

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.384 of 1994**

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{Against the Judgment of conviction 09.08.1994 and sentence Order dated 10.08.1994 passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial No.550 of 1992/177 of 1992}.

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1. Bhushan Yadav, son of Sri Jai Kishun Prasad.
  2. Jai Kishun Yadav, son of Late Budhu Yadav.
- Both residents of village-Jharhapar, P.S. Karai Parsurai, District-Nalanda.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

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**Appearance :**

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| For the Appellant | : | Mr. Arun, Advocate.<br>Mr. Agreya Pratap, Advocate.<br>Ms. Surya Nilambari, Amicus Curia. |
| For the State     | : | Mr. Shiwesh Chandra Mishra, A.P.P.                                                        |

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**  
**and**  
**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

**Date : 30-08-2018**

By the Judgment of conviction dated 09.08.1994 and sentence order dated 10.08.1994 passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Nalanda at Bihar Sharif, in Sessions Trial No.550 of 1992/177 of 1992, both the above stated appellants have been convicted for the offences punishable under Sections 304B, 498A and 201 of the Indian Penal Code but the appellant no.1, namely, Bhushan Yadav has been



sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 304B of the Indian Penal Code, to undergo rigorous imprisonment for three years for the offence punishable under Section 498A of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under Section 201 of the Indian Penal Code, whereas the appellant no.2, namely, Jai Kishun Yadav has been sentenced to undergo rigorous imprisonment for 10 years for the offence punishable under Section 304B of the Indian Penal Code, to undergo rigorous imprisonment for three years for the offence punishable under Section 498A of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under Section 201 of the Indian Penal Code. However, all the above stated sentences of both the appellants were ordered to run concurrently.

2. P.W.4, namely, Subhash Prasad Yadav, on 28.08.1990 at about 04.30 P.M., went to Karai Police Station and gave his fardbeyan to P.W.5, stating therein that on the same day at about 07.00 A.M., his cousin uncle, namely, Suresh Yadav, came and gave information that his sister, namely, Subhadra Devi, was poisoned to death by her in-laws and they had taken away her dead body for cremation towards Fatuha.



He further claimed that having got the aforesaid information, he along with his co-villagers Haricharan Yadav, Komal Yadav, Chandradeep Yadav and Suresh Yadav went to village Jharhapar and reached there at about 07.30 A.M. but no person was present in the in-laws' house of his sister. The neighbours of in-laws of his sister informed that his sister was poisoned to death by her in-laws and they had taken away her dead body for cremation towards Fatuha. P.W.4 further claimed that the marriage of his sister was solemnized with the appellant no.1 Bhushan Yadav in the year 1984 and her Gauna was performed in the year 1987. He further claimed that his sister visited several times to his house and whenever she came, she disclosed that her in-laws were demanding Rs.6000/-, Philips Radio, Reley cycle etc. in dowry and they used to torture her physically and mentally due to non-fulfillment of the aforesaid demand. P.W.4 further claimed that the appellant no.1 Bhushan Yadav had written two letters, demanding the above stated articles. P.W.4 annexed the photo-stat copy of the aforesaid two letters with his fardbeyan. Furthermore, P.W.4 claimed that his sister went to her sasural in the month of January, 1990 and, after that, he also visited several times to in-laws' house of his sister and requested them not to torture his sister. Furthermore, he



claimed that on 19.08.1990, he visited the in-laws' house of his sister and met his sister, who started weeping to see him and requested him to take her away from her in-laws' house, otherwise she would be killed. P.W.4 further claimed that he talked to in-laws of his sister but they were not ready to give up their demands. P.W.4 claimed that the appellants and other in-laws of his sister committed the murder of his sister in the previous night and cremated her dead body at Fatuha.

3. On the basis of the aforesaid fardbeyan of PW.4, Hilsa P.S. Case No.259 of 1990 for the offences punishable under Sections 304B and 201/34 of the Indian Penal Code was registered and formal F.I.R. was drawn up on 29.08.1990 at about 10.15 A.M.

