

(2013) 05 GAU CK 0039

Gauhati High Court

Case No: Criminal Appeal No. 90 of 2012

Guljar Ali @ Guljar Hussain

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: May 29, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Dowry Prohibition Act, 1961 - Section 2
- Evidence Act, 1872 - Section 113B
- Penal Code, 1860 (IPC) - Section 302, 304B, 34

Citation: (2013) 3 GLD 895 : (2013) 3 GLT 437

Hon'ble Judges: P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench: Division Bench

Advocate: N. Zaman and Mr. P.C. Dey, for the Appellant; S. Jahan, Addl. P.P., for the Respondent

Final Decision: Allowed

Judgement

P.K. Musahary, J.

Heard Mr. P.C. Dey, learned counsel, appearing for the appellant and Ms. S. Jahan, learned Addl. Public Prosecutor, Assam for the respondent State. This appeal is directed against the judgment and order dated 28.4.2012 rendered by the learned Sessions Judge, Morigaon in Sessions Case No. 125/2010, corresponding to GR Case No. 882/2010, convicting the appellant under Sections 302 and 304B IPC and sentencing him to undergo rigorous imprisonment for life and to pay fine of Rs. 1000/-, in default to undergo rigorous imprisonment for another one month u/s 302 IPC and to undergo rigorous imprisonment for 7(seven) years u/s 304B IPC; with direction that both the sentences should run concurrently.

2. The prosecution case, as unfurled from the written FIR filed by one Abedur Rahman, is that soon after solemnization of marriage with his daughter, the

appellant and his family members started demanding a sum of Rs. 1 lac and a pulsar motor cycle as dowry and due to failure to fulfill the said demand, they tortured and killed his daughter Smti Jafrine Aktar by hanging inside their house. The police received the FIR and registered the Morigaon P.S. Case No. 119/10 u/s 304B/34 IPC. The IO, Tarun Ch. Kalita (P.W.-9), conducted the investigation. During the investigation he visited the place of occurrence, prepared a sketch map thereof, got (he inquest over the dead body held by Circle Officer (SDC) and also got the post mortem examination conducted in the Morigaon Civil Hospital on 22.8.2010. The I.O. recorded the statement of the witnesses and after collection of the post mortem report, submitted the charge-sheet against the present appellant only, without sending up the names of other three accused persons, u/s 304B IPC. On committal of the case by the concerned Magistrate, the learned Sessions Judge, Morigaon, considered the materials on record and framed charge u/s 302/304B IPC against the present appellant which was read over and explained to him. The appellant pleaded not guilty and claimed to be tried. Accordingly he stood the trial.

3. The prosecution, in order to prove the aforesaid charges examined as many as 9 witnesses, including the medical officer and the IO, but the appellant declined to examine any witness, although he was examined u/s 313 Cr.P.C. and offered a chance to adduce evidence in his defence. The learned trial Court, at the conclusion of the trial, and on consideration of the evidence on record and upon hearing the parties, passed the impugned judgment and order convicting and sentencing the appellant as mentioned earlier. Being dissatisfied with and aggrieved by the said judgment and order the appellant has approached this Court in appeal.

4. The written FIR was lodged by the father of the deceased. He has been examined as P.W.-2. He has proved the said FIR, Ext. 2 and his signature Ext. 2(1). As per his evidence the deceased was his first born daughter and she was married to the appellant. As stated by him, the appellant, just after 10/15 days of marriage, started demanding dowry of Rs. 1 lac in cash and a motor cycle from her daughter who, in turn, asked him (P.W.-2) to arrange the same but he could not fulfill the said dowry demand due to his financial unsoundness. Ten days before her death, his daughter informed him about the said dowry demand through his "nephew" over mobile phone. The house of the said nephew is located at a distance of two furlongs from the house of appellant Guljar Ali. On the day of incident, appellant Guljar AH killed his daughter in a merciless manner. The incident was a sequel to demand of dowry and the accused person told that her daughter had died by hanging herself. He visited his daughter's house and found her lying on the bed while some women massaging oil over her body. He could not see any sign of making attempt by the victim to kill herself by hanging. The appellant Guljar used to live with her daughter in the house. In cross-examination he stated that at the time of her marriage his deceased daughter was 13/14 years of age and she read up to class-IX. The appellant eloped his daughter. They brought her back home but again the appellant eloped her. Later on an agreement was signed between him (P.W.-2) and

