Ravipal Singh Vs State of M.P.

Criminal Appeal No. 117 of 2014

Court: MADHYA PRADESH HIGH COURT (GWALIOR BENCH)

Date of Decision: Aug. 2, 2016

Acts Referred:
Penal Code, 1860 (IPC) - Section 302, Section 304B, Section 498A

Citation: (2016) 3 JabLJ 207

Hon'ble Judges: Sheel Nagu and Vivek Agarwal, JJ.

Bench: Division Bench

Advocate: J.M. Sahani, Panel Lawyer, for the Respondent/State; Atul Gupta, Advocate, for the Appellant

Final Decision: Disposed Off

Judgement

Vivek Agarwal, J. - This appeal has been filed by the appellant, Ravipal Singh being aggrieved by judgment dated 23.12.2003 passed by 10th

Additional Sessions Judge (Fast Track Court), Gwalior in Sessions Trial No.330/2001 vide which the present appellant has been convicted under

sections 302,304B and 498A IPC and sentenced with life imprisonment for offence under section 302 IPC and ten years rigorous imprisonment

for offence under section 304B IPC. Beside the present appellant, accused Surendra Pal Singh Bhadoriya father and Pushplata mother of the

present appellant were acquitted under the provisions of sections 304B and 302 of IPC but were convicted under section 498A IPC with rigorous

imprisonment for two years and fine of Rs.2,000/-each. In default of payment of fine, further rigorous imprisonment of six months was imposed.

During the pendency of the present appeal, it is submitted that both the co-accused namely Surendra Pal Singh Bhadauriya and Pushplata have

died, therefore, appeals filed by them have abated. It is further submitted that Miscellaneous Criminal Case No. 1126/2004 seeking leave to

appeal filed by the State against acquittal of those two co-accused under section 302 and 304B has been rejected vide order dated 23.1.2012

and their acquittal under sections 302 and 304B was affirmed by this Court.

Factual Matrix:

2. The prosecution case in brief is that marriage of the deceased Smt. Aruna @ Rani was solemnized with the appellant on 10.3.1999. On

9.4.2001 wife of the appellant Smt. Aruna @ Rani was found dead. Post-mortem was conducted on her body on 10.4.2001 and it was found that

Aruna died on account of strangulation.

2.1. A case against the accused persons including the present appellant, Surendra Pal Singh father of the appellant and sisters of the appellant was

registered under sections 304B, 498A and 302 IPC for causing dowry death of Aruna @ Rani by torturing her for dowry and cruelty. The

accused Pushplata was charged under sections 498A and 302 IPC for demanding dowry and causing physical and mental torture and cruelly" to

Aruna, wife of the present appellant and causing her murder.

2.2. The facts which are not in dispute are that Aruna @ Rani was married to present appellant Ravipal Singh on 10.3.1999. The accused

Surendra Pal Singh was father in law of the deceased whereas accused Pushplata was mother in law of the deceased whereas accused Deepa @

Dipika, Recta and Usha are sisters in law of the deceased. It is also not in dispute that death of Aruna @ Rani, wife of the present appellant had

taken place in the matrimonial home at Gwalior situated at Rachna Nagar, Near Yash Petrol Pump under Police Station Gola Ka Mandir on

9.4.2001 before 12 noon.

2.3. The case of the prosecution is that the parents of the deceased Aruna @ Rani had spent cash amount in addition to offering various gifts on

the occasion of various ceremonies performed for solemnizati on of marriage of the deceased with the present appellant. It is the case of the

prosecution that the accused persons also demanded a motorcycle, colour TV and Rs. 10,000/- in dowry and for such demands deceased Aruna

