



Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1080 of 2020

Abrar Ahmad

.....Appellant

Versus

State of U.P.

.....Respondent

Counsel for the Appellant	: Abrar Ahmad, Arvind Kumar Singh, Deepesh Kumar Ojha, Prashant Tripathi, Rahul Misra, Sumit Kumar Gupta
Counsel for the Respondent	: G.A.

Along with :-

1. **Criminal Appeal No. 856 of 2020**
Smt. Shabana Khatoon and another
Versus
State of U.P.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE SAURABH SRIVASTAVA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. These two connected criminal appeals have been preferred by Abrar Ahmad, Lal Babu and Shabana Khatoon, who stood their trial before Mr. Abhimanyu Singh, the then Additional District and Sessions Judge, Court No.4, Kushinagar at Padrauna in connection with Crime No.648 of 2012, under Sections 408 A

and Section 4 of the DP Act. The appellants were, however, acquitted of the offence under Section 3 of the DP Act.

2. The learned Judge passed sentences of imprisonment for life upon each of the appellants for the offence under Section 304-B IPC and for the offence under Section 4 DP Act, each of the appellants received a two year term of simple imprisonment together with fine in the sum of Rs.5000/-. In the event of default in payment of fine, an additional term of two months simple imprisonment was directed to be suffered by the appellants. No sentence has been passed under Section 498-A IPC, notwithstanding the conviction on the aforesaid charge.

3. An information was given to the Station House Officer, Police Station Vishunpura, District Kushinagar in the form of a written report by Nurul Huda son of Idrish Ansari, a resident of Village Nonia Patti, Post and P.S. Padrauna, District Kushinagar, saying that the informant had married his daughter Tajrun Khatoon on 29.06.2013 to Abrar Ahmad son of Amiruddin, a resident of Jama Masjid, Post Dudahi, P.S. Vishunpura, District Kushinagar. After his daughter went to her matrimonial home and a month had passed by, he received a phone call from his daughter that her in-laws were demanding a motorcycle, a chain, a ring, apparently of gold. To this, the informant reported that he told his daughter that he had given cash and all necessities in her marriage and that he could not fulfill the aforesaid demand. His daughter in answer told the informant, as he reports, that her in-laws say that if she did not listen to them and get a motorcycle, chain and ring from her family, she would be done to death. The

were beating her up, telling her that if within a week, their demands were not fulfilled, she would be killed. Today, on 10.10.2013, which was a Thursday, he received a phone call late in the night from his son-in-law, Abrar Ahmad, that his daughter was seriously unwell. Upon receiving this information, it is said by the informant that he immediately left for Dudahi, that is to say, his son-in-law's home and found there that his daughter was dead. Nurul Huda said in his report to the Police that he was convinced that his daughter had been murdered by throttling her and in this murder, his son-in-law Abrar Ahmad, elder brother Lal Babu and Lal Babu's wife Shabana Khatoon, besides others in the family, were involved. This written information dated 10.10.2013 is on record as Ex. ~~Ka~~1.

4. On the basis of the written information, the Police at P.S. Vishunpura registered a First Information Report (for short, 'FIR') and the check FIR shows that the crime was registered on 10.10.2013 at 9.35 p.m. The crime occurred in the night intervening 09/10.10.2013. The check FIR shows that the crime was registered as Crime No. 648 of 2013, under Sections 498-A, 304-B IPC and Section 3/4 DP Act, P.S. Vishunpura, District Kushinagar. The check FIR is on record and marked as Ex. ~~Ka~~7. Inquest for the deceased was held on 10.10.2013, commencing at 10.00 a.m. and ending at 11.30 a.m. The inquest report dated 10.10.2013 is on record as Ex. ~~Ka~~3. According to the autopsy report dated 10.10.2013, Ex. Ka-2, the cause of death is asphyxia as a result of strangulation. The ante-mortem injury, that is noticed, is a contused ligature mark of size 18 cm x 2.5 cm on the anterior part of the neck, extending from right mastoid to mid of

5. The investigation was handed over to Police Station Tarya Sujan, District Kushinagar and assigned to a Deputy Superintendent of Police, one Dinesh Kumar Singh, PW-7. He commenced investigation recording statements under Section 161 Cr.P.C. and visiting the scene of crime, whereof a site-plan was drawn up. The site-plan is on record as Ex. *Ka-9*. The Investigating Officer filed a charge-sheet, bearing No. 48 dated 26.12.2013 against the appellant Abrar Ahmad and Lal Babu together. This charge-sheet is marked as Ex. *Ka-10*. A separate charge-sheet dated 02.01.2014 was filed against the appellant Shabana Khatoon, which is marked as Ex. *Ka-11*.

6. The learned Chief Judicial Magistrate, Kushinagar took cognizance, the appellants were furnished relevant prosecution papers as provided under Section 207 Cr.P.C. and *vide* order dated 25.06.2015, the case was committed to the Court of Sessions for trial.

