(2014) 07 JH CK 0030

Jharkhand High Court

Case No: Cr. Appeal (DB) No. 145 of 2004

Nirmal Kumar Jha		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: July 16, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 162, 170, 173, 313
- Dowry Prohibition Act, 1961 - Section 2
- Evidence Act, 1872 - Section 113B, 113B, 3, 45, 73
- Penal Code, 1860 (IPC) - Section 304B, 304B, 498A, 498A

Citation: (2014) 4 AJR 156 : (2015) 1 DMC 303

Hon'ble Judges: P.P. Bhatt, J; Dhirubhai Naranbhai Patel, J

Bench: Division Bench

Advocate: Kailash Prasad Deo, Aashish Kumar, Ritesh and Rakesh Kumar, Advocate for the Appellant; Sadhna Kumar, A.P.P, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dhirubhai Naranbhai Patel, J.

This criminal appeal has been preferred against the judgment and order of conviction and sentence, passed by the Sessions Judge, Godda, in Sessions Case No. 143 of 1999 dated 24th December, 2003 whereby, these appellants have been convicted for the offence punishable under Sections 304B and 498A of the Indian Penal Code. Appellant No. 1 has been sentenced to undergo imprisonment for life for the offence under Section 304B of the Indian Penal Code and two years rigorous imprisonment under Section 498A of the Indian Penal Code and appellant Nos. 2 to 4 have been sentenced to undergo rigorous imprisonment for seven years for the offence under Section 304B and rigorous imprisonment for two years for lie offence under Section 498A of the Indian Penal Code. Both the sentences have been ordered to run concurrently.

Case of the Prosecution:

2. It is the case of the prosecution that on 25.07.1999 at 11.30 a.m. the informant Anil Chandra Thakur (P.W.-II) gave fardbeyan to police that on 14.03.1994 his daughter Swarnlata Devi (deceased) was married with Nirmal Kumar Jha (accused) according to Hindu rites and customs and second marriage (Duragaman) of the informant daughter took place in the year 1995. Thereafter, husband of the deceased, father-in-law, mother-in-law and her two brother-in-laws started harassing the daughter of the deceased for demand of dowry in various ways and for dowry Nirmal Kumar Jha has written many letters to the informant. Thereafter, on 03.05.1999, the informant with his son Bipin Chandra Thakur went to the village Haripur to brought his daughter, but, her-in-laws (Sasural) family members did not allow her to go. Then there was a sitting with the villagers in which Nirmal Kumar Jha and his mother and father had told them that they will keep Swarnlata Devi properly. On 25.07.1999, Chintamani Kapri of village Haripur came to his house and told him that his daughter Swamlata Devi has died this morning. After hearing about the death of his daughter, informant alongwith his son Bipin Chandra Thakur and with his wife went to village Haripur and saw the dead body of his daughter Swarnlata. After seeing her body informant found injury marks on the body, hand, neck, leg, lip and back of his daughter and those injury marks, inflicted on his daughter body were caused by assault committed by his daughter''s husband, mother-in-law, father-in-law and her two brother-in-laws. The informant further alleged that his daughter Swarnlata Devi was killed for dowry by (1) Nirmal Kumar Jha, (2) Sahdeo Jha, (3) wife of Sahdeo Jha, (4) Hemant Kumar Jha, (5) Suman Kumar Jha.

Witnesses:

3. Following twelve witnesses were examined by the prosecution:-

4. One witness was examined by the defence.

Arguments of Appellant:

5. Counsel for the appellants submitted that there are major omissions, contradictions and improvements in the depositions of the prosecution witnesses. These aspects of the matter have not been properly appreciated by the learned trial court and hence, judgment of conviction and order of sentence passed by the learned trial court deserves to be quashed and set aside.

