

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.97 of 2009

- =====
1. RAM JATAN CHOURASIA, SON OF DASHRATH PRASAD CHOURASIYA.
 2. UMA DEVI, WIFE OF RAM JATAN CHOURSIA.
 3. TUNNI KUMARI, DAUGHTER OF RAM JATAN CHOURASIYA.
ALL RESIDENT OF VILLAGE-HARIYA, P.S.-NARDIGANJ,
DISTRICT-NAWADAH.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

WITH

CRIMINAL APPEAL (SJ) NO.260 OF 2009

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NAGINA PRASAD CHOURASIA, SON OF RAM JATAN CHOURASIA,
RESIDENT OF VILLAGE-HARIYA, POLICE STATION-NARDIGANJ,
DISTRICT-NAWADAH.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

(In CR. APP (SJ) No.97 of 2009)

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae.

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.260 of 2009)

For the Appellant/s : Mr. Kamal Kumar Sinha, Amicus Curiae

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

Date: 06-10-2018

When both the appeals have been called out Sri Kamal Kumar Sinha, learned counsel has appeared and submitted that Senior Counsel Sri Ambika Bhagat died more than a year ago. Before his death he had separated his office. In the aforesaid facts and circumstances, he is unable to assist the court. That being so, Sri Ranbir Singh as well as Kamal Kumar Sinha have been requested to assist the court as an Amicus Curiae.

2. Cr. Appeal (SJ) No.97 of 2009 wherein Ram Jatan



Chaurasia, Uma Devi and Tunni Kumari are the appellants while Cr. Appeal (SJ) No.260 of 2009 wherein Nagina Prasad Chaurasia is the appellant commonly originate against the judgment of conviction dated 22.01.2009 and order of sentence dated 28.01.2009 passed by First Additional Sessions Judge, Munger in Sessions Trial No.533/2007 convicting all the appellants for an offence punishable under Section 304B/34 of the IPC and sentenced each of them to undergo R.I. for ten years, on account thereof, have been heard together and are being decided by a common judgment.

3. Prakash Chandra Chaurasia filed complaint petition on 17.05.2005 before the Chief Judicial Magistrate, Munger showing the date of occurrence from 12.12.2003 to 04.05.2005, disclosing the place of occurrence to be at village-Hariya, P.S.-Nadriganj, District-Nawada as well as Nayagaon Bajrangbali Chowk, P.S.-East Colony, Jamalpur, District-Munger alleging inter alia that his daughter Punam (since deceased) was married with Nagina Prasad Chaurasia on 12.12.2003 and at the time of marriage, he had gifted according to his means. After marriage, his daughter had gone to her Sasural where the accused persons complained that at the time of marriage nothing tangible has been given at the end of her parents therefore, you are directed to inform your father to provide one Hero Honda Motorcycle, one T.V. and cash appertaining to rupees twenty thousand. Unless the aforesaid items, amounts are made available, she will not be allowed to stay. His daughter had shown her helplessness in the



background of financial crunch from which the complainant was suffering on account of loan borrowed at the time of her marriage whereupon she was threatened with dire consequences. Further insisted that at the time of *Duragaman* the aforesaid items must be provided. As per rituals, after spending four days at her Sasural, his daughter returned back to Naihar where she disclosed the event. Though, *Duragaman* was effected but, as those items along with cash appertaining to rupees twenty thousand were not provided, on account thereof, accused persons began to harass her. She was even manhandled at different occasion. Anyhow, complainant was informed whereupon he rushed and begged before his Samdhi, *Damad* and *Samdhin* not to torture her and further, be pity over his financial condition. In due course of time, his daughter begotten a son. Even considering that after birth of a son the matter will be pacified, could not yield any positive sign. On the other hand, all of a sudden he was informed that his daughter has been murdered. He rushed to the place of his daughter where came to know that after murdering her, funeral had already done.

4. It has further been disclosed that on query the accused persons blatantly refused even to keep his daughter's son who was handed over to him and further, the accused persons disclosed that now they will got the Nagina remarried. Informed rushed to Nadriganj Police Station and disclosed the event but was instructed to launch a case at Jamalapur with a further instruction that all the document will be transmitted to



Jamalpur P.S. where he had gone but, as no proper step has been taken at the police lastly complaint petition is being filed.

