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 RESPONDENT

STATE OF RAJASTHAN

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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.	Govt.	Government
11.	Guj. LR.	Gujarat Law Reporter
12.	H.C.	High Court
13.	I.L.R.	Indian Law Reporter
14.	J&K	Jammu & Kashmir
15.	Ker.	Kerala
16.	Ld.	Learned
17.	Mad.	Madras
18.	Mah. L.J.	Maharashtra Law Journal
19.	M.P. L.J.	Madhya Pradesh Law Journal
20.	M.U.B.	Myanmar Unity Bank
21.	N.C.T.	National Capital Territory
22.	Ors.	Others
23.	P&H	Punjab and Haryana
24.	para.	Paragraph
25.	S.	Section
26.	S.C.C.	Supreme Court Cases
27.	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 AND THE RESPONDENT HUMBLY SUBMITS TO THE JURISDICTION.

THE PRESENT WRITTEN SUBMISSION SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS IN THE PRESENT CASE.

[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the High Court-has on appeal reversed an order of acquittal of an appellant person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the appellant person and sentenced him to death;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 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 F.I.R. 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 sufficient to prove the guilt of appellant as in this issue it has been proved by the respondent that the essential ingredients of section 302 and 304B of the *Indian Penal Code* 1860 are fulfilled in the present case so the appellant is liable for the crime under above section. Further it is proved with the help of the statements of facts that intention and motive of committing the offence is present in the instant case which provides sufficient grounds to establish the guilt of the accused.

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 BASIS OF THESE EVIDENCES?

First Information Report is the Bible of the case initiated on Police report. The importance of the First Information Report cannot be under-estimated because it is the first version coming to the knowledge of the Police and setting its machinery to motion. The statements which are made under Section 161, *Criminal Procedure Code,* 1973 are documentary evidence, can be used for taking action against persons having found participated in commission of offence. This proves that the statements made during the investigation is a solid piece of evidence therefore the appellant can 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?

The evidentiary value of expert opinion in the instant case is of utmost importance. The counsel for the respondent submits that both the courts rightly on certainty and fact have reached the conclusion that the appellants were responsible for administering sleeping pills to the deceased and that it is be a case of murder, and rightly found them guilty.

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

Section 304-B of *Indian Penal Code* 1860 is applicable in the present case and the respondent will prove with proper evidence that soon before her death the deceased was subjected to cruelty and harassment by her husband and other relatives of her husband and such cruelty or harassment was in connection with demand for dowry. The main evidence in the present case is the post mortem report which states that the bruises have been found on many parts of the deceased body, and death of deceased is due to intake of excessive sleeping pills which were forcefully given to her.

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 High Court and Court of Session has accurately given the judgment by convicting the appellant for the offence of murder under section 302, 304-B, 120-B read with 34 of the *Indian Penal Code,* 1860. In the instant case essential ingredients of the offence of murder and dowry death are fulfilled which are sufficient ground for deciding the guilt of the appellant.

1.1. Whether appellant is liable for the offence of murder under section 300 of the *Indian Penal Code,* 1860.

It is humbly submitted before the hon'ble court that the appellant is liable for the offence of Murder of deceased under section 300 of the *Indian Penal Code,* 1860 and shall be punished under section 302 because the elements to constitute a crime of Murder under section 300 of *Indian Penal Code* 1860 are been fulfilled in the present case so the appellant is liable for committing the offence of Murder of the deceased.

In the case of *Ajit Singh* v. *State of Punjab*[2], the hon'ble Supreme Court held that "in order to hold whether an offence would fall under Section 302 of the *Indian Penal Code,* 1860 the courts have to be extremely cautious in examining whether the same falls under Section 300 of the Code or not." So it is necessary to first prove that the murder has been done under section 300 of the *Indian Penal Code,* 1860.[3]

It is humbly submitted that Section 302 of the *Indian Penal Code,* 1860 prescribes punishment for committing the murder. In case of *Rampal Singh* v. *State Of U.P.*[4], *Abdul Waheed Khan &Ors* v.

[2]Ajit Singh v. State of Punjab, (2011) 9 S.C.C. 462.
[3]RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, 32 (Y.V. Chandrachud & V.R. Manohar ed.Wadhwa & Company, 2008) (1896).
[4]Rampal Singh v.State Of U.P, (2012) Cr. L.J. 3765.

State of A.P.[5],*Virsa Singh* v. *State of Punjab*[6] and *Rajwant and Anr*. v. *State of Kerala*[7] it has been said and stated by various judges that to constitute a case for murder a person shall do an act:

i. With the intention of causing death, or;

ii. With the intention of causing such bodily injury as is likely to cause death, or;

iii. With the knowledge that such an act is likely to cause death.

1.1.1. That the requisites of the clause (1) of murder are fulfilled in the circumstances of the instant case, thus it incurs liability under this clause.

It is submitted that the first clause to be proved for making the person liable for murder is that the person has done the act with the intention of causing death. Now, it has been clearly stated in the facts of the case that appellant had committed the offence of murder of the deceased as from the day when the deceased with her daughter went back to her matrimonial house, the situation get worse as her mobile phone remain switched off from that day till she died. All her social accounts were deleted and she was bound to talk with her husband's phone and in his presence only[8]. These all instances clearly show the malafied conduct of the appellant which resulted in the death of the deceased.

