

## Review Research Paper

# Medical Evidence in Dowry Deaths: An Evaluation by Indian Courts

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### Abstract

Dowry Death has been one of the most barbaric forms of cruelty inflicted on young brides in the matrimonial home. Over the years, it assumed dangerous proportions calling for immediate legislative changes. Supreme Court judgment dated 11<sup>th</sup> Oct 2006 held that the demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence.

Forensic medical evidence has proved to be a crucial area in establishing the fact of 'unnatural' death before the Indian courts. An evaluation of cases indicates that proper scientific evidence has assisted the courts to establish the cause of deaths, while the absence of it has created a dilemma, leading to the acquittal of the accused. The paper emphasizes on the significance and indispensability of Forensic Medical evidence for the purpose of prosecuting an accused for the offence.

**Key Words:** Dowry, Medical Evidence, Death, Forensic Evidence, Cause of Death

### Introduction:

Dowry is one of the persistent evils of Indian society. It has assumed tremendous proportions over the years compelling the Indian Legislature to design stern laws for curtailing the evil. Section 304B IPC, 1860 stands testimony to the fact. It has been invoked in thousands of incidents concerning unnatural deaths of Indian brides in the safety of their matrimonial homes.

In the recent judgment of Supreme Court dated 11<sup>th</sup> Oct 2006 [10] it was held that the demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence.

No member of the family, even if he is a witness of the crime, would come forward to depose against another family member.

The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbour-hood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride.

But, it does not mean that a crime committed in secrecy or inside the house should go unpunished. [10]

Forensic evidence has been an innate part of the process, since the 'unnaturalness' of the death has to be established, before a court can proceed with examination of the case for dowry death.

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### Dowry in Indian Society:

Dowry system is deeply rooted in Hindu culture and is the customary practice of giving gifts in cash and kind by the bride's family to that of the groom. The origin of the practice of dowry may be traced to the Hindu ritual of "Varadakshina" which was associated with "Kanyadaan" in ancient Hindu tradition. Marriage was considered a sacrament and not a contract under Hindu Law, Kanyadaan being essentially the gift which the father of the bride made to the

bridegroom. The presents that were given to the daughter on the occasion of marriage by her relations and friends constituted her "stridhan", i.e., her separate property. Varadakshina was given voluntarily to the groom and there was no compulsion. [1]

The modern practice of dowry has no resemblance to the original concept contained in Hindu Law as it originated in ancient times. In fact it is a manifestation of the political, economic and cultural insignificance of women both in her natal family and in the family in which she enters in marriage.

Having always been considered an economic liability within her natal home, she is considered a temporary visitor until she departs in marriage to her husband's home. Dowry is to compensate the expenses of the new member to the family, even when the woman is educated and has her own job and is not economically dependent on her husband.

### **Extent of Dowry Death in India:**

Nearly 16000 women had been killed in dowry disputes from 1989 to 1991, about 15 a day. Another study reports that every hour and 42 minutes, a newly married woman is burned to death for bringing an insufficient dowry. [2]

According to National Crime Records Bureau, the number of dowry deaths reported in 2010 was 8391 which increased to 8618 in 2011. The number indicated a marginal decrease in 2012 and 2013, at 8233 and 8083 respectively. The country, thus, reports more than 8000 deaths due to dowry every year. [3]

### **Fighting Dowry through Legislations:**

The first noticeable attempt to tackle the problem of dowry was sought by the Hindu Succession Act, 1956 by conferring improved property rights on women, but the evil persisted. In 1961, Dowry Prohibition Act was passed which was the first penal law to ban this practice.

By the latter half of the 70's, it was realized that this law too had not lived up to the expectations and a Parliamentary Committee was appointed to study the law and suggest measures after an empirical survey.

Two of the major lacunas noticed were the phrases 'in consideration of marriage' and 'at or before marriage'.

This vagueness of the legal provisions was accordingly cured by the amendments of 1984 and 1986 respectively, by which 'in consideration of marriage' was replaced by 'in connection with marriage' and the words 'any time after marriage' were added. In 1983, Section 498-A was added to the Penal Code,

1860 which referred to both physical and mental cruelty as cognizable and non-bailable offence.

However, in spite of all efforts, the menace of bride murder or bride burning continued to rise and Section 304B was incorporated in the Indian Penal Code 1860 to make dowry deaths a specific crime under the law. The legal position, as it stands now, is that in order to establish the offence under Section 304B IPC the prosecution is obliged to prove that the death of a woman is caused by any burns or bodily injury or otherwise than under normal circumstances and such death has occurred within seven years of her marriage and that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband. Such harassment and cruelty must be in connection with any demand for dowry.

Once these aspects are established by the prosecution, by virtue of the presumption under Section 113B Evidence Act 1872, the court shall presume that the accused who has subjected the deceased wife to cruelty before her death caused the dowry death in connection with any demand for dowry.