5. It is evident from the record that learned Chief Judicial Magistrate after recording the S.A. of the complainant transfer the matter to the court of learned SDJM in accordance with Section 192(2) of the Cr.P.C. where, during course of an inquiry under Section 202 Cr.P.C. witnesses were examined and vide order dated 30.01.2006 the same was dismissed in accordance with Section 203 of the Cr.P.C. against which, Criminal Revision No.21/2006 was preferred which was allowed vide order dated 15.05.2006 and in pursuance thereof, vide order dated 07.06.2006 cognizance of an offence punishable under Section 304B IPC has been taken and the appellant accused have been summoned to face trial. After appearance of the accused persons /appellant, the case was committed and the trial proceeded before the court of First Addl. Sessions Judge and after concluding the trial, the judgment of conviction and sentence has been recorded, the subject matter of instant appeal.

6. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that deceased was suffering from diarrhea and for that, she was being treated by Dr. I. Ahmad of Sadar Hospital, Nawada but, lastly she died. In order to substantiate the same, two DWs have been examined.



7. In order to substantiate its case prosecution had examined altogether seven PWs who are PW.1-Ram Lal Sharma, PW.2-J.D. Singh, PW.3-Punam Kumari, PW.4-Sikandar Sah, PW.5-Prakash Chandra Chaurasia, PW.6-Mahendra Mandal, PW.7-Jageshwar Mandal. Side-by-side had also exhibited Ext.1-Complaint Petition, Ext.1/1-Signature of learned counsel over complaint petition, Ext.2-Signature of Tullu Singh. Defence had also examined two DWs. DW.1-Krishnadeo Singh, DW.2-Tullu Singh. There happens to be no exhibit of the documentary evidence at their end.

8. While assailing the judgment of conviction and sentence impugned, it has been submitted by the learned Amicus Curiae that finding arrived at by the learned lower court is not legally sound and so, is fit to be set aside. In order to justify the same, it has been submitted that no charge under Section 498A of the IPC has been framed nor under Section 4 of the Dowry Prohibition Act. Non-framing of charge under the aforesaid two sections has got relevancy in the background of the fact that whenever there happens to be demand relating to marriage, Section 4 of Dowry Prohibition Act would come into play. Whenever there happens to be torture or harassment to facilitate fulfillment of demand of dowry, Section 498A of the IPC would be attracted. Section 304B is the combination of both two sections and so, the non-framing of charge under the aforesaid two sections would dismantle the framework of the prosecution whereupon, the whole prosecution is bound to fail.



9. Furthermore, it has also been submitted that there happens to be inordinate delay in filing of the case without any cogent explanation. In criminal case delay of each and every hour has been identified to be fatal to the prosecution case in the background of the fact that, intermediary period has been perceived as an opportunity to manage the situation with false and frivolous allegation. In its continuity, it has also been submitted that being cognizable offence, preference would have been by way of institution of case before the police, who would have, properly investigated the case. An enquiry under Section 202 Cr.P.C. having no access to the accused happens to be controlled by the prosecution only having every possibility to produce collusive materials, affecting interest of the accused. So it has caused prejudice to the interest of the appellants.

10. Now coming to merit of the case, it has been submitted that defence had properly substantiated that deceased died of diarrhoea and further, there was no demand, torture at their end during the intervening period whereupon, none of the ingredients attracting Section 304B is found substantiated. That being so, the judgment impugned did not justify its prevalence.

11. Furthermore, it has also been submitted that death occurred within the jurisdiction of Nawada, no case was instituted at Nawada and that being so, instant prosecution is found contrary to the spirit of Section 177 of the Cr.P.C. whereupon, the judgment impugned suffers from inherent



lacuna. So, the cumulative effect did not justify prevalence of the judgment impugned.