7. Before the learned Sessions Judge, two sessions trials were registered, to wit, Sessions Trial No.331 of 2015, where the appellant Abrar Ahmad was the sole accused, and Sessions Trial No.501 of 2015, where Lal Babu and Shabana Khatoon were the accused. Both the trials came up before Mr. Rajeev Kamal Pandey, Additional Sessions Judge/ F.T.C. Kushinagar at Padrauna for framing of charge. In S.T. No.331 of 2015, on 07.08.2015 four charges were framed against the appellant Abrar Ahmad, *viz.* the first charge was for the offence punishable under Section 498-A IPC, the second under Section 3 DP Act, the third under Section 4 DP Act and the fourth under Section 304-B IPC.

and the fourth under Section 304-B/34 IPC; alternatively, under Section 302/34 IPC. In both the trials, the accused-appellants, who are the appellants here, pleaded not guilty and claimed trial.

8. Both the cases, being ones arising out of the same crime, were tried together.

9. The prosecution examined the following witnesses in support of their case:

1. PW-1 – Nurul Huda, the first informant and father of the deceased,
2. PW-2 – Najrun Khatun, sister of the deceased,
3. PW-3 – Naim Ansari, brother of the deceased,
4. PW-4 – Dr. Anoop Kumar, who conducted postmortem of the deceased,
5. PW-5 – D.D. Sharma, Deputy Superintendent of Police, in whose presence inquest and other related documents were prepared,
6. PW-6 – SI Amar Nath Srivastava, the then Head Moharrir, who drew up the check FIR and made other G.D. entries,
7. PW-7 – Addl. Superintendent of Police Dinesh Kumar Singh, who investigated the case and submitted the charge-sheet,
8. S.H.O. Gopal Tripathi, the then S.H.O., P.S. Bishunpura, District Kushi Nagar.

10. The prosecution produced the following documentary evidence:

Sr. No.	Exhibit No.	Exhibited documents with brief particulars
1	Ex. Ka-1	Written report dated 10.10.2013 lodged with Police Station Padrauna, District Kushi Nagar, proved by

5	Ex. Ka-5	Police Form No.13 (Challan Lash) dated 10.10.2013, proved by PW-5, D.D. Sharma
6	Ex. Ka-6	Police Form No. 379 (Photo Lash) dated 10.10.2013, proved by PW-5, D.D. Sharma
7	Ex. Ka-7	<i>Check</i> FIR dated 10.10.2013, proved by S.I. Amar Nath Srivastava
8	Ex. Ka-8	Carbon Copy of GD Entry dated 10.10.2013, proved by S.I. Amar Nath Srivastava
9	Ex. Ka-9	Site-plan of the place of occurrence dated 11.10.2013, proved by PW-7, Addl. S.P. Dinesh Kumar Singh
10	Ex. Ka-10	Charge sheet dated 26.12.2013 submitted against Abrar Ahmad and Lal Babu, proved by PW-7, Addl. S.P. Dinesh Kumar Singh
11	Ex. Ka-11	Charge sheet dated 02.01.2014 submitted against Shabana Khatun, proved by PW-7, Addl. S.P. Dinesh Kumar Singh
12	Ex. Ka-12	Recovery memo taking into possession of the belongings of the deceased dated 11.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
13	Ex. Ka-13	Arrest memo dated 12.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
14	Ex. Ka-14	Carbon Copy of GD Entry dated 12.10.2013, proved by PW-8, S.H.O. Gopal Tripathi
15	Material Ex. 1	Marriage Card
16	Material Ex. 2	Envelop of Marriage Card

11. After the prosecution evidence was over, the statements of the appellants under Section 313 Cr.P.C. were recorded, all on 08.08.2018. In their statements under Section 313 Cr.P.C., in answer to the last question, if the accused had anything to say, all the three appellants have come up with substantial explanations, which would be noticed later on in the course of this judgment.

12. The accused-appellants entered defence and three witnesses were produced, to wit: Istiyak Alam, DW-1, Husain Ansari, DW-2, and Amir Hasan, DW-3.

13. After holding trial and hearing parties, the learned Additional Sessions Judge convicted and sentenced each of the appellants

Government Advocate along with Mr. Kamlesh Kumar Nishad, learned State Law Officer appearing on behalf of the State in both the appeals.

16. Mr. Arvind Kumar Singh, learned Counsel for the appellants has urged that the FIR is ante-timed. The inquest shows that information to the police station was given on 10.10.2013 at 6.15 a.m. Amar Nath Srivastava, PW-6, was the Moharrir at the police station who has said in his testimony that the written information was received on 10.10.2013 at 12.35 p.m. It was, however, lodged at 9.35 p.m. with a delay of eight hours from receiving it and twenty hours after the incident. The exact date and time of incident are not mentioned in the G.D. The medical report, in the submission of the learned Counsel for the appellants, does not support the prosecution. It is next submitted that the Call Detail Record (CDR) was not collected during course of investigation. No complaint about cruelty in connection with dowry demand was made prior to the incident. There is no evidence that the deceased was subjected to cruelty in connection with demand for dowry soon before her death. The prosecution have failed to prove that the appellants had subjected the deceased to cruelty in connection with demand of dowry soon before her death. This is an essential ingredient, which the prosecution have to prove beyond reasonable doubt in order to raise the presumption under Section 113-B of the Evidence Act. The appellant Abrar Ahmad, who is the husband of the deceased, informed the deceased's father about the incident. Abrar Ahmad, Lal Babu and Shabana were present at the spot on 10.10.2013. The last fact shows the absence of a guilty mind and honourable behaviour. Abrar Ahmad