It has been clearly stated in the case of *Suraj Singh* v. *State Of U.P*[9] and, *Chotey & Anr*. v. *Emperor*[10] the Hon'ble Supreme Court said that:

> *".....Where the murder was committed at the time when the offence was being committed by the person and there is evidence that the accused intentinally does such an act to commit the offence or did the offence before the offence was committed, S. 300 would apply. Section 302 is only brought in to operation when circumstances amounting to abetment of a particular crime have first been proved, and then the presence of the accused at the commission of crime is proved in addition. Section 302 deals with the case where there has been the crime of murder but where also there has been actual commission of the crime abetted and the abettor has been present thereat. It is necessary first to make out the circumstances which constitute murder, so that if absent, the accused would be liable to be*

[5]Abdul Waheed Khan & Ors v. State of A.P., (2002) 7 S.C.C. 175 (India).
[6]Virsa Singh v. State of Punjab, A.I.R. 1958 S.C. 465.
[7]Rajwant & Anr. v. State of Kerala, A.I.R. 1966 S.C. 1874.
[8]Moot Proposition, Page 2, ¶ 4, line 2.
[9]Suraj Singh v. State Of U.P., (2008) 2 A.L.D. (Cri.) 301.
[10]Chotey & Anr. v. Emperor, A.I.R. 1948 All. 168.

punished as an murderer, and then to show that he was also present when the offence was committed."

In the present case soon after the death of the deceased the appellant informed his mother and sister. They immediately called their other family members but none of them even tried to call police, doctor, and the family members of the deceased with immediate cause. In addition to that the appellant started doing preparation of the ceremonies in a hush-hush manner. These instances clearly show the malafied intention and wrongful conduct of the appellant which proves that the appellant wanted to hide the offence of murder by quietly and secretly disposing of the body of the respondent. Also the conduct of the appellant prior to & immediately after the occurrence clearly shows that they were not innocent.

So, it is proved by the above stated facts and cases cited that the appellant had intentionally does the act of hitting on the injured body part of the respondent in order to commit the death of the respondent.

1.1.2. That the requisites of the clause (2) of murder are fulfilled in the circumstances of the instant case, thus it incurs liability under this clause.

It is submitted that the second clause to be proved for making the person liable for murder is that the person has done the act With the intention of causing such bodily injury as is likely to cause death.[11] Now, In the present case the intention to commit the offence of murder is clearly shown by the facts that there was a clear demand of dowry from the side of appellants and when the greed of dowry was not fulfilled, the appellants decided to end the life of the deceased by torturing her and finally forcefully gave the deceased excessive sleeping pills which was the main cause of death of the deceased.

In the case of *Virsa Singh* v. *The State of Punjab*[12] the Supreme Court defined the bodily injury in case of murder as:

"If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death." It was said that the intention that the section requires must be related, not only

[11]R. P. KATHURIA, LAW OF CRIMES AND CRIMINOLOGY, (2nd ed., Vinod Publications, 2007, Delhi).
[12]Virsa Singh v. The State of Punjab, A.I.R. 1958 S.C. 465.

to the bodily injury inflicted, but also to the clause, "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

So it is proved that the appellant has cause such a bodily injury to the respondent with the intention as is likely to cause the death of the respondent.

1.1.3. That the requisites of the clause (3) of murder are fulfilled in the circumstances of the instant case, thus it incurs liability under this clause.

It is humbly submitted that the bodily injury which was sufficient to cause death in the ordinary course of nature as section 300 Indian Penal Code third clause states, "*If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death"*

The court in the case of *Jai Prakash* v. *State (Delhi Administration)*[13]*; Harjinder Singh Alias Jinda* v. *Delhi Administration*[14]*; Morcha* v. *State Of Rajasthan*[15]*; Saleem Khan And Anr.* v. *State Of J.& K.*.[16]the Supreme Court has held that the prosecution must prove the following before it can bring a case under s. 300 *Indian Penal Code* third clause.

a. It must establish, quite objectively, that a bodily injury is present.
b. The nature of the injury must be proved; these are purely objective investigations.
c. 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.
d. 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.[17]

Now in the instant case this part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. The third clause of s. 300 *Indian Penal Code* consists of two parts. Under the first part it must be proved that there was an intention to inflict the injury that is found to be present and under the second part it must be proved that the injury was sufficient in

[13]Jai Prakash v. State (Delhi Administration) (1991) S.C.R. (1) 202, (1991) S.C.C. (2) 32.
[14]Harjinder Singh Alias Jinda v. Delhi Administration, A.I.R. 1968 S.C. 867, (1968) S.C.R. (2) 246.
[15]Morcha v. The State Of Rajasthan, A.I.R. 1979 S.C. 80, (1979) S.C.R. (1) 744.
[16]Saleem Khan & Anr. v. State of J&K. (1997) Cr. L.J. 2518.
[17]T. BHATTACHARYYA, THE INDIAN PENAL CODE 24 (Central Law Agency 2007) (1994).

the ordinary course of nature to cause death. The words "and the bodily injury intended to be inflicted" are merely descriptive. All this means is, that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury found to be present was the injury intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

It has been clearly stated in the facts of the case that and the Post Mortem Report that the main cause of the death of the deceased was excessive intake of sleeping pills which were forcefully administered to the deceased. Now in the Post Mortem Report of the deceased it has clearly stated that the bruises marks were approximate 12 hrs. older than the time of death but according to appellant deceased got bruises on 18th of Feb which show's that he is lying and he is hiding some essential facts of the case.

So it is humbly prayed that the decision of the learned High Court and Court of Sessions is accurate and the appellant shall be held guilty for the offence of murder of the deceased.

