

**IN THE COURT OF THE SESSIONS JUDGE, UDALGURI, ASSAM**

Sessions Case No.80/2016  
(U/S :304B/302 IPC)

State  
Versus  
Sri Biswajit Bora,  
S/o- Ratneswar Bora,  
resident of  
Vill- Kalitapara,  
P.S.- Kalaigaon, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S.,  
Sessions Judge,  
Udalguri.

APPERANCE:

For the Prosecution : Sri A. Basumatary, P.P.,Udalguri

A N D

For the accused : Mr. T.C. Boro, Advocate.

Evidence recorded on : 5.12.16, 4.2.17, 3.4.17, 7.6.17, 17.7.17,  
7.12.17, 30.1.18, 12.10.18.

Argument heard on : 8.8.2019.

Judgment delivered on: 19.8.2019.

**J U D G M E N T**

1. The prosecution case, as unfurled during the trial, in brief, is that on 9.6.2016 the informant Bhabani Baishya lodged an FIR with the Officer-In-Charge of Kalaigaon PS alleging, inter-alia, that on 8.6.16 at about 1 PM he came to know from his co-villager Riju Deka that his daughter Rima Bora, who was married by accused Biswajit Bora committed suicide by hanging. He suspects that the accused committed murder of his daughter by well planned conspiracy as the accused used to commit physical torture on his daughter on

demand of dowry which was informed to him by his daughter over telephone now and then.

2. Basing on the FIR the Officer-In-charge of Kalaigaon Police Station registered a case being Kalaigaon P.S. case No.91/2016 U/S 304B I.P.C. and entrusted the case for investigation to SI Hiren Kumar Bora. During the course of investigation the investigating officer visited the place of occurrence, prepares a sketch map of the place of occurrence, recorded statement of available witnesses U/S 161 Cr.P.C. and held inquest on the dead body of the deceased. The dead body was then sent for post-mortem examination and collected the post-mortem report. In the meantime the accused was also arrested after interrogation and forwarded to the court. On completion of investigation charge-sheet U/S 304B IPC was submitted against the accused to face trial.

3. On receipt of the charge-sheet, the learned Chief Judicial Magistrate, Udalguri took cognizance of the offence and ensured the attendance of the accused. Having found the offence U/S 306 IPC exclusively triable by the court of Sessions committed the case to this court of Sessions on 30.8.2016 after complying with the requirements U/S 207 Cr.P.C.

4. On commitment of the case with all requisite papers and upon perusal of the copies of documents supplied U/S 173 Cr.P.C., my learned predecessor in office having found a prima-facie case and sufficient ground for proceeding against the accused U/S 302/304B framed formal charges under the said Sections of law and the charges so framed on being read over and explained to him to which he pleaded not guilty and claimed to be tried.

5. To bring home the charges, prosecution examined in all 10 (ten) witnesses and also relied on some documents marked as exhibits. On conclusion of recording evidence the accused was examined U/S 313 Cr.P.C. His plea is of total denial and false implication. However, no evidence was led by defence.

6. In the perspective of the above facts and circumstances of the case, the points for determination in the case are set forth as follows:

- (i) Whether the accused caused the death of the deceased subjecting her to cruelty or harassment on demand of dowry?
- (ii) Whether the accused committed murder intentionally causing the death of the deceased?

7. I have heard arguments placed by the learned counsel of both the sides and also considered the entire evidence on record.