appellant's mother in the Court on 10.11.09. Both Guljar (appellant) and deceased were in love. A village meeting was held over the said matter. It was agreed upon that the marriage between Guljar and Jafrine Akhtar would be solemnized later when Jafrine would attain majority. He sent his daughter to her maternal uncle's house but she came back and insisted on solemnization of her marriage with the appellant. She also threatened to commit suicide unless she was given in marriage to the appellant. He came to know about the appellant's dowry demand from one Rejia to whom his deceased daughter told over phone. However, he does not remember the date on which she made the phone call. The demand for dowry had been made once in a week and the said Rejia told him (P.W.-2) about the same at least on 10 occasions. However, he did not take any legal action against the dowry demand. He visited the appellant's house on one occasion only. He does not like the family members of the appellant as they are all ruffians. During cross-examination, he also stated that he disliked the appellant and his family members because they did not allow his daughter to come home in the Roza month. He did not notice any injury on the person of his deceased daughter. However, he heard that the appellant used to torture her both physically and mentally. He cannot say how his daughter died but he heard from people that she died by hanging. He saw the deceased being taken in a 108 ambulance vehicle to doctor but she had died already. He denied the suggestion that his daughter, being a minor, committed suicide out of extreme grief as he, being the father, did not bring her home nor did he allow her to come home. He lodged no complaint regarding the alleged dowry demand and torture on her daughter.

5. P.W.-1, Khabdur Rahman, is the cousin of the deceased. His house is located at a distance of 1 km only from the house of the appellant. He is a reported witness. He came to know from people that the deceased died by hanging. He came to the place of occurrence on a bicycle. He found a gathering of a number of people in the courtyard of the appellant. On arrival he found half of her body lying on the cot and another half on the floor. In cross-examination he stated that he did not see how the deceased died by hanging. He heard about the incident at about 3 P.M. He also heard that the accused assaulted the deceased with a stick.

6. P.W.-3, Nazmin Faruqui, is the younger sister of the deceased. She was aged about 7 years only on the date of deposition i.e. on 27.7.2011. She was a student of class-IV. She deposed that her elder sister married to Guljar (appellant). In the afternoon, on the day of occurrence, she had been to her sister's house to give her sweetmeats. There she met a girl who told her that she did not know where his sister had been. Then she proceeded to her sister's room but she found it locked. She was asked by the said girl to take a seat. She did not know the name of the said grown up girl. The said girl told her (P.W.-3) that she would find out her sister for her. The said girl, thereafter, came back with the mother-in-law of her elder sister, who asked her to bring her parents. She was informed that her sister was no more. She could not meet her sister. She was produced before a Magistrate who recorded

her statements vide Ext. 3 which bears her signatures Ext. 3(1) and 3(2). On being cross-examined she stated that on an earlier occasion she had been to her sister's house. It was her second visit to her sister's house. On that day, police interrogated her. She denied that she told the police that when she visited her sister's house, she saw a number of people in the courtyard. She also denied that door of her sister's room had been locked and that a girl asked her to take a seat assuring her that she would find her elder sister for her.

7. P.W.-4, Dr. Hiteswar Gogoi, is the medical officer, who held the autopsy on the dead body of Jafrine on police requisition on 22.8.2010 in the Morigaon Civil Hospital while he was posted as Senior Medical & Health Officer thereat. As per his evidence, after post mortem examination, he found the following:

(i) Lacerated injury 1/4" x 1/4" at the right side of fore-head just above lateral angle of right eye with dried blood covering right eye and right face extending to right ear.

(ii) A ligature mark of 1/4" wide oblique in right side and transverse and circular in left side with parchmentisation of tissues under it.

(iii) Fracture of the upper cervical spine. All internal organs are healthy.