account of any harassment in connection with dowry, but for reason of other bickerings between the husband and wife and their circumstances. It is emphasized that Lal Babu and Smt. Shabana lived separately in the same house and they were not on good terms. There is absolutely no involvement of these two appellants in the affairs of the deceased's family. Learned Counsel for the appellants submits that the explanation offered about the victim's unnatural death and the circumstances that figure in the statements of Abrar Ahmad, Lal Babu and Smt. Shabana under Section 313 Cr.P.C. have not been considered by the learned Trial Judge. It is particularly emphasized that the Investigating Officer has neither collected the CDR nor an FIR has been lodged about cruelty in connection with dowry demand prior to the incident, which would show that the ingredients of the offence under Section 304-B IPC are not attracted. The learned Counsel for the appellants has placed reliance upon the authority of the Supreme Court in **Charan Singh v. State of Uttarakhand, (2024) 13 SCC 649**. It is lastly submitted that the extreme punishment of life imprisonment has been awarded for the offence under Section 304-B IPC without assigning any cogent reasons. It should not be awarded in every case as held by the Supreme Court in **Hem Chand v. State of Haryana, (1994) 6 SCC 727**. The learned Counsel for the appellants brings it to our notice that Abrar Ahmad has already served more than 13 years in jail in the aforesaid case.

17. Mr. Shashi Shekhar Tiwari, learned A.G.A. along with Mr. Kamlesh Kumar Nishad, learned State Law Officer have supported the impugned judgment and said that it is a case of a

would, therefore, arise and burden would lie upon the appellants to prove their innocence.

18. Upon hearing learned Counsel for the parties, we are of opinion that the case in the appeal of Abrar Ahmad, on one hand, and that in the appeal of Smt. Shabana Khatoon and Lal Babu, on the other, have very different facts and evidence, *vis-a-vis* the charge involved. We also find that though the Trial Court was right in framing a charge under Section 302 IPC, but as the legal position would have it, the charge under Section 302 IPC could not have been the alternate charge. Rather, the charge under section 304-B IPC should have been the alternate or just the next charge to be considered, if the charge under Section 302 IPC was not substantiated by the prosecution evidence. The law, that is crystallized in this regard, is clear and it is not that, that the murder of a woman within seven years of marriage within the four-walls of her matrimonial home, where soon before her death, there was cruelty inflicted upon her in connection with dowry, would become a case punishable under section 304-B alone. In both offences, that is to say, Sections 302 and 304-B IPC, there is essentially an unnatural death involved. Both the charges have different ingredients. Whereas the charge under Section 302 IPC requires the intention to do another to death followed up by the necessary action, a case under Section 304-B includes any kind of unnatural death of a woman in her matrimonial home within seven years of marriage, if immediately before her death, she was subjected to cruelty in connection with demand of dowry. Thus, a purely suicidal death, where ingredients of Section 304-B are attracted, would lead to proof of the charge with burden shifted

the Court finds that there is material to frame a charge under Section 302 IPC, the Court must consider evidence to see if the charge under Section 302 IPC is proved. If it is not proved, the Court can then consider evidence to decide whether the alternative charge of dowry death punishable under Section 304-B is established. In this connection, reference may be made to **Jasvinder Saini v. State (Govt. of NCT of Delhi), (2013) 7 SCC 256**. In **Jasvinder Saini (supra)**, it was held:

"15. It is common ground that a charge under Section 304-B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304-B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302 IPC the trial court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without advertent to the evidence adduced in the case and simply on the basis of the direction issued in *Rajbir case* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] . The High Court no doubt made a half-hearted attempt to justify the framing of the charge independent of the directions in *Rajbir case* [*Rajbir v. State of Haryana*, (2010) 15 SCC 116 : (2013) 2 SCC (Cri) 149 : AIR 2011 SC 568] , but it would have been more appropriate to remit the matter back to the trial court for fresh orders rather than lending support to it in the manner done by the High Court."

19. In this case, what we find is that the husband and wife were

defence on behalf of all the appellants that Abrar Ahmad had soured relations with his brother Lal Babu, after the latter's marriage, on account of which their father had put them up in separate accommodation within the same premises. This stand has come in the explanation given by the appellants to the incriminating circumstances appearing against them, in their statements under Section 313 Cr.P.C. and the defence evidence led. Of course, this does not figure in the prosecution evidence and nothing on the point could be elicited during the cross-examination as well. However, the cross-examination of the three witnesses for the prosecution, who are the father, brother and sister of the deceased, and for that matter, their examinations-in-chief as well, show that they were strangers to Abrar's household after all. In the short life of the parties' marriage, PW-1, the deceased's father, had visited the deceased's matrimonial home on one occasion alone. All his information about the affairs in his daughter's life were based on three telephonic conversations that he had with his daughter. In this kind of an interaction between the two families, after matrimony, if it can at all be called any kind of interaction, it is difficult to infer or hold that PW-1 would have known that the two brothers were estranged and living in separate quarters, albeit in the same house.

