

Before Ritu Bahri & Karamjit Singh, JJ.

ABDUL WAHID —Appellant

versus

STATE OF HARYANA—Respondent

CRA-D-153-DB-2015

December 23, 2021

Indian Penal Code, 1860 – Sections 498-A, 302, 120-B; Indian Evidence Act, 1872 Section 106 – Victim Died By Falling In Water Tank 13 Years After Marriage – FIR Registered By Her Father Against Husband And His Family. Husband’s Appeal Against Conviction Allowed – Benefit Of Doubt Given. Husband – Working In CRPF – Posted At Far Off Place – Improbable That He Was Causing Physical Harassment, Demanding Dowry. Section 106 Evidence Act – Not Applicable. Absence Of Motive – Significant In Case Of Circumstantial Evidence.

Held, that one cannot ignore the fact that the appellant was working in CRPF and was posted at for off place and had availed leave only w.e.f. 25.10.2011 and whereas Afsana died on 27.10.2011. In these circumstances it is highly improbable that prior to occurrence in question, the appellant was persistently causing physical harassment to the deceased, on account of demand of dowry.

(Para 38)

Further held, that The Court cannot lose sight of the fact that the appellant being posted in Bihar was not living with his wife in village Salaheri in normal course. No one has stated in the Court that prior to the alleged occurrence on the night intervening between 26/27.10.2011, the deceased was seen in the company of the appellant. In these circumstances, we are of the view that the provisions of Section 106 of the Evidence Act are not applicable to the facts of the present case in a strict sense. It is general rule that in a criminal case the burden of proof is always on the prosecution to bring home the guilt of the accused and Section 106 of Evidence Act is certainly not intended to relieve it of that duty.

(Para 45)

Further held, that In a case of circumstantial evidence, motive assumes great significance and importance. Absence of motive would put the Court on its guard and cause it to scrutinize each piece of

evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. We are of the view that in the instant case, the prosecution has failed to establish genesis of the motive of the occurrence. Thus further making the prosecution story doubtful.

(Para 46)

Further held, that In the light of the above, we are of the considered view that there are missing links in the chain of circumstances, which have been relied upon by the prosecution to prove the guilt of appellant-accused. Thus the prosecution has failed to prove its case beyond a reasonable doubt against appellant-accused.

(Para 47)

Hostile Witness — Testimony cannot be ipso facto discarded in toto — portion that inspires confidence — corroborated by other sources can be believed.

Held, that We deem it expedient to mention the legal position with regard to hostile witnesses. The testimony of hostile witness cannot be ipso-facto discarded in toto. It is well settled that portion of the testimony of hostile witness, which inspires confidence can be used. It is also well settled that testimony of hostile witness finding corroboration from other sources can be believed.

(Para 37)

Medical Evidence —Final opinion in writing of board of doctors which conducted post-mortem examination, regarding cause of death of deceased never sought by investigating officer - no collective final opinion of board ever placed before trial Court, except oral statement of one doctor – held to be personal opinion, cannot be termed as collective opinion of board of three doctors. Insufficient to hold — deceased died due to strangulation.

Held, that In order to establish medical evidence, the prosecution examined PW-1 Dr. Pankaj Vats who proved post-mortem report Ex.PA/1. As per the said medical evidence the post-mortem examination of the dead body of Afsana was conducted on 28.10.2011 by board of three doctors in CHC, Nuh. PW-1 was the member of the said medical board. From the perusal of post-mortem report, it is evident that the cause of death was kept in abeyance till the receipt of reports from FSL Madhuban and Pathology Department, PGIMS Rohtak. As per report of FSL Madhuban dated 21.3.2012 Ex. PH no poison was detected in viscera of the deceased. As per report dated

23.2.2012 Ex. PG of the said FSL, diatoms could not be detected in humerus bone of the deceased. The report Ex. PX dated 21.12.2011 of Pathology Department PGIMS Rohtak stated that no significant pathological changes were found in the heart of the deceased. The State counsel failed to produce/show, any final collective opinion given by the concerned board of doctors which conducted the post-mortem examination, regarding the cause of death of deceased Afsana. The State counsel during arguments conceded that no such collective opinion in writing regarding cause of death of the deceased is available on the record of trial Court. So it appears that in the present case, after the receipt of aforesaid reports, the concerned board of doctors which conducted the post-mortem examination had not given its collective opinion in writing regarding the cause of death of deceased Afsana. However, PW-1 one of the member of the said medical board, while appearing in the witness-box stated that cause of death in this case was drowning and significant strangulation which was ante-mortem in nature and sufficient enough to cause death in natural course of life. It is evident that final opinion in writing of the board of doctors which conducted post-mortem examination, regarding cause of death of deceased was never sought in this case by the investigating officer and no such collective final opinion of the board of doctors was ever placed before the trial Court, by the prosecution except the aforesaid oral statement of PW-1 regarding the cause of death of the deceased. We are of the view that the aforesaid oral opinion regarding cause of death given by PW-1 may be his personal opinion. It cannot be termed as collective opinion of the board of three doctors which was constituted to conduct autopsy in the present case. There is possibility that other two members of the medical board may be having different view than that of PW-1, with regard to cause of death of the deceased. It could be easily observed that PW-1 testified in the Court regarding cause of death of Afsana, without consulting other members of the medical board which conducted post-mortem examination of the dead body. Thus mere saying by PW-1 in the Court that cause of death in this case was due to drowning and significant strangulation is not sufficient to hold that the deceased died due to strangulation.