@ Rani was tortured and beaten. It was further alleged that Aruna @ Rani was not taken in vidai from her parental house even after three months

of marriage despite requests made by brother and other relatives of the deceased because the accused wanted to take Aruna to his home only on

fulfilment of their demand of dowry. At last Aruna was taken to her matrimonial home upon surety of her Phoopa, Chandra Pal Singh that if dowry

items as demanded are not handed over by the complainant"s family then he shall fulfil those demands at his level. It was further alleged that

accused persons used to treat Aruna with cruelty and used to beat her for fulfilment of demand of dowry. Though Colour IV and cash was given to

the appellant"s family but motorcycle could not be arranged as a result torture to Aruna at the hands of accused and his relatives continued. It is

further part of the prosecution story that even at the time of marriage, the appellant Ravipal had left the mandap for demand of dowry and his father

Surendra Pal Singh had persuaded him to complete marriage ceremonies. Again at the time of kaleva appellant had demanded motorcycle but

when complainant expressed his inability due to financial constraint, the appellant had refused to accept the meals. It was also averred that the

appellant never visited his in-laws house after marriage and had also not visited them for vidai of Aruna. In fact brother of deceased used to pick

and drop Aruna from her matrimonial home. Once accused Surendra Pal Singh had visited the complainant"s house for vidai of Aruna and at that

time also he had putforth demand for dowry items.

2.4. The prosecution charge is that on 9.4.2001 appellant had committed murder of Aruna due to non-fulfilment of demand of dowry items and the

appellant had not given any information to the immediate family members i.e. parents of the deceased but had merely informed one relative Neelu

Bhadoriya over telephone about the death of Aruna. Aruna"s father namely Member Singh had reached Gwalior to sec. Aruna in dead condition.

On 9.4.2001, on intimation the police had registered Crime No.8/2001 under section 174 of CrPC and had investigated the matter. Panchnama

Ex. P-6 was prepared in presence of the witnesses, and after preparation of the said panchnama body of the deceased was sent to Jay Rogya

Hospital along with inquest report where autopsy was conducted by Dr. Madhup Kumar and Dr. Y.S. Kushwah, report of which is Ex.P-3.

2.5. Ex.P-4 is the report made by Member Singh, father of the deceased to the Station House Officer, Police Station Gola Ka Mandir, Gwalior.

On the basis of Ex.P-4, after investigation said police station had registered a case against the accused on 12.4.2001.

2.6. During the investigation on 9.4.2001, the police had prepared spot map (Exhibit P-8) and had seized piece of red saree from the hook of the

fan fitted in the room which is the scene of the crime so also another piece from the floor of the said room beside a chalkani vide seizure memo

Ex.P-9. List of items handed over in dowry was supplied by the father of the deceased on 15.4.2002 vide Ex.P-10, marriage card seized is Ex.P-

11. A Panchnama Ex.P-12 was prepared in regard to two sealed bottles of viscera of Aruna and clothes of the deceased and a packet of salt.

They were sent for chemical analysis vide letter dated 8.5.2001 Exhibit P-16 to Superintendent of Police. On completion of investigation, challan

was filed in the Court of .JMFC from where the matter was committed to the Sessions Court.

2.7. The following charges were framed against the appellant :

;g fd fnukad 09-04-2001 dks 12 cts jpuk uxj Xokfy;j esa rqeus v:.kk] ftlds lkFk vfHk;qDr jfoiky flag tks fd rqEgkjk iq= gS] dk fookg fnukad

10-03-1999 dks gqvk Fkk] dh "kkjhfjd {kfr ls QkWalh yxkus lsA lkekU; ifjfLFkfr;ksa ls fHkUuA vizkd`frd e`R;q gqbZ rFkk mldh e`R;q ds

iwoZ rqe tks fd v:.kk ds llqj gksrs gq,] ngst dh ekWax ds fy;s mlds lkFk dzwjrkiw.kZ O;ogkj dj izrkfM+r fd;k vkSj fnukad 09-04-2001 dks jpuk

uxj Xokfy;j esa d:.kk dh ngst e`R;q dkfjr dh vkSj blds }kjk rqeus ,slk dk;Z fd;k tks Hkk0n0fo0 dh /kkjk 304&ch ds v/khu naMuh; vijk/k gS ftlds

laKku ysus dh vf/kdkfjrk bl U;k;ky; dks izkIr gSA fodYi ;g fd fnukad 09-04-2001 dks o mlds iwoZ jpuk uxj Xokfy;j esa rqeus v:.kk dks tks fd

rqEgkjs iq= vfHk;qDr jfoiky dh iRuh Fkh dks ngst dh ekWax dks ysdj izrkfM+r dj dzwjrkiw.kZ O;ogkj fd;k vkSj blds }kjk ,slk dk;Z fd;k tks