On the basis of the said examination he opined that the cause of death was due to asphyxia as a result of hanging. He proved the post mortem report, Ext. 4 and his signatures, Ext. 4(1) and Ext. 4(2). On being cross-examined he stated that the dead body was brought to the post mortem room on 21.8.2010 and it was kept there for the night. According to him it was unlikely that lacerated injury could be caused by rats. He denied that the lacerated injury was caused by rats. He, however, stated that he found dry blood but he "found no contusion containing firm clot or staining of the tissues washing."

8. P.W.-5, Md. Muktab Ali, is a neighbour of Jafrine. He stated that the deceased was inside the room and she was "struggling inside the room as she was hanging from her churni". The deceased "was kicking and throwing her arms. People broke open the door and took her down from a hanging position." The service of 108 was requisitioned. She was sent to Hospital. Police came later. Later he heard that she had died in the hospital. She was present when police came and seized the churni. She signed the seizure list Ext. 5 and proved her signature, Ext. 5(1). She deposed that she was not having a visiting term with the family of the deceased and she had no knowledge why the deceased died. She also deposed that she never saw the deceased quarrelling with the appellant so long the appellant and the deceased were living together. In cross-examination also she stated that she did not see any quarrel between the deceased and her husband (appellant) nor did she hear anything about their quarrel. The deceased was treated by the appellant in an affectionate manner. She also stated that she did not meet any male member at the place of occurrence. They broke the door open, got into the room and brought her down from hanging position.

9. P.W.-6, Mushab Ali, is the driver of the ambulance vehicle. There is nothing significant in his deposition. P.W.-7, Lelina Begum, is the wife of appellant's brother. She stated that the sister of the deceased came looking for her. She saw Jafrine in a hanging position who was kicking her legs and hands. Seeing the deceased in that position, she shouted. Hearing her shouting, the nearby people came and broke open the door. The deceased Jafrine was then brought down from hanging position. Service of 108 was requisitioned and the deceased was taken to hospital at Morigaon. She heard Jafrine had died in the hospital. In cross examination, she stated that Jafrine has been maintaining good relationship with the appellant, his mother, sister etc. She also stated that she did not see any body in Jafrine's room when she was found in hanging state. P.W.-8, Babulal Hussain, is the brother of the appellant. As per his evidence he was not present at home on the date of occurrence. He resides in an adjacent house. The incident took place at 3 PM in the Ramjan month and on the day of occurrence, all the family members were away from home. On that day Jafrine's sister came to meet her and she did not find Jafrine, She was searching for her. In cross examination he stated that Jafrine was found alive while she was brought down from hanging position. He also stated that he did not know if there was any quarrel between the appellant and the deceased. They had love affairs and theirs was a love marriage. The door of the dwelling house was locked from inside. They put oil and massaged over her body to circulate her blood.

10. P.W.-9, Sri Tarun Ch. Kalita, is the I.O. of this case. He deposed that he came to the place of occurrence accompanied by C.O.(SDC). The said CO (SDC) held the inquest and sent the dead body to Morigaon Hospital for post mortem examination. He proved the inquest report, Ext. 6 and the signature of the CO (SDC), Ext. 6(1). He also prepared a sketch map of the place of occurrence, recorded the statement of the witnesses and seized one churni at the place where deceased was found hanging. He proved the said seizure list, Ext. 5 and his signature on it Ext. 5(1). He arrested the appellant Guljar Ali and on completion of the investigation, filed the charge-sheet u/s 302 IPC against the appellant. In cross-examination, he stated that he was present at the time of holding the inquest. At the time of holding inquest they found no injury on the body of the deceased. No mark of injury was also found on the face of the deceased.

11. We consider it relevant to briefly refer to and quote Section 304B IPC which deals with punishment relating to dowry death, hereunder:

304B. Dowry Death.--

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon after before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such

husband or relative shall be deemed to have caused her death.

Explanation: For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Section 304B IPC has been held to be a substantive provision creating a new offence and not merely a provision effecting a change in the procedure for trial of a pre-existing substantive offence.

12. The provision of Section 304B IPC has been discussed and considered by the Apex Court in [Kaliyaperumal and Another Vs. State of Tamil Nadu](#). In the said judgment it has been held that the essential ingredients attracting Section 304B IPC are that:--

(i) The death of a woman should be caused by burn or bodily injury or otherwise than under normal circumstances.

