

***Before Rajiv Sharma & Harinder Singh Sidhu, JJ.***

**ROMESH DUTT AND ANOTHER—Appellants**

*versus*

**STATE OF PUNJAB—Respondent**

**CRA-S No.1189-SB of 2000**

December 10, 2018

***A) Indian Penal Code, 1860—S. 304-B Dowry death—Delay in lodging FIR—Case of prosecution cannot be discarded merely on ground that there is delay in lodging the FIR—Evidence led by the prosecution trustworthy and reliable—Delay of few hours in lodging FIR loses significance—Contents of FIR shows demand of dowry by appellants.***

*Held that*, PW-2 Ram Kumar Sagar was under tremendous pain and agony and stressed after loosing his daughter. The FIR was required to be registered immediately. However even if the FIR is registered belatedly, the delay can be explained. Moreover the case of the prosecution cannot be discarded merely on the ground that there is delay in lodging the FIR. In the instant case, the evidence led by the prosecution is trustworthy and reliable. In these circumstances, the delay of few hours in lodging the FIR loses its significance. According to the contents of the FIR, there was demand of dowry by the appellants. They were demanding Rs.50,000/- and Cielo car. The averments to this effect were made.

(Para 38)

***B) Indian Penal Code, 1860— S.304B—Evidence Act, 1872—S.113—Appellant had to explain circumstances under which she died—Post-mortem examination conducted by Board of Doctors—Face was cyanosed—Blood stained froth was coming out from nostrils, right and left lungs were congested—Cause of death was asphyxia due to smothering—As per DW-1 Dr.Manjit Singh deceased had suffered fits of epilepsy days before her death—Deceased had no history of epilepsy—Statement of DW-1 does not inspire confidence—Moreover, as per PW-1 Dr. Ranbir Singh in case of death by smothering heart is often full of dark blood—In the present case, lungs were congested and there was blood in heart as per post mortem report—Opinion of doctor qua asphyxia confirms to authoritative texts of medical jurisprudence.***

*Held that*, in the instant case, lungs were congested and there

was blood in heart as per the post-mortem report. The word used by Modi is “often”. Thus even if blood was found in heart, it will not suggest that it was not the case of homicidal smothering.

(Para 26)

*Further held that,* thus PW-2 Ram Kumar Sagar and his wife PW-4 Veena Sagar have categorically deposed that the appellants were demanding dowry. They also visited the house of the appellants on 27.05.1998 and tried to convince them. They were poor people. Neetu had died on 28.05.1998 in the house of the appellants. Appellant Romesh Dutt was present in the house with his wife. He had to explain under what circumstances she died. It is fit case where Section 106 of the Evidence Act would be attracted. The dead body was sent for post-mortem examination. The post-mortem examination was conducted by Board of doctors. The face was cyanosed. Blood stained froth was coming out from the nostrils. Right and left lungs were congested. The cause of death was asphyxia due to smothering. PW-1 Dr. Ranbir Singh has proved the post-mortem report Ex.PB. The appellants have placed strong reliance upon DW-1 Dr. Manjit Singh Saini. According to him, Neetu visited to him on 11.03.1998 and 19.03.1998. He proved the prescription slip Ex.DF. According to DW-1, only room number of doctor is written. Room no.15 was written on slip Ex.DF. However he used to sit in room no.16. The patient was not referred to him but was referred to room no.15. Since he used to sit in room no.16, there was no occasion for sending Neetu to room no.15.

(Para 39)

*Further held that,* according to DW-1 Dr. Manjit Singh Saini, Neetu had recently developed epilepsy. He had not recommended CT scan of Neetu. He has proved entries made in the register. The various entries made in the register by same ink are not believable. He had kept the official record with him for a period of one year and three months which he could not explain. The statement of Dr. Manjit Singh does not inspire confidence. According to DW-1 Neetu had suffered two fits of epilepsy 10 days back. Neetu had no history of epilepsy. Suggestion was made to PW-1 Dr. Ranbir Singh that in case of death by smothering the right side chamber of the heart is often full of dark blood/fluid and the left chamber is empty.

