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Court : Patna

Decided On : May-16-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 1169 of 2011

Appellant : Rajiv Singh

Respondent : The State of Bihar

Judgement :

1. This appeal has been preferred by the appellant Rajiv Singh against the judgment of conviction dated 21.10.2011 whereunder, he has been found guilty for an offence punishable under Sections 304B, 201, 498A of the I.P.C. and sentence dated 25.10.2011 directing to undergo rigorous imprisonment for ten years under Section 304B of the I.P.C., rigorous imprisonment for two years as well as also slapped with fine appertaining to Rs. Five thousand in default thereof, to undergo simple imprisonment for one month additionally under Section 201 of the I.P.C., rigorous imprisonment for two years as well as also fined Rs. Five thousand in default thereof, to undergo S.I. for one month additionally, under Section 498A of the I.P.C. with a further direction to run the sentences concurrently.

2. After hearing both sides as well as going through the record, certain admitted fact is to be taken note of for better appreciation.

Appellant Rajiv Singh happens to be the husband of Rani Archana Sinha (so alleged victim) with whom marriage was solemnized on 29.04.2007. It is also an admitted fact that the couple proceeded to enjoy holiday (might be a honeymoon trip) to Darjeeling, Manipal etc. and during course of returning, while the couple were travelling by the capital express, aforesaid Rani Archana Sinha disappeared. Rajiv Singh arrived at Patna and then returned back to Mokama where he had conversation with his mother in-law and after getting proper instruction on the facts so disclosed by him from his father in-law, Mokama G.R.P.S. Case no.26 of 2007 was registered at his instance. Simultaneously, mother of Rani Archana had filed case against appellant after so many months. Furthermore, Mokamah G.R.P.S. Case no.26 of 2007, got closed by filing final report while charge sheet has been submitted in the case filed by mother-in-law of appellant, the present one.

3. On 05.09.2007 the mother in-law of Rajiv Singh (appellant), mother of Rani Archana Sinha namely Malti Devi (PW-3) filed Complaint Case no.2544 of 2007 against altogether nine accused persons including Rajiv Singh (appellant) showing the date of occurrence as 30.04.2007 to 10.08.2007 to 15.08.2007 alleging inter alia that Rani Archana Sinha happens to be her daughter and was an advocate being a member of District Bar Association, Patna since 2005. Rani Archana Sinha was married with Rajiv Singh, son of Rajdeo Singh, resident of Lalji Tola, Gandhi Maidan, Patna on 29.04.2007, according to Hindu rites and rituals and the venue for aforesaid marriage was Hotel Republic located at Exhibition Road, Patna. After marriage, Rani Archana Sinha had gone to in-lawsŸ house and after staying there for sometime, she returned back to her quarter at Gaya along with her husband Rajiv Singh. At that very time, Rani Archana Sinha had reported that her in-laws have got greedy eye towards her (complainantŸs) wealth. Rajiv Singh returned back within two days. Rajiv Singh again came to his quarter within a week at Gaya and requested to allow Rani Archana Sinha to go with him and accordingly, she accompanied. Rani Archana Sinha had also disclosed that Rajiv Singh had prepared a list of ornaments given by them as well as by their relatives and took it in his possession. It has further been disclosed that Rajiv Singh had forbidden Rani Archana Sinha from making expenses. The mother in-law, father in-law, sister in-law compelled her to serve as maid-servant while the brother in-law, Dewar asked for Rs.2,50,000/- from her to facilitate decoration of the house in

the background of the fact that as she failed to qualify in the judicial service examination, there was no need to allow her status.

While Rani Archana Sinha was staying with her (complainant) at Gaya, her husband Subhash Chandra Prasad was transferred from Gaya to Banka and during intervening period Rajiv Singh repeatedly requested to send Rani to Patna. Although, she was not inclined, but on an assurance of Rajiv Singh that they will soon follow at Banka, Rani Archana Sinha returned back to Patna on 11.07.2007. It has further been disclosed that while staying at Banka, Rajiv Singh had talked several times with her and at each occasion, he gave assurance to come along with Rani Archana at Banka and also shown his inclination to go to Deoghar. It has further been disclosed that result of C.D.P.O. was published on 10.08.2007, wherein Rani Archana Sinha was not selected. She had talked with Rani Archana Sinha to console her. However, she was alright as was not interested with C.D.P.O. cadre. During conversation, she had not talked about her departure to Darjeeling. Without having any sort of pre-information with regard to going to Darjeeling, on 10.08.2007 Rajiv Singh along with Rani Archana Sinha proceeded for Darjeeling. However, Rani Archana was in touch with her and on 12.08.2007, she had informed that she was at Manipal. On 13.08.2007, she had contacted with Rani Archana on mobile phone, which was disconnected by Rajiv Singh. However, Rajiv Singh and Rani Archana Sinha talked with her. Mobile phone of her daughter as well as son in-law Rajiv Singh was found switched off in the evening of 13.08.2007 as well as 14.08.2007. On 15.08.2007 again she tried to contact with her daughter Rani Archana Sinha, but her mobile was switched off. Then she contacted son in-law Rajiv Singh, who said he had lost all thing. On query, he disclosed that he lost Rani Archana Sinha. Thereafter, her husband enquired from him (Rajiv Singh) and on his disclosure, that he happens to be in Mokama, her husband directed him to inform Mokama G.R.P.S. on account thereof, Mokama G.R.P.S. case no.26 of 2007 was registered on the statement of Rajiv Singh. Then she had averred that she met with Rajiv Singh at Mokama G.R.P.S. and found the golden chain, golden ring missing. Appearance of Rajiv Singh was not depicting the sorrow event which he had just met. Virtually, Rajiv Singh had made out a defence case just to save his skin as the accused persons were adamant to get remarriage of Rajiv Singh, so that they could be able to get sumptuous dowry. It

has further been disclosed that Rajiv Singh is continuously giving statement in paper just to save his own skin. Therefore, she smacked some sort of foul play whereunder her daughter Rani Archana Sinha might have been murdered during journey. It has further been submitted from the conduct of G.R.P.S. Police whereunder they had allowed Rajiv Singh to go to Ajmer, the place of posting clearly suggest it the case of connivance. Hence, necessitate for filing of instant case.

4. On the basis of the aforesaid complaint petition the learned Chief Judicial Magistrate directed the local police to register and investigate whereupon, Gandhi Maidan P. S. Case no.308 of 2007 was registered under Section 304B, 201, 498A of the I.P.C. and Section 3/ 4 of D. P. Act and proceeded for investigation. After concluding the same, charge sheet was submitted followed with commencement of trial which ultimately met with conviction and sentence of appellant, the subject matter of instant appeal.

5. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence. It has further been submitted that Rani Archana Sinha on her own disappeared during course of journey and for that rightly Mokama G.R.P.S. Case no.26 of 2007 was registered. It has further been submitted that husband of complainant who happens to be a Judicial Officer managed the affair in revengeful manner, concocted evidences and got the appellant involved. Witnesses have also been examined in support of defence.

6. While challenging the judgment of conviction and sentence, it has been submitted on behalf of appellant that instant trial is nothing, but misuse of CourtŸs valuable time as is based upon presumption and hypothesis without supported with any sort of legal, cogent, reliable evidence. It has also been submitted that prosecution case happens to be full of contradiction, inconsistency, vagrancy and on account thereof is subject to decadence.

7. The first and foremost ground has been raised with regard to maintainability of instant case. It has been submitted that it is an admitted fact that for disappearance of Rani Archana Sinha, Mokama G.R.P. S. Case no.26 of 2007

was registered at the behest of appellant Rajiv Singh as per direction given by the informant Malti Devi as well as her husband Subhash Prasad. Approximately near about a month thereafter, Malti Devi had filed complaint petition whereunder, she had shown her grievance against the I.O. of Mokama G.R.P.S. Case no.26 of 2007, who had permitted the appellant to join his service as a ground suggesting connivance in between I.O. with appellant, was not a ground to justify entertaining of instant complaint petition, because of the fact that instant complaint petition does not inspire the theme of version and counter version rather being aggrieved by the conduct of the I.O. of Mokama G.R.P.S. Case no.26 of 2007, instant complaint petition has been filed. It has further been submitted that law does not provide institution of more than one case for the same occurrence though version and counter-version is permissible. As it does not happen to be counter-version, hence the trial happens to be contrary to spirit of law. It has also been submitted that instead of filing separate complaint, protest petition should have been filed in connection with Mokama G.R.P.S. Case no.26 of 2007. Apart from this, it has also been submitted that there happens to be inordinate delay in launching of the case and for which, no cogent and reasonable explanation has been averred. That means to say that instant case has been filed in pre-planned manner after long delay and on account thereof, the learned lower Court should have rejected the same.

8. It has further been submitted that right from initial version there happens to be complete absence of demand of dowry by the appellant as well as any kind of torture having been inflicted by the appellant upon Rani Archana Sinha. More so, even during course of evidence, none had claimed. It has further been submitted that during course of evidence the family members have spoken with regard to purchase of Tata Mutual Bond appertaining to Rs.2,52,000/- and for that a joint account in name of Rani Archana Sinha as well as appellant was opened, is not going to fulfil the ingredients of the dowry as per Section 2 of the D. P. Act. In the background of the fact that the aforesaid event was under own volition of parents of Rani Archana Sinha and that was intentionally purchased to patronize PW-2, the brother of Rani Archana Sinha, who was an employee thereof. Not only this, from the evidence of the witnesses supported by DWs as well as Bank statement, it is crystal clear that appellant had not taken a single farthing there from. No other

event putting finger against the appellant is visualizing from the evidence of the PWs.

9. Now, coming to improbability of the case, it has been submitted that co-passengers have been examined by the prosecution itself who have had made categorical statement that at wee hour near about Barauni, the wife had left on the pretext of going to lavatory and since thereafter, she did not return. Passengers having their birth adjoining to have perceived the same.

10. It has further been submitted that anyhow taking the source of his influence, the prosecution party blurred fate of Mokama G.R.P.S. Case no.26 of 2007 and then commanding the situation put undue pressure and under such circumstance, while the dead body of a woman, which was completely decomposed, non-identifiable was found at railway track near Katihar after so many days, claimed it to be that of Rani Archana Sinha and further managed the subsequent event whereunder, the Forensic Science Laboratory report identifying the aforesaid dead body to be that of Rani Archana Sinha on the basis of collusive DNA Test was obtained.

11. It has further been submitted that from the evidence of PW-10 Dr. Shyam Bihari Upadhyay, who happens to be the Director of Forensic Science Laboratory, Bihar, it is apparent that the report is of collusiveness being partisan one as well as also speaks about having been procured at the instance of prosecution party, because of the fact that even without having proper facility at F.S.L. Patna, Bihar, the Director instead of sending it to the Central Government Laboratory located at Kolkata or Hyderabad sent the same to a private laboratory not accredated by the Government and got a collusive report. PW-10 had gone to such extent that even without having proper knowledge or qualification relating to D.N.A. examination, deposed and the trial Court, illegally and arbitrarily relied upon such inadmissible evidence which ought not to be.