(ii) Such a death should have occurred within 7 years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand for dowry and

(v) Such cruelty or harassment is shown to have been meted out to the woman soon after the death.

In the present case there is no doubt that the victim died by hanging and as such she died an unnatural death under circumstances which is not normal. Her death occurred within few months of her marriage. However, there is no material or legal evidence to prove that she was subjected to cruelty or harassment by her husband or any relative of her husband.

13. In another case of [Kamesh Panjiyar @ Kamlesh Panjiyar Vs. State of Bihar](#), it has been held that the word "dowry" in Section 304B IPC has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. Under the said provision there are three occasions relating to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties." The settled position of law is that a case of "suicidal death of a woman within 7 years of marriage" is covered by the expression "death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances" as expressed in Section 304B IPC. In

view of the above law, since Jafrine, wife of the appellant, was found hanging inside the house and died later in the hospital, the provision of Section 304B IPC would be attracted in the present case. As per the evidence of the medical officer (P.W. 4), the victim died due to asphyxia as a result of hanging which shows that she died otherwise than under normal circumstances within a period less than one year after her marriage.

14. The demand for dowry itself is punishable under the law provided such demand is proved by direct or circumstantial evidence. Inference can also be drawn from the evidence on record as held in the [The State of Andhra Pradesh Vs. Raj Gopal Asawa and Another](#), . The legislation has taken a serious view on the increasing menace of dowry death and with a view to combat with it, Section 304B IPC and Section 113B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act, 1986. In the said case it has been held that presumption u/s 113B of the Evidence Act is a presumption of law. On proof of essentials mentioned therein, it has become obligatory on the court to raise the presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption have already been mentioned and quoted in the forgoing paragraph. It must be noted that as per the aforesaid judgment the prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case the aforesaid presumption would operate. Evidence in that regard has to be led by the prosecution. Following the decision in Raj Gopal (supra), the Apex Court again in the [State of Rajasthan Vs. Jaggu Ram](#), , held as under:

13. A conjoint reading of Section 304B IPC and Section 113B, Evidence Act, shows that in order to prove the charge of dowry death, prosecution has to establish that the victim died within 7 years of marriage and she was subjected to cruelty or harassment soon before her death and as such cruelty or harassment was for dowry. The expression "soon after her death" has not been defined in either of the statutes. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide whether there is any proximate connection between the demand of dowry, the act of cruelty or harassment and the death.

15. In view of the above decision, the Court has to consider whether the prosecution succeeded in establishing the existence of the ingredients of Section 304B IPC. We would now indulge in this exercise.

16. The witnesses examined by the prosecution are not eye witnesses. None of them had witnessed the incident of hanging of the victim by herself or by somebody. The incident took place at about 4 PM (afternoon) of 21.8.2010 inside the house of the appellant. The evidence of the prosecution witnesses is that they found the deceased in a hanging state and she was alive at the time when she was seen by some of the witnesses. Some ladies gathered at the place of occurrence, brought her down and massaged over her body with some oil to restore the blood

circulation and to save her life. They also requisitioned an ambulance vehicle and, in fact, shifted the deceased to Morigaon Civil Hospital but she died in the said hospital.

17. The evidence on record is enough to hold that the victim died due to hanging by her neck by a piece of cloth. The real question, in this case, is, whether it is a case of homicidal or suicidal hanging. As per evidence of P.W.-9, IO, was a party to holding of the inquest over the dead body. He found no injury on the body and face of the deceased. However, as per evidence of the medical officer, P.W.-4, there was lacerated injury, ligature mark and fracture of the upper cervical spine which might have been caused in the course of hanging. No clarification was sought from the medical officer as to why and how the victim sustained such lacerated injury and ligature mark. His opinion was not sought whether such lacerated injury and ligature mark could be sustained in the course of hanging or otherwise.

18. The medical evidence, except the aforesaid lacerated injury and ligature mark, does not disclose that the deceased sustained any injury on the other part of her body. Moreover, the medical officer, P.W.-4, offered no opinion as to whether the deceased died due to homicidal or suicidal hanging. In fact the defence put no question to the medical officer in this regard. The court of law, in absence of expert opinion, is not in a position to take a view as to whether it was a case of homicidal or suicidal hanging, more so, when there is no eye witness to the incident Nobody saw how the hanging took place. The hanging may be by herself or caused by somebody else. The former could be termed as suicidal and the latter as homicidal hanging.