Irrespective of the fact whether such person is directly responsible for the death of the deceased or not, by virtue of the presumption, he is deemed to have committed the dowry death. [4]

### **Proving Dowry Death:**

In order to seek the conviction of an accused for the offence of dowry death, the prosecution is obliged to prove that:

- (a) The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) Such death occurred within seven years of her marriage;
- (c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) Such cruelty or harassment was meted out to the deceased soon before her death.
- (e) Such cruelty or harassment was for or in connection with the demand of dowry; and

If all of the above conditions are present, then there is a presumption that the accused has committed the crime of dowry death.

### **Medical Evidence to Prove Death:**

The first component relates to the nature of death of the woman. The term "normal circumstances" apparently refers to natural death. In other words, the expression "otherwise than under normal circumstances" would mean

the death not in usual course but apparently under suspicious circumstances, if not caused by burns or bodily injury. [5] Majority of the dowry deaths occur due to burning, so much so that, dowry death has almost become synonymous to Bride Burning. Other modes generally adopted by the accused may be drowning, hanging, strangulation, poisoning, smothering etc.

Establishing the cause of death and thereby the fact that the death was not in normal circumstances is crucial to proceed with a charge of dowry death. In many situations, the deaths are shrouded in mystery, or the bodies are merely disposed of without medical examination. Ascertaining the exact cause of death and whether the same is accidental, suicidal or homicidal in nature is the responsibility of the forensic medical expert.

In case where the death is merely accidental, no charge under Section 304B may be sustained; but in situations where suicidal or homicidal deaths are involved, the accused may be held liable for the death of the married woman. It is important that the investigation lays adequate emphasis on deciphering the cause and circumstances relating to death with the assistance of forensic experts.

The following may be indicated as important points in this regard.

#### **Common causes of Dowry Death:**

- (a) Death due to Burning
- (b) Death due to Drowning
- (c) Death due to Asphyxia
- (d) Death due to Poisoning

#### **Death due to Burning:**

- Nature of death
- If burn injuries, ascertain the time and date
- Depth/ extent of burn.
- Whether the victim was admitted in the hospital or not.
- Presence of any smell of kerosene oil or any other inflammable substance.
- Whether the burn is ante-mortem or post-mortem.
- Any associated illness.

#### **Death due to Drowning:**

- Condition of clothes.
- Presence of froth at mouth and nostrils.
- Condition of eyes and tongue.
- Cadaveric spasm -presence of mud and weeds; decomposition.
- Cyanosis
- Cutis anserine
- Injury marks on the body
- Rigor mortis and Post-mortem staining.

#### **Death due to Asphyxia:**

- External evidence of compression, such as ligature marks, bruises, nail marks or any other injury around the neck.
- Condition of eyes, tongue, external orifices and dribbling of saliva.
- Cyanosis and petechial hemorrhage.
- Evidence of struggle.
- Differences in ante mortem and post mortem hanging.

#### **Death due to Poisoning:**

- Smell from mouth.
- Condition of eyes, teeth, tongue, nails, etc.
- Presence of froth at mouth.
- Cyanosis or any other colour change
- Contents of stomach etc.

#### **Evaluation of Medical Evidence by Courts:**

In several cases before the courts in India, medical reports and expert testimonies have helped to ascertain the culpability of the accused in cases of dowry deaths.

#### **Case Law on death due to Injury not Burn Injury:**

In *Prem Kanwar vs. State of Rajasthan* [6], the woman allegedly died due to burning and the father stated that the accused used to harass and torture her for dowry. The medical evidence stated that the whole body was burnt, including the hairs of the deceased, the outer portion of the skull had come out and the bones of the skull of the deceased were broken. The doctor opined that the deceased died because of burns was well established, but her skull bones were already broken and therefore, she had been killed before being burnt. The Supreme Court safely relied on the evidence to uphold the guilt of the accused which the court stated clearly showed the greed of the accused in persistently harassing and beating the woman for dowry.

In *State of Karnataka vs. M.V. Manjunathgowda & Anr.* [7], in a case of dowry death, the husband put up the plea that the wife had met a suicidal death when she slipped into the well while going to fetch water. The court rubbished the claim of the husband stating that the medical evidence indicated injuries on the skull and the right side of the occipital region fractured into five fragments. The doctor opined that the death was homicidal due to shock and haemorrhage as a result of head injury and they were sufficient in ordinary course of nature to cause death. Coupled with this evidence, the court found evidence on record to indicate that soon before her death she was subjected to

cruelty or harassment in connection with the demand of dowry by her husband. The court accordingly convicted the accused under Section 304B IPC.

In yet another case before the Karnataka High Court [8], Mahadevamma died an untimely death. At the time of marriage, there was an agreement for Rs.20000 and 6 tolas of gold as dowry to be given in two instalments.

The woman lived for some time in the matrimonial home and a child was born to them.

However, her in-laws kept on the persistent demand for money for construction of house, twenty days after which she died. One of the contentious issues before the court was with regard to the cause of death.

The defense put the argument that the woman had epilepsy and she fell from stairs thereby and sustained injuries, resulting in death. The court relied on the medical expert opinion that the tongue was protruding, severe red congestion was present around the neck and chest had small superficial abrasions.