12. It has further been submitted that certain precautions are to be taken up for the purpose of sampling relating to D.N.A. examination and from the evidence available on the record, it is crystal clear that none of the precautions so prescribed therefor were taken up and on account thereof, its impact was bound to

adversely affect relating to authenticity, genuineness, reliability of the D.N.A. report.

13. It has further been submitted that neither there happens to be direct evidence nor the instant case happens to be based upon circumstantial evidence in the background of the fact that Rani Archana Sinha had herself left the place and further, there happens to be complete absence of conclusive evidence regarding death of Rani Archana Sinha along with the fact that there happens to be absence of evidence of demand followed with torture. Consequent thereupon, the conviction so recorded by the learned lower court happens to be improper, illegal and in the aforesaid background, the appeal is fit to be allowed. Also relied upon 1996 B.B.C.J. 585, AIR 2010 SC 1974, (2005)5 SCC 104.

14. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned trial Court has submitted that there happens to be no controversy with regard to presence of deceased in company of appellant Rajiv Singh under the theme of last seen which the appellant had himself admitted by way of institution of Mokama G.R.P.S. Case no.26 of 2007. It has also been submitted that appellant had not challenged the authenticity of D.N.A. report before the trial Court during course of trial by examining an expert to suggest that in the facts and circumstances of the case, the procedure for conduction of DNA was wrong and on account thereof its resultant. It has further been submitted that for conduction of D.N.A. Test, certain modes have been prescribed, which was to be carried out by the laboratory concerned as is evident from the evidence of P.W.-10. It is evident from PW-10 that he had simply reiterated the report as the examination was done out of State in a laboratory which was duly accredited and the local staff duly participated during course of examination. It has further been submitted that there happens to be consistent evidence with regard to demand of dowry and for that purpose Rani Archana Sinha was subjected to cruelty and that being so, the conviction and sentence so recorded by the learned trial court did not attract interference. Also relied upon 1995 (Suppl)1 SCC 50, 1994 CR.L.J. 3271, 1983 CR.L.J.487.

15. Prosecution has examined altogether twelve (12) witnesses namely PW-1 Subhash Chandra Prasad, PW-2 Ravi Shankar Prasad, PW-3 Malti Devi (informant-complainant), PW-4 Sri Krishna Tiwary, PW-5 Sujit Dipania, PW-6 Sumit Kumar Dipania, PW-7 Navin Kumar, PW-8 Dr. Ram Rekha Kumar, PW-9 Alakhdeo Sharma, PW-10 Dr. Shyam Bahadur Upadhyay, PW-11 Kalpana Kumari and PW-12 Shambhu Prasad Tiwary.

16. Prosecution has also exhibited the document as exhibit-1, Signature of Malti Devi, exhibit-2, List of ornaments, exhibit-3, F.I.R./complainant petition, exhibit-4, Protest petition dated 22.10.2007 as well as F.I.R. of Mokama P.S. 26/2007 dated 15.08.2007, exhibit-5, Informant petition dated 09.09.2007, exhibit-6, Account statement of Tata Mutual Fund, Exhibit -6/A to 6/J, Account statement of Tata Mutual Fund, Exhibit -7, Petition dated 21.01.2010 of Rajiv Singh, Exhibit-8, Statement under Section 164 of Cr.P.C. of Krishna Tiwari, Exhibit-8/1, Statement of Sujit Kumar under Section 164 of Cr.P.C., Exhibit-8/2, Statement of Sumit Kumar under Section 164 of Cr.P.C, Exhibit -8/3, Statement of Navin Kumar Mishra under Section 164 of Cr.P.C, Exhibit-9, Photograph of Rani Archna Sinha and Rajiv Singh, Exhibit-X/4, Photograph of Rani Archna Sinha and Rajiv Singh, Exhibit-10, Postmortem report, Exhibit-11, Ferdbyan of Jyotish Chandra Sharma, Exhibit-11/1, Endorsement of Ajib Nagar Jyoti Chandra Sharma, Exhibit-12, Endorsement under Section 174 Cr.p.c. by Magistrate dated 18.08.2007, Exhibit-13, Inquest report, Exhibit-14, D.N.A. report, Exhibit-15, Pathology report, Exhibit-16, FSL report, Exhibit-17, FSL report of Rajiv Singh, Exhibit-18, Endorsement of Mundrika Prasad on complaint, Exhibit-19, Signature of Mundrika Prasad, Exhibit-20, Original case diary in the writing of Rajendra Singh, Exhibit-20/1, Reservation chart, Exhibit-21, Signature on seizure lists , Exhibit-21/A, Signature on seizure lists, Exhibit-22, Signature of Lalan Prasad Choudhary on seizure lists, Exhibit-23, Photographs, Exhibit-23/A, Photographs, Exhibit-24, Part of diary, Exhibit-25, protest petition given by the informant, Exhibit-26, certified copy of final form, Exhibit-27, certified copy of 733/10, Exhibit-28, order of Supreme Court, Exhibit-29, Certified copy of order of High Court.

17. Appellant had also examined witnesses out of whom DW-1 Shiv Kumar, DW-2 Md. Nazir Hussain, DW-3 Suman Sinha, DW-4 Kundan Kumar Singh and DW-5

Bajrang Singh. Side by side Exhibit-A letter written by Subhash Chandra Pd. (PW-1), Exhibit-A/1 statement of Bank Account, Exhibit-B letter written by Akhilesh Kumar, Exhibit-B/1 order dated 08.09.2008 passed by the High Court.

18. In Suresh Kumar Vrs. State of Haryana reported in 2014 CRI. L. J. 551, the ambit and scope as well as ingredients of Section 304B of the I.P.C. along with impact of Section 113(B) of the Evidence Act has been taken into consideration in detail in following way:-

œ26. The actual words used in Section 304B of the IPC are of importance. This section reads as under:-

œ304-B. Dowry death- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called œdowry death?, and such husband or relative shall be deemed to have caused her death.

Explanation- For the purpose of this sub-section, œdowry? shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (2* of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.?

27. In a large number of decisions, this Court has indicated the ingredients of Section 304-B of the IPC, which are now broadly accepted. In Pawan Kumar v. State of Haryana, (1998) 3 SCC 309: (AIR 1998 SC 958: 1998 AIR SCW 721) the ingredients were identified as:

œ(a) When the death of a woman is caused by any burns or bodily injury, or

(b) occurs otherwise than under normal circumstances

(c) and the aforesaid two facts spring within 7 years of girlŸs marriage

(d) and soon before her death, she was subjected to cruelty or harassment by her husband or his relative,

(e) this is in connection with the demand of dowry.?

28. The ingredients of Section 304-B of the IPC were rephrased in Kans Raj v. State of Punjab, (2000) 5 SCC 207: (AIR 2000 SC 2324: 2000 AIR SCW 2093) in the following words:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances:

(b) Such death should have occurred within 7 years of her marriage:

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) Such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) To such cruelty or harassment the deceased should have been subjected soon before her death.

29. The expression œotherwise than under normal circumstances? was explained to mean œdeath not in the usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury.?

30. A somewhat recent exposition is to be found in Hira Lal v. State (Govt. of NCT). Delhi, (2003) 8 SCC 80: (AIR 2003 SC 2865: 2003 AIR SCW 3570) wherein this Court held that to attract the application of Section 304-B of the IPC, the essential ingredients are as follows:-

œ(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.?

31. More recently the ingredients of Section 304-B of the IPC have been abbreviated in Bakshish Ram v. State of Punjab, (2013) 4 SCC 131: (AIR 2013 SC 1484 : 2013 AIR SCW 1914) in the following words:

œ(a) that a married woman had died otherwise than under normal circumstances;

(b) such death was within seven years of her marriage; and

(C) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.?

32. This žformulaŸ, though framed in different words by this Court, from time to time, conveys the same meaning of the essential ingredients of an offence punishable under Section 304-B of the IPC.

33. Importantly, Section 304-B of the IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring œotherwise than under normal circumstances? can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304-B of the IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a œdowry death? and the womanŸs husband or his relative œshall be deemed to have caused her death?. The Section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple

offenders who has or have caused the dowry death.

19. Cruelty, be a physical action only. Whether it should be identified, perceived under such form alone, or it also includes the mental, psychological way of treatment. In Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177.

3. The basic purport of the statutory provision is to avoid œcruelty? which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word œcruelty? as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of œcruelty? in terms of Section 498-A.

20. In Gananath Pattnaik v. State of Orissa, (2002) 2 SCC 619, at page 622 :

7. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. œCruelty? for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

21. Soon before her death has further been explained by the Apex Court in Surinder Singh v. State of Haryana reported in 2014 CRI.L.J. 561 relevant paras-13 and 14.

œ13. Section 113B of the Indian Evidence Act, 1872 states that when the question is whether a person has committed the dowry death of a woman, and it is shown

that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. Section 304B of the Indian Penal Code states that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ždowry deathŸ, and such husband or relative shall be deemed to have caused her death. Thus, the words žsoon beforeŸ appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the Indian Penal Code. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words žsoon beforeŸ is, therefore, important. The question is how žsoon beforeŸ? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, žsoon beforeŸ is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

14. In this connection we may refer to judgment of this Court in Kans Raj v. State of Punjab (2000) 5 SCC 207: (AIR 2000 SC 2324: 2000 AIR SCW 2093) where this Court considered the term žsoon beforeŸ. The relevant observations are as

under: œ

œSoon before? is a relative term which is required to be considered under specific circumstances of each case and no strait-jacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term œsoon before? is not synonymous with the term œimmediately before? and is opposite of the expression œsoon after? as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be œsoon before death? if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.?

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law.

22. The evidences adduced on behalf of respective parties have to be scrutinized in terms of principle enunciated by the HonŸble Apex Court as referred above.

(i) The first and foremost ground which has to be dealt with, however is out of controversy happens to be not the date of marriage. Marriage of Rani Archana

Sinha with appellant Rajiv Sinha took place on 29.04.2007. Whether Rani Archana Sinha had disappeared on her own or met with death if so, other than natural one is to be decided at the subsequent part of this judgment. However, on account of having registration of Mokama P.S. Case no.26 of 2007 by the appellant Rajiv Singh, she disappeared on 15.08.2007 while according to prosecution, she was murdered in between 13.08.2007 to 15.08.2007 and on account thereof, the admitted position brought the event within a period of seven years of marriage. Detailed discussion on this score is being made henceforth in subsequent paras of judgment.