DISCUSSION, DECISION AND REASONS THEREFOR:

8. PW1, Bhabani Baishya is the first informant of the case. He has adduced his evidence to the effect that accused is his son-in-law. His daughter Rima Bora was given marriage with accused about 3 years ago. After two years of marriage accused started demanding dowry i.e. money. His demand could not be fulfilled. Due to non fulfillment of demand accused used to torture his daughter. While visiting their house his daughter Rima used to tell him that her husband tortured her on demand of dowry. Accused asked him money enabling him to purchase a bike. He being a poor person could not fulfill the demand of the accused and so he tortured his daughter Rima. Ultimately accused killed his daughter. The family members of the accused did not inform them about the incident. He came to know from his neighbouring person that his daughter had been killed by accused. On getting such information he came to the house of the accused and found the dead body of Rima lying inside the room. Police came to the place of occurrence and took the dead body for post-mortem examination. He did not find the accused person at home when he visited his house. He suspects that the accused person killed his daughter Rima. On the next day of the occurrence he lodged a written FIR before Kalaigaon PS. Ext.1 is the said FIR and Ext.1(1) is his signature.

9. In cross-examination, he has maintained that deceased and the accused used to visit their house off and on. He also used to have social visit to the house of the accused. When I reached the house of the accused he found some persons present at the gate of the accused. He denied the defence suggestion that he did not mention in his FIR that the accused demanded money to purchase a bike. He has also denied that he did not mention in his FIR that his daughter Rima informed him that her husband demanded money. He has further denied the suggestion that the accused did not make demand of money to purchase a bike and he did not make any demand of money. While he came to the house of the accused on getting information of death of his daughter, he did not lodge FIR on that day although the police came to the place of occurrence at that time. He lodged the FIR on the next day of the incident and he has also not mentioned in his FIR as to the delay in lodging the same.

10. PW2 is Chandi Bora. According to his version the occurrence took place about 7/8 months ago at about 12 noon. His house is situated adjacent to the house of the accused. At the time of occurrence he was at his paddy field. He heard hulla in the house of the accused person that his wife committed suicide. He rushed to the place of occurrence and found the victim hanging in the room. The father of the accused took out the body from the hanging position. Already village people gathered there. Police came to the place of occurrence.

11. In cross-examination, he has revealed that he had not heard any quarrel between the family members of the accused and the victim.

12. PW3 is Ranjit Baishya. As per his testification the occurrence took place in the house of the accused person. The informant is his elder brother and victim Rima Bora is the daughter of the informant and the wife of the accused. At the material time he was working as a labourer near the house of the sister of the accused. While working there he came to know from some women that victim Rima expired. Then he rushed to the house of the father of the victim alongwith his elder brother informant Bhabani Baishya and another co-villager

on a hired vehicle. They found the dead body of victim Rima lying dead in their drawing room on the floor with one of her leg in bending position. They also noticed one side of the cheek blackish. The villagers of the locality told them that it is a case of killing and not a case of suicide. One year prior to the occurrence the victim told him, while she visited her parental house, that over non giving of gold finger ring in marriage her husband used to make trouble in their family. Rima also told him that accused made demand of a bike to be brought from her parental home. Over non fulfillment of the demand the accused person used to torture her. They suspect that the accused killed his wife Rima

13. In cross-examination, he has disclosed that his house is situated at a distance of about 50 KM from the house of the accused. He has denied that that he did not state before the police that Rima told him that after receipt of the amount from 'Bandhan' by her father accused demanded gold ring and bike. He also denied that he did not state before the police that they saw blackish mark on the cheek of the deceased and that they came to know from the villager of the locality that it was not a case of suicide but it was a case of murder by the accused and his family members. He has further denied that he did not state to police that the victim told him that she was tortured by the accused.

14. PW4, Smti. Saru Lata Borah is a house-wife and the mother of the accused. She has deposed that she knows the informant and the deceased was the daughter of the informant and wife of the accused. The occurrence took place around 10 months ago at about 12 noon. At the time of occurrence she was not present at her residence. He was busy in grinding rice at the house of her neighbour. At the time of occurrence accused was not at home. He was at his work place. After grinding of rice being done she came back home and called her daughter-in-law (deceased). Finding no response from her she entered into the room to find her out. But she was found hanging from the ceiling by means of a rope at their drawing room. Seeing this position she raised shout whereupon the neighboring people came to their house. The

neighbouring people immediately took down the deceased but she already died. Her husband was not present at that time. He also came to the place of occurrence on hearing her shout. Her husband informed the matter over phone to Bhabani Baishya (informant) whereupon he came to their residence. The local people informed about the occurrence to the police. Police came to the place of occurrence and took the deadbody of the deceased to hospital for post-mortem examination. Her cross-examination was declined by the defence.

