

IN THE COURT OF SESSIONS JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,
Sessions Judge,
Barpeta.**

**JUDGMENT IN SSESSION CASE NO. 335 OF 2015
(G.R. Case 6387/2014)
Barpeta P.S. Case No 2757/2014**

Committing Magistrate :-

***Smt. B. Mahanta
The then Chief Judicial Magistrate,
Barpeta.***

State of Assam

-versus-

**(1) Smti Mina Das,
(2) Kajal Das,
(3) Anjanjyoti Das**

**All of resident of Madhaya Matuakuchi
P.S. & District – Barpeta Accused.**

APPEARANCES :

***For the State* : Sri Lalit Ch. Nath, learned Public
Prosecutor, Barpeta.
For the Accused : Sri Motiur Rahman, learned Counsel,
Barpeta.**

**CHARGE FRAMED UNDER SECTION 120(B)/304(B) OF THE INDIAN
PENAL CODE**

***Date of Charge* : 11.12.2015,
Date of Prosecution evidence : 02.04.2016; 02.05.2016;
03.06.2016; 04.07.2016;
18.11.2016; 18.05.2017;
29.06.2017; 06.09.2017;
24.05.2019 & 18.06.2019,
Date of Statement of accused : 17.07.2019 & 26.08.2019,
Date of Argument : 20.11.2019, 07.01.2020
& 06.02.2020**

Date of Judgment

: **06.02.2020**

J U D G M E N T

1). The prosecution case, in brief, is that on 24.09.2014, informant Bhaskar Jyoti Das, S/O Kumud Chandra Das of village Bilortarihati, lodged an ejahar before the Officer-in-charge, of Barpeta Police Station alleging, *interalia*, that his sister Gitanjali Das was given in marriage with accused Anjanjyoti Das. Since after the marriage, accused Anjanjyoti Das alongwith others started torturing her demanding dowry. On 23.09.2014, at night, at her matrimonial house, accused persons namely Surendra Nath Das, Mina Das and Kajal Das in conspiracy with accused Anjanjyoti Das committed murder of his sister and hanged her into her house as if victim committed suicide. It is alleged in the FIR that informant had seen injury mark in the dead body of the deceased.

The informant also stated that accused persons assaulted his victim sister physically and mentally by demanding dowry. Accused Anjanjyoti also threatened her to divorce or kill her if victim did not fulfill his demand of Rs.2,00,000/- and one bike.

On receipt of F.I.R., the Officer-in-charge, Barpeta Police Station, registered a case being Barpeta P.S. Case No. 2757/2014 under Sections 120(B)/304(B) of the Indian Penal Code.

The Investigating Officer investigated the case and ultimately, on completion of investigation, filed charge sheet in the case against accused under Section 120(B)/304(B) IPC vide charge sheet No.463, dated 08.07.2015.

2). On getting summons, the accused, named above, appeared before the learned committal court corresponding to GR case No.6387/2014. **The then learned Chief Judicial Magistrate, Barpeta, Smt, B. Mahanta**, after furnishing the copy, committed the case to this court, the same being exclusively triable by the court of Sessions on 12.10.2015.

3). On appearance of the accused before this court, after committal, my learned predecessor-in-office framed charges against the accused **under Section 120(B)/304(B) IPC** after getting prima-facie materials under the said sections of law. On completion of Prosecution Witnesses, the statement of witnesses under Section 313 CrPC was recorded by the undersigned. All accused denied alleged incriminating materials against them, but denied to adduce evidence in their defence. Argument was heard from both side.

Both sides were given liberty to examine and cross-examine the witness, further, if any, in the case.

4). The prosecution side, in order to bring home the charges, against the accused, examined as many as **19 (nineteen)** number of witnesses including informant, Medical Officer and the Investigating Officer.

The accused, during their statement, recorded under Section 313 CrPC, stated that they are innocent.

5). I have heard argument advanced by **Sri Lalit Ch. Nath**, learned Public Prosecutor for the State as well as **Mr. Motiur Rahman**, learned Defence Counsel for the accused persons, who are facing trial for commission of offence under Sections **120(B)/304(B) IPC**.

The learned Public Prosecutor has submitted that the prosecution side has proved beyond all reasonable doubt, by adducing all the material witnesses, that the accused persons, on the fateful day, committed murder by causing death of the informant's sister Gitanjali Das, by subjecting her to cruelty by demanding dowry.

On the other hand, the learned defence counsel has contended that prosecution side has failed to prove the case against the accused persons beyond reasonable doubt in as much as there is no eye witness to the alleged offence and there are serious material contradictions in the evidence by Prosecution Witnesses. Further, circumstances against accused are lacking to warrant their guilt and conviction in the case.

6). Upon the rival submissions and on the facts and circumstances of the case, following points have been sorted out for determination in this case ---

(1) Whether the accused on 23.09.2014 at night at Matuakuchi Ward No.19, within the jurisdiction of Barpeta Police Station, conspired to cause the death of Gitanjali Das and in pursuance of such conspiracy, accused did some acts to commit the dowry death of Gitanjali Das and thereby committed an offence punishable under Section 120 (B) of the Indian Penal Code ?

(2) Whether the accused on the same date, time and Place, caused dowry death of Gitanjali Das, who was wife and daughter-in-laws of accused respectively, subjecting her to cruelty or harassment demanding dowry articles and thereby accused committed an offence punishable under Section 304(B) of the Indian Penal Code ?

DISCUSSION, DECISIONS AND REASONS THEREOF

7). Now to arrive at judicious decision, let me scrutinize the evidence of the prosecution witnesses.

Jyotika Das (P.W.1) has deposed that she did not know the informant namely Bhaskarjyoti Das but she knows the deceased Gitanjali was her sister-in-law who married her elder brother namely Anjanjyoti. She knows accused Mina Das who is her aunt and she also knows the accused Kajal Das who is her elder brother.

P.W.1 stated that accused Anjanjyoti married the deceased before 5/6 months of the incident. After the marriage, deceased Gitanjali stayed in her matrimonial home and she had good relationship with her husband and her (P.W.1) aunt.

P.W.1 further stated that she went to the house of accused after getting information of death of the deceased and she had seen the dead body of the deceased in her matrimonial home.

In cross examination, PW1 stated that accused Anjanjyoti used to work in Army and he was posted at Janmu & Kashmir at the time of incident. The distance of her house was about 2 Km away from the house of accused and there is good transportation facility. They have good relation with the family of the accused. After the marriage of deceased Gitanjali, she (P.W.1) went to the house of accused for 4/5 times and she knows very well accused Mina Das who is her aunt. P.W.1 stated that accused Mina Das was an innocent woman who did not have any dishonesty to another.

P.W.1 stated that accused did not demand dowry at the time of marriage or after marriage and deceased Gitanjani was married with accused with mutual understanding of both the family. She (P.W.1) had seen wooden furniture in the house of accused which was given by the deceased family at the time of her marriage and accused persons did not raise any objection regarding dowry. Her (P.W.1) aunt behaved the deceased like her daughter and financial condition of the accused was good as her aunt's son Anjanjyoti was working in Army.

