

Sessions Case No. 26(A)/2006.

U/S 304B/306/34 IPC

State

Vs.

1. Sri Suryadev Maishal,
2. Manidra Chandra Maishal,
3. Durgabala Maishal'
4. Kamal Mandal,
5. Dhaneswar Maishal
6. Bonodev Maishal

....Accused.

***PRESENT : Smt. M. Nandi,
Sessions Judge,
Bongaigaon.***

***ADVOCATES APPEARED : Sri A. K. Nath, Public Prosecutor
for the State.***

*Sri B. Choudhury, Advocate
for the accused.*

Date of Argument : 30.08.2014

Date of Judgment : 12.09.2014

JUDGMENT AND ORDER

1. The prosecution case, in brief, is that the informant Sri Sunil Ch. Baroi lodged an ejahar before the O.C. Abhayapuri Police Station stating inter-alia that his sister Alladi Bala Baroi got married to the accused Suryadev Maishal. After their marriage, she started to lead conjugal life with her husband. After some days the accused persons namely, Suryadev Maishal, Manindara Maishal, Dhanai Maishal, Bonodev Maishal, Durgabala Maishal W/O Manindra Maishal and Kamal Mandal started to torture his sister both physically as well as mentally on demand of money and other dowry articles. It is also stated that the accused Suryadev Maishal used to take alcohol and assaulted his wife. When his sister brought money from her parental home, her husband Suryadev Maishal snatched away such money and spent the same by playing cards and taking alcohol. On 17.12.2002 at about 12 AM at night,

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his sister became unconscious after taking poison. After that she was taken to Abhayapuri Civil Hospital wherein she was admitted. On the next day at about 8.30 AM accused Kamal informed him that his sister was taking treatment at Abhayapuri hospital. Now she was improved. On receipt of the information, the informant along with his family members went to Abhayapuri hospital and found his sister in serious condition and none of the family members of the husband of the victim were present. Only the wife of Brajen Ray was found there. They went to the Doctor to consult about his sister. The Doctor stated that when she was brought in the hospital, on the same day she was referred to Goalpara Civil Hospital but the accused persons did not take his sister to the Goalpara Civil Hospital for better treatment. After that they hired a vehicle and took Alladi Bala to Bongaigaon Civil hospital and admitted there. Unfortunately after examining her, doctor declared her dead.

2. On receipt of the ejahar, police registered a case and after completion of investigation submitted charge sheet against the aforesaid accused persons. During trial all the accused persons put their appearance before the court and they were enlarged on bail. Charge was framed U/S 304B/306/34 IPC which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. In this case, prosecution examined 17 witnesses and the defence examined none. The plea of the defence is the plea of denial.

4. **Point for determination:**

1. *Whether on 17.12.2002 at night Alladi Maishal had consumed poison and consequently she died and she being the wife, daughter-in-law, sister-in-law etc. of the accused persons all the accused persons subjected her to cruelty and harassment as well as their actions and words did drive her to commit suicide and also they demanded dowry from her as well as her family members in furtherance of their common intention and thereby*

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committed an offence U/S 306/34 IPC !

2. *Whether 17.12.2002 at 12 PM death occurred to Alladi Maishal otherwise than under normal circumstances within seven years of the marriage with accused Suryadev Maishal and before her death the accused persons being the husband and relatives of the husband of the deceased subjected her to cruelty for or in connection with the demand for dowry in furtherance of their common intention and thereby committed an offence U/S 304B/34 IPC !*

DECISION AND REASONS THEREOF

5. To arrive at just decision of the case, let me consider the evidence of the witnesses.

6. PW 1 is the informant Sunil Ch. Baroi. He deposed in his evidence that deceased Alladi Bala Maishal Baroi got married to the accused Suryadev Maishal about 13 years back. The occurrence took place on 17.12.2002. On 18.12.2002 at about 8.30 AM accused Kamal came to his house and informed that Alladi took poison and she was taken to Abhayapuri hospital but she was feeling better. She would be taken to their house at about 12/1 AM. On receipt of the information, he sent his younger brother Nadiar Chan Baroi to Abhayapuri hospital. At about 11 AM he went there and found Alladi in serious condition. Froth like object was coming out form her mouth and he found the smell of 'Rogor' insecticide from her mouth. None of the family members of the accused were found beside Alladi. Only the wife of Brajen Ray was found along with her. He immediately went to consult with the doctor and doctor stated that as the condition of Alladi was serious, he referred the patient to Goalpara Civil Hospital in the morning hour. Thereafter he hired one vehicle and took his sister to Bongaigaon Civil Hospital. Doctor examined her and declared her dead. On the next day, he lodged the ejahar in the Police Station. Police visited the house of the accused Suryadev Maishal and found a bottle of 'Rogor' insecticide and seized the same vide Ext-2

