TEAM CODE: 4AUR31

4TH AMITY NATIONAL MOOT COURT COMPETITION, 2017

IN THE HON'BLE SUPREME COURT OF INDIA

AT NEW DELHI

CRIMINAL APPEAL NO……/2017

[UNDER SEC. 302, 304-B, 120-B & 34 OF THE INDIAN PENAL CODE, 1860]

RAGHVENDRA & ORS. **APPELLANT**

V.

STATE OF RAJASTHAN **RESPONDENT**

Most respectfully submitted to the Hon'ble Justice the memorial drawn on behalf of the APPELLANT

RAGHVENDRA & ORS.

Memorial *for Appellant*

INDEX

INDEX OF AUTHORITIES ……...……II

LIST OF ABBREVIATIONS……..……..IX

STATEMENT OF JURISDICTION…….…….X

SYNOPSIS OF FACTS…….…….……..…XI

ISSUES RAISED…….…….…….….XII

SUMMARY OF ARGUMENTS…….…….....XIII

ARGUMENTS ADVANCE…….……....1-20

1. WHETHER THE GROUNDS ARE SUFFICIENT TO DECIDE THE GUILT OF THE APPELLANT? 1

1.2. Appellant is not liable for the offence of murder under section 300 of the Indian Penal Code, 1860.…….……...…….……...…….…2

1.3. The appellant shall not be liable for any punishment under section 302 of the Indian Penal Code, 1860. …….…….....4

1.4. The Appellant is not liable under section 120-b read with section 34 of the India Penal Code, 1860.…….……..……5

2. WHAT IS THE EVIDENTIARY VALUE OF FIRST INFORMATION REPORT AND STATEMENTS MADE UNDER SECTION 161 OF CRIMINAL PROCEDURE CODE, 1973? CAN THE APPELLANT BE PUNISHED ONLY ON THE BASIS OF THESE EVIDENCES? 7

2.1. What is the evidentiary value of First Information Report? ……..…...7

2.2. What is the evidentiary value of the statements made under section 161 of Criminal Procedure Code, 1973? ……..……...……...9

2.3. Can the appellant be punished only on the basis of First Information Report and Statements made under section 161 of Criminal Procedure Code, 1973?.....10

3. WHAT IS THE EVIDENTIARY VALUE OF EXPERT OPINION? CAN AN APPELLANT BE PUNISHED ON THE BASIS OF POST MORTEM REPORT?.....12

3.1. Whether there is any evidentiary value of an expert opinion or not? …….…....12

3.2. Whether the appellant can be punished on the basis of Post Mortem Report?.....13

4. WHETHER SECTION 304-B OF THE INDIAN PENAL CODE, 1860 IS APPLICABLE IN THE PRESENT CASE? ……..…….17

CONCLUSION……..…….....21

PRAYER…….…….…….....XV

INDEX OF AUTHORITIES

JUDICIAL DECISIONS

1. Apren Joseph v. State of Kerala, A.I.R. 1973 S.C. 1 8
2. Abdul Waheed Khan & Ors. v. State of A.P., (2002) 7 S.C.C. 175. 2
3. Akula Ravinder v. State of A.P., A.I.R. 1991 S.C. 1142. 21
4. Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 S.C.C. 770. 3
5. Appa bhai v. State of Gujarat, A.I.R. 1988 S.C. 696. 10
6. Apren Joseph v. State of Kerala, A.I.R. 1973 S.C. 1 8
7. Ashok Kumar v. State of Punjab, (1987) Cr. L.J. 1412 (P&H), ... 18
8. Augustine Saldanha v. State of Karnataka, (2003) 10 S.C.C. 472. 3
9. Awadesh v. State of M.P., A.I.R. 1988 S.C. 1158. 14
10. Baba ji Charan Barik v. State, (1994) Cr. L.J. 1684 (Ori.). 20
11. Bajrang v. State of Rajasthan, (1998) Cr. L.J. 134 (Raj.), ... 18
12. Bakshish Ram and Another v. State of Punjab, A.I.R. 2013 S.C. 1484. 19
13. Baldeo Singh v. State, (1982) Cr. L.J. 1087 14
14. Baldev Singh v. State of Punjab, 1996 (1) P.L.J.R. 35 at 39(S.C.) 9
15. Baliya v. State Of Madhya Pradesh, (2012) 9 S.C.C. 696 6
16. Basdev v. The State of PEPSU, A.I.R. 1956 S.C. 488 3
17. Bechan Prasad v. Jhuri, A.I.R. 1936 All. 363 16
18. Bhagwan Singh v. State of M.P., (2002) 4 S.C.C. 85. 8
19. Bhagwan Swarup v. State of Rajasthan, A.I.R. 1991 S.C. 2062. 7
20. Bheru d. Balai v. State of M.P., (2006) Cr. L.J. 2845 (M.P.). 9
21. Bijinder Singh v. State, (1979) Cr. L. J. 1290 at p. 1293. 4
22. Bir pal Singh v. State of Rajasthan, (1981) Cr. L.J. 1000 14
23. Bir Singh v. State of U.P., A.I.R. 1978 S.C. 59 14
24. Central Bureau Of Investigation, Hyderabad v. K. Narayana Rao, (2012) 9 S.C.C. 512 6
25. Chacko v. State of Kerala, (2004) 12 S.C.C. 269. 3
26. Collector, Jabalpur v. A.Y. jahagir, A.I.R. 1971 M.P. 32 13
27. Com. v. Webster, 5 Cuch 295, 316 (India) 3

28. Damodar prasad Chandrika prasad v. State of Maharashtra, (1972) I S.C.C. 107:1972 S.C.C. (Cri.) 110,114 : (1972) Cr. L.J. 451. 453-54 8
29. Forest Range Officer v. P. Mohammad Al., A.I.R. 1994 S.C. 120. 13
30. Giasuddin v. State of Assam, (1977) Cr. L.J. 1512, 1516 (Gau.). 10
31. Gulshan Kumar v. State, (1993) Cr. L.J. 1525 (Del) 8
32. Gurditta Singh v. State of Rajasthan, (1992) Cr. L.J. 309 ; (1991) Cr. L.J. 303 (Raj.) 18
33. Hadi Kirsani v. State, A.I.R. 1966 Ori. 21 : (1966) Cr. L.J. 45 16
34. Hans Raj v. State of Haryana, A.I.R. 2000 S.C. 2324 20
35. Emperor v. Mt. Dhirajia, A.I.R. 1940 ALL. 486. 4
36. Hazari Lal v. State (Delhi Admn.), (1980) 2 S.C.C. 390 : (1980) S.C.C. (Cri.) 458, 464 : (1980) Cr. L.J. 564 10
37. Kapil Singh v. State of Bihar, (1991) Cr. L.J. 1248 (Pat.). 8
38. Khyali v. State , (1980) A.L.J. 230. 17
39. L. Basappa v. State, A.I.R. 1960 Bom. 461. 16
40. Las Society of Indian v. Fertilizers and Chemicals Travancore Ltd., A.I.R. 1994 Ker. 308. 14
41. Mani Ram v. State of Rajasthan, A.I.R. 1993 S.C. 2453. 14
42. Maula Bux v. State of Rajasthan, (1983) 1 S.C.C. 379. 16
43. Meghaji Godadji Thakore v. State of Gujarat, (1993) Cr. L.J. 730 (Guj.). 9
44. Mir Nagvi Askari v. C.B.I., (2009) 15 S.C.C. 643 5
45. Mohan Singh v. State of Punjab, A.I.R. 1975 S.C. 2161 14
46. Nankhu Singh v. State of Bihar, A.I.R. 1973 S.C. 491 8
47. Nilamani Nath v. State of Orissa, (1998) Cr. L.J. 962 (Ori.) 18
48. NunnaVenkateswarlu v. State of A.P., (1996) Cr. L.J. 108 (A.P.) 21
49. Onkar Namdeo Jadhoo v. Second Additional Sessions Judge, Bularda, (1996) S.C.C. (Cri) 488. 12
50. Palaniswami v. State, A.I.R. 1968 Bom. 127: 68 Bom L.R. 941: (1967) Mah. L.J. 25: (1968) Cr. L.J. 453 : (1968) Lab L.J. 14
51. Pandurang Chandrakant Mhatre v. State of Maharashtra, (2009) 10 S.C.C. 773. 9
52. Pritam Singh v. State of Punjab, (1977) Cr. L.J. 51 (P&H) 8
53. Rajendra singh v. State of U.P., (2007) 7 S.C.C. 378 11