15. PW5, Dhanmani Baishya is the elder brother of the deceased. It is his evidence that informant is his father and accused is his brother-in-law. The occurrence took place about one year ago. The marriage between his sister and accused was solemnised about 3 years prior to occurrence. They gave furniture at the time of marriage but they could not give gold ring to the accused. His mother took loan of Rs.30,000/- from "Bandhan". The accused demanded Rs.30,000/- which was taken by his mother from "Bandhan" for purchasing a bike. They could not fulfill his demand. His sister has a child. But the accused did not provide treatment to the child for which his sister went to their house. They provided treatment to the daughter of his sister. Prior to one month of the incident when he visited the house of the accused he saw that accused gave slap to his sister. His sister also told him that if any incident would be happened then the accused would be guilty. On the day of occurrence his sister talked with him over phone and she told him over phone that phone be handed over to his mother. When he gave the phone to his mother the line was cut off. When he rang up second time he found the phone switched off. Thereafter, he again rang for the second time. The accused told that why he disturbed them again and again over phone. But he heard a sound "O' Maa". At about 12.30 PM they got information from the village people that his sister committed suicide. On getting the information they went to the house of the accused alongwith village people and they saw that the dead body of his sister was lying inside the room. He saw impression of heel hit on the floor and also saw a "Sadar" hanging in the fan. Police came to the place of occurrence. He suspects that the accused killed his elder sister Rima. Inquest was held

upon the dead body of Rima in his presence. Police obtained his signature. Ext.2 is the inquest report. Ext.2(1) is his signature.

16. In cross-examination, he has stated that they lodged ejahar after two days of the incident. He has denied the defence suggestion that he did not state before the police that "on the day of occurrence in the morning my sister gave a miscall, I called back, I talk with her, she told me to hand over the phone to my mother, second time when I rang her accused received the phone and told me why I disturbed them again and again, I heard a sound "O' Maa".

The mother of the accused is alive. He has denied that he did not state before the police that "the accused tortured my sister physically for not giving gold ring, when we obtained loan from "Bandhan" the accused demanded money for purchasing bike".

He has admitted that he did not state before the police that the accused did not provide treatment to the child of his sister for which he had to take her to their house for providing treatment.

He has also denied that he did not state before the police that "prior to one month of the occurrence I went to the house of accused and in my presence the accused slapped my sister and my sister told me that if she would die the accused would kill her".

He has relative near the house of the accused. His relative (aunt) has five family members. There are also houses near the house of the accused.

He has further denied that he did not state before the police that he saw impression of toe on the floor.

Many people gathered outside the house of the accused. He does not know if village people had entered inside the room before they reached there. At present the child is with the accused. He has denied the defence suggestion that the accused is not involved in the commission of the alleged crime and no incident of demand of dowry took place to the death of his sister.

17. PW.6, Pritam Boro is a witness of inquest. He has stated that he is the village Headman of Kalitapara village. The accused hails from his Lot. He saw the informant after the incident which took place on 8.6.16. On that day the

cousin of the accused namely Pabitra Bora came to his house and informed him that wife of the accused committed suicide. Immediately he went to the house of the accused and saw that wife of accused was lying on the floor. A "Sadar" was hanging from a bamboo of the room. Thereafter, he informed police as well as the father of the deceased. Police came to the spot alongwith Circle officer. Inquest was held in his presence. Ext.2 is the inquest report. Ext.2(2) is his signature.

18. In cross-examination, he has stated that the wife of the accused or her family members did not inform him about quarrel and torture prior to her death.