Hkk0n0fo0 dh /kkjk 498&, ds v/khu n.Muh; vijk/k gS ftlds laKku ysus dh vf/kdkfjrk bl U;k;ky; dks izkIr gSA fodYi ;g fd fnukad 09-04-2001

dks jpuk uxj Xokfy;j esa rqeus v:.kk dh lk"k; ;k tkudkjh j[krs gq;s "kkjhfjd {kfr }kjk e`R;q dkfjr djds gR;k dh vkSj blds }kjk rqeus ,slk dk;Z

fd;k tks Hkk0n0fo0 dh /kkjk 302 ds v/khu naMuh; vijk/k gS ftlds laKku ysus dh vf/kdkfjrk bl U;k;ky; dks izkIr gSA

2.8. Based on the above charges, trial proceeded and learned Sessions Judge though acquitted accused Nos. 4, 5 and 6 as no evidence was

found against them but convicted accused Nos. 2 and 3 Surendra Pal Singh and Smt. Pushplata wife of Surendra Pal Singh under section 498A

IPC with rigorous imprisonment of two years and fine of Rs. 2000/- each. In default of payment of fine, they were sentenced for rigorous

imprisonment of six months each, whereas, the present appellant Ravipal Singh was convicted under sections 302, 304B and 498A IPC and

handed over punishment of life imprisonment for offence under section 302 IPC and ten years for offence under section 304B IPC. However, no

punishment was handed over separately for section 498A of IPC.

Argument of Appellant:

3. The argument of learned counsel for the appellant is that there is no eye witness in the present case and the appellant has been convicted solely

on the basis of autopsy report (Ex.P-3) and evidence of PW3, namely; Dr. Madhup Kumar. His submission is that under section 113B of

Evidence Act, 1872 presumption can be drawn that the deceased caused dowry death as defined under section 304B IPC and based on such

presumption the appellant could have been convicted only under section 304B IPC and not under section 302 IPC.

3.1. Learned counsel for the appellant has also drawn attention of this Court towards the deposition of autopsy doctor to show that injuries on the

person of deceased as mentioned in para 11 of his deposition could have been caused by at least two or more persons. It is further averred that

since accused No. 2 and 3, i.e., father and mother of the present appellant have been convicted under section 498A IPC, therefore, prosecution

story that the appellant had murdered the deceased is not supported by medical evidence. He has further relied on the statement of the defence

witness DW7, namely; Ramautar who has deposed that he has a tea shop and had visited the shop of the appellant to serve tea to the customers

when he saw appellant going inside his house situated at a distance of three to four metres. He further testifies that appellant had knocked the door,

but when the door was not opened by Rani, appellant had pushed the door with some force, as a result the tower bolt had broken down. In the

mean while, Ramautar (DW7) along with Ravi, Raju, Pandit and Nai had reached the scene of crime in which they saw that wife of Ravipal was

hanging from a fan tied to a saree around her neck. Thereafter, Ravipal fetched a pair of scissors and brought down his wife. Thereafter, Ravi Pal

had left to call Dr. Santosh Sharma who had examined the deceased and had opined that there was life in the body and the body was warm and

breathing. Thereafter, according to this witness. Dr. Sharma had asked to call another doctor whose name is not known to the deponent and both

the doctors alter examining the deceased had opined that deceased was 110 more. In 11 is support, the appellant examined as many as ten

witnesses. Mathura Singh Chouhan (DW1), Prakash Singh (DW2), Rameshpratap Singh (DW3) and R.K. Yadav (DW4) are the witnesses who

primarily deposed about accused No.2 Surendra Pal Singh to the effect that Surendra Pal Singh was at Shivpuri and was not present at Gwalior.