6. It is submitted by counsel for the appellants that in the present case, star witnesses are P.W. 7, P.W. 8 and P.W. 11 and their depositions are to be read viz-a-viz the deposition given by the Investigating Officer (P.W. 12) and viz-a-viz evidence given by the doctor (P.W. 10), who has carried out postmortem of the dead

body of the deceased. Rest of the witnesses have turned hostile. It is submitted by counsel for the appellants that looking to the First Information Report, it is ante-timed, as P.W. 7 has stated in paragraph-1 of her cross-examination that she came at the village where the offence has taken place at about 02:00 p.m. whereas fardbeyan is of the same date i.e. 25.07.1999 at about 11:30 a.m. Thus, when the witnesses are coming in the village where the offence has taken place at 02:00 p.m., there cannot be fardbeyan at 11:30 a.m. Similarly, P.W. 8, who is brother of the deceased, has also stated in paragraph-1 of his deposition that incident has taken place at about 01:45 p.m. to 02:00 p.m. This also falsify the fardbeyan recorded at 11:30 a.m. Similarly, the last line of the deposition of P.W. 8 reveals that the person, who has given intimation to the informant and the parents of the deceased, is one Chintamani, who has never been examined by the prosecution. He was sent by the police to give information to the parents of the deceased meaning thereby the offence was already revealed to the police before Chintamani reaches to the village at which the parents of the deceased were stayed and before Chintamani gives information to the parents of the deceased, the fact was already disclosed to the police. Similarly, looking to paragraph-1 of the deposition of P.W. 11, the father of the deceased, he has stated in his deposition that First Information Report was recorded at the police station whereas, looking to the document-First Information Report which is at Ext. -3, it was recorded at the village and moreover, looking to the deposition given by P.W. 12-Investigating Officer, a person who has recorded the First Information Report, namely, Nageshwar Das-police witness has not been examined by the prosecution. This has caused serious prejudice to the defence. Cumulative effects of the depositions of these witnesses i.e. P.W. 7 to be read with deposition of P.W. 8 to be read with the deposition given by P.W. 11 to be read with deposition of P.W. 12, it is submitted by the counsel for the appellants that the First Information Report is ante-timed.

7. It is further submitted by counsel for the appellants that the letters, which are referred by P.W. 8 in paragraph-2 of his deposition, which are exhibited as Exts.-1 and 1/1 were never narrated before the police in his statement recorded under Section 161 of the Code of Criminal Procedure nor these two documents were never produced before the police. If the prosecution is relying upon these documents, which are at Exts. 1 and 1/1 as per Sub-Section 5 of Section 173 of the Code of Criminal Procedure, these documents ought to have been made part and parcel of the chargesheet. No copy of these documents has ever been given to the accused. Moreover, these documents have not been sent to the handwriting expert/experts. Prima facie, looking to the handwriting of letters at Exts. 1 and 1/1, there are difference in the size of the hindi letters. Both are apparently different. Upon one of the letters, postal stamp reveals last figure as "2". How this stamp reveals "2" is also not known because the alleged incident has taken place in the year 1999 and the deposition given by P.W. 8, who has produced these documents is of the year December, 2001. This is how there can be on postal stamp mostly revealing the date

of last figure as "2". All these aspects have not been properly appreciated by the learned trial court. In fact, these documents cannot be relied upon by the prosecution, looking to Sub-section 5 of Section 173 of the Code of Criminal Procedure. Neither the handwriting of the accused has been taken as an undisputed handwriting for matching with handwriting of these two letters, in fact, these documents have not been proved at all. It is submitted by counsel for the appellants that the contents of these two documents are not proved as per the evidence given under Section 3 of the Indian Evidence Act, 1872 and the learned trial court ought not to have believed the facts stated in these documents to exist. The learned trial court has wrongly relied upon these two documents. A prudent man would not have come to the conclusion that these documents are proved. These aspects of the matter have not been properly appreciated by the learned trial court. It is further submitted by the counsel for the appellants that the statement recorded under Section 313 of the Code of Criminal Procedure by the learned trial court reveals that not a single question about these two letters at Exts. 1 and 1/1 has ever been asked to any of the accused or appellants and, therefore also, these two documents cannot be relied upon. These aspects of the matter have also not been properly appreciated by the learned trial court, in fact, the prosecution has failed to prove the demand of dowry by these appellants.