54. Rajwant and Anr. v. State of Kerala, A.I.R. 1966 S.C. 1874. 2
55. Ram Narayan v. State of Punjab, (1975) Cr. L.J. 1500 : A.I.R. 1975 S.C. 1727 : (1975) S.C.C. (Cri.) 571 14
56. Ram narayan v. State of U.P., A.I.R. 1973 S.C. 2200 17
57. Ramaswamy v. Dasari Mohan, (1998) Cr. L.J. 1105 : A.I.R. 1998 S.C. 774. 18
58. Rampal Singh v. State Of U.P., (2012) Cr. L.J. 3765. 5
59. Rampal Singh v. State Of U.P., (2012) Cr. L.J. 3765. 2
60. Rangappa Gounden v. State, A.I.R. 1936 Mad. 426 : (1937) Cr. L.J. 471 16
61. Ratan Lal v. State of M.P., (1993) Cr. L.J. 3723, (M.P.) 18
62. Ravindra Pyarelal Bidlan and Ors. v. State of Maharashtra, (1993) Cr. L.J. 3019 17
63. Rohinu v. Empress, I.L.R. 9 Cal. 455 16
64. Ruli Ram v. State of Haryana, (2002) 7 S.C.C. 691. 3
65. S. Arul raja v. State of Tamil Nadu, (2010) 8 S.C.C. 233. 6
66. S. Gopal Reddy v. State of A.P., A.I.R. 1996 S.C. 2184.. 13
67. S. N. Bhadolkar v. State of Maharashtra, (2005) 9 S.C.C. 71. 3
68. S.K. Hasib v. State of Bihar, (1971) 2 S.C.W.R. 446; 8
69. Saju v. State of Kerala, A.I.R. 2001 S.C. 175: (2001) 1 S.C.C. 378 : (2001) Cr. L.J. 102 (S.C.): 6
70. Sankara Suri Babu v. State of A.P., (1991) Cr. L.J. 1480 (A.P.) 18
71. Sanker Rana v. Lohor Rana, (1995) Cr. L.J. 3570 (Ori.). 11
72. Savita Alias Babbal v. State of Delhi, (2011) 3 J.C.C. 1687 (Delhi) 6
73. Sewati v. State of H.P., (1981) Cr. L.J. 919, (H.P.) 10
74. Shanti v. State of Haryana, A.I.R. 1991 S.C. 1226 18
75. State Delhi Administration v. Pali Ram, A.I.R. 1979 S.C. 14 16
76. State of Assam v. U.N. Rajkhowa, 1975 Cr. L.J. 354, (Gau.). 8
77. State of Assam v. Upendra Nath Rajkhowa, (1975) Cr. L.J. 354. 8
78. State of H.P. v. Jagroop Singh, (1993) Cr. L.J. 2766 (H.P.) 18
79. State of H.P. v. Jograj, (1997) Cr. L.J. 2033 (H.P.). 19
80. State of H.P. v. Nikku Ram, (1995) Cr. L.J. 4184. 20
81. State of Haryana v. Bhajan Lal, A.I.R. 1992 S.C. 604. 10
82. State Of Orissa v. Chakradhar Behera And Ors, A.I.R. 1964 Ori. 262. 8

83. State of U. P. v. Virendra Prasad, (2004) 9 S.C.C. 37..... 3
84. State of U.P v. Krishna Mater & Ors., 2010 (2) L.S 42 (SC)..... 8
85. State of U.P. v. Babu Ram, (2000) Cr. L.J. 245 : A.I.R. 2000 S.C. 1735. 3
86. State of U.P. v. Krishna Mater & Ors, (2010) 2 L.S. 42 (S.C.)..... 8
87. State of U.P. v. Mahesh Chandra Pandey, A.I.R. 2000 S.C. 3631..... 20
88. Superintendent of Police, C.B.I. and Ors v. Tapan Kr. Singh, A.I.R. 2003 S.C. 4140. 10
89. Surinder Kumar Bali v. State, (2010) 1 J.C.C. 325 at p. 334 (Delhi)..... 6
90. Surveshwar Singh v. State of Rajasthan, (1999) Cr. L.J. 2179 (Raj.). 19
91. Virsa Singh v. State of Punjab , A.I.R. 1958 S.C. 465. 2

BOOKS REFERRED

- C.D. FIELD, EXPERT EVIDENCE (4th ed., Delhi Law House, Delhi, 2006)
- JOHN A. ANDREWS & MICHAEL HIRST, CRIMINAL EVIDENCE (2nd ed., Sweet & Maxwell Ltd., 1992, London)
- K.D. GAUR, CRIMINAL LAW AND CRIMINOLOGY (Deep & Deep Publications Pvt. Ltd., 2002, New Delhi)
- 1 M. MONIR, LAW OF EVIDENCE (14th ed.,Universal Law Publishing Co., New Delhi, 2008)
- N.D. BASU, INDIAN PENAL CODE (9th ed., Ashoka Law House, New Delhi, 2004)
- P.C. BANERJEE, CRIMINAL TRIAL & INVESTIGATION (4th ed., Orient Publishing Company, New Delhi, 2007)
- R. GOPAL, CODE OF CRIMINAL PROCEDURE (20th ed., LexisNexis Butterworths, 2005, New Delhi)
- R.K. NELSON, INDIAN PENAL CODE (9th ed., Lexis Nexis Butterworths, 2003, New Delhi)
- 3 R.P. KATHURIA, LAW OF CRIMES AND CRIMINOLOGY (2nd ed., Vinod Publications (P) Ltd, Delhi, 2007.)
- R. P. KATHURIA, LAW OF CRIMES AND CRIMINOLOGY (2nd ed., Vinod Publications, 2007, Delhi)
- RATANLAL & DHIRAJLAL, INDIAN PENAL CODE (LexisNexis Buttersworth, Nagpur)
- RATANLAL & DHIRAJLAL, LAW OF CRIMES (26th ed., Bharat Law House, 2007, New Delhi)
- RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE (31st ed., Wadhwa & Company, 2006, Nagpur)

- 3 S.K. SARVARIA, INDIAN PENAL CODE (9th ed., LexisNexis Buttersworth, New Delhi, 2003)
- 1 S.P. TYAGI, LAW OF EVIDENCE (2nd ed., Vinod Publications Ltd Delhi, 2008)
- SHRIKANT BHATT, PRINCIPLES AND PRACTICES OF CRIMINAL LAW, (1st ed., Snow White Publications, Mumbai, 2009)
- SIR JOHN WOODROFFE & SYED AMIR ALI, LAW OF EVIDENCE (17th ed., Butterworths, 2001, New Delhi)
- VINOD NIJHAWAN, BETTER CRIMINAL REFERENCE (2nd ed., Vinod Publications Pvt. Ltd., 2008, New Delhi)
- R.V. KELKAR'S, LECTURES ON CRIMINAL PROCEDURE (4t ed., Dr. K.N. Chandrasekharan Pillai, Eastern Book Company 2015)
- WOODROOFE, COMMENTARIES ON CODE OF CRIMINAL PROCEDURE (2nd ed., Law Publishers Pvt. Ltd., 2005, Allahabad)

DICTIONARY REFERRED

1. Aiyar, K.J., Judicial Dictionary, (New Delhi: Butterworths India, 13th edition, 2001).
2. Black, Henry Campbell, Black's Law Dictionary, (St. Paul, Minn: West Publishing Company, 6th edition, 1990).
3. Chandrachur Y.V Justice, Law Lexicons.
4. Findlaw's Dictionary of Law.
5. Hornby A.S., Oxford Advanced Learner's Dictionary, (Oxford: Oxford University Press, 5th edition, 1997).
6. Webster's Third New International Dictionary.

STATUES REFERRED

1. Constitution of India, 1950.
2. The Indian Penal Code, 1860.
3. The Indian Evidence Act, 1872.
4. The Code of Criminal Procedure, 1973.
5. The Dowry Prohibition Act, 1961.