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wherein he put his signature vide Ext-2(1). Police also seized one letter from him vide Ext-3 and 3(1) is his signature. This witness was re-examined and stated that his sister Alladi Maishal Baroi during her lifetime reported the facts of torture on her by the accused on demand of dowry to his mother Punnya Bala Baroi, his uncle Nudiar Chand Baroi and their neighbour Haren Sardar, his younger brother Bidul Baroi and his sisters Adori Bala Baroi and Renu Bala Baroi.

7. PW 2 is Parimal Ray. He deposed in his evidence that victim Alladi got married to the accused Suryadev Maishal. She died in the house of her husband. On the date of incident, Suryadev Maishal called him in his house and found the dead body of Alladi lying on the ground. He found a bottle of insecticide beside her. Later on, he came to know that Alladi died.

8. PW 3 is Minati Mandal. She deposed in her evidence that on the date of incident at night while she was sleeping in her house, wife of Dhanai Maishal came to her house and asked her to accompany to the house of Manindra Maishal. He went there and found that Alladi was vomiting. On being asked, she replied that she took poison. Alladi was taken to hospital by accused Suryadev Maishal. Later on, she died.

9. PW 4 is Nilmani Mandal. He deposed in his evidence that on the date of incident at 12 PM at night his wife Minati was called by the wife of Dhanai and inquired whether they have possessed tamarind in their house and also stated that wife of Suryadev Maishal took poison. His wife was also called by the accused. Later on, he came to know from his wife that Alladi took poison. Alladi died in the hospital. On the next day police came and seized one bottle of Rogor insecticide and prepared seizure list wherein he put his signature vide Ext-2(2).

10. PW 5 Suresh Sarkar, PW 6 Gauranga Mandal, PW 7 Paresh Ch. Biswas and PW 8 Moina Bala Ray also stated that the marriage of the deceased Alladi Maishal was held with the accused Suryadev Maishal. On the date of incident they came to know that Alladi took poison. She was taken to Abhayapuri hospital and subsequently she died.

11. The witnesses examined so far by the Investigating Officer did not say anything regarding physical torture or demand of money from the deceased by the accused persons. It is interesting to note that except the informant, the Investigating Officer did not examine any of the relatives like mother of the deceased, her brothers or sisters who knew about the incident. Subsequently the relatives of the deceased were examined in this case as Court witness.

12. CW 1 is Nadiar Chan Baroi. He deposed in his evidence that his cousin sister Alladi Bala Baroi got married to the accused Suryadev Maishal about 12/13 years back. After their marriage, his sister Alladi led conjugal life with her husband for one and half years. Though one child was born, but subsequently he died. On 18.12.2002 at about 7 AM accused Kamal Mandal came to their house and informed that their sister Alladi on the last night took poison. She was taken to Abhayapuri hospital. Now her condition was improved. On receipt of the information he alongwith other brothers went to Abhayapuri hospital and found critical condition of their sister. They did not find any of the family members of the accused. Doctors stated that they referred his sister to Goalpara Civil Hospital but none of the guardian appeared to take her to Goalpara Civil Hospital. Thereafter they hired a vehicle and took Alladi to Bongaigaon Civil Hospital. On examination, doctor declared her dead. This witness also stated that after the marriage he came to know from his sister Alladi that after taking alcohol, accused Suryadev Maishal used to torture her on demand of money. Once he visited the house of the accused, then his sister gave one golden ear ring and asked to take the said golden ear ring otherwise her husband would sell the same. After taking the ear ring from his sister, he handed over the same to her mother. Later on, police conducted inquest on the dead body of his sister and he put his signature on the inquest report vide Ext-4(2). After that the dead body of his sister was taken to Goalpara Civil Hospital for postmortem examination.

In his cross-examination, CW 1 replied that he and Sunil Baroi hired a vehicle from the stand and took Alladin to Bongaigaon Civil Hospital, but he could not recollect the number of the vehicle. He also did not

know the name of the driver. He, Sunil Baroi and wife of Brajen accompanied Alladi in the vehicle.