(Para 40)

*Further held that,* merely on that basis it cannot be stated that Neetu had not died from asphyxia by smothering and the word used by Modi is 'often'. The doctor has found that the deceased was cyanosed.

The blood stained froth was coming out from nostrils. It was unnatural death.

(Para 41)

**C) Indian Penal Code, 1860— S.304B—Dowry death—Deceased died within six months of marriage—She was subjected to cruelty and harassment for bringing insufficient dowry before her death—Family of deceased gave sufficient dowry which has been admitted by accused persons—Father of deceased withdrew sum of Rs.50,000/- from bank duly proved by Senior Manager of Bank—Thus, no occasion of family of deceased to falsely implicate accused persons—Appeals dismissed.**

*Held that*, the marriage of the appellant was solemnized with Rajesh Kumar on 23.01.1998. She died on 28.05.1998 just within six months of marriage. She was subjected to cruelty and harassment for bringing insufficient dowry before her death. The family of deceased had given sufficient dowry to the appellants which they have not denied. PW-2 Ram Kumar has withdrawn a sum of Rs.50,000/- from the bank which has been proved by PW-14 Jagir Singh, Senior Manager of the Punjab National Bank, Jalandhar. Thus there was no occasion of the family of the deceased to falsely implicate the appellants. The family of the deceased had also visited the in-laws house of their daughter on 27.05.1998.

(Para 42)

*Further held that*, the prosecution has proved the case against the appellants under Section 304-B IPC beyond reasonable doubt. They have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years for offence under Section 304-B IPC. The sentence imposed upon the appellants is sufficient to meet the ends of justice and we do not see any merit in the contention of learned counsel appearing on behalf of the State and the complainant to enhance the same.

(Para 43)

R.S. Cheema, Senior Advocate with  
Isaan Khetarpal, Advocate and  
Satish Sharma, Advocate  
*for the appellants*  
in CRA-A-1189-SB-2000.

P.S.Ahluwalia, Advocate  
*for the petitioner*  
in CRR-279-2001.

Rajesh Bhardwaj, Sr.D.A.G., Punjab.

**RAJIV SHARMA, J.**

(1) Since common questions of law and facts are involved in the aforesaid two appeals and revision petition, these are taken up together and disposed of by a common judgment.

(2) Criminal Appeal No.CRA-S-1189-SB-2000 has been filed by the appellants against their conviction and sentence passed vide judgment and order dated 23.11.2000 by the learned Additional Sessions Judge, Jalandhar, in Sessions case no.64 of 1999 whereby they were charged with and tried for offences punishable under Sections 304-B, 302, 498-A of the Indian Penal Code (in short 'IPC') along with one Tilak Bahadur. The appellants were convicted and sentenced for the offence under Section 304-B IPC to undergo rigorous imprisonment for a period of 7 years. The appellants were acquitted under Section 302 IPC. No separate conviction was recorded under Section 498-A IPC. Tilak Bahadur was acquitted.

(3) Criminal Appeal No.CRA-D-514-DBA-2001 has been filed by the State of Punjab for enhancement of sentence.

(4) The complainant has also filed Criminal Revision No.279 of 2011 for enhancement of sentence.

(5) The case of the prosecution in a nutshell is that the marriage of Neetu, daughter of PW-2 Ram Kumar Sagar, was solemnized with Rajesh Kumar on 23.01.1998. The complainant was a government contractor. He gave dowry to the accused as per his capacity. The accused were not happy with the dowry and after one month, they started harassing the deceased on account of bringing insufficient dowry. She brought this fact to the notice of her mother Veena Sagar and her maternal uncle Ashok Soni @ Pappu. Rajesh Kumar and Romesh Dutt were demanding Rs.50,000/- and Cielo car in dowry. The complainant along with his wife went to the house of the accused on 27.05.1998. Romesh Dutt was present in the house. They came to know about the death of their daughter on 28.05.1998. They went to the house of the accused. The daughter was lying dead on the bed. The complaint was filed before the police. The statement of complainant Ex.PC was recorded. The body was sent for post-mortem examination. The cause of death was asphyxia due to smothering and was sufficient to cause death in the ordinary course of nature. The viscera of the deceased was preserved and sent for FSL examination. The investigation was

completed and the challan was put up after completing all the codal formalities.