12. On the other hand, the learned Additional Public Prosecutor while controverting the submission having made by the learned Amicus Curiae has submitted that unless and until specific ground would have been taken at an initial stage challenging the continuance of proceeding on the jurisdictional error the appellant would not be legally entitled to raise the issue at an appellant stage. Appellants allowed the proceeding to sail without having any kind of hurdle at their end whereupon, they waived. Now they are precluded to raise the issue. It has also been submitted that in each and every case delay, in institution of the case is not at all found fatal to the prosecution more particularly, when a father has lost his daughter simply on the ground that he failed to fulfill the demand on account of poverty and, having a kid of eight months in his lap having thrown away by the accused persons in order to devour the last existence as a hurdle in getting themselves remarried. Even then, the complainant/informant had asserted that he had gone to the Nardiganj Police Station wherefrom he was instructed that as Naihar lies at Munger on account thereof, case was to be instituted at that place and for that, they assured that relevant papers would be sent.

13. Now coming to factual aspect, it has been submitted that death within seven years of marriage otherwise than normal circumstance is admitted. When the evidence of



witnesses is properly scrutinized, then the demand of dowry and for that, persistent activity of torture and harassment during intervening period for fulfillment of the same is found properly adduced justifying the finding recorded by the learned lower court. Consequent thereupon, the judgment impugned is did not require interference.

14. First of all jurisdictional avenue is to be seen. From plain reading of the complaint petition, it is evident that dowry death was committed at village-Hariya, P.S.-Nardiganj, District-Nawada but, the earlier part that means to say the persistent demand of dowry, as is evident continued not only at village Hariya rather at Nayagaon also and for that, the deceased was tortured. Ordinarily, as per Section 177 of the Cr.P.C. prescribes conduction of trial by the court within whose jurisdiction offence has been committed. The other section right from 178 to 189 are exception to that wherein, Section 178 of the Cr.P.C. deals with present issue which reads as follows:

“178. Place of inquiry or trial

- (a) When it is uncertain in which of several local areas an offence was committed, or
- (b) where an offence is committed partly in one local area and partly in another, or
- (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
- (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

15. Apart from this, Section 462 of the Cr.P.C. also cares the same whereunder it has been held that no finding,



sentence or order of any criminal court shall be set aside on account of having passed by wrong sessions division, district, or sub-division or other local area unless, it appears that such occasion a failure of justice. In likewise manner, Section 465 of the Cr.P.C. also takes care of, laying down that any kind of procedural error would not invalidate the finding unless in the opinion of the court, failure of justice has occurred. Furthermore, as prescribed under sub-section 2 of Section 465 Cr.P.C. that during course of determining whether any error or omission or irregularity in any proceeding, sanction for prosecution has occasion a failure of justice, the court shall see with regard to the fact whether the objection could and should have been raised at an earlier stage of the prosecution. After perusal of the lower court, it is evident that no such prayer has been raised challenging legality of the prosecution on account of out of jurisdiction. Moreover there happens to be specific assertion at the end of prosecution that at the time of *Duragaman* as well as whenever deceased had visited his place during intervening period, the allegation having at the end of the prosecution that at each occasion demand was renewed, did justify the same. Not only this, it is also evident from the record that appellant never raised that by way of continuance of proceeding at Munger they are being prejudiced nor during course of argument succeeded to substantiate that by continuance of proceeding at Monghyar, either their interest has been prejudice or failure of justice has occurred whereupon, under the garb of Section 462 of the Cr.P.C. the



judgment impugned could not be said to be illegal.

16. Now, before coming to analyze the material having on the record, it looks prudent to have proper appreciation of ingredients of Section 304B of the IPC. From reading of Section 304B of the IPC, it is evident that prosecution is under obligation to satisfy the following ingredients:

- a)** Death has occurred within seven years of marriage.
- b)** By burn or by bodily injury or otherwise than normal circumstance.
- c)** There should be demand of dowry.
- d)** Soon before her death, the deceased should have been tortured by the husband or relative of the husband for fulfillment thereof.

If those ingredients are fulfilled, then in that circumstance, the court shall presume it to be dowry death as provided under Section 113B of the Evidence Act put though is rebut-able which, the accused has to discharge.

17. Section 304B is an independent offence though it attracts presence of Section 498A IPC only for limited purpose to construe the act of cruelty in same terms as prescribed there under. In likewise manner, framing of charge under Section 4 of the Dowry Prohibition Act may or may not attract in the background of the fact that after death of the deceased the



matter is found transformed into major offence than the minor offence and one of the basic ingredients engulfs the same.

