainant to inform him about the death of Pushpa. On getting

information he reached Bhairampur and found that the dead body was kept at the door of the house and the police personnel were doing writing

work. He was not interrogated by the police, nor his signature was obtained. He got information that Pushpa has committed suicide.

23. Babban D.W. 3 has stated that he knows Preetam, Bhanner, Santosh and Maina who are his neighbours and reside separately. Santosh

mostly resided in Unnao at the house of her maternal aunt and is engaged as rickshaw puller. He has pleaded ignorance about any atrocities at the

hands of Santosh and Bhanner on the deceased as also her suicidal death on 18.5.1996. He has further stated that when Santosh arrived he was

called by him. The police did not interrogate him.

24. In spite of stringent laws to combat atrocities on women in the country, unnatural death of the young woman in her matrimonial home are rising

and is a cause of great concern not only to the society but the Courts as well. A married woman may commit suicide by hanging or burning or

consuming poison for various reasons. She ties the knot of marriage only to find peace and shelter in safe and sound care of her husband after

leaving her parental house. She does not bid adieu to her parents to have harassment and torture at the hands of her husband or relatives for

demand of dowry, who are expected to be her caretakers and well wishers. In Hindu marriage is not a contract but a sacred act, recognised by

the law and the society for thousands of years. Any departure of such human behaviour has to be taken with a grain of salt. It is not expected from

parents or relations of acquaintances that they will falsely rope husband and his relations only to wreck vengeance and punish husband or her in-

laws even when the victim dies due to her extramarital relationship if any or mental frustration or depression etc. on account of other reasons. The

probative value and intention of witnesses has to be taken with a touch of ground reality keeping in view the fact that their beloved known victim

was tortured and that's why the death was propelled.

25. To attract the provisions of Section 304B of the Indian Penal Code, the following conditions are required to be established:

(i) the death of woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

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

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called "dowry death" and such husband or his

relatives shall be deemed to have caused her death. If the above mentioned ingredients are attracted in view of the special provision, the court shall

presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such

evidence for disproving such compulsory presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting

an answer through cross-examination of prosecution witnesses or by adducing evidence on the defence side.

26. Section 113B of the Indian Evidence Act, 1872 speaks about presumption as to dowry death which reads as under:

113B. Presumption as to dowry death--When the question is whether a person has committed the dowry death of a woman and it is shown that

soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry,

the court shall presume that such person has caused the dowry death. In the present case following factual circumstances stand established:

- (a) the deceased was married to husband accused;
- (b) the deceased died at the place of her husband within a span of seven years.
- (c) she died an unnatural death.

Therefore, a presumption automatically may arise u/s 113B of the Indian Evidence Act. If it is established by the evidence of the prosecution

witnesses that the chain is complete suggesting only to the fact that the accused persons perpetrated torture soon before her death over demand of

dowry and as such the victim died an unnatural death.

27. In the instant case, the evidence on record show that the following facts are not disputed:

- (i) that the deceased was married with accused Santosh according to Hindu rites three years prior to her death;
- (ii) that the deceased suffered unnatural death in her matrimonial home on 18.5.1996;
- (iii) that accused-appellant Bhannar is real elder brother of Santosh and they lived together;
- (iv) that accused Santosh are four brothers, and the other two brothers namely Maina and Preetam also reside nearby but F.I.R. had been lodged

only against two of them;

- (v) that the daughter of Dhannu D.W. 1 is married to Preetam, elder brother of accused-appellant Santosh;

(vi) that the police did not find any object or support on the ground in the room where the dead body of the deceased was found hanging from the

dhanni of the roof, and

- (vii) that there was big hole in the mud wall towards the room of Maina (brother of accused Santosh).

In view of the above undisputed facts, it is thus proved that deceased Pushpa suffered unnatural death in her matrimonial home within seven years

of her marriage with accused-appellant Santosh, therefore, the first two ingredients to make out case of dowry death punishable u/s 304B, I.P.C.

are fully established. In fact both these elements are not disputed by the defence. The only difference is that the case of the prosecution is that the

deceased was first done to death and thereafter she was hanged with the dhanni of the roof to make out a case of suicide, while the accused

persons have tried to show that she had committed suicide. Since there is no charge u/s 302, I.P.C. against the accused, so it is hardly of any

relevance for disposal of this appeal.

28. In the case of Kashmir Kaur and Another Vs. State of Punjab, , the Hon"ble Apex Court has held that:

Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of

Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal

jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of

Section 304B, I.P.C. Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can,

by leading their defence prove that the ingredients of Section 304B were not satisfied. The specific significance to be attached is to the time of the

alleged cruelty and harassment to which the victim was subjected to the time of her death and whether the alleged demand of dowry was in

connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or

the relatives will be deemed to have committed that offence.

