

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No 1160 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

- =====
- 1 Sk Reyaz @ Sk Reyazuddin, son of late Sk Mohamaddin
2 Taharun Nesha @ Tairun Nesha, wife of Sk Reyaz @ Sk Reyazuddin, residents
of Village – Rakhai, Police Station – Shikarpur, District – West Champaran

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

WITH

Criminal Appeal (DB) No 1298 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Sk Shabbu @ Sahnawaz Akhtar, son of Sk Reyazuddin, resident of Village –
Rakhai, Police Station – Shikarpur, District – West Champaran

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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For the Appellant/s	:	Mr Ajay Kumar Thakur, Ms Fauzia Shakil & Mr Satish Kumar Sinha, Advocates
For the Informant	:	Mr Amrendra Nath Verma, Advocate
For the State	:	M/s S N Pd & A Sharma, APPs

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 06-04-2016

These two appeals arise out of Sessions Trial No 278 of 2009 in which the appellants were found guilty and sentenced by judgment dated 20.09.2010 and order dated 22.09.2010 by the Additional Sessions Judge I, West Champaran at Bettiah for an offence under Sections 304B/34 of Indian Penal Code (for brevity, *IPC*). The appellants in Cr Appeal No 1160 of 2010 are Sk Reyaz @ Sk Reyazuddin and Taharun Nesha @ Tairun Nesha. They are the

father-in-law and mother-in-law respectively of the deceased and have been sentenced to 10 years rigorous imprisonment. In Cr Appeal No 1298 of 2010, the sole appellant is Sk Shabbu @ Sahnawaz Akhtar who has been sentenced to imprisonment for life and is the husband of the deceased Shama Perween.

2 We have heard Shri Ajay Kumar Thakur, learned counsel for the appellants, Shri Amarendra Nath Verma, learned counsel for the informant, Shri S N Prasad and Shri A Sharma, learned APPs for the State and perused the records.

3 The submission on behalf of the appellants is that in order to raise the presumption in terms of Section 113-B of the Indian Evidence Act, 1872 (for brevity, *the Evidence Act*), the three ingredients of Section 304B of IPC are essential first to be established by the prosecution. They are (1) marriage within seven years of death, (2) demand of dowry and (3) cruelty “soon before” death. If anyone of the ingredients are not proved and established by the prosecution, the presumption under Section 113-B of the Evidence Act would not arise as against the accused persons, and, then the onus would entirely be on the prosecution to establish a homicidal death. Submission would, inter alia, further be that the two ingredients, demand of dowry and cruelty “soon before” death, have not at all been established. To the contrary, there are clear evidences of the

prosecution witnesses to suggest otherwise. On the other hand, learned counsel for the State and learned counsel for the informant submit that there are sufficient facts on record, duly proved, to satisfy the ingredients and there is no effective rebuttal of the presumption. It may be noted that virtually, when the hearing was concluded, learned counsel for the informant pointed that an interlocutory application had been filed for additional evidence at the appellate stage which is pending. We do not consider it, at this late stage, to pass an order in this regard. The appeals were filed in the year 2010, and the appellants, except the lady, have been in custody for over 6 to 8 years. This interlocutory application was filed in the year 2015, to bring on record certain evidences of other cases which were instituted later on, as between the parties. It does not delve upon the evidence in relation to the incident with which we are concerned. We, therefore, do not consider it proper to pass any order on that interlocutory application.

4 The First Information report (for brevity, *the FIR*) (Exhibit 1), as lodged by PW 5 Wasiullah Khan @ Munna who named five accused persons, the three appellants and two others, namely, Chanda Khatoon and Richi Khatoon, one married and one unmarried sisters-in-law of the deceased Shama Perween. The two were also chargesheeted alongwith the appellants but acquitted by the trial Court and rightly so. The informant unsuccessfully filed appeal against their

acquittal.

