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A.F.R

Reserved On:- 20.8.2024

Delivered On:- 12.09.2024

1- Case :- CRIMINAL APPEAL No. - 6376 of 2010

Appellant :- Virendra Singh And Others

Respondent :- State of U.P.

Counsel for Appellant :- A.K.S. Solanki,Achyuta Nand Pandey,Bablu Singh,Dileep Kumar(Senior Adv.),Jitendra Kumar Shishodia,Rajrshi Gupta,Samit Gopal(Elevated),Sudhir Mehrotra,Vinod Singh

Counsel for Respondent :- A.K. Singh,Aradhana Chauhan,G.P. Singh,G.S.Hajela

2- Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 6504 of 2010

Appellant :- Panna Singh

Respondent :- State Of U.P.And Another

Counsel for Appellant :- Aradhana Chauhan,Gaurav Pratap Singh

Counsel for Respondent :- A.K.S. Solanki,J.S.Sengar,Jitendra Kumar Shishodia

3- Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 6365 of 2010

Appellant :- Panna Singh

Respondent :- State of U.P. and Others

Counsel for Appellant :- Aradhana Chauhan,Dileep Kumar(Senior Adv.),Gaurav Pratap Singh,Rajrshi Gupta

Counsel for Respondent :- A.K.S. Solanki,Jagdish Singh Sengar,Jitendra Kumar Shishodia,Rizwan Ahamad

4- Case :- GOVERNMENT APPEAL No. - 8242 of 2010

Appellant :- State of U.P.

Respondent :- Virendra Singh And Others

Counsel for Appellant :- G.A.

Counsel for Respondent :- ,Ajit Kumar Singh Solanki,D.R. Chaudhary,Dileep Kumar(Senior Adv.),Jitendra Kumar Shishodia,Pushpendra Singh,Rajrshi Gupta

Order In :-

Case :- CRIMINAL APPEAL No. - 6376 of 2010

Appellant :- Virendra Singh And Others

Respondent :- State of U.P.

Counsel for Appellant :- A.K.S. Solanki,Achyuta Nand Pandey,Bablu Singh,Dileep Kumar(Senior Adv.),Jitendra Kumar Shishodia,Rajrshi Gupta,Samit Gopal(Elevated),Sudhir Mehrotra,Vinod Singh

Counsel for Respondent :- A.K. Singh,Aradhana Chauhan,G.P. Singh,G.S.Hajela

Hon'ble Siddharth, J.

Hon'ble Syed Qamar Hasan Rizvi,J.

(Delivered by Hon'ble Siddharth, J.)

1. Heard Shri Rajrshi Gupta, learned counsel for the appellants; Ms. Divya Ojha, learned A.G.A.-I for the State; Shri Sudhir Mehrotra, learned Special Counsel for the High Court and perused the material on record.

2. This criminal appeal against the judgment and order dated 14.09.2010 passed by learned Sessions Judge, Aligarh in S.T. No. 931 of 2006 (State vs. Virendra Singh and 4 others) connected with S.T. No. 949 of 2007 (State vs. Vishambhar) whereby the appellants were acquitted for offence under Sections- 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act. However, the appellants have been convicted for offence under Section 506(I) IPC and awarded two years rigorous imprisonment and fine of Rs. 10,000/- and in

default of payment of fine to undergo two months additional simple imprisonment.

3. The prosecution case, in short, is that the informant, Panna Singh, married his daughter, Kumari Bhumika, with the appellant no. 3, Manoj on 22.06.2024. Rs. 5 lakhs in cash and other goods were given in dowry to the accused-appellants but the accused persons used to demand one Maruti car more in dowry and used to torture his daughter. Whenever his daughter used to come to her parental home, she used to complain that the appellants are demanding a Maruti car and in case the same is not given to them she would be killed. During his posting at Rajkot from November, 2005 to February, 2006 her husband and appellant no. 3, Manoj Kumar, took her along with him and tortured her as a result of which she suffered pain in her legs but he did not get her treated. She informed her brother, Sanjay Singh, about the pain in her legs and her brother went to Rajkot to get her treated in the hospital. The informant, his son and two relatives went to Rajkot where they discovered that on account of beating, the disk of the waist of his daughter has got displaced and operation has become necessary. The appellants stated that only after their demand of car is fulfilled they will get the operation of their daughter conducted. On 21.05.2006 at about 1:30 p.m in the night her elder brother-in-law, Vishambhar Singh (*Jeth*), who was residing at Kwarsi in Aligarh, informed on phone that daughter of informant has fallen from the roof of his house and died. He is taking her dead body to village- Khempur. The informant and others went to Khempur and found that there were no signs of falling of his daughter from the roof on her body. Blue signs were found on her neck, head was fractured by causing of injuries by log or some sharp edged weapon and there were signs of injuries all over her body. When the appellants were going to cremate the dead body of his daughter, informant tried to inform the police which was opposed by the appellants and they started throwing bricks and stones on them. They threatened them to leave

their place failing which they would also be done to death. He informed the police on phone and then police reached and after taking possession of dead body of his daughter, saved the informant and his relatives.

4. Complaint in this regard was made at the police station- Gabhana, District- Aligarh on 22.05.2006 at 11:00 a.m and it was registered as First Informant Report No. 17, under Sections- 498-A, 304-B and 506 IPC and Section 3/4 of Dowry Prohibition Act. Thereafter on 22.06.2005 at 12:00 p.m the inquest proceedings were started which ended at 13:10 p.m. After inquest dead body of deceased was sent for post-mortem at 13:15 hours.

5. After submission of charge sheet charges were framed against the appellants under Sections- 498-A, 304-B, 201 and 506 IPC and Section 3/4 of D.P. Act on 14.03.2007. The appellants denied the charges and sought trial.

6. To prove the prosecution case, 8 witnesses were produced before trial court and examined. P.W.-1, Panna Singh, in his examination-in-chief, reiterated the contents of FIR. He further stated that on 31.05.2006 at about 10:30 p.m some policeman informed that his daughter has died. Thereafter, the elder brother-in-law of his daughter, Vishambhar Singh, informed him that his daughter has fallen from roof and has died and they are taking her dead body to village Khempur. When he reached Khempur along with his family members after five minutes the dead body of his daughter came in a Maruti van wherein the appellants, except Manoj and Balveer, were sitting. Manoj and Balveer followed them on motorcycle. There were no signs of his daughter falling from roof on her body. There were blue signs on her neck. Head was fractured because of injury caused by log. On her entire body lacerated wounds and blue signs were present. Co-accused persons, were taking the dead body for cremation and when the informant tried to inform the police they started throwing bricks and stones on them and threatened them to leave otherwise they would also be killed. With great difficulty informant