(6) The prosecution has examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. According to them they were falsely implicated. They also pleaded that they belong to affluent family.

(7) The appellants were convicted and sentenced, as noticed hereinabove. Hence the appeal (CRA-S-1189-SB-2000) filed by the appellants Romesh Dutt and Rajesh Dutt; and appeal (CRA-D-514-DBA- 2001) and criminal revision (CRR-279-2001) filed by the State of Punjab and complainant for enhancement of sentence. Ram Kumar Sagar (complainant) petitioner in CRR-279-2001 died during the pendency of revision. His legal heirs were permitted to be brought on record vide order dated July 28, 2014.

(8) Learned counsel appearing on behalf of the appellants in CRA-S-1189-SB-2000 has vehemently argued that the prosecution has failed to prove the case against the appellants.

(9) Learned counsel appearing on behalf of the State and complainant have supported the prosecution case and prayed for enhancement of sentence.

(10) We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

(11) PW-1 Dr. Ranbir Singh testified that he was posted as SMO, Surgery, Civil Hospital, Jalandhar. A Board was constituted comprising of him, Dr. P.N. Datta and Dr. Kamaljit. The post-mortem examination was conducted by them. The face was cyanosed. Blood stained froth was coming out from nostrils. Nails of hands and feet were mildly bluish. Brain membrane was congested. Right and left lungs were congested. Both chambers contained blood. Blood from heart was sent for chemical examination. The post-mortem was conducted at 11.15 AM on 29.05.1998. The cause of death in his opinion as well as members of the Board was asphyxia due to smothering which was sufficient to cause death in the ordinary course of nature. The time that elapsed between death and post- mortem was within 24 to 26 hours and between injuries and death was immediate. He proved PMR MB-6/98 dated 29.05.1998. There was no laceration inside the mouth as a result of teeth bite or any other cause. The suggestion was put to PW-1 Dr. Ranbir Singh if there was possibility of signs being of the result of the

fall of a patient suffering from epilepsy with face downward on soft pillow during the epileptic fit and stopping of breathing. PW-1 stated that there was only remote possibility of the same. He agreed with the observations made in Modi's Medical Jurisprudence that in case of death by smothering the right side chamber of the heart is full of dark and the left chamber is empty.

(12) PW-2 Ram Kumar Sagar is father of the deceased. According to him, marriage of his daughter Neetu was solemnized with Rajesh Kumar on 23.01.1998. The relationship between the parties were normal though one month thereafter the appellants demanded a sum of Rs.50,000/- and Cielo car. He went to the house of the appellants on 27.05.1998. He apprised the appellants that he was poor man. He has four daughters. His daughter had told him about the demand of dowry by the appellants. He received a telephonic message on 28.05.1998 about the death of his daughter. According to him, the appellants had killed his daughter for bringing insufficient dowry. They started crying when they saw the body of their daughter. He has admitted in his cross-examination that his daughter and Rajesh had gone on honeymoon. He denied the suggestion that lodging of FIR was an afterthought.

(13) PW-3 Vijay Chawla has proved the bill nos.2100 dated 27.11.1997 and 2160 dated 27.11.1997 vide which the cloths were sold to PW-2 Ram Kumar.

(14) PW-4 Veena Sagar is the mother of the deceased. She has corroborated the statement of her husband PW-2 Ram Kumar Sagar. According to her also, the appellants were demanding Rs.50,000/- and Cielo car. They were informed about the death of their daughter. They had given sufficient dowry to their daughter. In cross-examination, she deposed that when they reached the house of the accused on the day of occurrence, all the doors of house were opened. Neetu had not written any letter to her when she was on honeymoon. She did not also see the photographs of honeymoon. She admitted that no application was moved before the police against the appellants for demanding dowry.

