

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1190 of 2017**

Arising Out of PS. Case No.-226 Year-2003 Thana- SASARAM NAGAR District- Rohtas

Md. Jamaluddin Khan @ Mohammad Jamaluddin Khan S/o Aabid Khan,
resident of Village- Baradih, P.S.- Agredh, District- Rohtas.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mrs. Meena Singh, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 18-12-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 03.08.2017 and order of sentence dated 04.08.2017 passed by the court of learned F.T.C.-I, Rohtas at Sasaram in Sessions Trial No. 459/2006, arising out of Sasaram P.S. Case No. 226/2003, corresponding to G.R. No. 780/2003, whereby the appellant/convict has been convicted for commission of the offence punishable under Section-304B of I.P.C. and sentenced to undergo R.I. for life.

2. Heard Mr. Krishna Prasad Singh, learned senior senior counsel for the appellant assisted by Mrs. Meena Singh,



and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State.

Prosecution Case

3. The brief facts leading to the filing of the present appeal are as under:

“The informant namely Sultana Begum gave her *fardbeyan* on 29.4.2003 at 12.15 hours at S.D.P.O. Office Sasaram stating therein that informant had solemnized the marriage of her daughter Roshan @ Ruksana Begum with Mohd. Jamaluddin on 17.12.02 in accordance with Muslim rites and rituals and, as per her capacity, she gave Dan Dahej and did Bidai of her daughter. Her daughter went to her *sasural* (in-laws’ house). After a few days the husband of her daughter Mohd. Jamaluddin, the aunt of Jamaluddin namely Shabba Khatun, sister of the mother of Jamaluddin named Sarfeenna and her husband Mohd. Kalam started demanding a colour T.V., Rs. 50,000/- cash and upon non-fulfilment assaulted and tortured her daughter. Having received this information, the informant went to the house of her daughter on 17.4.2003, where her daughter told her entire story and also told that accused persons were giving threat to kill her. Her son-in-law Jamaluddin was not present at his home on that day and informant returned consoling her daughter that she will talk with him about this matter. It is



further alleged that on 28.4.03 at 6:00 a.m., the informant got information on phone that condition of her daughter is serious and to come immediately to see her daughter. Then she along with her husband Mohd. Sadi and son Mohd. Rafiq Ahmad went to Baradih and saw her daughter dead and her dead body was kept for cremation. Her face was blue and dark and abdomen swollen. It is further alleged that informant was coming to the police station, but her son-in-law and his aunt stopped her. Thereafter the dead body of her daughter was cremated and informant, her husband and son returned to her house and on next day morning went to the office of Dy. S.P., Sasaram and narrated about the entire occurrence to him and Dy. S.P. called Darogajee from Agrer P.S. and recorded her *fardbeyan*. Due to the aforesaid reasons, the informant claims that her daughter has been killed by the accused persons for non-fulfilment of demand of dowry.”

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused.

5. As the case was exclusively triable by court of sessions, the learned Magistrate committed the same under



Section 209 of the Code to the concerned sessions court where the same was registered as Sessions Case No.459 of 2006.

6. During course of trial, the prosecution has examined 10 witnesses, namely, PW-1, Hasnain Ibrahim, PW-2, Sultana Khatoon, PW-3, Faiz Alam, PW-4, Mohammad Rafi Ahmad, PW-5, Dr. Rajendra Prasad, PW-6, Jahid Khan, PW-7, Anjum Ara Khatoon, PW-8, Nazma Khatoon, PW-9, Habid Khan and PW-10, Alimun Begum @ Alisa Khatoon. Defence has examined DW-1, Shakib Khan and DW-2, Alamgir Khan. Prosecution has exhibited carbon copy of inquest report, signatures of inquest witnesses and post mortem report as exhibits and defence has produced two exhibits, namely, certified copy of decree passed in T.S. No.711/14 and certified copy compromise petition of T.S. No.711/14.

7. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellant, as stated hereinabove.