URLs REFERRED

1. http://www.altavista.com
2. http://www.helplinelaw.com/bareact/index.php?dsp
3. http://www.Indialawinfo.com/bareacts/company/html
4. http://www.Indiancourts.nic.in/codemore.htm
5. http://www.indlaw.com
6. http://www.judis.nic.in
7. http://www.lexsite.com
8. http://www.lfhri.org
9. http://www.manupatra.com/lgsearch/htm
10. http://www.transperanceinternational.org

LIST OF ABBREVIATIONS

1.	A.I.R.	All India Reporter
2.	All.	Allahabad
3.	Anr.	Another
4.	A.P.	Andhra Pradesh
5.	Art.	Article
6.	Cal.	Calcutta
7.	C.W.N.	Calcutta Weekly Notes
8.	Del.	Delhi
9.	Eg.	Example
10.	F.I.R.	First Information Report
11.	Govt.	Government
12.	Guj. L.R.	Gujarat Law Reporter
13.	H.C.	High Court
14.	I.L.R.	Indian Law Reporter
15.	J&K	Jammu & Kashmir
16.	Ker.	Kerala
17.	Ld.	Learned
18.	Mad.	Madras
19.	Mah. L.J.	Maharashtra Law Journal
20.	M.P. L.J.	Madhya Pradesh Law Journal
21.	M.U.B.	Myanmar Unity Bank
22.	N.C.T.	National Capital Territory
23.	Ors.	Others
24.	P&H.	Punjab and Haryana
25.	Para.	Paragraph
26.	S.	Section
27.	S.C.C.	Supreme Court Cases
28.	Vol.	Volume

STATEMENT OF JURISDICTION

THE APPELLANT HAS APPROACHED THE HON'BLE SUPREME COURT OF INDIA PURSUANT TO THE DECISION GIVEN BY THE HON'BLE HIGH COURT OF RAJASTHAN. THE COURT'S JURISDICTION IS INVOKED UNDER ARTICLE 134[1] OF THE CONSTITUTION OF INDIA, 1950. THE APPELLANT WILL ACT IN ACCORDANCE WITH THE FINDINGS AND DECISION OF THE COURT.

[1]INDIA CONST. **A**rt. 134**: Appellate jurisdiction of Supreme Court in regard to criminal matters**
(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-has on appeal reversed an order of acquittal of an appellant person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the appellant person and sentenced him to death; or certifies under Article 134A that the case is a fit one for appeal to the Supreme Court: .

Provided that an appeal under sub-clause ?shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require. (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

SYNOPSIS OF FACTS

The counsel for the appellant respectfully showeth:

-I-

- **Background:** The appellant got married to Gauri (Deceased) on 1st January, 2013 and was living at Isarda village of Rajasthan with his joint family. The family consists of Bheem Singh Shekhawat (Father-in-law), Yashodhara Devi (Mother-in-law), Dev Singh Shekhawat (Brother-in-law), Nidhi (unmarried sister-in-law), and another married sister-in-law Anita. After the marriage the couple was living a happy life but the things got changed after the death of Gauri's father-in-law due to a heart attack, as now Raghvendra has to take care of entire family.

-II-

- **The Suicide:** On 20th February, 2015 Gauri's father Charan Singh Rathore got a call from Raghvendra at 10:10 pm that Gauri had committed suicide at 07:00 am of today morning. Mr. Charan Singh Rathore lives at Jodhpur with his wife and son and his daughter-in-law. Charan Singh Rathore's elder daughter Mamta is living at Jaipur with his husband Yuvraj Singh.

-III-

- **The F.I.R.:** After getting this news, when Charan Singh and his entire family reached at Gauri's home at next day morning (i.e. 21st February 2015), they found that Raghvendra and his family is ready to take Gauri's body for funeral without informing the police about her suicide. Thus, Charan Singh Rathore immediately called police to stop the funeral. On behalf of First Information Report lodged by deceased father, police officer sends the body for post mortem.

-IV-

- **The Post Mortem Report:** According to the post mortem report the time of death of deceased is between 06:00 to 08:00 am approx.; The cause of death is only intake of excessive sleeping pills; The bruises have been found on many parts of the deceased body, but it is not clear that these bruises had been caused by deceased herself or by some other person to her; The bruises marks were approximate 12 hours older than the time of death.

-V-

- **The Case:** The Court of session find Appellants guilty and punished them under the same sections 302, 304-B, and 120-B read with section 34 of *Indian Penal Code* 1860 and the Rajasthan High Court upheld the decision of Session Court.

ISSUES RAISED

1. **WHETHER THE GROUNDS ARE SUFFICIENT TO DECIDE THE GUILT OF THE APPELLANT?**
2. **WHAT IS THE EVIDENTIARY VALUE OF FIRST INFORMATION REPORT AND STATEMENTS MADE UNDER SECTION 161 OF CRIMINAL PROCEDURE CODE, 1973? CAN THE APPELLANT BE PUNISHED ONLY ON THE BASIS OF THESE EVIDENCES?**
3. **WHAT IS THE EVIDENTIARY VALUE OF EXPERT OPINION? WHETHER THE APPELLANT CAN BE PUNISHED ON THE BASIS OF POST MORTEM REPORT?**
4. **WHETHER SECTION 304-B OF INDIAN PENAL CODE, 1860 IS APPLICABLE OR NOT?**

SUMMARY OF ARGUMENTS

1) WHETHER THE ABOVE GROUNDS ARE SUFFICIENT TO DECIDE THE GUILT OF THE APPELLANT?

The grounds in the present case are not at all sufficient to prove the guilt of appellant as in this issue it has been proved by the appellant that the due procedure of law has not been followed by the police officers according to Section 174 (1) of *Criminal Procedure Code*, 1973 and also the main ingredients for proving the guilt under Section 302 and 304-B of the *Indian penal code* 1860 are not fulfilled in the present case so the appellant is not liable for any crime as there are no sufficient grounds which can prove his guilt.

2) WHAT IS THE EVIDENTIARY VALUE OF FIRST INFORMATION REPORT AND THE STATEMENTS MADE UNDER SECTION 161 OF CRIMINAL PROCEDURE CODE, 1973? CAN THE APPELLANT BE PUNISHED ONLY ON THE BASIS OF THESE EVIDENCES?

The First Information Report is not a substantive piece of evidence and it can only be used for the purpose of corroboration under Section 157, of Indian Evidence Act or for contradiction under Section 145, of Indian Evidence Act against the maker there of. The statements which are made under Section 161 of the *Criminal Procedure Code,* 1973 are only the part of police investigation and appropriate documents have not been produced before the court which proves that the statements made during the investigation are not a solid piece of evidence therefore the appellant cannot be punished on the basis of First Information Report and statements made under section 161 of *Criminal Procedure Code*, 1973.

3) WHAT IS THE EVIDENTIARY VALUE OF EXPERT OPINION? CAN AN APPELLANT BE PUNISHED ON THE BASIS OF POST MORTEM REPORT?

There is no evidentiary value of expert opinion in the instant case as the doctor conducting autopsy has not been properly examined and the expert opinion is only the opinion evidence. It does not help court in interpretation.

Normally, the post-mortem report is used by the doctor who has conducted the post-mortem examination for the purpose of refreshing his memory as permitted by law while giving substantive piece of evidence in the court of law. Hence the appellant cannot be punished on the basis of Post Mortem Report.

4) WHETHER SECTION 304-B OF INDIAN PENAL CODE, 1860 IS APPLICABLE OR NOT?

The Section 304-B of *The Indian Penal Code*, 1860 is not applicable in the present case as there is no proper evidence which can prove that soon before the death, the deceased was subjected to cruelty or harassment by her husband or any relative of the husband and such cruelty or harassment must be for or in connection with demand for dowry. It is clearly mentioned in the facts that the deceased was mentally ill and depressed due to many negative incidents occurred which are the main reasons behind committing of the suicide.