23. Now, the remaining ingredients are to be seen and for that, first of all a demand of dowry as well as torture and cruelty meted out to Rani Archana Sinha soon before the incidence is to be seen. From the written report, it is evident that in no specific term, it has been alleged against the appellant that he had demanded dowry and for that purpose Rani Archana Sinha was subjected to torture at his end. In paragraph-3 of the written report the informant had mentioned the fact that her daughter had reported that her in-laws have greedy eyes towards her wealth. In paragraph-4, she had narrated that Rani Archana had reported her that Rajiv Singh had prepared a list of jewellery given by them as well as by the relatives of her husband and took in his possession. In paragraph-5 of the written report, she had further disclosed that brother in-law (Bahnoi) and Dewar had instructed Rani Archana to bring Rs. 2,50,000/- from her parents to decorate his house in the background of being unsuccessful in Judicial Service Exam. Now, coming to the oral evidence, PW-1 had deposed during his examination-in-chief that his daughter had stated that her sasuralwala happens to be greedy one and were expecting lacs of rupees from them. He has further stated that her mother in-law Urmila Devi had directed her to bring Rs.2,50,000/- from her father to facilitate purchase of household articles as well as to complete construction of 4th floor. He has further stated that Rajiv Singh and his father Rajdeo Singh were repeatedly demanding dowry. Rajiv Singh had directed to give mutual fund of Rs. Five lacs whereupon, he had purchased units of Tata Mutual Fund appertaining to Rs.2,52,000/- on 13.06.2007 as well as Rs.1,47,000/-, wherein Rajiv Singh was nominee as per his instruction. Subsequently thereof, joint account was opened in S.B.I. Exhibition Road, Patna. He has further disclosed on 10.08.2007, units

appertaining to Rs.49,000/- was purchased in three instalments. He has further stated that father in-law of his daughter namely Rajdeo Singh had also demanded Rs.2,50,000/- as dowry to facilitate purchase of household articles as well as completing the construction work of 4th floor. During cross-examination, this PW has not been cross-examined to the specific point relating to demand of dowry. However, from page-15 of his deposition (paragraph not given), it is apparent that his previous statement relating to Mokama G.R.P.S. Case no.26 of 2007 has been drawn though inadmissible in the present context. At page-18, he has stated that the complaint petition (written report) was drafted in his presence on his instruction. He has asserted that in complaint petition that he had incorporated the fact that Rajiv Singh and his father began to demand cash. He has denied the suggestion that no such averment has been made therein by way of explaining that in para-3 he had incorporated the fact that her in-laws had greedy eyes on my wealth. In page-19, he has further asserted that in protest petition also he got the fact incorporated regarding demand of money by Rajiv Singh. He had denied the suggestion that no such averment was made in the protest petition. At page-22, he had divulged the fact that he had purchased units of mutual fund appertaining to Rs.2,52,000/- on different dates only in name of Rajiv Singh. At on that very time his son Ravi Shankar Prasad was posted in Mutual Fund Office. He has further disclosed that mutual fund is still existing as it has not been withdrawn. He has further admitted at page-23 of his deposition that even during life time of Rani Archana, the cash relating to mutual fund would have been withdrawn if so desired.

24. PW-2 Ravi Shankar Prasad is the, son of PW-1 and PW-3 as well as brother of Rani Archana Sinha. He had asserted that his sister had gone to her sasural after marriage. Rajiv Singh, his parents, sister demanded Rs.2,50,000/- for purchasing household articles as well as for getting the 4th floor of the house completed and for that, parents of Rajiv Singh, brother, sister, brother in-law began to torture his sister. She was treated as a maid-servant in the house. His sister was not well with their behaviour. Because of the fact that soon after marriage Rajiv Singh, his parents, brother, sister and brother in-law began to coerce for payment over which he had purchased Units of Tata Mutual Fund appertaining to Rs.42,000/-. Subsequently thereof, he had also purchased mutual fund on 25.05.2007,

06.06.2007, 08.06.2007, 13.06.2007, 16.06.2007 for Rs.42,000/- at each occasion respectively in name of Rajiv Singh. Thereafter as per rule formulated by SEBI the PAN card was necessary for purchase of mutual fund. Consequent thereupon, Rajiv Singh applied for getting PAN number in name of his sister. At the other hand, it was directed that for the remaining amount units be purchased in name of Rani Archana, wherein Rajiv Singh be shown as nominee. He had purchased three units of Rs.49,000/- each on 10.07.2007 in name of his sister and then thereafter of Rs.40,000/- as well as Rs.21,000/- wherein Rajiv Singh was shown as nominee. Then thereafter on 13.08.2007 Rajiv Singh had enquired from him regarding status of purchase of mutual fund, which was answered by him in affirmative. During cross-examination at para-6, he had stated that Rani Archana had disclosed to parents regarding demand of cash after returning from her sasural. She had stated at both rounds when she came from her sasural. He came to know with regard thereto in the month of May. At page-7 his attention has been drawn up towards his previous statement in the context that he had not made statement before the Gandhi Maidan Police that his sister was tortured by Rajiv Singh. He had denied the suggestion that no such kind of statement was ever made by him before the Gandhi Maidan Police. He had further narrated in the page-8 of his cross-examination that accused persons had not demanded cash rather they directed to invest in mutual fund and accordingly mutual funds at different occasion each of Rs.42,000/- was purchased in joint name of Rani Archana as well as Rajiv Singh (either or survivor). Three mutual funds of Rs.49,000/- each was purchased in name of Rani Archana, wherein Rajiv Singh was nominee. In remaining also Rajiv Singh was nominee.

25. PW-3 is the informant Malti Devi, she has stated in her examination in-chief that when her daughter returned from her sasural after a week along with Rajiv Singh, she had stated that her mother in-law, father in-law, Bhainsur, Dewar, Nanad, husband all have greedy eyes over her wealth. She also disclosed that they are saying to bring money from her Naiharwala, so that upper floor of the house be constructed as well as articles could also be purchased. She has further disclosed that they were demanding Rs.2,50,000/-. At second occasion when she (Rani Archana Sinha) came, she disclosed that she was being treated as a maid-servant by her in-laws who were saying that after bringing money, she will be

allowed to live like queen. In case you did not oblige by way of bringing of cash from her Naihar, she will have to work like a maid-servant. She had also disclosed that her husband Rajiv Singh had prepared list of ornaments and a copy thereof, had also handed over to her. All the ornaments, Sari etc. were in possession of Rajiv Singh. She had also stated that Rani Archana had disclosed that they were giving artificial pat as they used to torture her. Her mother in-law, father in-law, Dewar and husband were constantly demanding money. She had further disclosed that on 13.08.2007, Rajiv Singh had enquired from her son Ravi Shankar Prasad (PW-2) regarding investment whereupon, he disclosed that investment has already been made relating to whole amount. During cross-examination at page-6, she had categorically stated that in the complaint petition she had asserted that husband of Rani Archana was also demanding Rs.2,50,000/-. She had also asserted to have mentioned in the complaint petition that mother in-law, father in-law, Dewar and others were treating like maid-servant and were stating that either bring the cash or work like a maid-servant. She had further stated that she had incorporated the fact in the complaint petition that husband of Rani Archana and his family members were showily artificial effection, as were torturing her. She had further asserted that she had incorporated in the complaint petition as well as stated before the I.O. that her husband was demanding money. She had denied the suggestion that no such averment was ever made. At page-9 again her attention was drawn towards the statement that Rajiv Singh had talked with her son Rajiv Shankar Prasad on 13.08.2007 and enquired regarding quantum of investment.

26. PW-11 Kalpana Kumari happens to be the I.O., her attention was drawn up at page-11 of her cross-examination regarding the averment made under written report which happens to be inadmissible in the eyes of law, because of the fact that PW-11 was not at all maker of the document rather it was PW-3. At page-12, she had stated that the informant had stated regarding demand of dowry as well as treating with torture against Rajiv Singh during her further statement. However, she had stated that Rajiv Singh had said to his parents that Rani Archana happens to be golden bird. Extract money from her parents. Again, she had disclosed that informant had not alleged during course of further statement against Rajiv Singh regarding demand of dowry as well as torture. She had further stated that witness

Subhash Chandra had not put allegation against Rajiv Singh asking for dowry from Rani Archana as well as torturing her. She had also stated that Ravi Shankar Prasad had not against Rajiv Singh regarding demanding of dowry, torturing of Rani Archana. She had further stated that witness Subhash Chandra had not stated before her that Rajiv Singh and his father was regularly demanding dowry. This witness had not stated before her that Rajiv Singh had directed to hand over mutual fund units appertaining to Rs. five lacs. She had further said that this witness had not stated before her that before 13.06.2007, he had already purchased unit of Rs.2,52,000/- and then thereafter, he had purchased unit of Rs.1,47,000/- on different dates.

27. So far remaining witnesses PW-4, PW-5, PW-6, PW-7 are concerned, they are not on this very point and on account thereof, their evidences have got no relevance over the issue.

28. So, from the analysis of the evidence as stated above, it is crystal clear that right from initial version coming out on the basis of the complaint petition/ written report there happens to be evidence of demand as well as meeting Rani Archana with torture and cruelty by forcing her to act as maid-servant. However, after having parallel scrutiny of evidence of PW-1, PW-2 and PW-3 inconsonance with the evidence of I.O. (PW-11) as referred above, it is evident that there happens to be some sort of development, exaggeration in the evidence of PWs-1, 2 and 3, regarding exact words and sentence used during course of evidence, but its fragrance is found coming out from the Complaint petition itself supported by the evidence and that part remained untouched. In likewise manner, happens to be theme of purchase of Tata Mutual Fund because of the fact that neither cross-examination was made over its maturity and in likewise manner, the interesting period happens to be too short to get it redeemed.

29. Now the only question remains whether Rani Archana is dead or alive.

30. Admittedly by way of admission on behalf of respective parties presence of Mokama G.R.P.S. Case no.26 of 2007 at the behest of appellant/ accused on an instruction of PW-1 based upon information given by appellant Rajeev Singh is out of controversy. Therefore, disappearance of Rani Archana Sinha while being in

company of appellant during course of journey from Darjeeling to Patna could be accepted as admitted. That means to say theory of last seen is found applicable against appellant Rajiv Singh in the background of admitted position. However, one could find from the record that none is an eye witness to occurrence. As such case rest upon circumstantial evidence. The basic crux for consideration of circumstantial evidence is that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable or point to any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. The evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable.

31. Before coming to material witnesses on that very score, while the investigation of Gandhi Maidan P.S. Case no.308 of 2007 as well as Mokama G.R.P. Case no.26 of 2007 were going on, a dead body was traced out near railway track within the jurisdiction of Katihar G.R.P. in decomposed condition for which U.D. Case was instituted, the news circulated claimed and counter claimed over probability of proper identification. However, settled at rest by the I.O. praying for D.N.A. Test, which was allowed. Blood of PW-1 and 3 were taken and then relevant sample were sent to Forensic Science Laboratory, Patna, Bihar for examination. As the facility was not at all available at F.S.L. Patna, as such the sample were tested outside Gurgaon and after getting the report, PW-10, Dr. Shyam Bihari Upadhyay endorsed the same divulging, matching thereof, giving ultimate finding the dead body of deceased being that of Rani Archana Sinha.

32. Sanctity of D.N.A. Test has been taken into consideration by the Honble Apex Court in NandLal Wasudeo Badwaik Vrs. Lata Nandlal Badwaik and another reported in 2014 (2) SCC 576.