4. P.W.5 Nand Kishore Rai took the charge of investigation. He recorded the statements of the witnesses, inspected the place of the occurrence and after completion of investigation submitted the charge sheet against the appellants and others for the offences punishable under Sections 304B, 498A and 201/34 of the Indian Penal Code along with one Jhanjhu Yadav.

5. After cognizance and commitment, the appellants were put on trial and stood charged along with



Jhanjhu Yadav for the offences punishable under Sections 304B, 498A and 201 of the Indian Penal Code.

6. After denial of the charges by the appellants and above stated Jhanjhu Yadav, the prosecution examined, altogether, 5 witnesses and also got exhibited some documents including two letters bearing Ext.1 and Ext.1/A.

7. The statements of the appellants and the above stated Jhanjhu Yadav were recorded under Section 313 of the Code of Criminal Procedure, in which they claimed that the deceased died of Cholera at Saidanpur Hospital. The appellants got examined three defence witnesses in support of their defence.

8. The learned trial court having analyzed the evidences, available on the record, came to the conclusion that the prosecution succeeded to prove the charges for the offences punishable under Sections 304B, 498A and 201 of the Indian Penal Code against the appellants, whereas failed to prove the charges against the co-accused Jhanjhu Yadav and, accordingly, the learned trial court convicted the appellants in the manner, as we have already stated above, whereas acquitted Jhanjhu Yadav of the charges framed against him.

9. Learned Amicus Curiae Ms. Surya



Nilambari, appearing for the appellants challenged the impugned Judgment of conviction and sentence order, arguing that the learned trial court failed to take note of this fact that the prosecution could not succeed to prove all the essential ingredients of Section 304B of the Indian Penal Code. She further submits that the appellants took stand in course of trial that the deceased died of cholera at Saidenpur Hospital and the aforesaid fact was proved by D.W.1 Dr. Binod Kumar Sinha but the learned trial court doubted the statement of D.W.1 as well as Ext.A and Ext.B on the ground that the doctor failed to disclose who had got admitted the deceased in the hospital but it is obvious from the deposition of D.W.1 that he was examined in the court after three years of the death of the deceased and it was not necessary to mention the name of the person, who had brought the deceased for admission in the hospital. Moreover, D.W.2 and D.W.3 have specifically stated that the deceased was taken to the hospital by her in-laws and, therefore, only on the aforesaid ground it is not correct to say that the Ext.A and Ext.B are fictitious documents. She further submits that the learned trial court has relied upon Ext.1 and Ext.1/A, the two letters, said to have been written by the appellant no.1 to his father-in-law, but the learned trial court failed to take note of this fact that



the aforesaid two letters had not been proved in accordance with the provisions of the Evidence Act and, hence, the aforesaid two letters were not admissible in evidence. She further submits that the defence had raised objection at the time of admission of the above stated two letters but the learned trial court turned down the objection raised on behalf of the defence. She further submits that the Ext.1 and Ext.1/A have not been proved in accordance with the provisions of Section 67 of the Evidence Act and, moreover, the learned trial court also failed to compare the writings of the aforesaid two letters with the admitted handwriting of the appellant no.1 in accordance with the provisions of Section 73 of the Evidence Act and, therefore, the learned trial court wrongly relied and based his findings on the aforesaid Ext.1 and Ext.1/A. She further submits that the prosecution witnesses have made general statements in respect of torture and demand and, moreover, the prosecution witnesses have made contradictory statements and there is nothing on the record to show that the deceased was subjected to cruelty or harass soon before her death and, therefore, it is obvious that the prosecution could not succeed to prove all the necessary ingredients of Section 304B of the Indian Penal Code and, therefore, the presumption of dowry death against the appellants



is not attracted. She further submits that when the prosecution could not succeed to prove the charge framed under Section 304B of the Indian Penal Code and the appellants succeeded to prove this fact that the deceased died of cholera, Section 201 of the Indian Penal Code is also not attracted against the appellants. She further submits that so far as the offence under Section 498A of the Indian Penal Code is concerned, the same is also not made out in the light of the evidences adduced in this case and, therefore, the learned trial court committed error in convicting the appellants for the above stated offences.