13. CW 2 is Haren Sardar. He deposed in his evidence that he is the adjacent neighbour of the informant Sunil Baroi. Alladi, sister of Sunil Baroi got married to the accused Suryadev Maishal. In the year 2002 Alladi died. On the date of incident at about 8/8.30 AM while he was working in his paddy field, Bidhu Baroi informed him that Alladi took poison. He accompanied Bidhu Baroi to hospital and found Alladi unconscious. He came to know from the nurse of the hospital that Alladi was referred to Goalpara Civil Hospital. Thereafter Sunil, Nadiar Chan Baroi and wife of Brajen brought Alladi to Bongaigaon Civil Hospital by hiring a vehicle. When he came to the hospital, he found Alladi dead. Later on, police conducted inquest on the dead body of Alladi wherein he put his signature vide Ext-4(3).

In his cross-examination, CW 2 replied that he was not examined by police during investigation.

14. CW 3 is Dr. Jaykanta Rabha. He deposed in his evidence that on 19.12.2002 he was posted at Goalpara Civil Hospital as Medical & Health Officer-1. On that day he has performed postmortem examination on the dead body of Alladi Maishal, female aged 25 years in connection with Bongaigaon P.S. GDE No. 820/02 dated 18.12.2002 escorted by UBC 206 Manindra Ray and Sunil Ch. Baroi and found as follows:

PHYSICAL APPEARANCE:- A young female dead body with rigor mortis present in all the limb. There are no external injury found on her body.

THORAX:- Walls, ribs and cartilages, pleurae, larynx and trachea, both sides lungs, pericardium, heart, vessels are found healthy.

Pieces of both lungs preserved for toxicological examination.

Muscles, bones and joints are fund healthy.

CRANIUM AND SPINAL CANAL: Scalp, skull, vertebrae, membrane, brain and spinal cord are found healthy.

ABDOMEN:- Liver, spleen, kidneys, bladder and organs of genitalia are found healthy.

Piece of liver preserved for toxicological examination.

Pieces of kidneys preserved for toxicological examination.

Doctor opined that the cause of death could not be ascertained. It may be due to poisoning. The viscera were preserved for toxicological examination.

15. CW 4 is Bidur Baroi, who is the brother of the deceased. He deposed in his evidence that the marriage of his sister Alladi Bala Baroi was solemnized with the accused Suryadev Maishal about 12/13 years back. After their marriage, they led conjugal life for 6/7 months peacefully. On the date of incident, Kamal came to his house and informed that Alladi took poison. When Alladi visited their house, she disclosed that accrued Suryadev Maishal used to torture her on demand of money. He and his elder brother Sunil Baroi sometimes paid Rs. 500/- and sometimes Rs. 1000/- to Alladi to give the same to the accused. After taking the money, accused Suryadev Maishal took alcohol, engaged himself in playing cards and did not stay home at night and returned back home at 1/1.30 AM at night and assaulted Alladi. Kamal informed about the incident but stated that Alladi was taken to hospital. She was found out of danger. They need not go to the hospital and asked them to come home. In spite of that he along with Haren Sardar went to Abhayapuri hospital and found his sister there. She was not in a position to speak. After that Sunil Baroi came. At that time he did not find any family members of the accused in the hospital. One lady was present there. As the condition of Alladi was critical, they have brought her to Bongaigaon Civil Hospital, but on the way she died.

In his cross-examination, CW 4 replied that after the

marriage, he could not recollect the dates when Alladi visited their house. At first he paid Rs. 2000/- to Alladi to give the same to the accused, but he could not remember the date of paying money. On the second time he also paid Rs. 2,000/- to Alladi for giving the same to the accused. He did not know the amount paid by his elder brother Sunil and other brothers.

16. PW 5 is Punya Bala Baroi, who is the mother of the deceased. She deposed in her evidence that her daughter Alladi got married to the accused Suryadev Maishal about 10 years back. She died in the house of her husband. They had one son. After one month of the death of Alladi, her son also died. At the time of incident, the age of her son was six months. Before one month of the incident, Alladi came to their house and complained that her husband used to torture her on demand of money. On the date of incident, Kamal informed her that Alladi took poison. She was taken to hospital but she could recover. They need not go to the hospital. On receipt of the information Sunil Baroi, Nadiar Chand Baroi went to Abhayapuri hospital to see Alladi and found no any family member of the accused in the hospital. Froth like object was coming out from the mouth of Alladi. Then Sunil Baroi hired a vehicle and brought Alladi to Bongaigaon Civil Hospital. On the same day Alladi died.