On dissection, the medical expert found contusion present on the left temporal region with hematoma. The brain matter was shrunken and liquefied. The thorax region was intact, congested, Thyroid cartilage was broken. He opined that the death was due to asphyxia as a result of hanging.

Further medical clarification was sought which established that the death was one of homicide on account of the presence of injury on the left temporal region. There was no evidence with regard to the defense contention that the deceased was suffering from epilepsy.

This evidence established the complicity of the accused in the death of the woman, and even though a demand for dowry could not be established, the court held the accused liable for offences of abetment and cruelty.

### **Case Law on Death due to Head Injury not Drowning:**

In *Deen Dayal vs. State of U.P.* [9], the body of a married woman was recovered from inside a well. The contention of the husband and his family members was that the death was accidental on account of falling down into the well. The prosecution held the story that the dead body had been thrown into the well as there were unfulfilled demands of dowry. The medical evidence in the case established that death was caused due to coma resulting from head injury. Such injuries, the doctor stated, were possibly caused by some blunt weapon. He found no water in the lungs or the wind pipe.

He further said that that if there was water in the well then those injuries couldn't possibly have been caused (by falling down into it). In cross-examination, he said that both the injuries could be caused by dashing against two different projections.

Under persistent cross-examination, he further said that as a result of falling from a high place with face downward, one injury could possibly be caused while the other could be caused by dashing against some stone. The Court held that the medical evidence negated the story of the defence, more so, since the well was a kuccha well, was half covered by wooden planks and there was water in the well.

Therefore, the court opined, that there was no doubt that her body was dumped into the well when she was dying or already dead. The Supreme Court confirmed conviction of the accused for the offence of dowry death.

### **Case Law on Death due to Asphyxia not Snake Bite:**

Similarly, where the death was stated to be snake bite, but the medical evidence clearly established that she had died due to asphyxia as a result of compression of neck and the general and specific chemical testing did not reveal any poison, the court upheld the order of conviction of the accused. [10]

### **Case Law on Recording of Dying Declaration:**

In *Rajeev Kumar vs. State of Haryana* [11], dying declaration was recorded which stated that the husband of the deceased used to taunt her for inadequate dowry and being fed up with such conduct, she sprinkled kerosene on herself and set herself ablaze.

The defense questioned the dying declaration on the ground that her larynx and trachea had been affected by burns and it was impossible for her to have made any statement. Medical opinion was sought on the issue. While the recording of the dying declaration had been certified by a doctor who stated that she was fit to make a statement, in post mortem it was found that the larynx and trachea were charred.

However, the doctor clarified that when the larynx and tracheae are charred, the person cannot speak, but when the larynx and tracheae are in the process of being charred, the person can speak. Another medical opinion was brought in which stated that if the vocal cord of the larynx is charred, such person may be able to speak but it may not be very clear.

The Court held that there was no inconsistency in the statements; rather the medical evidence along with the ocular evidence

established the fact that the woman had made a dying declaration regarding torture in the hands of her husband. [9]

### Case Law on Non-Examination of Doctor during Trial and FSL Report:

In *Chhotan Sao vs. State of Bihar* [12], the apex court questioned the scanty medical report and the non-examination of the medical expert to set aside the conviction of the accused for the offence of dowry death. The case related to the death of one Babita who, it was alleged was beaten up and forced to consume poison which resulted in her death.

The deceased had also complained of the harassment faced in the hands of the accused due to demand for more money coupled with threats to kill in case of non-fulfillment. Based on the evidence of witnesses and other materials on record, the trial court as well as the High Court convicted the accused for the offence. In appeal, the Supreme Court held that a disturbing feature of the case was that the doctor who had conducted the post-mortem had not been examined.

The trial court merely mentioned that the viscera had been sent for chemical analysis but no report received till then; and no apparent injury external or internal had been found on post mortem examination.

Accordingly the court concluded that the fact recorded by the courts below that Babita died an unnatural death was not based on any legal material on record. "The non-examination of the doctor who conducted the post-mortem coupled with the failure to produce the Forensic Laboratory Report regarding the examination of viscera of the deceased leaves a gaping hole in the case of the prosecution regarding the nature of the death of Babita Devi." The Court accordingly acquitted the accused of all charges. [12]

### Conclusion:

As has been emphasized long ago [13], the importance of medical testimony in elucidating and fixing the character and extent of crime and the degree of its punishment, is very properly becoming every year more apparent and better understood.

Medical evidence has demonstrated that without it, many of the most startling and dangerous crimes would go undiscovered and unpunished. The same stands true for the barbaric offence of dowry death.

Dowry is a serious menace to the society and it is important that the evil of dowry is tackled in the most effective manner.

The successful prosecution and conviction of accused demands that effective forensic evidence is adduced whereby the cause of death and related issues can be well established before the Court of Law.

Medical evidence plays a crucial role in determination of guilt or otherwise of the accused and it is imperative that the Criminal Justice System lays increased emphasis on expert opinion for effective and efficient dispensation of justice.

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