**10.** On the other hand, learned Additional Public Prosecutor for the State supported the impugned Judgment of conviction and sentence order, arguing that the prosecution succeeded to prove all the ingredients of Section 304-B of the Indian Penal Code and it is well settled principle of law that if all the ingredients of Section 304B of the Indian Penal Code are proved, there shall be a presumption of dowry death against the husband and all his relatives and, therefore, in the present case, the learned trial court rightly convicted the appellants for the offence punishable under Section 304B of the Indian Penal Code. To fortify his contention, the learned Additional Public Prosecutor for the State relied upon a decision reported in **AIR**



**2016 SC 125**, in which the Apex Court has held that if all the ingredients of Section 304B of the Indian Penal Code are made out, then the accused is deemed to have caused the death of the deceased but the accused is entitled to rebut the statutory presumption of having caused a dowry death.

**11.** Now, in view of the aforesaid submissions as well as the evidences, available on the record, we have to see as to whether the learned trial court has properly appreciated the evidences, available on the record, and has rightly convicted and sentenced the appellants or not?

**12.** As we have already stated above, altogether, five prosecution witnesses have been examined, out of them, P.W.4 is the informant himself, whereas P.W.1, P.W.2 and P.W.3 are said to be co-villagers of the informant, and P.W.5 is the Investigating Officer.

**13.** P.W.1 Chandradeep Yadav says that the marriage of the deceased Subhadra Devi was solemnized with the appellant no.1 Bhushan Yadav in the year 1984 and after solemnization of her marriage, she went to her in-laws' house but whenever Subhadra Devi came to her parental home, she used to disclose that the behaviour of her in-laws with her was not proper as her in-laws were demanding cycle, radio, clothes



and cash in the dowry. This witness further claims that when the above stated demand was not fulfilled, Subhadra Devi was poisoned to death by her in-laws. He further claims that having got the aforesaid information, he along with P.W.2, P.W.3 and P.W.4 as well as one Subhash Gope went to the village of in-laws of the deceased on 28.08.1990 and reached there at about 9.00 A.M. He further claims that the in-laws of the deceased Subhadra were not present in the house and the villagers told them that Subhadra was killed in previous night. This witness admitted in his cross examination that on 28.08.1990, when he reached in the village of in-laws of the deceased, he learnt that the dead body of the deceased Subhadra was taken away. This witness further admitted at para-6 of his cross examination that the distance between his village and village of appellants is about one and half Kosh.

**14.** Almost, similar statement has been given by P.W.2, who happens to be the uncle of P.W.4. This witness states that at the time of Bidai, the appellants had made demand of dowry. This witness further states at paragraph-2 of his examination that after performance of Gauna, Subhadra went to her in-laws' house from where she came once to her parental home and disclosed about the demand as well as torture meted



out to her by her in-laws. He further states that after disclosure of the aforesaid fact, Subhadra again went to her in-laws' house and, thereafter, she was poisoned to death by her in-laws. This witness further admits that at about 07.30 A.M. on 28.08.1990, he got information about the killing of the deceased Subhadra and having got the aforesaid information, he along with P.W.1, P.W.3 and P.W.4 and Suresh Yadav went to the in-laws' house of the deceased but they were not present at their house and he and others came to know from the villagers that in the previous night, Subhadra was poisoned to death by her in-laws. On being cross examined by the defence, this witness admitted that at the time of negotiation of marriage of Subhadra Devi, he was not present and he came to know about the demand of dowry from his uncle Chandresar Yadav, Subhash Yadav (P.W.4) and his father Komal Yadav (P.W.3). This witness, further, admitted that the in-laws of deceased had not demanded dowry before marriage. This witness further admitted that he had not disclosed before the police about the so-called demand of the appellants. This witness admits at paragraph-11 of his cross examination that the village-Kamrathu is situated at the distance of 6 Kosh from Fatuha but village-Jharhapar is at less distance from village-Fatuha.