19. PW7, Dr. Bhadra kanta Sarma is the doctor who conducted post-mortem upon the dead body of Rima Bora on 9.6.2016. On examination, he found the following:-

EXTRANAL APPEARANCE:-

Clothing- green Mekhela, Blue green blouse, orange petticoat, white Sadar. Hair- long & black. Rigor-mortis – loose. Bruise discoloration of face. Protruded tongue. Froth present on mouth. No external injury seen. Ligature mark is found around neck, knot present on right side. Parchmantisation seen on skin under the ligature mark.

CRANIUM AND SPINAL CANAL:-

Scalp, Skull, Vertebrae- C1 C2 fracture with atlanto-occipital dislocation, Membrane- intact, Brain-intact, spinal cord- contused S. cord at C1C2 level, Liver, Kidneys, Bladder, Organs of generation- all are intact.

THORAX:-

Walls ribs and cartilages- intact.

Pleurae- intact, Larynx and trachea- intact, congested, lungs- congested, Vessels- intact. Heart- intact.

ABDOMEN:-

Walls, Peritoneum- intact, Mouth, pharynx, oesophagus- mouth open with some froth. Tongue protruded, Stomach and its contents, Small intestine and its contents, Large intestine and its contents- all are intact.



More details description:-

1. No external injury noted.
2. Congested larynx with B/L congestion of lungs.
3. Ligature mark is found around neck, knot present on right side. Parchmentisation seen on skin under the ligature mark.
4. Fracture of C1C2 vertebrae with occipital dislocation.

The doctor opined that death was due to asphyxia as a result of suicidal hanging. Time since death approximate is 12-14 hours. Ext.3 is his post-mortem report and Ext.3(1) is his signature.

20. PW8, Sasadhar kalita is one of the investigating officers of the case. He has deposed that on 17.7.16 he was posed at Kalaigaon PS as Attached Officer. On that day he received case diary in connection with Kalaigaon PS case No.91/16 U/S 304B IPC. After going through the case diary he found that the investigation of the case has already been completed. After going through the case diary and statement of witnesses, he found material against the accused U/S 306 IPC and filed charge-sheet U/S 306 IPC. Ext.4 is the charge-sheet. Ext.4(1) is his signature. His cross-examination is declined by the defence.

21. PW9, Hiren Kr. Borah is the other investigating officer of the case. His evidence discloses that on 08.06.2016 he was posted as attach officer at Kalaigaon P.S. On that day about 03:30 p.m. the informant Bhabani Baishya lodged an FIR stating that his daughter-in-law committed suicide inside the house. The then O.C. Kaliagaon P.S. after making GD entry No. 191 Dtd. 08.6.16 entrusted him to investigate into it. Thereafter, he informed Executive Magistrate D.N. Hazarika to hold inquest on the dead body. He alongwith O.C. proceeded to the place of occurrence. They reached the place of occurrence at 04.30 p.m. He recorded the statement of witnesses at the place of occurrence and Executive Magistrate held inquest on the dead body. The dead body was sent for Postmortem examination. On the next day i.e. on 09.06.2016, the father of the deceased lodged an FIR alleging that the husband (accused) of the deceased committed murder. The case being No. 91/16 U/S 304(B) IPC,

was registered. The O.C. again entrusted him to investigate the case. He again went to the place of occurrence and met the complainant and recorded his statement. He did not find the accused but, later the accused came to the police station. The accused was arrested after interrogation and forwarded him to the court. He prepared sketch map vide Ext.5 wherein Ext.5(1) is his signature. On account of transfer he handed over the case dairy to the O.C. Kalaigaon P.S.

22. In cross-examination, he has revealed that he has not submitted extract copy of G.D. entry 191 Dtd. 08-06-16 which was recorded on information of informant Bhabani Baishya that his daughter-in-law committed suicide and the G.D. entry was made as U.D. case. On the day of incident no FIR was lodged from family members of deceased. Dead body was removed after reaching the place of occurrence. He recorded the statement of witnesses on 08-06-16 and 09-06-16.