Thus, these defence witnesses are of no consequence to the case of the present appellant. Similarly, Ramdani Bhaskar (DW5) is the warden of

Central Jail, Gwalior who had deposed that one Dilip of Water Works Department had approached the Central Jail. Gwalior to meet the present

appellant on 10th June, 2000, therefore, this witness is also of no help to the present appellant. Except these defence witnesses, no other witness

has been examined in favour of the present appellant to establish his innocence. Dr. Santosh Sharma or other doctor who had certified death of

Aruna have not been examined.

3.2. Learned counsel for the appellant relied on the case of Jasvinder Saini and others v. State (Government of NCT of Delhi), as reported

in (2013)7 SCC 256, to bring home the issue that FIR was lodged under the provisions of sections 498A, 304B, 201/34 IPC under Crime

No.110/2001, therefore, there was no justification for charging the appellant vide charge-sheet dated 19.12.2001 with offence under section 302

IPC inasmuch as charge under section 3 04B is not a substitute for a charge of murder punishable under section 302 IPC. It is further submitted

that ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such

ingredients. It is further submitted that the trial court without adverting to the evidence in the case, simply on the basis of law laid down in the case

of Rajbir v. State of Haryana [(2010)15 SCC 116], framed charge under section 302 IPC which is not warranted from the evidence available

on record.

3.3 Learned counsel for the appellant relied on the case of Umakant and another v. State of Chhattisgarh, as reported in (2014)7 SCC 405,

for drawing attention of this Court especially to para 27 of the judgment that the burden of proof in criminal law should ne beyond all reasonable

doubts. The prosecution has to prove the guilt of the accused beyond all reasonable doubt and it is also the rule of criminal jurisprudence that if

two views are possible on the same set of evidence adduced in the case, one pointing to the guilt of the accused and the other towards his

innocence, the view which is favourable to the accused should be adopted.

3.4 Learned counsel for the appellant relied on the decision in the case of Sharad Birdhichand Sarda v. State of Maharashtra, as reported in

AIR 1984 SC 1622, for drawing attention of his Court especially to paras 150 and 152 of the judgment to submit that then, is insufficient evidence

to uphold the conviction of the appellant on the basis of circumstantial evidence as required by section 3 of Evidence Act. It is averred that the

prosecution story should stand on its own legs, it cannot derive any strength from the weakness of the defence. It is further submitted that in cases

where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be

fully established and all the facts so established should be consistent only with the hypothesis of guilt of the accused. It is further argued that the

following conditions must be fulfil led before a case against an accused can be said to be fully established .

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty;

(3) they should exclude every possible hypothesis of innocence; and

(4) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the

accused and must show that in all human probability the act must have been done by the accused.

3.5. Learned counsel for the appellant relied on the law laid down by the Supreme Court in the case of State of Haryana v. Ram Singh, as

reported in AIR 2002 SC 620, especially para 19 of the said judgment which is to the effect that defence witness is also entitled to equal

treatment as extended to the prosecution witness. The issue of credibility and trustworthiness is also to be attributed to the defence witness at par

with that of prosecution witness and thus evidence of PW7 cannot be brushed aside.

3.6. Learned counsel for the appellant relied on the case of Muthu Kutty and another v. State by Inspector of Police, T.N., as reported in

2005 SCC (Cri) 1202, especially para 20 of the said judgment wherein it has been held that a reading of section 304B IPC aid section 113B of

Evidence Act together makes it clear that law authorises a presumption that the husband or any other relative of the husband has caused the death

of a woman if she happens to die in circumstances not normal and that there was evidence to show that she was treated with cruelty or harassed

before her death in connection with any demand for dowry, it is further held that it, therefore, follows that the husband or the relative, as the case

may be, need not be the actual or direct participant in the commission of the offence of death. But in view of this fact that there is no evidence to

explain the circumstances of injuries on the person of the deceased, the offence will directly fall in the domain of section 302 of IPC.