(15) PW-7 Tarsem Lal has produced the bills of jewellery purchased by family of the deceased.

(16) PW-14 Jagir Singh has proved that a sum of Rs.50,000/- was withdrawn on 05.03.1998 by PW-2 Ram Kumar.

(17) PW-15 Darbara Singh deposed that Romesh Dutt was arrested at about 11.30 PM on 28.05.1998. Recoveries were effected at

the instance of the accused.

(18) PW-16 Parmod Kumar has taken the body for post-mortem examination.

(19) PW-17 Swaran Singh testified that Ram Kumar Sagar had come to him and had made his statement vide Ex.PC. He went to the spot. The dead body was examined by him. He prepared the inquest report Ex.PU. He recorded statements of the witnesses. He prepared the site plan. Romesh Dutt took out the dowry articles from the house on 02.06.1998. He arrested Rajesh Dutt on 04.06.1998.

(20) The appellants examined DW-1 Dr.Manjit Singh. He proved prescription slip Ex.DF. He has deposed that the deceased came to the OPD on 11.03.1998 and 19.03.1998. According to him, she was suffering from grand mal epilepsy. She was not suffering from the disease previously and had recently developed the same. In cross-examination, he admitted that he did not remember if he had kept the register with him for one year and three months. The medicine prescribed by him for the patient is also prescribed for few cases of migraine. He had not advised the patient to go for CT scan.

(21) Appellant Rajesh Dutt has taken the plea of alibi. He has produced DW-6 Narinder Singh Gill, DW-7 Lalit Kumar Bablani and DW-8 Murari Lal to prove this. According to these witnesses, Rajesh Dutt had gone to Delhi to make purchases from them.

(22) The appellants also produced DW-3 Ashok Mahajan and DW- 10 Kewal Krishan their neighbours to prove that it was a natural death. According to DW-3 Ashok Mahajan, he knew the appellants. He and Romesh Dutt used to go for morning walk daily at 5.15 A.M. They returned by 6.15 A.M. He went to his house and Romesh Dutt went to his house. At about 8.00 A.M. he went to Bhargo Camp. He came back at 10.00 A.M. When he was passing in front of the house of the accused, he found number of people were present there. He was told by his wife that the wife of Rajesh Dutt had died. He went to the house of the accused. The parents of the girl were present. Rajesh Kumar had gone to Delhi.

(23) DW-10 Kewal Krishan deposed that he was reading a newspaper at 8.00 A.M. on 28.05.1998. He heard the noise of Romesh Dutt that son open the door (*beta darwaja khol*). He was knocking the door. He did not receive response from inside. In the meanwhile, parents of the girl came there. The door could not be opened from inside. The door was opened after lot of knocking and pushes. He

himself entered the room along with Romesh Dutt. The girl was lying on pillow with her face downwards.

(24) Mr. R.S. Cheema, learned senior counsel has vehemently argued that the deceased had died due to epileptic seizures. According to him, she was suffering from epilepsy and was treated by DW-1 Dr. Manjit Singh Saini. The appellants never demanded any dowry from the deceased family.

(25) According to Modi, a Textbook of Medical Jurisprudence and Toxicology, Twenty Fourth Edition, in homicidal smothering, affected by the forcible application of the hand over the mouth and the nostrils, bruises and abrasions are often found on the lips and on the angles of the mouth, and alongside the nostrils. The face may be pale or suffused. The eyes are open, the eyeballs are prominent and conjunctivae are congested and some times there are petechial haemorrhages. The lips are livid, and the tongue sometimes protruded. Bloody froth comes out of the mouth and the nostrils. The lungs are normal if death has occurred rapidly. The right side of the heart is often full of dark fluid blood and the left is empty.

(26) In the instant case, lungs were congested and there was blood in heart as per the post-mortem report. The word used by Modi is “often”. Thus even if blood was found in heart, it will not suggest that it was not the case of homicidal smothering.