17. CW 5 replied in her cross-examination that after their marriage, once she visited the house of the accused. After that she did not visit the house of the accused. At that time they led conjugal life peacefully. Before one month of the incident, Alladi came to their house and stayed for 4/5 days.

18. CW 6 is Adori Bala Mandal, who is the sister of the deceased. She also stated that the marriage of her sister Alladi was held with the accused Suryadev Maishal. She died about 10 years back. After their marriage, they led conjugal life for one and half years. For six months they led conjugal life peacefully. After that Alladi complained that her husband Suryadev Maishal used to torture her on demand of money. She knew that his brother used to pay money to Alladi. He also came to know from her sister

that accused Suryadev Maishal used to take alcohol. He did not stay at home for 3/4 days. He spent money by playing cards.

In her cross-examination, CW 6 replied that she came to know about demand of money and torture by the accused from Alladi but she did not see the same. After two days of the death of Alladi, Bidur Baroi came to the house of her husband and informed about the death of Alladi. She did not see the dead body of Alladi.

19. On perusal of the evidence of aforesaid witnesses, it is seen that there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

20. In the case in hand, it appears from the evidence on record that the informant, who is the elder brother of the deceased though stated in the ejahar that his sister was tortured by the accused both physically as well as mentally on demand of money, but subsequently when he deposed before the Court he did not say anything regarding demand of money from her and assault by the accused. But he stated that his sister during her lifetime, reported the fact of torture on her by the accused on demand of dowry to his mother, brother, uncle and sisters. Accordingly, they were examined in this case as Court witness as they were not examined by police during investigation. All the witnesses i.e. CW 1, 4, 5 and 6 categorically stated that after their marriage Alladi led conjugal life with her husband for 6/7 months peacefully. After that it is reported by Alladi when she visited their house that

her husband used to torture her on demand of money. Her husband used to take alcohol. He did not come home for 3/4 days. He used to play cards and when he came home at night, he assaulted the deceased Alladi.

21. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

22. Learned counsel for the accused has submitted that in the FIR, there was no imputation by the informant "soon before death" the deceased was subjected to cruelty or harassment by her husband or any relatives of her husband for and in connection with any demand of dowry. As such, the ingredients of demand of dowry "soon before the death" of the deceased and the harassment U/S 304B IPC has not been proved beyond reasonable doubt. Though it is alleged that the death of the deceased occurred due to poison, but the FSL report did not support the case of prosecution. They found after examination of the articles sent by them for chemical examination gave negative test for poison. The victim died of natural death. The demand of dowry or harassment to the deceased is not proved by any independent witness except the statement of the relatives of the deceased i.e. CW 1, 4, 5 & 6 and the independent witnesses' statement of the neighbours who were examined by the prosecution did not implicate any of the accused

to be involved in the case.

23. In support of his submission, learned counsel placed reliance on a case law – *Sajal Kanti Dutta & Another v. State of Assam* [(2013) 5 GLT 767].

24. On the other hand, learned Public Prosecutor has submitted that the evidence on record revealed that the accused-husband was responsible for causing the death of the deceased and subjected her to cruelty for and in connection with demand of dowry articles. He also further stated that due to harassment as proved in the evidence which was caused by the accused Suryadev Maishal to his wife apparently due to demand of dowry, a precious human life was lost. Such type of social crime should be viewed seriously and suitable punishment is called for so as to serve as deterrent to others and the accused should be convicted U/S 304B and 306 IPC.

25. Before considering the rival submissions, it will be appropriate to note the relevant provisions of Section 304B of the Indian Penal Code. Section 304B reads as follows:

“304B- Dowry death - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation:- For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

26. On a bare look at the provision, it is seen that ingredients

necessary for the application of Section 304B IPC are:-

- (i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance;
- (ii) within seven years of her marriage;
- (iii) it must be shown that before the death she was subjected to cruelty or harassment by her husband or any relative of her husband or in connection with the demand of dowry.

27. In the light of these ingredients, the evidence of the prosecution is to be scanned.

28. In this case, the accused Suryadev Maishal was married with the deceased. It appears from the evidence on record that the deceased died on 17.12.2002 and it also appears that their marriage was held before one and half years of her death. So, she died within seven years of her marriage. It is also not disputed that the deceased died an unnatural death. The only controversy between the parties is with regard to third ingredient as to soon before the death of the deceased, the deceased was subjected to cruelty on account of demand of dowry.