œ13. Before we proceed to consider the rival submissions, we deem it necessary to understand what exactly DNA test is and ultimately its accuracy. All living beings are composed of cells which are the smallest and basic unit of life. An average human body has trillion of cells of different sizes. DNA (Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings, is the

blueprint of an individual. Human cells contain 46 chromosomes and those 46 chromosomes contain a total of six billion base pair in 46 duplex threads of DNA. DNA consists of four nitrogenous bases “ adenine, thymine, cytosine, guanine and phosphoric acid arranged in a regular structure. When two unrelated people possessing the same DNA pattern have been compared, the chances of complete similarity are 1 in 30 billion to 300 billion. Given that the EarthŸs population is about 5 billion, this test shall have accurate result. It has been recognized by this Court in the case of Kamti Devi (supra) that the result of a genuine DNA test is scientifically accurate. It is nobodyŸs case that the result of the DNA test is not genuine and, therefore, we have to proceed on an assumption that the result of the DNA test is accurate. The DNA test reports show that the appellant is not the biological father of the girl-child.?

33. ModiŸs celebrated text book of Medical Jurisprudence and toxicology 24th edition at page-413 to 417 as detailed the D.N.A. profile, structure and finger printing.

DNA PROFILING (DEOXYRIBONUCLEIC ACID TYPING)

General.- Life on earth is based on cells; almost every cell as a nucleus; and each nucleus carries a complete set of chromosomes. Human beings have 23 pairs of chromosomes in each nucleus. These chromosomes carry linearly arranged genetic units, which are materially referred as Deoxyribonucleic Acid (DNA). The DNA is the genetic material that makes every individual different, except for genetically identical twins. A pattern of chemical signals ie., genetic code, has been discovered within the DNA molecule, which is very unique to each individual, just like their actual fingerprint. Thus, the DNA profiling, unique to each individual, is colloquially referred to as žDNA FingerprintingŸ and it is also known as DNA typing. The companies who offer the DNA profiling claim that a DNA match of two individuals is as unlikely as 1 in 30 billion. One more estimation puts it at 1 in 80,000,000,000,000.

The chemical DNA was first discovered in 1869, but its role in genetic inheritance was not demonstrated until 1943. In 1944, Oswald Avery made the breakthrough discovery that DNA is the basic genetic material. A few years later, in 1953, James

Watson and Francis Crick determined that the structure of DNA is a double-helix polymer, a spiral consisting of two DNA strands wound around each other. The technique of DNA Fingerprinting was first developed in 1984 by Dr Alec Jeffreys from Britain. Since then, increasing attention has been paid around the world to the use of DNA profiling for individualisation purposes in criminal and allied cases. The use of Restriction Fragment Length Polymorphism (RFLP) analysis of minisatellites or Variable Number of Tandem Repeat (VNTR) loci scattered along the chromosomes has spread interest in the medico legal profession.

The Polymerase Chain Reaction (PCR) is a process, which allows targeted short segments of DNA sequences to be selectively copied a million-fold or more; hence it is termed as žgene amplificationŸ. It was first described in 1985. This method brings preference to the analysis of biological evidence as the same can be applied even in the circumstances, when a very small amount of DNA, as found in a single hair sheath cell or on feeble stains of body fluid on clothing or on other crime exhibits is encountered. PCR has rapidly gained acceptance as a tool in molecular biology, population genetics, genomapping and medical diagnostics.

At present, DNA profiling technique is also being used in many areas of human health care research. DNA fingerprinting is used to diagnose inherited disorders in both prenatal and newborn babies in hospitals all over the world. These disorders include cystic fibrosis, haemophilia, huntingtonŸs disease, familial alzheimerŸs, sickle cell anaemia and many others. Early detection of such disorderes enables the medical staff to prepare themselves and the parents for proper treatment of the child. In some programmes, genetic counsellors use DNA fingerprint information to help prospective parents understand the risk of having a disabled child. DNA fingerprints are also vital for developing cures for inherited disorders. Research programmes to locate the genes causing inherited disorders depend on the information contained in the profiles.

DNA STRUCTURE

Chemical Structure of DNA.- Chemically, DNA is made up of phosphoric acid, D-2-deoxyribose (R-D-2-deoxyribofuranose) and four nitrogenous bases, namely, purinesadenine (6-aminopurines), guanine (2-amino-6-oxypurine), pyrimidines-

cytosine (2-oxy-4-aminopyrimidine) and thymine (5-methyl-2, 4-dioxypyrimidine). The four basis found in DNA are thus adenine, guanine, cytosine and thymine, which are abbreviated A, G, C, and T respectively. The DNA chain can then be thought of as a long sequence of these four letters. The DNA is a double helix-two strand, twisted around one another much like a twisted ladder. The rungs of the ladder are formed by the pairing of A of one strand with the T of the other. Similarly, the pairing of C of one strand is formed with G of the other strand. Purines and pyrimidines on adjacent strands are held together in the same plane by hydrogen bonding. The genetic blueprint is a code of instructions. The words in the code sheets are all three-lettered, spelt by the various combinations of the four nucleotide bases, also known as triplet codon. Each word designates an aminoacid and the entire DNA string is a code of instructions for assembling aminoacids into large polypeptide chains. A discrete segment on the DNA instructs just the productions of a single protein. Also, because of the specific affinity between A and T, G and C, the instructions on one strand of the double helix are reflected by the other strand.

Nomenclature and Certain Properties of DNA.- There are innumerable bases in a chromosome. It is now well known that about 45 per cent of it are required for the cell operation, whereas the actual function of the remaining 55 per cent is yet unknown. These functional bases comprising about 45 per cent, interspaced with other bases of the unknown functions are spread throughout the length of the chromosomes. There are certain sites on the chromosomes, referred to as restriction sites, where the bases occur in certain combinations. The sequences in the restriction sites are in palindromic configurations. In the palindromic sequences, the order of bases in the complementary strand of DNA is exactly the reverse of those in the other strand,

Palindrome Sequence of DNA.- The palindromic sequences of DNA are specific regions with DNA that are inverted repetitions of the base sequences with two- fold symmetry. Such sites occur throughout the DNA and are inherited from the biological parents. Some palindromic sequences are short, consisting of a few nucleotides, whereas some involve up to 1000 base pairs. Restriction enzymes occur in certain bacteria as a natural defence system. Restriction enzymes are

bacterial endonucleases that have evolved to protect bacteria from infection by certain bacteriophages.

These enzymes locate the foreign DNA and break it at any site rendering the invader functionless. Arbar, Smith, and Nathans were awarded the Nobel Prize for physiology in 1978, for their discovery and use of the restriction enzymes for splicing DNA. Restriction enzymes occur in three classes referred to as type I, II and III. The type II is more often used for recombinant DNA work because this type is highly sequence specific. Such enzymes are named after the bacteria they were derived from. As for example, restriction enzyme called Hae III is named after its source bacteria haemophilus aegyptius.

The chromosomes also regions of repeated sequences throughout their length that are a combination of bases which occur repeatedly. Some to 40 per cent of genome consists of either highly repeated or moderately repeated sequences. Such repetitive DNA can broadly be classified into:

(i) The tandemly repetitive sequences; and

(ii) The interspersed repetitive sequences.

The tandem repetitive sequences comprise some 5 to 10 per cent of the genome. Four such classical sequences in the human genome are known to occur namely, Satellite 1 (0.2 to 0.5 per cent), Satellite II (1 to 2 per cent) Satellite III (1 to 3 per cent) and Satellite IV (0.5 to 2 per cent). The term satellite is generally used to describe tandemly repeated sequences. There are Short Tandem Repeats (STRS) termed as minisatellites or VNTR (Variable Number of Tandem Repeat) loci, scattered along the chromosomes.

DNA Profiling/ Finger Printing.- The forensic analysis of biological material like blood, flesh, semen, hair and urine has progressed to high level of sophistication to individualisation. In 1985, Professor Alec Jeffery from Lister Institute of Preventive Medicine, UK described a new approach to identification or individualization, based on analysis of segments of human DNA known as Hypervaiable Minisatellite Regions, or VNTR (Variable Number of Tandem

Repeat) loci scattered along the chromosomes.

It is estimated that about 30 per cent of the DNA that occur in the multiple copies of DNA sequences, are repetitions. These repeats vary both in terms of sequences of nucleotides and in the number of repeats of each sequence in the genetic material.

Procedure.- A schematic outline of the DNA Fingerprinting procedure is described. The first stage in DNA fingerprinting involves chemical extraction and purification of genomic DNA from the various biological cells, such as from blood, semen, hair roots, saliva and other tissues, by suing standard proteinase K digestion and organic solvent extraction procedure. The extracted DNA is checked to ensure that a sufficient good quality DNA has been recovered from the actual fingerprinting. The DNA is then broken by a specific restriction enzyme, the restriction endonucleases (REŸs) that cleave double stranded DNA at specific sequences. The DNA is then separated into fragments of varying length. Many of these pieces with contain a portion of repeated sequences, as these regions occur throughout the chromosome. In other words, it represents the variable minisatellites. The DNA fragments are then separated according to their molecular sizes into bands, by their passage through a slab of gel in an electric field by gel electrophoresis. The distance migrated by a DNA fragment is the inverse function of the logarithm of its molecular weight. The DNA band pattern in the gel is transferred to nitrocellulose or a nylon membrane by a technique known as Capillary (Southern) Blotting. Vaccum blotting can also be used in place of southern blotting. The membrane is treated to separate the two strands of the double helix within each DNA fragment, without disrupting the pattern on the membrane. The membrane is then reacted with a radioactive sequence, known as žprobesŸ, a segment of stuttered DNA that seeks out and forms a double helix with any minisatellite fragment on the membrane which contains the shared motif. The DNA thus bound to a filter can be identified by hybridisation with a labelled probe of homologous sequences. The nylon membrane is placed in contact with an X-ray film, The radioactivity will cause an image of bands to be produced by the technique called autoradiography. The X-ray film is developed to make visible pattern of bands, which is known as DNA Fingerprinting. The variable minisatellites thus become radioactive and are

visualised on X-ray film. The final picture of this process is a pattern of bands or stripes on X-ray film, each band containing one of the minisatellite regions.

It is known that the chromosomes are derived from both the parents and hence the distribution of restriction sites and the resultant fragment separation are in fact a heritage from both the biological parents. Some rearrangement of the DNA may also occur. Thus, when a DNA is analysed by means of a repeat sequence probe, fragments can be detected which are of maternal and paternal origin, while others are specific to the child. The DNA Fingerprinting produces a band pattern as unique in its way as normal fingerprint, towards individualisation. In addition, it provides the information relating to parental origin, when compared with parental DNA fingerprints.

In the DNA pattern, when analysed by means of a probe, the core sequence, if occurring at only one DNA locus, the probe is called a single locus probe. The core sequence if occurs at many different loci, the probe is called a multilocus probe.

The forensic science laboratories currently make use of three different methods of DNA typing: single locus RFLP, multilocus RFLP and the polymerase chain reaction. The forensic DNA profiling has been pioneered by two private laboratories namely Lifecodes Corporation of Valhalls, New York and Cellmark Dignosities of German Town, Maryland which undertake DNA testing on the request of private parties also.