8. Counsel for the appellants has taken this Court to the definition of the word "Dowry" as defined under Section 2 of the Dowry Prohibition Act, 1961 and it is submitted that assuming without admitting that there was a demand of amount, but, it has not causal connection with the marriage at all. In fact, the prosecution is saying one thing in the First Information Report, another thing in the deposition of the prosecution witnesses and in their statements recorded under Section 161 of the Code of Criminal Procedure, there is no reference of Rs. 10,000/- or Rs. 20,000/- or colour television or cow. Different items are narrated by different prosecution witnesses. Someone is saying Rs. 10,000/-, some prosecution witnesses are saying Rs. 20,000/- and some are saying colour television and some witnesses are saying cow and in the First Information Report without quantifying the amount Rs. 10,000/- or Rs. 20,000/- general demand of money is referred. Thus, not only there is contradiction in the depositions of the prosecution witnesses, but, also there are major inconsistencies in the depositions of the prosecution witnesses and therefore also, the judgment of conviction and order of sentence passed by the trial court deserves to be quashed and set aside.

Arguments by the State:

9. It is submitted by the counsel for the State-A.P.P. that no error has been committed by the learned trial court in appreciating the evidences on record. The prosecution has proved the offence under Section 304B of the Indian Penal Code as well as under Section 498A of the Indian Penal Code beyond reasonable doubt. Immediate is the First Information Report in this case. The incident has taken place

on 25.07.1999 during morning hours and fardbeyan of the informant-P.W. 11 was recorded on the same day at about 11:30 a.m. and First Information Report was lodged on the same day at about 15:00 hours at Godda (M) Police Station being Godda (M) P.S. Case No. 242 of 1999.

10. It is submitted by the State-A.P.P. that looking to the depositions given by P.W. 7, who is mother of the deceased, P.W. 8, who is brother of the deceased and P.W. 11 - informant - father of the deceased, the prosecution has proved that these appellants were constantly torturing the deceased Swarnlata Devi and they were demanding dowry either in cash or kind and as the informant side could not satisfy the demand of dowry, these appellants have committed murder of Swarnlata Devi on 25.07.1999 and several injuries were also observed by the prosecution witnesses upon the body of the deceased and there is enough medical evidence in support of the deposition given by P.W. 7, P.W. 8 and P.W. 11 and the medical evidence given by P.W. 10-Dr. Kula Nand Choudhary, who has carried out postmortem of the dead body of the deceased, which is at Ext. -2. There are several injuries upon the body of the deceased. These evidences have also been properly appreciated by the learned trial court and the prosecution has therefore, proved the offences under Section 304B and 498A of the Indian Penal Code.

11. It is further submitted by the counsel for the State-A.P.P. that not only there is an oral evidence before the learned trial court, but, there are documentary evidences also which are at Ext. 1 and 1/1, in the form of two letters written by appellant No. 1 (original accused No. 1 of the sessions trial). These two letters, which are referred in paragraph-23 of the judgment delivered by the learned trial court, are proved by the prosecution and given exhibit numbers also. They are referred by P.W. 8 in his cross-examination. These two letters have also been referred by other two prosecution witnesses. Looking to these documentary evidence also there was torturing by these appellants to Swarnlata Devi and there was a demand of dowry and if this demand is not satisfied they will commit murder of the deceased. In fact, as the informant side persons could not satisfy the demand of dowry they have committed murder of the Swarnlata Devi by causing several injuries which have been also proved by the postmortem report, which is at Ext.-2 and hence, the offence under Section 304B and 498A of the Indian Penal Code have been proved by the prosecution beyond reasonable doubt and hence, this Court may not interfere with the judgment of conviction and order of sentence passed by the learned trial court and therefore, this criminal appeal may not be entertained by this Court.