29. What Section 304B IPC requires is that death of the woman should be unnatural. In the case of *Shanti v. State of Haryana [AIR I (1991) DMC 187 (SC)]*, the Apex Court clearly held that for applicability of Section 304B IPC, question whether unnatural death of a woman was homicidal or suicidal is irrelevant. Section 304B IPC raised a presumption of culpability against the husband or relative hitherto unknown to our jurisprudence and the prosecution must prove with some positive evidence that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment.

30. In dowry death and suicide case, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence which could be direct or indirect. The conduct of husband and other

relatives also plays a vital role in coming to the conclusion of the guilt. The decision of Hon'ble Apex Court in *Bachan Singh v. Satpal Singh* (AIR 1990 SC 209) is on this point.

31. In the case of *Ashok Kumar v. State of Rajasthan* (AIR 1990 SC 2134), it was observed that-

“Motive for a murder may or may not be. But in dowry deaths, it is inherent. And hence what is required of the Court to examine is as to who translated it into action is motive for it is not individual, but of family.”

32. In view of the above settled position of law, the present case can be judged on the point of dowry death on the point of the ingredient covering U/S 304B IPC.

33. According to the doctor, the cause of death could not be ascertained but it may be due to poisoning. The viscera were preserved for toxicological examination. It is seen from the record that the victim was examined on 19.12.2002. On the same date doctor preserved the viscera for toxicological examination. Though FSL report is available in the record, but the person who examined the viscera was not examined in this case. It appears from the forwarding that the office of Toxicological Division, Forensic Science Laboratory, Assam received the viscera on 30.01.2004 which was sent by the Sub-Divisional Police Officer, North Salmara, Abhayapuri on 24.12.2003 i.e. after one year of preserving the same and it is reported that after examination of the exhibits i.e. stomach with its contents, lung, liver and kidney which were preserved for toxicological examination, gave negative test for common poison. There is no explanation from the side of the Investigating Officer why the Investigating Officer was so late in sending the viscera to the FSL. It also appears from the evidence on record that the part of vomiting which was vomitted by the deceased was also preserved and seized by the Investigating Officer, but the said vomiting could not be sent for toxicological examination. It is evident that the investigation conducted by the Investigating Officer was improper in its very nature.

34. According to learned counsel for the accused the deceased died of natural death but it is not specifically given in details how the deceased died inside the house of the accused. If she was sick as affirmed by the learned counsel for the accused, then why she was not taken to any doctor or hospital by the accused persons. Admittedly she did not die of any heart attack or haemorrhage. She died in the house of accused and, therefore, it was expected of the accused to furnish some explanation in their statement U/S 313 CrPC as to the exact cause of her death. Unfortunately accused barely taking the plea that deceased died of natural death. The accused persons chose not to bring the truth before the Court, i.e. the circumstances leading to the death of the deceased.

35. It may be stated here that where the death of a woman is caused by burnt or bodily injury occurs other than in the normal circumstances within 7 years of the marriage and the evidence reveals that she was subjected to cruelty or harassment by her husband or any of his relatives in connection with any dowry, such death is described as dowry death under Section 304B. By Section 113B of the Evidence Act, the Court has to raise a presumption of dowry death if the same has taken place within 7 years of marriage and there is evidence on the fact of woman having been subjected to cruelty and/or harassment.

36. To attract the provision of Section 304B IPC, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned counsel for the accused submitted that there is no proximity for the alleged demand of dowry and harassment. Though the language used “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the Courts, depending upon the facts and circumstances of

each case. However, the said expression would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand the concerned death. 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. These principles have been reiterated in *Kaliyaperumal v. State of Tamil Nadu (AIR 2003 SC 3828)* and *Yashoda v. State of Madhya Pradesh [(2004) 3 SCC 98]*.

37. With these principles in mind, let us analyse the evidence led in by the prosecution. CW 1, who is the brother of the deceased stated in his deposition that after their marriage he came to know from his sister Alladi that accused Suryadev Maishal, after taking alcohol used to torture her on demand of money. Once he visited the house of the accused, then his sister asked him to take the golden ear ring from her otherwise her husband would take away and sell the same to procure alcohol. But in his cross-examination, CW 1 replied that he could not say the exact date when accused Suryadev Maishal demanded money from his sister and after taking alcohol assaulted her. He also could not recollect the date when he visited the house of the accused and Alladi gave her ear ring to him. CW 4 Bidur Baroi, who is also another brother of the deceased also stated that after their marriage when his sister visited their house, she complained that accused Suryadev Maishal used to torture her on demand of money and sometimes he and his elder brother Sunil Baroi paid Rs. 500/- to Rs. 1000/ to give the same to the accused. He also replied in his cross-examination that he could not remember the dates when Alladi visited their house. First time he paid Rs. 2,000/- to Alladi to give the same to the accused, but he could not recollect the date. CW 5, who is the mother of the deceased specifically stated that before one month of her death, Alladi visited their house. His son Bidur brought her to their house and also took her back to her matrimonial home. At that time her daughter Alladi stated that she has been tortured by her husband on demand of money. CW 6, who is the sister of the deceased also stated that after marriage, the accused