3.7. Learned counsel has also drawn our attention to the law laid down in the case of Tarsem Singh v. State of Punjab, as reported in AIR

2009 SC 1454, in para 22 of the judgment wherein it has been mentioned that injuries reported on the person of the deceased by the autopsy

surgeon could have been caused by others as the appellant was not the only accused. FIR was lodged against others also.

3.8. Lastly, learned counsel for the appellant has relied on the decision rendered in the case of Vijay Pal Singh and others v. State of

Uttarakhand, as reported in (2014) 15 SCC 163, wherein in para 32 it is mentioned that in the light of the presumption under section 113B of

Evidence Act, if the ingredients of section 304B IPC were established, the punishment should have been handed over only under section 304B

IPC and not under section 302 IPC.

Argument of the State :

4. Learned Panel Lawyer has drawn attention to the evidence of PW2, PW4 and PW8, namely; Mukut Singh (PW2), Member Singh (PW4) and

Prabha Devi (PW8) who have deposed in unequivocal terms that there was demand of dowry, cruelty and torture of the deceased. It is also

submitted that injuries No. 1 to 9 as have been detailed out in the post-mortem report (Ex.P-3) are ante mortem in nature and there is no

explanation for such injuries. It is further mentioned that injuries No. 1 to 9 were caused within six hours of the death. In note it has been

specifically mentioned that injuries No. 3 and 4 appear to have been caused by pressing of the neck of the deceased by using right hand of a

human being. Further injuries No. 3 and 4 were sufficient to cause death of a person. In note No. 7, PW3 doctor has categorically mentioned that

injuries No. 10 and 11 appear to have been caused by a material like ligature or rough material like rope. Attention of this Court has been drawn

to the opinion of the doctor that death of the deceased was caused by a person by manual strangulation by hand, i.e., throttling. There were signs

of pressing of the mouth of the deceased along with other signs of injuries on the right forearm, right wrist, right aim and internal injuries. It was also

found that lips of the deceased were bluish. Learned Panel Lawyer has also drawn attention to para 17 of the cross-examination of PW3 in which

he has rebutted the suggestion that injuries No. 3 and 4 could have been caused if a person uses a rope for hanging. In fact, the doctor has

categorically mentioned that injuries No. 3 and 4 were caused using a rope. Thus, the learned Panel Lawyer has pointed out that injuries No. 3 and

4 could not have been caused by a saree as has been mentioned in the defence story and therefore it is clear case of murder falling within the

ingredients of section 302 IPC.

4.1. Learned Panel Lawyer has also drawn attention to the evidence of Munni Devi (PW6) to support the prosecution story that it is not the case

of suicide but that of murder. Learned Panel Lawyer has also pointed out that none of the doctors mentioned in the deposition of DW7 were

examined by the defence namely Dr. Santosh Sharma and another doctor who allegedly visited the place of incident and declared the deceased as

dead. In fact other witness who had reached the place of incident namely one Ravi, Raju. Pandit and Nai have also not been examined by the

defence to support the story of DW7. It is further mentioned that though the appellant had given his statement under section 313 CrPC but he has

not chosen himself to be examined, therefore, adverse inference is to be drawn against the appellant inasmuch as there is no explanation for the

injuries on the body of the deceased which as per the medical report could not have been self inflicted, therefore, learned Panel Lawyer has prayed

for maintaining the conviction of the appellant under section 302 read with section 304B IPC.

5. In rebuttal, learned counsel for the appellant has also relied on the law laid down in the case of Nesar Ahmed and another v. State of Bihar,

as reported in 2002 SCC (Cri) 1100, in which it has again been reiterated that when conviction is based on circumstantial evidence, then it is the

duty of the prosecution to show that appellant was present in the house where the deceased died as a result of burn injuries at the crucial time.