Appellant's Arguments

8. Learned senior senior counsel for the appellant Mr. Krishna Prasad Singh submits that the present judgment of conviction and order of sentence is fit to be set aside due to the reason that the Trial Court has not appreciated the facts as well



as the evidences and without proper appreciation of facts and evidences has passed the judgment of conviction. He submits that, in all, ten prosecution witnesses were examined and out of ten prosecution witnesses, five witnesses have been declared hostile. There were only two witnesses whose evidences are in complete contradiction of the fact of this case but appreciation has not been made. Learned senior counsel for the appellant further submits that the most fatal point in this case is that charge has been framed under Sections 304B/201 of the Indian Penal Code and conviction has also been made in those Sections. But he submits that for the conviction under Section 304B of the Indian Penal Code three essential ingredients which are necessary to be present are not present in this case i.e., (a) death of a woman is caused by any burn or bodily injury otherwise than under normal circumstances, (b) such death of the woman should occur within seven years of her marriage and (c) soon before her death she should be subjected to cruelty or harassment by the accused in connection with any demand for dowry. Counsel submits that here, in the present case, there is no ingredient of demand of dowry, but the Trial Court without appreciating these facts, that from the evidences there is no ingredient of demand of dowry in the present case has unlawfully created presumption against the accused/present



appellant that he has committed dowry death and held the conviction. Learned counsel further submits that the another fatal point in the present case is that the Investigating Officer has not been examined. Counsel submits that due to non-examination of Investigating Officer the defence has got no opportunity to cross-examine the Investigating Officer. The another point on which the senior counsel for the appellant puts reliance is that the FIR has also not been exhibited, even then the Trial Court has held conviction which is against law. Learned counsel further submits that another important point in favour of the appellant is that from the FIR, it became crystal clear that there are three named accused persons in this case and all the three were charge-sheeted under Sections 304B/34 and 201 of the Indian Penal Code. But on the same set of evidences, exhibits and materials available on record, two accused persons have been acquitted whereas the appellant has been convicted under Section 304B IPC and sentenced to undergo rigorous imprisonment for life. Counsel submits that it is unique situation under which the same set of evidences has been found not proved against two charge-sheeted accused persons and against one person it has been found proved. Learned counsel further submits that, in this view of the matter, there is gross violation of Section 106 of the Evidence Act. In support of his argument, learned senior



counsel for the appellant further submits that P.Ws.1 and 4 are inquest witnesses. PW 2 is the mother of the deceased, PW 4 is the brother of the deceased. PW 5 is the doctor whereas Pws. 6, 7, 8, 9 and 10 (independent witnesses) were declared hostile. Counsel submits that from the record there is absolutely absence of demand of dowry, soon before the occurrence. Counsel submits that PW 2, the mother of the deceased, has stated in paragraph-1 that the demand of dowry of Rs.50,000/- cash and a colour TV was made by in-laws of her daughter. She has deposed that three months after marriage she went to the *sasural* of her daughter. It has also been stated that just after 5 to 6 days of her return from daughter's *sasural*, her daughter was killed by the in-laws. But in the cross-examination at para-6 she has controverted her own statement that after marriage her daughter visited to her *maika* and thereafter she has not met with her. She has also disclosed that in this regard her daughter has not written any letter to her. Counsel further submits that upon receiving the information of death of her daughter, she has visited the in-laws house of her daughter and had seen the dead body. There was mark of injury on the neck of her daughter. But she has also disclosed that she has not visited the police station and on the next day she has discussed about filing of the case. In para-8 she disclosed that her husband and son had participated in the last



rites (*Matti Manjil*) of her daughter. She has disclosed in para-10 that there was a dispute between father of the accused and his brother and they got executed land in their own favour without informing her. They were not ready to provide her share but after death of her daughter she has filed case for getting her share. In paragraph-11 she has disclosed that she has visited the office of the Dy. S.P. to meet him and 2 to 3 days thereafter the dead body of her daughter was excavated from the graveyard. She has clearly deposed that at the time of removing the dead body from the graveyard she was not present. But she has accepted that her husband, her son and PW 1 had visited to the *sasural* of her daughter. She has also disclosed in para-29 that prior to death of her daughter she has not disclosed to any police officer or Dy. S.P. that the in-laws of her daughter were demanding Rs.50,000/- and a colour TV.