P.W.1 did not see the injury mark of the deceased as she did not go near the dead body of the deceased.

P.W.1 stated that all the allegations which was made by the deceased brother namely Bhaskarjyoti was totally false.

P.W.1 further stated that she heard that deceased Gitanjali had been suffering from mental disorder and her medical checkup was done at Guwahati.

8). **Gitashri Das (PW-2)** deposed that she knows the accused persons. Accused Anjanjyoti married the deceased before 5/6 months of the incident. She heard that Gitanjali committed suicide by hanging on the ventilation. She stated that deceased legs were found about 2/ 2 ½ feet above from the ground of the house. She did not know why deceased committed suicide. After that, Police came and examined her. Police took the dead body of the deceased.

In her cross examination, P.W.2 stated that she did not know

why the deceased Gitanjali had died ? She did not hear any conflict between the deceased and the accused persons.

P.W.2 further stated that accused persons kept her as their daughter and merciful against the deceased.

9). **Sandhya Das (PW3)** has deposed that she knows the accused persons and accused Anjanjyoti is her nephew who married the deceased before 5/6 months of the incident. Accused Mina Das is her sister-in-law and accused Kajal Das is her nephew. After the marriage, deceased Gitanjali stayed in her matrimonial home alongwith the accused persons.

P.W.3 further stated that she did not know how the deceased Gitanjali had died. Police came to the place of occurrence after the deceased Gitanjali committed suicide by hanging. Police took the dead body of the deceased. Police recorded her statement on the alleged day of occurrence.

Her cross-examination was declined by defence side.

10). **Pranita Das (PW4)** deposed in her evidence that she knows accused persons being her neighbors. She saw the deceased Gitanjali for the first time at the place of incident.

P.W.4 stated that she did not know the name of the accused who is elder son of accused Mina Das and married the deceased Gitanjali. She heard that Gitanjali committed suicide and she went to the place of occurrence. She took out the ornament from the hands of decease in presence of Police. Police took the dead body of the deceased.

During cross-examination, P.W.4 stated that she did not know why deceased Gitanjali committed suicide ?

11). **Monmohan Das (P.W.5)** has deposed that accused Anjanjyoti, who is his nephew, married the deceased socially before 4 months of the incident. Accused Anjanjyoti and Kajal are the brothers and their father namely Suren Das died but their mother namely Mina Das is alive and they live together.

Suren Das died after the incident.

P.W.5 stated that his house was situated about 4 km distance from the house of his nephew.

He further stated that deceased relationship with the accused was good in her matrimonial house. He heard at about 7:00 AM that deceased Gitanjali committed suicide by hanging in her room. Then, he came to the place of occurrence and saw that the dead body of Gitanjali was hanging. On being asked, accused Kajal replied that he did not inform Police then he (P.W.5) went to police station and informed about the alleged incident. After that, People came to the place of occurrence and raised suspicion that accused killed the deceased Gitanjali.

He (P.W.5) stated that he did not go to the house of accused regularly but he got information. P.W.5 stated that deceased Gitanjali had been suffering from mental disorder and she used to go to Doctor at Guwahati for her medical checkup. But she (deceased) did not permit the accused to go in front of the Doctor. Accused used to take her to Guwahati and then she used to meet to Doctor with her brother. His nephew did not know regarding the illness of the deceased ?

During his cross-examination, P.W.5 stated that deceased Surendra Natha Das is his brother who retired from Indian Army and he used to get pension. As, he worked at Indian Army, deceased Surendra Nath Das followed a strict rule regulation and he also guided his children to follow the said strict rules and regulations.

Accused Mina Das is his sister-in-law and he treated her as a mother. At the time of incident, accused Anjanjyoti worked at Kashmir. After the marriage, accused Anjanjyoti and deceased Gitanjali came to his house and she (deceased) had a good relationship with his family members. P.W.5 stated that deceased Gitanjali never said against the accused before him and accused Mina Das treated her as her daughter.

P.W.5 stated that accused did not demand dowry at the time of marriage and deceased Gitanjani got married with accused Anjanjyoti with mutual understanding of both the family. Accused had a four wheeler car and

motorcycle. He (P.W.5) stated that financial condition of the accused was good as deceased Suresh Das got pension and accused Anjanjyoti worked in Army. He never saw fiscal conflict in their family.

P.W.5 further stated that deceased Gitanjali took her treatment at Guwahati before Doctor Avaya Mahanta and sometime, he noticed her unconscious mind when he used to visit the house of accused.

He (P.W.5) never heard that accused demanded dowry from the family members of the deceased Gitanjali as stated by Bhaskarjyoti. Accused had one motorcycle, so there was no question to demand a motorcycle from the family members of the deceased. Moreover, the father of the deceased did not tell him when he met him, in a market that accused demanded money and motorcycle as a dowry.

P.W.5 stated that all the allegations which were made by the deceased family members are totally false. Further, P.W.5 stated that the family members of the deceased assaulted the family members of accused and destroyed their property.

12). Bhanita Das (P.W.6) has deposed in her evidence that she knows the accused persons who are her neighborers but she did not know name of the husband of the deceased.

She (P.W.6) stated that deceased Gitanjali died in her matrimonial home. The incident took place about 3-4 months after her marriage. She did not get herself introduced with the accused persons at the time of alleged incident. She also did not talk with the deceased as they shifted their house before 2 months of the deceased marriage. **Prosecution side declared her hostile.**

She denied that she stated before the police that deceased used to interact her when she came first time but her mother-in-law did not like them, so she stopped talking with them. Deceased girl used to weep sometime. She stated that victim girl was tortured by her father-in-law and mother-in-law. Accused Kajal Das also tortured her. She claimed to have heard shouting several times upon the deceased.

During her cross-examination by defence side, P.W.6 deposed that she came to the place of occurrence before 2-2 ½ months of the incident and she just used to start interact her neighborers. Her residence was covered by wall and she did no see the neighborer's house from her residence. Deceased Gitanjali never came to her house and she also did not interact her to her house.

P.W.6 stated that she knows the accused Mina Das but she did not meet her. She did not know the alleged incident.

P.W.6 further stated that she used to go to 'namghar' for spiritual purpose and she did not hear any allegation against deceased Gitanajli at 'namghar' where many people gathered. She did not see that accused Mina Das had conflict with anyone. She (P.W.6) had deposed truly before the Court.

13). Dhanjita Das (P.W.7) deposed in her evidence that incident took place after 4/5 months of marriage of deceased. She heard that daughter-in-law of Suren Das was murdered. As her health condition was not good at the time of, alleged incident, so she did not go to the place of occurrence and she also did not interact with the family members of accused. She deposed that she did not hear any incident during the staying of victim in the house of accused after marriage.

P.W.7 further stated that she did not know why murder had committed and she did not know the alleged incident of murder. She deposed before the Police as deposed above. **Prosecution side also declared her hostile.**

She denied that she deposed before the police that initially deceased used to talk with them but as her mother-in-law did not like it, so she (victim) stopped talking with them. Sometime, P.W.7 saw the deceased in distress condition; that she deposed falsely before the court.