20. So far as PW-2, the deceased's sister, is concerned, she never went to her sister's matrimonial home and her interaction with the deceased after the latter's marriage was limited to a telephonic contact, which too, from the evidence, appears to be brief and infrequent. PW-3, the deceased's brother, appears to have visited his sister, but again not any more than his father,

premises, separated by their father on account of the soured relationship between the two brothers. The circumstances, in which the relations had soured, have also been spoken about by the defence witnesses. The Trial Court has not paid any attention to the defence evidence. It is not fair to condemn defence evidence or look upon it with suspicion as second grade evidence, inferior to that of the prosecution. As regards the awareness that PW-1 had about his son-in-law's household and the limited contact that he had with his daughter, would be evident from the following part of his cross-examination:

"अबरार के पास मोबाइल था। मेरी बेटी ने अपनी शादी के बाद अबरार के मोबाइल से मुझसे 3 बार बात की थी। एक बार घटना के एक महीना पहले बात किया था। बात मुझसे हुई थी। तारीख व समय नहीं बता सकता। मुझे मेरे मोबाइल का नम्बर याद नहीं है। मैं पढ़ा लिखा नहीं हूँ। फिर इस घटना के पहले भी मेरी बेटी ने मुझसे फोन किया था। कब किया था समय याद नहीं है। तीसरी बार छः रोज पहले फोन किया था। यकिन के साथ समय याद नहीं आ रहा है। शादी के बाद मैं एक ही बार उसकी ससुराल गया हूँ। मैं शादी के बाद पहली बार अपनी लड़की के ससुराल हाल चाल लेने गया था। मेरी लड़की ने जब पहली बार मुझसे फोन किया तो हाल चाल लेने के संबंध में की थी।

अबरार कुल कितने भाई है इस समय मुझे याद नहीं है। अबरार का सबसे बड़ा भाई लालबाबू है। और अबरार के कितने भाई है मुझे नहीं मालूम है। मेरी बेटी के लिए ससुराल में अलग से कोई कमरा मिला था कि नहीं इसकी जानकारी मुझे नहीं है।"

21. Likewise, PW-2, Smt. Najroon, who was the deceased's sister, had no contact with the deceased nor had she visited her matrimonial home. This fact would be evident from the following part of her cross-examination:

"मैं हमेशा अपनी बहन का हाल चाल फोन करके पूछती थी। मैं किस नम्बर से अपनी बहन से बात करती थी नम्बर मुझे याद नहीं है। फोन खराब हो गया था। इसलिये फेंक दिया। मैं अबरार के नम्बर पर ताजरुन से बात करती थी। मैं जब अबरार के फोन पर फोन करती थी तथा कहती थी कि ताजरुन से बात कराइये तो वह ताजरुन से बात करा देते थे। फोन में दिन में ही करती थी।

ताजरुन किस नं. से बात करती थी मुझे मालूम नहीं। मैं कभी ताजरुन के घर नहीं गयी थी। मेरे शौहर भी कभी ताजरुन के घर नहीं गये थे। मुझे इस बात की जानकारी नहीं है कि शादी के बाद मेरे पिता जी ताजरुन के घर गये थे कि नहीं मैंने अपने पिता जी से ताजरुन के सम्बन्ध में कोई बात नहीं किया था।

"शादी के बाद से मेरी बहन से मुलाकात नहीं हुई। केवल मोबाइल से बात हुई। ताजरुन को शादी में गिफ्ट के रूप में मोबाइल नहीं दिया गया था ताजरुन से बात उसके पति अबरार के मोबाइल से ही होती थी ताजरुन से मेरी बात तीन चार बार हुई।

अबरार ने मुझे कभी फोन नहीं किया किस तारीख को ताजरुन से बात हुई तारीख नहीं बता सकता। ताजरुन से जितने बार बात हुई दिनांक व समय याद नहीं है। ताजरुन के निकाह से 1 माह तक मेरी ताजरुन से कोई बात नहीं हुई। उस समय मैं पडरौना में ही था। मैंने बहन का हाल चाल लेने के लिए फोन नहीं किया वही फोन करती थी।"

23. All this evidence would show the scanty nature of interaction that the deceased's family had with her husband's family. They would possibly not know, therefore, that the two brothers were living separately.