Hence it is proved that the appellant has fulfill all the three essential ingredients to constitute a crime of murder under section 300 of the *Indian Penal Code*, 1860 and shall be made punishable under section 302 of the *Indian Penal Code*, 1860.

1.2. Whether the Appellants are liable under section 120-B read with section 34.

It is humbly submitted before this hon'ble court that Appellant is liable under section 120-B read with section 34 as ingredients of the offence of criminal conspiracy are fulfilled

The ingredients of the offence of criminal conspiracy lead down in *Mir Nagvi Askari* v. *C.B.I.*[18]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

[18]Mir Nagvi Askari v. C.B.I., (2009) 15 S.C.C. 643.

b) an act which is though not illegal by illegal means.

In the instant case, the statements made by the appellants are contradicting to the facts on record that clearly shows that they had an agreement and that agreement is in regard to the murder of the deceased which they successfully accomplished. Appellant fails to produce any evidence in relation of their presence at the stated locations at the time of incidences.

From the above fact it can be clearly stated that there is no evidence on record to prove that at the time of death of deceased only two family members was present in the house and doing their respective jobs. And appellant have no evidence to prove that there was no agreement between the family members to commit a crime.

Furthermore, Statement made under Section 161 of *Criminal Procedure Code*, 1973 we can also conclude that the first demand of dowry was in favor of appellant brother which indicate that somewhere his brother and family was caught up in criminal conspiracy and when deceased died no one called up the doctor nor the police and they were also taking the deceased body for funeral without waiting for deceased family to come. These all particulars prove that there was a clear criminal conspiracy and a common intention between them.

It is humbly submitted that the evidences are in itself sufficient to prove the guilty of the appellant, statements made by the respondent are colliding with evidences on record but no such evidences has been produce by the appellants in relation to their statements which clearly shows that the evidence on record 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 BASIS OF THESE EVIDENCES?

It is humbly submitted before the hon'ble court that the he relative importance of First Information Report is far greater than that of any other statement recorded by the police during the course of the investigation. The evidentiary value of First Information Report and statements made under section 161 of *Criminal Procedure Code*, 1973 is of great importance in deciding the case where there are no eyewitnesses of the case and the appellant can be punished only on 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 in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the First Information Report is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them the weapons, if any, used, as also the names of the eyewitnesses, if any.[19]

According to Section 154 of the *Criminal Procedure Code*, 1973 '*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 in writing as aforesaid , shall be signed by the person giving it, and the substance thereof shall be entered in the book to be kept by such officer in such form as the state government may prescribe in this behalf.*[20]

[19]Meharaj Singh (L/Nk.) v State of U.P., (1994) 5 S.C.C. 188.
[20]The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974. Section 154.

A First Information Report means the information, by whomsoever given, to the officer in charge of a police station of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.[21]

In the case of *T.T. Antony* v. *State of Kerela*,[22] the hon'ble court held that "while dealing with Section 154 and other relevant provisions, information given under sub-section (1) of Section 154 *Criminal Procedure Code*, 1973 is commonly known as First Information Report though this term is not used in the Code. It is a very important document. And as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 *Criminal Procedure Code*, 1973, as the case may be, and forwarding of a police report under Section 173 *Criminal Procedure Code*, 1973.

If First Information Report is made immediately after the occurrence of an incident, when the memory of the person giving it is fresh in his mind about the occurrence, the sanctity of such First Information Report will be increased. That too, First Information Report must not be made during the investigation. In *Sahadevan Rajan and Ors.* v. *State Of Kerala*[23] it was held that the value of First Information Report depends on the circumstances of each case, nature of the crime, information and opportunity of witnessing the offence.

In *Pandurang Chandrakant Mhatre* v. *State of Maharashtra*[24] 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.

[21]State of Bombay v. Rusy Mistry, (1960) Cr. L.J. 532 : A.I.R. 1960 S.C. 391 ; Gurushima Naidu v. Guruswami Naidu, (1951) 52 Cr. L.J. 857 : A.I.R. 1951 Mad. 812, 813.
[22]T.T. Antony; Bijoy Singh v. State of Bihar, (2002) 9 S.C.C. 147 ; A.I.R. 2002 S.C. 1949.
[23]Sahadevan Rajan and Ors.v. State Of Kerala, (1992) Cr.L.J. 2049.
[24]Pandurang Chandrakant Mhatre v State of Maharashtra, (2009) 10 S.C.C. 773 ; State of Kerala v. Anila chandran @ Madhu and Ors., A.I.R. 2009 S.C. 1866; Pala Singh v. State of Punjab, A.I.R. 1972 S.C. 2679; Sarwan Singh v. State of Punjab, A.I.R. 1976 S.C. 2304; Akbar Sheikh and Ors. v. State of W.B., (2009) 7 S.C.C. 415.

The evidentiary value of First Information Report is far greater than that of any other statement recorded by the police during the course of investigation, its importance as conveying the earliest information regarding the occurrence cannot be doubted.

So, the First Information Report is a very valuable document. It is of utmost legal importance, both from the point of view of the prosecution and the defence. First Information Report constitutes the "foundation" of the case in the first instance and whole of the case is built on it. If the foundation is weak, then the prosecution case will tumble down. If on the other hand, if it is strong it will endure the attacks of the appellant.