The technology of Restriction Fragment Length Polymorphism (RFLP) analysis of VNTR markers for individualisation of the biological material has undergone rapid changes in the last few years. Now, the use of multiple single-locus minisatellite probes produce one or two bond patterns (depending on ones homo-or hetrozygocity), which is less confusing, and easier to evaluate when making comparisons. Chemiluminescent detection of RFLP patterns with alkaline phosphatase conjugated oligonucleotide probes and a chemiluminescent substrate provides an alternative to isotopic detection.

The main limiting factor in the DNA profiling is that sufficient amount of DNA is not available for the purpose from the crime exhibits, like a single hair or feeble stained clothing, having a few sperms or the blood cells. This limitation is overcome by a typing system based on Polymerase Chain Reaction (PCR), which copies and amplifies DNA in the test tube.

DNA Amplification by Polymerase Chain Reaction.- The polymerase chain reaction is a method by which specific segments of DNA which are of interest , can be replicated a million fold or more, so as to obtain sufficient DNA for analysis. The PCR process was originally developed by Mullis and his colleagues. Subsequent developments have led the PCR to be automated and an accepted tool in molecular biology. The PCR process is analogous to cellular mechanisms for DNA replication. The double stranded DNA extracted from the biological material is dissociated in to single strands by incubation at high temperature. Each strand serves as a template for the replication of their complementary sequences.

The detection of genetic variation in PCR-generated material has two general approaches; those based on detecting differences in sequences and those based on detecting differences in the size of the PCR products. Sequence specific probing is the most general and specific in defining sequence variation at a site.

In PCR or the VNTR typing short sequence, segments are amplified more efficiently than long ones. The limited PCR cycle numbers prevent over amplification. As always, the conditions for reliable genetic typing must be defined empirically.

Study at the DNA level is beginning to unravel the differences between the sex chromosomes. A number of X and Y-chromosomes specific sequences have been identified and these serve as potential markets for sex determination. Assays based on amplification of X and Y sequences in the sex determination assays have been successfully applied to forensic samples.

34. The errors have also been perceived during course of D.N.A. profiling and same has been detailed at pages-419 to 421

Problems linked with DNA profiling.- One of the lasting effects of the OJ Simpson case will likely be greater scrutiny by defence lawyers of the prosecutionŸs forensic DNA evidence presented in criminal cases. In the Simpson case, the defence, in essence, put the crime laboratory on trial. There is no substantial dispute about the underlying scientific principles in DNA profiling, howerver, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

Although, there is a common consensus within the scientific community that DNA profiling can yield results with a very high probability, the complex procedure of DNA profiling is not without problems. At every phase of the seven-step procedure just described, mistakes and improper handling of the DNA-probe can produce false results which in some cases can lead to a life sentence or even death-penalty judgement. Therefore, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

As with any new technology, the greatest risk of reaching an incorrect conclusion stems from undetected human error in the laboratory. Preliminary quality-control surveys have revealed some serious errors in DNA laboratories, which probably would have resulted in unjustified acquittals and convictions. If the same specimen is loaded in both lanes, an identity is obtained. Another problem that becomes evident is that if a first test goes wrong, there usually is not enough DNA to run the test again. This can be frustrating to many experts. The stakes get very high when molecular biology comes out of the laboratory and into the courtroom. Therefore, a short summary of the potential errors which can arise is important in order to comprehend the dangers of DNA profiling.

A distinction can be drawn between (a) technical errors; and (b) population genetics errors which can arise as a matter of false calculation and wrong interpretation based on the calculations.

(a) Technical Errors.-Firstly, the DNA-probe can be contaminated or degraded. This is specially the case with field samples. The contamination can be caused by bacterial, viral, other non-human DNA or by blood or saliva traces of police officers of laboratory personnel when handling the DNA. The degradation is especially

likely when the DNA is in warm, moist conditions. Normally, DNA degrades in a couple of days and vaginal swabs even in a few hours since the vaginal secretions penetrate the DNA of the sperm. An exception is blood and semen stains outside the vagina which dry quickly and can yield results even after a few weeks. Another point is the handling of the recovered DNA-probe. The probe has to be put immediately in a deep freezer cooling as low as-70C or even lower.

Furthermore, the DNA samples can be mixed up by the police or the laboratory personnel (this actually took place in one case), or the amount of the DNA can be insufficient. Secondly, a significant žsource of errorŸ is the incomplete digestion of the DNA by the restriction enzymes. The other extreme can be an over-digestion also called žstar activityŸ. Thirdly, a žband shiftŸ can occur, meaning that the DNA fragments which are put in several lanes next to each other can influence each otherŸs mobility, thus causing wrong results of the gel electrophoresis. In connection with the problem of žband shiftŸ, the gel electrophoresis itself may not be conducted properly, ie, the voltage can be too law or too high or the concentration of the gel can be incorrect. Finally, the expert who determines a match can be biased or put in other words: ž people tend to see what they expect to see and it is true that there are very large financial interests in the success of the tests, and their continued adoption by the courts. The people carrying out the tests have vested institutional interests in prosecutions being successfulŸ. All these points are, by far, not the only ones but they show that ž the practical problems of actually doing the test should not be underestimated. The process is very labour intensive and needs both meticulous expertise and much experience in reading and interpretation of the bandsŸ. However to be fair, some improvements have been introduced to decrease these factors.

Another problem is the phenomenon of band shifting. This occurs when DNA fragments migrate at different speeds through separate lanes on a single gel. This problem has been attributed to a number of factors including the preparation of gels, the concentration of sample DNA, the amount of salt in the DNA solution, and contamination. Band shifting can occur even if the various lanes contain DNA from the same person. Because allele sizes in forensic RFLP systems are closely spaced, it is difficult to know if the relative positions of bands arise from the size of

the allele fragments or from band shifting.

(b) Pupulation Genetic Errors.- To establish a match, the comparison of the DNA sample from the scene of crime or from the victim and the DNA of the suspect is insufficient. The result would only imply that the samples are identical, yet this does not verify the hypothesis that the suspect is the factual offender. The ascertain that the frequency of such a matching DNA-profile that might occur by chance in the relevant population must be calculated. Normally, the race of the suspect or defendant determines the type of the population genetics used. DNA databases of the main races-African American, Caucasian (European race), Asians and Hispanies exist. Still, many complicated problems in regard of the population genetics arise that cannot be described here. Since, the existing population databases refer only to the main races mentioned above; the question is how safely these databases can be used for other races like African, Caribbean or South East Asians. The fact is that the variations can be very high. Another point is that these databases are calculated on the assumption of the Hardy-Weinberg equilibrium and linkage equilibrium. These equilibriums assume that marriage in a given population is random and therefore, the alleles of a given loci are transmitted randomly as well. The question is, do these equilibriums equally apply to the intermarriage frequency of subcultures and isolated tribes and communities?

Such subcultures may have different frequencies of the alleles which are not as randomly as assumed for the main populations. That would drastically increase the possibility that more individuals could have a matching DNA profile. Furthermore, statistical erros, the size of the population used for calculation and other mistakes can all add up to wrong probability figures.

35. As stated above, much stress has been made on behalf of appellant with regard to authenticity of the D.N.A. report. During examination in-chief, PW-10 had detailed that for want of adequate infrastructure required for conduction of D.N.A. Test outsourcing was permissible and as serving technician got training at Gurgaon, as per direction given by Directorate of Forensic Science, Ministry of Home affairs, Government of India, New Delhi, as such sample was also not

examined at Lab India, Gurgaon in presence of technician, who also actively participated and then the report was brought up whereupon, he had prepared the final report. It has further been stated by that Aluminium Phosphed as well as Lorazepam commonly known as Acgtivan tablet was also found present during course of examination of viscera. During cross-examination, it is evident that his educational qualification, experiences have been tested. He had admitted that D.N.A. Test was not in his field. He had not received training in D.N.A. field. Then he has detailed the requirement of authentication as well as process of preparation of authentication card. He has further disclosed that as the sample were sent by the Court itself, therefore, it need not require authentication. He has further stated that as per circular issued by the Additional Director of C.I.B. the sample should be sent to Government Laboratory only. He has further stated that he had not received authentication card from Gandhi Maidan P.S. while receiving the sample for D.N.A. Test. He again stated that he does not possess expertise in D.N.A. examination. He has further disclosed that he had got information with regard to accreditation granted to Lab India, Gurgaon from N.A.B.A. He was cross-examined over qualification, experience, training of Shiv Kumar relating to D.N.A. Test. He had also stated that Shiv Kumar as well as Santosh Kumar both were sent to Lab India for conduction of examination of D.N.A. Test.

36. From the evidence of PW-10, it is evident that he has been cross-examined mainly on his profile relating to D.N.A. examination whereupon, he had categorically ensured. However, it is apparent from his examination in-chief itself that he has prepared the report on the basis of examination and report of the samples made by Lab India at Gurgaon. It is also evident from the cross-examination that this witness was not cross-examined on the factum of any sort of deficiencies, deformity, lapses error during course of examination of samples, which could have adversely affected upon authenticity of the report. At this juncture, the evidence of PW-1 and PW-3 is to be looked into who have clearly stated regarding giving of samples and so far sample from the body of deceased is concerned, PW-8 has already stated like so whereupon, he was not at all cross-examined.

37. Now coming to the evidence of remaining material witnesses, it is evident that PW-4 had stated that he had boarded capital express on 14.08.2007 and was allotted birth no.43 of coach no.S-1. He saw a couple occupying the front seat. Wife has said that she is going to lavatory. She had gone, but did not return. He has seen the couple upto Barauni Station. He was to come to Mokama, he awaken at Barh where he got down from the train. He has further stated that police had shown photograph and on the basis thereof, he had identified the girl. He had also made statement under Section 164 of the Cr. P. C. He has further narrated that he had stated that he was not sure even after seeing the photograph that the girl was travelling on the train. He had claimed identification of male counter-part. During course of cross-examination, he had identified the photograph shown by defence and said that he was the gentleman who was the male partner of the couple. He had not seen the wife shouting, crying or weeping.

38. But this witness had not stated the exact time at which hour the lady left the place along with the fact that after her disappearance her male partner became perplexed and was moving hither and thither to trace out her. Not only this, this witness on account of his sleep had gone away from his destination then in that event identifying the lady proceeding towards latrine before Barauni is a circumstance which could be taken into consideration.

39. PW-5 had stated that on 14.08.2007, he had boarded capital express. He was allotted birth no.44 of coach no.S-1. He along with his brother Sumit Kumar Dopania was going. They slept at Katihar and awaken at Bakhtiyarpur after hearing Commotion. Then he enquired into the matter. Some persons were speaking that wife who had gone to latrine is not being traced out. It was 4.30a.m. He has further identified the photograph as well as he also identified the accused in dock. During cross-examination, he has stated that at the time of statement, police has shown photograph of couple. Some photograph has been seen by him in Court. He had further stated that the couple had sat in front of his birth. He had further stated that accused was very much perplexed at Bakhtiyarpur and was enquiring from other passengers.