Recently in **Maya Devi and another v. State of Haryana reported in 2016 CRI.L.J. 629**, it has been held:-

“16. To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. In fact, learned senior counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

17. xxx xxx xxx

18. xxx xxx xxx

19. xxx xxx xxx

20. With these principles in mind, let us analyse the evidence led in by the prosecution. The marriage of Kavita@Kusum (since deceased) was solemnized with Karamvir on 17.07.1994. Kavita died on 26.09.1996 after consuming some poisonous substance at her matrimonial home. The father of the deceased lodged a complaint



against the accused persons that he had given dowry on the eve of marriage beyond his means but after 20-25 days of marriage, Karamvir-appellant No. 2 herein, Maya Devi-appellant No.1 herein and brothers Dharamveer and Paramveer and sister Sonika, started harassing his daughter for more money. When Kavita visited her father's house, she narrated the entire tale of woes to her parents and brother. When the complainant enquired about the matter, the appellants informed the complainant that the appellant No. 2 is in need of money and they also have to perform the marriage of Sonika. A sum of Rs. 20,000/- was paid to appellant No. 2 so that the daughter of the complainant is not harassed. It was further stated that the complainant received a letter of his daughter regarding continuous demand for dowry and sufferings meted out to her. The complainant paid a further sum of Rs. 25,000/- for the purchase of refrigerator and gold chain to the appellant No. 2. Kavita was sent with her husband on the assurance that the accused family would not harass her in future. Even on the day of „sakarant“, when the brother of the deceased visited her matrimonial home, the accused threatened them that the household articles of Kavita will be thrown out. A further demand of Rs. 30,000/- was made to meet the kitchen expenses by the appellants. Since that demand was not fulfilled, the deceased was left with her father at Delhi. Subsequently, the complainant requested to compromise the matter and tendered his apology in writing. In June 1996, the deceased was brought to home by the accused persons. After some days, when the complainant visited her matrimonial home at Rohtak, he was informed that situation has not changed and whenever she brings money, the peace returns for 10-20 days otherwise she is beaten mercilessly by the accused persons. On 26.09.1996, the complainant got the information about the death of his daughter. The case was committed to the Court of Sessions and the accused were found guilty under Section 304B and 498A of the IPC. There is ample evidence that the deceased was harassed, maltreated and was subjected to cruelty, for and in connection with the demands for dowry by the accused. Admittedly, appellant No. 2 was present in his office on 26.09.1996



located at M.D. University Campus at Rohtak but he did not attend to his wife at the relevant time. The assertion made by learned senior counsel for the appellants that the deceased was suffering from moderate depressing episode and was having suicidal tendencies prior to her death is of no consequence. Dr. V.P. Mehla (DW-2) was apprised by the deceased about the harassment and the maltreatment by her in-laws a month prior to her death when she was taken to the aforesaid doctor for the alleged treatment. According to DW-2, the deceased was so much depressed as a result of the act of cruelty meted out to her at the hands of the appellants that she developed suicidal tendencies. The testimony of DW-2 shows that the accused had created such a charged environment in her matrimonial home that she developed suicidal tendencies. Except appellant No. 1 herein, all were living in the house at Rohtak. Appellant No. 1 herein was a frequent visitor to that house and she herself admitted this fact in her statement under Section 313 of the Code. Thus, it is very much clear that accused persons maltreated, harassed and subjected the deceased to cruelty, after the solemnization of her marriage with the appellant No. 2 herein, during her life time and soon before her death, for and in connection with the demands for dowry, who died at her matrimonial home within seven years of her marriage otherwise than in normal circumstances.

21. Section 304B IPC does not categorise 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 "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of Section 304B IPC are fulfilled, any death (homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death". The section clearly specifies what



constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.”

18. So far offence of dowry death is concerned, it is always facilitated at the place of accused and on account thereof, the possibility of an eyewitness appears to be very blight. The daughter-in-law being an outsider never finds support from the co-villager of the Sasural. Presence of Naiharwala also became impossible. That being so, the occurrence is to be supported by way of circumstantial evidence couple with onus put upon the accused under Section 113B of the Evidence Act. Under the garb of aforesaid legal principle now the materials on record have to be seen in order to adjudicate.