ARGUMENTS ADVANCE

1. WHETHER THE GROUNDS ARE SUFFICIENT TO DECIDE THE GUILT OF THE APPELLANT?

It is humbly submitted before the hon'ble court that the trial court has erred in giving the judgment by convicting the appellant as there are no sufficient grounds to decide the guilt of the accused. *Firstly*, the due procedure of law has not been followed by the police investigating officer. *Secondly*, the elements to constitute the offence of Murder under section 300 of *The Indian Penal Code*, 1860 are not been fulfilled in the present case. So the grounds are not sufficient to decide the guilt of the appellant.

1.1. Whether the due procedure of law has been followed by the police investigating officer?

It is humbly submitted before this hon'ble court that the due procedure of law has not been followed by the police investigating officer. The due procedure of law is that when there is any case of suicide by a woman within 7 years of her marriage or when the case relates to death of a woman within 7 years of her marriage with suspicion, then it is the duty of the police officer to immediately inform the magistrate who will prepare an inquest report of the incident which is mandatory as per the law.[2]But in the instant case the police officer has not informed about the incident to the magistrate and no inquest report has been made by the magistrate which acts as a sole base of the case. According to Section 174 (1) of *Criminal Procedure Code*, 1973:

Section 174 (1): *When the officer-in-charge of a police station receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, shall proceed to the place where the body.*

According to Section 176 (1) When the case is of the nature referred to in clause (3) sub-clause (i) of section 174,[3] the nearest magistrate empowered to hold inquests shall hold an inquiry into the

[2]V.S.R. AVADHANI, CRIMINAL INVESTIGATION (LAW, PRACTICE & PROCEDURE) 178 (1t ed. Asia Law House 2015).
[3]The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 Section 174 (3) states that *when (i) the case involves suicide by a women within seven years of her marriage; or (ii) the case relates to the death of a woman with in seven years of her marriage in any circumstance raising a reasonable suspicion that some other person committed an offence in relation to such women.*

cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

Under section 174 (3) of *Criminal Procedure Code*, 1973, it is mandatory provision which requires that the body of a woman, who has committed suicide within seven years of her marriage, has to be subjected to post-mortem examination and the inquest also has to be held.[4] In the present case Charan Singh Rathore immediately called police to stop the funeral and on behalf of the First Information Report lodged by the deceased father, the police officer sent the body for the post mortem[5] and no magistrate was intimated by police officer hence raising the question of reliability on the investigation done by the police. Informing nearest Executive Magistrate as empowered, obligation lies on the police.[6]

1.2. Appellant is not liable for the offence of murder under section 300 of the *Indian Penal Code,* 1860.

It is humbly submitted before the honb'le court that the appellant is not liable for the offence of Murder of deceased under section 300 of the *Indian penal code*, 1860 and shall not be punished under section 302 because the elements to constitute a crime of Murder under section 300 of IPC are not been fulfilled in the present case so the appellant is not liable for the offence of Murder of the deceased.

It is humbly submitted that Section 302 of the *Indian Penal Code*, 1860 prescribes punishment for committing the offence of murder. In case of *Rampal Singh* v. *State Of U.P.*[7]*Abdul Waheed Khan &Ors* v. *State of A.P.*[8], *Virsa Singh* v. *State of Punjab*[9] and *Rajwant and Anr*. v. *State of Kerala*[10] it has been said and stated by various judges that to constitute a case for murder a person shall do an act :

1. With the intention of causing death, or;

[4]V.S.R AVADHANI, CRIMINAL INVESTIGATION (LAW, PRACTICE & PROCEDURE), 168, (1t ed., Asia Law House, 2015).
[5]Moot Proposition, Page 1, ¶ 3, line 5.
[6]V.S.R, AVADHANI, CRIMINAL INVESTIGATION (LAW, PRACTICE & PROCEDURE), 178, (1t ed., Asia Law House, 2015).
[7]Rampal Singh v. State of U.P., (2012) Cri. L.J. 3765.
[8]Abdul Waheed Khan & Ors v. State of A.P., (2002) 7 S.C.C. 175.
[9]Virsa Singh v. State of Punjab, A.I.R. 1958 S.C. 465.
[10]Rajwant and Anr. v. State of Kerala, A.I.R. 1966 S.C. 1874.

2. With the intention of causing such bodily injury as is likely to cause death, or ;
3. With the knowledge that such an act is likely to cause death.

In cases like *Ruli Ram* v. *State of Haryana*[11]; *Augustine Saldanha* v. *State of Karnataka*[12]; *State of U. P.* v. *Virendra Prasad*[13]; *Chacko* v. *State of Kerala*[14] and *S. N. Bhadolkar* v. *State of Maharasthra*[15] It was observed in all these cases that the prosecution must prove the facts before it can bring a case under Section 300. *First*, it must establish quite objectively, that a bodily injury is present; *secondly*, the nature of the injury must be proved. These are purely objective investigations; *thirdly*, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and *fourthly*; it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

In the instant case, there is no evidence on record that can prove motive of appellant to kill deceased as motive in the correct sense is the emotion supposed to have led to the act. "The ordinary feeling, passions and propensities under which parties act, are facts known by observation and experience; and they are so uniform in their operation that a conclusion may be safely drawn that, if a party acts in a particular manner, he does so under the influence of a particular motive".[16] Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequence of the act.[17] In order to form an intention there must be a capacity for reason and when by some extraneous force this capacity is ousted, the capacity to form an intention must have been unseated too. However, knowledge stands on a different footing. Some degree of knowledge must be attributed to every sane person and the degree of knowledge varies with every person[18]. The only argument made by Charan Singh in his statement made before investigation officer is

[11]Ruli Ram v. State of Haryana, (2002) 7 S.C.C. 691.
[12]Augustine Saldanha v. State of Karnataka, (2003) 10 S.C.C. 472.
[13]State of U. P. v. Virendra Prasad, (2004) 9 S.C.C. 37.
[14]Chacko v. State of Kerala, (2004) 12 S.C.C. 269.
[15]S. N. Bhadolkar v. State of Maharashtra, (2005) 9 S.C.C. 71.
[16]State of U.P. v. Babu Ram, (2000) Cr. L.J. 245 : A.I.R. 2000 S.C. 1735 ; Com. v. Webster, 5 Cuch 295, 316 (India).
[17]Basdev v. The State of PEPSU, A.I.R. 1956 S.C. 488 ; 1956 S.C.R. 363; Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 S.C.C. 770.
[18]Emperor v. Mt. Dhirajia, A.I.R. 1940 ALL. 486.

that "the deceased has been murdered by her in-laws because the appellant had called him after 14 hours of her death"[19] does not show the intention of appellant to kill deceased. Moreover the appellant was always busy in his work though he manages to call his wife which shows his concern about her.

From the above resume of evidence it is clear that the case rests entirely on circumstantial evidence.

1.3. The appellant shall not be liable for any punishment under section 302 of the *Indian Penal Code*, 1860.

It is humbly submitted before the hon'ble court that the section 302 of the Indian Penal Code which says that: "*Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine"* is not be applicable in the present case as no offence of murder has been proved. So, the appellant shall not be liable for any punishment under section 302 of the *Indian Penal Code*, 1860.

It is clearly stated in post mortem report that the death of deceased is only due to intake of excessive sleeping pills.[20]And there is not direct or circumstantial evidence to prove that the death of deceased is homicidal. Hence, appellant cannot be punished under this section.

Death of a human being can occur in various ways—it can be natural, suicidal or accidental as well. In the cases of culpable homicide, it is of utmost importance that the person who is alleged to have been killed by the person charged, met with unnatural death, caused with intention or knowledge as mentioned in Section 299 of the *Indian penal code* 1860.[21]

In the case of *Rampal Singh* v. *State Of U.P.* [22]the Hon'ble Supreme Court held that*" Where the act committed is done with no intention to kill the other person; it will not be a murder within the meaning of Section 300 of the Code and shall not be punishable under Section 302 of the Code"*

[19]Moot proposition, Page 3, ¶ 1, line 1.
[20]Moot proposition, Page 5, ¶ 1, line 2.
[21]Bijinder Singh v. State, (1979) Cr. L. J. 1290.
[22]Rampal Singh v. State of U.P., (2012) Cr. L.J. 3765.