Reasons:

12. Having heard the counsels for both the sides and looking to the evidences on record, it appears that P.W. 11-Anil Chandra Thakur, who is an informant and rather of the deceased, has given fardbeyan on 25.07.1999 before Godda (M) Police Station that on the same day at about 07:00 hours to 07:30 hours, he was informed by Chintamani Kapri (P.W. 1) that his daughter (Swarnlata Devi) has been murdered

and therefore, they rushed at village Haripur. No sooner did they come to the bus station of village Haripur, they came to know that the dead body of his daughter Swarnlata Devi has been sent to the hospital, they immediately rushed to the hospital where they saw the dead body of his daughter. He was accompanied by P.W. 7 (wife of P.W. 11 and the mother of the deceased) and by P.W. 8 (who is the brother of the deceased) and also by one Sunil (who has not been examined by the prosecution). Thereafter, fardbeyan was given at 11.30 a.m. on 25.07.1999 and on the same date at about 15:00 hours First Information Report was lodged at Godda (M) Police Station being Godda (M) P.S. Case No. 242 of 1999. Investigation was carried out. Statements of several witnesses were recorded by the Investigating Officer. Chargesheet was filed under Section 173 of the Code of Criminal Procedure and the case was committed to the sessions court being Sessions Case No. 143 of 1999 and on me basis of the evidence given by P.W. 1 to P.W. 12 as well as on the basis of the evidence given by the defence witness No. 1 and on the basis of documentary evidences, Exts. 1, 1/1, 2, 3/2, 5 and 6, Sessions Judge, Godda has convicted these appellants for the offence punishable under Section 304B and 498A of me Indian Penal Code. Appellant Nos. 2 to 4 have been sentenced to undergo rigorous imprisonment for seven years, each, for the offence punishable under Section 304B and two years rigorous imprisonment under Section 498A of the Indian Penal Code. Appellant No. 1 has been sentenced to undergo imprisonment for life under Section 304B of the Indian Penal Code and two years rigorous imprisonment under Section 498A of the Indian Penal Code. Against this judgment and order of conviction and sentence, the present criminal appeal has been preferred.

13. Looking to the deposition of the prosecution witnesses, it appears that P.W. 1, P.W. 2, P.W. 3, P.W. 4, P.W. 5, P.W. 6 and P.W. 9 have turned hostile and they have not supported the case of the prosecution. Thus, out of left out witnesses, P.W. 12, is an Investigating Officer and P.W. 10 is Doctor, who has carried out postmortem of the body of the deceased and the material witnesses are P.W. 7, P.W. 8 and P.W. 11, who are mother, brother and father of the deceased respectively, and as they are close relatives of the deceased we will examine their depositions with all circumspection and in detail.

14. Looking to the deposition given by P.W. 7-Bulbul Devi-mother of the deceased Swarnlata Devi, has given her deposition before the learned trial court and has stated in her examination-in-chief that colour television; cow and some cash was demanded by these appellants. This colour television, cow and cash has not been referred in the F.I.R. at all. Further looking to the cross-examination of P.W. 7 she has stated that one Chintamani Kapri, who has given information to the victim side persons about death of daughter of P.W. 11, she had given information at about 02:00 p.m. meaning thereby certainly after 12:00 noon, whereas, looking to the fardbeyan given by P.W. 11, the time is 11.30 a.m. This reveals that the First Information Report is ante-timed. Moreover, looking to the cross-examination of