19. Two possibilities have been found in this case. The prosecution side had taken the plea that the victim was hanged by the husband in collusion with the other family members (in-laws) as she could not meet their dowry demand. The poor parents of the deceased could not arrange cash amount of Rs. 1 lac and a motor cycle for which, out of anger, her husband and the in-laws finished her life by hanging. The IO, while submitting the charge sheet, did not send up the other accused persons (in-laws). The appellant, as the husband of the deceased was sent up to face the trial inasmuch as there was a strong suspicion against him. It was so suspected because the couple lived in the same house without any other family member. The accusing finger was pointed at the husband (appellant). The possibility or probability to commit murder of his wife by way of homicidal hanging can not be ruled out, but there must be some acceptable reason for committing such murder of his wife by her husband. Offence u/s 304B IPC is a serious offence and the prosecution must, first of all, prove that there is/was dowry demand(s) and the physical and mental torture or harassment is related to dowry demand. The court has to find out and must be satisfied from the evidence adduced by the prosecution that there was, in fact, dowry demand. In this case evidence has been led to the effect that the dowry demand was made 10 days before the death of the victim and her father was informed through his "nephew" over mobile phone, whose name has

never been disclosed by P.W.-2 (victim's father). The investigating agency took no pain to get the name of the said "Nephew". If they like, they could collect the said nephew's name and particulars because it was indicated that his house is only two furlongs away from the house of the appellant. As the said "Nephew" was not produced and examined as a witness, the evidence of P.W.-2, father of the deceased, stands uncorroborated in so far it relates to allegation of dowry demand of the appellant. In cross-examination, P.W.-2 also stated that he came to know about the appellant's dowry demand from one Rejia. The victim first informed about the dowry demand over phone to said Rejia and it was, in turn, informed to P.W.-2. The IO, in his evidence, never stated that P.W.-2 ever disclosed the said fact before him during investigation. The father of the deceased (P.W.-2), for the first time, made statement before the learned trial Court to the effect that his daughter informed him about the dowry demand of the appellant through his "Nephew" and Rejia. There was no previous statement of P.W.-2 before the I.O. or the Magistrate in this regard. This may be the reason why the I.O. did not cite the said Rejia or the "Nephew" as witnesses in the charge-sheet. That may also be the reason why the prosecution did not request the Court to summon the said Rejia and the "Nephew" as witnesses. It is a clear case of improvement of the case by the informant P.W.-2 to prove the charge that his daughter was killed by the appellant for not being able to meet the dowry demand.

20. We do not find P.W.-2 as a reliable and trustworthy witness as his evidence on the charge of dowry demand is as much unbelievable as baseless. That apart, we have found from the evidence of P.W. 5, 7 and 8 that the appellant and the victim, as a newly married couple, has been maintaining good relationship without any quarrel between them. The said P.W. 5, 7 and 8 are co-villagers and related witnesses. None of them has stated that the victim was ever subjected to physical and mental torture and harassment by the appellant husband and his other family members on dowry demand. There is not even a whisper in the evidence of the said witnesses that the appellant and his family members demanded dowry at any point of time and they subjected the victim to physical and mental torture on demand of dowry. Normally, in the village when there is a dowry demand and torture on woman by the husband and in-laws, it hardly remains as secret or undisclosed to the neighbours. It is because the rustic and unsophisticated simple living villagers do not know how to conceal the family affairs. Had there been a problem arisen out of dowry demand, it would have been leaked to or made known to co-villagers or at least the neighbours. We have already found that P.W. 5, 7 and 8 are all related and neighbours. There is no evidence that the victim ever disclosed to the said witnesses or any co-villager about the alleged dowry related quarrel, harassment, torture etc. before her death.