19. From the record, it is evident that marriage is not denied, in likewise manner death within seven years of marriage is also not denied and in likewise manner the death otherwise than normal circumstance is also not under challenge irrespective of the fact that dead body has not been recovered, and for that DW.1 as well as DW.2 have been examined who disclosed that the deceased was suffering from diarrhoea and was under treatment of Dr. I. Ahmad and during course thereof, she died. As such, it is manifest that two out of four ingredients are found duly substantiated.

20. Now, remaining ingredients require proper scrutiny from the materials available on the record. The most competent



witness on that very score would be the PW.3 Pawan Kumar brother of the deceased and PW.5, informant, father of the deceased.

21. PW.3 had deposed that his sister Punam Kumari was married with Nagina Prasad Chaurasia on 12.12.2003. Ram Jatan Chaurasia is her father-in-law, Uma Devi mother-in-law and Tunni Kumari Sister-in-law. After marriage, his sister had gone to Sasural when she returned back, she disclosed to her father that her Sasuralwala are saying that they have been provided meager dowry and so, a motorcycle, T.V. and cash appertaining to Rs.20,000/- was being demanded at their end. Thereafter, *Duragaman* was effected. As, the aforesaid items were not provided, in the aforesaid background, his sister was subjected to ruthless harassment. After gap of sometime, they received information regarding her death. They were not at all informed at the time of her death, at the time of her funeral and so, he apprehended that on account of non-fulfillment of demand of dowry, his sister was tortured and lastly, she has been murdered by her Sasuralwala. During cross-examination at para-2, he had sated that he had visited place of his sister twice or thrice. He is not remembering the time of last visit. Then had stated that they knew about the occurrence one day after its commission. On an information given by Jageshwar Mandal who was telephonically informed by some body from the Sasural of the deceased. In para-3 he had stated that his father, after getting information had gone to the Sasural of his sister and returned back on the same day. Then



thereafter, his father had not visited the village. Then had stated that after return, this case has been filed by his father. Then had said that his father had not disclosed with regard to institution of any case at Nawada. Then had stated that he had earlier deposed in this case before the court of Manoj Shankar. He had further stated that his sister had intimated his father with regard to demand of motorcycle as well as cash. Then had denied his suggestion that his father had participated during course of funeral. Then had denied the suggestion that his father came along with his Bhagina. In para-4 he had stated that his father had not visited Nawada during course of *Sharadh* rather he performed the same at Mungerghat. Then had stated that he had deposed that his brother-in-law had demanded motorcycle and cash. Then had said that his Bhagina who is presently aged about 2 ½- 3 years is staying with them. In para-5, he had stated that he is unable to say why not his father had instituted a case at Nawada. He is not remembering whether his father had met with Superintendent of Police, District Magistrate, DIG. He had further stated that no demand was made in his presence. However, from his father demand was made. In para-6, he had stated that he is not knowing whether the complaint case was dismissed on 30.01.2006. Then had denied the suggestion that his sister had died out of diarrhea. Then had denied the suggestion that at the instance of his father he has deposed falsely. He had denied the suggestion that his sister was not at all tortured by anybody for fulfillment of demand of dowry.



22. PW.5 is the informant. During examination-in-chief he had deposed that Punam, deceased was married with Nagina Prasad Chaurasia on 12.12.2003. Ram Janam is father-in-law, Uma Devi is mother-in-law and Tunni is sister-in-law. At the time of marriage he had offered gift according to his means. After marriage, his daughter had gone to her Sasural at village Khariya wherefrom she returned back after staying a month. After return, she disclosed that her husband, mother-in-law, father-in-law and sister-in-law were saying that they got meager dowry on account thereof, a motorcycle, a T.V. and Rs.20,000/- have been demanded at their end and for that, they are torturing her. She had further stated that they are threatening that if those articles are not being procured then in that circumstance, it will be difficult to permit her stay.

