

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.721 of 2012

Arising Out of PS. Case No.-38 Year-2006 Thana- CHENARI District- Rohtas

Ashok Prasad Sah @ Ashok Prasad S/o Sri Madan Sah @ Madan Prasad
Resident of Village- Bharadu, Chenari, P.S.- Chenari, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 527 of 2012

Arising Out of PS. Case No.-38 Year-2006 Thana- CHENARI District- Rohtas

1. Nirmala Devi W/o Madan Sah Resident of Village- Bharadu, Chenari, P.S.- Chenari, District- Rohtas.
2. Madan Sah @ Madan Prasad S/o Late Banshropan Sah Resident of Village- Bharadu, Chenari, P.S.- Chenari, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 721 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Raghunandan Kumar Singh
Mr. Nilesh Kumar
Ms. Babita Kumari
Mr. Ritwaj Raman
Mr. Upadhyay Saurav Kumar
For the Respondent/s : Mr. Ashwani Kumar Sinha (App)
For the Informant/s : Mr. Prabhat Ranjan Singh
Mr. Ashutosh Ranjan Pandey

(In Criminal Appeal (DB) No. 527 of 2012)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Raghunandan Kumar Singh
Mr. Nilesh Kumar
Ms. Babita Kumari
Mr. Ritwaj Raman
Mr. Upadhyay Saurav Kumar
For the Respondent/s : Mr. Ashwani Kumar Sinha (App)
For the Informant/s : Mr. Prabhat Ranjan Singh
Mr. Ashutosh Ranjan Pandey



CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 20-06-2018

As both these criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsel for the appellants and learned APP for the State on these criminal appeals.

3. These criminal appeals have been preferred against the judgment and order of conviction dated 09.05.2012 and order of sentence dated 15.05.2012 passed by Additional Sessions Judge-V, Rohtas at Sasaram in Sessions Trial No. 262 of 2008/113 of 2009 arising out of Chenari P.S. Case no. 38 of 2006, whereby the learned trial Court acquitted the accused Shashi Gupta, Sanjay Sah, Asha Devi, Ranjani Devi and Vidya Kumari giving them benefit of doubt from the offence punishable under Sections 304(B) and 201 of Indian Penal Code while convicted accused Ashok Prasad, Madan Prasad and Nirmala Devi for the offence punishable under Sections 304(B) and 201 of the Indian Penal Code and sentenced them to undergo R.I. for life under Section 304(B),



and further sentenced them to undergo R.I for three years and also slapped them with a fine of Rs. 5,000/- each and in default of payment of fine, further sentenced them to undergo S.I. for six months under Section 201 I.P.C. However, all the sentences were directed to run concurrently.

4. The factual matrix of the case is that Chenari P.S. Case no. 38 of 2006 was instituted under Sections 304(B), 201/34 of the Indian Penal Code against Ashok Prasad, Madan Sah, mother of Ashok Prasad Nirmala Devi, Asha Devi, Ranjan Devi, Vidya Kumari, husband of Asha Devi and husband of Ranjan Devi on the basis of written report of Naresh Prasad S/o Late Ram Kishun Sah with the allegation, in succinct that the informant had performed marriage of his sole daughter Sunita Kumari @ Nilam Kumari with Ashok Prasad son of Madan Sah on 3.02.2001 and accorded gift worth Rs. 4 lacs in the marriage succumbing the pressure of groom and his parents. His daughter was blessed with a daughter and two sons out of the aforesaid wedlock. Husband of his daughter, Ashok Prasad, her parents-in-law, sister-in-law Asha Devi, Ranjan Devi, Vidya Kumari and husband of Asha Devi, Ranjan Devi are very greedy persons. They always used to torment his daughter over dowry demand and mount



pressure upon her to fetch Maruti Car from him. They also always used to thrash her and did not accord her food. Whenever, he used to pay visit in-laws house of his daughter, the aforesaid persons used to make demand of Maruti car from him, and on refusal, they used to extend threatening of dire consequences to his daughter. On 14.07.2006 at 08:00 PM, he got telephonic information from some unknown person about burning alive his daughter by the aforesaid accused persons. Then he rang his daughter in-law's house, but got no response. Then he rang to the neighbour of his in-law's house, namely, Basisth Dubey, who divulged him that the house of in-laws of his daughter is locked and all the members of the house are absconding. Today, when he arrived at in-law's house of his daughter, he found it locked. He suspected that the aforesaid accused persons have burnt to death his daughter and grand children and disposed of their dead body.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused persons.