24. In his statement under Section 313 Cr.P.C., the appellant Lal Babu, Abrar's brother, has stated:

"मैं और अबरार दोनो बेरोजगार थे। दोनो लोगो के खर्च का पैसा मेरे पिता अमीरुद्दीन भेजा करते थे। इसकी वजह से अबरार के साथ मेरे तालमेल बहुत खराब हो गए थे इसलिए हमारे पिता ने घर का बटवारा करके मुझे व मेरी पत्नी को अलग कर दिया था। मैं अपनी पत्नी के साथ अलग रहता था तथा अलग खाना बनता था।

अलग हो जाने के कारण अबरार से मेरी कोई बातचीत नहीं होती थी। दादी के जागने के कारण इस घटना की जानकारी हुई। अबरार और उसकी पत्नी के बीच किस प्रकार के संबंध थे तालमेल न होने के कारण नहीं जान पाया। अबरार की ग्रहस्थी में मेरा व मेरी पत्नी का कोई हस्तक्षेप नहीं था अबरार ने अपनी पत्नी को हम लोगो से बात करने से मना किया था।"

25. DW-1 is a brother-in-law of sorts to Lal Babu. He stated in his examination-in-chief:

"लाल बाबू व अबरार के पिता अमीरुद्दीन लखनऊ में ठेकेदारी का काम करते हैं। लाल बाबू व अबरार की माँ व अन्य भाई बहन लखनऊ में रहते हैं, लालबाबू व अबरार दुदही में अपने पैतृक घर पर रहते हैं, लालबाबू व अबरार के खर्च के लिए उनके पिता पैसा भेजते थे, अमीरुद्दीन ने लालबाबू के पास पैसा खर्च के लिए भेजते थे, लालबाबू की शादी के बाद से लालबाबू व अबरार में खर्च को लेकर झगड़े होते थे इस झगड़े को देखकर सन् 2012 में अमीरुद्दीन ने अपने दोनों लड़को को अलग कर दिया तब से लालबाबू अपनी पत्नी के साथ उसी घर में अलग रहते थे वह अपना अलग भोजन बनाते थे अलग खाते पीते थे। इन लोगों के पास खेतीवारी नहीं है उसके बाद दिनांक 29.06.2013 को अबरार की शादी ताजरुन के साथ हुई शादी व ताजरुन की मृत्यु के समय लालबाबू अलग रहता था। लालबाबू व अबरार के बीच कोई सम्बन्ध नहीं था,"

26. In his cross-examination, he has stated:

Husain Ansari (DW-2) for a period of one and a half years before his marriage and about a month and two afterwards. He is otherwise an independent witness, not connected to either the deceased's family or the appellants' family. However, he knew their affairs well because Abrar would work for him. He has said in his examination-in-chief:

"लालबाबू अबरार के बड़े भाई हैं अबरार की शादी के पूर्व से ही लालबाबू और उसकी पत्नी शबाना खातुन को अबरार के पिता ने अबरार के शादी के पहले से अलग कर दिया था, लालबाबू अपनी शादी के पहले अबरार के साथ रहता था इनके पिता शेष परिवार के साथ लखनऊ रहते हैं वे लालबाबू व अबरार के खर्च के लिए पैसा लालबाबू के पास भेजते थे लालबाबू की शादी के बाद दोनों भाइयों में टकरार होती थी जिसके कारण पिता अमरुद्दीन ने लालबाबू के शादी के बाद लालबाबू व उसकी शबाना खातुन को उसी मकान में अलग कमरा दे दिया और वह अलग रहने लगे यह बात सन् 2011 की है। लालबाबू अपनी पत्नी शबाना खातुन व अपनी दादी के साथ अलग रहते थे अलग खाना खाते पीते थे लालबाबू की दादी मर गयी है।"

28. This witness in his cross-examination has testified:

"मैं MLC दिल्ली होल्डर हूँ हमारा घर मुल्जिमान लालबाबू व अबरार के घर से 500 मीटर की दूरी पर है मैं अभियुक्त लालबाबू व अबरार के घर रोज नहीं जाता रहा हूँ जब कोई अवसर पर काम पड़ता था तो मैं उनके घर जाता हूँ

लालबाबू के शादी होने के कुछ दिन समय बाद जब अबरार अविवाहित था उसी समय से अमीरुद्दीन ने दोनों को अलग कर दिया था अबरार अकेले बनाता खाता था।"

29. DW-3, Amir Husain, is a neighbour of the deceased's in-laws. He has said in his examination-in-chief:

"लालबाबू अबरार को जानता हूँ लालबाबू व अबरार का घर मेरे घर के एक घर के बाद है लालबाबू के पिता लखनऊ में रहकर ठीकेदारी करते हैं लालबाबू और अबरार के अलावे उनके परिवार के लोग लखनऊ रहते हैं लालबाबू व अबरार का खर्च अमरुद्दीन भेजते थे अबरार की शादी से पूर्व ही लालबाबू अलग रहते थे अमरुद्दीन ने लालबाबू की शादी के बाद से लालबाबू को अलग कर दिया था लालबाबू व अबरार का खाना अलग-अलग बनाते खाते हैं घर एक ही कोठरी अलग अलग बटवारा हुआ है अबरार की शादी हुई तो लालबाबू अलग रहते थे और लालबाबू की दादी नगैतुन लालबाबू के साथ रहती थी लालबाबू अबरार के बीच अबरार की शादी से पहले से बोल चालू बन्द था लालबाबू अपनी पत्नी शबाना के साथ अलग रहते हैं।"

30. He has said in his cross-examination:

"अबरार के पिता लखनऊ रहते थे बाकी लालबाबू अबरार व उनकी पत्नियाँ एक ही घर में रहती थी उस घर का मुख्य एक ही दरवाजा है।"

spoken about the strained relations between the two brothers, both of whom were supported in their livelihood by their father's exertions and the fact that upon Lal Babu's marriage, their father had placed them in separate living quarters in the same house with no hearth to share, shows that two brothers hardly had any interaction as a family. There is consistent evidence that the two brothers did not speak to each other.