**15.** P.W.3 is cousin granduncle of P.W.4 and this witness admits that the marriage of the deceased Subhadra was solemnized in the year 1984 and her Gauna was performed in the year 1987 and after performance of Gauna, she went to her in-laws' house. This witness also states that the appellants and their family members used to demand cash, radio, cycle etc. and the appellant no.1 Bhushan Yadav had written two letters, demanding the above stated articles in dowry. This witness further states the deceased Subhadra used to say that the behaviour of her husband and in-laws was not cordial with her. This witness claims that Subhadra was poisoned to death by her in-laws and, thereafter, he along with others went to the in-laws' house of the deceased Subhadra and came to know that Subhadra was poisoned to death by her in-laws and her dead body was disappeared by her in-laws. He further states that the in-laws of the deceased Subhadra had not given any information to him as well as others regarding the death of the deceased Subhadra. This witness claims that he had disclosed before the police regarding the illegal demand of the appellants.

**16.** P.W.4 Subhash Prasad Yadav is the informant of this case. This witness states that the in-laws of the deceased Subhadra had demanded cash, radio, cycle, clothes etc. in dowry



and the appellant no.1 Bhushan Yadav had written two letters, making the aforesaid demand. This witness proved the above stated two letters as Ext.1 and Ext.1/A. This witness also proved his fardbeyan as Ext.2. This witness states that the marriage of his sister was solemnized in the year 1984 and after marriage, she went to her in-laws' house but the behaviour of her in-laws was not proper with her and whenever she used to come to her parental home, she disclosed that she might be killed by her in-laws if their demand of cash, radio, cycle etc. is not fulfilled. This witness admits that the Gauna of his sister was performed in the year 1987. At paragraph-4 of his examination-in-chief, this witness states that after one month of the performance of Gauna, Subhadra came to his house and, after that, she visited her in-laws' house several times and almost all the times when she came to her parental house, she disclosed that she might be killed by her in-laws, if their demand is not fulfilled. This witness further states at paragraph-5 of his deposition that last time in the month of January, 1990, his sister had gone to her in-laws' house from her parental home and, at that time, the appellant no.1 had come for the Bidai of his sister Subhadra. This witness further states that his sister while leaving her parental house in the month of January, 1990,



requested him not to permit her to go to her in-laws' house as she might be killed. This witness further states at paragraph-6 of his deposition that on 19.08.1990, he went to the village of the appellants and again his sister disclosed that she might be killed and, thereafter, he requested the appellants not to make demand and torture the deceased. He further states that he wanted to take back his sister to his home but he was not allowed by the appellants and their other family members. This witness further admits at paragraph-7 of his deposition that his cousin uncle Suresh Yadav in the morning of 28.08.1990 gave information about the killing of the deceased and also informed that the dead body of the deceased was taken away to Fatuha for cremation and having got the aforesaid information, he went to the village of the appellants but her in-laws were not found at the house. This witness further admits that he went to the police station and lodged the F.I.R. at about 04.30 P.M. and also handed over two letters earlier written by the appellant no.1. This witness further admits that Samudri Devi, who happens to be the cousin sister of the deceased, was married with Rambabu of village-Jharhapar. He further admits that Rambabu is the cousin brother of the appellant no.1. This witness further admits that he has no inimical term with the above stated Samudri