(Para 39)

A.P.S. Deol, Senior Advocate with, Vishal Rattan Lamba,
Advocate *for the appellant*.

Ankur Mittal, Addl. A.G. Haryana with
Saurabh Mago, AAG, Haryana.

KARAMJIT SINGH, J.

(1) This criminal appeal has been preferred by the appellant-accused against judgment of conviction and order of sentence dated 15.12.2014/20.12.2014 passed by learned Sessions Judge, Mewat in Sessions case No.84 of 2012/2013 (State vs. Abdul Wahid), having FIR No.556 dated 28.10.2011 registered under Sections 498-A, 302/102-B of the Indian Penal Code (in short 'IPC'), Police Station Nuh, whereby the accused-appellant Abdul Wahid has been convicted under Sections 302 and 498-A of IPC and sentenced to imprisonment for life under Section 302 of IPC. He was also sentenced to undergo rigorous imprisonment for a period of one year under Section 498-A of IPC. Both the substantial sentences were to run concurrently.

(2) The brief facts of the case are that on 27.10.2011 PW-2 namely complainant-Rafiq son of Hussain Khan resident of village Mubarikpur (Rawalki) met Inspector/SHO Gajender Kumar (PW-14) and moved complaint (Ex.PB) to the effect that his daughter Afsana got married with accused-Abdul Wahid about 13 years back and at the time of the marriage he had given dowry to the accused beyond his capacity. However, the accused and other members of his family were not satisfied with the same and raised demand of more dowry. The complainant kept on fulfilling their demands from time to time. When some of their demands were not fulfilled by the complainant, the accused along with his family members started torturing his daughter. In the month of March, 2006 to November, 2006, due to demand of Rs.70,000/- by the accused and his family members, panchayats were convened to rehabilitate Afsana in her matrimonial home, by resolving the dispute. In November, 2006 complainant gave an amount of Rs.70,000/- to the accused in panchayat, on which the accused took back Afsana along with him to his house. The marriage of his second daughter namely Rajiya was fixed for 19.11.2011 and the complainant wanted to give car in her marriage. When the accused came to know about this fact, he (accused) along with other members of his family namely Jameel, Jamshed, Sahid and Parmina started raising demand of car and Rs.4 lacs. Afsana told the complainant about aforesaid demand raised by her husband and other members of his family. However, the complainant refused to accede the said demand. Consequently, accused along with his family members started harassing and illtreating Afsana. On 27.10.2011 at about 7:00 a.m., the complainant received a telephone call from accused-Abdul Wahid to the effect that Afsana fell in the water tank and he asked the complainant to

reach his village Salaheri, immediately. The complainant reached village Salaheri and came to know that his daughter Afsana was murdered by the accused and other members of his family. Accused Abdul Wahid also confessed his guilt before the panchayat of the village.

(3) PW-14 Inspector Gajender Kumar sent the aforesaid complaint Ex. PB to the police station and consequently FIR Ex. PB/2 was registered under Sections 302, 498-A/120-B IPC against the accused-appellant.

(4) Earlier to that on 27.10.2011, PW-3 ASI Bachu Singh received telephonic message regarding drowning of Afsana and he reached the place of occurrence, where Sahid s/o Atar Khan met him and got recorded his statement Ex.PC. PW-3 ASI Bachu Singh conducted inquest proceedings. The said police official also prepared inquest report Ex.PA/4 of the dead body of Afsana, which was identified by Assu and Tahir. The photographs of the water tank and dead body Ex.P2 to Ex.P4 were taken by PW-12 Sabir. The dead body was sent for its post-mortem examination vide police request Ex.PA/2.