5 The prosecution evidence, in brief, is that the informant (PW 5) received a call on his mobile phone at about 5.30 pm on 26.02.2008 allegedly informing that his younger sister Shama Perween had been burnt and killed at her Sasural by her husband and other relatives. He immediately informed his other brothers and went looking at Narkatiaganj Hospital and then to MJK Hospital (Government Hospital), Bettiah but could not gather any information. They returned to their village which falls under Shikarpur Police Station (for brevity, *PS*) and then lodged an FIR there. They then accompanied police team headed by the Investigating Officer (for brevity, *the IO*), (PW 7) Jamaluddin Khan, to the place of occurrence which was under Narkatiaganj PS about 20 to 25 kilometers away. Reaching there at about 8.30 am on 27.02.2008, they found the dead body of Shama Perween badly burnt in the house, being prepared for cremation. Police seized the dead body and sent it to MJK Hospital, Bettiah for post mortem. Upon completion of investigation, two chargesheets were submitted, and cognizance having been taken for offence punishable under Sections 304B/34 of IPC, case was committed to the Court of Session for trial and after trial, the convictions/acquittal. Hence, the appeal.

6 In order to establish their case and the guilt of the

appellants, prosecution has examined nine witnesses. PWs 1, 2 and 3 are Sk Ejaz Ahmad, Md Fajaloo Rahman Khan and Sagir Ahmad. PW 2 is a distant maternal cousin of the deceased and PW 3 is distant uncle of the deceased. PW 1 states that the marriage, between the deceased and the appellant (Sk Shabbu in the second criminal appeal), had taken place about four years back and having stayed in her Sasural for about 3-4 months, she had complained that she used to be mistreated for dowry. There was a demand of money and a motorcycle. He had heard rumours in the village that the in-laws had burnt her to death on failure to get dowry. He admits that he was examined by the police. In cross-examination, he admits that he is not related to the deceased or her family. He had not been summoned by the Court to give evidence. He could not give the date of marriage. He states that in the year, 2005 or 2006, the deceased was talking to her brother and complaining about demand of dowry and mistreatment, which as a bystander, he had heard. Let it be noted that the date of occurrence is 26.02.2008. He had heard the rumours about the death of the deceased at about 2 pm in the afternoon. The date he does not remember. In the cross-examination, he admits that he was taken to PS to give a statement by PW 5 which date is confirmed by the IO being 02.03.2008. His attention is drawn to the statement before the IO in course of investigation wherein he had not stated that

the deceased was tortured for non-fulfilment of dowry and such a statement he was making for the first time in the Court. Let it be noted that the IO (PW 7) accepted that there was no statement made by PW 1 that the deceased was tortured for non-payment of dowry. We then have PW 2, who is a distant cousin of the deceased, Md Fajaloo Rahman Khan. He, in his cross-examination, admits that the deceased gave her Intermediate examination after marriage, having studied, and thereafter, she got employed as a Teacher in Panchayat School. He was not aware as to what were the demands made by the in-laws of the deceased but he had heard about dowry demand when he visited the house of the brother of the deceased, the date and the time he was not aware. Upon coming to know of the death of Shama Perween, PW 5, that is the brother and informant, did not inform the villagers. He admits having given statement to the Police. The IO, when confronted, states that this witness (PW 2) had not disclosed to him that he had heard complaining her brother in his house with regard to demand of dowry and mistreatment. We then have PW 3, Sagir Ahmad. He states that he had heard people saying that the accused persons had burnt to death the deceased. He had heard that in-laws used to demand dowry. In cross-examination, he admits that though he is related to Reyaz, the appellant father-in-law, and had been visiting him, he did not know his wife's name or his daughter's

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name or the name of the husband of the daughter of Reyaz. He admits that he had not lodged any case in Shikarpur PS. He is then questioned as to about visits of the deceased to her brothers' place and he admits that to call her from her Sasural and to return her to Sasural, auspicious days were determined. He admits that the deceased had joined her studies of Intermediate after marriage and had later been appointed as Teacher. He is confronted that he had been interrogated in course of investigation which he admits, and then confronted by the IO (PW 7), who clearly states that PW 3 had not stated to him that the deceased used to be tortured for dowry.

7 From the evidence of the above three witnesses, all that can be gathered is that they made the statement for the first time in the Court with regard to dowry and torture in respect of the deceased, but they are neither able to say the date even with proximity when they had come to know of the same, much less, that it was seen, before she was killed. Now we may see the evidence of PWs 4, 5 and 6, namely, Md Sanaullah Khan @ Tunna, Wasiullah Khan @ Munna, the informant, and, Shafiullah Khan, who are three elder brothers of the deceased Shama Perween. In his examination-in-chief, PW 4 states that after marriage, he had heard that there were demands for dowry from his sister and that she used to be tortured. He states that he had heard that the accused persons had taken his sister to MJK Hospital,