First Information Report is the Bible of the case initiated on Police report. The importance of the First Information Report cannot be under-estimated because it is the first version coming to the knowledge of the Police and setting its machinery to motion.[25] It is for that reason that it has been provided under section 157 of the *Criminal procedure Code*, 1973 that the First Information Report should be sent forthwith to the concerned Magistrate. Provision of Law is to safeguard against any embellishment and concoction that may be subsequently made in the First Information Report. The value of First Information Report is that it is the first report of an occurrence to the Police and as such it is entitled to the most careful consideration by the courts of law. Its importance lies in the facts that it is presumed to be an untutored, unplanned and thought out version of the incident just as it reaches the Police.

Great importance is attached to the First Information Report by the courts for the following reasons:[26]

(1) It is usually the information given immediately after the occurrence when memory is fresh with no scope for fabrication on the part of the person giving it.

(2) There is also no chance for interested persons to interfere in the matter and fabricate or concoct any stories.

[25]Kalyan v. State of U.P., (2001) 9 S.C.C. 632; Ram Ratan v. State of U.P., (2002) Cr. L.J. 2688 (All.).
[26]First Information Report, Police Training school, Puducherry.

(3) It is the first record of the case made immediately after the occurrence and before the investigation starts.

(4) It indicates the version of the given case at the very outset, occurrence and the material on which the investigation originally started. Chances of making mistakes are less.

Once registration of the First Information Report is proved by the prosecution and the same is accepted on record by the court and the preservation establishes its case beyond reasonable doubt by other admission, cogent and relevant evidence, it will be impermissible for Court to ignore the evidentiary value of the First Information Report.[27]

Hence it can clearly be observed from the above judgment that First Information Report is a substantive piece of evidence therefore appellant can 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 evidentiary value of statement made under Section 161 of *Criminal Procedure Code*, 1973 can be understood by the section itself and Section 161 sub clause 2 states that *Such person shall be bound to answer truly all question relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.*[28]

In his statement Charan Singh divulged information about INR 20 lakh and the demand of the motor bike and photocopy of the document regarding the selling of ancestral property of Churu and purchase of bike this has also been presented and submitted to the police according to his statement made under section 161 of *Criminal Procedure Code*, 1973[29] Another statement of Charan Singh states that deceased's in laws were harassing her and all her social media accounts were also deleted. This depicts the harassment which was done by her in laws and marks of bruises

[27]Bable @ Gurdeep Singh v. State of Chhattisgarh through P.S.O.P. Kursipur, A.I.R. 2012 S.C. 2621.
[28]The Code of Criminal Procedure, 1973 No. 2, Acts of Parliament, 1974.
[29]Moot proposition, Page 3, ¶ 4, line 1.

found on her body also states this and no contrary fact has been countered from the appellant's side regarding these statements.

Furthermore, According to Charan Singh's statement and also according to facts of the case there was a time lapse of 14 hours in informing him about the death of his daughter[30] and also on their arrival they saw the appellants were ready to take deceased dead body for funeral without informing to the police[31]. One more crucial fact in this regard is that Charan Singh's elder daughter Mamta had been spoken to the deceased at 7:45 AM and appellant said that deceased died at 7:00 AM[32] which clearly shows an indication that deceased has been murdered by her husband and in laws.

In the case of *Minati Das* v. *Radha Kanta Patra*,[33] the hon'ble court held that, the statement recorded under Section 161, *Criminal Procedure Code*, 1973 along with the charge-sheet are obviously documents produced for the inspection of the court in connection with the consideration of framing of charge and for other purposes and therefore these recorded statements answer the description of documentary evidence as contained in Section 3 of the *Indian Evidence Act*. Such statements recorded under Section 161, *Criminal Procedure Code*, 1973 can also be viewed as proposed or possible oral evidence coming within the definition of evidence as contained in the said Section 3 of the Evidence Act because the makers of such recorded statements are expected to make such statements while examined in court. Such proposed or possible evidence however can be adduced in evidence in court only if the same is admissible and relevant under law.

It was held that, statement under Section 161, *Criminal Procedure Code*, 1973 was a documentary evidence, can be used for taking action against persons having found participated in commission of offence.

[30]Moot proposition, Page 2, ¶ 1, line 3.
[31]Moot proposition, Page 1, ¶ 3, line 1.
[32]Moot proposition, Page 3, ¶ 3, line 1.
[33]Minati Das v. Radha Kanta Patra, (1994) 1 East Cri Cas.451 (Cal.).

In the case of *L.K. Nayak* v. *State*[34] it was held that evidence of relative or interested witnesses cannot be rejected in total on the ground of their relation. Relatives are the last persons to spare real culprit.

In present case the statements made by the respondent under section 161 are reliable as they are proved with evidence as stated under section 162 regarding to the use of statements in evidence.

Section 162 provides that "*when any witness is called for the prosecution in such inquiry or trial whose statement if duly proved, may be used by the prosecution and with the permission of the court, and to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872and when any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross examination*."[35]

In *State of Gujarat* v. *Lavaram Ramchandra*, this hon'ble Court opinion that the probative value of the statement has to be judged in the circumstances of each case. No hard and fast rule can be laid down that in all such cases the evidence of such witness will be of no value.[36]

It is humbly submitted before this hon'ble court that by the above facts and case law it was clear that there is a significant evidentiary value of First Information Report and statements made under section 161 of *Criminal Procedure Code*, 1973

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:[37]

[34]L.K. Nayak v State, (2013) Cr. L.J. 1792 (Chh.).
[35]The Code of Criminal Procedure, 1973 No. 2, Acts of Parliament, 1974. Section 162.
[36]State of Gujarat v. Lavaram Ramchandra, (1979) 2 G.L.R. 208 (Guj.) (DB): Nathu Manchhu v. State,A.I.R. 1978 Guj. 49 (DB).
[37] R.V. KELKAR'S, LECTURES ON CRIMINAL PROCEDURE, 71 (4t ed., Dr. K.N. Chandrasekharan Pillai, Eastern Book Company 2015).