6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused



persons and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of Additional Sessions Judge-V, Rohtas at Sasaram for trial.

7. Charge against accused Ashok Prasad, Madan Prasad, Nirmala Devi, Shashi Gupta, Asha Devi, Sanjay Sah, Ranjani Devi and Vidhya Kumari was framed under Sections 304(B) and 201 of the Indian Penal Code. Charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses namely, Sanjay Kumar as PW-1, Dayanath Dubey as PW-2, Laxuman Prasad as PW-3, Dinesh Ram Chandrabanshi as PW-4, informant Naresh Prasad as PW-5 and I.O. Binay Kumar as PW-6. Out of the aforesaid witnesses, PW-3 (Laxuman Prasad) turned hostile. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the



occurrence claiming themselves to be innocent. The accused persons have neither adduced any ocular nor documentary evidence, in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present Criminal Appeals.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants that as per account of PW-1 (Sanjay Kumar) and PW-5 (Naresh Prasad), the marriage of deceased was performed beyond seven years of her death and the prosecution has also failed to prove cause of unnatural death. It is further submitted that though as per prosecution case, the children of the deceased had burnt to death by the accused persons and their dead body was disposed of, but the bail



order of this Court dated 8.12.2006 indicates that the children are with their mother-in-law (Nirmala Devi) of the deceased in jail and PW-1 and PW-5 have also stated that children are with their father. It is further submitted that I.O. has not found any incriminating article at the place of occurrence. The witnesses examined by the prosecution has not stated about any specific date time and period of demand of dowry and subjecting the deceased to cruelty. It is further submitted that death of the deceased has not been established by the prosecution and I.O. has also found the case true under Section 364 I.P.C. The prosecution has also failed to establish that the deceased was subjected to cruelty soon before her death. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing trustworthy, consistent and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that PW-1 (Sanjay Kumar), PW-2 (Dayanath Dubey) and PW-4 (Dinesh Ram Chandrabanshi) and informant have fully substantiated the



prosecution case and after correctly appreciating the facts and material on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

15. In order to seek conviction under Section 304B I.P.C. against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances (b) such death should have occurred within seven years of her marriage (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband (d) such cruelty or harassment should be for or in connection with demand of dowry (e) to such cruelty or harassment the deceased should have been subjected to soon before her death. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment over dowry demand can be presumed to be guilty of offence under Section 304-B I.P.C. While as per Section 113-B of the Evidence Act, when the question is whether a person has committed dowry death of a woman and it is shown that soon before her death



such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused dowry death. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment over dowry demand. Presumption under Section 113-B would be operative only if it is shown that soon before death the deceased was subjected to cruelty by her husband or any relative for or in connection with demand of dowry.

16. Regarding the aforesaid first ingredient i.e. death of woman had occurred within seven years of her marriage, it is the case of the prosecution that marriage of the deceased was performed with appellant no. 1 (Ashok Prasad) on 03.02.2001 while the occurrence is of 14.07.2006. PW-1, PW-2 and PW-5 have stated in their respective examination-in-chief that marriage of deceased was performed with Ashok Prasad in the year 2001. Though, PW-1 (Sanjay Kumar) who happens to be brother of the deceased has stated in paragraph 9 of his cross-examination that at the time of marriage of his sister, he used to study in standard 4. Now, he is in standard



10 and there was a gap of one year in his study while PW-5 who happens to be the informant of the case has stated in paragraph 9 of his cross-examination that his youngest son, namely, Sanjay Kumar is seven years old who used to study in standard 1 or 2nd at the time of marriage of his daughter. From the aforesaid statement of PW-1 and PW-5, it appears that PW-1 was in standard 1 at the time of marriage of the deceased. Now, he is in standard 10 with one year gap in the study and the statement of the aforesaid witnesses were recorded in 2010-11 while the occurrence is of the year 2006. So as per the arithmetic calculation, the performance of marriage comes within seven years of alleged death of the deceased.