According to the learned counsel for the appellant, the chain of event is not complete.

Finding:

6. We have perused the record and after carefully going through the same as well as arguments advanced by tire learned counsel for the appellant

as well as learned Panel Lawyer, we are of the considered opinion that though it is true that there is no direct eye witness to the incident but

evidence of PW3 autopsy doctor clearly points out that there were mud marks on the clothing of the deceased but no signs of saliva. The thumbs

of the deceased were not turned inside and her lips, nails and tongue were bluish. There was no hyper planter flexion on the legs and there were

two signs of abrasion on the neck of the deceased. Hypostasis was present on back of chest, abdomen and thighs. Rigor mortis was in the

declining stage. The marks of abrasion were on the lower side of the thyroid and not interconnected with front of neck. It is further averred that

two tracheal rings below the thyroid were broken and blood was deposited in the muscles. It is also mentioned that it was not possible to have

ligature mark on the neck of the deceased. The directions of blood deposition was horizontal and vertical. In the note No. 3 doctor has

categorically opined that injury No. 3 and 4 were caused by applying force of the right hand of human being on the neck of the deceased. It is

further mentioned that injury No. 5 was caused due to attempt of smothering. Injury" No. 6 was caused due to swallowing some chemical poison

which was not sufficient to cause death. Injury No. 10 and 11 were caused by friction of rope like ligature material or rope like straight and rough

article.

6.1 In the cross examination, PW3 has categorically mentioned that injury'' No. 1 to 9 were caused prior to injury No. 10 and 11. He has further

mentioned that injury No. 2 was not sufficient to cause death but was of serious nature therefore it can be kept under the category of life

threatening injury. In para 17 of the cross-examination, this witness has rebutted the suggestion that injury No. 3 and 4 could have been caused if a

person hangs oneself using a rope, thus, this witness has remained undeterred in his findings that injury No. 3 and 4 where caused by strangulation

by using rope for tying neck of the person. This witness has also rebutted the suggestion that if a person hangs using a medium other than rope,

then injuries No. 3 and 4 could be caused.

6.2 Thus, the question is whether the death was homicidal or not. We have noticed the evidence of the doctor. The doctor''s evidence is so explicit

that he has left no manner of doubt in the matter of determination of the cause of death.

6.3 In the case of Sunil Singha v. State of West Bengal, as reported in 2007 CrLJ 516, it is clearly laid down that when the housewife was in

the matrimonial home under the custody of tie husband it is the duty of tire husband to clarify or to offer an explanation as to how the victim died

with the injuries including the indication of strangulation over neck in her matrimonial home. Relying therein on the decision of the Supreme Court in

the case of Ganesh Lal v. State of Maharashtra, as reported in 1992 CrLJ 1545, it has been held that it is settled law that conduct of the

accused in an offence previous and subsequent to the incident are relevant facts and when death occurs in the custody of the accused the accused

was under an obligation, in section 313 CrPC statement, at least, to give a plausible explanation for the cause of her death but no such attempt was

made.

6.4. In this regard, it will be necessary to refer to the judgment of the Supreme Court in the case of Mafabhai Nagarhhai Raval v. State of

Gujarat, as reported in AIR 1992 SC 2186, wherein it was observed that the doctor who has examined the deceased and conducted the post-

mortem is the only competent witness to speak about the nature of injuries and the cause of death and unless there is something inherently defective

the Court cannot substitute its opinion to that of the doctor.

6.5. It will be necessary to point out here that reliance of the appellant''s counsel on the law laid down in the case of Tarsem Singh (supra), is not of

much significance inasmuch as the distinguishing feature is that in the case of Tarsem Singh (supra), all other co-accused were acquitted but in the

present case co-accused Surendra Pal Singh and Pushplata mother of the appellant have been convicted under section 498A IPC and further

more the appellant has not discharged his burden to show what was the possible cause of injuries on the person of the deceased which could not

be said to be self inflicted.