informed the police. Police took the dead body of his daughter in possession and saved them. Thereafter he got the report written by his son, Sanjay Singh, which was lodged at the police station. In his cross-examination, P.W.-1 admitted that in his report it is not mentioned that the appellants ever demanded any dowry from him or his other family members. In his cross examination, he stated that his son, Sanjay Singh and appellant, Manoj, both were employed in Central Industrial Security Force (C.I.S.F) at Bombay Airport, but this fact was not known to him earlier and only after marriage of his daughter was settled with Manoj, he came to know of this fact. He further admitted that he did not enquired much about the appellant, Manoj, but from his son, Sanjay Singh, before marrying his daughter with appellant, Manoj. He himself enquired about his pay-scale and his service being permanent. He never went to see Manoj at Bombay but saw him in the village only. He never informed his son, Sanjay Singh, that the appellants are demanding any amount in dowry. In answer to reply whether his elder daughter, Prabha, was willing to marry at that time, the informant informed that she was not willing to marry because she was of religious temperament and did not wanted to get involved in the relationship of marriage. She was of saintly nature. He denied that appellant, Manoj, refused to marry his elder daughter, Prabha, and stated that he is willing to marry his younger daughter, Bhumika (deceased). He further stated that before marriage the accused persons never demanded any dowry but he spent money in marriage of his daughter on his own sweet will. They demanded Maruti car after her marriage. He admitted that he got the marriage of his daughter performed as an ideal marriage and the relatives of both sides appreciated the same. At the time of marriage his deceased-daughter, had passed intermediate examination and was studying in B.A privately. At the time of her death, she was in B.A.- IIIrd year. She had passed B.A. IInd year examination after her marriage. At the time of death her 7 papers of B.A.-III examination had concluded. After marriage, appellant, Manoj, had stated that he will not permit his daughter to study further. He never told appellant,

Manoj, not to create hindrance in the study of his daughter. At the time of her death she was living in house of her elder brother-in-law, Vishambhar, at Aligarh and appearing in the examination of B.A.-IIIrd year. Her examination was concluding on 23.05.2006. In further cross-examination, P.W.-1 stated that he gave Rs. 5 lakhs in cash and other goods in dowry at the time of marriage of his daughter to the appellants but they were not satisfied and were demanding Maruti car. On account of non-fulfilment of demand of Maruti car they used to beat and torture his daughter. His daughter used to inform him of their conduct. He further stated in cross-examination that he gave the goods in marriage of his daughter willingly. He had prepared the list of goods given in dowry but had not taken signature of the appellant's side on the same. He had purchased some goods from market, some were already given by relatives and some were in his house. He admitted that he has no receipt of any goods purchased by him for giving it to his daughter in marriage. He named the banks from which he withdrew Rs. 4.8 lakhs but did not furnished any evidence of the same. He admitted that he did not mentioned in the report that the appellants were not happy with the dowry given in marriage nor he mentioned that his daughter informed him in this regard and he informed these facts to the Investigating Officer. He also admitted that he never made any complaint against the appellants regarding their unhappiness from dowry received by them. He admitted that before marriage he enquired about the financial condition of family of appellants and after being satisfied his daughter was married with appellant, Manoj. At the time of incident his son was at his home due to some holiday but he did not remembered the day on which he had come. He admitted that he was not present at the time of incident. When his daughter was residing at Vishambhar's house and appearing in B.A.-IIIrd year examination he and his wife never visited her. His daughter, Prabha, had gone to the place of appellant, Vishambhar. He reiterated that the first information about falling of his daughter was given by appellant, Vishambhar, on phone as mentioned in the FIR. He received

information at about 10:30 p.m. After the dead body of his daughter arrived at village Khempur, he did not lodge the FIR because he wanted to see his daughter properly. Four persons accompanied him to the house of appellants, namely, Tejveer Singh, Gajendra Singh, Roshan Singh and his son, Sanjay Singh. They also did not make efforts to lodge the FIR. Since all wanted to see his daughter first. The appellants did not take out the dead body of deceased from Maruti van and it was taken out by the informant and his companions. He informed this fact to the Investigating Officer and if he did not mention the same in his statement he cannot say why. He admitted that when he reached village Khempur he did not have the phone. Police had not reached village Khempur at that time. It reached the village after he gave information to the police at about 09:00 a.m. He lodged the report on the next day at 11:00 a.m. at P.S.- Gabhana. He further admitted in the cross-examination that neither he nor his son signed the inquest report. Dead body of the deceased was brought on *jugaad* after post-mortem at about 03:00 p.m. He further stated that clothes of deceased were not taken by Investigating Officer and given to some villager. When he contacted him investigating officer took custody of clothes of deceased and prepared memo of the same. There were blood stains found on her clothes. He further stated that on 22.05.2006 at 09:00 a.m. the accused did not want post-mortem of dead body of his daughter. When he objected appellants threw bricks and stones on them and they suffered simple injuries thereafter police was informed and it came. When he visited the scene of incident people pointed out to the place where dead body of his daughter lying. When he went to house where incident took place he found that the roof of the house was 22 feet above the *khadanja* (uneven road). People informed that they were told by appellants, Vishambhar and Manoj, that his daughter was lying dead on this place. They also informed that they never saw the deceased falling from the roof before them. He denied that the deceased fell down from the roof while she was talking on mobile phone with her husband and there was no boundary wall on the roof. He also

denied that her husband, Manoj, was at Rajkot at the time when she was talking to him on phone. He admitted that at the time of incident appellants, Virendra Singh, Pushpa Devi and Balveer Singh, were at village Khempur. He further stated that at the time of marriage of his daughter her elder brother-in-law, Vishambhar Singh, was employed in Rapid Action Force (R.A.F). Father of Vishambhar Singh, informed that he was posted at Aligarh. Later his daughter informed her father-in-law, Virendra Singh and his wife, Babita, reside at Aligarh. His daughter used to visit them. His elder sister-in-law, Babita (*jethani*), visited his place 2-3 times. His daughter used to come with Babita to his place and also go back with her. He does not know where Babita resided at Aligarh. He had provided medicines to his daughter 3-4 times before she went with her husband to Rajkot. The pain in the legs of his daughter started 7-8 months after her marriage. These facts were not written by him in the FIR. When Manoj took his daughter he informed him about her treatment at Aligarh and Manoj informed that he will get her treated at Rajkot free of cost. Appellant, Manoj, took her to Rajkot in November, 2005 from his village. After one and a half months he came to know that Manoj was not getting her treated. This fact was informed to him by his son, Sanjay Singh. He himself did not go to Rajkot but sent his two brothers-in-law and his son. He went there only after he heard that his daughter is hospitalized. His brother-in-law, Satish Kumar Singh, informed that his daughter was suffering from slip disk which requires operation. When he asked appellant, Manoj, to admit her in hospital he stated that unless Maruti car is given by him he will not get his daughter treated and appellant, Manoj, got her discharged from hospital. After hearing about the illness of his daughter he along with his brother-in-law, Satish Kumar Singh and other brother-in-law, Sanjay Singh and son, Sanjay Singh, went to Rajkot which he mentioned in the FIR. He admitted that he did not mention in the FIR that he sent his brother-in-law, Satish Kumar Singh, alone to Rajkot who got his daughter admitted in hospital and thereafter discharged. He further admitted in his cross-