(5) On 28.10.2011, post-mortem examination of the dead body of Afsana was conducted by board of three doctors namely PW-1 Pankaj Vats, Dr. Pardeep Mangla and Dr. Tirlok Singh Yadav. The post-mortem report is Ex.PA/1. Opinion regarding cause of death was kept in abeyance till the receipt of the reports from FSL Madhuban and Pathology Department of PGIMS Rohtak.

(6) On the same day, i.e. 28.10.2011 PW-14 Inspector Gajender Kumar inspected the place of occurrence and prepared its rough site plan Ex.PW14/A and also recorded statements of PWs. The accused was arrested by the police on 2.11.2011. As per prosecution version, while in police custody on 2.11.2011, accused suffered disclosure statement Ex.PW14/B before PW-14 Inspector Gajender Kumar in the presence of PW-6 Altaf and PW-17 Ahmad regarding his involvement in murder of his wife Afsana. The prosecution also alleged that further on 4.11.2011 while in police custody, accused suffered another disclosure statement Ex.PW14/C before PW-14 Inspector Gajender Kumar in the presence of PW-7 Illiyas and PW-8 Hussaindeen and in pursuance thereof, he got recovered one 'Duppatta' used by the accused for strangulating his wife. The said 'Duppatta' was taken into possession by the police vide memo Ex.PW9/A in presence of PW-9 EHC Satbir Singh, PW-7 Illiyas and PW-8 Hussaindeen. The rough site plan of the place of aforesaid recovery is Ex.PW-14/D, which was

prepared by PW-14 Inspector Gajender Kumar.

(7) During investigation the call detail records of the mobile phone numbers 9798022588 & 9728824241 were taken into possession. The viscera and humerus bone of the deceased were sent to FSL and PGIMS Rohtak respectively for their examination.

(8) On completion of investigation, challan was presented against the accused. On committal, the learned Sessions Judge framed charge against the accused for offences punishable under Sections 302 and 498-A of IPC. The accused did not plead guilty and claimed trial.

(9) To prove its case against the accused, the prosecution examined in all 20 witnesses and the Public Prosecutor also tendered report of Histopathology Ex. PX and closed the prosecution evidence.

(10) In brief the evidence led by the prosecution is as follows:-

(11) PW-1 Dr. Pankaj Vats proved post-mortem report Ex.PA/1 which bears his signatures. On post-mortem examination, the following was found:-

a.Length of body 160 cms, dead body of a young adult female, moderately nourished and built.

b.Mouth:- coarse, copious froth coming out of mouth, white in colour, more froth coming out on pressing the chest continues.

c.Nose:- admixed hemorrhagic fluid, coming out of bilateral nostrils.

d. Mark of ligature:- present over the neck, involving anterior & lateral aspect of neck, length of ligature 18 cms above the thyroid cartilage, running transversely, width-1 cm, continuous 6cms from left ear lobe & 8 cm from right ear lobe. No ligature found around the neck, neither produced by police. Rigor mortis present in all the four limbs, but no in neck. Post-mortem lividity present over lower back. On dissection of neck, ligature mark superficially-deeply congested & underlying soft tissue found blanched. Thyroid bone, thyroid cartilage found intact.

e.Injuries:-

(1) Contusion of about 4x1 cms over left supra clavicular

area, medial aspect, 3 cms inferior to ligature mark.

(2) Abrasions of about 0.5x0.2 cms size over left side of neck and three pointed abrasion mark on left side of neck. No other injury seen.

(3) Pleura:- healthy

(4) Larynx and trachea:- on dissection hemorrhagic froth found.

(5) Right lung and left lung:- lungs bilaterally voluminous, diffusely distended, covering majority of pericardium, water lodged, gritty sensation, on dissection white colour froth admixed with blood seen, no free fluid seen in pleural cavity.

(6) Pericardium, heart, large vessels:- healthy, left side of heart found dark red colour blood.

(7) Organ of generation :- healthy & intact, uterus – 12x8 cms, gravid, on dissection, gestational sac with embryo found, sealed with uterus.

(8) Other organs:- found healthy.

(12) PW-2 Rafeeq Ahmad, complainant proved complaint Ex.PB which was lodged by him with the police against the accused and other members of his family. He reiterated the allegations against the accused , as has been narrated in complaint Ex.PB and FIR Ex.PB/2.

(13) PW-3 ASI Bachu Singh who received information regarding the incident on 27.10.2011 and reached the spot, proved inquest report Ex.PA/4 and police request Ex.PA/2 and further stated that after post-mortem examination the concerned doctor handed over to him one sealed parcel containing viscera, another sealed parcel containing bone, which he further handed over to Inspector Gajender Kumar.

(14) PW-4 ASI Jagdish Chand and PW-5 HC Mohd. Harun proved memo Ex.PW4/A relating to wireless message received regarding extension of leave of the accused by his department.