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.

The First Information Report can have better corroborative value if it is recorded before there is time and opportunity to embellish or before the informant's memory fails.[38] It does not matter whether the person lodging the report had witnessed the commission of the offence or not, nor is it necessary that all details should be mentioned in the report about the manner of occurrence, the participants in the crime, the time and place of occurrence etc. The requirement of section 154, *Criminal Procedure Code* is only this that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.[39]

It is not the requirement of law that the minutest details be recorded in the First Information Report lodged immediately after the occurrence. The fact of the state of mental agony of the person making the First Information Report who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the First Information Report is to obtain the earliest information regarding the circumstance in which the crime was committed.

It is humbly submitted before this hon'ble court that by the above facts it is clear that there is evidentiary value of First Information Report and statements made under section 161 of *Criminal Procedure Code* and appellant can be punished only on the basis of these evidence.

[38]Apren Joseph v. State of Kerala, (1973) 3 S.C.C. 114.
[39]Hem Raj v. State of Punjab, (2003) 4 Crime 254 S.C.

3. WHAT IS THE EVIDENTIARY VALUE OF EXPERT OPINION? CAN AN ACCUSED 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. This qualification makes the latter's evidence admissible in that particular case though he is no way related to the case. Because an expert has an advantage of a particular knowledge vis-à-vis a judge who is not equipped with the technical knowledge and hence not capable of drawing an inference from the facts presented before him.

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

The Section 45 of *Indian Evidence Act,* 1872 deals with the provision relating opinion of experts. *According to section 45: 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*.[40]

An expert is a person who has made a special study of the subject or acquired special experience therein. An expert in order to be competent as a witness need not have acquired his knowledge professionally. It is sufficient, so far as the admissibility of the evidence goes, if he has acquired a special experience therein.[41]

The importance of the provision of expert opinion has been explained in the case of *State of H.P.* v. *Jai Lal and Ors.*[42]. It was held by the hon'ble court that Section 45 of the *Indian Evidence Act,* 1872 which makes opinion of experts admissible lays down, that, when the court has to form an

[40]Collector, Jabalpur v. A.Y. jahagir, A.I.R. 1971 M.P. 32.
[41]Baldeorai v. Urmila Kumara, A.I.R. 1979 S.C. 879;Assistant collector, C.E., Kalicut v. V.P. Sayed Mohd., (1983) Cr. L.J. 225 : A.I.R. 1983 S.C. 168 (GOLDSMITH); Kishan Singh v. Nichhattar Singh, A.I.R. 1983 Punj. (Prrinciple of deaf and dumb school).
[42]State of H.P. v Jai Lal and Ors., (1999) 7 S.C.C. 280.

opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

When considering questions as to function and weight, to apparently conflicting principles must be born in mind. First, the expert does not decide the case. he assists the jury or justices to do so .the principal was stated by lord president cooper thus "(the duty of the expert witness)is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved by the evidence the scientific opinion evidence, is intelligible, convicting and tested, becomes a factor (and often and an important factor)for consideration along with the whole other evidence in the case".[43]

In *Mafabai N. Raval* v. *State of Gujrat*[44] it was held by hon'ble Supreme Court that in respect of nature of injuries and cause of death, the most competent witness is the doctor examining the deceased and conducting post mortem. Unless there is something inherently defective, the court cannot substitute its opinion in place of the doctors.

In *Ramesh Chandra Agrawal* v. *Regency hospital*[45] it was held by the hon'ble court that for the case where science is involved, role of expert cannot be disputed. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed.

[43]Davie v. Edinburg magistrates, A.I.R. 1953 S.C. 34.
[44]Mafabai N. Raval v. State of Gujrat, A.I.R. 1992 S.C. 2186; (1992) S.C. Cr. L.J. 3710 ; (1992) 4 S.C.C. 69.
[45]Ramesh Chandra Agarwal v. Regency Hospital Ltd., (2009) 7 S.C.J. 748.

3.2. Can the accused be punished solely on the basis of post mortem report?

It is humbly submitted before the hon'ble court that the learned judges of High Court and the Court of Sessions rightly pronounced the decision that the appellants are responsible for administering sleeping pills to the deceased and that it is a case of murder, and rightly found them guilty.

The important noticeable points in post mortem report are:

1) The time of death of deceased is between 06:00 to 08:00 am approx.[46]

Primarily it states that the time of death of the deceased is between 06:00-08:00 a.m. The Deceased's sister Mamta gave the statement under Section 161 of *Criminal Procedure Code*, 1973 to the police officer that the deceased had called her at 07:45 a.m. on the same day, i.e. 20th February, 2015,[47] through her husband's phone and suddenly call got disconnected within a minute. Whereas appellant gave the statement during police investigation that when he came from morning walk at 07:00 a.m. he found deceased dead body lying on the bed.[48] So, if deceased had already died at 07:00 a.m. then how it could be possible that she called Mamta at 7:45 AM.[49] This shows that appellant is lying because Mamta has submitted the call details as proof as well. Under such instance appellant is not reliable, hence there are some promiscuous facts which appellant is hiding.