this witness, it has been stated by her that she has not seen urine in the clothes of her daughter whereas, looking to paragraph-9 of the medical evidence given by P.W. 10, in case of throttling normally there shall be urination to the victim and the doctor has also not seen the stains of urine on the clothes of the deceased and it is a case of the defence that they have not caused murder or dowry death of the victim, but, she has expired because of diarrhoea. This witness in cross-examination has also referred one Sunil, but, the same person has not been examined as prosecution witness, who is an independent witness. Looking to overall examination of this witness, the prosecution has failed to prove the offence of dowry death under Sections 304B and 498A of the Indian Penal Code, beyond reasonable doubt. Moreover, this witness has not referred any letters which are Exts. 1 and 1/1. Such a vital document cannot be omitted by this witness, if these documents and letters are true, correct and genuine. This witness has also stated in the cross-examination that after the cremation of her daughter, they had stayed at the house of one Sri Gopal Babu, whereas, the husband of this witness (P.W. 11) has stated that after the cremation of his daughter, they had stayed in the corridor of one school. Thus, it appears that P.W. 7 is not giving correct version of the whole incident and the correct facts before the learned trial court. Moreover, looking to the cross-examination of this witness, she has stated that there was never any complaint filed by this witness about demand of colour television etc, and merely on the basis of suspicion, this witness says that these appellants might have committed murder of the deceased because they could not fulfill their demand of dowry. This witness has also failed to prove any cruelty or harassment committed by these appellants to the victim.

15. Looking to the deposition given by P.W. 8, who is brother of the deceased, has stated in paragraph-1 of his deposition that the information they got about the murder of his sister at about 01:45 p.m. to 02:00 p.m. and thereafter, they rushed in another village where the murder of his sister has taken place. Some of the relatives had gone by motorbike and some of the relatives had gone through public transportation. The fact remains that if the information they have received at 01:45 p.m. to 02:00 p.m. on 25.07.1999, there cannot be fardbeyan dated 25.07.1999 at about 11:30 a.m. This makes the prosecution case highly doubtful. The prosecution witnesses are not bringing truth before the Court or it appears that the First Information Report is ante-timed. Moreover, looking to the deposition of P.W. 8, he has stated in paragraph-1 of his deposition that there was demand of Rs. 20,000/- from these appellants. Thus, this witness has never stated in his examination-in-chief of a demand of colour television and cow. Cow and colour television have not been referred by this prosecution witness whereas, P.W. 7 - mother of deceased has stated about cash, cow and colour television. Moreover, Rs. 20,000/- demand as stated in examination-in-chief was never referred by this witness in his statement under Section 161 of the Code of Criminal Procedure before the police, as it reveals from paragraph-10 of the deposition of the Investigating

Officer-P.W. 12. Thus, if paragraph-1 of the deposition of P.W. 8 is read with paragraph-10 of the deposition of the Investigating Officer-P.W. 12, there is material improvement in the case of the prosecution by this witness about demand of cash of Rs. 20,000/- and when there is major improvement in the case of the prosecution as per Explanation to Section 162 of the Code of Criminal Procedure, it is a major contradiction in his deposition. This aspects of the matter have not been properly appreciated by the learned trial court. More the major contradictions in the deposition of any prosecution witness, the witness will render himself as an unreliable and untrustworthy witness. This is one major contradiction in his deposition. Further looking to the deposition of P.W. 8, he has referred two letters written by appellant No. 1 (original accused No. 1 of the Sessions Case), which are at Exts. 1 and 1/1. These two letters have also been referred by the learned trial court in paragraph-23 of the judgment delivered in Sessions Case No. 143 of 1999. As this witness is the brother of the deceased-close relative of the deceased, there are all chances of false implication of the accused and therefore, instead of discarding his evidence in totality, we shall scrutinize his evidence in detail. Looking to the deposition about the letters written by appellant No. 1, who is husband of the deceased, these two letters were never pointed out by this witness before the police, when statement under Section 161 of the Code of Criminal Procedure was recorded by the police and he has also admitted these facts in his cross-examination. Thus, these two letters are referred in the court for the first time by this witness. This is also a major improvement in the deposition of P.W. 8. This aspects of the matter have also not been properly appreciated by the learned trial court. Secondly, these two documents, which are Exts. 1 and 1/1, are never supplied along with paper of the chargesheet to the accused. For the ready reference Sub-section 5 of Section 173 of the Code of Criminal Procedure reads as under:

"173. Report of police officer on completion of investigation.-

(1) .....

(2) .....:.....

(3) .....

(4) .....

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

(6) .....

(7) .....

(8) ....."