6.6. Appellant''s counsel has relied on 11re decision of Muthu Kutty (supra), which is also not of much consequence inasmuch as the Supreme

Court in the case of Muthu Kutty (supra), has held that the purpose of provisions contained in section 304B IPC is not to extricate husband or

their relatives from the clutches of section 302 IPC if they directly caused death and this conceptual difference has to be kept in view by the courts.

There is overwhelming evidence in the form of medical evidence that the death was caused by strangulation and throttling and not by hanging.

6.7 The law laid down in the case of Jasvinder Saini (supra), is also of no help to the appellant inasmuch as it only lays down that though the courts

are unrestrained to add or alter a charge under section 216 CrPC but such addition or alternation should be made before pronouncement of

judgment. In the present case, charge under section 302 IPC was framed on 19.12.2001 at the commencement of the trial itself and there fore this

case law will not be of any help to the appellant. Similarly, the law laid down in the case of Ram Singh (supra), is also not of any help to the

appellant inasmuch as that the said case was based on contradiction in the evidence of doctor conducting the postmortem arid that of eye witness,

which is not the case herein.

6.8 In the case of Sharad Birdhichand Sarda (supra), the ratio of the decision is that the circumstances from which the conclusion of guilt is to be

drawn should be fully established. The facts so established should be consistent with the hypothesis of the guilt of the accused, the circumstances

should be of conclusive nature and tendency, they should exclude every possible hypothesis except the one to be proved, and there must be a

chain of evidence so complete as to not leave any reasonable ground for the conclusion. All these factors as discussed above are available in the

present case to complete the chain of evidence.

6.9. The appellant has relied on the decision in the case of Nesar Ahmed (supra), but facts of the said case are also distinguishable because it was

a case of bride burning based on circumstantial evidence where the vital link of presence of the appellant in the house at the crucial time was not

established by the prosecution. In the present case, as the appellant has not examined himself and led any evidence to show that he was not

present in the house at the time when ante-mortem injuries were inflicted upon the deceased, the ratio of the said decision will be of no avail to the

appellant.

6.10 The appellant has also relied on the decision of Supreme Court in the case of Umakant (supra), wherein it is laid down that if two views are

possible on evidence adduced, one pointing towards the guilt and the other towards innocence, the view favourable to the accused should be

adopted. In the present case, there is overwhelming evidence pointing towards the guilt of the appellant, and therefore, there is no question of

adopting a lenient view, especially when the presumption under section 113B of the Evidence Act remains unrebutted.

6.11 Similarly appellant has relied on the decision in the case of Vijay Pal Singh (supra), wherein the Supreme Court has deprecated the failure of

the prosecution to explain injuries and connect murder to its author, but in the present case, ratio of the said decision will be inapplicable to the

appellant whose main ground is that he can be convicted only under section 304B IPC and not under section 302 IPC on the basis of

circumstantial evidence.

6.12 In the statement of appellant recorded under section 313 CrPC in reply to question No.2 that when witnesses Keshav Singh, Mukut Singh,

Member Singh etc received information on 9.4.2001 from Gwalior then they had reached the house of the appellant and found Aruna to be dead,

the witness says that he is not aware. Similarly, in reply to question No. 11 when he was asked that when this witness saw the dead body, there

were marks of injuries on the body, what does he want to say, he says that he does not know anything. Same is the reply to questions No. 15 and

22. Question No.22 was that cremation of Aruna had taken place at Bhind to which the appellant said that he is not aware. If it was a suicidal

death and appellant was not demanding dowry or guilty, then what was the reason for not participating in the cremation has not been explained by

him.

6.13 Though, the appellant has said that he has not committed any offence and he has been falsely implicated but he has not explained the ante-

mortem injuries on the person of the deceased. Whether those injuries could have been self inflicted and before coming to the shop, whether the

appellant had left his home to come to shop or was coming from a third place. It is also seen that defence has not examined Dr. Santosh Sharma

and Dr. Arvind Mittal. In fact, there is contradiction in the statement of DW7 and that of the appellant inasmuch as DW7 has deposed that when

Dr. Santosh Sharma had come he said that there is life in the body and the body was warm but it no where appears from the statement of the

appellant that any efforts were made to resurrect Aruna or to rush her to hospital for treatment etc.