Devi. He also admits that Rambabu Yadav and the appellant no.1 reside in the same house. At paragraph-17 of his cross examination, this witness says that the above stated two letters (Ext.1 and Ext.1/A) were sent by post and the aforesaid letters were in one envelope but he did not produce the above stated envelope before the police. This witness further admits that after performance of Gauna, Subhadra had visited her parental house thrice. He further admits that the demand of dowry was made much prior to Gauna of Subhadra. This witness further states at paragraph-21 of his cross examination that after the performance of Gauna, Subhadra disclosed that she was being tortured by her in-laws and the co-villagers of the appellants, namely, Jamun Gope and Chenari Gope had also informed about torturing of the deceased Subhadra but, even then, he did not give any information to the police station. This witness further states that a Panchayati was convened but the appellants did not change their attitude. This witness further states that the appellants refused to send the deceased to her parental home but he did not give any information regarding the aforesaid refusal to the Chowkidar, Dafadar, Mukhiya and Surpanch nor sought any help from the police.

**17.** P.W.5 Nand Kishore Rai is the Investigating



Officer. This witness states that on 28.08.1990 at about 04.30 P.M., he recorded the fardbeyan of P.W.4 and at the time of recording the fardbeyan, P.W.4 handed over two letters to him. This witness also admits in paragraph-4 of his cross examination that he did not record the statement of the neighbours of the appellants in course of investigation but recorded the statements of other co-villagers of the appellants. This witness at paragraph-6 of his cross examination also admits that he recorded the statement of Dr. Binod Kumar Sinha (D.W.1) and had also perused the Admission Register of Saidanpur Government Hospital and found an entry dated 27.08.1990 in respect of the admission of the deceased in the aforesaid hospital. This witness further admits that D.W.1 had issued a certificate, which was received by him through the concerned Chowkidar, and he had attached the aforesaid certificate with the case diary but he did not mention the aforesaid fact in the case diary. This witness further states that in paragraph-27 of the case diary, he had mentioned this fact that D.W.1 had issued certificate in respect of admission of the deceased Subhadra. This witness further admits that he had also recorded the statement of the Dresser of the hospital. This witness further admits at paragraph-8 of his cross examination



that P.W.1 had not made statement before him to this effect that the deceased had disclosed to him that the behaviour of her in-laws was not proper with her. Furthermore, the aforesaid witness admitted that P.W.1 had not disclosed this fact before him at the time of recording his statement under Section 161 of the Code of Criminal Procedure that the in-laws of the deceased were demanding cycle, radio, clothes and cash. Similarly, this witness also admitted that P.W.2 had not disclosed before him that they refused to fulfil the demand of appellants at the time of performance of Gauna and when Subhadra (deceased) came to her parental home, she had disclosed that her in-laws were demanding cash and other articles. Similarly, P.W.3 had also not disclosed before him regarding the demand of cash.

**18.** On perusal of the above stated evidences, available on the record, we find that the prosecution succeeded to prove this fact that the marriage of the deceased had taken place with the appellant no.1 Bhushan Yadav in the year 1984 and her Gauna was performed in the year 1987. Furthermore, it is admitted fact of the parties that the deceased died in the year 1990 and, therefore, the prosecution has proved that the deceased died within 7 years of her marriage. Furthermore, from perusal of the above stated evidences, it is obvious that the



prosecution witnesses claim that the appellants demanded cycle, radio, clothes and cash in the dowry at the time of solemnization of marriage of the deceased and continued their demand till the death of the deceased but on the point of making demand of dowry, the prosecution witnesses made contradictory statements because P.W.2 says that after marriage, the deceased had once come to her parental home and disclosed the above stated demand of dowry, whereas P.W.4 states that the deceased came to her parental home several times and, whenever, she came to her parental home, she disclosed the factum of demand of dowry. Furthermore, P.W.4 claimed that on 19.08.1990, he had gone to the house of the appellants where the deceased again disclosed the above stated demand of dowry and torturing but, admittedly, P.W.4 did not give any information to the police, nor to local Chowkidar, Dafadar and Mukhiya, particularly, in the circumstance, when P.W.4 claims that he wanted to take back the deceased to his home but the appellants did not allow the deceased to go with P.W.4.