23. After ten days, her husband came and took her on Bidai. At his place also husband of Punam was coaxing her to demand money. He had consoled her and then, allowed her Bidai. About fifteen days thereafter, he received call from his daughter that accused persons severely manhandled her for procurement of motorcycle, T.V. and Rs.20,000/- in cash. He rushed to Sasural of her daughter and disclosed the factual aspect. Then, at the time of delivery she was brought to his place. His son-in-law also came. After delivery, Sasuralwala of Punam were invited who came and even at that occasion they reiterated their demand and further, hotly exchanged on that very score. The family life of his daughter sailed in same condition facing continuous incident of torture, cruelty in order



to procure the demand of motorcycle, T.V. and Rs.20,000/-. Before Holi, in the year 2005 his daughter came. After Holi, at the time of Bidai they have stated that in case of non-fulfillment of demand, she will not be allowed to visit. On 05.05.2005 an information was given to Jageshwar Mandal over telephone divulging the death of the deceased as well as, her dead body having been cremated. After coming to know about the same, he tried to contact but, the telephone call was not at all attended at the Sasural of his daughter. He suffered from anxiety and rushed to the place of his daughter. On query, the accused persons disclosed that as their demand have not been fulfilled; in the aforesaid background his daughter had died. Took your daughter's son and go away otherwise, he will also face the same consequence. Even he was manhandled. He returned back therefrom along with his daughter's son and had gone to Nadriganj Police Station. The police said that his house lies at Jamalpur Police Station so, case has to be registered there. The police had also said that they transmit the relevant document to the Jamalpur Police Station. He repeatedly visited Jamalpur Police Station but, no paper was received from Nadriganj Police Station and then thereafter, complaint case has been filed. Identified the accused. Further claimed that his daughter has been murdered on account of non-fulfillment of dowry. During cross-examination at para-6 he had stated that when telephonic information was received by Jageshwar he was on duty. His son Pawan Kumar has come to workshop to inform whereupon he took leave and left the workshop. He had



further stated that who had phoned Jageshwar he is not knowing. Then para-7 of cross-examination has been cross-examined relating to one Tullu Singh (who has been examined as DW). In para-8 he had stated that he proceeded from his house at about 12 noon and reached at the house of his daughter in the morning of 6th. He had not taken anybody as his companion. Then there happens to be cross-examination relating to population of the village etc. At para-9 he had stated that he proceeded from the place of his daughter at about 07:30-08:00 AM. He reached at Nadriganj Police Station at 09:00 AM. He had not tendered written report rather, he orally narrated with regard to the occurrence. Officer-in-charge chased whereupon, he could not file written report. He had not gone to the place of Superintendent of Police, Nawada, Chief Judicial Magistrate, District Judge, District Magistrate are at Nawada. He had not filed complaint before Chief Judicial Magistrate. He could not get advise at that very place. He launched criminal case at Munger. He had disclosed with regard to the occurrence to his friends. Then had stated that Jageshwar Mandal and others have got information with regard to miss-happenings. His another daughter Pinki and her husband also came to know. He had further stated that after coming from Nawada, he had not gone to Superintendent of Police, Munger. He had simply filed complaint before the court. Delay in filing complaint was on account of waiting for the paper which the Nadriganj police had disclosed to be transmitted to Jamalpur Police Station. In para-10 he had



stated that in complaint petition he had shown the date of occurrence to be 04.05.2005. In para-11 he had stated that he is not remembering the date of which he had visited Nawada for the last. He had filed complaint before the Chief Judicial Magistrate on 17.05.2005. Then there happens to be cross-examination with regard to examination of the witnesses during course of an inquiry. At para-12 he had stated that he had not lodged Sanha nor instituted any case regarding demand of dowry, torture since before the occurrence. Then thereafter, there happens to be contradiction. Then had denied suggestion that his daughter died of ailment who was under going treatment at Nawada by Dr. I. Ahmad. He had also denied the suggestion that he became very much angry on a hearsay information whereupon, instituted this case on false pretext.

24. PW.7 is the Jageshwar Mandal. He had stated that he has got telephone, having number 243825. He received information in the month of May 2005 to inform Prakash or Pawan that Punam is dead. He informed the Pawan. His father came after one and half hour. During cross-examination, he had stated that he had not tried to locate from where call was made nor, to identity the caller. He had further stated at para-3 that after 3-4 days, he met with Prakash who had informed that he brought his daughter's son. Up till now, case has not been filed. In para-5 he had stated that Shradh of deceased was not performed by Prakash at his house. Then on that very score, his attention has been drawn up towards his previous statement. Then had denied the suggestion that Prakash



happens to be his friend on account thereof, he has come forward to depose falsely.