(Emphasis Supplied)

In view of the aforesaid provision of the Code of Criminal Procedure, all the documents upon which the prosecution is relying upon must be supplied along with the papers of the report (popularly known as chargesheet).

16. Admittedly, these two letters were not the part and parcel of the chargesheet nor copy whereof has ever been given to the defence and, therefore, these two documents have very little evidentiary value, especially when the handwriting of Exts.-1 and 1/1 are materially different. We have closely perused these two documents. Ostensibly, looking to these two letters, which are written in Hindi script, one is having smaller size letters and another letter is having bigger size letters, apparently, prima facie, both are not written by the same person. In these circumstances, it was a duty of the learned trial court to send these two letters after taking undisputed handwriting of the accused to the handwriting experts. In fact, this exercise ought to have been done by the Investigating Officer, but, we are not finding fault with the Investigating Officer, because these two letters were never produced before the police nor these two letters are part and parcel of the chargesheet. These two letters were referred for the first time by P.W. 8 in the court and, therefore, it was the duty of the learned trial court that whenever there is slightest doubt in the minds of a Judge about the handwriting, instead of venturing upon, using power under Section 73 of the Indian Evidence Act, 1872, the rule of wisdom is to send these types of documents along with undisputed handwriting under Section 45 of the Indian Evidence Act. 1872 to get report of the handwriting experts and after getting report under Section 45 of the Indian Evidence Act, 1872, the discretion should be used by the learned trial court under Section 73 of the Act, 1872, if so required. This aspect of the matter has not been properly appreciated by the learned trial court. Powers under Section 73 of the Indian Evidence Act given to the Court, is to be utilized slowly. We have also perused the documents of letters at Exts. 1 and 1/1. Prima facie, handwriting are different. In the cross-examination of P.W. 8, he has admitted that these two documents were available with him, meaning thereby that these are not the documents which are found out subsequently after filing of the chargesheet. Cumulative effect of this fact and law is that these two documents namely Exts. 1 and 1/1 are not proved by the prosecution as defined under Section 3 of the Indian Evidence Act, 1872. A prudent man will not come to a conclusion that these two documents are proved, much less, a trained man like a Judge can say that these documents are proved. Moreover, this witness has stated as last sentence of his deposition, that when one Chintamani (P.W. 1), who reached the victim side persons, this witness and parents (who are P.W. 7 and P.W. 11) asked Chintamani (P.W. 1) that who sent him to inform P.W. 7, P.W. 8 and P.W. 11 about the incident, Chintamani (P.W. 1) staged that he was sent by police, meaning

thereby, the police had already an information about the offence and therefore, the offence was already revealed or disclosed before the police and hence, the fardbeyan given by P.W. 11 cannot be converted into an First Information Report because the facts of the offence were already known to the police. Thus, the First Information Report has riot been proved by the prosecution beyond reasonable doubt unless, it is ante-timed: Looking to the overall evidence of P.W. 8-close relative of the deceased-brother of the deceased, there are several material improvements and contradictions in his deposition. Number of material improvements and contradictions, in deposition of a prosecution witness, makes the witness untrustworthy and unreliable. This witness P.W. 8 is untrustworthy and unreliable witness looking to the examination-in-chief and cross-examination. This witness has also failed to prove the factum of cruelty committed by these appellants.