Bettiah. This is of some importance because the prosecution is trying to build a story, as the informant could also submit, that they had no information where the deceased had been taken. This evidence demolishes that. In the cross-examination, he admits that his sister had given birth a son about a year back before the incident happened. He admits that after marriage, his sister, the deceased, had come to her 'Maike' 3-4 times. Each time, the dates were predetermined an auspicious day but he could not say when she had come. He admits signing the seizure list dated 27.02.2008 and his brother's signature therein are marked as Exhibits A and A/1. This seizure list is later proved by the IO and marked as Exhibit 5 which would be a material document. He admits that he had no difficulty in communicating with his sister whenever he went to her place or whenever she came to her Maike. He admits that she had got the job as a Teacher long after her marriage and she had never run from her Sasural. Her delivery was arranged by her in-laws and after delivery, she had, once or twice, also come to her Maike. He states that demands were made from the deceased only and they had never complained about that. He admits that the School was at quite some distance from the house of the deceased and everyday, it was someone from the in-laws' family who would take her to the School and bring her back. Suggestions were given that it was the husband who had a motorcycle and every

morning, he used to take her to School where she was a Teacher and bring her back. Suggestion was given that even a day prior to the incident, she had been taken to the School by the husband and brought back. Suggestion was given that in fact on the fateful morning, she was boiling milk in sauce pan on the kerosene stove and that burnt causing substantial injuries. She was taken to Hospital and information was given. She died in course of treatment. Thus, from the evidence of this witness also, apart from vague and general allegation of demand of dowry and mistreatment, no particulars are at all available, much less, to show any concrete demand and that too leading to torture soon before the death.

8 Now we come to PW 5 Wasiullah Khan @ Munna. He is the elder brother and informant. In his examination-in-chief, he states that the marriage was conducted about four and half years back and lot of things had been given in the marriage. After the marriage, his sister, the deceased used to complain that she used to be tortured and there used to be demand of dowry. He states that about 5.15 pm on 26.02.2008, on mobile phone, he came to know that his sister had been burnt to death by her in-laws. On that information, he went to Narkatiaganj Hospital and to the MJK Hospital, Bettiah where he did not find his sister. He then went in the morning of 27.02.2008 to the Shikarpur PS and gave information. At about 8.30 am, he, alongwith

the Police, reached the place of his sister where the dead body was seized and sent for post mortem. He identified all the three appellants. He identifies his signature on the Fardbayan, as recorded, which is marked as Exhibit 1. He admits, in his cross-examination, that even though his sister used to complain, they never opposed or protested. He admits that last time, she visited her brothers' house about 8 to 9 months prior to her death. He admits that at the time of marriage, the deceased had given up her studies and used to stay at home and it is, thereafter, that is after the marriage, she then did her Intermediate and she got the job as a Teacher. He admits that he had seen her alive about 4 – 5 months before the incident. He admits that he had never lodged any complaint before any authority on any earlier occasion. He admits that a small piece of land had been purchased in the name of the deceased in Ramnagar which is lying vacant. He states that he had made the statement to the IO that she used to be mistreated on failure to get dowry which is not corroborated by the IO in his deposition. He states that he had gone to MJK Hospital, Bettiah at about 10 pm. He admits that he had received information at about 5.30 pm on 26.02.2008 and states that the person, who informed him, did not disclose his name. He states that it is at 8.30 in the morning on 27.02.2008 from Shikarpur PS, he had gone to the village of his sister. He admits his signature on the seizure list (Exhibit 5) which is

marked as Exhibit A/1. Now he makes a startling disclosure. He states that he had lodged the Fardbayan in the night at about 2 am intervening 26.02.2008 and 27.02.2008. The Fardbayan had been drawn up by his maternal uncle. This is very significant. Firstly, the maternal uncle has not been examined by the prosecution. Secondly, no Fardbayan, that was lodged at about 2 am in the morning hours of 27.02.2008, had been brought on record. The FIR, which had been brought on record as Exhibit 1, is lodged at about 8.30 am on 27.02.2008. Even there, there is interpolation of date. It was first written 26.02.2008 which has been corrected to 27.02.2008. The narration is also not consistent, inasmuch as in Exhibit 1, it is stated that PW 5 is lodging this FIR on 26.02.2008 because he states that “today in the evening at 5.30 pm, I received telephonic call”. Thus, this is another Fardbayan which was drawn up and lodged at 8.30 am on 27.02.2008. What happened to the earlier written statement, which was lodged with the Police at 2 am, is not explained. He further admits that even though the Police went to seize the body and sent it for post mortem, they did not arrest any person. He denies knowing that the in-laws of the deceased had tractor and motorcycle of their own. He is given a suggestion that it is for land, which the informant wants, that this false case is being lodged and that the deceased had given a statement before her death to the police at the Hospital at

Bettiah, which has not been brought on record.