(27) The expression “often” has been defined by the Single Judge of Karnataka High Court in *Arun Kumar Alva versus The Vijaya Bank, M.G. Road, Bangalore and other*<sup>1</sup> as under:-

“The meaning of the expression 'often' as per The Law Lexicon is, "a word which implies repetition'. As per Chamber's 21 Century Dictionary 'often' means 'many times', 'frequently', 'in many cases'. As per Oxford Universal Dictionary Illustrated 'often' means, 'many times', 'frequently' As per New Websters Dictionary 'often' means, 'frequently', 'many times', 'repeatedly'. Therefore, the meaning of the word 'often' means many times. But in the charge against the petitioner the element of many times is absent. Hence, the charge is contrary to the instructions of respondent - Bank.”

(28) Similarly, in H W V Cox, Medical Jurisprudence and

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<sup>1</sup> 2006(3) KantLJ 610



Toxicology, Seventh edition, it is stated that because of passive venous congestion in some forms of asphyxia, the skin of the affected parts become suffused, often cyanosed and purple and sometimes swollen.

(29) In Medical Jurisprudence and Toxicology (Law Practice & Procedure) by Dr.K.S.Narayan Reddy, 3<sup>rd</sup> Edition 2010, it is mentioned that smothering is a form of asphyxia which is caused by closing the external respiratory orifices either by the hand or by other means. Blood may ooze out from the mouth and nose. The tongue may be protruded. The lungs are congested. It is also stated that obstruction by bed clothing, a pillow, a cushion etc. applied with skill, may not leave any external signs of violence, especially in the young and the old. When the face is pressed into a pillow, the skin around the nose and mouth may appear pale or white due to pressure.

(30) Thus there is no merit in the contention of Mr. Cheema that there is no injury found around the nose and mouth. In some cases, death is rapid due to reflex cardiac arrest and asphyxial signs are absent.

(31) A co-ordinate Bench of this Court in *Veer Bhan* versus *State of Haryana*<sup>2</sup>, has held that it is immaterial whether the husband was present or not to prove the case under Section 304-B and 498-A IPC. It has been held as under:-

“6. Mr. Baldev Singh, the learned counsel for the appellants in support of this appeal has urged that the case of Veer Bhan was distinguishable from that of his mother Krishnawanti as he was not present at the place when the incident took place as per the dying declaration made by Manju Bala, he stood exonerated.

7. We have considered this argument of the learned counsel and are of the opinion that this argument has no merit as in a matter with regard to a dowry death covered by Section 304B of the Indian Penal Code, the presence of the accused at the time when the death was caused, is not relevant.

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16. The question now arises as to the correctness of the sentence that has been imposed. It appears to us from the dying declarations that Krishnawanti was, in fact, liable under Section 302 of the Indian Penal Code, but the trial

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<sup>2</sup> 1998 (1) RCR (Criminal) 214

Court framed a charge against both the accused under Sections 304B and 498A of the Indian Penal Code only. We are, therefore, of the opinion that as far as Krishnawanti is concerned, the sentence imposed on her requires no modification, but are of the opinion that in the case of Veer Bhan who was admittedly not present at the spot when the incident took place, some modification in the sentence is called for. We, therefore, while dismissing the appeal, reduce the sentence imposed on Veer Bhan to seven years' rigorous imprisonment for the offence punishable under Section 304B of the Indian Penal Code; other parts of the sentence remaining as they are.

Appeal dismissed.”

(32) Similarly in *Baldev Singh* versus *State of Punjab*<sup>3</sup>, the Lordships of the Supreme Court have held that the expression soon before the death is left to be determined by the Court depending on facts and circumstances of each case. Their Lordships have held as under:-

“6. In order to attract Section 304B Indian Penal Code, the following ingredients are to be satisfied.

- i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.
- ii) Such death must have occurred within 7 years of the marriage.
- iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- iv) Such cruelty or harassment must be in connection with the demand of dowry.”

(33) In *Subramaniam* versus *State of Tamil Nadu and another*<sup>4</sup>, their Lordships of the Supreme Court have held that opinion of doctor must be conformed to tests laid down in authoritative texts on medical jurisprudence.