25. PW.4 had stated that Punam was married with Nagina Prasad Chaurasia on 12.12.2003. After marriage, she had gone to her Sasural where, Nagina Prasad Chaurasia, Ram Jatan Chaurasia, father-in-law Uma Devi mother-in-law and Tunni Kumari Sister-in-law conjointly advanced demand of motorcycle, cash appertaining to Rs.20,000/- as well as one T.V. and for that, they began to harass her. Because of the fact that father of the Punam happens to be financially weak on account thereof, he could not fulfill the same. At the time of Holi, Punam had come to her Maika and thereafter, she was taken away to her Sasural. After staying for 10-15 days, accused persons murdered her. He had further stated that Nagina used to demand. He ruthlessly treated the deceased even at her Sasural whenever he used to visit on the pretext of fulfillment of demand of dowry. Once he had assaulted in his presence also. He had further stated that complainant Prakash is his brother-in-law. He is on frequent visit to his place. Punam had also disclosed to him regarding demand as well as harassment having at the end of her Sasuralwala for fulfillment of the same. Identified. He had further stated that the father of the Nagina had informed Prakash regarding death of Punam. During cross-examination at para-5 he had stated that Punam was murdered at village-Hariya, P.S.-Nadriganj, District-Nawada. She was murdered on 04.05.2005. He got information three days after the occurrence from Prakash, father of the



deceased whereupon he had gone there. In para-6 he had stated that Prakash had disclosed that accused persons did not permit him to see the dead body. He had not inquired whether case has been instituted at Nawada or not. He had not inquired whether case has been instituted at Munger or not. Because of the fact that Punam was his Bhagine on account thereof, he had said that his name may be given as a witness. In para-7 he had stated that he had got no occasion to visit Nawada. In para-8 he had stated that when Uma Devi and Tunni Kumari came at the place of Prakash Chauhan he had met with them but he is unable to disclose their actual age. They have come prior to the Holi. They stayed for 1-2 days. They were normally welcomed. Punam had gone to her Sasural 2-4 days after the Holi. Her husband had come at that very occasion. In para-9 he had stated that Shradh was performed by Prakash at Munger. Son of Punam is about 3-1/2 year. In para-10 he had stated that case was instituted on 16-17. Father of Punam had not filed application before anybody regarding demand of dowry by the Sasuralwala of Punam as well as she was being harassed. In para-11 he had stated that Prakash Chaudhary had not informed him before going to Nawada but, after return, he had disclosed regarding the occurrence. He had not disclosed that she died of diarrhoea. He had further stated that he is not knowing whether the SDJM had dismissed the complaint. Then had denied the suggestion that deceased died of diarrhoea. But with ulterior motive this case has been instituted by Prakash and being relative of the Prakash, he had deposed falsely.



26. PW.1-Ram Lal Sharma, PW.2-J.D. Singh are the friends of PW.5, complainant and they have deposed on the score whatever they have gathered from the Punam as well as complainant PW.5 disclosing maltreatment at the end of her Sasuralwala over demand of dowry, and lastly, she was murdered due to non-fulfillment of the same. They have been tested on that very score.

27. DW.1 is Krishnadeo Singh who had stated that on 04.05.2005 he was Mukhiya of Hariya Panchayat. He knew Ram Jatan Chaurasiya as well as his family. Nagina Prasad Chaurasiya is married at Jamalpur. His wife died of diarrhoea who was being treated by Dr. I. Ahmad, Sadar Hospital, Nawada. He had allowed the funeral which was participated by fifty co-villagers. During course of Shradh, father of deceased had participated. Others family members of the deceased were not present. He had not talked with Prakash Chaurasia. He had not complaint that his daughter was being harassed by the accused persons for fulfillment of demand of dowry. He had not disclosed that he will launch a prosecution. Police Station lies at Nadriganj. Court is established at Nawada. When he received notice from court, then he knew about the institution of the case. During cross-examination at para-3 he had stated that house of Ram Jatan lies half kilometer away from his house. Then he had stated that he is not remembering when his wife died. He is not knowing father's name of his wife but, he can identify him. He had further stated that he had not seen any prescription regarding illness of the deceased. Villagers have



disclosed that Ram Jatan had disclosed that she was treated but died. He is unable to say with regard to nature of her ailment before her death. He had seen dead body at the place of Nagina Prasad at about 07:00 PM. Funeral took place on the same day. At that very time, Prakash was not there. Then, thereafter, after staying for 15-20 minutes, he returned back. He had not participated during course of funeral. Then had denied the suggestion that deceased was tortured on account of non-fulfillment of demand of dowry. He had deposed falsely in order to save the accused.