examination that his daughter came to Aligarh for appearing in B.A.-III examination in February, 2006. Her B.A.-III examination was to conclude on February, 2006. His elder daughter, Prabha, used to visit her at Aligarh at the house of appellant, Vishambhar. His daughter used to give examinations sitting on chair. She had appeared in 7 papers without any problem. The information about problem of slip disk in her spine was discovered from M.R.I report and at the time of her death she was suffering from same problem. He never went to meet his daughter while she was giving examination from the house of appellant, Babita wife of Vishambhar. After 26th December, 2006, appellant, Manoj Kumar, never got her treated for slip disc. He does not know in which hospital M.R.I of his daughter was conducted. He denied knowledge of treatment of his daughter by appellant, Manoj, at Shri G.T. Seth, Orthopaedic Hospital, Rajkot, on 23.11.2005, 30.11.2005, 07.12.2005, 15.12.2005, 22.12.2005, 11.01.2006 and 24.01.2006 continuously and making payment of cost of medicine and obtaining receipts. P.W.1 stated that he did not mentioned in the F.I.R that information of death of his daughter was first given by the police personnel. He only talked with appellant, Vishambhar. He stated that this fact was not mentioned by him in the F.I.R because of being mentally disturbed, but he informed the Investigating Officer in this regard. Why he did not mentioned this fact in his statement he cannot say. He does not knows the mobile number from which calls were made to him. He stated that he did not lodged the F.I.R on the date of incident, but on the next day because he and his family members had not seen the dead body of the deceased and when they saw the injuries on the head and body of the deceased they decided to lodge the FIR. After her marriage his daughter came to his house 12-13 times and stated that Maruti car is being demanded by the appellants and they also beat her. He admitted that he went to the matrimonial home of his daughter 5-6 times and also meet with appellant, Vishambhar, about the same time. Sister-in-law of his daughter, Geeta, also used to come to his house along with his daughter.

7. P.W.-2, Kumari Prabha, daughter of P.W.-1 repeated the contents of F.I.R in her examination-in-chief. She also reiterated the contents of the statement of P.W-1 in her statement. In her cross-examination she stated that she has two elder sisters and the deceased, Bhumika, was her younger sister. P.W.-2 refused to marry. She denied that earlier her marriage was to be solemnized with appellant, Manoj, but she refused. She clearly stated that she never wanted to marry and her decision was known to her family members. She stated that after two months of marriage of deceased, she went to her matrimonial home and she was healthy. Before going to Rajkot she had come to her parental home 10-12 times. Whenever she came to her parental house she used to make complaint about being harassed for dowry by the appellants. She stated that prior to the incident she had gone to the house of appellant, Vishambhar, in Shankar Vihar Colony 8-10 times. He used to reside on the upper floor of the house with his family where her sister, Bhumika, was staying for appearing in B.A.-III examination. Whenever she went there no one misbehaved with her. She went to the house of appellant, Vishambhar, after the death of her sister where someone informed that her sister has been done to death. No one told her earlier that Bhumika has died. She was never informed that Bhumika was admitted in hospital. She herself was appearing in examination. She found dried blood on the body of deceased in the police station. She reached the police station after F.I.R was lodged. She stated in her cross-examination that she is giving statement on the basis of her statement noted on paper because she has habit of reading after writing on paper only. The deceased suffered pain in the legs because of beating by the family members of her matrimonial home. She also stated that the accused persons refused to get the deceased treated till their demand of Maruti Car is fulfilled. She stated that she had informed the Investigating Officer that her father and brother had gone to Rajkot in last week of December, 2005 but why this fact was not mentioned in her statement recorded by the Investigating Officer she cannot say. She stated that she had informed the Investigating Officer that her

sister had suffered slip disk due to torture by the appellants and was unable to climb the stairs. She requested the appellants to permit Bhumika to live with her and appear in B.A.-III year examination but they refused stating that appellant, Vishambhar and Babita, have their own house in Aligarh and Bhumika will stay with them and appear in examination. She had informed the Circle Officer that on 21.05.2006, appellant, Manoj, came from Rajkot to Aligarh and other appellants had also reached Aligarh. On 21.06.2006 at about 06:00 p.m phone call came calling all the persons to the house of Vishambhar. She had informed the Circle Officer that she sensed that intention of appellants are not good. She had informed Investigating Officer that all the appellants in execution of conspiracy caused murder of her sister on 21.05.2006 by causing her injuries and if this is not mentioned in her statement recorded under Section 161 Cr.P.C., she cannot say why. When the appellants were taking the dead body of her sister in Maruti van at 10:30 p.m in the night to village - Khempur for cremation, the police personnel informed her father. This fact was also informed by her to the Investigating Officer but he did not mentioned it in her statement. She clearly stated that the family members of matrimonial home of her sister did not indulged in any dispute regarding performance of her last rites. She had informed this fact to the Investigating Officer. She stated that when the dispute between the parties took place, she informed Investigating Officer that after dispute between the parties police was informed. She was not able to inform any phone number of her father nor her own mobile number to the police personnel informing about the death of her sister to the Investigating Officer. She could not state the phone number on which the deceased used to talk to her husband at Rajkot. In her cross-examination, she admitted that the Government Advocate got her statement prepared in writing but she did not read the statement of her father recorded earlier before the court. She did not asked her father what questions were put to him in a cross-examination. She admitted that she has written her statement because of habit and it has been prepared as the incident took place.

She admitted that she had given her written statement to a Government Advocate and he may have left out something from her statement. She admitted that whenever Manoj used to come to village- Khempur, she used to go to meet him and her sister, Bhumika. She used to talk to appellant, Manoj. She used to talk to all the family members of matrimonial home of her sister. Prior to the death of her sister, she had gone to house of Babita and Vishambhar 8-10 times. It was situated on upper floor and consisted of one room only taken on rent. When Bhumika went to Rajkot, she had informed her that appellant, Manoj, was taking her for treatment. Manoj had come to Aligarh on the date of incident but she was not present in Aligarh. This was informed by Bhumika to her on telephone. When she went to house of Babita and Vishambhar, Manoj was not present. She stated that she had requested the appellants, including Manoj, to permit Bhumika to stay with her *mama*, Satish Kumar Singh, for giving examination but they refused. In the cross-examination, she was questioned as to how she named, Manoj, in her examination-in-chief when he was not present at Aligarh and then she replied that Manoj informed him on phone that Bhumika will appear in examination from his brother's place. She stated that she saw the place of incident where no blood was found. It was wiped out. People informed that her sister was done to death. She had informed everything to her father. No one informed her that they saw Bhumika falling from upper floor of the house.

8. P.W.-3, Dr. K.P. Singh, testified before the court that blood was oozing from nose and ears of the deceased. He found the following injuries on the dead body of the deceased :-

(1) lacerated wound 5cm x 0.5 cm x bone deep on the central vault of skull, 6 cm above from glabella.

(2) Abraded contusion on top of left shoulder 3cm x 3cm.