Hence, by the above stated facts and cases cited it has been clearly proved that neither of the appellant is liable for the offence of murder of deceased, under section 300 of the *Indian Penal Code*, 1860 because no essential ingredients of the section has been fulfilled and shall not be punished under section 302 of the *India Penal Code*, 1860.

1.4. The Appellant is not liable under section 120-B read with section 34 of the *India Penal Code*, 1860.

It is humbly submitted before this hon'ble court that Appellant is not liable under section 120-B read with section 34 as ingredients of the offence of criminal conspiracy are not fulfilled. The ingredients of the offence of criminal conspiracy which are laid down in the case of *Mir Nagvi Askari* v. *C.B.I.*[23]are:

1) There should be an agreement between two or more person who are alleged to conspire.

2) The agreement should be to do or cause to be done
   a) an illegal act, or
   b) an act which is though not illegal by illegal means.

In the instant case, according to Appellant (husband of deceased) on the day of suicide, he went for a morning walk to the nearby park at 06:00 a.m. and when he returned back at 07:00 a.m. he found deceased dead body on the bed and a bottle of sleeping pills in her hand. Then he called his mother who was taking care of the daughter of the deceased as deceased never used to take care of her daughter, and called Nidhi from the kitchen.[24] His mother Yashodhara Devi called his younger brother Dev Singh to come home who was at local akhara at that time, 5km away from the house. Nidhi called Anita and Suryadev to come home immediately.[25]

From the above facts it can be clearly stated that at the time of the death of deceased only two family members were present in the house and doing their respective jobs. If there would have been any conspiracy of the appellant then they all would have been present at the house. There is

[23]Mir Nagvi Askar v. C.B.I., (2009) 15 S.C.C. 643.
[24]Moot proposition, Page 3, ¶ 1, line 3.
[25]Moot proposition, Page 3, ¶ 4, line 5.

also no evidence which can prove that there was an agreement between the family members to commit the offence.

In the case of *Savita Babbal* v. *State of Delhi*[26] it was held that for Criminal Conspiracy an agreement should be there between two or more person to do an illegal act or an act which is not illegal by illegal means. Such agreement may be proved by direct evidence. But in the present case there is no direct evidence to prove the agreement or by circumstantial evidence or by both.[27]

The hon'ble Supreme Court in the case of *S. Arul raja* v. *State of Tamil Nadu*[28] has held that mere circumstantial evidence to prove the involvement of the appellant is not sufficient to meet the requirements of criminal conspiracy under Section 120-A of the *Indian Penal Code*, 1860. A meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence and the respondent has not adduced any evidence which underlines the same.

Further, in the case of *Surinder Kumar Bali* v. *State*[29] the hon'ble Court has took the view that it is not essential that more than one person should be convicted of the offence of criminal conspiracy. If the court below had come to a distinct finding that the evidence led on behalf of the prosecution was unbelievable, then certainly no conclusion could have been based on such evidence and the petitioner along with the other co-appellant would have been entitled to acquittal.

In *Bhagwan Swarup* v. *State of Rajasthan*[30] it was held that the prosecution has to satisfactorily and beyond reasonable doubt establish that the two appellant conspired and pursuant to that conspiracy, the offence was committed.

Thus it is humbly submitted to hon'ble Court that appellant is not liable for the offence of criminal conspiracy under section 120-B read with section 34 as there was no agreement between the appellant.

[26]Savita Alias Babbal v. State of Delhi, (2011) 3 J.C.C. 1687 (Delhi) ; Baliya v. State Of Madhya Pradesh, (2012) 9 S.C.C. 696 ; Central Bureau Of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 S.C.C. 512 :
[27]Saju v. State of Kerala, A.I.R. 2001 S.C. 175: (2001) 1 S.C.C. 378: 2001 Cr. L.J. 102 (S.C.):
[28]S. Arul raja v. State of Tamil Nadu, (2010) 8 S.C.C. 233.
[29]Surinder Kumar Bali v. State, (2010) 1 J.C.C. 325 at p. 334 (Delhi)
[30]Bhagwan Swarup v. State of Rajasthan, A.I.R. 1991 S.C. 2062.

2. WHAT IS THE EVIDENTIARY VALUE OF FIRST INFORMATION REPORT AND STATEMENTS MADE UNDER SECTION 161 OF CRIMINAL PROCEDURE CODE, 1973? CAN THE APPELLANT BE PUNISHED ONLY ON THE BASIS OF THESE EVIDENCES?

2.1. What is the evidentiary value of First Information Report?

It is humbly submitted before the hon'ble court that the principal object of First Information Report is to set the criminal law in motion[31] from the point of view of the informant and it is not necessary to state all the minute details therein[32]. It is not a substantive piece of evidence and it can only be used for the purpose of corroboration under section 157,[33] of *Indian Evidence Act* or for contradiction under Section 145,[34] of *Indian Evidence Act* against the maker thereof.[35]

Section 154 (1) of Criminal Procedure Code, 1973 stats as: *Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*[36]

In the case of *State of Assam* v. *U.N. Rajkhowa*[37] hon'ble Supreme Court held that "It is a settled law that a First Information Report is not an substantive piece of evidence, that is to say, it is not evidence of the facts which it mentions[38]. Further in the case of *Gulshan Kumar* v. *State*[39] it was

[31]Bhagwan Singh v. State of M.P., (2002) 4 S.C.C. 85.
[32]State of U.P. v. Krishna Mater & Ors., (2010) 2 L.S. 42 (S.C.).
[33]Indian Evidence Act, 1872, No. 1, Acts of parliament, 1872, Section 157. "*In order to corroborate the testimony of a witness, any former statement made by such a witness relating to the same fact, at or about the time when the offence took place, or before any authority legally competent to investigate the fact may be proved."*
[34]Indian Evidence Act, 1872, No. 1, Acts of parliament, 1872, Section 145. "*A witness may be crossed-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."*
[35]S.K. Hasib v. State of Bihar, (1971) 2 S.C.W.R. 446 ; Apren Joseph v. State of Kerala, A.I.R. 1973 S.C. 1;Nankhu Singh v. State of Bihar, A.I.R. 1973 S.C. 491; State Of Orissa v. Chakradhar Behera And Ors, A.I.R. 1964 Ori. 262.
[36]The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974. Section 154.
[37]State of Assam v. Upendra Nath Rajkhowa, (1974), (1975) Cr. L.J. 354.
[38]State of Assam v. U.N. Rajkhowa, (1975) Cr. L.J. 354, 378 (Gau.); Damodarprasad Chandrika prasad v. State of Maharashtra, (1972) I S.C.C. 107:1972 S.C.C. (Cri.) 110,114: (1972) Cr. L.J. 451. 453-54.; Pritam Singh v. State of Punjab, (1977) Cr. L.J. 51 (P&H); Kapil Singh v. State of Bihar, (1991) Cr. L.J. 1248 (Pat.).
[39]Gulshan Kumar v. State, (1993) Cr. L.J. 1525 (Del).

held by the hon'ble Supreme Court that though First Information Report is not a substantive piece of evidence, it can be used to corroborate or contradict the statement maker thereof and also to judge trustworthiness of the prosecution story.

In the instant case the version of events by Charan Singh is highly dubious since all the statements which he has given to police are vague and without any proof. All the Statements and facts given by him are irrelevant facts and he has also not followed the requisite format. The object of insisting upon prompt lodging of First Information Report is to obtain prior information regarding the circumstances in which crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses.[40]

Firstly, Charan Singh mentioned about selling of the ancestral property but failed to furnish any documents for proving the same that it was sold to fulfill the demands of the appellants.

Secondly, he did not furnish any proofs whatsoever regarding the ownership of motorcycle through which it can be proved that the motorbike was given to the deceased's husband.

Thirdly, he mentioned many vague facts about deceased's harassments such as she wasn't allowed to talk to them and her social media accounts were forcefully deleted. It seems like Charan Singh is quiet a storyteller and has created his own encyclopedia about the incident with no strong grounds of proof in this regard.