17. Regarding second ingredient i.e. death of woman must be caused by burns or bodily injury or had occurred otherwise than under normal circumstances, it is the case of the prosecution as adumbrated in the FIR that on 14.07.2006 at around 08:00 PM, some unknown person telephonically informed the informant that all the accused persons burnt his daughter alive. The informant has also claimed that in-laws of his daughter have burnt her alive and disposed of her dead body. But, PW-4 (Dinesh Ram



Chandrabanshi) has stated in paragraph 1 of his examination-in-chief that daughter-in-law of appellant Madan Sah was drenched with blood. She was wearing red colour saree. The accused persons lifted her in the vehicle and drove her away. There is no eye witness of the occurrence of committing murder of the deceased by setting her ablaze by the accused persons. I.O. examined in the case as PW-6 has stated in paragraph 10 of his cross-examination that he has written in paragraph 27 of the case diary that no clear cut evidence has been found regarding murder of the deceased. So, the case appears to be under Section 498(A), 364/201, 120(B) and 34 of I.P.C. Ext-A which is the letter written by the appellant Madan Sah to S.H.O. Chenari, Rohtas indicates that the deceased has eloped with her cousin from her marital house on 5.07.2006 and said Madan Sah (appellant) has given information to the P.S. concerned regarding the aforesaid occurrence and on receiving the said informatory petition, on 6.07.2006 the S.H.O. had directed to enter the same in the station diary. I.O. in paragraph 8 of his cross-examination has stated that it is written in paragraph 17 of the case diary that scribe of the P.S. had divulged that Madan Sah had given the written letter to the then S.H.O. S.I. Navin Kumar Singh on



06.07.2006 informing eloping of his daughter-in-law Sunita Kumari with her cousin Rajesh Kumar Gupta in the night of 4/5-07-2006 and the S.H.O. had directed to enter in the S.D. entry, and accordingly, the then scribe of the P.S. had recorded the same in the station diary at serial no. 91 on 6.07.2006. I.O. had proved the carbon copy of the said letter which has been marked as Ext-A as mentioned hereinabove. I.O. has stated in paragraph 10 of his cross-examination that he has written in paragraph 27 of the case diary that no clear cut evidence has been found regarding murder of the deceased. So, the case appears to be under Sections 498(A), 364/201, 120(B) and 34 of the I.P.C. Hence, the million dollar question arises as to once the I.O. has not found any cogent and tangible evidence regarding murder of the deceased, then how he has submitted charge-sheet under Section 304(B) of I.P.C? From perusal of aforesaid ocular and documentary evidence of the prosecution and defence, it appears that the prosecution has utterly and miserably failed to substantiate the death of the deceased (Sunita Kumari) either due to burn or bodily injury or otherwise than under normal circumstances in her marital house beyond all reasonable doubt. Thus case of dowry death of the deceased as taken by the prosecution does not stand



established by the prosecution beyond all reasonable doubt.

18. Regarding the other three ingredients that there was dowry demand and deceased was subjected to cruelty or harassment by her husband or by any relative of her husband for or in connection with demand of dowry and to such cruelty or harassment, the deceased should have been subjected to soon before her death, though PW-1 (Sanjay Kumar), PW-2 (Dayanath Dubey), PW-4 (Dinesh Ram Chandrabanshi) and informant PW-5 (Naresh Prasad) have stated in their respective examination-in-chief that the accused persons demanded Maruti car in dowry and subjected the deceased to torture or cruelty over the said demand, but they have not stated about any specific date, time and period of aforesaid demand and subjecting the deceased to cruelty. Moreover, the said witnesses have failed to establish that the deceased was subjected to cruelty over the said dowry demand soon before her death by the accused persons. PW-1 (Sanjay Kumar) in paragraphs 4 and 5 of his examination-in-chief has stated that when he arrived at the marital house of his *Didi* (deceased), mother of Ashok Prasad Sah, Asha Devi, husband of Asha Devi, Ranjan Devi and husband of Ranjan Devi slated him and uttered to allow him to meet his sister on according