(3) Multiple abrasions 58cm x 8cm on outer side on left thigh and knee.

(4) Multiple abrasions 3cm x 3cm on medial aspect of right knee.

(5) Abrasion 2cm x 2cm in front of right wrist.

(6) Abrasion 1cm x 0.1cm between thumb and index finger.

9. No injury was found on the face and back. In internal examination both the bones of parietal side of the skull was found to be broken. Membrane of brain was congested and redness was present. Cause of death was certified to be coma as a result of head injury. During cross-examination, P.W.-3, stated that injury no. 1 was situated 6cm above glabella. Glabella is situated between both the eyebrows. He stated that injury no. 1 started from glabella on frontal bone. Injury nos. 2 to 6 were found on non-vital parts of the deceased and the doctor stated that they can be caused by falling on rough surface like *damar* road (metalled road) and *khadanja* (uneven road). Doctor further admitted that if a person falls from a height of 22 feet he cannot have any control over his body and the injury shall be caused on the part which will hit the land surface. He accepted that if the deceased fell from the height of 22 feet on the road, the injury suffered by her could have been caused. Her clothes would also be torned. He stated that in the inquest report, he found that *mehroon* colour *salvaar* of the deceased was torned because of skidding on the rough surface. No visible injuries were found on the face, neck and back of the deceased. The deceased died due to coma.

10. P.W.-4, proved that he registered the case at the police station chik report whereof is present on the record. He also proved the G.D. entry in this regard recorded by him. He also proved that the application for lodging the FIR was written by the son of informant, Sanjay Singh.

11. P.W.-5, Nayab Tehsildar, Devraj Singh, proved that he got the inquest proceedings conducted. He proved that he himself wrote in the inquest report that *salvaar* of deceased was torned due to skid injury. He further prove that

the clothes of the deceased were not taken by the police in custody before him.

12. P.W.-6, Circle Officer, Rajesh Kumar Singh, proved that case in dispute were registered at P.S.- Gabhana in his absence and its investigation was entrusted to him. In his cross-examination, P.W.-6 admitted number of procedural lacks committed by him during investigation, like not recording the time when he left for investigation in General Diary nor the time of reporting back to the police station. He admitted that he did not recorded the statement of Head Constable of police station. He did not stated even the date when he recorded the statement of informant nor he could tell the reason why the signatures of P.W.-1 were not taken on the FIR. He also did not tried to know when the chik FIR was sent to the court concerned. He admitted that who brought to the dead body of the deceased to the police station is also not mentioned by him in a case diary. He stated that P.W.-1 did not provided him any receipt of purchasing the goods given in dowry in the marriage of deceased. He also admitted that P.W.-1 did not provided him details of the bank accounts from which he withdrew the amounts for making payment of dowry in cash to the appellants. He admitted that P.W.-1 never informed him that his deceased daughter used to inform him that the appellants were not satisfied with the dowry. He only informed that the appellants used to beat his daughter because of non-fulfilment of demand of Maruti car. He further admitted that when he took the copy of post-mortem report, he never informed him that the appellants did not cooperated with him after death of deceased nor he informed him that they started throwing bricks and stones. He stated that P.W.-1 only informed that the appellants started quarrelling on the issue of getting post-mortem of the dead body of deceased. He admitted that P.W.-1 never showed him the place of incident. He did not recorded the statement of any person of village Khempur, where the appellants resided. He did not went to the house where the deceased was residing nor he enquired from anyone in

that locality. P.W.-1 informed him that appellant- Vishambhar Singh, informed him about the death of his daughter on account of falling from the roof and died on the spot. He also informed P.W.-1 that they are taking the dead body of deceased to village- Khempur. He admitted that Parcha No. 1 of the case diary was not in his hand writing.

13. P.W.-7, Circle Officer, Sunil Kumar Singh, proved that he got the investigation from earlier Investigating Officer, P.W.-6. Rajesh Kumar Singh. He proved that he recorded the statement of P.W.-1 and on his pointing out inspected the scene of occurrence and prepared site plan. At the time of inspection of place of incident, he recorded the statement of Mulayam Singh and Saurabh and further implicated the accused under Section 201 IPC. He proved that he recorded the statements of the prosecution witnesses, thereafter he conducted the other tasks like arrest of the accused persons, incorporating details of inquest report, post-mortem, etc., in the case diary. He is not aware when chik FIR was sent to the court since no such entry was found on the F.I.R and no signature of C.J.M is present on the F.I.R. It is not mentioned in the application of P.W.-1 that family members of matrimonial home of the deceased ever demanded dowry nor any such allegation was made in the statement of P.W.-1 recorded by him. P.W.-1 also never stated before him that appellants ever demanded dowry. He admitted that in the entire investigation none of the witnesses informed him that any of the appellants demanded dowry in front of them. No one informed him that prior to the death of deceased any application was given to any authority regarding the demand of dowry by anyone. He did not enquired from which bank account Rs. 5 lakhs was withdrawn by P.W.-1 nor he provided any list of the goods purchased by him and given as dowry in marriage of the deceased. P.W.-1 also did not provided any documents regarding treatment of the deceased prior to her death but he was informed that appellants stated that unless their demand of dowry is met, they will not get the deceased treated. He admitted that he also

did not enquired from the appellant, Manoj, whether he got deceased treated and, if yes, then where. He did not collected any call details to verify whether deceased ever informed anyone about her torture for demand of dowry. Mama of deceased, brother of deceased and P.W.-1 never informed him about any ticket or reservation details about their going to Rajkot to prove whether they went to Rajkot for getting the deceased treated in the hospital. He admitted that in the FIR P.W.-1 stated that demand of Maruti car was being made. He was not shown any evidence of throwing bricks and stones by the accused persons on the prosecution side nor they were shown to the earlier Investigating Officer. During the investigation, it had come to his knowledge that information of death of Bhumika was given by family members of her matrimonial home to her father, P.W.-1, stating that she was strolling on roof of first floor and talking to her husband, Manoj, on phone when she fell down and died on account of injuries suffered by her and they are reaching village-Khempur with her dead body. During investigation he was never informed that any altercation took place between both the sides in the night of incident at village Khempur. He also stated that he was never informed by P.W.-1 that his one daughter is unmarried and involved in religious pursuits. He did not enquired why if the deceased was being tortured for dowry she was still living with the appellants, Vishambhar and Babita, and appearing for B.A.III examination from their house. At the place of incident at Shankar Vihar Colony, no one had informed him about beating and causing injuries to the deceased by anyone. No one told him that the deceased after suffering injuries was not in a position to walk and was made to walk by giving support. He did not found any sign of blood on the place of incident but admitted that the height of roof was 20-22 feet.