2) The cause of death is only intake of excessive sleeping pills.[50]

It is clearly mentioned in the post mortem report that the cause of death is intake of excessive sleeping pills. Post mortem report only explains about the cause of death and there is no way to find out whether the deceased herself took those Pills or were given by someone. Another crucial fact which must be emphasized here is that the deceases was the mother of a five month old child and the whole and sole responsibility of her upbringing lies on her shoulder therefore the

[46]Moot Proposition, Page 5, ¶ 1, line 1.
[47]Moot Proposition, Page 3, ¶ 3, line 1.
[48]Moot Proposition, Page 3, ¶ 5, line 1.
[49]Moot Proposition, Page 3, ¶ 3, line 1.
[50]Moot Proposition, page 5, ¶ 1, line 2.

possibilities of her suicide are few and far. Moreover, if she would have committed suicide then there must be a suicide note but no suicide note was found.

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.[51]

Subsequently 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. There are no acceptable reason stated by the deceased husband that why would she hit herself? The bruises were also of severe nature which on first instance couldn't be easily done by oneself. So, it is clear that she was physically harassed by the in law's family. If we look upon ordinary conduct human affairs then it is no way possible that a mother and a happy wife would take away her own life just to frame her in law's family. Human life is very precious and nobody would just give it up especially when she is responsible for another life as well.

4) The bruises marks were approximate 12 hrs. older than the time of death.[52]

Lastly, it states that the bruise marks were approximate 12 hrs. older than the time of death whereas according to the appellant version the bruises were allegedly caused by deceased two day before her death,[53] 34 hours to be more precise and post-mortem report clearly stated the time of bruises to be 12 hour old.[54] These facts clearly show the contradiction in statements made by husband thereby hinting towards him lying. According to the husband's version it seems like the deceased was some sort of their arch enemy whose life's only aim was to ruin their happy prosperous life. Unless and until there are some strong facts to prove the same, there doesn't seem to be an explanation on why she would be doing this.

From the above analysis it may be submitted that evidence of an expert and post mortem report is a substantive piece of evidence. The courts consider it conclusive. Thus it is humbly submitted to Hon'ble Court that in the present case the post mortem report is clear and cannot be upon and appellant can be punished on the basis of post mortem report.

[51]Moot Proposition, Page 5, ¶ 1, line 3.
[52]Moot Proposition, page 5, ¶ 1, line 4.
[53]Moot Proposition, page 3, ¶ 6, line 1.
[54]Moot Proposition, page 5, ¶ 1, line 4.

4. WHETHER SECTION 304-B OF INDIAN PENAL CODE 1860 FOR THE OFFENCE OF DOWRY DEATH IS APPLICABLE OR NOT?

It is humbly submitted before the hon'ble court that both the High Court and the Court of Sessions had rightly convicted the appellant under the section 304-B for the offence of dowry death, as it has been already submitted before the Court of Sessions and the High Court that it is applicable in the present case as the all essentials ingredients for committing the offence are fulfilled to constitute the offence.

In *Rajbir @ Raju & Anr* v. *State of Haryana*[55] a two judges bench of the supreme court directed all trail court to ordinarily add section 302 to the charge of section 304-B, so that death sentences can be imposed in such heinous and barbaric crimes against women.

In the case of *Mustafa Shahadal Shaikh* v. *State of Maharashtra*[56] the hon'ble court held that:

In order to convict an accused for the offence punishable under Section 304-B *Indian Penal Code*1860, the following essentials must be satisfied:

i. The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

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 any relatives of her husband;

iv. Such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

[55]Rajbir @ Raju & Anr v. State of Haryana, (CRLMP No. (5) – 23051).

[56]Mustafa Shahadal Shaikh v. State of Maharashtra, (2012) 11 S.C.C.397; Shati v. State of Haryana, A.I.R. 1991 S.C. 1226 ; Dunnapothula Kistaiah v. State of A.P., (2009) 1 A.L.T. (Crl.) 41 (A.P.) ; Shanti v. State of Haryana, A.I.R. 1991 S.C. 1226 ; State of A.P. v. Raj Gopal Asawa & Anr., A.I.R. 2004 S.C.W. 1566 ; Arun Garg v. State of Punjab, A.I.R. 2003 S.C.W 4387 ; Ram Badan Sharma v. State of Bihar, A.I.R. 2006 S.C.W. 4068.

If the abovementioned ingredients are attracted in view of the special provision, the court shall presume and it shall record such fact as proved unless and until it is disproved by the appellant.

4.1. Whether the death of the deceased has been caused by burns or bodily injury or otherwise than under normal circumstances?

The very first ingredient of the section 304-B is "*The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances*." The expression "otherwise than under normal circumstances" means a death not taking place in the course of nature and apparently under suspicious circumstances if not caused by burn or bodily injury. These words apparently carry the meaning of natural death. It was held in case of *Kailash* v. *State of M.P.*[57]

As concern to the death in the present case it is being clearly stated in post mortem report that cause of death was only intake of excessive sleeping pills[58] which were forcibly administered to the deceased by the appellant as the bruises on the body of the deceased are caused during such act only because there was no valid reason for the deceased to injure herself also the bruises are very sore and cannot be caused by herself. An unnatural death is to be considered as murder unless otherwise prove.

The supreme court has observed that death "otherwise than in normal circumstances' would mean that the death was not in usual course but apparently under suspicious circumstances if it was not caused by burn or bodily injury. Death of a woman occurring within 7 years of marriage cannot be described as occurring in normal circumstances.[59]

4.2. Whether the death has occurred within seven years of marriage?

The second essential ingredient of the section 304-B is that "*Such death must have occurred within seven years of her marriage"* in relation to this reliance can be placed on the judgment the hon'ble court.