Maruti car to them and they did not allow to meet his sister, then he regressed to Patna and he again visited there two days later along with some articles like attire, cosmetic, sweet etc, then the aforesaid persons kept the aforesaid articles but they did not allow to meet his sister till coughing up the demand of Maruti car and also extended threatening of dire consequences. 2-3 months later, there was telephonic call from Chenari to his father informing that his daughter had been eliminated and her dead body had been buried and accused persons were absconding. The aforesaid statement of PW-1 indicates that the said witness had visited marital house of the deceased around 2-3 months preceding to her death, but in quite contradiction to the aforesaid statement, in paragraph 8 of his cross-examination, he has stated that he had visited marital house of his sister thrice before her death. For the first time, he had gone there one year later to the marriage of deceased. Second time 4-5 years later thereto, while he failed to resurrect his memory regarding date, month and year of visiting there third time. Thus, the aforesaid contradictory statement of PW-1 regarding the aforesaid aspects of the case creates serious doubt about credibility of the said witness.

19. PW-2 (Dayanath Dubey) has stated in paragraph



8 of his cross-examination that he has no concern with the domestic and family affairs of the informant. Aforesaid statement of PW-2 goes to suggest that the said witness had no personal knowledge of the aforesaid occurrence as he has no concern either with the domestic or family affairs of the informant and he happens to be tuted witness. Attention of the said witness has been drawn regarding contradiction in his statement given before the court and that given before the I.O. under Section 161 Cr.P.C. by the defence in paragraph 10 of his cross-examination regarding demand of Maruti car by the accused persons, not performing her *vidai* and not allowing her maternal people to meet her due to said demand, subjecting the deceased to cruelty over non-fulfillment of the said demand, getting information of murder of the deceased by the accused persons from his brother and then giving information to the informant of the same by him in turn and rushing to Patna along with informant and others, finding 10-20 accused persons at the door of the accused persons and divulgence of driving away the deceased on vehicle by the accused persons on the pretext of according her medical aid and dumping her at the isolated place by the accused persons to him by Laxman and Dinesh. The I.O (PW-6) in paragraph



12 of his cross-examination has also corroborated the aforesaid contradiction between the statement of the said witness given before the court and that given before him under Section 161 Cr.P.C regarding aforesaid material aspects of the case. Thus, the aforesaid witness has taken altogether different stands before the court regarding aforesaid material aspects of the case and does not appear to be worth credence and reliable witness.

20. As per prosecution case, the accused persons burnt the victim to death and disposed of her dead body over dowry demand. But, in quite contradiction to the aforesaid prosecution case, PW-2 (Dayanath Dubey) has stated in paragraph 3 of his examination-in-chief that when he along with other arrived at the marital house of the deceased, 10-20 locals were present there. Out of them, Laxman and Dinesh divulged them that the accused persons have drove away the victim on a vehicle on the pretext of according her medical aid and dumped her at some unknown place. Moreover, the aforesaid Laxman and Dinesh have not corroborated the factum of divulgence of taking away the victim by the accused persons on vehicle for according her medical aid to the said witness. Hence, the aforesaid evidence of the said witness is



not admissible in evidence.

21. PW-4 (Dinesh Ram Chandrabanshi) has also stated in paragraph 1 of his examination-in-chief against the aforesaid prosecution case of burning to death of the deceased and disposing of her dead body by the accused persons by stating that on the date of occurrence at 9:15 PM while he was proceeding from Sasaram to Chenari and arrived near the house of Madan Sah, he found the silver colour marshal car parked at his house and crowd of eight persons there. The daughter-in-law of Madan Sah was drenched with blood. She was wearing red colour saree. Amongst them were Madan Sah, Ashok Prasad Sah, Shyam Bihari Sah, wife and daughter of Madan Sah. On grilling, they divulged him that they are taking her for medical treatment. They lifted her into vehicle and proceeded from there. The lady was senseless at that time. Though, in the aforesaid paragraph, he has named Madan Sah, Ashok Prasad Sah, Shyam Bihari Sah, wife and daughter of Madan Sah amongst the persons driving away the victim from the vehicle on the said date, but in paragraph 13 of his cross-examination, he has stated that he cannot divulge the physics of the aforesaid persons to whom he had seen, but he can identify them by seeing their face. He had not divulged their