40. PW-6 is brother of Sumit Kumar Dopania. He was allotted birth no.41 of Coach No.S-1 and his brother was allotted birth no.44 of coach no. S-1. He further stated that during course of journey, he came to know at morning hour that a lady has disappeared from the train. One person was in search of his wife and was saying that his wife was not traceable. It was 4.00-4.30a.m., at that very time, the train had crossed Bakhtiyarpur. He had further identified the accused in dock. During cross-examination, he has stated that Gandhi Maidan Police had recorded his statement. Gandhi Maidan Police had shown photograph, which he identified. He had further found the couple sitting in front of his seat by the side of gate. The wife was wearing green colour Salwar suit.

41. PW-7 had travelled in the capital express on 14.08.2007. He was allotted coach no.S-1 birth no.35. He had further stated that one couple was travelling having birth no.33 as well as 36. He is unable to say whether they were travelling on birth no.55 as well as 38. He had further stated that during course of statement, police had shown photograph. In para-8, he had further stated that at about 12.00 mid-night, he had seen the girl going towards toilet and after returning there from she sat over birth no.55. Somebody was sleeping over birth no.55 while she sat near leg of that passenger. During cross-examination, he has stated that he had found the gent sleeping over birth no.36 while lady was sitting over birth no.55. He further identified the accused who was occupying seat no.36. He had not seen the couple quarrelling. He had seen the lady going towards toilet in between Begusarai and Barauni.

42. PW-11 happens to be Kalpana Kumari, the Investigating Officer of the case. She had stated that after registration of the case, she took up investigation. Recorded statement of PWs. Inspected the place of occurrence which she has described residential house of sasural of Rani Archana Sinha, recorded the statement of witnesses as well as got them examined under Section 164 of the Cr. P. C., apprehended the accused. Further traced out mobile no.9835076279 standing in name of Anita sister of Rajiv Singh, another mobile no.9835473520 belongs to Kamlendra, brother in-law of Rajiv Singh. Mobile no.9905356100 belongs to Rakesh Kumar, brother of Rajiv Singh.

Archana Mobile no.	Talked with Mobile no	Dated
9334606301	9434877639 Ravi	12.08.07
	9234610453	10.08.07
	9430070913	10.08.07
	9835076279	10.08.07
	9431840218	10.08.07
	9234877630	12.08.07
	9431058644	15.08.07
	9434610453	15.08.07
Ravi Mobile no.	Talked with Mobile no.	Dated
9234610453	9314136965	13.08.07
Rajiv Mobile no.	Talked with Mobile no.	Dated
9314136965	9835076279	
?	9234877639	
	9928318243	
	9414866095	
	9334603601	
	9431058644	
	9905356100	
	9431058644	
	9928496865	
	9733088721	
	9431058644	
	9431058644	
	9335312001	
	06122320616	
	9234610453	
	9945762092	
	06122320616	
	9905356100	

	06132223509	
	9835076279	
	9905356100	
	06122320616	
	92346106152	
	9835076279	
	9928496865	

43. After concluding the investigation, PW-11 has submitted charge sheet against Rajiv Singh. While investigation kept pending against other co-accused. During course of investigation, the dead body of female was found on 18.08.2007, whereupon postmortem was conducted at Sadar Hospital, Katihar and viscera was preserved. For the recovery of aforesaid dead body Azamnagar U.D. Case no.08 of 2008 was registered. She had further disclosed that she took possession of viscera from Katihar as well as had also filed petition for conduction of DNA Test and for that permitting to take blood sample of parents of Rani Archana in presence of competent officer, which was accordingly ordered. In pursuance thereof, she had obtained blood sample and sent it along with viscera report to Forensic Science Laboratory, Patna for DNA Test. She had received DNA test in sealed covered, which was submitted before the Chief Judicial Magistrate and case was transferred before the concerned Court. With regard to recovery of other item, again a prayer was made for its examination by the FSL. She had visited the place where dead body was found and detailed the same. Then she had filed petition for addition of Section 304B, 201 of the I.P.C. before the Court. She had identified the accused. During cross-examination at pages-10, 11 inadmissible piece of evidence has been brought up concerning the contents of written report as she was not the maker of the document. The maker of the document was PW-3 and on account thereof, had the appellant intended to bring those things on record, although happens to be an exhibit, would have confronted those parts to the PW-3. Furthermore, the contents of the case diary relating to G.R.P. Mokama P. S. Case 26 of 2007 is also not admissible. However, at page-12, the contradiction with regard to further statement of informant (PW-3) has been confronted. She had further disclosed that even after her requisition, Mokama G.R.P. had not produced the diary having in pen of Rani Archana. However, the

defence had tried to draw her attention towards contents of diary. Then happens to be contradiction with regard to evidences of Subhash Chandra, Ravi Shankar at pages-12 and 13. Again inadmissible part has been brought up at page-14 which happens to be the statement of tenant of accused namely Sachchidanand as well as neighbour Jagannath. She had disclosed that she took statement of accused under para-90 of the supplementary case diary. She had further stated that in para-74 of the supplementary case diary, she had incorporated the fact that the sample was handed over in sealed condition at Rajbansi Nagar Hospital by one Ashok Kumar and Anil Kumar. She had further stated that she had not put her own sign. She had further stated that at the time of taking sample from parents of Rani Archana, no independent witness was kept. She had not taken statement of Ashok Kumar and Anil Kumar. She had denied the suggestion that she had submitted charge sheet under the influence of husband of complainant.

44. PW-12 is a formal witness, who had simply produced the material exhibits seized in connection with Mokama Rail P.S. Case no.26 of 2007.

45. The appellant had also entered into defence and had examined DW-1, Shiv Kumar, DW-2 Md. Nasir Hussain, DW-3 Suman Sinha, DW-4 Kundan Kumar Singh, DW-5 Bajrang Singh, as well as also exhibted exhibit-A letter dated 29.08.2009 written by Subhash Chandra Prasad, Exhibit-A/1 Bank Account statement of Rajiv Singh, Exhibit-B letter written by Akhilesh Kumar, Exhibit-B/1 order dated 08.09.2008 passed by the Patna High Court, marked exhibit-X for identification letter written by Akhilesh dated 14.09.2008, Exhibit-X/1 R.T.I. reply letter dated 06.03.2000.

46. Now, coming to the evidence, DW-1 had simply shown his presence after marriage of Rajiv Singh at his house and further spoke with regard to cordial relationship amongst the spouse. He had also stated presence of parents of Rani Archana. During cross-examination, he had stated that he came to know regarding incidence from television. He had gone to place of Rajiv Singh, but having no talk with his father Rajdeo Singh.

47. DW-2 is an employee of the State Bank who had exhibited the statement of the account standing in name of Rajiv Singh and during said course had stated

that no amount relating to Tata Mutual Fund was ever deposited/ transacted through the aforesaid savings account.

48. DW-3 has claimed to be tenant of appellant. She had stated with regard to marriage of appellant Rajiv Singh with Rani Archana and further disclosed that Rani Archana was living happy marital life till her presence. She had no occasion to hear complaint with regard to un-desirous treatment. She had not seen the family members quarrelling. She had not seen Rani Archana being tortured over procurement of dowry.

49. DW-4 is Kundan Kumar Singh who on 15.08.1987 was the O/c of Mokama G.R.P. on that day at about 11.40 a.m. Rajiv Singh had produced written report on the basis of which Mokama Rail P.S. Case no.26 of 2007 was registered under Section 365 of the I.P.C. He had further stated that Rajiv Singh had informed regarding missing of his wife Rani Archana Sinha from Capital Express. After registration of case, he had taken up investigation. He further disclosed that he was travelling in coach no. S-I, birth no.35 and accordingly he informed Barauni, Barh, Khagaria, Bihpur Katihar Rail Police after disclosing the physical feature of Rani Archana and requested them to inform, in case they trace out any information. Because of the fact that Rani Archana was travelling through train as such he had deputed Mahendra Lal Choubey to obtain reservation chart of coach no. S-I and S-2 from Danapur and accordingly, he brought the same. He had recorded statement of Ravi Shankar Prasad, Subhash Prasad and Malti Devi on 16.08.2007. Then there happens to be inadmissible part with regard to query made by him from Ravi Shankar Prasad and given by Subhash Chandra Prasad as well as Malti Devi. He had also stated that from the reservation chart, he located some passengers as well as also located T.T.E. Hari Shankar Prasad. He had further stated that Hari Shankar was shown photograph of Rani Archana, who had stated that she was travelling over birth no.36 as well as 33 along with her husband. He had taken statement of Bajrang Singh, Navin Kumar Mishra. Again there happens to be inadmissible part relating to statement whatever being given by Navin Kumar Mishra. Then he had again made inadmissible evidence disclosing the fact that Bajrang Singh, Sumit Kumar, Jawahar Singh disclosed that the girl was travelling in coach no. S-I. In para-7, he had stated that Bajrang Singh

telephonically informed that proprietor Anapurna Tour and Travel had disclosed after seeing the photograph of Rani Archana that she had booked one room. At para-8, he had disclosed that he was informed regarding taking of meal by Rani Archana at Food Plaza at Jalpaiguri Station on 14.08.2007. In para-9 and 10 happens to be the statement of Hari Shankar Prasad which he had recorded under the case diary. In para-11, he had disclosed examination of neighbours of Rajiv Singh. In para-74, he had mentioned the mobile no. of Rajiv Singh 9314836965 while mobile no. of Rani Archana 9413217340. He had further disclosed that on 12.08.2007 Rani Archana had talked over mobile no.9955073519 at 5.00p.m. On 13.08.2007, call was made over mobile no.9335312001. He had further disclosed that in between 10.08.2007 to 15.08.2007 Rajiv had talked with parents of Rani Archana as well as his brothers with his mobile. During course of investigation, he had gone to Darjeeling as well as New Jalpaiguri and had visited the Hotel where Rani Archana had stayed. Again he disclosed that in para-156 incorporated the fact that Rajiv Singh had talked with father of Rani Archana on 13.08.2007 and in likewise manner, he had talked on 12.08.2007. In para-197, he had incorporated the fact that cousin brother of Rani Archana had filed written report before him. In para-15, he had stated that after considering the DNA report, viscera report, medical report, he had submitted report under Section 182, 211 of the I.P.C. against Rajiv Singh. At para-16, the prosecution had cross-examined regarding his conduct to suggest that he was more inclined towards accused than prosecution and in spite of efforts taken by prosecution, he failed to turn up to depose. Then at page nos.6 and 7, he clearly stated that he had got no instruction to enquire from witnesses on telephone. He had further accepted that statement of another T.T.E. Pritam Singh was not taken by him. He had got information on 21.08.2007 regarding recovery of unknown female dead body and further the dead body has been preserved at Katihar Sadar Hospital for DNA test. He had further stated that in para-64 of the case diary that he had incorporated the fact that shoe and slipper was produced before him by Rajesh Singh for which seizure list was prepared. In para-84, he had mentioned the fact that mobile no.9314136965 and 9413217340 belongs to Rani Archana. This information was given by Rajiv Singh. However, he had investigated. He had further stated that mobile no.9835076279 belongs to Anita sister of Rajiv Singh, mobile no.9234877639 belongs to mother of Rani

Archana, mobile no.9928318243 belongs to friend of Rajiv Singh, mobile no.9414866095 belongs to class teacher of Rajiv Singh, mobile no.9334606301 belongs to Rani Archana, mobile no.9928496865 belongs to friend of Rajiv Singh namely Santosh, mobile no.9335312001, 09945762092 belongs to friend of Rajiv Singh. He had further stated that mobile no.9413217340 call was made on 12.08.2007, 13.08.2007 over mobile no.9955073519, 9335312001 and 9417799999. Out of which as per disclosure made by Rajiv Singh one belongs to Naresh while regarding rest, he had not disclosed the same. In para-156, he has mentioned the fact that on 13.08.2007, Rajiv Singh had dialed father of victim as well as brother of victim and talked with them upto 300 seconds. In para-159, he has mentioned the fact that he had seized note book of Rani Archana Sinha. In para-163, he has mentioned the fact regarding report of DNA. He had also mentioned the fact regarding receiving of photo copy of postmortem report, viscera report. He had also disclosed with regard to receiving of reservation chart then had concluded the investigation as false as well as also recommended for taking action against the informant Rajiv Singh under Sections 182, 211 of the I.P.C. He had also mentioned the fact that he had sent the note book for forensic examination, but till pendency of investigation he had not received the report.