During her cross-examination by defence side, P.W.7 stated that she had been staying at village Matuakuchi for last 7 years and accused were staying there prior to their stay. She stated that she knows the accused Mina Das and her husband Suren Das who had retired from Army but she did not see the deceased Gitanjali because she did not visit their house. She did not

interact with village people namely Satyen Das, Munin Das about the alleged incident. She did not know what was happened with the deceased Gitanjali. She did not depose before Police as told by learned Govt. Advocate.

P.W.7 further stated that she did not know the paternal members of the deceased as they did not visit her house. As Gitanajli died by hanging, so she deposed it as 'murder'. She (P.W.7) did not know about the alleged incident.

14). Dinabandhu Das (P.W.8) deposed in his evidence that deceased Gitanjali is his niece and she got married with accused Anjanjyoti, who is second son of Suren Das at village Matuakuchi before 5 months of the alleged incident. Accused Anjanjyoti worked at Army.

P.W.8 stated that deceased Gitanjali stated before him, when he went to her house, after her marriage, that accused **demanding Refrigerator and TV**. P.W.8 handed over the above said item to the accused persons. P.W.8 stated that accused Anjanjyoti demanded rupees two lakhs and one bike, due to his mother pressure before festival of puja. Accused Anjanjyoti threatened her to divorce if his demand is not met. Accused persons took Rs.50,000/- from accused and painted their house. P.W.8 stated that Gitanjali was hanging on his knee down position. Then, his nephew namely Bhaskarjyoti informed him about the alleged incident and he went there. He found that accused were having tea. He had seen one 'plus' on her(deceased) bed. He had seen injury mark on her lip and chin. P.W.8 deposed that it was a pre-planned murder and he deposed the same before Police.

During cross-examination, P.W.8 stated that Bhaskarjyoti is his nephew and he had shared the alleged occurrence before and after the death of the deceased. He (P.W.8) had visited the maternal house of the deceased twice. Once he handed over TV and freeze to the house of accused and once he had visited the house of accused with his wife.

On the day of alleged incident, he reached the place of occurrence at about 7.30-8:00 A.M. and at that time, Police started investigation and examined him. P.W.8 stated that for the prestige of accused, they did not state before the village people of Matuakuchi about alleged demand of T.V. and freeze.

Accused took Rs.50,000/- from Bhaskarjyoti for painting of their house but he did not know whether the accused borrowed the said amount or not. P.W.8 gave his statement at the place of occurrence on 24.09.2014 before Police. He did not give his statement at Police Station.

P.W.8 denied that he did not depose before Police that he handed over T.V. and Freeze before the accused as demanded; that accused threatened her to divorce if his demand of Rs.2,00,000/- and one bike are not met; that he did not depose before Police that he saw the injury mark on the deceased lip and chin; that he did not depose before Police that he had seen Gitanjali hanging on his knee down position; that on 24.09.2014, he did not depose before Police that accused Anjanjyoti took Rs.50,000/- from Bhaskarjyoti for painting of their house; that he deposed before Police accused Suren Chandra Das informed him about the alleged incident through phone; that he did not depose before Police that it was a pre-planned murder; that he deposed before Police that he had doubt against the accused about the alleged incident. On the day of alleged incident, he (P.W.8) did not see the accused Anjanjyoti but he heard that he (accused Anjanjyoti) had come.

P.W.8 further stated that he gave his evidence against the accused under Section 406 of IPC. They did not file any case against the accused before her death.

P.W.8 denied that the alleged demand of Rs.2,00,000/-, TV, freeze, bike were totally false; that it was totally false that it was a pre-planned murder etc.

15). Bhaskarjyoti Das (P.W.9) who is the informant of this case has deposed that on 24.09.2014, accused Mina Das informed him over telephone that Gitanjali died. Then, he informed the alleged incident before his mother and his family members. After that, he reached to the house of accused at about 9:30/10:00 AM and saw the dead body of accused in the courtyard of the house of accused. He found swelling injury mark in the lip and cheek of the deceased. Blood was coming out from her lip. Police seized one 'Plus', her mobile phone and one note book.

P.W.9 stated that deceased Gitanjali died after 5/6 months of her marriage. Accused Anjanjyoti demanded one bike, Refrigerator and TV after his marriage. Accused also demanded rupees two lakhs for the job purpose of accused Kajal Das. Then, his (P.W.9) uncle namely Dinabandhu fulfilled the demand of Refrigerator and TV and handed it over to their family.

P.W.9 further stated that accused borrowed Rs.50,000/- for painting of their house before marriage but they did not return the same. Victim was threatened that she will be divorced. The family members of the informant did not disclose the matter to the neighbors of the accused and they did not file any case regarding this before Police.

Then, P.W.9 filed this case and Police came to his house and recovered a note-book of deceased Gitanjali where she had written "Holi Song". Police examined him. Ext.1 is the ejahar and Ext.1(1) and Ext.1(2) are his signatures. Ext.2 is the seizure list and Ext.2(1) is his signature. Police seized the note book of deceased Gitanjali by Ext.2 and MR No. was 287/14. Ext. A is the note book

During his cross-examination, PW9 deposed that he had been working at Police Battalion since 2008 and he did not know why Police seized Ext.A. There was not any suicide note.

P.W.9 stated that deceased Surendra Nath Das worked at department of Defence and accused Anjanjyoti also works at Defence department. He (P.W.9) did not see the accused Anjanjyoti on the day of occurrence but he was present in his house on the day of the alleged incident.

P.W.9 stated that accused started torturing the deceased after her marriage and she died after 6 months of her marriage. They did not inform the Police as well as other people of the society about the above said incident where as police station is situated 1 Km far away from his house. They thought that the matter would be resolved.

He (P.W.9) had seen the injury marks in the face of the deceased but it was not written in the FIR. He had written bodily injury mark in the FIR through which he indicated the face of the deceased.

It was not written in the FIR that accused Mina Das informed him

about the alleged incident and it was also not written in the FIR that accused borrowed Rs.50,000/- for painting of their house but he knows it.

P.W.9 deposed that it was not written in the FIR that accused Anjanjyoti demanded Rs.2,00,000/- for the job purpose of his brother but he had written in the FIR that victim was threatened to get divorce if the demand of Rs.2,00,000/- and bike were not fulfilled.

He (P.W.9) denied that he did not state before Police that Anjanjyoti demanded Rs.2,00,000/- for the job purpose of his brother.

It was not written in the FIR that his (P.W.9) uncle handed over TV and Freeze when accused started torturing the deceased after two days of her marriage.

P.W.9 denied that he did not state before Police that the said demanded articles were returned back by the accused rather he said to Police that his uncle handed over the said demanded articles to the accused.

P.W.9 stated that he had seen S.I and Additional SP on the day of occurrence but he did not disclose the matter of the alleged incident. He stayed there at about 15 minute and at that time, he did not file an ejahar. He had got the information of the alleged incident at about 6 AM. Then, he immediately informed his family members.

It was not written in the FIR that he stayed at Guwahati at the time of alleged occurrence and the same was also not informed before Police.