17. Looking to the deposition given by P.W. 11, who is Anil Chandra Thakur-informant and father of the deceased, he has stated in paragraph-1 of his deposition that these appellants were demanding Rs. 10,000/-. From paragraph-1, there is inconsistency in the prosecution version. First Information Report is silent about this quantified cash. P.W. 7 mother is saying some cash was demanded by the appellants. PW. 8 brother of the deceased in paragraph-1 of his deposition stated about Rs. 20,000/- cash demand and P.W. 11, who is father of the deceased, has stated about the demand of Rs. 10,000/-. In cross-examination of paragraph-10 of Investigating Officer, it has been stated that P.W. 11 has never given statement before the police under Section 161 of the Code of Criminal Procedure about demand of Rs. 10,000/-. Thus, not only there is inconsistency in the depositions of the prosecution witnesses, but, there is also contradiction in the deposition of P.W. 11 because he has never stated before the police about demand of Rs. 10,000/-. This aspect of the matter has not been properly appreciated by the learned trial court. Secondly, looking to paragraph-1 of the deposition of P.W. 11-informant and father of the deceased, it has been stated that in May, 1999, P.W. 11 was given threat that if the cash is not given these appellants will kill Swarnlata Devi. This very high sounding sentence was never stated before the police while his statement was recorded under Section 161 of the Code of Criminal Procedure, as stated in para-10 of the deposition given by the I.O. (P.W. 12). Thus, this is another major contradiction in the deposition of P.W. 11. Thirdly, this witness has also stated that the appellants were writing letters for demanding dowry and he also relied upon two letters Exits. 1 and 1/1 as stated hereinabove. Though victim side persons are claiming that they were having these two documents, but, not a single prosecution witness has ever stated before the police in their statement under Section 161 giving reference of these letters which are at Exts. 1 and 1/1 and this is also therefore, tantamounts to major contradiction in the deposition of P.W. 11 as per explanation to Section 162 of the Code of Criminal Procedure. Fourthly, these two letters cannot be relied upon by the prosecution looking to sub section 5 of Section 173 of the Code of Criminal Procedure. All the documents, which are relied upon by

the prosecution, must be supplied alongwith the papers of the report under Section 173 of the Cr.P.C. to the accused. In the facts of the present case, admittedly, these documents were never part and parcel of the chargesheet. Fifthly, this witness stated that his statement was recorded in hospital on 25.07.1999 whereas, looking to fardbeyan which is Ext. 3, 3/1 and 3/2, as per the police the statement of informant was recorded in the village. Thus, prosecution has failed to prove the First Information Report and fardbeyan. Different versions are coming out from the different prosecution witnesses which reveals inconsistencies in the stand of the prosecution and there are major contradictions also in the depositions of the prosecution witnesses. F.I.R. is ante-timed. Moreover, there is no reference in the First Information Report about demand of Cash, Cow or Colour television. Every witness has given different version before the learned trial court.

18. Moreover, the demand of cash and kind has no causal connection with the marriage. Section 2 of the Dowry Prohibition Act, 1961 reads as under:-

"2. Definition of ''dowry''.- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before [or any time after the marriage] in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

(Emphasis Supplied)

19. Section 304B of the Indian Panel Code reads as under:-

"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 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."

(Emphasis Supplied)

20. Looking to these two Sections whenever there is a dowry death of a women caused within 07 years of marriage there is also presumption under Section 113B of the Indian Evidence Act, 1872 and as per explanation given to Section 304B of the Indian Penal Code "dowry" should have been the same meaning as defined under Section 2 of the Act, 1961 and looking to the definition of word "dowry" under the Act, 1961, every demand of money by husband or relatives of the husband is not dowry. The demand should be in connection with the marriage. It may be at the time of marriage, before the marriage or after the marriage, but, the sine qua non of the definition of word "dowry" is that the demand of cash and kind must be "in connection with the marriage". This essential ingredients of Section 2 of the Act, 1961 is not proved by the prosecution. Not a single prosecution witness has stated about this aspect of the matter.