(15) PW-6 Altaf, PW-7 Illiyas and PW-8 Hussaindeen stated that Afsana accidentally fell in the water tank. All three of them were declared hostile. They did not support the case of prosecution. Even PW-17 Ahmad was also declared hostile.

(16) PW-12 Sabir, photographer proved photographs Ex.P2 to Ex.P4 of water tank and dead body, which were taken by him with

digital camera.

(17) PW-14 Inspector Gajender Kumar, Investigating Officer proved FIR Ex. PB/2, rough site plan of the place of occurrence Ex.PW14/A, disclosure statements of accused Ex.PW14/B, Ex.PW14/C, recovery memo of 'Dupatta' Ex.PW9/A and rough site plan of place of recovery Ex.PW14/D.

(18) PW-9 EHC Satbir Singh proved recovery memo Ex.PW9/A being its attesting witness. He also proved 'Dupatta' Ex.P1.

(19) PW-10 HC Vikram Singh proved call detail records Ex.PW10/C and Ex.PW10/B of mobile phone No.9798022588 of the accused and mobile phone No.9728824241 of Sanjay Kumar son of Manram, which were taken into possession by the police vide memo Ex.PW10/A.

(20) PW-11 C. Mahesh deposed regarding delivery of special reports, while PW-13 EHC Amit tendered his affidavit Ex.PW13/A. PW-15 HC Dharam Pal proved scaled site plan Ex.PW-15/A of the place of occurrence, which was prepared by him. PW-16 HC Umar Mohd. Tendered his affidavit Ex.PW16/A. PW-18 C. Ravinder Kumar tendered his affidavit Ex.PW18/A. PW-19 HC Kishan Lal tendered his affidavit Ex.PW19/A. PW- 20 S.K. Pandey, Havaladar, 153 Battalion, CRPF Motihari, Bihar produced relevant record regarding availing of casual leave by accused for the period from 28.10.2011 to 11.11.2011. He proved documents Ex.PW20/A to Ex.PW20/F in this regard and further stated that the accused departed from the office on 25.10.2011 (wrongly written as 25.9.2011). The prosecution also tendered reports of FSL, Ex.PG, Ex.PH and report of Pathology Department PGIMS Rohtak Ex. PX.

(21) Thereafter the accused was examined under Section 313 Cr.P.C. wherein he denied all the allegations appearing against him. He pleaded innocence and stated that he has been falsely implicated in this case. However, the accused had not led any evidence in his defence.

(22) After appraisal of the evidence and material on record, the learned Sessions Judge convicted and sentenced the accused as stated in the opening paragraph of this judgment.

(23) Being aggrieved and dissatisfied with the impugned judgment and order, the appellant has preferred present appeal.

(24) The counsel for the appellant submitted that at the time of alleged incident, the appellant was working in CRPF and was

posted in Bihar. Deceased Afsana was living in her Matrimonial home in village Salaheri. At the time of the alleged incident, appellant was not present in the village. Actually, appellant left his head quarter in Bihar on 25.10.2011 to avail leave as is evident from testimony of PW-20 (official of CRPF) and he reached Delhi and then left for his village but he got late and as such on the night intervening 26/27.10.2011 he stayed with his friend in the neighbouring village of Salamba. The counsel for the appellant further contended that unfortunately on 27.10.2011, early in the morning, Afsana accidentally slipped and fell in water tank which was at a distance of just 10 feet from the house of the appellant, where she had gone to fetch water.

(25) The counsel for the appellant further contended that the prosecution has miserably failed to prove charges under Section 498-A IPC and 302 IPC against the appellant. Admittedly, the appellant got married with Afsana about thirteen years back prior to the incident in question and they were having two children. That as per the complainant, after marriage, the appellant used to harass his wife Afsana and he also demanded `70,000/- from the complainant in the year 2006 and finally the dispute was resolved as complainant paid the above said amount to the accused in the presence of panchayat. The counsel for the appellant submitted that the prosecution failed to examine any independent witness to substantiate the aforesaid allegations levelled by the complainant, against the appellant. The counsel for the appellant further contended that no complaint regarding the alleged harassment and maltreatment of his daughter by the appellant, was ever lodged by the complainant with the police, prior to the present incident. It is further contended that the complainant himself while appearing in the witness-box admitted that the appellant purchased immovable property in the name of his wife Afsana and this fact belies the aforesaid allegations of ill-treatment and demand of dowry. The counsel for the appellant further contended that in his further cross-examination dated 4.7.2013, the complainant clearly stated that his daughter Afsana was never harassed by the accused on account of demand of dowry. Even the other private witnesses namely PW-6 Altaf, PW-7 Illiyas, PW-8 Hussaindeen and PW-17 Ahmad also stated so and were declared hostile.