The witness Bhabani Baishya (PW1) did not state before him that "accused demanded money for purchasing Bike and Cash amount".

PW3 Ranjit Baishya did not state before him that "the demand of money for ornaments at the time of getting loan from Bandhan Bank and he saw blackish colour on the neck of deceased".

PW5 Dhanmani Baishya did not state before him that "on the day of occurrence in the morning his sister gave a miss call, he called back, he talked with her, she told him to hand over the phone to his mother, second time when he rang her, accused received the phone and told him why he had disturbed them again and again. He heard a sound "O" Maa. Prior to one month of occurrence when he went to house of accused and in his presence the accused slapped his sister and his sister told him that if she would die the accused would kill her".

23. PW10, Dithakananda Hazarika held inquest on the dead body of the deceased. As per his evidence on 8.6.16 he was posted as Circle Officer at Kalaigaon Revenue Circle. On that day he held inquest on the dead body of Rima Bora in connection with Kalaigaon PS case No.6/16. The dead body was

found lying on the floor of her husband's residence facing upside. Both legs were found bent and both hands also found bent. He opined that the deceased suspected to have been died by hanging from the bamboo "Maroli" with a Sadar tied around her neck and therefore, the deceased might be died due to hanging. Ext.2 is the inquest report, wherein Ext.2(3) is his signature.

24. In the back drop of the above evidence coupled with the facts and circumstances of the case what emerges at the out set is that the accused has been charged under section 304B of I.P.C. and alternatively charged U/S 302 IPC.

25. In the present case as per the autopsy report of the P.W.7, Dr. Bhadra kanta Sarma the death of the deceased was due to asphyxia resulting from hanging which was ante mortem and suicidal in nature. His evidence as well as the autopsy report disclosed that he did not find any violence mark on the dead body. Thus, from the autopsy report the death of the deceased Rima Bora was due to hanging and not as a result of homicidal death. When it has been confirmed by the doctor (PW7) as to the suicidal death of the deceased and there being no iota of evidence adduced by the prosecution witnesses as to the cause of death of the deceased was of homicidal in nature, the question of homicidal death of the deceased is not an issue in the case in hand.

26. It is also manifest from the evidence on record as discussed above that there was no eye witness to the alleged incident of commission of suicide by the deceased Rima Bora though her death occurred during seven years of her marriage. In that view of the matter before proceeding further to evaluate the evidence in its proper perspective I find it apposite to make a ready reference of the ingredients of the section 304(B) of the Indian Penal Code extracted hereunder:

The essential ingredients, of section 304(B) are as follows –

- (a) The death of the woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) Such death should have occurred within seven years of her marriage;

- (c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) Such cruelty or harassment should be for or in connection with demand of dowry; and
- (e) The deceased should have been subjected to such cruelty or harassment soon before her death.

27. It is also not out of place to mention that in a case when the allegation is against the committing of an offence coming under the purview of section 304(B) of the Indian Penal Code the mischief of provision of section 113-B of Indian Evidence Act will come in force. The said section of section 113-B of the Indian Evidence Act runs as under: "Section 113-B presumption as to dowry and when the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection, with any demand for dowry, the court shall presume that such person has caused the dowry death."

28. In the case of **Kamesh Panjiyar Vs State of Bihar, (2005)2 SCC 388**, the Apex Court held that **prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'Death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Hence, prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only attracting the provision of Section 113B IPC.**

**The expression 'Soon before' is a relative term which is required to be considered under the specific circumstances of each case and no strait-jacket formula can be laid down by fixing any time of allotment as to what would constitute a period of soon before the occurrence. It can be said that the term 'soon before' is synonymous with the term 'immediately before'. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case.**

29. In the case of **Kans Raj Vs State of Punjab and others, (2000) 5 SCC 207**, it was held that **in case of dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death'.**

30. If the prosecution evidence is considered in the back drop of the fact that the death of the deceased Rima Bora was not a normal one being caused by hanging and secondly, the incident happened within a period of seven years of marriage and as such, it is necessary to find out whether the evidence on record is sufficient to establish the other ingredients viz. (c ), (d) and (e) under the provision of section 304(B) of the Indian Penal Code.