14. P.W.-7 further testified that P.W.-2 did not provided him any document regarding treatment of deceased nor he asked from P.W.-2, Kumari Prabha, why she has not married. He also stated that P.W.-2, never informed him that

she went to Shankar Vihar Colony where deceased was residing and died at 10:30 p.m on the night of incident. He further stated that P.W.-2 never informed him that on the night of incident, husband of deceased, Manoj, had come back from Rajkot to Aligarh nor she informed him that on the night of incident husband of deceased and other family members of her matrimonial home had come to the place where deceased was residing. She also did not informed him that because of non-fulfilment of demand of a Maruti Car deceased was subjected to grievous injuries and she died of the same. She did not informed that deceased informed her about this on telephone nor she informed him about any telephone number.

15. P.W.-8, the third Investigating Officer, stated that he again recorded the statement of P.W.-1 and inspected the place of incident in the presence of witnesses, Asha Devi, Anokhe Lal, etc., on 18.09.2006 and submitted charge sheet against appellants in court against all of them except, Vishambhar Singh. Charge sheet was submitted against Vishambhar Singh later on 09.01.2007. He stated that witness, Asha Devi, informed him that Bhumika was strolling on roof talking on mobile phone on the upper floor of the house and she saw her there. After 15 minutes she heard the sound of her falling. She came out and saw the deceased lying on the road and raising cries. Anokhe Lal, informed P.W.-8, that he saw the deceased falling from roof. He enquired about deceased from Satendra who informed that he had come to know the deceased was wife of younger brother of Vishambhar, who is tenant on the first floor. The deceased was lying in the pool of blood and died soon. The other persons present on the spot approved the statements of Asha Devi, Anokhe Lal and also one Satendra. The appellants also informed him about the manner of incident as informed by the aforesaid witnesses.

16. The statement of the appellant, Babita, was recorded under Section 313 Cr.P.C., who clearly stated that deceased was living with her at the time of incident and was appearing in B.A.-III examination. She was talking on phone

with her husband on the roof of upper floor of her house and accidentally fell down. Appellant, Pushpa, stated that she was in the village- Khempur at the time of incident. Appellant, Vishambhar Singh, stated that at the time of incident he was at Delhi and his family was residing in rented house at Aligarh where the deceased was also living for the purpose of appearing in B.A.-III examination. She fell accidentally from the roof top and died. Later he received information of this accident. Appellant, Manoj, husband of deceased, stated that on the date of incident he had taken leave and was coming to take back his wife, the deceased, whose examination was about to be concluded. He was coming from Rajkot, Gujarat and was on the way when the incident took place. Appellant, Balbeer, stated that the deceased died on account of falling from roof and at that time he was in his village- Khempur. Appellant, Virendra, stated that his daughter-in-law died because of suffering injuries from falling from the roof. Information of incident was given to the family members of the deceased and they were informed that her dead body is being taken to village- Khempur for last rites. He also stated that deceased was living with his another daughter-in-law, Babita, at Aligarh and appearing for examination.

17. The trial court after considering the rival submissions and going through the evidence on record acquitted the appellants of charges under Sections- 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act but convicted and sentenced the appellants under Section 506 Part-I IPC to two years rigorous imprisonment.

18. Against the judgment and order of trial court above noted four criminal appeals have been preferred. Criminal Appeal No. 6376 of 2010 has been preferred by the appellants against the order of conviction and sentence under Section 506 Part-I IPC. Second Criminal Appeal No. 6365 of 2010 and third Criminal Appeal No. 6504 of 2010 have been preferred by the informant, P.W.-1, challenging acquittal of the appellants for committing the offences

under Section 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act. Last Government Appeal No. 8242 of 2010 has been also preferred by the State Government against the acquittal of the accused by trial court regarding the sections aforesaid.

19. Learned counsel for the appellants has submitted that it is a case of false implication of the appellants as clear from the evidence on record. The prosecution has tried to implicate the appellants falsely in the case of dowry death when it is a simple case of accident. He has made number of other submissions which shall be considered hereinafter.

20. Learned A.G.A has vehemently opposed the submissions made by learned counsel for the appellants and has submitted that the trial court has committed patent legal error in acquitting the appellants for committing the offences under Sections- 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act and only convicting them for committing minor offence punishable under Section 506 Part-I IPC. He has pointed out that at the time of consideration of bail application of the appellants a learned Single Judge of this court issued notices to the Presiding Officer of the trial court seeking his explanation as to why he has acquitted the appellants regarding the charges under Sections- 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act. There was presumption against the accused under Section 113-B of Evidence Act since the deceased died within 7 years of her marriage with appellant, Manoj. He has further submitted that the Presiding Officer of the trial court has submitted his reply which is on record, but it is not satisfactory.

21. After hearing the rival submissions, we find that first lacuna in the prosecution is that the F.I.R was lodged on 21.05.2006 and the same was produced before C.J.M on 27.05.2006. Further, the Investigating Officers, P.W.-6 and P.W.-7, have not been able to state the date when F.I.R was sent to

the C.J.M., Aligarh from the police station- Gabhana, District- Aligarh as per Section 157 Cr.P.C.

22. Regulation 97 of the Police Regulations also mandates that the original copy of the FIR shall be sent by the Superintendent of Police to the Magistrate forthwith having jurisdiction. For ready reference regulation 97 of Police Regulations is quoted hereinbelow:-

“97. Process for information relating to the commission of a cognizable offence.- Whenever information relating to the commission of a cognizable offence is given to an officer-in-charge of a police station the report will immediately be taken down in triplicate in the check receipt book for reports of cognizable offences (Police Form No. 341). The step will on no account be delayed to allow time for the true facts to be ascertained by a preliminary investigation. Even if it appears untrue, the report must be recorded at once. If the report is made orally, the exact words of the person who makes it, including his answers to any questions put to him should be taken down and read over to him; he must sign each of the three parts, or if he cannot write, he must make his mark or thumb-impression. If a written report is received an exact copy must be made, but the signature or mark of the messenger need not be taken. In all cases the officer-in-charge of the station must sign each of the three parts and have the seal of the station stamped on each. The triplicate copy will remain in the book; the duplicate copy will be given to the person who makes the oral or brings the written report; the original will be sent forthwith through the Superintendent of Police to the Magistrate having jurisdiction with the original written report (if any) attached. The practice of delaying first information reports until they can be sent to head quarters attached to special or general diaries is contrary to the provisions of Criminal Procedure Code and is prohibited.

If there is an Assistant or Deputy Superintendent incharge of the subdivision, and stationed at a place other than the headquarters of the district, the original should be sent through him to the Magistrate.”