(26) The counsel for the appellant further contended that the prosecution has also miserably failed to prove its case against the appellant under Section 302 IPC. It is contended that there was no eye-witness to the alleged occurrence and the entire case of prosecution is

based on circumstantial evidence. The circumstances which have been relied upon by the prosecution are having missing links and they not at all point towards the guilt of the appellant. The counsel for the appellant further contended that as per post-mortem report Ex.PA/1, autopsy on the dead body of Afsana was conducted by board of three doctors and final opinion regarding cause of death was kept pending till the receipt of reports of FSL. As per the report of FSL Ex.PH, no poison was detected in viscera of the deceased. It is further contended that even after the receipt of aforesaid report of FSL no final opinion in writing was given by the said board of doctors regarding cause of death of Afsana. The counsel for the appellant further argued that in these circumstances the opinion given by PW-1 while appearing in the witness-box to the effect that the deceased died due to drowning and significant strangulation, cannot be taken into consideration. It is further contended that the complainant and all other private witnesses stated in the Court that the appellant is not responsible for death of his wife Afsana.

(27) The counsel for the appellant further argued that as per the prosecution story, the accused was arrested on 2.11.2011 and thereafter he suffered disclosure statement Ex.PW14/B in presence of PW-6 and PW-17 and further suffered disclosure statement Ex.PW14/C in presence of PW-7 and PW-8. That all the said four PWs while appearing in the witness-box denied the fact regarding aforesaid alleged disclosures made by the appellant.

(28) The counsel for the appellant further argued that as per prosecution, the appellant got recovered one 'Dupatta' Ex.P1 on the basis of disclosure statement Ex.PW14/C. The private witnesses, who witnessed the aforesaid recovery were declared hostile and they did not support the case of prosecution. The counsel for the appellant while summing up his arguments urged that the present appeal deserves to be allowed and the appellant be acquitted.

(29) On the other hand the State counsel submitted that the complainant while appearing in the witness-box, fully supported the case of prosecution in his examination-in-chief as well as cross-examination which was recorded on 30.08.2012. He was recalled for his further cross-examination on 4.7.2013 and at that stage he tried to back-track from his previous statement. The State counsel submitted that it being so, the entire statement of the complainant cannot be disbelieved or ignored. The State counsel further contended that from the perusal of testimony of complainant, it stands proved that the

appellant used to ill-treat his wife Afsana and he also raised demand of dowry and money after marriage and in 2006 one such demand of the appellant was fulfilled by the complainant. The State counsel further contended that even prior to the present occurrence, the appellant raised demand of Rs.4 lacs and one car, when he came to know that complainant is willing to gift one car in marriage of his younger daughter Rajiya which was fixed for 19.11.2011. It is further contended that when complainant refused to accept the said demand, the appellant again started ill-treating his wife Afsana.

(30) The State counsel further submitted that the appellant proceeded on leave on 25.10.2011 on the pretext that his wife was ill. He returned to his village on 26.10.2011 in late hours and on the night intervening 26/27.10.2011 at about mid-night he entered his house and strangled his wife Afsana with the help of 'Dupatta', while she was sleeping and then threw her dead body in the water tank which was near his house. The State counsel further contended that PW-1 who being the member of the medical board which conducted post-mortem examination, clearly stated that the deceased died due to strangulation and drowning. The State counsel also referred to post-mortem report Ex.PA/1 as per which ligature mark was found on the neck of the deceased. He also referred inquest report Ex.PA/4 wherein it was recorded that one mark of blue colour was found on the neck of the deceased. The State counsel further referred to disclosure statements Ex.PW14/B and Ex.PW14/C, as per which the appellant admitted that he killed his wife by strangulating her with 'Dupatta' and thereafter threw her dead body in the water tank. The State counsel further argued that aforesaid 'Dupatta' Ex.P1 was got recovered by the appellant from the disclosed place and the same was taken into possession by the police vide memo Ex.PW9/A. The State counsel further contended that in these circumstances the trial Court rightly concluded that it was the appellant who murdered his wife Afsana by strangulating her and then he threw her dead body in the nearby water tank. The State counsel while concluding his arguments made prayer that the appeal being devoid of merits, should be dismissed.

(31) We have considered the rival contentions addressed by the counsel for the parties.

(32) At the outset, it is pertinent to note that the prosecution moved an application under Section 319 Cr.P.C. during the trial to summon other members of the family of the accused-appellant namely Saheed, Jameel, Jamshed and Parmina. The said application was

dismissed by the trial Court vide order dated 14.5.2013.