P.W.9 had written in his FIR that the dead body of the deceased Gitanjali was hanging on the ventilation and he had seen grievous injury marks in her body. The date of demand of money, dowry and bike were not mentioned in the FIR for which accused started torturing upon the deceased. P.W.9 did not disclose before the group of people which were present on the day of occurrence that deceased Gitanjali was tortured by the accused on demanding dowry but he (P.W.9) deposed the same before Media.

P.W.9 denied that it was false that accused assaulted his sister on demand of dowry.

He filed this case on 24.09.2014 at about 11:00 AM.

P.W.9 denied that he had deposed falsely that he had seen the

injury marks on the body of the deceased Gitanjali; that Gitanjali had died by hanging; that he deposed falsely.

16). Monoj Das (P.W.10) deposed in his evidence that Bhaskarjyoti is his friend. On getting information of his sister was murdered, he went to his house at about 7:00/7:30 A.M. Police asked about the note book of Gitanjali where her handwriting was there and Bhaskarjyoti handed over the note book to Police. Deceased Gitanjali had written something on that note book. Ext.2 is the seizure list and Ext.2(2) is his signature. Material Ext.A is the seized note book. He did not know what was written in that note book (Material Ext.A). Police seized the note book to verify her handwriting. Apart from that, he did not know about the alleged incident.

17). Kumud Ch. Das (P.W.11) who is father of the deceased has deposed that incident took place after 5 months of marriage of her deceased daughter. Accused Anjanjyoti married the deceased in the year 2014 and she stayed there till her death. He (P.W.11) stated that he had given furniture and ornaments, at the time of her marriage and accused demanded one Refrigerator and TV after her marriage and he (P.W.11) fulfilled their demand. After that, father and mother of his son-in-law also demanded rupees two lakhs and one motorbike but he could not fulfill the same. P.W.11 further stated that Anjanjyoti threatened her to divorce and accused killed her daughter for not giving rupees two lakhs and one motorbike, which was demanded by accused. P.W.11 got the alleged information at about 8:30 AM at Howly and he returned back to the place of occurrence. He had seen the dead body of the deceased lying in the courtyard. He had seen injury mark on the deceased face and blood flowed over her face.

P.W.11 heard from deceased Gitanjali that accused Anjanjyoti threatened her over telephone. His son namely Bhaskarjyoti filed this case after returning home from Guwahati. After that, Police investigated the case and took one note book from his (P.W.11) home where victim had written 'holi song'. P.W.11 deposed that he think that his daughter died due to not fulfilling the

demand of dowry.

During his cross-examination, P.W.11 deposed that informant Bhaskarjyoti is his son and he lived at Guwahati for the job purpose. Police reached the place of occurrence before he reached, at about 9:30 AM and at that time, informant did not reach the place of occurrence. Informant reached the place at about 10:30/11:00 AM. P.W.11 did not see as well as he did not ask who took down the body of the deceased Gitanjali.

P.W.11 further stated that they had good relation with the family of the accused before marriage. The husband of accused Mina Das was a retired personal from Army. Accused Anjanjyoti also worked at Army at Janmu & Kashmir, at that time and he (P.W.11) did not see the accused Anjanjyoti on the day or before the day of alleged incident.

P.W.11 arranged the marriage of the deceased after being ensured by the Baban Das. He did not depose before Baban Das that accused demanded money and harassed the deceased Gitanjali.

P.W.11 stated that deceased mental condition was not good after her marriage. Accused Anjanjyoti and his family members came to his house and he had a good relationship with the family member of the accused. Accused Mina Das and Kajal did not demand money before him. Deceased Gitanjali did not give any objection against accused persons when he went to the house of accused.

P.W.11 deposed that he did not inform before his neighbors that accused demanded money and assaulted her daughter. Before the alleged incident, his relationship was good with the accused.

P.W.11 denied that he did not depose before Police that mother and father of accused Anjanjyoti demanded Rs.2,00,000/- instead of saying that deceased brother-in-law demanded the said amount; that he did not depose before Police that he was present at Howly market at the time of alleged incident; that he did not depose before Police that Police seized a note-book of holi-geet from his house on the next day of the incident.

He (P.W.11) stated that accused demanded Rs.2,00,000/- in the year 2014 but he did not remember the exact date. Police did not ask him as well as he did not depose the same. He handed over the freeze after 3-4 days of the

deceased marriage. Police did not handover the dowry goods as they had filed a case before SDJM against the accused as well as accused persons did not return the dowry goods before them.

He (P.W.11) denied that accused did not do any wrong with the victim, that he had filed a false case after the alleged incident.

18). Manju Das (P.W.12) who is mother of the deceased has deposed that incident took place on 23rd September 2014. Accused got married with the victim before 5 months of her death. P.W.12 stated that accused alongwith Mina Das, Anjanjyoti and late Suren Das demanded one Refrigerator and TV after her marriage and their demand was fulfilled. After that, Anjanjyoti demanded rupees 2 lakhs for purchasing bike and accused Mina, Suren and Kajal took Rs.50,000/- for painting of their house. Anjanjyoti also demanded rupees two lakhs for job purpose and tortured the deceased physically and mentally.

P.W.12 got the information at about 7:00 AM over telephone by the accused Mina Das that her daughter committed suicide. Then, she went to the place of occurrence and found the dead body of deceased was lying in the courtyard. She had seen injury mark on the deceased face and blood flowed over her face. Police had reached the place of occurrence before her son.

Police seized one note-book from her house and Police recorded her statement.

During her cross-examination, P.W.12 deposed that deceased Gitanjali got married with accused after mutual understanding of both the family and it was arranged after being ensured by one Baban Das. After that, they had investigated the family background of the accused and decided of her marriage. Accused did not demand money at the time of marriage.

P.W.12 stated that after getting information of the death of the deceased, she went to the place of occurrence but she did not see the accused Anjanjyoti. People of the society informed her that accused Anjanjyoti had come.

She (P.W.12) deposed that deceased Gitanjali was the honest daughter-in-law of the accused and she obeyed instruction of all the accused

persons in decent manner. Accused Anjanjoyti threatened her to divorce when she returned back to her matrimonial house lately. Accused persons displayed a decent behavior against the victim in front of her.

She (P.W.12) told before Baban Das that accused assaulted her daughter. Baban Das replied to keep patient as he had a good relationship with the accused. The neighborer's of the accused did not know the alleged assault committed by the accused and they also did not depose the same as they thought that accused Anjanjyoti resolved the matter whenever he had returned to his house. P.W.12 stated that they did not file any case against the accused before her death as they have good relation with the accused. Police had come before she reached the place of occurrence. She did not depose anything before Police as well as Police did not ask her about the alleged incident. She could not remember that she introduced herself before Police as a mother of the deceased or not ? She did not state the alleged incident before the people of the society who gathered at the place of occurrence. She did not remember the date on which accused demanded money for the purchasing of one bicycle and job purpose of accused Kajal Das. She deposed before Police that accused killed her daughter. She did not depose before Police that she had seen cut mark on the face of the deceased and blood was coming out from her lip. Her mental condition was good when she gave statement before Police.