31. Here in this case, the prosecution examined as many as 6 independent witnesses in support of its case. But it appears on scrutiny of the entire evidence on record that only father of the deceased (PW1) who is the first informant of the case as well as brother of the deceased (PW6) in their evidence have made a feeble attempt to bring a semblance of the case U/S 304 B IPC but their evidence has suffered from glaring inconsistency and contradictions in respect of the material particulars of the case. The first informant (PW1) has stated that his daughter Rima Bora was given marriage with the accused about 3 years ago and after two years of marriage accused started demanding dowry i.e. money but his demand could not be fulfilled. Due to non fulfillment of demand accused used to torture his daughter. While visiting their house his daughter Rima told him that her husband tortured her on demand of dowry. Accused asked him money enabling him to purchase a bike. He being a poor person failed to fulfill the demand of the accused and, as such, he tortured the deceased and ultimately she was killed by the accused. The family members of the accused did not inform them about the incident. When he heard about the death of his daughter Rima he went to the house of

the accused and saw her dead body lying inside the room and the accused was not at his home when they visited his house. However, in cross-examination, he has admitted that he did not mention in his FIR that the accused demanded money to purchase a bike. He also did not mention in his FIR that his daughter Rima informed him that her husband demanded money. He has also revealed that while he came to the house of the accused on getting information of death of his daughter, he did not lodge FIR on that day although the police came to the place of occurrence at that time. On the next day he lodged the FIR. Thus, it transpires from the evidence of PW1 that he being the father of the victim Rima who was alleged to have been killed by the accused for not fulfilling his demand of dowry but he has failed to mention in the FIR itself as to when after the marriage of his daughter with the accused dowry demand was made. The FIR is proverbially silent as to date and time when the accused demanded dowry before the death of his daughter Rima. Moreover, it is beyond understanding as to why the informant (PW1), the father of the victim, in spite of being aware of harassing her by the accused on demand of dowry which resulted her death due to hanging failed to mention such material aspect in the FIR which was filed on the next day of the incident appears to have affected the credibility of the testimony of the informant (PW1) as a credible one.

32. No doubt FIR cannot be an encyclopedia to contain all minute details of history of the case. However, the FIR should at least mention a broad story of the prosecution in a dowry death case and abetment of committing suicide due to cruelty on a married woman within 7 (seven) years of her marriage. The non-mentioning of this material and vital facts in such a case may affect the credibility of the FIR. In the case in hand, it has already been observed herein before that there is not a whisper in the FIR as to commission of physical and mental torture by the accused of the deceased on demand of dowry. Thus, it is beyond comprehension as to why the vital part of the prosecution story remain off the FIR when the informant (PW1) knew before the death of his victim daughter Rima Bora that she was constantly subjected torture till her unnatural death on demand of dowry. Therefore, non-mentioning of the material and

vital facts have affected the credibility of the FIR and I am fortified in this conclusion by the observation made in the case of **Pravir Mandal and another Vs State of West Bengal (2010) CriLJ 444.**

33. Another significant facet in the evidence of the informant (PW1) which has rendered his testimony as to the demand of dowry by the accused not liable to be proved as this witness has been contradicted with his previous statements before the police by confirming through the PW7 investigating officer of the case. Though PW1 has stated that he stated to police that his daughter told before him that her husband demanded money but the investigating officer (PW9) has confirmed that he did not make such statement before him U/S 161 Cr.P.C. As a result of such material contradiction, the testimony of PW1 is not safe to rely on to establish that his daughter was subjected by the accused to cruelty or harassment for, or in connection with any demand of dowry.