50. DW-5 is Bajrang Singh, one of the A.S.I. posted at G.R.P. Mokama. During examination-in-chief, he had stated that as per direction of the O/c who was investigating the Mokama G.R.P. P.S. Case no.26 of 2007, he had gone to New Jalpaiguri, Darjeeling. During course thereof, he was also handed over photographs of victim. He had gone to New Jalpaiguri on 16.08.2007 and contacted Pradeep Sah, proprietor of Anapurna Tour and Travels. He identified the photographs and disclosed that both the persons have come to his hotel on 11.08.2007, hired vehicle and gone to Gangtok where they booked themselves at Hotel Sunshine. Photo of victim even published at local newspaper. He got talk with Pradeep Sah on mobile with S.P. Rail, Patna. Then he stated that after leaving their belongings in his hotel, they gone to Food Plaza located at New Jalpaiguri and he had gone to Food Plaza. He had shown the photograph to Manager of Food Plaza, who had disclosed that on 11.08.2007 and 14.08.2007, they have taken food. Manager had also talked with S.P. Rail, Patna. He had also requested the Rail Authority to hand over reservation chart and details of

passengers, which was accordingly provided. He had also examined the T.T.E. so deputed. They have also identified the photograph. He got the T.T.E. talked with S.R.P. Then had stated the statement of the witnesses. During cross-examination, he has exhibited the search-cum-seizure list over which the signature of Rajiv Singh was taken. He had also exhibited the photograph. He has further stated regarding inspection of relevant registration of different hotels located at Gangtok (Hotel Sunshine, Yuma Hotel etc.). However, all these persons have not been examined. Hence, his evidence found uncorroborated.

51. Having the parallel scrutiny of PWs as well as DWs, Rani Archana Sinha being in company of appellant Rajiv Singh is an admitted fact. It is also an admitted position that couple had gone to Darjeeling, Gangtok. It is also an admitted fact that there was reservation in Coach no.S-1, birth nos.33 and 35. Since thereafter, there happens to be version and counter-version. According to version of prosecution, Rani Archana was done to death while according to appellant, she on her own slipped and on account thereof, substantial case was registered at Mokama G.R.P. as per instruction given by PW-1 Subhash Prasad, father of Rani Archana Sinha.

52. In the background of respective version, it is concluded as follows.

(i) After registration of Gandhi Maidan P.S. Case no.308 of 2007 while the investigation was going on simultaneously proceeding with the investigation of Mokama G.R.P. P.S. Case no.26 of 2007, the news flashed with regard to disappearance of Rani Archana Sinha and, after recovery of dead body of a woman being in decomposed position, attracted attention of the Investigating Officer and on account thereof, to have a conclusive proof with regard to identity, the viscera was preserved at Katihar Sadar Hospital during course of post mortem examination and the same matched under DNA Test after obtaining blood sample of parents (PW-1 as well as PW-3) and then the report, which is an exhibit of the record speaks affirmation of identity of dead body to be that of Rani Archana Sinha and on account thereof, one could have conclusive opinion regarding death of Rani Archana. Once the dead body is found properly identified then other aspect is to be seen whereunder the death has been shown on account of Aluminium

Phosphid commonly known as Celphos as well as Lorazepam a Benzodiazenpine commonly known as Ativan (as per evidence of PW-10) and on account thereof, death of deceased otherwise in normal circumstance.

(ii). It is also evident that there happens to be consistent version of PW-1, PW-2 and PW-3 that in between 13.08.2007 to 15.08.2007, they have unsuccessfully tried to contact Rani Archana Sinha, but they could not succeed. From the evidence of Investigating Officer as well as from the evidence of DW-4, the aforesaid event is found substantiated and on account thereof, presence of some foul game having been played at the hands of appellant is being smudged.

53. The evidence of PW-4, PW-5, PW-6, PW-7 is not going to favour the appellant, because of the fact that they have shown presence of couple, but there happens to be inconsistent with regard to seat which they have occupied as well as over their own conduct from which disappearance of Rani Archana in between Begusarai and Barauni became suspicious. Furthermore, they are not consistent over timing. Apart from the fact that none of them have claimed her presence. At the other hand, from their evidence, it is evident that appellantŸs conduct was suspicious. Furthermore, from the evidence of DW-4, it is evident that the belongings of Rani Archana was not produced before him including the mobile phone which she was carrying. At the other hand, her sandal was produced, but it was not paired. It is also evident that inspite of having stoppage of Capital Express at Mokama, Rajiv Singh did not opt to get down rather he continued his journey till Patna where he got down and then returned back to Mokama, informed the PW-3 and then as per instruction of PW-1, F.I.R. was instituted. Really this happens to be the expected conduct when one finds his near and dear missing during course of journey.

54. Much stress has been made that purchase of share of Tata Mutual Fund was only to promote and to give supporting hand to PW-2, the son of PW-1 as well as PW-3, brother of Rani Archana, who was employed under Tata Mutual Fund. It has also been submitted that have there been the aforesaid deposit under the banner of dowry then under such circumstances, appellant would have got the maturity amount deposited in his name and for that, apart from cross-examining

PWs-1, 2 and 3 also examined DW-2 as well as exhibited the statement of account standing in name of appellant Rajiv Singh. Admittedly, the mutual fund was purchased in name of Rani Archana, on the date of purchase of mutual fund was already married with Rajiv Singh. There is no controversy that aforesaid bonds were purchased by PW-2 and not by Rajiv Singh. Had there been truth in the suggestion of Rajiv Singh that it was for the purpose of promoting PW-2 then in that event, the bond would have been purchased either in name of PW-1 or PW-3, why in name of married daughter. Furthermore, if the bond was not as a dowry then why Rajiv Singh had allowed purchase in name of Rani Archana Sinha including opening of account. Because of the fact that the date of purchase and the date of death happens to be so approximate that there was no occasion to allow the bonds to be credited in the account of appellant after its maturity as till then Rani Archana had already died and for that a criminal case was there and in that view of the matter, any step taken up by the Rajiv Singh for getting withdrawal of maturity amount could be seen as an additional link.

55. Drowning man catches at straw has been confirmed at the end of appellant when an argument has been raised to the effect that Akhilesh Kumar, cousin brother of deceased who was at that very time posted at Kishanganj P. S. as O/c failed to identify the dead body in the background of Exhibit-B, a written application submitted by him as well as his non-examination on behalf of prosecution. After said event has got no force at all because of the fact that none of the PWs have claimed identification of the dead body and that happens to be reason for conduction of DNA Test by which identification of dead body was ascertained.

56. During course of statement of appellant under Section 313 of the Cr. P. C. all sorts of incriminating materials were confronted to appellant so adduced on behalf of prosecution during course of trial, which was not at all answered, explained by the appellant. More particularly, over last seen theory as well as depriving PW-1 as well as PW-3 to talk with Rani Archana Sinha, at the other hand, indulging in conversation with others. From the print out, the allegation made by PW-2 is found fully corroborated on account of having gossiped for 300 seconds with PW-1 as well as PW-2 on 13.08.2007 only. Appellant, on the other hand, admitted to have conversation with certain mobile no., but regarding rest, did not answer.

57. In Madhu alias Madhuranatha and Anr. V. State of Karnataka reported in AIR 2014 Supreme Court 394, the same has been found in following manner:-

15. A number of witnesses have deposed of seeing the deceased in the company of the appellants before the incident. In cases where the accused was last seen with the deceased victim (last seen-together theory) just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. (Vide: Nika Ram v. State of Himachal Pradesh, AIR 1972 SC 2077; and Ganeshlal v. State of Maharashtra (1992) 3 SCC 106 : (1992 AIR SCW 1175).

16. It is obligatory on the part of the accused while being examined under Section 313, Cr.P.C., to furnish some explanation with respect to the incriminating circumstances associated with him, and the court must take note of such explanation even in a case of circumstantial evidence, to decide whether or not the chain of circumstances is complete. (Vide: Musheer Khan alias Badshah Khan and Anr. v. state of Madhya Pradesh, AIR 2010 SC 762: (2010 AIR SCW 996); and Dr. Sunil Clifford Daniel (AIR 2013 SC (Cri) 193: 2012 AIR SCW 5180) (supra)].

58. Delay in filing case has been desperately hunt by the appellant. From the written report coupled with the evidence of PW-1 as well as PW-3, it is found properly explained. However, the issue has been explained by the HonŸble Apex Court in Harivadan Babubhai Patel v. State of Gujarat, (2013) 7 SCC 45,

12. In this context, we may refer with profit to the authority in State of H.P. v. Gian Chand (2001)6 SCC] wherein a three-Judge Bench has opined that the delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay. If the explanation offered is satisfactory and there is no possibility of embellishment, the delay should not be treated as fatal to the case of the prosecution.

13. In Ramdas v. State of Maharashtra (2007)2 SCC 170 it has been ruled that when an FIR is lodged belatedly, it is a relevant fact of which the court must take notice of, but the said fact has to be considered in the light of other facts and circumstances of the case. It is obligatory on the part of the court to consider

whether the delay in lodging the report adversely affects the case of the prosecution and it would depend upon the matter of appreciation of evidence in totality.

14. In Kilakkatha Parambath Sasi v. State of Kerala (2011)4 SCC 552 it has been laid down that when an FIR has been lodged in a belated manner, inference can rightly follow that the prosecution story may not be true but equally on the other side, if it is found that there is no delay in the recording of the FIR, it does not mean that the prosecution story stands immeasurably strengthened. Similar view has also been expressed in Kanhaiya Lal v. State of Rajasthan(2013)5 SCC 655.

15. Scrutinised on the anvil of the aforesaid enunciation of law, we are disposed to think that there had been no embellishment in the FIR and, in fact, there could not have been any possibility of embellishment. As we find, the case at hand does not reveal that the absence of spontaneity in the lodgment of the FIR has created a coloured version. On the contrary, from the other circumstances which lend support to the prosecution story, it is difficult to disbelieve and discard the prosecution case solely on the ground that the FIR was lodged on 25-1-2006 though the deceased was taken by the accused persons sometime on 23-1-2006. The explanation offered pertaining to the search of the deceased by the informant has been given credence to by the learned trial Judge as well as by the High Court and, in our considered opinion, adjudging the entire scenario of the prosecution case, the same deserves acceptation. Hence, the said submission is sans substance.