P.W.12 denied that she did not depose before Police that accused Suren, Mina and Kajal Das borrowed Rs.50,000/- for painting of their house; that she did not depose before Police that accused persons directly demanded Rs.2,00,000/-. She stated before Police that accused demanded money through agent.

P.W.12 did not see that accused assaulted the deceased. She handed over the money for painting of their house before her marriage.

P.W.12 denied that all the alleged incident was false; that she deposed wrongly that accused killed her daughter; that her daughter committed suicide.

19). **Karishmita Kumari (P.W.13)** deposed that deceased Gitanjali is

her elder sister. She stated that incident took place after 5 months of her (deceased) marriage. Accused persons committed brutal behavior upon the deceased in her matrimonial home. The deceased had eaten stale rice which was given by the accused persons in her matrimonial home. She met the victim when she came to her paternal home. She stated that accused persons threatened her to divorce if she did not fulfill their (accused persons) demand of rupees two lakhs and one bike. After hearing the death information of the deceased, she came to the place of occurrence and saw deceased Gitanjali was hanging on his knelt down position and one leg was straight. She had seen injury mark on her face. Then, Police came and took the dead body of the deceased for postmortem report. Her aunt reached the place of occurrence after she had reached and saw the dead body of the deceased in the courtyard of the accused. P.W.13 further stated that accused Suren, Mina Das and Kajal Das tortured the deceased Gitanajlai. In the afternoon, she came to the deceased paternal house which is her aunt and Police seized one note-book from the house of her aunt. Police recorded her statement.

During her cross-examination, P.W.13 deposed that her aunt reached the place of occurrence after half an hour she had reached. Her aunt's saw the dead body of the deceased in the courtyard of the accused which she contradicted of her earlier statement where she deposed before P.W.13 that Gitanjali was hanging on his knelt down position and one leg was straight. P.W.13 stated that her uncle Ganesh Chandra Das reached the place of occurrence before she had reached and he had seen the deceased on hanging position as well as knee touched the bed. Police came to the place of occurrence after 1/ ½ hours, she had reached. She did not depose anything before Police at the place of occurrence. P.W.13 visited the house of the deceased for two times and she did not see that accused had given stale rice to the deceased Gitanjali.

P.W.13 denied that she did not state before Police that deceased told her that accused persons threatened her to divorce if she did not fulfill their (accused persons) demand of rupees two lakhs and one bike; that after hearing the death information of the deceased, she came to the place of occurrence; that Gitanjali was hanging on his knelt down position and one leg was straight; that

she had seen injury mark on her face; that her aunt reached the place of occurrence after she had reached; that she did not visit the place of occurrence.

She (P.W.13) did not know why Police seized the note-book and she deposed the same before the people who were present on the alleged day of occurrence but she did not know the name of that persons.

She (P.W.13) did know the family members of the accused namely Jyotika Das, Gitashri Das, Sandhaya Das, Pranita Das and Manmohan Das as she did not discourse with them. She did not know where their (accused) family members had stayed ?

She denied that she deposed falsely.

20). Ganesh Ch. Das (P.W.14) has deposed that deceased Gitanjali is his niece and incident took place after 5 months of her (deceased) marriage. Accused persons tortured the deceased and demanded rupees two lakhs, one bike, refrigerator and TV. Then, they fulfilled the demand of refrigerator and TV. Victim told the whole incident to him and to her mother.

On the day of alleged occurrence, accused Kajal Das informed to her (deceased) family members that Gitanjali had died. P.W.14 heard that accused murdered the deceased and hanged her.

P.W.14 stated that he had seen the deceased into her room where she had died on hanging and her one leg touched the bed. He had seen one "plus" and injury mark on her lip. Police recorded her statement next day of the alleged incident.

In his cross-examination, P.W.14 stated that he did not know the date and month on which accused demanded TV and Freeze. Accused knows that he had good relationship with the family members of the victim. He did not know that deceased family members filed a case against the accused.

P.W.14 stated that he was not a ward commissioner and he did not depose the same before Police. Accused did not demand dowry before him. P.W.14 had seen the dead body of the deceased on her knee down position as well as knee touched bed when Police took down her.

Accused Mina Das and deceased Gitanjali came to his house after

he invited them and victim did not give complaint against accused before him. He had seen good relationship between accused Mina Das and the victim.

P.W.14 did not state before Police that accused demanded TV,Freeze, Rupees two (2) Lakh and Bike.

He denied that he did not state before Police that deceased Gitanajali died on hanging by 'Urna' (cloth), her knee was in down position as well as touched bed; that he depose falsely before Court.

21). Dr. Partha Pratim Das (P.W.15) deposed that on 24/09/2014, he performed the Post mortem examination of Gitanjali Das, age 24 years, W/O Anjanjyoti Das, Metuakuchi P.S. & Dist:- Barpeta in connection with Barpeta P.S. Case U.D. Case No. 53/14 dated 24.09.2014. The body was identified by UBC 159 Kalachand Rabha and Dinobundhu Das.

On examination he had found the following-----

1. External Appearance :

Female dead body average built wheatish complexion wearing red, yellow, green & black floral printed nightie, white bra, green petticoat and blue panties with sanitary pad. red, Eyes closed. Mouth partly open. Tongue protruded and bitten. Dribbling of saliva from left angle of mouth. Rigor mortis present and fully developed. Body cold on touch. Post Mortem hypostosis present, not fixed

Injuries:- 1. A contusion of size 0.5 cm X 0.3 C, present on lower lip near left corner of mouth.

2. A contusion of seize 0.5 Cm X 0.2 Cm present on the chin in mid line place obliquely 1 cm above lower margin of jaw.

An oblique noncontinuous ligature mark of size 30 Cm X 1.5 Cm present high up around the neck above the level of thyroid cartilage, the non continuity position of the knot being present on the right side of the nape of neck.

2. Cranium and spinal canal :

Scalp, skull, vertebrae- All healthy.

Membrane- Congested

Brain- Congested.
Spinal cord- Not examined.

3. Thorax :

Walls, ribs and cartilage- All healthy.
Pleurae- congested with petechial hemorrhage at places.
Larynx and trachea- Healthy.
Right and Left Lung- Both lungs are congested and oedematous with sub pleural petechial. On cut section the cut surface oozes out dark coloured fluid blood.
Pericardium- Congested.
Heart- healthy and contains dark red fluid blood.
Vessels- healthy.

4. Abdomen :

Walls- Intact and Healthy.
Peritoneum- Congested.
Mouth, pharynx, oesophagus- Mucosa are congested and empty.
Stomach and its contents- Mucosa congested and contains watery fluid.
Small intestine and its contents- Mucosa congested and contains partly digested food particles.
Large intestine and its contents :- Mucosa congested and contains gases and fecal matter.
Liver- Congested.
Spleen- Healthy..
Kidneys- Both are healthy..
Bladder- Healthy, empty.
Organs of generation,

extrema and internal- All healthy.