6.14 In the above attending circumstances it is also seen that two possible hypothesis emerge namely (i) Aruna was under tension because she was

not having any kids and she was undergoing treatment; (ii) she was not happy with her brother Mukut Singh who used to seek money from Aruna.

The cross-examination of Mukut Singh PW2 does not reveal that any suggestion was made to him that Aruna was under tension because Mukut

Singh used to ask for money or jewellery from Aruna. There is no suggestion to any of the prosecution witness that Aruna was under depression

due to not having a child and she was undergoing treatment. In fact none of the suggestions given by the appellant in his statement under section

313 CrPC can be inferred from the examination of witnesses, therefore this defence of Aruna under depression lacks credence and cannot be

accepted.

6.15 In the case of Trimukh Maroti Kirkan v. State of Maharashtra, as reported in 2007 CrLJ 20, the Supreme Court has held that when

circumstantial evidence of witnesses fully establishes that wife was ill-treated, often beaten on account of non-fulfilment of demand of money and

where medical evidence shows that death was due to strangulation and injuries were found on her body but no explanation has been given by the

accused as to how she received such injuries, the circumstances unequivocally point towards the guilt of the accused, file Supreme Court has

upheld the conviction under the facts and circumstances under section 302 of IPC and inter alia held in paras 16 and 17 as under :

16. In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law" which must be kept in

mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an

explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has

been taken in a catena of decisions of this Court. {See: State of Tamil Nadu v. Rajendran [(1999) 8 SCC 679 (para 6)]; State of U.P. v. Dr.

Ravindra Prakash Mittal [AIR 1992 SC 2045 (para 40)]; State of Maharashtra v. Suresh [(2000)1 SCC 471 (para 27)]; Ganesh Lal v.

State of Rajasthan [(2002)1 SCC 731 (para 15)]; and Gulab Chand v. State of M.P. [(1995)3 SCC 574 (para 4)]}.

17. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly

before the commission of crime they were seen together or the offence takes placed in the dwelling home where the husband also normally resided,

it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found

to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Naika Ram v. State of Himachal

Pradesh [AIR 1972 SC 2077], it was observed that the fact that the accused alone was with his wife in the house when she was murdered there

with "khokhri" and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to

his guilt. In Ganeshlal v. State of Maharashtra [(1992)3 SCC 106], the appellant was prosecuted for the murder of his wife which took place

inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible

explanation for the cause of her death in his statement under section 313 CrPC. The mere denial of the prosecution case coupled with absence of

any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime

accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal [AIR 1992 SC 2045], the medical evidence

disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. Hie

defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the

wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them

were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his

wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under section

302 IPC. In State of Tamil Nadu v. Rajendran [(1999)8 SCC 679], the wife was found dead in a hut which had caught fire. The evidence

showed that the accused and his wife were seen together in the hut at about 9:00 p.m. and the accused came out in the morning through the roof

when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The

medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of bum injuries. It was held that there

cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.

6.16 In tire present case, the chain of circumstances is complete. Admittedly, the deceased was wife of the accused and they had strained

relations. The deceased was harassed for demand of dowry. The deceased was in the company of the accused-appellant and the appellant has

failed to explain various injuries reported in the post-mortem over the body of the deceased. The death of the deceased was homicidal caused by

asphyxia due to strangulation. Thus, on examination of the entire evidence in its entirety, the only inference that can be drawn is guilt of the accused.

6.17 For the foregoing reasons, the appeal filed by the appellant being without substance deserves to be and is hereby dismissed. The judgment of

the Court below convicting the appellant for offence punishable under sections 302, 304B and 498A of the IPC is upheld and affirmed. The

appellant who is in jail shall serve out the remaining part of his sentence.