59. Appellant as stated above also challenged his prosecution under instant trial on the ground that it happens to non-permissible under eye of law because of the fact that it does not happen to be case and counter-case rather it happens to be 2nd F.I.R., which is found hit by Section 162 Cr.P.C. The appellant meant to say that once for disappearance of Rani Archana, a case had already been drawn on the basis of fardbeyan of appellant himself, then in that event, subsequent filing of case will not be entertainable as.

(A) The first one, the investigation had already commenced on the fardbeyan of appellant and on account thereof, truthfulness of version made by appellant

become subject to investigation. If, the investigation would have revealed complicity of appellant, then in that event, investigating officer was quite competent to array the appellant as an accused after completion of investigation by way of submission of charge sheet against him.

(B) In other way, I.O. might have taken recourse of filing prosecution under Section 182, 211 of the I.P.C. in case disclosure was found false. So, anyway present prosecution happens to be barred. Furthermore, it has also been stated that instant F.I.R. is also hit by Section 162 of the Cr.P.C.

60. While appreciating the points raised on behalf of appellant, it should be taken into account that for disappearance of Rani Archana from the train as suggested by the appellant, he had instituted a case at Mokamah. Informant (PW-3) had perceived such story of disappearance shrewdly woven in preplanned manner in the background of previous conduct of appellant and his family members where under Archana was treated and so, apprehended some sort of foul game extending to murder, and on account thereof, perceiving apathy of the end of Mokama Police, got this case filed narrating the event including presence of case instituted of Mokama at the behest of appellant, which lastly found galvanized under instant prosecution. Be that as it may, with regard to disappearance of Rani Archana two version have been advanced. One at the instance of appellant and other by PW-3, giving two different and distinct version. That means to say, it happens to be version and counter-version.

61. While considering over the subject, it is apparent that in ordinary course on cursory perusal of Cr.P.C., it is found that second F.I.R. with regard to same occurrence is non-entertainable on account of presence of Section 162 Cr.P.C. But while minutely going through its requirement, the theory of Sameness is found there. Concept of Sameness, is the crucial issue which has been taken into consideration by the HonŸble Court in detail and explained it magnifying the same in harmonious way. In Surender Kaushik and Ors. v. State of Uttar Pradesh and Ors. reported in AIR 2013 SUPREME COURT 3614.

11. Chapter XII of the Code deals with information to the police and their powers to investigate. As provided under Section 154 of the Code, every information relating

to commission of a cognizable offence either given orally or in writing is required to be entered in a book to be kept by the officer-in-charge of the concerned police station. The said FIR, as mandated by law, has to pertain to a cognizable case. Section 2(c) of the Code defines œcognizable offence? which also deals with cognizable cases. It reads as follows:- œcognizable offence? means an offence for which, and œcognizable case? means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;?

12. If the primary requirement is satisfied, an FIR is registered and the criminal law is set in motion and the officer-in-charge of the police station takes up the investigation. The question that has emerged for consideration in this case is whether after registration of the FIR and commencement of the investigation, a second FIR relating to the same incident on the basis of a direction issued by the learned Magistrate under Section 156(3) of the Code can be registered.

13. For apposite appreciation of the issue raised, it is necessitous to refer to certain authorities which would throw significant light under what circumstances entertainment of second FIR is prohibited. In Ram Lal Narang (supra), this Court was dealing with the facts and circumstances of a case where two FIRs were lodged and two charge- sheets were filed. The Bench took note of the fact that the conspiracy which was the subject-matter of the second case could not be said to be identical with the conspiracy which was the subject- matter of the first one and further the conspirators were different, although the conspiracy which was the subject-matter of the first case may, perhaps, be said to have turned out to be a part of the conspiracy which was the subject-matter of the second case. After adverting to the various facets, it has been opined that occasions may arise when a second investigation started independently of the first may disclose wide range of offences including those covered by the first investigation. Being of this view, the Court did not find any flaw in the investigation on the basis of the subsequent FIR.

14. In T.T. Antony (supra), it was canvassed on behalf of the accused that the registration of fresh information in respect of the very same incident as an FIR

under Section 154 of the Code was not valid and, therefore, all steps taken pursuant thereto including investigation were illegal and liable to be quashed. The Bench, analyzing the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, came to hold that only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code and, therefore, there can be no second FIR and consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. It was further observed that on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code.

15. It is worth noting that in the said case, the two-Judge Bench explained and distinguished the dictum in Ram Lal Narang (supra) by opining that the Court had indicated that the real question was whether the two conspiracies were in truth and substance the same and held that the conspiracies in the two cases were not identical. It further proceeded to state that the Court did not repel the contention of the appellant regarding the illegality of the second FIR and the investigation based thereon being vitiated, but on facts found that the two FIRs in truth and substance were different since the first was a smaller conspiracy and the second was a larger conspiracy as it turned out eventually. Thereafter, the Bench explained thus: - œThe 1973 Cr PC specifically provides for further investigation after forwarding of report under sub-section (2) of Section 173 Cr PC and forwarding of further report or reports to the Magistrate concerned under Section 173(8) Cr PC. It follows that if the gravamen of the charges in the two FIRs ” the first and the second ” is in truth and substance the same, registering the second FIR and making fresh investigation and forwarding report under Section 173 Cr PC will be irregular and the court cannot take cognizance of the same.?

16. In Upkar Singh (supra), a three-Judge Bench was addressing the issue pertaining to the correctness of law laid down in the case of T.T. Antony (supra). The larger Bench took note of the fact that a complaint was lodged by the first respondent therein with Sikhera Police Station in Village Fahimpur Kalan at 10.00 a.m. on 20th May, 1995 making certain allegations against the appellant therein and some other persons. On the basis of the said complaint, the police had registered a crime under Sections 452 and 307 of the IPC. The appellant had lodged a complaint in regard to the very same incident against the respondents therein for having committed offences punishable under Sections 506 and 307 of the IPC as against him and his family members. As the said complaint was not entertained by the concerned police, he, under compelling circumstances, filed a petition under Section 156(3) of the Code before the Judicial Magistrate, who having found a prima facie case, directed the concerned police station to register a crime against the accused persons in the said complaint and to investigate the same and submit a report. On the basis of the said direction, Crime No. 48-A of 1995 was registered for offences punishable under Sections 147, 148, 149 and 307 of the IPC. Challenging the direction of the Magistrate, a revision was preferred before the learned Sessions Judge who set aside the said direction. Being aggrieved by the order passed by the learned Sessions Judge, a Criminal Miscellaneous petition was filed before the High Court of Judicature at Allahabad and the High Court, following its earlier decision in Ram Mohan Garg v. State of U.P.[10], dismissed the revision. While dealing with the issue, this Court referred to paragraph 18 of T.T. Antony (supra) and noted how the same had been understood: -

œ11. This observation of the Supreme Court in the said case of T.T. Antony is understood by the learned counsel for the respondents as the Code prohibiting the filing of a second complaint arising from the same incident. It is on that basis and relying on the said judgment in T.T. Antony case an argument is addressed before us that once an FIR is registered on the complaint of one party a second FIR in the nature of a counter- case is not registrable and no investigation based on the said second complaint could be carried out.?

17. After so observing, the Court held that the judgment in T.T. Antony (supra) really does not lay down such a proposition of law as has been understood by the learned counsel for the respondent therein. The Bench referred to the factual score of T.T. Antony (supra) and explained thus:-

œHaving carefully gone through the above judgment, we do not think that this Court in the said cases of T.T. Antony v. State of Kerala has precluded an aggrieved person from filing a counter-case as in the present case.?

To arrive at such a conclusion, the Bench referred to paragraph 27 of the decision in T.T. Antony (supra) wherein it has been stated that a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution. Thereafter, the three-Judge Bench ruled thus:

œIn our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.?

18. Be it noted, in the said verdict, reference was made to Kari Choudhary v. Sita Devi[11], wherein it has been opined that there cannot be two FIRs against the same accused in respect of the same case, but when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation can be carried out under both of them by the same investigating agency. Reference was made to the pronouncement in State of Bihar

v. J.A.C. Saldanha[12] wherein it has been highlighted that the power of the Magistrate under Section 156(3) of the Code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out under Section 3 of the Police Act.

19. It is worth noting that the Court also dealt with the view expressed in Ram Lal Narang (supra) and stated thus: -

œ22. A perusal of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) also shows that even in cases where a prior complaint is already registered, a counter-complaint is permissible but it goes further and holds that even in cases where a first complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang case is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang case is in the same line as found in the judgments in Kari Choudhary and State of Bihar v. J.A.C. Saldanha. However, it must be noticed that in T.T. Antony case, Ram Lal Narang case was noticed but the Court did not express any opinion either way.?

20. Explaining further, the Court observed that if the law laid down by this Court in T.T. Antony (supra) is to be accepted to have held that a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code, such conclusion would lead to serious consequences inasmuch as the real accused can take the first opportunity to lodge a false complaint and get it registered by the jurisdictional police and then that would preclude the victim to lodge a complaint.

21. In Pandurang Chandrakant Mhatre (supra), the Court referred to T.T. Antony (supra), Ramesh Baburao Devaskar v. State of Maharashtra[13] and Vikram v. State of Maharashtra[14] and opined that the earliest information in regard to the commission of a cognizable offence is to be treated as the first information report and it sets the criminal law in motion and the investigation commences on that basis. Although the first information report is not expected to be an encyclopaedia of events, yet an information to the police in order to be first information report

under Section 154(1) of the Code, must contain some essential and relevant details of the incident. A cryptic information about the commission of a cognizable offence irrespective of the nature and details of such information may not be treated as first information report. After so stating, the Bench posed the question whether the information regarding the incident therein entered into general diary given by PW-5 is the first information report within the meaning of Section 154 of the Code and, if so, it would be hit by Section 162 of the Code. It is worth noting that analyzing the facts, the Court opined that information given to the police to rush to the place of the incident to control the situation need not necessarily amount to an FIR.

22. In Babubhai (supra), this Court, after surveying the earlier decisions, expressed the view that the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case the contrary is proved, where the version in the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible. In case the accused in the first FIR comes forward with a different version or counterclaim in respect of the same incident, investigation on both the FIRs has to be conducted.

23. It is worth noting that in the said case, the Court expressed the view that the High Court had correctly reached the conclusion that the second FIR was liable to be quashed as in both the FIRs, the allegations related to the same incident that had occurred at the same place in close proximity of time and, therefore, they were two parts of the same transaction.

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the

same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.

62. Thus, concluding on this score after analyzing coupled with parallel scrutiny of the evidences of PWs as well as DWs as well as circumstances visualizing there from, the instant appeal lacks merit and is accordingly dismissed. The appellant is on bail. Hence, his bail bond is cancelled with a direction to surrender before the learned lower Court to serve out the remaining part of sentence, failing which the learned lower Court will take appropriate step for procurement of his presence.

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