Further in the case of *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*[41] it was held by the hon'ble Supreme Court that "First Information Report is not a substantive piece of evidence and it can be used only to discredit the testimony of the maker thereof and it cannot be utilized for contradicting or discrediting the testimony of other witnesses. Auxiliary to it in another case the court held that it need not contain details of the occurrence as if it was an 'encyclopedia' of the occurrence.[42]

[40]Meghaji Godadji Thakore v. State of Gujarat, (1993) Cr. L.J. 730 (Guj.).
[41]Pandurang Chandrakant Mhatre v. State of Maharashtra, (2009) 10 S.C.C. 773.
[42]Baldev Singh v. State of Punjab, (1996) 1 P.L.J.R. 35 at 39 (S.C.) ;Bheru d. Balai v. State of M.P., (2006) Cr. L.J. 2845 (M.P.).

In *Superintendent of Police, C.B.I. and Ors.* v. *Tapan Kr. Singh*[43] the hon'ble Supreme Court held that "What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence." There are no allegations made in the First Information Report for which appellant has been convicted. Further in the case of *State of Haryana* v. *Bhajan Lal*[44] it was held that the condition which is *sine qua non* for recording a First Information Report is that there must be information and that information must disclose a cognizable offence.

Hence, it can be clearly said from the above mentioned facts and cases that the First Information Report is not a substantive piece of evidence therefore appellant cannot be punished on the basis of First Information Report.

2.2. What is the evidentiary value of the statements made under section 161 of Criminal Procedure Code, 1973?

It is humbly submitted before the hon'ble court that under Section 161 of *Criminal Procedure Code*, 1973 *any Police officer making an investigation is accredited and empowered to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to records statement of witnesses.*[45] These statements are predominantly called as section 161 *Criminal Procedure Code*, statements. After filing charge sheet, these statements will also be perused by the Court to take cognizance of an offence. Such a statement can only be utilized for contradicting the witness in the manner provided by Section 145 of the Indian Evidence Act.[46]

A statement recorded by police officer during investigation is neither given on oath nor is it tested by cross-examination. According to the law of evidence such statement is not evidence of the facts stated therein and therefore it is not considered as substantive evidence.[47]

[43]Superintendent of Police, C.B.I. and Ors. v. Tapan Kr. Singh, A.I.R. 2003 S.C. 4140.
[44]State of Haryana v. Bhajan Lal, A.I.R. 1992 S.C. 604.
[45]The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974. Section 161.
[46]Appabhai v. State of Gujarat, A.I.R. 1988 S.C. 696.
[47]Sewati v. State of H.P., (1981) Cr. L.J. 919, 920 (H.P.) ; Hazari Lal v. State (Delhi Admn.), (1980) 2 S.C.C. 390 : 1980 S.C.C. (Cri.) 458, 464 : 1980 Cr. L.J. 564; Giasuddin v. State of Assam, (1977) Cr. L.J. 1512, 1516 (Gau.).

As has been held in *Rajendra Singh* v. *State of U.P*.[48] "a statement under Section 161 *Criminal Procedure Code* is not a substantive piece of evidence. In view of the provision to Section 162 (1) *Criminal Procedure Code*, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent could not have been present at the scene of commission of the crime."

Hence, it is submitted to this hon'ble Court that there is no evidentiary value of Statement made under section 161 to an investigating officer and therefore appellant cannot be punished on the basis of this statement.

2.3. Can the appellant be punished only on the basis of First Information Report and Statements made under section 161 of *Criminal Procedure Code*, 1973?

It is humbly submitted before this hon'ble court that as there is no evidentiary value of First Information Report and Statements made under section 161 of *Criminal Procedure Code*, 1973. Therefore Appellant cannot be punished only on the basis of the above evidence.

The statements made to the police are of three categories:

1. A statement which has been recorded as an First Information Report,
2. A Statement recorded by the police in the course of the investigation, and
3. A statement recorded by the police but not falling under the above (1) or (2) category.

None of the above statement can be considered as substantive evidence, that is to say, as evidence of facts stated therein. Because it is not made during trial, it is not given on oath, nor is it tested by cross-examination.[49] "Though the First Information Report in not intended to be a catalogue of events, it is required to contain basic features of the prosecution case, since it sets law into

[48]Rajendra Singh v. State of U.P., (2007) 7 S.C.C. 378.
[49]R.V. KELKAR'S, LECTURES ON CRIMINAL PROCEDURE, 71 (4t ed., Dr. K.N. Chandrasekharan Pillai, Eastern Book Company 2015)

motion."[50] Statements recoded during investigation are no evidence and the Court cannot come to a conclusion by merely looking upon their statement.[51]

Therefore it is humbly submitted before this hon'ble court that by the above facts and case law it is clear that there is no evidentiary value of First Information Report and statements made under section 161 of *Criminal Procedure Code* and appellant cannot be punished only on the basis of these evidence.

[50]Sanker Rana v. Lohor Rana, (1995) Cr. L.J. 3570 (Ori.).
[51]Onkar Namdeo Jadhoo v. Second Additional Sessions Judge, Bularda, (1996) S.C.C. (Cr) 488.

3. WHAT IS THE EVIDENTIARY VALUE OF EXPERT OPINION? CAN AN APPELLANT BE PUNISHED ON THE BASIS OF POST MORTEM REPORT?

It is humbly submitted before this hon'ble court that the Judge is not expected to be an expert in all the fields-especially where the subject matters involves technical knowledge. He is not capable of drawing inference from the facts which are highly technical. In these circumstances he needs the help of an expert- who is supposed to have superior knowledge or experience in relation to the subject matter. If there is a dearth of direct evidence and in certain cases where corroboration is required for already existing evidence, the expert opinion is sought and can be used as evidence.

3.1. Whether there is any evidentiary value of an expert opinion or not?

Expert evidence is covered under Section 45-51 of *Indian Evidence Act*, 1972. The Section 45 of the Act says that "*An expert is one who has acquired special knowledge, skill or experience in any science art or trade profession; such knowledge may have been acquired by practice, observation or careful studies. A person having special knowledge of the market value of land by experience is an expert.*[52]

In the case of *S. Gopal Reddy* v. *State of A.P.*[53] the hon'ble Supreme Court held that "Expert evidence is opinion evidence and it can't take the place of substantive evidence. It is a rule of procedure that expert evidence must be corroborated either by clear direct evidence or by circumstantial evidence. It is not safe to rely upon this type of evidence without seeking independent and reliable corroboration."

Further in the case of *Forest Range Officer* v. *P. Mohammad Al.,*[54] it was held by the hon'ble Supreme Court that the Expert opinion was only the opinion evidence. It does not help court in interpretation. In the case of *Mohan Singh* v. *State of Punjab*[55] it was held that if the injuries are such that they cannot be caused in manner alleged by the prosecution, the prosecution case fails.

[52]Collector, Jabalpur v. A.Y. jahagir, A.I.R. 1971 M.P. 32.
[53]S. Gopal Reddy v. State of A.P., A.I.R. 1996 S.C. 2184.
[54]Forest Range Officer v. P. Mohammad Al., A.I.R. 1994 S.C. 120.
[55]Mohan Singh v. State of Punjab, A.I.R. 1975 S.C. 2161; Ram Narayan v. State of Punjab, (1975) Cr. L.J. 1500 : A.I.R. 1975 S.C. 1727 : (1975) S.C.C. (Cri.) 571 ; Baldeo Singh v. State, (1982) Cr. L.J. 1087 ; Bir Singh v. State

Further in the case of *Palaniswami* v. *State*[56] hon'ble Supreme Court held that "Expert's opinion must be supported by reasons and it is the reason which is important in assessing the merit of the opinion". Auxiliary to it, in the case of *Las society of Indian* v. *Fertilizers and chemicals Travancore Ltd*.[57] hon'ble Supreme Court held that "Expert opinion is not necessarily binding on the court. The court also observed that the medical expert's opinion is not always final and binding".

Expert opinion becomes admissible only when the expert is examined as a witness in the court. The report of an expert is not admissible unless the expert gives reasons for forming the opinion and his evidence is tested by cross-examination by the adverse party.

Thus, from the above submissions it may be submitted that evidence of an expert is not a substantive piece of evidence. The court does not consider it conclusive. Without independent and reliable corroboration it may have no value in the eye of law.