(34) In the instant case, the opinion of doctor qua asphyxia

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<sup>3</sup> 2009 AIR (SC) 913

<sup>4</sup> (2009) 14 SCC 415

conforms to the authoritative texts of medical jurisprudence as discussed herein above.

(35) In *Amar Singh* versus *State of Rajasthan*<sup>5</sup>, their Lordships of the Supreme Court have held that when prosecution proved that soon before her death deceased had been subjected by the appellant to taunts in connection with demand for dowry, the Court has to presume that the appellant had committed offence under Section 304-B IPC. It is for the appellant to rebut this presumption. Their Lordships have held as under:-

“21. The prosecution, therefore, has been able to show that soon before her death the deceased has been subjected by the appellant to taunt in connection with demand for dowry. This Court has held in *Pawan Kumar and Others v. State of Haryana* (supra) that a girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride and such acts of taunting by the husband would constitute cruelty both within the meaning of Section 498A and Section 304B Indian Penal Code.

22. Once it is established by the prosecution that soon before her death the deceased was subjected by the appellant to harassment or cruelty in connection with demand for dowry, the Court has to presume that the appellant has committed the offence under Section 304B Indian Penal Code. This will be clear from Section 113B of the Indian Evidence Act which states that:

“113-B. Presumption as to dowry death.- when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

The prosecution in this case had led sufficient evidence before the Court to raise a presumption that the appellant

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<sup>5</sup> (2010) 9 SCC 64

had caused the dowry death of the deceased and it was, therefore, for the appellant to rebut this presumption.”

(36) In *Bakshish Ram and another* versus *State of Punjab*<sup>6</sup>, their Lordships of the Supreme Court have laid down the following conditions which are precedent for establishing offence of dowry death under Section 304-B IPC :-

“14. A perusal of Section 304B clearly shows that if a married woman dies 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 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 the death. The conditions precedent for establishing an offence under this section are:

- (a) that a married woman had died otherwise than under normal circumstances;
- (b) such death was within seven years of her marriage; and
- (c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.

This section will apply whenever the occurrence of death is preceded by cruelty or harassment by husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind the section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.

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18. We have already noted Section 304B Indian Penal Code and its essential ingredients. Section 113B of the Evidence Act is also relevant for the case in hand. Both Sections 304B and 113B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to compact the increasing menace of dowry deaths. Section 113B of the Evidence Act reads as under:

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<sup>6</sup> (2013) 4 SCC 131

"113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

Explanation. - For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)"

As per the definition of "dowry death" in Section 304B Indian Penal Code and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients amongst others, in both the provisions is that the woman concerned must have been 'soon before her death' subjected to cruelty or harassment "for or in connection with the demand for dowry". While considering these provisions, this Court in *M. Srinivasulu v. State of A.P.* has observed thus:

"8. 4. ... The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B Indian Penal Code.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

19. As discussed above, a perusal of Section 113B of the Evidence Act and Section 304B Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. In other words, the prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal

circumstances". The prosecution is obliged to show that soon before the occurrence, there was cruelty or harassment and only in that case presumption operates. As observed earlier, if the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the case on hand, admittedly, the prosecution heavily relied on the only evidence of Sib0 (PW-2) - mother of the deceased which, according to us, is a hearsay, in any event, a very general and vague statement which is not sufficient to attract the above provisions. In such circumstances, as argued by the learned counsel for the appellants, accidental death cannot be ruled out."

(37) Learned senior counsel has also argued that there is inordinate delay in lodging the FIR. The complaint was made by PW-2 Ram Kumar Sagar vide Ex. PC. On the basis of which FIR was registered. There is delay of 11 hours in lodging the FIR.

(38) PW-2 Ram Kumar Sagar was under tremendous pain and agony and stressed after losing his daughter. The FIR was required to be registered immediately. However even if the FIR is registered belatedly, the delay can be explained. Moreover the case of the prosecution cannot be discarded merely on the ground that there is delay in lodging the FIR. In the instant case, the evidence led by the prosecution is trustworthy and reliable. In these circumstances, the delay of few hours in lodging the FIR loses its significance. According to the contents of the FIR, there was demand of dowry by the appellants. They were demanding Rs.50,000/- and Cielo car. The averments to this effect were made.