9 From the evidence of informant (PW 5), the first thing appears that there are vague allegations about demand of dowry with no certainty. The last meeting, which this witness had with his deceased sister, was about 4-5 months back. One important admission is that he had signed a seizure list which later will be shown as Exhibit 5. We may, at this stage itself, note that this seizure list is prepared by the IO, when he reached the place of occurrence for the first time and seized the dead body and sent it for post mortem. This seizure list, which is witnessed by PW 5 himself, appertains to an exploded damaged kerosene stove with sauce pan having burnt milk, from the place of occurrence. Thus, from the evidence of PW 5, apart from the vague allegations of demand of dowry and vaguely stating of torture, there is no further evidence, much less to continued torture, soon before her death. We may also notice one important fact. Neither of these two brothers even disclosed that their sister had made any written complaint.

10 Now we may come to PW 6, the third elder brother of the deceased, namely, Shafiullah Khan. He admits that having completed Intermediate after marriage, the deceased took up the job of a Panchayat Teacher. She was blessed with a son. After marriage, 3-4 times, she had come to her Naihar. In his examination-in-chief, he

says that there was a demand of motorcycle and Rs 1 lac as dowry but significantly, he did not mention torture of any kind. He admits that he works as a TTE at Raxaul and his family stays at Muzaffarpur. He states, on coming to know on mobile phone that his sister had been burnt and killed by her in-laws at about 5.30 pm, he comes to MJK Hospital, Bettiah from Raxaul. From there, he went to Shikarpur PS, where he found his two brothers there. With the police, he went to the in-laws place where at 8.30 in the morning that is 27.02.2008, he found the dead body being prepared for cremation. His younger brother (PW 5) had lodged the FIR. The body was sent for post mortem to MJK Hospital, Bettiah. Now, in his examination-in-chief, for the first time, he comes up with a letter (Exhibit 2) allegedly written by the deceased, a Photostat copy whereof he states that he had given to the IO. In his cross-examination, he states that he had given his statement before the police stating about the letter. He admits that the letter is undated. There is no envelope in which it had come. There is no postal endorsement. He had not complained to any authority on basis of the aforesaid letter. He admits that after the letter was written, his sister had visited Maiké in the year, 2007. Then the defence challenges the authenticity of the letter clearly stating that the letter is not in the handwriting of the deceased and it is being produced having been manufactured, for the first time in the Court

which is denied by the defence witness. This is of some importance because when the IO is examined and confronted in this regard, he does not state that any such letter was produced before him. To the contrary, the IO states that this witness had stated before him in course of investigation that when this witness reached MJK Hospital, Bettiah, he came to know that his sister had died and the in-laws had taken away the body.

11 To us, these are two very important pieces of evidence which had to be considered by the trial Court and have been ignored. Firstly, the letter, Exhibit 2. It is a written document purported to have been written by the deceased. It is challenged by the defence that it is not in the handwriting of the deceased. To us, the law is that it was upon the prosecution to establish and prove that it was a genuine document written by the deceased. There was no effort to prove the same. Mere statement of PW 6 was taken to be a sacrosanct statement proving the document. Unfortunately, that is not the law. A document, if it is to be accepted in evidence, is to be first proved by the author itself. If the author is not available and it being a handwritten document, it is required to be proved by someone who is, in normal course, familiar to the handwriting. Here, PW 6, who is the elder brother, says that it is his sister's handwriting. The defence, who is the husband and the in-laws, who were equally familiar, denies