23. The Apex Court in the case of *Ishwar Singh (the appellant) Vs. State of U.P. (The respondent) AIR 1976 SC 2423* has held that delay in sending report to the Magistrate makes the prosecution case doubtful. Only two days' delay in sending of the FIR to the Magistrate was considered fatal for the prosecution case. The Apex Court found that the delay in sending of the FIR gives time for introducing improvements setting up distorted version of the occurrence in the FIR. It would be useful to refer to paragraph 5 of the judgment of the Apex Court which is as follows:-

“ 5. Mr. Frank Anthony appearing for appellant Ishwar Singh submitted that in affirming the Judgment of the trial Court, the High Court also overlooked certain important aspects of the case that the Sessions Judge had failed to consider. He pointed out that the F.I.R. which is stated to have been lodged at 9.05 A. M. on February 14, 1973 was sent out from the police station the next day, February 15; the time when it was despatched is not stated, but it appears from the record that the Magistrate received it on the morning of February 16. The Court of the Magistrate was nearby, which makes it difficult to understand why the report was sent to him about two days after its stated hour of receipt at the police station. Section 157 of the CrPC, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the first information report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when one finds that the case made in Court differs at least in two very important particulars from that narrated in the F.I.R. Mahabir Singh, who lodged the first information report, stated in-Court that he had invited some people to his house to effect a settlement between him and Ishwar Singh, and that he had also sent Ghanshyam to call Ishwar Singh there. The F.I.R. does not mention anything like this. From the F.I.R. it appears as if the accused persons came uninvited to his house, demanded

why he had demolished the drain, and started assaulting him and the other persons who were present there. It is also difficult to understand why Mahabir should invite anyone to his house for a settlement, if really Ishwar Singh had permitted him to demolish the drain as he claimed. Further, the F.I.R. does not mention that Mahabir and Satyapal wielded lathis in their defence when attacked and that this resulted in some of the accused getting injured; but that is what both Mahabir (P.W. 1) and Satyapai (P.W. 2) stated in their evidence in Court. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eye-witnesses "cannot be accepted at its face value", as observed by this Court in Mitter Sain v. State of U.P."

24. The Apex Court in the case of ***Marudanal Augusti Vs. State of Kerala (1980) 4 SCC 425*** has held that once FIR is found to be fabricated brought into existence long after the occurrence, entire prosecution case will collapse. In this case there was only 29 hours delay in receipt of FIR by Sub-Magistrate which the Apex Court held fatal for the prosecution case and affirmed the order of the acquittal passed by the trial court and set aside the judgment of the High Court.

25. In the recent judgment of the Apex Court in the case of ***Mohd. Muslim Vs. State of U.P. (Now Uttarakhand) [2023 (124) ACC 932]*** Apex Court has held that four days delay in sending of FIR to the court in a case of murder casts doubt on its authenticity in paragraph 13 which is quoted as follows:-
"13. The chick FIR report was sent to the Court on 08.08.1995 with the delay of about 4 days. It is worth mentioning that FIR in a criminal case and particularly in a murder case is a vital and a valuable piece of evidence especially for the purpose of appreciating the evidence adduced at the trial. It is for this reason that the infirmities, if any, in the FIR casts a doubt on its authenticity. The FIR in such cases may also lose its evidentiary value. In Meharaj Singh and Ors. Vs. State of U.P. and Ors.1, it has been opined that on account of the infirmities such an ante-timing of the FIR loses its evidentiary value. Thus, this entitles the accused to be given the benefit of doubt."

26. Secondly, we find that there is no evidence at all on record which may prove that the deceased was subjected to cruelty soon before her death regarding non-fulfilment of demand dowry attracting section 304-B IPC along with Section 113-B of Evidence Act. For attracting the provisions of Section 304-B IPC prosecution is required to prove its one of the vital ingredients of Section 304-B IPC beyond reasonable doubt that deceased was subjected to cruelty by accused in connection with demand of dowry soon before her death. Legal presumption under Section 113-B of Evidence Act does not appears to be attracted in this case. The presence of all the appellants in their village home except appellants, Smt. Babita, Vishambhar, and Manoj, was proved in their village at the time of incident. City Aligarh where deceased died in the house of appellants, Babita and Vishambhar, was 21 kms away from the village- Khempur where remaining appellants resided. The prosecution under Section 304-B IPC cannot escape from the burden of proof that harassment / cruelty of deceased woman was related to demand of dowry and it was done "soon before her death". The court cannot simply pass order of conviction and sentence if the death of deceased woman takes place within 7 years of her marriage in abnormal circumstances. To attract the provisions of section 304-B IPC, one of the main ingredients for constituting the offence which is required to be established is that the deceased was subjected to cruelty and harassment soon before her death in connection with demand of dowry.

27. In the present case, P.W.-1 stated that at the time of marriage of the deceased with appellant, Manoj, no demand of dowry was made and he willingly gave Rs. 5 lakhs in cash and other goods in dowry in their marriage which took place on 22.06.2004. It was an ideal marriage and all the relatives appreciated the same. He then stated that appellants were not happy with the dowry and they started demanding Maruti car in dowry after marriage and subjected his daughter to beating and harassment daily by different modes.

There is nothing on record to prove this allegation except oral statement of P.W.-1. The marriage of deceased took place on 22.06.2004 and she died on 21.05.2006. During this period, no complaint was made against the appellants before the police or any other forum or authority alleging that appellants are demanding Maruti car from the deceased.

28. P.W.-2, who is real sister of deceased, also failed to prove any such allegation before the trial court. She gave her statement by reading a written document and admitted that she writes everything prior to stating it before the court. She also stated that government advocate may have failed to state some facts in her written note. The last Investigating Officer, P.W.-8, went to the place of incident and he recorded the statements of three witnesses, namely, Asha Devi, Anokhe Lal and Satendra Singh, where from it is clear that the deceased was talking on mobile phone and strolling on the upper floor of the house and accidentally fell down. It has come in the evidence that there was no boundary wall on the upper floor of the house whereon the deceased was strolling and talking on mobile phone from her husband. The above witnesses have clearly stated that the deceased fell down accidentally from the upper floor on the road and died soon. P.W.-1 and P.W.-2 have tried their best to make out a case of dowry death against the appellants but they have miserably failed in their efforts.

29. The essential ingredients to attract to provisions of Section 304-B IPC have been enumerated by the Apex Court in the case of ***Kashmir Kaur vs. State of Punjab, AIR 2013 SC 1039*** as follows :-

“To attract the provisions of Section 304-B of the IPC the main ingredients of the offence to be established is (a) that soon before the death the deceased she was subjected to cruelty and harassment in connection with the demand of dowry, (b) the death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal, (c) such death occurs within seven years

from the date of her marriage, (d) that the victim was subjected to cruelty or harassment by her husband or any relative of her husband, (e) such cruelty or harassment should be for or in connection with demand of dowry, and (f) it should be established that such cruelty and harassment was made soon before her death.”

30. The Apex Court in the case of ***Prema. S. Rao vs. Yadla Srinivasa Rao, AIR 2003 SC 11***, has held that to attract the provisions of Section 304-B IPC one of the main ingredients of offence which is required to be established is that “soon before her death” deceased was subjected to cruelty and harassment “in connection with demand of dowry”. In the case of ***Mustafa Shahdal Shaikh vs. State of Maharashtra, AIR 2013 SC 851***, the Apex Court defined the meaning of “soon before her death” as interval between cruelty and death should not be much. There must be existences of approximate and live link between the effect of cruelty based on demand of dowry in the concerned death. If the alleged incident of cruelty is remote in time and has become state enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. In the cases of ***Yashoda vs. State of Madhya Pradesh, (2004) 3 SCC 98*** and ***Kaliyaperumal vs. State of Tamil Nadu, AIR 2003 SC 3828*** similar proposition of law has been considered.