3.2. Whether the appellant can be punished on the basis of Post Mortem Report?

It is humbly submitted before the hon'ble court that the appellant cannot be punished on the basis of Post Mortem Report as in the case of *Mani Ram* v. *State of Rajasthan*[58] the hon'ble Supreme Court held that medical evidence is hardly conclusive and decisive, because it is primarily an evidence of opinion. The court has to consider not merely medical evidence, but also the other evidence and circumstances appearing on the point.

The appellant submits that both the courts mainly on suspicion and conjecture have reached on the conclusion that the appellants were responsible for administering sleeping pills to the deceased and that it could not be a case of suicide, and, without considering the fact that there is no evidence whatsoever which can prove that the appellant were harassing her and, therefore, question of

of U.P., A.I.R. 1978 S.C. 59 : (1978) 9 Cr. L.J. 177 ; Purushottam v. State of M. P., A.I.R. 1980 S.C. 1873 : (1980) Cr. L.J. 1738 ; Bir pal Singh v. State of Rajasthan, (1981) Cr. L.J. 1000 .

[56]Palaniswami v. State, A.I.R. 1968 Bom. 127 : 68 Bom. L.R. 941:(1967) Mah. L.J. 25 : (1968) Cr. L.J. 453 : (1968) Lab. L.J. 610.; Awadesh v. State of M.P., A.I.R. 1988 S.C. 1158 ;(1988) Cr. L.J. 1154.

[57]Las society of Indian v. Fertilizers and Chemicals Travancore Ltd., A.I.R. 1994 Ker. 308 (India).

[58]Mani Ram v. State of Rajasthan, A.I.R. 1993 S.C. 2453.

cruelty against her does not arise in this case and, as a result of which, none of them can be found guilty.

The important noticeable points in the post mortem report prepared by the doctor are:

1) The time of death of deceased is between 06:00 to 08:00 am approx.
2) The cause of death is only intake of excessive sleeping pills.
3) The bruises have been found on many parts of the deceased body, but it is not clear that these bruises had been caused by deceased herself or by some other person to her.
4) The bruises marks were approximate 12 hours older than the time of death.[59]

It is stated primarily in the post mortem report that the time of death of the deceased is between 06:00 to 08:00 am but in the instant case the appellant has also stated in his statement to police that he went for a morning walk to the nearby park at 06:00 a.m. on that day and when returned at 07:00 a.m. he found deceased's dead body lying on the bed.[60] Therefore, under such instance the time mentioned by the appellant and time mentioned in the post mortem reports match. Consequently, on this basis we can say that appellant's statement is true. Furthermore, it states that the cause of death is intake of excessive sleeping pills and during police investigation as well as appellant mentioned that when he returned from morning walk he found deceased's dead body lying on bed and a bottle of sleeping pills in her hand. [61] From this fact we can conclude that appellant's statement and post mortem report are same hence it is a reliable statement.

Moreover, it expounds that bruises were found on many parts of the deceased body, but it is not clear that these bruises had been caused by deceased herself or by some other person to her. By the above two statements of appellant which come across true and matches with the post mortem report we can conclude the fact that the third statement given by the appellant is also true that on 18th February 2015 night he had an argument with deceased over the issue of shifting at tonk separately from the entire family and when he refused to do so, the deceased injured herself with the wall of the room and got bruises on her body.[62] Here the expert opinion i.e. the doctor is also

[59]Moot proposition, Page 5, ¶ 1, line 1.
[60]Moot proposition, Page 3, ¶ 5, line 1.
[61]Moot proposition, Page 3, ¶ 5, line 3.
[62]Moot proposition, Page 3, ¶ 6, line 3.

not sure about the fact that from where deceased got bruises so the court shall accept and rely on the statement of the appellant.

Lastly, the post mortem report states that the marks of the bruises were approximate 12 hours older than the time of death. So on this points the experts are not sure about the exact time and also not aware of the fact that who has made those bruises. In the case *State Delhi Administration* v. *Pali Ram*,[63] the hon'ble Supreme Court held that "No expert can claim that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of questions put to him." hence on this basis we can conclude that expert opinion is not reliable thereby not proving the allegations of cruelty against the appellant".

Further in the case of *Rangappa Gounden* v. *State*,[64] the hon'ble Supreme Court held that "a post-mortem report is no evidence. The doctor may use it to refresh his memory while giving his evidence". Auxiliary to it, in the case of *Maula Bux* v. *State of Rajasthan*[65] It was held by the hon'ble Supreme Court that "as post-mortem reports are concerned, sufficient weightage is given to doctor's deposition who had conducted the post-mortem report. When the post-mortem report is more favorable to the appellant and there are discrepancies between the medical evidence and the inquest report, the benefit of discrepancies should be given to the appellant by accepting the post-mortem report instead of inquest report".

Furthermore, in the case of *Ram Narayan v. State of U. P.*[66] the Hon'ble Supreme Court held that the opinion of an expert cannot be substantive nor be conclusive evidence in a case. It is the opinion of a third person and can be used for purpose of corroboration.

From the above analysis it may be submitted that evidence of an expert and post mortem report is not a substantive piece of evidence. The courts do not consider it conclusive. Without independent and reliable corroboration it may have no value in the eye of law. Thus it is humbly submitted to

[63]State Delhi Administration v. Pali Ram, A.I.R. 1979 S.C. 14.
[64]Rangappa Gounden v. State, A.I.R. 1936 Mad. 426 : (1937) Cr. L.J. 471 ; Hadi Kirsani v. State, A.I.R. 1966 Ori. 21 : (1966) Cr. L.J. 45 ; Bechan Prasad v. Jhuri, A.I.R. 1936 All. 363 : (1937) Cr. L.J. 424 ; Rohinu v. Empress, I.L.R. 9 Cal. 455; L. Basappa v. State, A.I.R. 1960 Bom. 461.
[65]MaulaBux v. State of Rajasthan, (1983) 1 S.C.C. 379.
[66]Ram Narayan v. State of U.P., A.I.R. 1973 S.C. 2200 ; Khyali v. State, (1980) A.L.J. 230.

Hon'ble Court that in the present case the post mortem report is not clear and cannot be relied upon and appellant cannot be punished on the basis of post mortem report.

4. WHETHER SECTION 304-B OF THE INDIAN PENAL CODE, 1860 IS APPLICABLE IN THE PRESENT CASE?

It is humbly submitted before the hon'ble court that the hon'ble High Court and hon'ble Trial Court has erred by convicting the appellant under section 304-B of the *Indian Penal Code,* 1860 as the essential ingredients to prove a case under section 304-B of *Indian Penal Code,* 1860 are not fulfilled in the present case.

According to Section 304-B of the *Indian Penal Code*, 1860:

To constitute an offence under Section 304-B the following essentials must be satisfied:[67]

(i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;[68]

(ii) Such death must have occurred within seven years of her marriage;

(iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;[69]

(iv) Such cruelty or harassment must be for or in connection with demand of dowry.[70]

The aforesaid legal position, as it stands now, is that in order to establish the offence under Section 304-B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances and such death occurs within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or

[67]Shanti v. State of Haryana, A.I.R. 1991 S.C. 1226 ; State of H.P. v. Jagroop Singh, (1993) Cr. L.J. 2766 (H.P.) ; Ratan Lal v. State of M.P., (1993) Cr. L.J. 3723, (M.P.) ; Sankara Suri Babu v. State of A.P., (1991) Cr. L.J. 1480 (A.P.).

[68]Ashok Kumar v. State of Punjab, (1987) Cr. L.J. 1412 (P&H), where the wife died of self-poisoning within statutory period, but there was no proof of cruelty by the husband or others. Gurditta Singh v. State of Rajasthan, (1992) Cr. L.J. 309 (DB), single judge session, (1991) Cr. L.J. 303 (Raj.) where the court said that simply because a young wife had brought her life to a tragic end by committing suicide by consuming insecticide it could not be said that she had embraced death on account of any demand of dowry by her husband or mother-in-law.

[69]Bajrang v. State of Rajasthan, (1998) Cr. L.J. 134 (Raj.), Cruelty soon before death for demand for dowry are necessary constituents without which the offence is not complete.