34. The evidence of PW5, the brother of the victim, is equally important for close and careful analysis as he has stated in his evidence that when his mother took loan of Rs.30,000/- from "Bandhan", the accused demanded the entire amount for purchasing a bike but they could not fulfill his demand. Due to non fulfillment of demand of dowry the accused did not provide treatment to their child for which his sister went to their house and, accordingly, they provided treatment to the daughter of his sister. He has also disclosed in his evidence that prior to one month of the incident when he visited the house of the accused he saw that accused gave slap to his sister and his sister also told him that if any incident would be happened then the accused would be responsible for it and on the date of occurrence his sister had a talk with him over phone and she told him over phone to hand over the phone to his mother and when he gave the phone to his mother the line was cut off and, thereafter, when he rang for the second time he found the phone was switched off and when he again rang the accused told him why he was disturbing again and again over phone then he heard a sound "O' Maa" and at about 12.30 PM they got information from the village people that his sister committed suicide is

found to be improvement made by PW5 before the court for the first time as when the investigating officer was confronted with such statements made by PW5 it has been confirmed by the investigating officer that PW5 did not make such statements before him. Thus, it is evident that PW5 has improved his version for the first time before the court though as no such statements were made before the I.O. (PW9).

35. When the evidence of PW5 testified before the court substantially differs from the statement before the police has not only affect his reliability but such contradicts statements have gone to the root of the matter and his basic version has been thoroughly shaken, therefore, cannot be annexed with undue importance.

36. In the fitness of things, if we make comparative analysis of the testimony of the mother of the victim PW4 with that of her son (PW5), it would appear crystal clear that though PW5 has stated that when his mother (PW4) took loan of Rs.30,000/- from Bandhan Bank and the accused demanded the whole amount from his mother for purchasing a bike and they could not fulfill his demand does not find place in the testimony of his own mother (PW4). PW4, the mother of the victim has not uttered a single word that she took load of Rs.30,000/- from Bandhan Bank and the accused demanded Rs.30,000/- for purchasing bike and they could not fulfill his demand which resulted causing mental and physical harassment to his deceased daughter. On overall analysis of the evidence of PW4, it is amply evident that she has not even spoken a word that her daughter committed suicide due to mental and physical harassment perpetrated to her by the accused at the matrimonial home. Thus, it is found that PW4, the mother of the victim has not at all supported the material particulars of the case that her daughter Rima Borah committed suicide as a result of physical and mental torture perpetrated by the accused on demand of dowry at any point of time since after her marriage with the accused. Hence, the testimony of PW5 which has suffered from glaring contradictions and improvements and also discrepant with the testimony of his



own mother PW4 does not have a ring of truth that the victim Rima was subjected to torture soon before her death on demand of dowry.

37. So far as the testimony of PW2 and PW3 are concerned, it appears that they are neighbouring witness of the accused and their evidence is hearsay one. Still none of these witnesses has adduced any implicating evidence in support of the material particulars of the case that the accused committed physical and mental torture on the victim Rima which compelled her to commit suicide rather their evidence would disclose that accused had cordial relation with Rima Borah after marriage till her death. Their evidence also discloses no iota of evidence as to demand of dowry by the accused from the deceased for which she was subjected to torture or harassment.

38. When there is virtually no cogent and consistent evidence which would reveal that deceased Rima Borah was subjected to cruelty or any demand of dowry was made immediately before her death and, therefore, in absence of non-fulfillment of all the ingredients of section 304B, the presumption of section 113B will not be attracted in this case.