Suryadev Maishal and her deceased sister led conjugal life peacefully for six months. After that her sister complained that her husband Suryadev Maishal used to torture her on demand of money. It appears from the evidence on record that after the marriage, the deceased in total stayed in the house of her husband for one and half years. She disclosed the fact of demand of money and torture before her relatives one month before her death when she visited her parental home. So, it disclosed that the victim was tortured by the accused soon before her death. So, third ingredient of Section 304B IPC is also proved.

38. Another question raised by the learned counsel for the accused is that the witnesses examined by the prosecution earlier did not support the prosecution case. After that the other witnesses who were brought by the prosecution on later stage are all the relatives of the deceased and they are interested witnesses and implicate the accused regarding torture and demand of money which cannot be taken into consideration in the instant case.

39. It is true that CW 1, 4, 5 & 6 are related to the deceased. Merely because they are all relatives of the deceased will not by itself cause any prejudice to the case of the prosecution. The other witnesses examined by the prosecution are the neighbours of the accused. Naturally they are reluctant to say anything against their neighbours. In such a case, it is not the outsiders who would come to the rescue and would stand by the victim and their family, but it is the members of their family who would go to witness such an unfortunate incident.

40. An interested witness is the one who is desirous of falsely implicating the accused with an intention of ensuring their conviction. Merely being a relative would not make the statement of such witness equivalent to that of an interested witness. The statement of a related witness can safely be relied upon by the Court, as long as it is trustworthy, truthful and duly corroborated by other prosecution evidence. The appreciation of evidence of such related witnesses has been discussed by the Hon'ble Supreme Court in its

various judgments.

41. In the case of *Dalip Singh v. State of Punjab (1954 SCR 145)*, while rejecting the argument that witnesses who are close-relatives of the victim should not be relied upon, the Hon'ble Supreme Court held as under:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relatives would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feeling run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

42. Similar view was taken by the Apex Court in the case of *State of Andhra Pradesh v. S. Rayappa and others [(2006) 4 SCC 512]*. The Court observed that it is now almost a fashion that a public is reluctant to appear and depose before the court especially in criminal cases and the cases for that reason itself are dragged for years and years. The Court also stated the principle that, “by now, it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as interested witness. The term interested postulates that the person concerned must have some

direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.”

43. In the case of *State of Uttar Pradesh v. Kishanpal and others [(2008) 16 SCC 73]*, the Hon'ble Supreme Court has also taken the view that related witness does not necessarily mean or is equivalent to an interested witness. A witness may be called interested only when he or she derives some benefit from the result of litigation; in the decree in a civil case, or in seeing an accused person punished.

44. In the light of the above principles and the evidence noticed in the case, it transpires that the statement of the witnesses are reliable and trustworthy as they are fully corroborated by other prosecution, documentary and ocular evidence.

45. Coming to the offence U/S 306 IPC, learned counsel for the accused has contended that the proximity between the torture, suicide and abetment or instigation to commit suicide is to be proved but that has not been proved in this case. As per the evidence of Investigating Officer, he could not come to any conclusion as to whether death was as suicidal case or murder or homicidal or accidental from the witness as well as from the postmortem report and so, he sent the viscera for report and he did not try to collect any evidence to ascertain as to whether the death of the deceased was due to any other reason. As such, there was possibility of accidental death or any other reason and when two views are possible regarding the same incident, then the view supporting the defence should be accepted and in such case the guilt of the accused are to be proved beyond reasonable doubt which is not proved by the prosecution in the instant case. As such, benefit of doubt is to be given to the accused.

46. On the other hand, learned Public Prosecutor for the State submitted that there are sufficient materials available in the evidence on record that the victim was subjected to cruelty and harassment on demand of money by the accused and under compelling circumstances she committed suicide. There is no evidence that the deceased died of any other disease.