32. Now, in this background, whatever happened on the fateful night, was a matter between the appellant Abrar and the deceased. It is true that the marriage was a very short live one, and in that short period, there is testimony of PW-1 in his examination-in-chief that one month after marriage, the deceased had called him up to say that her in-laws Abrar and Lal Babu @ Ajmeri and Shabana Khatoon were demanding in dowry a gold chain, a gold ring and a motorcycle. The witness has testified that he told his daughter that whatever he had, he had given away in her marriage and now his circumstances did not permit him to give anything more. A week after this call, the deceased again called up PW-1, her father, and informed him that Abrar, Lal Babu and Shabana were threatening her that in the event the chain, the ring and the motorcycle were not given, they would not let her live. On 06.10.2013, there was yet another phone call from the deceased, where she told PW-1 that the three of her named in-laws were torturing her and demanding the dowry to be made good within a week, and else, they would do her to death. On 10.10.2013, the fateful phone call came from the appellant Abrar to PW-1 that he should immediately come over as Tajroon was very ill. PW-1 then went over to Tairoon's place, located in Dudahi

33. This witness in his cross-examination has testified to the effect that when he first spoke to his daughter over telephone to know about her welfare, she had told him that her in-laws were troubling her. He has said that he never informed the Police about his daughter being ill-treated or troubled by her in-laws. As regards, the appellants, Lal Babu and Shabana Khatoon, PW-1 has stated that none of them ever called him up on phone. He has further said that Shabana Khatoon had greeted him, but both of them did not say anything else. The relevant part of PW-1's cross-examination reads:

"लालबाबू ने कभी मुझे फोन नहीं किया। शवाना ने भी कभी हमें फोन नहीं किया। मैं जब अपनी बेटी से मिलने गया था तो शवाना ने मुझे सलाम किया। उन लोगों ने मुझसे और कोई बात नहीं किया। मैंने भी उनका हाल चाल नहीं पूछा था।"

34. So far as PW-2, Smt. Nazroon, the deceased's sister is concerned, she has testified in her examination-in-chief that her younger sister was treated with cruelty and violence by her husband, brother-in-law Lal Babu and sister-in-law Shabana Khatoon in connection with their demand of a motorcycle, a gold chain and a gold ring that they wanted in dowry. This information was given to her by the deceased Tajroon over mobile phone, during conversation the two had. In her cross-examination, in one part of it, that is reproduced hereinabove, this witness has expressed her lack of acquaintance with the deceased's husband and in-laws and acknowledged having never visited her sister. In her cross-examination, she has asserted that the deceased had told her that the appellants Shabana Khatoon and Lal Babu would demand a motorcycle, gold chain and a gold ring in dowry. This information, the witness had acquired during a telephonic conversation with the deceased, who had told her that the appellants would demand a motorcycle, gold chain and a gold ring in dowry.

by the Court that she knew about violence and cruelty for the purpose of demand of dowry, but did not know how Tajroon died.

35. PW-3, Naeem Ansari, in his examination-in-chief has said that a month after her marriage, his sister called him up on phone to say that her husband Abrar, brother-in-law Lal Babu and his wife Shabana Khatoon would beat her up and torture her demanding in dowry a motorcycle and they had further said that in the event the demand was not made good, they would not spare her life. In his cross-examination, this witness has said about the demand for dowry that when his sister called his father, she had told the latter about the dowry demand by her in-laws, but they did not lodge any complaint with the Police. It is also said in the cross-examination by this witness that his sister had told them, which means her parents' family, that the appellants are greedy in nature and it is for that reason that they were demanding a motorcycle, a chain and a ring. About the motorcycle, that was already given at the time of marriage, the witness has said, he does not remember in whose name it was purchased. It is further on said that it was Abrar, who would repeatedly come up with the demand for dowry. The witness also says in his cross-examination that notwithstanding the information about cruelty in connection with demand of dowry, they did not lodge any complaint with the Police nor did they seek the intervention of their close relatives or friends in order to resolve the matter through a *panchayat*.

36. Now, so far as cruelty and the demand of dowry is concerned, there are consistent allegations by the three prosecution witnesses against the appellant Abrar, who was the

appears to have done. There is convincing evidence on record to show that Abrar and his brother Lal Babu had separate households within the same premises with a partition being brought about by their father, who appears to be the earning member of the family, living in Lucknow. The separate households for the two sons were set up by their father, when Lal Babu was married, and it has come in evidence of the defence witnesses that the two brothers did not see eye-to-eye and were hardly on speaking terms. In our opinion, therefore, the fact that there was cruelty inflicted upon the deceased in connection with demand for dowry has to be limited to the appellant Abrar, the deceased's husband. We say so because Lal Babu and wife Shabana lived in a separate household and Lal Babu apparently was not on good terms with his brother. The two hardly spoke to each other. In these circumstances, to infer that Lal Babu and his wife Shabana would join cause with Abrar, the appellant, in subjecting the deceased to cruelty in connection with demand for dowry, is rather illogical. The gainer would be the husband and so the perpetrator.