9. Learned senior counsel for the appellant further submits that in this case the evidence of PW 4, who is brother of the deceased, is also important. In his statement he has disclosed that one Shaba has tried to administer poisonous *Laddu* to her sister. But in cross-examination he disclosed that after marriage of his sister he had not lodged any *Sanha* about attempt to provide poisonous *Laddu* to her. He also deposed that when the accused tried to provide her poisonous *Laddu* is not



known to him. In his evidence he has accepted that the last rites of her sister were performed before him prior to filing of this case and he had participated in *Matti Manjil*. It has also been deposed by him that after performance of last rites they have not filed case and they have returned back to village. After returning they made up their mind to file criminal case. In the cross-examination he has also deposed that they have no capacity to fulfil the demand of Rs.50,000/- and this matter was well-known to his brother-in-law. When the attempt to administer poison has been made was not known to him. Learned senior counsel for the appellant further submits that the doctor who has conducted the *post mortem* examination has not been examined but one of the members of the Medical Board has been examined. In paragraph-5 it has been accepted by the member of the Medical Board, who is a doctor, that after death, if body is placed in a grave and heavy soil is placed on the dead body that cannot cause bruise. That can cause abrasion. Bruise will appear when swelling and discoloration of the skin is found. In abrasion, there is a breach of skin and swelling may be found. Colour may be found in both the injuries. Counsel submits that the prosecution has examined independent witnesses i.e., Pws. 6 to 10 and all those independent witnesses have been declared hostile and, hence, no independent evidence has come against the appellant.



Counsel further submits that the defence has examined two witnesses i.e. DW 1 and DW 2 and they have deposed clearly that the deceased died due to illness and parents had participated in the last rites of the deceased. Learned counsel further submits that prosecution has brought on record carbon copy of inquest report, *post mortem* report. Signature of inquest witnesses have also been exhibited. Certified copy of decree prepared in original Title Suit No.711 of 2014 and certified copy of compromise dealing with grounds of compromise were exhibited as Exts. A and B. Counsel submits that by virtue of Sessions Trial No.459 of 2006 charges have been framed against three accused persons, namely, the present appellant, one Md. Kalam and Sarjina Begum under Sections 304B/34 and 201 of the Indian Penal Code. But on the same set of charge, out of three, two accused persons have been acquitted whereas only one accused, i.e., present appellant, has been found guilty under Sections 304B of the Indian Penal Code. Counsel submits that on the same set of charges benefit of doubt and acquittal has been awarded to two accused persons but the appellant has been convicted.

10. In support of his argument, counsel relied on the judgment dated 14.05.2010 in the case of **Durga Prasad & Anr vs. State of M.P.**, passed in **Cr. Appeal No .1081 of 2010**,



arising out of **S.L.P. (Crl.) No. 5450 of 2009** and submits that when there is no evidence to prove that the said victim was subjected to demand of dowry just prior to her death, which is, in fact, ingredient of applicability of Section-304B of I.P.C., which creates presumption against the accused, in the light of Section-113B of the Indian Evidence Act, 1872. Therefore, in absence of the same, according to the above mentioned judgment, the appellant is entitled for acquittal.

11. Learned senior counsel for the appellant relied on another judgment of this Court (Ranchi Bench, in the case of **Mashi Das Minz & Ors. Vs. State of Bihar**, reported in **2000(1) P.L.J.R. 517** and submits that it was a case under Section 302/34 of I.P.C. in which the emphasis has been supplied on the examination of the I.O. and it has been held that examination of I.O. is essential when there is contradiction in the depositions of eye-witnesses who are also on inimical terms. Counsel further submits that in paragraph Nos. 14 and 15 of the said judgment, it has been categorically held that neither the I.O. nor the doctor has been examined in this case and none of the villagers supported the prosecution case in any manner. In result, neither doctor nor I.O., i.e. neither the prosecution story nor the medical evidence could be tested in the Court and, therefore, non-examination of the doctor is fatal in the present case also.