According to the Medical Officer, it may be a case of poisoning. Bottle of 'Rogor' insecticide was found beside the deceased. The accused left the deceased in the hospital to let her die though she has been referred to Goalpara Civil Hospital for better treatment and this conduct of the husband shows that due to his abetment or instigation the deceased died after taking poison. Learned counsel for the State also submitted that as per provisions of Section 106 of the Indian Evidence Act, the burden of proving a fact especially within the knowledge of any person is upon him and in this case, the incident occurred in the house of the accused Suryadev Maishal wherein he was staying along with the deceased. So, it was incumbent upon the husband to explain as to how the said incident happened and non-explanation to this also proves that the husband intentionally instigated or abetted in the commission of suicide by his wife Alladi Bala Maishal.

47. It appears that as per evidence of prosecution witnesses, the victim and her husband were staying separately and the other accused are residing in their adjacent house. The victim was found dead inside the house, then it was within the especial knowledge of the accused Suryadev Maishal and in that case it was incumbent upon the accused Suryadev Maishal to explain as to how the death of his wife Alladi was caused and if that remains unexplained by him, then there can be an inference of his guilt as per the provisions of Section 106 of the Evidence Act. Though the accused is not under any obligation to disprove the prosecution case, yet when the prosecution has proved that the death of the wife took place inside the house of her husband in some unnatural way, then the husband is bound to explain such death and if not explained properly then an inference may be made regarding his guilt as the provisions of Section 106 of the Indian Evidence Act.

48. It has been held by the decision reported in (2013) 1 Supreme Court Cases (Cri) 146 wherein some cases have been discussed.

49. In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, Hon'ble Supreme Court while dealing with the term "instigation" held:

“.....instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement the requirement of 'instigation', though it is not necessary that actual words must be used to that effect or what constitutes 'instigation' must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

Thus, to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goad' or 'urging forward'. The dictionary meaning of the word 'goad' is 'a thing that stimulates someone into action; provoke to action or reaction'..... to keep irritating or annoying somebody until he reacts.....”

50. Hon'ble Supreme Court in the case of *Ramesh Kumar v. State of Chattisgarh* while dealing with a similar situation observed that what constitutes “instigation” must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

51. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as

instigation.

52. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide.

53. In view of the aforesaid decision of the Hon'ble Supreme Court, it appears that where the accused had, by his acts or omissions or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may have to be inferred and to constitute 'instigation' a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by 'goading' or 'urging forward'.

54. As I have already stated that the Investigating Officer has conducted the investigation in a suspicious manner and did not even care to send the vomiting of the deceased which were collected during investigation to the FSL for its proper examination. The viscera which contained liver, kidney and lungs preserved by the Medical Officer were sent for toxicological examination after one year of preserving the same and accordingly the outcome of the examination gave negative test for poison. It also appears that except the informant the other relatives of the victim i.e. mother, brothers and sisters to whom the deceased stated about the incident of demand and torture were not examined by the Investigating Officer during investigation. The Investigating Officer, PW 11 S.I. Amzad Ali admitted the fact in his cross-examination that except the informant, he did not examine the relatives of the deceased as because they were not available. They also did not come to him to say anything about the incident. The informant also did not bring his family

members before him. But it is the part of the Investigating Officer to find out the persons who knows about the incident.

55. In this case, three Investigating Officer were examined i.e. PW 9, PW 10 and PW 11 and from their evidence and conduct, it appears that they were avoiding to send the viscera in time to the FSL for toxicological examination. There is a deliberate attempt on the part of the Investigating Officer to misdirect the evidence and to withhold the material evidence from the Court. In my considered view action should be taken against such Investigating Officers.

56. Hon'ble Supreme Court in the case of *Sahabuddin & Another v. State of Assam* (Criminal Appeal No. 629 of 2010) had discussed some of the cases in respect of defective investigation by the Investigating Officer which are mentioned as below-

57. In regard to the defective investigation in the case of *Dayal Singh and Others v. State of Uttaranchal* [Criminal Appeal 529 of 2010], while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:-

“In the case of *Sathi Prasad v. The State of U.P.* [(1972) 3 SCC 613], Hon'ble Supreme Court stated that it is well settled that if the police records becomes suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, the Hon'ble Supreme Court in the case of *Dhanaj Singh @ Shera & Ors. v. State of Punjab* [(2004) 3 SCC 654], held that in the case of defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

58. Dealing with the cases of omission and commission, the Hon'ble Supreme Court in the case of *Paras Yadav v. State of Bihar* [AIR 1999 SC 644], enunciated the principle in conformity with the previous judgments that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

59. In the case of *Zahira Habibullah Sheikh & Another Vs. State of Gujarat & Ors.* [(2006) 3 SCC 374], the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. It was observed that in such situations, there is a greater responsibility of the Court on the one hand and on the other the Courts must seriously deal with persons who are involved in creating designed investigation. It was further held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The Courts have a vital role to play.