name to the police. He has failed to resurrect his memory as to whether he had divulged about physics of the aforesaid persons to the police. Attention of the said witness has been drawn in paragraph 14 of his cross-examination by the defence regarding his statement given before the court and that given before the I.O. under Section 161 Cr.P.C. in respect of witnessing of eight persons at the house of Madan Sah by him and witnessing daughter of Madan Sah drenched with blood wearing red colour saree. I.O. in paragraph 13 of his cross-examination has also corroborated the aforesaid contradiction. Thus, in the aforesaid facts and circumstances, the aforesaid witness appears to have taken altogether different and contradictory stands before the court regarding aforesaid material aspects of the case and in view of the aforesaid contradiction, the aforesaid witness also does not appear to be worth credence and reliable.

22. Informant Naresh Prasad (PW-5) has stated in paragraph 1 of his examination-in-chief that *vidai* of his daughter was made in the marriage itself. After *vidai*, he had sent his son Om Prakash to take back his daughter. The entire family of groom, Madan Sah, wife of Madan Sah, groom Ashok Prasad Sah, sister of Ashok Prasad Sah, Asha Devi,



Ranjan Devi, Vidya Kumari and husband of Asha Devi demanded Maruti car from his son in lieu of vidai of his daughter and they did not perform vidai of his daughter, resultantly, his son regressed to his house. From perusal of aforesaid statement of the informant, it appears that informant sent his son, namely, Om Prakash for *vidai* of his daughter, but accused persons refused to perform *vidai* of his daughter due to not coughing up demand of Maruti car in lieu of *vidai* and did not perform her *vidai* till fulfillment of aforesaid demand. But, there is no such case of the prosecution as alleged by the informant in his written report. In paragraph 5 of his examination-in-chief, informant has stated that he got telephonic information by some stranger from Chenari that accused persons have dumped the dead body of his daughter after eliminating her. Then he rang to Basisth Dubey of Chandra Kaithi, who divulged him that the house of Madan Sah is locked and dead body of his daughter has been dumped after eliminating her, then he rushed to the house of Madan Sah where lot of persons congregated, they divulged him that the accused persons have driven his daughter away on silver colour marshal vehicle after eliminating her. Dinesh, Laxman and Shiv Shankar were present at that time, but neither Basisth



Dubey nor aforesaid Dinesh, Laxaman and Shiv Shankar nor any person has come forward to corroborate the factum of divulgence of the aforesaid facts to the informant. Hence, for want of corroboration, aforesaid statement of the informant is not admissible in evidence. Though, as per prosecution case and account of informant, accused persons were demanding Maruti car in dowry, but in paragraph 15 of his cross-examination, informant has stated that he had not given any information to the P.S. regarding demand of Maruti car by the accused persons. He has stated in paragraph 17 of his cross-examination that person giving information of murder of his daughter did not divulge him his name and address and after giving information about death of his daughter, he had snapped the call. But, in quite contradiction to the aforesaid prosecution case, PW-2 (Dayanath Dubey) has stated in paragraph 3 of his examination-in-chief that his brother Basisth Dubey who reside in the mill located in Chenari had informed him in the evening in the year 2006 that the accused persons had eliminated the daughter of Naresh Prasad, then he had informed Naresh Prasad (informant) about the same in turn. Though, as per prosecution case and as per account of informant as given by him in paragraph 24 of his cross-