12. Learned senior counsel for the appellant relied on another judgment of Hon'ble Supreme Court in the case of **Javed Shaukat Ali Qureshi Vs. State of Gujarat**, reported in **(2023) 12 S.C.R. 220** wherein it has been held that when there is similar or identical evidence of eye-witnesses against two accused by ascribing them the same and similar role, the Court cannot convict one accused and acquit the another. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide like cases alike and in such cases the Court cannot make a distinction between the two accused who were acquitted and present appellant who was convicted, as it may amount to discrimination.

13. In the light of the above said submissions, senior counsel for the appellant submits that the present is a fit case for acquittal as there is no ingredient of 304B of I.P.C. save and except the death of the victim is caused under unnatural circumstances within 7 years of her marriage. But, she was neither subjected to cruelty nor harassment by her husband or any relative of her husband nor in connection with any demand for dowry soon before her death and, hence, this death shall not be called as dowry death. In this view of the matter, the appellant is entitled for clean acquittal in this case. Counsel further



submits that the appellant is in custody since last 8 years and that aspect may be taken into consideration.

Arguments of the State

14. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh appearing for the State submits that there is no need of any interference in this appeal due to the reason that the doctor has been examined and the doctor has found ante mortem injury on the body. It is further submitted that it is true that neither the I.O. has been examined nor the doctor, who had conducted the *post mortem*, has been examined. He also submits that it is also true that the F.I.R. has not been exhibited, but non-exhibit of F.I.R., non-examination of the I.O. and non-examination of the doctor who has done the *post mortem* are fatal in the present case as, admittedly, the dead body has been found at the house of the accused whose last rites they have done without informing the police. This event has been caused just within seven years of the marriage of the victim. Counsel also submits that doctor, who has conducted the *post mortem*, has not been examined, but another doctor who was a member of the Medical Board has been examined and cross-examined. He submits that on the point of demand of dowry soon before her death, there were minor contradictions which may be ignored in the light that death of a woman has



been caused under unnatural circumstances and by the *post mortem* report and injury indicated on the same, has been well tested that injuries are *ante mortem* injuries. Learned A.P.P. further submits that question of parity does not arise in this case due to the reason that appellant is the husband of the deceased and he is responsible for protection of his wife. He further submits that case of the appellant and the case of other co-accused are on different footing. Therefore, trial court has rightly convicted the present appellant and acquitted the others. Learned A.P.P. submits that the judgments on which reliance has been made by the learned senior counsel for the appellant are not applicable in the present case as the judgment on which the question of parity has been raised, i.e. case of **Javed Shaukat Ali Qureshi** (supra), the charges were made under Section-395, 396/149 of I.P.C. whereas, in the present case, the charges have been framed under Sections- 304B and 201 of I.P.C. He further submits that the judgment of **Durga Prasad** (supra) shall also not apply to the present case due to the reason that in the said case, conviction has been held under Section-498A and 304B of I.P.C., but here, in the present case, conviction has been held under Section-304B of I.P.C. He sums up his argument mentioning that it is also true that all independent witnesses, P.W. 6 to P.W. 10, became hostile in this case, but mother and



brother of the deceased have adduced their evidences. They are not hostile and they have explained everything, except minor contradiction, which may be ignored in the present facts and circumstances and submits that the appeal may be dismissed.

Question

15. On the basis of the arguments advanced by learned senior counsel for the appellant and State the question has been formulated:-

(i) Whether the Trial Court on the basis of materials before it, was justified in recording conviction and consequently sentencing the appellant to undergo rigorous imprisonment for life.

Reasons

16. From the above discussions it is clear that the present appellant has been convicted under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. Section 304B of the Indian Penal Code states as follows:-

“Section 304B. Dowry death.