**19.** It is pertinent to note that P.W.4 and other material witnesses claim that the demand of dowry was made at the time of solemnization of marriage and continued till the death of the deceased and, furthermore, the aforesaid witnesses



claim that the deceased made complaint to them several times regarding the illegal demand and torturing but, even then, P.W.4 did not give any information to the concerned local police station, particularly, in the circumstance, when the relation of the deceased with her in-laws was so strained. It is also pertinent to note here that P.W.4 claims in his deposition that Panchayati was also held in respect of the above stated illegal demand and torturing but the appellants did not change their attitude. It is surprising enough that P.W.4 conveyed Panchayti but did not make any complaint to the local police. So far as, P.W.1, P.W.2 and P.W.3 are concerned, they make statement in respect of demand of dowry for the first time in course of trial and they had not made statement in respect of demand of dowry before P.W.5 in course of investigation.

**20.** The learned trial court has relied upon the Ext.1 and Ext.1/A, the two letters, said to be written by the appellant no.1, and held that the aforesaid two letters proved the illegal demand of the appellants beyond all reasonable doubts.

**21.** Learned Amicus Curiae has argued that the aforesaid two letters are not admissible in evidence because the aforesaid two letters have not been brought on the record in evidence in accordance with law.



**22.** Section 67 of the Indian Evidence Act, 1872, says that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

**23.** Section 73 of the Indian Evidence Act, 1872, says that in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

**24.** From bare perusal of the aforesaid provisions, it is obvious that there are so many modes to prove the signature or handwriting of a person. The handwriting and signature of a person can be proved by calling a handwriting or finger print



expert, or by a person, who is acquainted with the handwriting or signature of that person or by comparing with the admitted signature or handwriting of the person by the court.

**25.** In the present case, P.W.4 proved the letters, said to be written by the appellant no.1, but he has, nowhere, stated in his deposition that he was acquainted with the handwriting of the appellant no.1 and, furthermore, P.W.4 has also not stated in his deposition that he had occasion to see the handwriting and signature of the appellant no.1 and, therefore, in our view, P.W.4 was not competent person to prove the handwriting and signature of the appellant no.1. Furthermore, Section 73 of the Indian Evidence Act, 1872, casts a pious duty upon the Court to compare the disputed handwriting and signature of a person with his admitted signature and handwriting but, in the present case, the learned trial court failed to exercise the aforesaid power, particularly, in the circumstance, when the appellant no.1 in his statement recorded under Section 313 of the Code of Criminal Procedure completely denies the writing of Ext.1 and Ext.1/A and also in the circumstance, when the aforesaid two letters have not proved by the handwriting expert or a competent person.

**26.** In our view, the learned trial court had



occasioned to compare the Ext.1 and Ext.1/A with admitted signature and handwriting of the appellant no.1 but the learned trial court failed to do so and, therefore, in our view, the learned Amicus Curiae rightly submitted that Ext.1 and Ext.1/A have not been brought on the record in accordance with law and the aforesaid Ext.1 and Ext.1/A cannot be looked into evidence in the present case.

**27.** Therefore, in our view, there was nothing for the trial court to form an opinion that the appellants had made illegal demand of dowry and had put the deceased into cruelty and harassment due to non fulfillment of the dowry demand.

**28.** One of the most important ingredients of Section 304-B of the Indian Penal Code is that the deceased must be subjected to cruelty and harassment by her in-laws soon before her death in connection with the illegal demand but, in the present case, P.W.4 claimed that he had visited the in-laws' house of the deceased on 19.08.1990 and the deceased had disclosed that she was subjected to harassment and torture by her in-laws due to non-fulfillment of the illegal demand and, thereafter, he made effort to take back to the deceased to his home but he was not allowed by the in-laws of the deceased. It is surprising enough that P.W.4 did not give any information in



respect of the aforesaid incident to the police and without making any effort to take back the deceased to his home, he returned to his home silently. Therefore, the aforesaid conduct of P.W.4 creates doubt about his above stated claim.