21. P.W.-2, in his evidence stated that the appellant and his family members demanded dowry on as many as 10 occasions but there is no substance in it inasmuch as material particulars such as the dates, if not all, even few dates, were

not mentioned, on which such dowry demand was made and physical or mental torture was meted on the victim. His evidence in this regard has not been corroborated by any independent witness or co-villager or neighbour of the deceased. Even the related witnesses have made no statement supporting the evidence of P.W. 2 that the appellant made repeated dowry demand on 10 occasions. We have already stated earlier that the "Nephew" and Rejia, before whom the deceased divulged the dowry demand, were not examined by the prosecution and we have disbelieved this portion of the evidence of P.W.-2 and came to a conclusion that it was an improvement in the prosecution case. The investigating agency or for that matter the prosecution, as a whole, cannot be blamed for not examining the said "Nephew" and Rejia as witnesses inasmuch as P.W.-2, as father of the victim, did not disclose this fact before the I.O. during investigation. There is no lapse on the part of the prosecution in not examining the said persons. Had it been disclosed or found reflected in the police report and yet the prosecution failed to examine them, it would have amounted to withholding of important witness attaching serious consequence which may be fatal to prosecution. We do not want to attribute any adverse comments against the I.O. and the prosecution but we must say that P.W.-2, as father of the victim, took shelter on falsehood by making allegation without any proof or basis.

22. Indisputably, in this case, there is no eye witness or direct evidence that the deceased was subjected to physical or mental torture due to non fulfillment of dowry demand. So also it is an indisputable position that there is no evidence, direct or indirect, proving the fact that the appellant and his parents and other family members demanded dowry as alleged by P.W.-2 compelling her to take recourse to suicidal hanging to finish her life.

23. In the other way, it is needless to say that the charge of commission of dowry related murder could also be proved by circumstantial evidence but we fail to find any such incriminating circumstantial evidence against the appellant. There is no circumstantial evidence linking the appellant with the death of his wife who was found hanging inside the house/room where they were living. The incident, as disclosed in the police report, took place at about 4 pm in the afternoon. The prosecution adduced no evidence to the effect that the appellant was in the house/room at the relevant point of time; say just before or at the time of or immediately after the incident of hanging. No evidence has also been adduced to prove that the appellant was present or last seen with his wife (deceased), by some body so as to connect or link the appellant with the death of his wife or to draw a legal inference that the hanging of the victim could be done by the appellant only and not by any other person. None of the prosecution witnesses has testified that the incident of hanging took place while the appellant was present at home. The little girl, P.W.-3, who visited her sister's (deceased's) house on the date of occurrence to present "sweetmeat", has not stated that she found/met the appellant at his home during her visit. She, of course, deposed that she met the

other family members of the appellant and talked to a lady of the family. The incident did not take place in the night time and therefore, it can not be presumed that the couple were present together in the room. As the incident took place at about 4 PM, it can not be taken for granted that the appellant was present inside the house at the relevant point of time. In the present case, since the presence of the appellant inside the room or in the complex of the house, has not been proved, no presumption or inference could be drawn against him that he committed the homicidal hanging to kill his wife.

24. As discussed already, the evidence of the prosecution witness is that there was a continued good relationship between the couple and nobody had seen or heard that any quarrel took place between the couple prior to the incident. The cogent evidence is that they had love affairs and they got married although Jafrine had not attained the marriageable age and there was a legal bar and objection to such marriage from their parents, particularly P.W. 2, father of Jafrine. We have found in the evidence that some women folk tried to save the life of the victim by doing massage over her body. She was not found dead at that time and so an ambulance was requisitioned to shift her to hospital. Before her death she did not indicate or disclose to persons who were present at the time of massaging her, that she was hanged by her husband or she had been tortured or harassed for not being able to meet the dowry demands.

25. In view of the above discussion, we are not persuaded to accept the view that the prosecution has been able to prove the charge of Section 304B and 302 IPC against the appellant beyond reasonable doubt and to uphold the conviction and sentence as awarded by the learned trial Court. As the charges have not been proved beyond reasonable doubt, the order of conviction and sentence as passed by the learned trial court vide judgment which is under challenge, is liable to be set aside. It is accordingly set aside and quashed. The appellant stands acquitted on benefit of doubt. He be set at liberty forthwith if his further detention is not required in connection with any other case. Appeal succeeds. The bail bond stands discharged.

Return the LCR forthwith.