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was



subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

17. From bare reading of Section 304B, it transpires to this Court that in order to seek conviction under Section 304B IPC against a person for the offence of dowry death the prosecution is obliged to prove that the death of a woman was caused by burns or bodily injury otherwise than under normal circumstances. Such death should have occurred within seven years of marriage and it has to be shown that soon before her death woman was subjected to cruelty or harassment by her husband or any relative of her husband or in connection with any demand for dowry. Here in the present case, in total, ten prosecution witnesses were examined. Out of ten prosecution witnesses, PWs. 1 and 4 are the inquest witness, PWs. 6, 7, 8, 9 and 10 were the independent witnesses but they all were declared hostile. PW 2 is the informant and mother of the deceased, PW 4 is the brother of the deceased and PW 5 is



the doctor.

18. PW 2 in her deposition, particularly in paragraph-1, deposed that she went to the *sasural* of her daughter where accused persons demanded dowry of Rs.50,000/- and a colour TV. It has also been disclosed by her daughter that accused persons, including the appellant, had threatened to kill and dump her body if they do not fulfil the dowry demand. But in paragraph-6 (cross-examination) she stated that it is not the informant who visited to the *sasural* of her daughter; rather her daughter visited to *maika*. In paragraph-10 of her cross-examination, she deposed that she has not visited to the police station rather her husband has visited to meet Dy. S.P. Subsequently, in para-13 she further deposed that she has visited to the Dy. S.P. In para-15 she further deposed that she is a *pardanasi* lady and she has narrated that her daughter used to reside at her *sasural*. Story of visiting to her daughter's house was again narrated by her in para-29 of her deposition but it has not been informed by her to any police officer or Dy. S.P. about demand of Rs.50,000/- and a colour TV. She has also narrated the date and the time when she has visited to her daughter's *sasural*. In para-25 she has stated that she has not seen anybody committing murder of her daughter. It has been informed to her that there is pain in her daughter's stomach. In para-27 she has



narrated that she has participated in the last rituals of her daughter. She has also narrated that she has disclosed everything to Darogaji. Prior to that, in para-27 she has narrated that she has not narrated any statement to Dy. S.P. nor she has ever visited to police station. Similarly, in para-15 she had narrated that she is a *pardanasi* lady but in para-28 she has narrated that she is a working lady. In para-29 she has specifically deposed that whatever be the demand made by the accused persons, in support of the said demand there is not a single witness of her daughter's *sasural*. Similarly, PW 4 who is brother of the deceased has narrated a different story. He has narrated in para-1 of his deposition that one Shaba, who is wife of his maternal uncle, tried to put poison in the *laddu* given to her sister. But in paragraphs-6 and 7 he has deposed that he has visited to the appellant's house before marriage. The appellant's conduct was good at the time of marriage. He further stated that his aunt Shaba was married to his maternal uncle Alamgir. He further deposed that his sister (deceased) never wrote any letter to them about demand of dowry made. It has also been accepted that he has not got the *Sanha* registered anywhere about the attempt of administering any poisonous *laddu*. He also does not know when the attempt to kill his sister by poisoning was made. This witness has narrated in her examination in para-12 that his mother



worked as a midwife and he has also adduced that he cannot take the deceased, day and year when his sister was poisoned. It transpires to this Court that PW 1 and PW 3 are the inquest witness. They are cousin of the deceased as accepted by the brother of the deceased and the said PW 1 has stated in para-6 (cross-examination) that he does not have personal knowledge of demand of dowry by the accused. Similarly, in para-12 the mother of the deceased has deposed in her cross-examination that she could not said the date of any dowry demand and she could not file any case at the time of dowry demand. From the evidence of DW 1 and DW 2 it has come that the deceased died due to illness and her parents were informed about the death and the father and brother of the deceased had participated in the last ritual. The story of pendency of civil litigation in which compromise took place has also on record being Exhibits A and B.