[57]Kailash v. State of M.P., A.I.R. 2007 S.C. 107: (2006) 12 S.C.C. 667*;* Akula Ravindra v. State of A.P., A.I.R. 1991S.C. 1142.
[58]Moot Proposition, page 5, ¶ 1, line 2.
[59]Rajayyan v. State of Kerala, A.I.R. 1998 S.C. 121 : (1998) Cr. L.J. 1633.

In the case of *Rajesh Bhatnagar* v. *State of Uttarkhand*[60], there was demand for dowry of specific items and the deceased died within seven years of her marriage. The conduct of the appellant prior to and immediately after the occurrence clearly shows that they were not innocent. This hon'ble Court upheld the conviction.

In the instant case the deceased and the appellant got married on 1st of January, 2013 and both the deceased and appellant were living at village Isarda, district tonk, Rajasthan, with the appellant's joint family[61]. On 20th February, 2015 the deceased found dead at her husband's house that means before 7 years of her marriage and under unnatural circumstances. So it is not disputed that the death is occurred within seven years of marriage.

4.3. Whether soon before the death, the deceased has been subjected to cruelty or harassment by her husband or any relatives of her husband?

The second essential ingredient of the section 304-B is that "Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband**"**

As in the present case the deceased was subjected to physical cruelty and mental harassment the bruises found on many parts of the deceased body and these bruises marks were approximate 12 hrs. Older than the time of death as stated by the post mortem report[62] and same were seen by the female members of the respondent's family[63].

There was also mental harassment done by appellant family as deceased mobile was always switched off and whenever the respondent called at some other phone they got a reply that either deceased was went somewhere out with appellant or she is too busy and they ask them to call back her later. Deceased's all social networking accounts like Facebook, WhatsApp etc. has been deleted. She calls once in a week from appellant mobile always in the presence of him.[64] That the last call made by the deceased to Mamta (sister of deceased) from appellant mobile phone which proves that deceased was subjected to mental harassment.

[60]Rajesh Bhatnagar v. State of Uttarkhand, (2012) 7 S.C.C. 9 : (2012) Cr. L.J. 3442 : A.I.R. 2012 S.C. 2866.
[61]Moot Proposition, Page 1, ¶ 1, line 2.
[62]Moot Proposition, Page 5, ¶ 1, line 4.
[63]Moot Proposition, Page 1, ¶ 3, line 4.
[64]Moot Proposition, Page 2, ¶ 4, line 2.

This hon'ble court spoke in the case of *Deen Dayal* v. *State of U.P.*[65] about the expression "soon before her death". These words to be understood in a relative and flexible sense. They cannot be construed a laying down a rigid period of time to mechanically applied in each case. There can be no fixed period of time in this regard.

In the case of *M. Srinivashu* v. *State of A.P.*[66] the expression 'soon before her death' used in the substantive section 304-B, *Indian Penal Code*1860and section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case.

In the case of *Kans Raj* v. *State of Punjab*[67] this hon'ble court stated that "soon before" is a relative term which is required to be considered under specific circumstances of each case and no straight-jacket formula can be laid down by fixing any time limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in section 114.

The hon'ble Supreme Court ruled out that harassment one month before death held to be covered by the words "soon before".[68] Also the words "Soon before" cannot be limited to fixed time limit.[69]Appellant would like to reiterate the rider enunciated by the Supreme Court in its judgment in the case of *K. Prema S. Rao* v. *Yadla Srinivasa Rao,*[70] to the effect that "the Legislature has by amending the Penal Code and Evidence Act made Penal Law more strident for dealing with punishing offences against married women.

That clearly states soon before her death, she must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

[65]Deen Dayal v. State of U.P., (2009) 11 S.C.C. 157; A.I.R. 2009 S.C. 1238.
[66]M. Srinivashu v. State of A.P., (2007) 12 S.C.C. 443.
[67]Kans Raj v. State of Punjab, A.I.R. 2000 S.C. 2324.
[68]Amar Singh v. State of Rajasthan, A.I.R. 2010 S.C. 3391.
[69]Kailash v. State of M.P., A.I.R. 2007 S.C. 107.
[70]K. Prema S. Rao v. Yadla Srinivasa Rao, A.I.R. 2003 S.C. 11.

4.4. Whether the cruelty or harassment was for, or in connection with, demand for dowry?

As concern to present case soon after 9 months of the marriage (i.e. 1st October, 2013) appellant's father was died due to heart attack just after his death on 10th December, 2013 appellant raised the demand of Rs.20 lakhs from the respondent through the deceased which was fulfilled by the respondent by selling his ancestral property at Churu .

After that on 10th January, 2014 appellant again demanded motor-bike from the respondent through the deceased and this demand had also been fulfilled by the respondent. on the 10th March 2014 deceased alone came to Jodhpur for giving birth to a child at the seventh month of her pregnancy, but their also she was not normal. Deceased in-laws never called her, only appellant called her usually once in week and after every such call she got highly disturbed.