(33) There is no dispute regarding the fact that appellant got married with deceased Afsana daughter of PW-2 Rafeeq, about 13 years prior to the incident in question. They were having two children out of the said wedlock. There is also no dispute regarding the fact that the appellant was working as a Constable in CRPF and at the time of the occurrence he was posted in Bihar. From the perusal of testimony of PW-20 coupled with documents Ex.PW20/A to Ex.PW20/F, it is evident that he availed leave from the 28.10.2011 to 11.11.2011 and he departed from the office on 25.10.2011 to avail the said leave.

(34) Admittedly, at the time of occurrence deceased Afsana was living in her matrimonial home at village Salaheri i.e. the native place of appellant Abdul Wahid. It has come on the record that the dead body of Afsana was found from the water tank on 27.10.2011, in the morning. The said water tank was at a distance of just 10 feet from the house of the appellant in village Salaheri. The rough site plan of the said spot is Ex.PW14/A which was prepared by the investigating officer. The scaled site plan of the said spot is Ex.PW15/A which was prepared by PW-15.

(35) There was no eye-witness to the alleged occurrence. The entire case is based on circumstantial evidence. In such a case to establish the charges, the entire evidence should conclusively point toward guilt of the accused person.

(36) In the trial Court, the prosecution relied upon the testimony of PW-2 Rafeeq in order to establish that Afsana was subjected to cruelty on account of demand of dowry, in her matrimonial home and when the demand of dowry raised by the appellant was not acceded, the appellant killed Afsana by strangulating her and then threw her dead body in the nearby water tank on the night intervening between 26/27.10.2011. The prosecution also placed reliance on the medical evidence in the shape of testimony of PW-1 wherein the said doctor proved post-mortem report Ex.PA/1 and further stated that Afsana died due to strangulation and drowning. The prosecution also relied upon the disclosure statements Ex.PW14/B and Ex.PW14/C to establish the guilt of the appellant. The another circumstance relied upon by the prosecution to prove its case against the appellant is that on the basis of disclosure statement Ex.PW14/C, the appellant got recovered 'Dupatta' Ex.P1, which was used by him to strangulate his wife Afsana.

(37) During trial PW-6, PW-7, PW-8 and PW-17 were declared hostile. We deem it expedient to mention the legal position with regard to hostile witnesses. The testimony of hostile witness cannot be *ipso-facto* discarded in to. It is well settled that portion of the testimony of hostile witness, which inspires confidence can be used. It is also well settled that testimony of hostile witness finding corroboration from other sources can be believed. In this context reference be made to ***Pandappa Hanumappa Hanamar versus State of Karnataka***¹. In the instant case the aforesaid PWs were cross-examined by the public prosecutor. However, they had not supported the prosecution case at all.

(38) As per the testimony of PW-2, in 2006 the appellant demanded Rs.70,000/- from him as a dowry and to settle the dispute he paid the said amount to the appellant in presence of panchayat. The prosecution failed to examine any member of the said panchayat to establish the aforesaid allegations of demand of dowry. It has also come into evidence that prior to the present occurrence, the complainant had never lodged any complaint with the police or any other authority to the effect that the appellant used to illtreat or harass Afsana on account of demand of dowry. PW-2 while appearing in the witness-box admitted that the appellant purchased four kanal of land in the name of Afsana about 3-4 years prior to her death. He further admitted in his testimony that the appellant also purchased one kanal plot in the name of Afsana about 2 years prior to her death. PW-2 also admitted that both the children of Afsana were studying in Mewat Model School, Nuh at the time of her death. PW-2 further admitted that other brothers of the accused were living in separate houses. All these facts belies the allegations of demand of dowry and maltreatment of his wife by the appellant, raised by the complainant, specially when the marriage was already 13 years old and most of the time the appellant being working in CRPF, was away from his native place in village Salaheri. Even in his further cross-examination, dated 4.7.2013, PW-2 stated that his daughter Afsana was never harassed by the accused-appellant on account of demand of dowry. Surprisingly the learned Public Prosecutor had not sought permission of the trial Court to re-examine or declare the said witness hostile, in order to confront him with his previous statement, which was totally in variance to what he had stated in his testimony dated 4.7.2013. It is also to be noticed that even the other private witnesses namely PW-6, PW-7, PW-8 and PW-

¹ (1997)10 SCC 197

17 have nowhere stated that deceased Afsana was harassed by accused-appellant on account of demand of dowry. The prosecution also failed to produce any reliable evidence to establish that marriage of the younger daughter of PW-2 was fixed for 19.11.2011 or that the complainant had promised to give car in her marriage. One cannot ignore the fact that the appellant was working in CRPF and was posted at far off place and had availed leave only w.e.f. 25.10.2011 and whereas Afsana died on 27.10.2011. In these circumstances it is highly improbable that prior to occurrence in question, the appellant was persistently causing physical harassment to the deceased, on account of demand of dowry.