37. The evidence against Lal Babu and Shabana, indulging in violence or treating the deceased with cruelty in connection with demand for dowry along with Abrar, is based mostly on telephonic conversations, that PW-1, PW-2 and PW-3 had with the deceased. The evidence shows that post marriage, the deceased had never come back home to her parents nor the parents or siblings had opportunity to interact with her. The information that the witnesses had from the deceased was, therefore, scanty and one which cannot be mechanically accepted for all the appellants. Abrar, being the husband, would of course take the blame for any

appellants Lal Babu and Shabana and gone mostly by the prosecution evidence and almost a presumption to find against them on the fact of infliction of cruelty in connection with demand for dowry upon the deceased.

38. Coming to the homicide or the unnatural death that the deceased met, it again happened in the room where Abrar and his wife stayed. Apparently, it happened by night and there was no reason at that hour for the appellants Lal Babu and Shabana to be there. The two were living in separate households, albeit in the same house and premises. It is true that the cause of death is asphyxia on account of strangulation and the hyoid bone is fractured, as the doctor reports. Abrar, who was presumed to be with his wife by night, could have the charge under Section 302 IPC considered against him on the basis of circumstantial evidence. The Trial Court logically should have first considered evidence on the charge under Section 302 IPC and tested it, if the charge could be proved by the exacting standards required in a case of circumstantial evidence. If the said charge was not proved, then the case under Section 304-B IPC could have been examined on a presumption under Section 113-B of the Evidence Act, because the prosecution has after all proved cruelty in connection with dowry demand, at least by Abrar, immediately before the unnatural death. The marriage, of course, was well within seven years. Thus, the Trial Court did not do, and instead, proceeded straight away to consider the charge under Section 304-B IPC with reference to the evidence on record. This charge, it held proved against the appellant Abrar, besides the two other appellants.

appeal for enhancement of sentence under Section 386(c) Cr.P.C. There is neither an appeal for enhancement of sentence by the State nor by the complainant nor a revision by either of them. The only other option available with the Court is to order a retrial. This is not a case of ordering a retrial because that is a course which has to be treaded with much caution. The reason is that retrial wipes out all evidence that has hither to been recorded and with passage of time, it may not be possible for good and sound evidence to be led again. Therefore, this Court has to exercise powers in accordance with Section 386(b) Cr.P.C., either reversing the finding and sentence and acquitting the appellant, alter the finding, maintaining the sentence, or with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but without enhancing the same, to borrow almost the phraseology of the statute. Reference in this connection, on the limitation of our powers to convict the appellant on a different charge and enhance the sentence, is well elucidated in **Sachin v. State of Maharashtra, (2025) 9 SCC 507**, where it has been held:

“57. However, in this case, our focus of attention is whether, in the absence of any appeal or revision filed by the State, a complainant or a victim in a particular case and when the appeal has been filed only by the accused assailing the judgment of conviction and sentence, the High Court can exercise its revisional jurisdiction while dealing with an appeal filed by the accused/convict. In other words, when an accused is seeking setting aside of a judgment of conviction and sentence, can the High Court, in the absence of there being any challenge to the same from any other quarter, suo motu exercise its revisional power and thereby condemn the accused by awarding an enhancement in his sentence. Even if an opportunity of hearing is given to such an accused/convict, we do not think that the High Court can exercise its revisional jurisdiction under Section 401CrPC while exercising its appellate

58. In this regard, we find that the expression “but not so as to enhance the same” in sub-clause (iii) of clause (b) of Section 386CrPC throws some light on the view we have taken, which reads as under:

“386. Powers of the appellate court.—

(b) in an appeal from a conviction—

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;”

Although the said expression “but not so as to enhance the same” is in the context of sub-clause (iii) of clause (b) of Section 386, the spirit of the said provision must be understood, inasmuch as while maintaining the finding of conviction, the High Court cannot exercise its suo motu revisional jurisdiction under Section 401CrPC and enhance sentence awarded to the appellant-accused.

61. In this regard, it must be noted that for exercise of powers of the appellate court for enhancement of sentence in an appeal filed either by the State or the complainant or the victim, CrPC provides that the appellate court can reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court competent to try the offence or alter the finding by maintaining the sentence or with or without altering the finding, alter the nature or the extent, of the sentence but not so as to enhance the same. Thus, the power to enhance the sentence can be exercised by the appellate court only in an appeal filed by the State, victim or complainant provided the accused has had an opportunity of showing cause against such enhancement. It is further provided that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order of sentence under appeal. Therefore, even in an appeal for enhancement of sentence, unless the conditions prescribed in the form of provisos are complied with by the appellate court, there cannot be an enhancement of sentence. Obviously in such an appeal for enhancement of sentence, the convict or the accused is the respondent and therefore there cannot be enhancement of sentence unless the accused or convict has been heard.