5. Muscles Bones and Joints :

Injury- As described.
Disease or deformity- Not detected.
Fracture- Absent.
Dislocation- Absent.

6. More detailed description of injury and disease :

The ligature mark is dry, depressed, parchmented and dark brown in colour, on dissection the tissues under the ligature mark are pale and glistening. hyoid bone and cartilages of the neck are intact.

IN MY OPINION :

Death was due to asphyxia as a result of antemortem suicidal hanging. Injuries described were antemortem and caused by blunt force impact. Approximate time since death 12 – 24 hours. Accordingly, he had submitted the P.M. report. P.W.15 submitted PM Report vide Ext. 3 and Ext.3 (1) is his signature and 3(2) is the signature of Professor & Head Deptt of Forensic Medicine FAA Medical College & FAA Medical College which is know to him.

In his cross-examination, P.W.15 has stated that the injuries which are found on the body of the deceased may not cause the death of the deceased.

22). **Nipol Das (P.W.16)** has deposed that he knows the accused persons and deceased Gitanjali committed suicide into her room at her matrimonial home in the year 2014. The incident took place after 6/7 months of her marriage. He heard that some quarrel took place between the deceased and her father-in-law and mother-in-law. On the day of alleged occurrence, he did not go to see the dead body of the victim. Police recorded his statement.

In his cross-examination, P.W.16 stated that he did not know why victim committed suicide and her paternal family members did not complain him against the accused. Victim married the accused with mutual understanding of both the family and she (victim) spent her marital life happily into her maternal house. He (P.W.16) had the same courtyard alongwith the accused and he did not know apart from that deceased committed suicide.

23). Anupama Ojah (P.W.17) has deposed that accused residence is placed after 3 houses from her house. P.W.17 had seen some quarrel took place between the deceased and accused persons.

P.W.17 declared hostile by the prosecution side.

She denied that she stated before police that she noticed victim weeping sometime and was unhappy. Her father-in-law and mother-in-law tortured her. P.W.17 stated that accused Kajal Das also tortured her; that she deposed falsely before the Court as a relative of the accused.

In her cross-examination, P.W.17 has stated that accused is her neighbors but they have not any relation with the accused. She did not know what happened into the house of accused as she did not go to their house. She did not depose before Police as deposed by the public prosecutor. Her neighbors did not state before her about the alleged incident and the family members of the victim also did not depose anything against the accused. She did not know the alleged incident apart from that deceased Gitanjali committed suicide by hanging.

24). Rahul Dewry (P.W.18) has deposed that on 17/10/2014, he was working at Barpeta TOP as TSI. On that day, OC of Barpeta PS entrusted him to investigate the case. Upon perusal of the case diary, he recorded the statement of accused Anjanjyoti Das after arresting him on 05/02/2015. He made entry in the case diary till 07/02/15. After that, he was transferred to Sorbhog PS in the year 2015.

In his cross-examination, P.W.18 has stated that he recorded the statement of the accused Anjanjyoti Das who posted at 16 Assam Regiments.

As per his statement recorded by him the accused was about to come from Jammu & Kashmir on casual leave of 28 days. As per his statement, he was not present at his residence at Metuakuchi, Barpeta.

25). Dipak Bargayari (P.W.19) has deposed that on 15-03-2015, he was working at Barpeta TOP as in-charge. On that day, OC of Barpeta PS entrusted him to complete the investigation of the case.

The first investigating officer of the case was Binod Phangsu, who died in the year 2016 at Golaghat in an encounter there. Upon perusal of the case diary, P.W.19 found that investigation of the case is almost complete. Hence, he submitted Charge-Sheet against the accused persons on the section 120(B)/304(B) IPC on 08/07/2015.

P.W.19 exhibited charge-sheet vide Ext. 4 and Ext. 4 (1) is his signature.

From the perusal of the case diary, it is seen that aforesaid Lt. I.O. of the case namely Binod Phangsu had visited the place of occurrence and drew sketch map. Ext. 5 is the said sketch map and Ext. 5(1) was the signature of Lt. Binod Phangsu which he know. He examined the witnesses namely 1. Smti Pranita Das, 2. Shandhya Das, 3. Geeta Sri Das, 4. Manmohan Das, 5. Sri Dhanjita Das, 6. Bhanita Das, 7. Nipal Das, 8. Nanima Choudhury, 9. Anupama Ojah, 10. Anju Ojah, 11. Bijoy Kr. Das, 12, Sri Nayan Mani Das and 13. Sri Dipak Pathak. The said I.O. also recorded the statement of 14. Sri Bhaskar Jyoti Das, 15. Dinabandhu Das, 16. Sri Kumud Ch. Das, 17. Smti Manju Das, 18. Babita Das, 19. Parishmita Das, 20. Belirani Das, 21. Ranjit Das, 22. Ganesh Ch. Das, 23. Dipankar Das, 24. Anjan Adhikary, and 25. Ratul Saikia @ Bablu. He also seized three mobile phone, note book etc. vide. Ext. 6 and Ext. 7. Ext. 6(1) and 7(1) are the signature of the said late I.O.

Witness Smti Bhanita Das (PW-6) deposed before the said I.O. that daughter in law used to talk with them initially but as her mother-in-law did not like it so she stopped talking with them. She was sad sometime for this reason. They also heard her weeping sound. She was tortured by her in laws and Kajol Das very much. They also heard

her hue and cry.

Witness Dhanjita Das (PW-7) deposed in her evidence before the late I.O. of the case that daughter in law used to talk with them initially but as her mother-in-law did not like it so she stopped talking with them. She was sad sometime for this reason.

Witness Anupama Ojah (PW-17) deposed in her evidence before the late I.O. of the case that they noticed that she remains sad. She kept on weeping very often. She was tortured by her father-in-law and mother-in-law very much. Kajol Das also committed tortured on her. They heard many a time her hue and cry.

In his cross-examination, P.W.19 has stated that one U/D case being No. 53/14 was registered for the said incident. Police also recorded statement of witnesses as per case diary. As per FIR deceased Gitanjali Das died on 23/09/2014 but FIR was lodged on 24/09/2014. There was no mentioned of delay for one day in the FIR. P.W.19 stated that the earlier I.O did not seize any call recored of the telephone of the Anjanjyoti Das or deceased Gitanjali Das to verify the fact mentioned in the FIR. The earlier I.O also did not investigate to prove that seized note book contents the hand writing of deceased.

Witness **Sri Dinabandu Das** (PW-8) did not state before police that he handed over T.V and Freeze to the accused person; that accused demanded Rs. 2 Lakhs and one bike, failing which, he will divorce her. However, he has stated separately in his statement before police that accused threatened her to divorce her; that he noticed injury mark on the lips and chin of the deceased; that he saw deceased on hanging and on kneel down position; that accused Anjanjyoti took Rs. 50,000/- from Bhaskar and got his house painted; that accused Suren Ch. Das informed him over telephone and narrated the incident; that this murder was a preplanned murder.

P.W.19 could not say whether the deceased I.O. made any correspondence with the army authority to ascertain his presence or otherwise on the date of incident.