28. DW,2 is the Tullu Singh who had stated that he knew Nagina Prasad Chaurasia of village-Hariya. Nagina Prasad Chaurasia has been married with Punam of village-Jamalpur. He is not knowing complainant Prakash Chandra Chaurasia. Punam wife of Nagina Prasad Chaurasia is dead. He knew from villagers that she died of diarrhoea. He had not participated during course of her funeral. He had not informed Prakash or anybody else regarding death of Punam. He had not participated during Sharadh. Punam was treated by the doctor. During course of Sharadh he knew regarding presence of father of Punam. Punam Devi died of natural death. He had seen the funeral process then had denied the suggestion that she was murdered on account of non-fulfillment of demand of dowry. He denied the suggestion that after taking money, he has given false evidence. In para-4 he had stated that he has deposed at an earlier occasion also. He simply heard regarding death of Punam. He is not on visiting terms. Then he was allowed to



read his earlier deposition and after going through the same, he had stated that he had not deposed death occurred on account of diarrhoea. He had further stated that at an earlier occasion, he had stated how Punam died he is unable to say. He had simply seen the dead body being carried to the funeral place. Then had denied the suggestion that she was murdered on account of non-fulfillment of dowry and for that during the intervening period, she was being tortured.

29. As stated, the marriage is admitted. The date of marriage is also admitted. Death within seven years of marriage is also admitted. Death otherwise than normal circumstance is also admitted. Now the only question is whether the deceased was harassed or subjected to cruelty soon before her death on account of demand of dowry. PW.3, the brother of the deceased and PW.5, the complainant /father of the deceased have categorically stated that before Holi in the year 2005 while deceased was at her Naihar she had disclosed that on account of non-fulfillment of demand of dowry in a form of cash, appertaining to Rs.20,000/- motorcycle and a TV she was being tortured. It is further evident that 4-5 days after the Holi her husband came and during course thereof he insisted upon the demand and just 10-15 days after her Bidai, she has been done to death. From the evidence of DWs also, it is apparent that no information was given to the police nor to the Naiharwala of the deceased. DW.1, who claimed himself to be Mukhiya of the panchayat had stated that he had given the permission to cremation. However, his evidence is also found duly influenced



in the background of the fact that he accepted that on the basis of disclosure by the co-villagers that she died of diarrhoea without ascertaining the same granted permission. At the present juncture it looks pertinent to mention that witnesses have been suggested and in likewise manner DW.1 has also deposed that deceased was being treated by Dr. I. Ahmad but, neither Dr. I. Ahmad has been examined nor any prescription having issued at his end has been made an exhibit. Apart from this, it is also evident that PW.3 as well as PW.5 have not been cross-examined at the end of the appellant on the score of demand of dowry as well as on the score of torture having inflicted upon her. That being so, the other ingredients are also found to be properly placed at the end of the prosecution.

30. So far status of husband Nagina Prasad Chaurasia is concerned, apart from being husband there happens to be specific allegation against him to have demanded the dowry, and for that maltreatment over the deceased even at her naihar at the time of Bidai after holi is there which is found uncontroverted coupled with failure at his part to rebut the same, as, could not be able to explain the death with regard to remaining i.e. Ram Jatan Chaurasia, Uma Devi, and Tunni Kumari, considering the vagueness of the evidence they are found entitled for benefit of doubt. That being so, the judgment of conviction and sentence recorded against them are hereby set aside. Consequent thereupon, Cr. Appeal (SJ) No.97 of 2009 filed on their behalf are allowed. So far appellant Nagina Prasad Chaurasia is concerned, Cr. Appeal (SJ) No.260



of 2009 filed on his behalf is hereby dismissed. Appellant is on bail. Hence his bail is hereby cancelled directing him to surrender before the learned lower court within four weeks to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against him in accordance with law. First and last page of judgment be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
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