On 15th May 2014 a girl child was born to deceased, but no one from her in-laws had come to see her or take her back. Deceased also called to her sister-in-law Anita to make a request to take her back to Isarda but she insulted deceased and disconnect the call. Respondent himself called many times to deceased mother-in-law Yashodhara Devi but she never responded to take back the deceased and her daughter. Suddenly on the morning of 15th October 2014 (i.e. five months after the birth of the child) deceased brother-in-law Dev Singh and her sister-in-law Nidhi came to Jodhpur and on the same day took back Gauri and child to their home at Isarda.[71]

These all instances create a clear apprehension that the appellant are again raised their demand and started doing cruelty and harassment with the deceased in connection with demand of dowry. But before such demand is being communicated to the respondent through the deceased the appellant done a heinous and barbaric act which results in the death of deceased in a tragic manner.

Where death was proved to have been caused by poisoning & there was consistent evidence of torture for demand of dowry, it was held that the fact that the appellant husband killed his wife

[71]Moot Proposition, page 2, ¶ 3, line 7.

stood proved & conviction was proper.[72] Also the facts and circumstances proved the guilt of the appellant person even in the absence of any eye-witness.[73]

In the present case unnatural death occurred within the seven years of her marriage. The respondent succeeds to establish that the deceased was subjected to cruelty soon before the death in connection with demand of dowry. Therefore the appellant should be convicted under section 304-B of *Indian Penal Code*, 1860.

In support of this contention reliance has been placed on the cases of *Ashok Kumar* v. *State of Haryana*[74]where other ingredients of section 304-B are satisfied, in that event, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regards to the basic ingredients of section 304-B, the court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death; and in the case of *Pathan Hussain Basha* v. *State of A.P.*[75] the hon'ble court held that by a deeming fiction in law, the onus shifts on to the appellant to prove as to how the deceased died. It is for the appellant to show that the death of the deceased did not result from any cruelty or demand of dowry by the appellant persons.

In *Jogeshwar Mahto* v. *State of Bihar* [76] the hon'ble court held that when all ingredient of section 304-B are prove accuse can be liable for "dowry death".

As in the present case no effort was made by appellant to report it either to a police officer or to a doctor also there was a unreasonable delay of 14 hours while informing to the respondent about the unnatural death of the deceased and the bruises on the body of the deceased[77] which might occurred while administrating sleeping pills to the deceased forcibly by the appellant also dying of deceased through sleeping pills is not accidental and death of a mother of 9-10 months child without any valid reason or leaving behind any letter would also eliminate that it is a case of suicide

[72]Butan Sao v. State of Bihar, (2000) 2 B.L.J.R. 1400.
[73]Sarju Modi v. State of Bihar, (2003) Cr. L.J. 631 Jhar.
[74]Ashok Kumar v. State of Haryana, (2010) 12 S.C.C. 350 : A.I.R. 2010 S.C. 2839.
[75]Pathan Hussain Basha v. State of A.P., A.I.R. 2012 S.C. 3205.
[76]Jogeshwar Mahto v. State of Bihar, (2001) Cr. L.J. 4589 (Jhar.) ; Paniben v. State of Gujarat, A.I.R. 1992 S.C. 1817;Dev Prasad v. State of U.P., (2002) Cr. L.J. 4291.
[77]Moot Proposition, Page 2, ¶ 1, line 3.

which proves that the appellant is having an intention of causing death of the deceased. So the appellants are held liable for the murder of the deceased also.

4.5. Whether the presumption under section 113-B of *Indian Evidence Act*, 1872 can be raised?

It is humbly submitted that in *Gurdeep Singh* v. *State of Punjab*[78]the requirements of section 113-B presumption under section 304-B of *Indian Penal Code 1860* for the purpose of its applicability has been thus rephrased by this hon'ble court.

(i) death should be of burns or bodily injury or has occurred otherwise than under normal circumstances:

(ii) within seven years of the marriage; and

(iii) that soon before her death she had been subjected to cruelty or harassment by her husband or her relatives.

In *Nand Kishore* v. *State of Maharashtra*[79] it was held that all the ingredients of this section must exist conjunctively. There must be nexus between cruelty & harassment to raise the presumption under section 113B of the evidence Act. When a person has committed the dowry death of a woman & it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, in connection with any demand for dowry the court shall presume that such person had caused the dowry death.[80]

In present case all the above stated ingredients are fulfilled as the death of the deceased according to post-mortem report is due to excessive of sleeping pills so the death of deceased is due to normal circumstances.[81]

[78]Gurdeep Singh v. State of Punjab, (2011) 12 S.C.C. 408-B.
[79]Nand Kishore v. State of Maharashtra, (1995) Cr.L.J. 3706.
[80]The Indian Evidence Act,1872, No. 1, Acts of Parliament, 1872.Section 113-B.
[81]Moot proposition, page 5, ¶ 1, line 2.

CONCLUSION

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

1. **That the appellant are liable for committing the offence of murder.**
2. **That there are appropriate evidences to prove that the deceased was subject to mental and physical cruelty and harassment.**
3. **Evidences are present which proves that the statements made to police officer by the appellant are preconceived.**
4. **All the elements of Section 304-B are successfully fulfilled hence the appellant are liable for the offence of dowry death.**
5. **Police report, First Information Report, Statements under section 161 and Post Mortem Report are sufficient to decide the guilt of the accused.**

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 upheld.**
2. **The above grounds are sufficient to decide the guilt of the appellant.**
3. **There is a great evidentiary value of First Information Report and statements made under section 161 of Criminal Procedure Code, 1974 and the appellant can be punished only on the basis of these evidences.**
4. **The evidentiary value of expert opinion is substantive and the appellant can be punished on the basis of post mortem report.**
5. **The appellant is liable for the offence of murder of the 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 Respondent

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Date: _____

Place: NEW DELHI