Witness Miss Karishmita Kumari (PW-13) did not state before the then I.O. that deceased Gita told her that accused will divorce her if

Rs. 2 lakhs and one bike is not given to the accused person.

He (P.W.19) had not seen GDE entry no. while police going to the place of occurrence after registering a U/D case. As per case diary, police examined witnesses after registering U/D case.

The written FIR was received at 4.00 PM. He could not say the distance between the thana and the place of residence of complainant. The complainant was not asked any questions in his statement u/s 161 Cr.PC regarding cause of delay in lodging FIR.

He (P.W.19) could not say whether any prayer was made to Magistrate to skip the final report given in the U/D case after registration of the regular case.

26). As said above, accused has been charged in this case, u/s 304B IPC as well as Section 120(B) IPC. Let us first discuss upon the charge u/s 304B IPC and see whether the accused is guilty for committing offence under that Section or not ?

It is pertinent to mention here that in the case of ***Guljar Ali @ Guljar Hussain – versus- State of Assam, (2014) 1 GLR 88***, the Hon'ble Gauhati High Court in **Para Nos-12 & 13** of its judgment held as follows :

PARA NO-12

We consider it relevant to briefly refer to and quote section 304B, IPC which deals with punishment relating to dowry death, hereunder:

"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 after 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 (28 of 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.”

Section 304B, IPC has been held to be a substantive provision creating a new offence and not merely a provision effecting a change in the procedure for trial of a pre-existing substantive offence.

PARA NO-13

The provision of Section 304B, IPC has been discussed and considered by the **Apex Court in Kaliyaperumal & another-versus-State of Tamil Nadu, (2004) 9 SCC 175**. In the said judgement it has been held that the essential ingredients attracting section 304B, IPC are that -

- (i) The death of a woman should be caused by burn or bodily injury or otherwise than under normal circumstances.
- (ii) Such a death should have occurred within 7 years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand for dowry and,
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before the death.

27. In the present case, there is no doubt that the wife of accused Anjanjyoti died by hanging and as such she died an unnatural death under circumstances which is not normal. Her death occurred within a few months of her marriage with accused Anjanjyoti.

28. A conjoint reading of Section 304B, IPC and Section 113B, Evidence Act, shows that in order to prove the charge of dowry death, prosecution has to establish that the victim died within 7 years of marriage and she was subjected to cruelty or harassment soon before her death and as such

cruelty or harassment was for dowry. The expression "soon before her death" has not been defined in either of the statutes. Therefore, in each, case, the court has to analyze the facts and circumstances leading to the death of the victim and decide whether there is any proximate connection between the demand of dowry, the act of cruelty or harassment and the death.

In this connection, I want to quote the relevant portion of the judgment which was delivered by the Hon'ble Apex Court in Smt. Maya Devi & Another-versus-State of Haryana, Criminal Appeal No.1263 of 2011 decided on 07/12/2015.

The Hon'ble Supreme Court in its judgment has held as follows :

"Soon before her death" in view of Section 304B IPV : To attract the provisions 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 of dowry". The expression " soon before her death" used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. Though the language used is "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 cruelty or harassment concerned 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 death concerned. 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.

29. In view of the above, this court has to consider whether the prosecution succeeded in establishing the existence of the ingredients of section 304B, IPC to prove the said charge against the accused. I would, now, indulge in this exercise.

Now coming to case in hand let us see whether the deceased sister of informant was subjected to cruelty or harassment for or in connection with the demand of dowry.

P.W.1 did not see any injury mark on the body of deceased. P.W.2 could not say why deceased committed suicide and she did not hear any conflict between accused persons and deceased. P.W.3, P.W.4 and P.W.5 deposed that victim committed suicide but they do not know any conflict between accused and victim before her death. P.W.5 deposed that victim was suffering from mental disorder and getting her treatment at Guwahati. Victim used to go to Doctor with her brother. He (P.W.5) deposed that her never heard any demand of dowry by the accused from the deceased or his family members.

Independent witness (P.W.6), who was declared hostile deposed in her evidence that she did not hear any allegations from deceased against accused persons. She however, stated in his statement before Police that accused Kajal Das tortured the deceased and also claimed to have heard shouting several times upon the deceased. But, P.W.6 could not say any specific date or time or whether she saw any torture on deceased by the accused either in her statement under Section 161 CrPC or before the Court.

Another hostile witness (P.W.7) Dhanjita Das could not throw any light on the circumstances regarding the suicide of deceased and deposed that she did not go to the place of occurrence or heard any incident during the staying of victim in the house of accused.

Witness Dinabandhu Das (P.W.8), who is uncle of victim deposed that accused demanded Refrigerator and T.V. which he handed over to the accused. He further deposed that accused Anjanjyoti demanded Rs.2 lakh and one bike before P.W.14. The said accused even threatened to divorce deceased if

demand of dowry is not met.

However, I.O. of the case confirmed in his evidence that P.W.8 did not state anything, as said above and deposed by him in the Court.

So, the evidence of P.W.8 is nothing but improvement over his previous statement.

Informant (P.W.9) though claimed in his evidence that accused demanded articles and cash as deposed by P.W.8 but he did not state before Police that accused Anjanjyoti demand Rs.2 lakh for the job of his brother. It may be mentioned here that P.W.9 was at Guwahati at the time of alleged incident, so his evidence is of no such important to the prosecution side.

P.W.9 also deposed that he saw injury on the face of deceased which he has even mentioned in his FIR (Ext.1) also. The parent of the deceased (P.W.11 and P.W.12), sister of deceased (P.W.13), uncle of deceased (P.W.14), all deposed that they saw injury mark on the face of deceased near her lip and blood was coming out from the injury. However, Medical Officer (P.W.15), who performed autopsy over the dead body of deceased deposed clearly that the injuries which he found on the body of the deceased may not cause the death of the deceased.

Hence, it can not be held that deceased was subjected to any physical assault leading to her death by such assault.

P.W.10, who is a seizure witness do not know anything about the incident.

The father of the deceased (P.W.11) deposed that his relationship was good with the family of accused before the death of deceased. Moreover, accused did not demand anything from him. He gave a vague statement by deposing that accused demanded Rs.2,00,000/- in the year 2014 but he could not say the exact date. Similarly, P.W.12 (mother of deceased) could not say any specific date on which accused demanded money for purchasing motor cycle and job of accused Kajal Das.

Witness Karishmita Das (P.W.13) also made improvement in her statement given before the Court that deceased told her that accused will divorce

her if Rs.2 lakh and a bike is not given to him as I.O. (P.W.19) confirmed that she (P.W.13) did not give any such statement before him.

P.W.14 could not say on which date accused demanded T.V and Refrigerator from the deceased or her family members even victim did not complaint him when she visited his house with accused Mina Das.

P.W.16 and P.W.17 deposed that they saw some quarrel between deceased and accused persons. But, they also did not state specifically of such quarrel.

P.W.18 is the I.O. who submitted charge sheet against the accused persons.

Thus marshalling the entire evidence of prosecution side, it has emerged that Prosecution side has failed to prove the Prime ingredient of Section 304 (B) that deceased was subjected to cruelty or harassment by the accused persons soon before her death for demand of dowry.