examination, accused persons burnt to death three children of his daughter, namely, Shivam, Pancham and Maya Kumari besides his daughter. But, in quite contradiction to the aforesaid case of the prosecution and statement of the informant, the son of the informant, namely, Sanjay Kumar (PW-1) has stated in paragraph 11 of his cross-examination that the aforesaid three children of deceased are residing with their father and grandfather which means that the aforesaid children of the deceased have not been burnt to death as per the case of prosecution and the statement of informant rather are alive. Attention of the aforesaid witness has been drawn by the defence in paragraph 26 of his cross-examination regarding statement given before the court and that given before the I.O. under Section 161 Cr.P.C. in respect of about demand of Maruti car in dowry by the accused persons since the marriage, his visit to the marital house of his daughter, demand of Maruti car by the accused persons from him at that time, not performing *vidai* of his daughter due to non-fulfillment of the said demand, regressing of informant without *vidai* of his daughter, rushing to the marital house of his daughter by him, his wife, Dayanand Dubey and one of his mohalla people on getting telephonic information from Lalan



Sao about serious illness of his daughter, finding his daughter seriously ill there, divulgence by her that the accused persons refused to accord her medical aid till according them Maruti car and on his request for the treatment of his daughter from the accused persons, refusal to accord her medical aid till fulfillment of their aforesaid demand, taking his daughter to Patna and getting her treated there, dumping of the dead body of his daughter after elimination, getting information from Basisth Dubey about elimination of his daughter and dumping her dead body by the accused persons, arriving at the house of Madan Sah, congregation of large number of people including Dinesh, Laxman, Shiv Shankar there, divulgence by them about driving the dead body of her daughter away by the accused on marshal vehicle after her elimination, tormenting her daughter and extending threatening to her over demand of Maruti car by the accused persons and I.O. (PW-6) in paragraph 14 of his cross-examination has corroborated the aforesaid contradiction between the statement of the said witness given before the court and that given before him under Section 161 Cr.P.C. Hence, informant appears to have taken altogether different stands in the court about aforesaid material aspects of the case and is not worth credence and reliable and



his evidence does not inspire my confidence to hold the conviction of the accused persons relying on the same.

23. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate demand of dowry by the accused persons subjecting the daughter of the informant to torture and cruelty over the said demand, excruciating her over the said demand soon before her death by adducing consistent, trustworthy and convincing evidence as discussed by me hereinabove and the death of the deceased also does not stand established by the prosecution. So, it cannot be presumed that the appellants committed alleged dowry death of the deceased under Section 113-B of the Evidence Act.

24. Hon'ble Apex court in *Major Singh & Another Vs. State of Punjab reported in (2015) 5 Supreme Court Cases 201* has been pleased to rule that when there is no evidence as to demand of dowry or cruelty and that deceased was subjected to dowry harassment "soon before her death" by the appellant-accused parents-in-law conduct of father and brother of deceased, not natural, the conviction of the appellant under Section 304-B cannot be sustained and is liable to be set aside. It has further been pleased to rule that to attract conviction



under Section 304-B I.P.C. prosecution should adduce evidence to show that “soon before her death”, the victim was subjected to cruelty or harassment. There must always be a proximate and live link between effects of cruelty based on dowry demand and death concerned.

25. Hon’ble Apex Court in *Baijnath &Ors. Vs. State of Madhya Pradesh (2017) 1 Supreme Court Case 101* has been pleased to rule that mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Sections 304-B and 498-A I.P.C. Only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under Section 113-B can be invoked. Section 113-B of the Act enjoins a statutory presumption as to dowry death. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the



reasonable contiguity of death. A conjoint reading of these three provisions, thus predicates the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the aboveresferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

26. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellants are acquitted of the charges levelled against them. As the appellant of Cr. Appeal (DB) no. 721 of 2012



(Ashok Prasad Sah) is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case while the appellants of Cr. Appeal (DB) no. 527 of 2012 (Nirmala Devi), (Madan Sah) are on bail, they are discharged from the liability of their bail bonds. Accordingly, these two Criminal Appeals are allowed.

(Prakash Chandra Jaiswal, J)

Dr. Ravi Ranjan, J./- I agree.

(Dr. Ravi Ranjan, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	10-04-2018
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Transmission Date	20-06-2018