(39) In order to establish medical evidence, the prosecution examined PW-1 Dr. Pankaj Vats who proved post-mortem report Ex.PA/1. As per the said medical evidence the post-mortem examination of the dead body of Afsana was conducted on 28.10.2011 by board of three doctors in CHC, Nuh. PW-1 was the member of the said medical board. From the perusal of post-mortem report, it is evident that the cause of death was kept in abeyance till the receipt of reports from FSL Madhuban and Pathology Department, PGIMS Rohtak. As per report of FSL Madhuban dated 21.3.2012 Ex.PH no poison was detected in viscera of the deceased. As per report dated 23.2.2012 Ex.PG of the said FSL, diatoms could not be detected in humerus bone of the deceased. The report Ex.PX dated 21.12.2011 of Pathology Department PGIMS Rohtak stated that no significant pathological changes were found in the heart of the deceased. The State counsel failed to produce/show, any final collective opinion given by the concerned board of doctors which conducted the post-mortem examination, regarding the cause of death of deceased Afsana. The State counsel during arguments conceded that no such collective opinion in writing regarding cause of death of the deceased is available on the record of trial Court. So it appears that in the present case, after the receipt of aforesaid reports, the concerned board of doctors which conducted the post-mortem examination had not given its collective opinion in writing regarding the cause of death of deceased Afsana. However, PW-1 one of the member of the said medical board, while appearing in the witness-box stated that cause of death in this case was drowning and significant strangulation which was ante-mortem in nature and sufficient enough to cause death in natural course of life. It is evident that final opinion in writing of the board of doctors which conducted post-mortem examination, regarding cause of death of deceased was never sought in this case by the investigating officer

and no such collective final opinion of the board of doctors was ever placed before the trial Court, by the prosecution except the aforesaid oral statement of PW-1 regarding the cause of death of the deceased. We are of the view that the aforesaid oral opinion regarding cause of death given by PW-1 may be his personal opinion. It cannot be termed as collective opinion of the board of three doctors which was constituted to conduct autopsy in the present case. There is possibility that other two members of the medical board may be having different view than that of PW-1, with regard to cause of death of the deceased. It could be easily observed that PW-1 testified in the Court regarding cause of death of Afsana, without consulting other members of the medical board which conducted post-mortem examination of the dead body. Thus mere saying by PW-1 in the Court that cause of death in this case was due to drowning and significant strangulation is not sufficient to hold that the deceased died due to strangulation.

(40) On the perusal of testimony of PW-7 and PW-8, it is clear that both of them stated in the Court that Afsana accidentally fell in the watertank on 27.10.2011. Even PW-6 Altaf, the real brother of the deceased while appearing in the witness-box stated that accused-appellant had nothing to do with the death of his sister Afsana. Further, PW-17 Ahmad, who is closely related to deceased, had not supported the case of the prosecution. Even PW-2 in his cross-examination dated 4.7.2013 stated that he is convinced that the accused-appellant was having no fault in the death of Afsana. We accordingly are of the view that in the absence of collective opinion of the board of doctors regarding cause of death, prosecution has failed to prove beyond doubt that the deceased died due to strangulation.

(41) PW-2 in his complaint Ex. PB and examination-in-chief stated that on the day of occurrence, accused-appellant appeared before the panchayat and confessed his guilt. The prosecution failed to examine any independent witness to establish this fact. No member of the panchayat was examined by the prosecution to prove this fact. PW-6, PW-7, PW-8 and PW-17 had no where stated that on the day of occurrence accused-appellant made any extra-judicial confession before the panchayat. So in this case, we are of the view that the prosecution has failed to prove that any such extra judicial confession as alleged by the complainant was ever made by accused-appellant before the Panchayat on 27.10.2011.

(42) The prosecution has also relied upon alleged disclosure statements Ex.PW14/B and Ex.PW14/C to establish its case against

accused-appellant. As per the prosecution the accused-appellant was arrested on 2.11.2011 and thereafter he suffered disclosure statement Ex.PW14/B on the same very day, before PW-14 in presence of PW-6 Altaf and PW-17 Ahmad wherein he confessed that on the night intervening between 26/27.10.2011 he reached his house in village Salaheri, at about mid-night and then he strangled to death his wife Afsana with 'Dupatta' when she was sleeping and then threw her dead body in the nearby water tank. However, PW-6 Altaf and PW-17 Ahmad who witnessed the recording of said disclosure statement and were closely related to the deceased, no where stated in their testimony that accused-appellant suffered any such disclosure statement in their presence.