19. In this background and discussion of the above said witnesses, it transpires to this Court that since there is absentia of demand of dowry soon before the death, dowry death could not be proved. In this regard, the different judgments of Hon'ble Supreme Court are very much relevant, namely, **Kans Raj Vs. State of Punjab** reported in **AIR 2000 SC 2324** in which the Hon'ble Supreme Court is categorical that in order to



seek conviction under Section 304B IPC against a person for the offence of dowry death, the prosecution is obliged to prove that: (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances, (b) such death should have occurred within 7 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 the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

20. Further, in the case of **Baldev Singh V. State of Punjab** reported in **AIR 2009 SC 913**, it has been stated that the expression “soon before her death” used in the substantive Section 304B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined.

21. Here, in the present case, in a recent judgment in the case of **Satbir Singh and Another Vs. State of Haryana** reported in **(2021) 2 SCC (Cri) 745** in which the word “soon before” has been interpreted, it has been held that the phrase “soon before” cannot be construed to mean “immediately before”. Prosecution must establish existence of “proximate and live link” between the dowry death and cruelty



or harassment for dowry demand by the husband or his relatives.

The relevant paragraphs which have been mentioned in this judgment, particularly, in paragraphs 15 to 17 read as under:-

“15. Considering the significance of such a legislation, a strict interpretation would defeat the very object for which it was enacted. Therefore, it is safe to deduce that when the legislature used the words, “soon before” they did not mean “immediately before”. Rather, they left its determination in the hands of the courts. The factum of cruelty or harassment differs from case to case. Even the spectrum of cruelty is quite varied, as it can range from physical, verbal or even emotional. This list is certainly not exhaustive. No straitjacket formulae can therefore be laid down by this Court to define what exactly the phrase “soon before” entails.

16. The aforesaid position was emphasised by this Court in Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] , wherein the three-Judge Bench held that : (SCC pp. 222-23, para 15)

“15. ... “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no



straitjacket formula can be laid down by fixing any time-limit. ... *In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. ... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.*

(emphasis supplied)

17. Therefore, courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term "soon before". What is pivotal to the above determination, is the establishment of a "proximate and live link" between the cruelty and the consequential death of the victim.



22. Another point which has been raised by the learned senior counsel for the appellant in the present case is that neither the *fardbeyan* nor the FIR has been exhibited. From the record it transpires to this Court that there are, in total, three exhibits produced by the prosecution in the present case. Carbon copy of inquest report with objection, the signatures of witnesses and *post mortem* report have been produced on behalf of the prosecution in this case. Neither *fardbeyan* nor FIR has been exhibited. The most surprising aspect is that the Investigating Officer has not been examined. On the point of non-examination of Investigating Officer, case of **Munna Lal Vs. State of Uttar Pradesh with Sheo Lal Vs. State of Uttar Pradesh** reported in **2023 SCC Online SC 80** which was subsequently followed in the case of **Ram Singh Vs. State of Uttar Pradesh** reported in **(2024) 4 SCC 208**, paragraph 28 is relevant which reads as under:

28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into 'settled principles of law'. These are:

(a). Section 134 of Indian Evidence Act, 1872,



enshrines the well-recognized maxim that evidence has to be weighed and not counted. In other words, it is the quality of evidence that matters and not the quantity. As a sequitur, even in a case of murder, it is not necessary to insist upon a plurality of witnesses and the oral evidence of a single witness, if found to be reliable and trustworthy, could lead to a conviction.

(b). Generally speaking, oral testimony may be classified into three categories, viz.:

(i) Wholly reliable;

(ii) Wholly unreliable;

(iii) Neither wholly reliable nor wholly unreliable.

The first two category of cases may not pose serious difficulty for the court in arriving at its conclusion(s). However, in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty



investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e). Discrepancies do creep in, when a witness deposes in a natural manner after lapse of some time, and if such discrepancies are comparatively of a minor nature and do not go to the root of the prosecution story, then the same may not be given undue importance.