21. In fact, there is major contradictions, omissions and improvements about the demand itself, as stated herein above. Cash, cow and colour television are not referred in the First Information Report and different prosecution witnesses have given different version and there is no connection of this demand with the marriage looking to the evidence laid before the learned trial court and hence, there is no presumption against these appellants under Section 113B of the Indian Evidence Act. The so called two letters at Exts. 1 and 1/1 have also not been proved by the prosecution. These aspects of the matter have not been properly appreciated by the learned trial court. Thus, neither the prosecution has failed to prove the offence committed by these appellants of dowry death under Section 304B of the Indian Penal Code nor the prosecution has proved the offence under Section 498A of the Indian Penal Code especially looking to the inconsistence depositions of all the prosecution witnesses that they are referring Panchayati held at the house of these appellants, but, not a single prosecution witness has been examined proving the Panchayati taken place at the house of these appellants. Bare allegation cannot prove the facts. Moreover, the witnesses are saying that they are presuming that these appellants have committed dowry death of Swarnlata Devi. Hundred possibility cannot be equated with one truth The factum of dowry death has to be proved by the Prosecution beyond reasonable doubt and as stated hereinabove, there are major omissions, contradictions and improvements in the depositions of P.W. 7, P.W. 8 and P.W. 11 when their depositions are read with the depositions given by P.W. 12-Investigating Officer and when their depositions are read alongwith First Information Report and they are untrustworthy and unreliable prosecution witnesses-P.W. 7, P.W. 8 and P.W. 11 and the prosecution has failed to prove the offence of dowry death as well as cruelty committed by the husband (appellant No. 1) and the relatives of the husband (appellant Nos. 2, 3 and 4).

22. It has been held by the Hon''ble Supreme Court in the case of Appasaheb and Another Vs. State of Maharashtra, especially in paragraph Nos. 10 and 11 which read as under:

"10. Section 2 of the Dowry Prohibition Act reads as under:

"2. Definition of ''dowry''.--In this Act, ''dowry'' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies."

11. In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. and Chemical and Fibres of India Ltd. v. Union of India.) A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained.&#65533;
(Emphasis Supplied)

23. It has been held by the Hon''ble Supreme Court in the case of Trust Jama Masjid Waqf No. 31 Vs. Lakshmi Talkies and Others, especially in paragraph Nos. 17 to 20, which read as under:

"17. As has been mentioned hereinbefore, in order to hold an accused guilty of an offence under Section 304-B IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be shown that soon

before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned.

18. In this case, one other aspect has to be kept in mind, namely, that no charges were framed against the appellants under the provisions of the Dowry Prohibition Act, 1961 and me evidence led in order to prove the same for the purposes of Section 304-B IPC was related to a demand for a fan only.

19. The decision cited by Mr. R.P. Gupta, learned Senior Advocate, in Biswajit Halder case was rendered in almost similar circumstances. In order to bring home a conviction under Section 304-B IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed to fully satisfy the requirements of both Section 113-B of the Evidence Act, 1872 and Section 304-B of the Penal Code.

20. Accordingly, we are unable to agree with the views expressed both by the trial court, as well as the High Court, and we are of the view that no case can be made out on the ground of insufficient evidence against the appellants for conviction under Sections 498-A and 304-B IPC. The decision cited by Ms. Makhija in Anand Kumar case deals with the proposition of shifting of onus of the burden of proof relating to the presumption which the court is to draw under Section 113-B of the Evidence Act and does not help the case of the State in a situation where there is no material to presume that an offence under Section 304-B IPC had been committed."

(Emphasis Supplied)

24. In view of these two decisions rendered by the Hon''ble Supreme Court, every demand of a money never tantamounts to dowry unless demand is in connection with the marriage, either at the time of marriage, before the marriage or after the marriage-Looking to the evidences given by P.W. 7, P.W. 8 and P.W. 11, the prosecution has failed to prove these aspects of the matter. In fact, the prosecution has failed to prove the demand of cash and kind beyond reasonable doubt. The letters at Exts. 1 and 1/1 have also not been proved by the prosecution nor any question has put before the accused while recording statements under Section 313 Cr.P.C.

25. As a cumulative effect of these evidences on record, the prosecution has failed to prove the offences as alleged by them against these appellants. We, therefore, allow this criminal appeal and the impugned judgment of conviction and order of sentence dated 24th December, 2003, passed by the Sessions Judge, Godda in Sessions Case No. 143 of 1999 is quashed and set aside. The appellants are acquitted from the charges levelled against them. The appellant Nos. 2, 3 and 4, who are already on bail, are discharged from the liabilities of their respective bail

bonds. The appellant No. 1, who is in jail custody, is directed to be released forthwith from the jail custody, if not wanted in any other case.