31. In the present case, P.W.-1, stated that after the marriage of his daughter the appellants started demanding maruti car and she was subjected to torture daily. This assertion does not sounds credible in view of the fact that soon before her death, deceased had come form Rajkot, where her husband was employed. She was living at her sister-in-law’s place at Aligarh and peacefully appeared in 7 papers of B.A.-III examination from there. There is no allegation that she was hindered from appearing in examination by any of the appellants. P.W.-1 has admitted that all the appellants, except appellant, Virendra and his wife visited his place with his daughter, number of times. He has not alleged that while they came to his house with his daughter they ever demanded maruti car or taunted him on this account. P.W.-2 has also not made

any such allegation in her statement. She has admitted going to the matrimonial home of her sister, Bhumika and meeting the members of her matrimonial home and talking to appellant, Manoj, whenever he came to his house on leave. Thus, there is no evidence of the deceased being subjected to torture in connection with demand of dowry soon before her death.

32. In the present case, we find that the deceased was living at the house of her sister-in-law, Smt. Babita, in the city of Aligarh and was appearing for B.A. IIIrd year examination soon before her death. It is admitted fact that she had passed her examination of B.A. Part-1 and B.A. Part-II after her marriage. She has appeared in 7 papers in B.A final examination which was about to be completed in two days i.e., on 23.05.2006 and appellant, Manoj, who was posted at Rajkot in Gujarat was coming to take her back to Rajkot after her examinations were over. Before the trial court, documentary evidence were placed to prove that the appellant, Manoj, was coming back from Rajkot. He filed the copy of railway reservation ticket dated 20.05.2006 from Rajkot to Aligarh and also the warrant for travel issued by his employer, Central Industrial Security Force (C.I.S.F.) and his leave certificate from 22.05.2006 to 26.05.2006. he also produced the railway reservation ticket of return journey dated 29.05.2006 and 30.05.2006. Therefore, it is clear that the deceased was peacefully appearing in B.A. Part-III examination staying in the house of her sister-in-law, Smt. Babita. Prior to that she was living at Rajkot, where her husband was employed and she suffered problem of slip disk in her spine for which the appellant, Manoj, got her treated from 22.05.2005 to 26.11.2005. He filed the documents of Orthopaedic Hospital and the receipts of purchasing medicines, M.R.I report, prescription of her treatment, receipts of physiotherapy and the registration slip in the Rajkot Hospital regarding treatment of deceased. This proves that the deceased was living with her husband prior to her death at Rajkot and from Rajkot she came to Aligarh to appear in B.A.-III examination. There is no allegation that she was subjected

to any torture connected with demand of dowry during this period except the statement of P.W.-1 that the appellant, Manoj, and husband of deceased, stopped her treatment for slip disk at Rajkot and threatened that unless the demand of Maruti car is fulfilled, he will not get the daughter of P.W.-1 treated further.

33. Even if the entire evidence lead before trial court by appellants regarding treatment of deceased, travel from Rajkot to Aligarh ignored even then the mere threat extended by appellant, Manoj, that he will not get daughter of P.W.-1 treated for her ailment of slip disk unless maruti car is given in dowry will not amount to subjecting the deceased to cruelty soon before her death. There is no evidence that deceased was suffering from ailment of slip disk to such an extent that her movement was difficult. She appeared in 7 papers of B.A.-III examination after sitting on chair without trouble which shows her ailment of slip disk was not critical. P.W.-1 claimed that his son and two brothers-in-law went to Rajkot and appellant, Manoj, gave threat to them that he will not get their daughter treated unless demand of maruti car is made. However, before the trial court P.W.-1 failed to file any documentary evidence to prove that he, his son and two brothers-in-law, ever went to Rajkot to meet the deceased where the threat was extended to P.W.-1. There is no allegation that the deceased was being subjected to any torture at Rajkot where she resided before coming to Aligarh to appear in B.A.-III examination before her death, nor P.W.-1 or P.W.-2 made any such allegation. Therefore, it is clear that soon before her death the deceased was not subjected to any harassment in connection with demand of any dowry by the appellants. The claim of P.W.-1 in his statement that he went to Rajkot along with his son and his two brothers-in-law also went there does not stands proved before trial court. Therefore, the finding of trial court that there was no evidence of the deceased being subjected to any cruelty in connection with demand of dowry

soon before her death is in accordance with law and cannot be said to be perverse and is hereby affirmed.

34. The nature of injuries suffered by the deceased are six in numbers. Except the injury no. 1 which was a lacerated wound on the central vault of the skull, 6 cm above from glabella, all the other injuries were simple and on non-vital parts of body the deceased.

35. The Doctor, P.W.-3, was cross-examined on the nature of injuries by the prosecution and he proved that the injury no. 1 may have been caused by falling from the height of 22 feet on rough surface. After falling from above height, the injured may skid and it can result in tearing of clothes in the process. The doctor found the "*salvaar*" of the deceased torn on account of skidding after falling from the height. In the cross-examination, the prosecution did not cross-examined him as to whether such an injury can be caused by hitting the deceased on head by some hard object and he *salvaar* can get torned in the process. Therefore, the medical evidence clearly proves that the deceased suffered vital head injury no. 1 because of accidentally falling from the height of about 22 feet while she was talking on phone.

36. P.W.-1 and P.W.-2 have tried to make improvements in their statements before the court with regard to the facts which they did not stated in their statements before the Investigating Officer. It was alleged in the F.I.R that there were blue marks found on the neck of the deceased and her head was broken by *danda* or some incised weapon but the doctor did not found sign of any such injury nor the prosecution cross-examined him in this regard. Therefore, the manner of incident and the injuries allegedly suffered by the deceased as alleged by the prosecution were not found to be proved before the trial court.

37. The statement of P.W.-2, daughter of P.W.-1 and sister of deceased, is most unreliable. She has given her statement on the basis of written note and has admitted that it was prepared in consultation with the government advocate. She has implicated appellants, Manoj and Vishambhar, and the other appellants and stated that they had gathered at Aligarh, where the deceased was temporarily residing and appearing for B.A final examination, and all of them conspired and killed the deceased. This was never stated by the P.W.-1 in his statement. Clearly there is vital contradiction in the statements of P.W.-1 and P.W.-2. The appellants, Manoj and Vishambhar, both filed their railway tickets of travel before the trial court in evidence and proved that while the appellant, Manoj, was coming from Rajkot to Aligarh and was on the way on the night of incident, the appellant, Vishambhar, was employed and posted at Delhi and he had applied for leave on 21st and 22nd May, 2005. He also filed the documentary evidence issued by C.I.S.F Delhi before the trial court. The ration card of the appellant, Manoj and deceased, Bhumika and appellants, Virendra Singh and Pushpa Devi, were filed in evidence which proved that deceased was not member of family of her father-in-law and mother-in-law and was not residing with them in village- Khempur. She was residing with her husband, Manoj at Rajkot, Gujarat.