29. The report of the incident had been lodged by P.W. 1 on 18.5.1996 at 11.30 p.m. The complainant is resident of village Bakoli (Misranpurva)

P.S. Malwa, District Fatehpur, while the accused-appellants are residents of village Bhairampur, P.S. Maharajpur District Kanpur Nagar. In the

written report Ex. Ka-1 itself, the complainant has noted that he got the information about the incident through Dhunnu, whose daughter is married

with Pitam, elder brother of Santosh. Dhunnu D.W. 2 has denied this fact stating that he did not go to the complainant for informing about the

death of Pushpa on 18.5.1996. According to him, on getting the information he went to the house of the deceased in village Bhairampur, where her

dead body was kept at the door and the police personnel were doing writing work. He has further stated that he was not interrogated by the

police, nor his signatures were obtained. However, on perusal of inquest report Ex. Ka-5, it is quite clear that he is panch witness and his thumb

impression had been taken by the police officer. He is an illiterate person and has thumb-marked his deposition recorded in the trial court, so the

question of taking his signature by the police personnel does not arise. Thus, the statement of Dhunnu D.W. 2 does not inspire confidence because

being close relatives of the accused-appellants he has not supported the prosecution story about informing the complainant regarding the incident in

his village. This fact has not much bearing. The beauty of the written report lodged by the complainant is that he has named only Santosh and his

elder brother Bhanner therein as accused persons, although there were other persons in their family and they were residing in the same premises.

Unlike the present trend of implicating the entire family of the groom's family in cases relating to dowry death or involving harassment of the bride

at the hands of her in-laws, in the instant case only two persons including the husband of the deceased have been nominated in the F.I.R. This fact

adds to the truthfulness of the allegations made by the complainant against the accused persons in the case.

30. We have the testimony of P.W. 1 and P.W. 2, who are grand-father and uncle of the deceased, to show that the accused-appellant had

demand a cycle from the deceased and her family members as dowry and for non-fulfilment of their demand, she was harassed and tortured by

the appellants. It has come in evidence that Sukhdeo, father of the deceased, was living alone in Madhya Pradesh as he was doing tailoring

business there and his family lived with P.W. 1. On perusal of the record it is found that grand-father of the deceased P.W. 1 was subjected to

lengthy cross-examination for many days and an attempt was made by the defence to confuse the witness by asking the same question again and

again at intervals to seek contradiction. The report of the incident had been lodged by P.W. 1. which he got scribed from his son P.W. 2 and ere

that Dhannu D.W. 1 has informed them about the incident. However, D.W. 1 has not corroborated this fact in his deposition before the trial court,

as he was examined by the defence. The reason for not supporting the prosecution by this witness is quite obvious, because his daughter had been

married to Preetam, real elder brother of accused-appellant Santosh. Both the witnesses of fact have consistently stated that the appellants used to

demand cycle from the deceased and for that purpose they used to beat her. The deceased was illiterate, so there was no occasion for her to write

any letter to her close relatives.

31. Complainant Chhangu P.W. 1, the grand-father of the deceased has categorically stated that the deceased was daughter of his son Sukhdeo,

who was doing tailoring in Koirali (Madhya Pradesh) for 10-12 years and his family was residing with him. He had performed marriage of the

deceased with accused Santosh. He has corroborated the contents of his written report regarding dowry demand of accused-appellants from the

deceased and her harassment and torture on this score. This witness had been cross-examined on five dates within a span of about three months.

Although no material contradiction has come in his testimony during cross-examination, but if a particular fact is asked many times from a witness

at intervals he can be trapped by the defence counsel for giving different versions. In such a situation the Court is required to evaluate the testimony

of the witness with care and caution. The whole testimony of the witness would be read as a whole and not one sentence from here and the other

from there. In cross-examination he has stated that the deceased used to complain about the atrocities committed by the accused persons with her,

but they used to pacify her. Even once she was badly beaten and accused Santosh assured them that he would tell his brother (Bhanner) not to

harass or beat the deceased. He has further stated that after getting news about the incident, he alongwith his son Mahadeo and mother of the

deceased had gone to the house of accused persons and by breaking open the door they entered in the room. However, the Investigating Officer

has found a big hole in the western wall of the room towards the room of Maina (brother of accused Santosh) through which the accused persons

have allegedly made their escape good after hanging the deceased with the roof of the room and closed the door. At one place he has stated that

when they reached the house of the accused persons, Santosh was there, but he has corrected himself by saying that he was arrested by the police