[70]Nilamani Nath v. State of Orissa, (1998) Cr. L.J. 962 (Ori.) dowry demand could not be proved nor the facts who caused death, was mere production of a stick with which death was supposed to have been caused not sufficient. Another case in which demand for dowry and ill-treatment could not be proved was before the Supreme Court is Ramaswamy v. Dasari Mohan, (1998) Cr. L.J. 1105 : A.I.R. 1998 S.C. 774.

harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry.[71]

It will be pertinent to highlight that in the present case, there is no eye-witness to the occurrence. Only relations of the deceased have been examined to say that she was subjected to maltreatment, harassment and cruelty. There is nowhere mention in the statement of facts that there was demand of dowry.

In the instant case two secondary evidence submitted to the police by Charan Singh First, the photocopy of the documents regarding the selling of ancestral property of Churu and Second, buying of the motorbike[72]. These documents does not prove that there was demand of 20 lakh rupees and a motorbike from the appellant in relation to dowry nor it can be proved that possession of the amount or of the bike was transferred to the appellant.[73,74]

That no reliance can be placed on the statements given by Charan Singh, Leelawati and Mamta , being close relatives of the deceased; the evidence given by them as to demand of dowry was too general and vague; their evidence suffered from contradictions on material points and they had motive to speak against the appellant and both the courts have failed to see that the economic condition of the appellant was much better than that of the parents of the deceased and there is no evidence that whether they paid money at all to the appellant as dowry. The appellant strongly contend that there is no definite evidence to show that deceased was subjected to cruelty or harassment by the appellant soon before her death for, or in connection with any demand for dowry to attract offence under Section 304-B *Indian Penal Code* 1860.[75] in the absence of satisfying the ingredients of offence under Section 304-B *Indian Penal Code* 1860, order of conviction passed and sentence imposed on the appellant cannot be sustained.

[71]Bakshish Ram and another v. State of Punjab, A.I.R. 2013 S.C. 1484; (2013) 4 S.C.C. 131.
[72]Moot Proposition, Page 3, ¶ 4 line 1.
[73]Moot Proposition, page 3, ¶ 4 line 2.
[74]State of H.P. v. Jograj, (1997) Cr. L.J. 2033 (H.P.). No conviction because the alleged demand of Rs 15000 was not proved and was also not in itself a demand of dowry.
[75]Surveshwar Singh v. State of Rajasthan, (1999) Cr. L.J. 2179 (Raj.). No evidence of cruelty soon before death, that is to say, in the immediate past, acquittal.

Council for respondent would like to reiterate the enunciated by Supreme Court in *State of U.P.* v. *Mahesh Chandra Pandey*[76] that the Appellant cannot be convicted under the section 304-B of code unless there is reliable evidence regarding demand of dowry.

In *Hans Raj* v. *State of Haryana*[77] this hon'ble court explained the expression "soon before death" that there should have been continuous cruelty connected with demand of dowry and the same should be shown to be in existence with demand of dowry. The meaning of the expression is to be decided by the court after analyzing facts and circumstances leading to the victim's death to see whether there is any proximate connection between the cruelty or harassment for dowry demand and the death. As in present case there is no direct or circumstantial evidence to prove that soon before death the deceased was subject to any cruelty and harassment. In the case of *State of H.P.* v. *Nikku Ram*[78] where it as held that where injuries are found on the person of the deceased could not have caused her death, the offence would not attract the mischief of the section 304-B. that in the present facts though the bruises have been found on many parts of the deceased body but the cause of her death was only intake of excessive sleeping pills and not the bruises.

According to the post mortem repost the death of deceased is only intake of excessive sleeping pills.[79] And there is no evidence available to prove that the sleeping pills were administrated by appellant to the deceased. Whereas the bruises marks are concerns Nidhi have already mentioned to the police that deceased often us to fight with appellant and injured herself and a night before death she got into argument with appellant mentioning the desire to shift at tonk as she doesn't want to live in a joint family at the village and get injured.[80] Further, the trial court also ignored the fact that the respondent had failed to produce any other evidence than the post mortem report. Hence, it can be clearly stated that there was absence of the intention to cause any critical injury to the deceased.

[76]State of U.P. v. Mahesh Chandra Pandey, A.I.R. 2000 S.C. 3631.
[77]Hans Raj v. State of Haryana, A.I.R. 2000 S.C. 2324 ; Baba ji Charan Barik v. State, (1994) Cr. L.J. 1684 (Ori.).no proof of harassment. About the expression "soon before" the Court said it is a relative term and it would depend upon the circumstances of each case and no fixed period can be indicated in that regard.
[78]State of H.P. v. Nikku Ram, (1995) Cr. L.J. 4184.
[79]Moot proposition, Page 5, ¶ 1 line 2.
[80]Moot proposition, Page 3, ¶ 6 line 3.

In *Akula Ravinder* v. *State of A.P.*[81] where it is emphasized that death must to be prove to be one out of course of nature and the mere fact that the deceased was young and death was no accidental is not sufficient to establish that death must have occurred otherwise than under normal circumstances.

In the instant case, there is no reference of demand of dowry in the facts of the case or in the First Information Report or in the statement made by interested witness under section 161 of *Criminal Procedure Code*, that there was definite evidence to show that deceased was subjected to cruelty or harassment by the appellant soon before her death for, or in connection with any demand for dowry hence appellant cannot be held liable under section 304-B *Indian Penal Code*.

In *Nunna Venkateswarlu* v. *State of A.P.*[82] No agreement at the time of marriage about the subsequent demands, the Court said they would not create the presumption that there was further any demand of dowry without any substantial evidence.

In *Bajrang* v. *State of Rajasthan*[83] for constituting the offence punishable under section 304-B, *Indian Penal Code* it is necessary that soon before death of the married lady she must have been harassed or cruelty treated for demand for dowry. The evidence against appellants on that ingredient of the offence under Section 304-B does not stand proved to my satisfaction in the facts and circumstances of the present case. All of them deserves to be acquitted of the offence under section 304-B, *Indian Penal Code* 1860.

In the instant case, there is no reference of demand of dowry in the facts of the case or in the First Information Report or in the statement made by interested witness under Section 161 of *Criminal Procedure Code*, that there was definite evidence to show that deceased was subjected to cruelty or harassment by the appellant soon before her death for, or in connection with any demand for dowry hence appellant cannot be held liable under section 304-B *Indian Penal Code* 1860.

[81]Akula Ravinder v. State of A.P., A.I.R. 1991 S.C. 1142 ; 1991 S.C.C. (Cri.) 990.
[82]NunnaVenkateswarlu v. State of A.P., (1996) Cr. L.J. 108 (AP.)
[83]Bajrang v. State of Rajasthan, (1998) Cr. L.J. 134 A.T.P. 135 (Raj.).

CONCLUSION

Therefore it is humbly submitted that the Conviction of appellant can be set aside on following grounds.

1. **There was no evidence of immediate demand of dowry.**

2. **It were nowhere mention regarding cruelty with view to demand of dowry made either in fact of the case or in First Information Report or statement made under section 161 *Criminal Procedure Code*, 1973.**

3. **No Demand of dowry was made at time of marriage.**

4. **Appellant after the death of his father was not able to spend sufficient time to deceased and also not able to fulfill her intense demand like diamond necklace and shifting to tonk with her. Because of it deceased could not withstand with appellant and committed suicide.**

PRAYER

In light of the aforementioned arguments, it is most humbly prayed before this Hon'ble Court that this Hon'ble Court may be pleased to:

1. **The decision of the High Court of Rajasthan shall be set aside.**
2. **The above grounds are not sufficient to decide the guilty of the appellant.**
3. **There is no evidentiary value of First Information Report and statements made under section 161 of Criminal Procedure Code, 1974 and the appellant cannot be punished only on the basis of these evidences.**
4. **The evidentiary value of expert opinion is not substantive and the appellant cannot be punished on the basis of post mortem report.**
5. **The appellant is not liable for any offence related to murder of deceased under section 300, 302, 304-B, and 120-B read with 34 of the Indian Penal Code, 1860.**

Pass any other order as this Hon'ble Court may deem fit in the light and interest of justice.

All of which is humbly submitted

Counsel for Appellant

_____

Date: _____

Place: **New Delhi**_____