60. In the case of *Sahabuddin Vs. State of Assam*, Hon'ble Apex Court emphasized that in a criminal case, the fate of the proceeding cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach of violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

61. In the case of *Ram Bali v. State of Uttar Pradesh* [(2004) 10 SCC 598], the judgment of *Karnel Singh v. State of M.P.* [(1995) 5 SCC 518] was reiterated and the Hon'ble Supreme Court had observed that:-

“In case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

62. In the light of the above principles, the present case makes it clear that the defect in the investigation or omission on the part of the investigating officer cannot be proved to be of any advantage to the accused. The Investigating Officer ought to have examined the relatives of the deceased which were examined in this case as court witness and sent the viscera which were preserved by the Medical Officer to the FSL for toxicological examination in time. This is a definite lapse on the part of the Investigating Officer which cannot be overlooked by the Court. In view of the settled position of law, Director General of Police, Assam is directed to take disciplinary action against the Investigating Officers.

63. Over and above, it has been proved by the prosecution through the evidence of witnesses as well as the documents available in the record that the accused-husband Suryadev Maishal tortured his wife both physically as well as mentally in connection with dowry demand and due to such torture and humiliation and instigation, the deceased Alladi Bala Maishal was compelled to commit suicide in his house. Hence, the accused Suryadev Maishal is convicted U/S 304B/306 IPC. The case against the other accused persons for the offence U/S 304B IPC or 306 IPC is not proved beyond all reasonable doubt. Hence, they are acquitted.

64. The accused Suryadev Maishal is heard on the point of sentence. He has submitted that after the death of his first wife, he contracted second marriage and from the side of his second wife, two children were born. The age of his son is six years and the daughter is three years old. He is

maintaining them. If he is sent to jail, they will face great hardship.

65. Heard Learned counsel for the accused as well as learned P.P. Learned counsel for the accused has prayed for leniency.

66. Considering the fact above, the Court is taken a lenient view.

O R D E R

I convict the accused Suryadev Maishal U/S 304B/306 IPC and sentence him to R.I. for seven years for the offence U/S 304B IPC and R.I. for seven years for the offence U/S 306 IPC and also to pay a fine of Rs. 2,000/- (Rupees Two Thousand) i/d, R.I. for six months. Both the sentences shall run concurrently.

No case is proved against the other accused persons. Hence, they are acquitted from the said offence.

The period which he detained in custody shall be set off from the period of imprisonment imposed on him.

Copy of Judgment be furnished to the accused free of cost.

Copy of the Judgment and Order be sent to Deputy Commissioner, Bongaigaon as per provision U/S 365 CrPC.

LCR be transmitted back to the learned court below with a copy of this judgment and order.

Given under my hand and the seal of the court on this 12th day of **September, 2014**.

Dictated and corrected by me,

*(M. Nandi)
Sessions Judge,
Bongaigaon.*

*(M. Nandi)
Sessions Judge,
Bongaigaon.*

Sessions Case No. 26(A)/2006

12.09.2014

All the accused persons are present.

Judgment is prepared in separate sheets of paper, delivered in the open Court and appended with the record.

After going through the evidence on record and other materials before me, prosecution has considerably proved the case against the accused Suryadev Maishal U/S 304B/306 IPC. Hence, he is convicted thereunder.

I convict the accused Suryadev Maishal U/S 304B/306 IPC and sentence him to R.I. for seven years for the offence U/S 304B IPC and R.I. for seven years for the offence U/S 306 IPC and also to pay a fine of Rs. 2,000/- (Rupees Two Thousand) i/d, R.I. for six months. Both the sentences shall run concurrently.

No case is proved against the other accused persons. Hence, they are acquitted from the said offence.

The period which he detained in custody shall be set off from the period of imprisonment imposed on him.

Copy of Judgment be furnished to the accused free of cost.

Copy of the Judgment and Order be sent to Deputy Commissioner, Bongaigaon as per provision U/S 365 CrPC.

As dictated,