the same. Thus, there being a dispute, it was incumbent upon the prosecution to prove that it was indeed the handwriting of the deceased and unless that proof was given, the document cannot be deemed to be duly proved and cannot be taken into evidence. That being so, in our view, Exhibit 2, the alleged letter of the deceased, was inadmissible in evidence. No person can get up and allege a letter to be written by someone without proper proof, in accordance with law. Thus, no reliance can be placed on Exhibit 2. Even otherwise, this witness clearly admitted that this letter was written by the deceased about six months prior and, thereafter, she had come back to her Maiké and returned without any reservations of any kind. This letter would, thus, even otherwise be of little significance. This letter has never been referred to by the two other brothers, that is PWs 4 and 5, nor is the IO aware of such letter. If the letter or copy thereof had been given to the IO, surely a production list ought to have been drawn. Not only that, the IO does not mention about this letter. There is no such production list brought on record by the prosecution. To us, it is clear that the evidence of PWs 4 and 5 having concluded, prosecution realized that there was nothing substantial to substantiate the demand of dowry or mistreatment, then, at that stage, for the first time, the letter was brought on record. It was an inadmissible piece of evidence having not been duly proved. In the circumstances, it was

wholly unreliable.

12 This witness PW 6 then reiterates that it is about 1.30-2 am that they had gone to Shikarpur PS and lodged the Fardbayan. As noted earlier, in respect of Exhibit 1 and the evidence of PW 5 who also states, that a Fardbayan drawn up by his maternal uncle and signed by PW 5, had been lodged in the Shikarpur PS at about 2 am but that document had not been brought on record by the prosecution. What has been brought on record by the prosecution is the Fardbayan which is recorded at 8.30 am on 27.02.2008. The so-called maternal uncle of PW 5, who had allegedly drawn up the Fardbayan, has not even been examined. What happened to that Fardbayan has not been explained by the prosecution. He admits that it was the husband of the deceased who used to take the deceased to the School and bring her back. The deceased was a Teacher. He again makes a statement of demand of dowry but he does not mention anything about torture. He is confronted with his statement in course of investigation to the IO, that when he reached the Hospital, he was told that the girl had died and the in-laws had taken her body home. He denies having made the statement to the IO, whereas the IO has clearly stated that it is such a statement that he had in fact made in course of investigation. Suggestion is then given that this entire dispute is with regard to a piece of land which stood in the name of the deceased having bought

by the in-laws of the deceased which the deceased's brothers wanted to grab after the death of the deceased. PW 7 is the IO. He proves the FIR as registered by him which is Exhibit 1. He deposes about the place of occurrence in his examination-in-chief. He clearly states that while examining the place of occurrence, he had found an exploded kerosene stove and a sauce pan containing burnt milk lying there which he seized. This is the seizure list which is marked as Exhibit 5 and which is witnessed by none else than PWs 4 and 5 whose signatures are marked as Exhibits A and A/1 thereon. He then prepared inquest report which is Exhibit 6. In the cross-examination, he admits that having seized the dead body from the place of occurrence, he sent it for post mortem. He then visited the Hospital that is MJK Hospital where the body had been sent for post mortem and there he was given a dying statement recorded by Inspector R B Sharma. The statement was of the deceased which was marked as Exhibit C. This statement was not produced by the prosecution though it was all along with them. Let it be noted that the prosecution did not examine this officer R B Sharma. He then admits that he had gone to the School of the deceased wherein the Principal disclosed that the last time, the lady came to the School, was on 25.02.2008 which is a day before the occurrence and it was the husband who had brought her on the motorcycle and come to take her back on his

motorcycle. He states that after the Fardbayan was lodged at about 9.15 in the morning on 27.02.2008, he had left for the place of occurrence. He is confronted with the statement of witnesses, as has already been noted. He admits that the maternal uncle of PW 5, who is said to have written the Fardbayan, was not examined in course of investigation. He categorically states that PW 6 had only stated to him that when he went to Hospital, he was told that the girl had died and her body had been taken away. From the evidence of this IO, who had not concluded investigation, it is clear that the Fardbayan that is being brought on record, is a Fardbayan that was recorded at 8.30 in the morning and is not the Fardbayan, that PWs 4, 5 and 6 state, was lodged at about 1.30-2 am, as written by the maternal uncle of PW 5. The maternal uncle, who had written that Fardbayan, has not even been examined in course of investigation. The IO is totally unaware of the letter of the deceased which was produced for the first time in the Court. It was obviously never disclosed to the IO. The other material evidence we get is that while the body was being prepared for cremation at the house itself, the IO had found in fact an exploded kerosene stove with sauce pan having evidence of burnt milk which was seized in presence of PWs 4 and 5 who signed that seizure list. We then have PW 8, Kaushal Kishore Thakur, the IO who concluded the investigation and filed chargesheet. He stated that

on 28.09.2008, when he had gone to arrest the accused persons, there was a huge public protest for which another case had been instituted. Otherwise, there is nothing much in his examination-in-chief. PW 9 is the doctor who performed the post mortem examination. He only corroborates that the deceased had 80% burnt injuries. The photographs are also exhibited apart from the post mortem report. We need not go into the evidence of defence witness because the defence examined DW 1 Sk Nabi Hassan for the two accused persons who had already been acquitted.