**29.** P.W.4 and other material prosecution witnesses claim that the deceased was poisoned to death and her dead body was cremated at Fatuha on 28.08.1990. P.W.4 and other material witnesses have admitted this fact that they got information regarding the death of the deceased in the morning of 28.08.1990 and within two hours of getting the information, they reached at the village of the appellants where they got information that the deceased was killed and was taken to Fatuha for cremation. P.W.4 and other material witnesses, who had gone along with P.W.4 to the village of the appellants, did not make any effort to go to Fatuha for the recovery of the dead body of the deceased, nor had taken any step to give information to the police immediately, particularly, in the circumstance, when the police station was situated at a distance of 5 kilometers from the village of the appellants and it is surprising enough that P.W.4 gave information to the police at 04.30 P.M., particularly, in the circumstance when he had already learnt about the killing of the deceased in the morning of 28.08.1990.



**30.** No doubt, under Section 304B of the Indian Penal Code, there is presumption of dowry death, if the ingredients of the aforesaid Section are proved. However, it is well settled principle of law that even if the ingredients of the aforesaid Section are proved, then also, the accused has right to rebut the aforesaid presumption of Section 304-B of the Indian Penal Code.

**31.** In the present case, the appellants took their stand that the deceased died of cholera and to prove the aforesaid fact, the appellants got examined three defence witnesses including D.W.1, who had got treated the deceased before her death. D.W.1 has, specifically, stated in his deposition that on 27.08.1990 at about 02.00 P.M., the deceased was admitted in Saidanpur Hospital and she was suffering from gastroenteritis. This witness further claimed that he provided medicines to her. This witness proved the Bed Head Ticket as Ext.A. This witness further stated that the deceased died in his hospital at 10.00 A.M. on 28.08.1990. However, the learned trial court doubted the statement of this witness as well as Ext.A and Ext.B on the ground that D.W.1 had not disclosed who had got admitted the deceased in his hospital and the medicines were provided to the deceased even after her death.



**32.** We are unable to accept the aforesaid findings of the learned trial court because, admittedly, D.W.1 was examined in the the year 1993, i.e., after three years of the alleged offence, and if he could not disclose the name of the person, who had got admitted the deceased in his hospital, then also, the aforesaid omission does not make any difference. Furthermore, even if it is assumed that the name of the person, who had got admitted the deceased in the hospital, has not been mentioned in the Bed Head Ticket, then also, only on the aforesaid ground, the entire deposition of D.W.1 as well as Ext.A and Ext.B cannot be discarded. Furthermore, we find that P.W.5 admitted in his deposition that in course of investigation, he recorded the statement of D.W.1, who subsequently, issued the certificate regarding the treatement of the deceased. Furthermore, we find that D.W.1 was shown as charge sheet witness in the charge sheet submitted against the appellants but the prosecution did not choose to examine D.W.1 as prosecution witness and, after that, the appellants examined D.W.1 as defence witness.

**33.** Therefore, in our view, in the aforesaid facts and the circumstances, the appellants successfully proved this fact that the deceased died of cholera and she was not poisoned.



Therefore, in our view, the prosecution failed to prove this fact that the death of the deceased was unnatural and in the aforesaid circumstance, we are of the view that the prosecution failed to prove all the ingredients of Section 304-B of the Indian Penal Code and the appellants are entitled to get the benefit of doubt.

**34.** On the basis of the aforesaid discussions, this appeal is allowed and the impugned Judgment of conviction and sentence order are, hereby set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

**35.** Let the copy of the first and last page of this Judgment be handed over to the learned Amicus Curiae so that she could claim for her remuneration before the Patna High Court Legal Aid Services Committee, Patna.

**(Hemant Kumar Srivastava, J)**

**( Rajendra Kumar Mishra, J)**

**Pradeep Srivastava/-**

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