23. In the case of **Lahu Kamlakar Patil and Another Vs. State of Maharashtra** reported in **(2013) 6 SCC 417** it has been held by Hon'ble Supreme Court in paragraph 18 which reads as follows:

*“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the FIR but has given the excuse that it was taken on a blank paper. The same could have been clarified by the investigating officer, but for some reason, the investigating officer has not been examined by the prosecution. **It is an accepted principle that***



non-examination of the investigating officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] , this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] , it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of



Bihar [(2001) 6 SCC 407 : 2001 SCC (Cri) 1148] , Rattanlal v. State of J&K [(2007) 13 SCC 18 : (2009) 2 SCC (Cri) 349] and Ravishwar Manjhi v. State of Jharkhand [(2008) 16 SCC 561 : (2010) 4 SCC (Cri) 50] , has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

24. Upon the findings of Hon’ble Supreme Court it becomes crystal clear that when no material contradiction has been brought out then non-examination of the Investigating Officer as a witness of the prosecution is of no consequence and, under such circumstances, no prejudice is caused to the accused but when certain circumstances where examination of Investigating Officer became vital then, in that case, examination of Investigating Officer is necessarily required and his non-examination creates *lacuna* in the case of prosecution.

25. Here, in the present case, PW 2 mother of deceased, who is informant also, has narrated the prosecution story but on the point of demand of dowry a sharp contradiction exists in her examination-in-chief, cross-examination as well as in the examination of the brother of the deceased, PW 4, and



only the version of PW 2 and PW 4 are relevant for the present case. It is important to point out here that the rest witnesses PW 6 to PW 10, who are independent witnesses, became hostile and the circumstance of the present case demands the essential examination of Investigation Officer and in absence of the same, we find that it creates a *lacuna* in the case of prosecution. It is true that learned Additional Public Prosecutor appearing for the State submitted that these contradictions in the evidences are minor and they may be ignored. But in the facts and circumstances, particularly, when on the same set of evidences other two accused persons were acquitted and the present appellant has been convicted and sentenced, it amounts to discrimination in our opinion due to the reason that in the case of **Makhan Singh Vs. State of Haryana** reported in (2023) 13 SCC 760 whose para-23 is relevant, states as follows:

“It is also relevant to note that the prosecution had not examined Ms. Vani Gopal Sharma (DW 1) and K.K. Rao, DSP (DW 2). It therefore creates a serious doubt with regard to fairness and impartiality of the IO. Apart from that, it is to be noted that on the basis of very same evidence, the trial Court, by giving benefit of doubt, has acquitted the father and mother of the appellant. In that view of the matter, conviction of the appellant on the very same evidence, in our view, was improper.”

26. In view of the aforesaid facts and



circumstances of the present case and in the light of the above said discussions, for seeking conviction under Section 304B of I.P.C., essential ingredient of Section 304B i.e., cruelty and harassment for non-fulfilment of dowry demand soon before the death of the deceased in connection with any demand for dowry have not been proved, coupled with the fact that on the same set of facts trial Court has acquitted two appellants as well as in absence of exhibit of *fardbeyan*, FIR and non-examination of I.O., which cause great prejudice to the appellant, we hold that the finding of the Trial Court is not correct and lawful, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence.

27. In view of the aforesaid discussions, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. We have gone through the reasoning recorded by the trial court while convicting the present appellant and we are of the view that the trial court has committed grave error while convicting the present appellant and, therefore, the impugned judgment of conviction and order of sentence requires interference.

Conclusion

28. Accordingly, the impugned judgment of conviction dated 03.08.2017 and order of sentence dated



04.08.2017 passed by the court of learned F.T.C.-I, Rohtas at Sasaram in Sessions Trial No. 459/2006, arising out of Sasaram P.S. Case No. 226/2003, corresponding to G.R. No. 780/2003 are quashed and set aside. The appellant is acquitted of the charges levelled against him by the learned Trial Court.

29. The sole appellant is in custody. He is directed to be released from jail custody forthwith, if his custody is not required in any other case.

30. The appeal stands allowed.

31. Let the Trial Court records be sent back to the trial court forthwith.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

K.C.Jha/Mahesh

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.12.2024
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