30). In the case of *Nilendu Paul & others-versus-State of Assam, 2010 (1) GLT 76*, it has been held by Hon'ble Gauhati High Court in **Para No-18** of its judgment as follows :

PARA NO-18

In support of his submission Mr. Medhi has relied upon a decision in **Tirath Kumari-versus-State of Haryana** reported in **(2005) 12 SCC 561** wherein in a similar situation the Hon'ble Apex Court while allowing the appeal acquitted the accused-appellants of all the charges. Relevant paragraphs **3,4,5 & 6** of the Tirath Kumari (supra) are quoted hereunder :

"3. It is not disputed that the incident had taken place within seven years of marriage. Section 304B IPC requires the following ingredients to be established before the presumption can be drawn under Section 113B of the Evidence Act :

- a) 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 ;**

- b) It must be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative ;
- c) Such cruelty or harassment must be in connection with the demand of dowry.

4. If aforesaid ingredients are established then the death shall be called as dowry death. Once the aforesaid ingredients are established by the prosecution the presumption under Section 113B of the Evidence Act shall be drawn."

Since it is clear from evidence of P.W.5 that cruelty or harassment by the accused persons upon the victim has not been proved beyond reasonable doubt, so prosecution under Section 113 B of the evidence Act can not be drawn against accused persons.

31). Learned Public Prosecutor, Barpeta in course of his argument, submitted that the circumstances of the case demands drawal of presumption as to dowry death of the victim as envisages in Section 113B of the Evidence Act.

In this connection, I want to refer a case decided by the Hon'ble Gauhati High Court in ***Nabin Gowala-versus-State of Assam, (2017) 2 GLR 94***, it has been held by Hon'ble Gauhati High Court in Para **Nos. 14 & 15** of its judgment as follow; :

PARA NO-14

While reading Section 304B IPC, it would be but necessary to also read Section 113B of the Indian Evidence Act, 1872. Section 113B of the Evidence Act envisages drawal of presumption as to dowry death and, for better appreciation, the same is reproduced hereunder :

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

Explanation- For the purposes of his section, "dowry death" shall have the same meaning as in Section 304B of IPC(45 of 1860).

PARA NO-15

"In Raja Lal Singh-versus-State of Jharkhand, (2007) 15 SCC 415, the Apex Court while reiterating that the expression "soon before" in Section 113B of the Evidence Act cannot be limited by fixing time limit and is an elastic expression, held that there should be a perceptible nexus between the death of the woman and the dowry related harassment or cruelty inflicted on her. In G.V. Siddaramesh-versus-State of Karnataka, (2010) 3 SCC 152, the Apex Court while appreciating Section 113B of the Evidence Act, held that there must be material to show that soon before the death of the woman, such woman had been subjected to cruelty or harassment for or in connection with demand of dowry. It is only upon demonstration of such materials that a presumption can be drawn that a person has committed the dowry death of a woman. It is then up to the appellant to discharge this presumption. In Vijay Pal Singh & others-versus-State of Uttarakhand, (2014) 15 SCC 163, the Apex Court held that the meaning of 'cruelty' for the purpose of Section 113B of the Evidence Act has not be gathered from the language as found in Section 498A of IPC. Accordingly, 'cruelty' would mean any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, etc., or harassment to coerce her to meet any unlawful demand for any property or valuable security or is on account of her failure to meet such demand."

32). Hence, in view of the fact and evidences produced, in support of prosecution case, I find it improper to draw presumption against the accused under Section 113B of the Evidence Act.

33). For the discussion and findings above, I hold that the prosecution side has not been able to prove the guilt of the accused beyond reasonable doubt u/s 304B IPC as well as to bring home the legal presumption u/s 113B of the Indian Evidence Act, 1872 against the accused person.

From the evidence adduced by the prosecution as reproduced herein above, it becomes evident that there are no eye witness to the occurrence to tell under what circumstances and by whom the deceased was hanging for which she met with death. Further, the evidence of doctor (P.W.15) shows that death was due to asphyxia as a result of antemortem suicidal hanging. P.W.15 stated in his cross-examination that the injuries which are found on the body of the deceased might not cause death of the deceased. I find that the circumstances and the other evidences brought on record can not be relied upon fully to connect the accused with the alleged crime of murder.

34) It is settled law that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

35). Hence, as I do not find sufficient materials against the accused persons to show that they committed murder by causing death the victim Gitanjali Das. Accordingly, accused namely Smti Mina Das, Kajal Das and Anjanjyoti Das are acquitted of the said charge under Sections 120(B)/304 (B) of IPC, on benefit of doubt.

36). In the result, accused Smti Mina Das, Kajal Das and Anjanjyoti Das are **acquitted** of the charge under sections 120(B)/304 (B) IPC, levelled against him, on benefit of doubt.

Accused persons are on bail. The bail bonds of accused stands discharged.

37). Given under my hand and seal of this Court on this 6th February, 2020.

Dictated & corrected by me.

**Sd/-
Sessions Judge, Barpeta.**

A P P E N D I X

(A) Prosecution witnesses:

P.W.1	= Jyotika Das,
P.W.2	= Gitashri Das,
P.W.3	= Sandhya Das,
P.W.4	= Pranita Das,
P.W.5	= Monmohan Das,
P.W.6	= Bhanita Das,
P.W.7	= Dhanjita Das,
P.W.8	= Dinabandhu Das,
P.W.9	= Bhaskarjyoti Das, the informant,
P.W.10	= Monoj Das,
P.W.11	= Kumud Ch. Das,
P.W.12	= Manju Das,
P.W.13	= Karishmita Kumari,
P.W.14	= Ganesh Ch. Das,
P.W.15	= Dr. Partha Pratim Das,
P.W.16	= Nipol Das,
P.W.17	= Anupama Ojah,
P.W.18	= Rahul Dewry, the I.O.,
P.W.19	= Dipak Bargayari, the I.O.

(B) Prosecution Exhibits:

Ext.1	= FIR,
Ext.1(1) & 1(2)	= Signature of Bhaskarjyoti,
Ext.2	= Seizure list,
Ext.3	= Post Mortem Report,
Ext.3(1)	= Signature of the M.O., Dr. P.P.Das,
Ext.3(2)	= Signature of Prof. & Head of Deptt. Of Forensic Medicine, FAAMCH, Barpeta,
Ext.4	= Charge-sheet,
Ext.4(1)	= Signature of S.I, Dipak Bargayari,

Ext.5 = Sketch Map,
Ext.5(1) = Signature of Lt. Binod Phangshu,I.O.,
Ext.6 = Seizure list,
Ext.7 = Seizure list,
Ext.6(1) & 7(1) = Signature Late Binod Phangshu.

- (C) **Defence witnesses**: Nil.
(D) **Defence Exhibits**: Nil.
(E) **Court witnesses**: Nil
(F) **Court Exhibits**: Nil.
(G) **Material Exhibits A**: Note Book.

Sd/-
Sessions Judge, Barpeta.