38. Regarding the incident of throwing bricks by the appellants on the prosecution side, this court finds that except the allegation made in statement of P.W.-1 and the F.I.R., there was no evidence at all to prove this allegation. The Investigating Officers did not found any evidence in this regard. There was no evidence found by the three Investigating Officers, P.W.-6, P.W.-7 and P.W.-8, nor any injury was suffered by prosecution side at all. The trial court convicted the appellants under Section 506 Part-I IPC only on the basis of the allegations made by P.W.-1. He stated that the alleged incident took place when the appellants were going to cremate the body of his daughter without post-mortem and they resisted and threatened P.W.-1 and his relatives of life.

P.W.-2 was clearly not present in the village Khempur of appellants at that time as per her own admission. Therefore, the solitary witness, P.W.-1 supported the allegations of throwing bricks and stones on his side by the appellants. This court has found that the statement of P.W.-1 is not reliable since he failed to prove the allegations of commission of main offences under Sections 498-A, 304-B, 201 IPC and Section 3/4 of Dowry Prohibition Act, as alleged by him in the FIR and also in his statement, against the appellants. His allegation of visiting his daughter at Rajkot and sending his son and two brothers-in-law is also not found to be proved. Therefore, without any corroboration of his evidence regarding allegations of commission offence under Section 506, Part 1 IPC, conviction of appellants under Section 506 Part-I IPC by the trial court cannot be upheld. The allegations do not sound credible since this incident is alleged to have taken place on the night of 21.06.2006. Thereafter, the dead body of deceased was retained and inquest proceedings were conducted on 22.05.2006 from 11:00 a.m to 12:00 a.m.; post-mortem was conducted on 22.05.2006 at 04:00 p.m and thereafter the body of deceased was cremated. The cremation of the deceased was joined by the P.W.-1 and his relatives and no dispute took place between them. During inquest proceedings the *mama* of deceased, Satish Kumar Singh, was present as witness of inquest. Neither P.W.-1 nor his son are witnesses of inquest proceedings. It appears that dead body of the deceased was sought to be cremated by the appellants after being taken to the village but it was opposed by the prosecution side and therefore the police took the dead body of the deceased in its custody. There is no allegation that after the dead body of the deceased was taken by the police in its possession, P.W.-1 was threatened or subjected to any insult by the appellants, who did not wanted post-mortem of the dead body of the deceased. P.W.-1 stated that when the dispute took place between the parties he made phone call to the police but he has admitted in his cross-examination before the trial court that he did not had any phone at that time.

39. Reading of definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation or property of person threatened, or to the person in whom the threatened person has interest and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or forbid to do an act which he is legally entitled to do.

(i) For proving the offence under Section 506 IPC prosecution is required to prove that the accused threatened some person.

(ii) That such threatening consisted of some injury to his person, reputation of property.

(iii) That he did so with intent to compel either that person to do or not to do an act to which he was legally entitled.

40. In this case, no injury was caused to any person. There is no evidence that the appellants threatened the prosecution side from not insisting upon the post-mortem of the dead body of the deceased which was a legal necessity. There is clear allegation that bricks and stones were thrown on P.W.-1 and his relatives by the appellant's side. None of them suffered any injury nor the Investigating Officer, during investigation, found any such evidence. The Investigating Officers, P.W.-6, P.W.-7 and P.W.-8, have not found the alleged incident proved.

41. In view of the above consideration, this court finds that the finding of the trial court regarding conviction and sentence of appellants under Section 506 Part-I IPC is perverse and not based on any credible evidence. P.W.-1 does not appear to be a reliable witness since he failed to prove the allegations made by him in the FIR and also in his statement and conviction and sentence of appellants under Section 506, Part-1 IPC on his uncorroborated testimony cannot be justified.

42. The judgment and order of trial court regarding conviction and sentence of appellants under Section 506 Part 1 IPC is set aside. The judgment and order of trial court is set aside. The appellants are acquitted of all charges.

43. Criminal Appeal No. 6376 of 2010 is allowed.

44. The appellants are on bail. Their bail bonds are cancelled and sureties are discharged.

45. Before parting we must do justice also to the Presiding Officer who passed the judgment and order under appeal and was issued show cause notice by a learned Single Judge as to why he has acquitted the appellants u/S 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act despite presumption against them u/S 113-B of Evidence Act.

46. The notice issued by a learned Single Judge of this court on 23.09.2010 to the District and Sessions Judge, Aligarh, who passed the judgment and order under challenge, was replied by him stating that the offences alleged U/S 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act are not proved against the appellants because they failed to prove that soon before her death deceased was subjected to any cruelty or harassment in connection with any demand of dowry, which is one of the vital ingredients for proving the offence of dowry death.

47. We are in full agreement with the reply submitted by the District and Sessions Judge, Aligarh to the notice issued by the learned Single Judge of this court. He has not committed any mistake in deciding the case and acquitting the appellants of charges under Sections- 498-A, 304-B, 201 IPC and Section 3/4 of D.P. Act. We have also reached the same conclusion. Further, we have found that conviction and sentence of appellants U/S 506 Part 1 IPC was also unwarranted and may have been ordered only for

protection of trial court from unwanted notice like the one which was issued by learned Single Judge to the District and Sessions Judge.

48. The reply submitted by the District and Sessions Judge, Aligarh is accepted with regret that learned Single Judge should not have issued notice to the Presiding Officer of trial court merely on the basis of submission of counsel for informant without considering the full facts and the law involved in the case. Learned Single Judge of this court acted in haste when he issued notice to the District and Sessions Judge, Aligarh. The District and Sessions Judge has stated in his reply that the notice has been issued to him only to harm his reputation and service career.

49. Learned Single Judge of this High Court not only issued notice to the Sessions Judge but directed the matter to be placed before Hon'ble The Chief Justice for kind perusal without waiting for reply of District and Sessions Judge and deciding whether reply of the District and Sessions Judge was satisfactory or not. Such conduct of the High Court is responsible for the fear on the part of the Judicial Officers in the trial court and in many cases where the accused deserves clear acquittal, judgment of conviction and order of sentence is passed only because Presiding Officers want to avoid issuance of notice and action by High Court ordered without properly considering their judgments and orders.

50. The office shall make endeavour to search the then District and Sessions Judge, Aligarh who has certainly retired by now and send a copy of this judgment to him so that he may know that he did not committed any error in deciding the case, except the minor error of conviction of appellants u/S 506, Part 1 IPC, which we have rectified.

51. For the detailed reasons given in the judgment of Criminal Appeal No. 6376 of 2010, the Criminal Appeal Nos. 6365 of 2010, 6504 of 2010 U/S 372

Cr.P.C and Government Appeal No. 8242 of 2010 are clearly without force and are hereby dismissed.

52. Office is directed to return the record of the trial court within period of two weeks and notify this judgment to the trial court too.

Order Date :- 12.09.2024

Rohit

(Syed Qamar Hasan Rizvi, J.) (Siddharth, J.)