62. However, under the scheme of Section 386 vis-à-vis

the complainant cannot seek enhancement of the sentence than what has been awarded by the trial court. The above distinction can be explained by way of a Latin maxim which has been discussed by Ujjal Bhuyan, J., while in the Bombay High Court [Jyoti Plastic Works (P) Ltd. v. Union of India, (2021) 15 GSTR-OL 453 : 2020 SCC OnLine Bom 2276] , in the following words: (Jyoti Plastic Works case [Jyoti Plastic Works (P) Ltd. v. Union of India, (2021) 15 GSTR-OL 453 : 2020 SCC OnLine Bom 2276] , SCC OnLine Bom para 40)

"40. In this connection we may refer to the maxim *reformatio in peius*. It is a Latin phrase meaning a change towards the worse i.e. a change for the worse. As a legal expression it means that a lower court judgment is amended by a higher court into a worse one for those appealing it. In many jurisdictions, this practice is forbidden ensuring that an appellant cannot be placed in a worse position as a result of filing an appeal. When the above phrase is prefixed by the words "no" or "prohibition", which would render the maxim as no *reformatio in peius* or prohibition of *reformatio in peius*, it would denote a principle of procedure as per which using a remedy available in law should not aggravate the situation of the person who avails the remedy. In other words, a person should not be placed in a worse position as a result of filing an appeal. No *reformatio in peius* or prohibition of *reformatio in peius* is a part of fair procedure and thus by extension can also be construed as part of natural justice. It is not only a procedural guarantee but is also a principle of equity."

(emphasis supplied)

63. The rationale of the above can be explained in simple language by stating that no appellant by filing an appeal can be worse off than what he was. That is exactly what we are seeking to reiterate in our judgment having regard to the facts of the present case."

40. Now, that the Trial Court has not considered the charge under Section 302 IPC, and instead, the charge under Section 304-B IPC alone has been tested *vis-a-vis* the appellant Abrar, besides the two other appellants, pragmatically, we can either affirm the finding and sentence or acquit the appellant, or alter the finding and alter the nature or the extent, or the nature and extent

an unnatural death on account of strangulation. The presumption under section 113-B of the Evidence Act would attach. Abrar, the appellant, has hardly discharged the burden of proof cast upon him under Section 113-B of the Evidence Act to show that he had not caused the dowry death charged against him.

41. Considering the nature of evidence, which is about strangulation and Abrar being the husband, we are of opinion that no interference with the impugned judgment, *vis-a-vis* Abrar is called for. We would, therefore, in the case of Abrar affirm both the conviction and the sentence. So far as the appellants, Smt. Shabana Khatoon and Lal Babu are concerned, we have already held that there is not much reliable evidence against them that they too treated the deceased with cruelty in connection with demand for dowry immediately before her unnatural death. There is no scope to delve into the feasibility of considering if the charge under Section 302 IPC is proved against these appellants, in the absence of an appeal by the State for enhancement of sentence or a revision or appeal by the complainant. Even otherwise, circumstantially the evidence against Lal Babu and his wife does not inspire confidence about their involvement in the deceased's unnatural death in any manner. We have expressed our reasons for so concluding and need not recapitulate. In a conviction under Section 304-B IPC unless it is established by evidence that soon before the victim's unnatural death, she was subjected to cruelty in connection with demand for dowry, the presumption under Section 113-B of the Evidence Act cannot be raised. This is precisely the case here. Reference in this connection may be made to **Baijnath v. State of M.P.** (2017) 1 SCC 101. In Baijnath

subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overeased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty.

32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v. State of Punjab* [*Shindo v. State of Punjab*, (2011) 11 SCC 517 : (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v. State of Haryana* [*Rajeev Kumar v. State of Haryana*, (2013) 16 SCC 640 : (2014) 6 SCC (Cri) 346] . In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in *K. Prema S. Rao v. Yadla Srinivasa Rao* [*K. Prema S. Rao v. Yadla Srinivasa Rao*, (2003) 1 SCC

demand is not at all established against Smt. Shabana Khatoon and Lal Babu, the two appellants in Criminal Appeal No. 856 of 2020. Once the presumption is not raised, conviction as ordered by the Trial Court on its basis under Section 304-B IPC cannot be sustained. No case under Section 4 of the DP Act and under Section 498-A IPC, for the selfsame reason, is also made out against these two appellants.

43. Therefore, so far as Criminal Appeal No.856 of 2020 is concerned, we would acquit the appellants, Smt. Shabana Khatoon and Lal Babu on all three counts, to wit, under Section 304-B/ 34, 498-A/ 34 IPC and Section 4 of the DP Act.

44. In the result, Criminal Appeal No.1080 of 2020 fails and is **dismissed**. Criminal Appeal No. 856 of 2020 succeeds and is **allowed**. The appellants, Smt. Shabana Khatoon and Lal Babu, are **acquitted**. They need not surrender. Their bail bonds are cancelled and sureties discharged.

45. The appellants, Smt. Shabana Khatoon and Lal Babu shall execute a personal bond each in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

46. Let this order be communicated to the appellant Abrar Ahmad in Criminal Appeal No.1080 of 2020 through the Jail Superintendent of the Jail, where he is serving, by the Registrar (Compliance).