39. In the reported case of **State of Tripura -versus- Dulal Dey, Cri.L.J. 555**, the Hon'ble Gauhati High Court observed that-

**"It would not be proper for the court to come to a suspicion against the accused respondent unless prosecution evidence connected with the accused with the alleged offence. If married woman dies in an unnatural circumstance at her matrimonial home within seven years from her marriage and there are allegation of cruelty and harassment upon such married woman, for or/in connection with demand for dowry by the husband or by the relatives of the husband then, obviously court can presume as dowry death. But when such allegations of cruelty and/or demand for dowry is totally absent in that case, it would not be proper for treating every death of every woman in her matrimonial home within seven years, as a dowry death, as the same would be injustice to the accused/husband and his inmates would send a wrong message to the society, as the incident may happen at any moment to any person including married woman in the**

**matrimonial home and she may commit suicide for any other reason, like a sudden quarrel on account of the fault of the spouse or both or for default of neither of them, it may be of selfishness,boorishness,callousness and difference opinion on the part of one of the parties except the reason for cruelty and demand for dowry from the husband and his relatives."**

40. In the case of **Himachal Pradesh -versus- Asha Ram**, reported in **[(2005)13 S.C.C. 0766]**, it was held that **however, if there is a slightest doubt in the mind of the court after going through the evidence regarding involvement of the accused for the offence if he has been tried, then it should be the duty of the court to acquit the accused of the charge levelled against him.**

41. Here in this case, what emerges from the above discussion in the light of the aforesaid precedents is that the evidence on record is incoherent, inconsistent and irreconcilable to prove that the victim Rima Borah committed suicide by hanging on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact are the ingredients of the offence to be led in respect of section 113B of Indian Evidence Act,1972 in order to bring home the guilt against the accused under section 304B of I.P.C.

42. In the case of **Durga Prasad and another -versus- State of M.P. [2010 (Cri.L.J.) 3419]** the Hon'ble Apex Court has held citing its own decision in **Biswajit Halder @ Babu Halder reported in 2007 [(A.I.R. S.C.W. 2189)]** that **in order to bring a conviction under section 304(B) I.P.C., it will not be sufficient to only, lead evidence saying that cruelty or harassment has been meted out to the victim, but such treatment was in connection with the demand for dowry. In our view, the prosecution in this case has failed, to fully satisfy the requirements of both sections under section 113(B) of the Indian Evidence Act,1872 and section 304(B) of the Indian Penal Code.**

43. On summing up the above discussion in the back drop of the cumulative consideration of the evidence on record, it is patent in the instant

case that death of the deceased Rima was an unnatural one and her death had taken place within seven years of her marriage, but the last ingredient that the demand for dowry had been made by subjecting her to cruelty and harassment soon before her death has not been proved beyond reasonable doubt under section 304(B) of the Indian Penal Code. Hence, the accused is entitled to get the benefit of doubt.

44. In the result, I am constrained to hold that the accused Biswajit Borah is not guilty under section 304B/302 I.P.C. Accordingly, he is acquitted and set at liberty forthwith.

45. Bail bond executed by the accused and the surety shall remain in force for another six months in pursuance of the provision under section 437-A Cr.P.C.

Given under my hand and seal of this Court this 19<sup>th</sup> day of August, 2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia)  
Sessions Judge,  
Udalguri.

Sessions Judge,  
Udalguri.

**APPENDIX:**

A) Prosecution witnesses:

i) PW1	Bhabani Baishya
ii)PW2	Chandi Bora
iii)PW3	Ranjit Baishya
iv)PW4	Saru Lata Bora
v)PW5	Dhanmani Baishya
vi)PW6	Pritam Boro
vii)PW7	Dr. Bhadra Kanta Sarma
viii) PW8	Sasadhar kalita
ix) PW9	Hiren Kumar Bora
x) PW10	Sri Dithakananda Hazarika

B)Defence witness: Nil.

C)Exhibits:

- i) Ext.1      FIR
- ii) Ext.2     Inquest report
- iii) Ext.3    Post-mortem report
- iv) Ext.4     Charge-sheet
- v) Ext.5      Sketch map

Dictated and corrected by me.

Sessions Judge,  
Udalguri