(43) The prosecution has also placed reliance on another disclosure statement Ex.PW14/C alleged to be suffered by the accused-appellant on 4.11.2011 before PW-14 in presence of PW-7 Illiyas and PW-8 Hussaindeen, wherein accused-appellant admitted his guilt and further disclosed regarding concealment of 'Dupatta' with which he strangled his wife Afsana. It is also the case of the prosecution that pursuant to said disclosure statement the accused appellant got recovered one 'Dupatta' Ex.P1 in presence of PW-7, PW-8 and PW-9 EHC Satbir Singh. PW-7 and PW-8 while appearing in the witness-box had not stated anything regarding the aforesaid disclosure statement and the alleged recovery. Both these witnesses were declared hostile and they had not supported the case of prosecution. As per the testimony of PW-9 coupled with site plan Ex.PW14/D, it is clear that the place from where alleged 'Dupatta' was recovered was open place and was accessible to all and sundry. It is also evident that 'Dupatta' Ex.P1 was not sent to FSL for its examination to ascertain as to whether it was having any blood-stains on it or not. So we are of the view that the prosecution has failed to prove beyond doubt that accused-appellant suffered disclosure statements Ex.PW14/B and Ex.PW14/C or got effected recovery of any 'Dupatta' in pursuance to any such disclosure statement.

(44) As per disclosure statements Ex.PW14/B and Ex.PW14/C, on the night of the alleged occurrence accused-appellant made telephone call from his mobile phone having No.9798022588 to his wife Afsana on her mobile phone having No.9728824241. The prosecution examined PW-10 HC Vikram Singh in order to prove relevant call detail record of the said two mobile phone numbers. However the prosecution failed to produce customer application

forms relating to aforesaid two mobile phone numbers in the trial Court. Further the requisite certificate as per the mandatory provisions of Section 65-B(4) of Evidence Act was not produced in the trial Court, to prove the authenticity of the said electronic record. It being so, the aforesaid call detail record cannot be taken into consideration by the Court.

(45) The Court cannot lose sight of the fact that the appellant being posted in Bihar was not living with his wife in village Salaheri in normal course. No one has stated in the Court that prior to the alleged occurrence on the night intervening between 26/27.10.2011, the deceased was seen in the company of the appellant. In these circumstances, we are of the view that the provisions of Section 106 of the Evidence Act are not applicable to the facts of the present case in a strict sense. It is general rule that in a criminal case the burden of proof is always on the prosecution to bring home the guilt of the accused and Section 106 of Evidence Act is certainly not intended to relieve it of that duty as has been observed by the Hon'ble Supreme Court in ***Criminal Appeal No.1903 of 2019, Nagendra Sah versus State of Bihar***, decided on **14.09.2021**. Undoubtedly in the present case, the appellant in his statement under Section 313 Cr.P.C. stated that on the night intervening between 26/27.10.2011 he got late and as such stayed in the house of his friend in the neighbouring village of Salamba. He failed to substantiate his defence by examining his friend or any other independent witness. Thus creating doubt/suspicion regarding his conduct as to why he stayed in the neighbouring village and did not come to his house in village Salaheri on the night intervening 26/27.10.2011. However, we are of the view that the liability of the appellant could not be fastened just on the ground of suspicion as stated above. Law is well settled with regard to the fact that however, strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof as has been observed by the Hon'ble Supreme Court in ***Criminal Appeal Nos.359-360 of 2010, Sheila Sebastian versus R. Jawaharaj and another*** decided on **11.05.2018**.

(46) In a case of circumstantial evidence, motive assumes great significance and importance. Absence of motive would put the Court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. We are of the view that in the instant case, the prosecution has failed to establish genesis of the motive of

the occurrence. Thus further making the prosecution story doubtful.

(47) In the light of the above, we are of the considered view that there are missing links in the chain of circumstances, which have been relied upon by the prosecution to prove the guilt of appellant-accused. Thus the prosecution has failed to prove its case beyond a reasonable doubt against appellant-accused.

(48) Consequently, the present appeal is allowed and the impugned judgment dated 15.12.2014 and order dated 20.12.2014 passed by learned Sessions Judge, Mewat are hereby set aside. The accused-appellant stands acquitted of all the charges framed against him in the present case.

(49) The accused-appellant, who is stated to be in custody is hereby directed to be released forthwith by the jail authorities, if he is not required by the police in any other case. Bail bonds of the accused-appellant stands discharged.

(50) Appeal is accordingly allowed.

Shubreet Kaur