later on the same day. He has specifically stated in cross-examination that at the time of inquest, Santosh was not there. In this connection,

statement of S.I. Daya Ram P.W. 7 is important. He is scribe of the inquest report. He has stated in cross-examination that he has reached the

spot in the night of 18/19.5.1996 before Tahsildar arrived there and at that time the family members of the deceased (parents' side) were there,

but no accused was found there. However, this witness could not state exactly as to whether the door of the room was bolted from inside or

locked from outside and does not remember as to how it was opened? He has very specifically stated that there was one door in the room and the

western wall was broken having such a big hole that a man can easily enter through it. The incident had taken place in the house of the accused

persons. Who had made hole in the western wall of the room where the dead body of the deceased was found hanging with the roof? No

explanation had come from the side of the defence, therefore, the natural inference would be that by closing the door of the room, the accused

persons made their escape good from the hole made in the western wall of the room towards the room of Maina (brother of accused Santosh).

Further, broken bangles were found from the room. If the deceased had himself committed suicide by hanging with the dhanni, then her bangles

would not have broken, as in that event there was no occasion for any resistance by the deceased. The bangles would break when force was used

with the deceased.

32. After perusing the statements of P.W. 1 and P.W. 2, it is quite apparent that their testimony is clear, cogent and reliable. They have not

exaggerated the incident at all. They have corroborated each other as also the written report. The last two ingredients for making out case within

the purview of "dowry death" stood fully proved beyond all reasonable doubt through their deposition before the trial court.

33. Accused Santosh had taken an alibi by examining his maternal aunt Bhagwan Dei D.W. 1, who had stated that accused Santosh was residing

with her in Unnao and was engaged as rickshaw-puller there. She has stated that on 18.5.1996 Dhunnu had come to her house and informed

about the incident and thereafter Santosh immediately left at about 4 p.m. However, accused Santosh has not stated a single word in his statement

u/s 313, Cr. P.C. about his residing with D.W. 1 at Unnao. On the contrary he has stated in answer to question No. 2 that he was residing with

Bhannar separately in the same house. It is also important to note here that no suggestion had been given either to P.W. 1 or P.W. 2 about living of

accused Santosh with his maternal aunt Bhagwan Dei in Unnao. P.W. 1 has very specifically stated in his examination-in-chief itself that at the time

of incident accused Santosh was living in village Maharajpur and still he is residing there. This fact has not been challenged by the defence in cross-

examination of P.W. 1. Similarly, no suggestion had been given to Mahadeo P.W. 2 in his cross-examination that at the time of incident Santosh

was living in Unnao with his maternal aunt Bhagwan Dei D.W. 1. In his examination-in-chief, this witness has stated that at the time of incident

Bhanner was living with Santosh. It is pertinent to note that although Bhanner accused is elder to Santosh but he was not married, so it does not

appeal to reasons that the newly wedded wife of Santosh would live with her jeth and her husband would live in Unnao. Statement of Babban

D.W. 3 is of no help to the accused as he is resident of village Bhairampur and has pleaded ignorance about the manner of death of Pushpa on

18.5.1996. In cross-examination he has stated that he does not remember the date when Pushpa died and on the day of incident he was not at

home. Thus, the defence has miserably failed to prove the alibi of accused Santosh.

34. Since the incident had taken place inside the house of the accused-appellant and no family member of the complainant was there at the alleged

time of incident, so the accused were required to give reasonable explanation as to the how and in what circumstances, the deceased has suffered

death at their house. In the case of Tulshiram Sahadu Suryawanshi and Another Vs. State of Maharashtra, , wherein it was held that:

A fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the

court exercises a process of reasoning and reaches a logical conclusion as to the most probable position. The above position is strengthened in

view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have

happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the

case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilized. Section 106 however, is not

intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the

prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless

the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the court to draw a different

inference.

As discussed above, the accused persons have failed to reasonably discharge their burden as was required from them vide Sections 106 and 113B

of Evidence Act. Thus, in my opinion, the prosecution has successfully proved the charges for the offences punishable under Sections 304B and

498A, I.P.C. against the accused-appellants. The appeal fails and is accordingly dismissed. As already stated, accused-appellant Bhanner has

served out the sentence awarded by the trial court, therefore, only accused Santosh is required to be taken into custody to serve out the remaining

part of his sentence. He is directed to surrender himself in the Court Chief Metropolitan Magistrate, Kanpur Nagar within 15-days from today,

else the learned Magistrate would procure his attendance by issuing coercive process against him.

35. Let certified copy of the judgment be sent to the court concerned and the Chief Metropolitan Magistrate, Kanpur Nagar for compliance, which

should be reported to the Court within six weeks positively.