13 From the evidence above, we have to note the following important features of this case. (1) The important witnesses PWs 5 & 6. PW 5, being the informant and PW 6, who produced the letter (Exhibit 2), have, in clear terms, stated that they had lodged the Fardbayan which had been drawn up by their maternal uncle and signed by PW 5 at the Shikarpur PS in between 1.30 – 2 am in the night intervening 26 -27th of February, 2008. The prosecution had not brought this on record. What had been brought on record is the Fardbayan on basis of which the first information report is registered and marked as Exhibit 1. That is a Fardbayan which was lodged at 8.30 am on 27.02.2008. Even there, there are inconsistencies and overwriting in the dates, as noted earlier. This raises grave suspicion as to the manner of information and the content of information being

sought to be disclosed in the FIR. (2) The only thing to be noted is that apart from vague and bald statement, there is no corroborative evidence of demand of dowry. Even though prosecution witnesses accept that the husband of the deceased, the appellant already had a motorcycle and a tractor, why would they be demanding the motorcycle again. They have tried to make the relationship between the deceased and her in-laws to be estranged but they themselves admit that there was no problem in the deceased visiting their house and going back. The dates of visit of the deceased to her Maikie was fixed an auspicious date and they had not complained to anyone about any mistreatment. (3) When Exhibit 2, the letter is shown by PW 6, it is for the first time taken at the trial. PWs 4 and 5, who are own brothers of PW 6, do not whisper about this. The IO does not mention this. Authenticity is challenged by the defence. No attempt is made by the prosecution to prove its genuineness. It is undated. Still the trial Court relied heavily on it, even though it was not proved in accordance with law. It was not a piece of evidence that could be taken into account. What is the evidence of torture? Except bald statement, there is nothing on record to substantiate. The deceased had regularly been taken to the School by the husband and brought back. Then there is no evidence of any torture soon before her death. The last communication between the brothers and deceased was more

than four months prior to the date of death and lastly, when police reached the place of occurrence accompanied by the informant and his brothers unannounced, at that time itself, in presence of the prosecution witnesses, police seized exploded kerosene stove and sauce pan with burnt milk therein which is consistent with the defence plea of the cause of death.

14 We fail to understand if what the prosecution is saying that they had definite information at 5.30 am on 26.02.2008 that their sister had been burnt to death, why did they not visit the place of their sister, which was not very far away? Why did they not lodge an FIR immediately? They can trace body in the Hospital but take no action. They sleep over the night and it is only next morning, they go to Shikarpur PS, where they reside, to lodge an FIR. This strange conduct is not compatible to guilt. What is then legal evidence? The evidence on record is only that the girl had died of extensive burn injuries. She had been taken to Hospital for treatment. Information was given to her brothers who had also reached the Hospital in question. The girl had died at MJK Hospital, Bettiah. Before her death, a statement (Exhibit C) was recorded which was handed over by the Police to the IO directly. The Police immediately seized, from the place of occurrence, exploded kerosene stove with sauce pan showing evidence of burnt milk. The purported letter complaining of

demand of dowry and torture was not at all proved inspite of challenge to its authenticity. It is undated and in any view written almost four to five months prior to the death.

15 In our view, these evidences, taken together, do not satisfy all the three conditions of Section 113-B of the Evidence Act. In our view, even the factum of demand of dowry much less torture soon before the death has not been established. That being so, Section 113-B of the Evidence Act cannot be invoked and no presumption can be raised against the accused persons and, for the sake of argument, even if we were to accept a presumption has been raised, in the facts noted above, in our view, it has been effectively rebutted by the prosecution's own evidence.

16 We, thus, are of the view that the prosecution has failed to prove the guilt of the accused persons beyond reasonable doubt. They are, thus, entitled to acquittal. We, accordingly, allow the appeal and set aside the judgment and order of conviction.

17 The appellants are in jail. They shall be released from jail custody forthwith, if not required in any other case.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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