(39) Thus PW-2 Ram Kumar Sagar and his wife PW-4 Veena Sagar have categorically deposed that the appellants were demanding dowry. They also visited the house of the appellants on 27.05.1998 and tried to convince them. They were poor people. Neetu had died on 28.05.1998 in the house of the appellants. Appellant Romesh Dutt was present in the house with his wife. He had to explain under what circumstances she died. It is fit case where Section 106 of the Evidence Act would be attracted. The dead body was sent for post-mortem examination. The post-mortem examination was conducted by Board of doctors. The face was cyanosed. Blood stained froth was coming out from the nostrils. Right and left lungs were congested. The cause of death was asphyxia due to smothering. PW-1 Dr. Ranbir Singh has

proved the post-mortem report Ex.PB. The appellants have placed strong reliance upon DW-1 Dr. Manjit Singh Saini. According to him, Neetu visited to him on 11.03.1998 and 19.03.1998. He proved the prescription slip Ex.DF. According to DW-1, only room number of doctor is written. Room no.15 was written on slip Ex.DF. However he used to sit in room no.16. The patient was not referred to him but was referred to room no.15. Since he used to sit in room no.16, there was no occasion for sending Neetu to room no.15.

(40) According to DW-1 Dr. Manjit Singh Saini, Neetu had recently developed epilepsy. He had not recommended CT scan of Neetu. He has proved entries made in the register. The various entries made in the register by same ink are not believable. He had kept the official record with him for a period of one year and three months which he could not explain. The statement of Dr. Manjit Singh does not inspire confidence. According to DW-1 Neetu had suffered two fits of epilepsy 10 days back. Neetu had no history of epilepsy. Suggestion was made to PW-1 Dr. Ranbir Singh that in case of death by smothering the right side chamber of the heart is often full of dark blood/fluid and the left chamber is empty.

(41) Merely on that basis it cannot be stated that Neetu had not died from asphyxia by smothering and the word used by Modi is 'often'. The doctor has found that the deceased was cyanosed. The blood stained froth was coming out from nostrils. It was unnatural death.

(42) The marriage of the appellant was solemnized with Rajesh Kumar on 23.01.1998. She died on 28.05.1998 just within six months of marriage. She was subjected to cruelty and harassment for bringing insufficient dowry before her death. The family of deceased had given sufficient dowry to the appellants which they have not denied. PW-2 Ram Kumar has withdrawn a sum of Rs.50,000/- from the bank which has been proved by PW-14 Jagir Singh, Senior Manager of the Punjab National Bank, Jalandhar. Thus there was no occasion of the family of the deceased to falsely implicate the appellants. The family of the deceased had also visited the in-laws house of their daughter on 27.05.1998.

(43) The prosecution has proved the case against the appellants under Section 304-B IPC beyond reasonable doubt. They have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years for offence under Section 304-B IPC. The sentence imposed upon the appellants is sufficient to meet the ends of justice and we do not see any merit in the contention of learned counsel appearing

on behalf of the State and the complainant to enhance the same.

(44) Learned counsel appearing on behalf of the appellants also argued that a lenient view may be taken but in view of the facts and circumstances discussed hereinabove, no lenient view can be taken the manner in which Neetu had died.

(45) The sentence of the appellant Rajesh Dutt was suspended on 27.09.2001 and Romesh Dutt was granted bail on 19.01.2001. Accordingly appeal bearing no.CRA-S-1189-SB-2000 is dismissed. The police is directed to take the appellants Romesh Dutt and Rajesh Dutt into custody to undergo remaining sentence imposed by the trial Court vide judgment and order dated 23.11.2000. The appeal and revision preferred by the State and the complainant bearing nos.CRA-D-514-DBA-2001 and CRR-279-2001 are also dismissed.

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*Angel Sharma*