

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1075 of 2018**

Arising Out of PS. Case No.-51 Year-2016 Thana- PAKARIBARAW District- Nawada

Rajesh Ravidas S/o Surendra Ravidas , R/o vill.- Chhatarwar , P.S.-
Pakribarawan, District- Nawada.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1071 of 2018

Arising Out of PS. Case No.-51 Year-2016 Thana- PAKARIBARAW District- Nawada

Surendra Ravidas S/o Late Kamo Ravidas, R/o Vill.- Chhatarwar, P.S.-
Pakribarawan, District- Nawadah.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1075 of 2018)

For the Appellant/s : Mr. Shivendra Prasad, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1071 of 2018)

For the Appellant/s : Ms. Soni Shrivastava, Advocate

Mr. Ramparvesh Kumar, Advocate

Ms. Sarandha Suman, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 02-02-2024

These appeals have been preferred by the appellants
under Section 374(2) of the Code of Criminal Procedure, putting



challenge to the impugned judgment of conviction and the order of sentence dated 07.07.2018, passed by learned 5th Additional District and Sessions Judge, Nawada in Sessions Trial No. 673 of 2017, 125 of 2017 arising out of Pakribarawan P.S. Case No. 51 of 2016 whereby the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 1075 of 2018				
Appellant	Penal provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Rajesh Ravidas	Under Section 304B/34 of the IPC	R.I. for life	-	-
Cr. Appeal (DB) No. 1071 of 2018				
Appellant	Penal provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Surendra Ravidas	Under Section 304B/34 of the IPC	R.I. for life	-	-

2. The brother of the deceased, Pramod Kumar Das (PW-4) is the informant whose written report, addressed to the Officer-In-Charge of Pakaribaraw (Nawada), is the basis for registration of the concerned Pakribarawan P.S. Case No. 51 of 2016 on 25.03.2016 disclosing commission of offence punishable under Section 304B read with Section 34 of the Indian Penal Code (IPC for short). The informant alleged that the deceased was married to the appellant Rajesh Ravidas of Criminal Appeal (DB) No. 1075 of 2018, nearly one and a half years ago. He alleged cruelty meted out to the deceased by her in-laws including these appellants for non-fulfillment of demand of dowry, which they



used to make. Despite intervention of *Panches*, no compromise could be reached. He also alleged that once his sister had called him on mobile belonging to his cousin Ranjeet (not examined) alleging demand of dowry and she being subjected to cruelty, whereupon the informant's brother Subodh Kumar and his nephew Navlesh Kumar (both not examined) had gone to her matrimonial home to bring her back to her paternal home (*maikaa*). The husband of the deceased (Rajesh Ravidas, an appellant) and his father Surendra Ravidas, who is also the appellant, did not allow the deceased to go to her *maikaa*. The appellant Surendra Ravidas (father-in-law of the deceased) and his wife (mother-in-law of the deceased) had asked them to come after Holi with money whereafter only they would allow the deceased to go to her *maikaa*. On 24.03.2016, the informant received a call on his cousin's mobile phone that the victim had been killed by poisoning. On reaching the matrimonial home of the deceased, he found her dead body lying. Upon inquiry, the informant and his family members learnt that the deceased had been poisoned, which led to her death. These appellants and the relatives, he alleged, had fled away from their house.

3. The dead body of the deceased was sent for postmortem examination. During the postmortem examination, no



external injury was found visible on the dead body. The cause of death could not be ascertained. The viscera was kept for chemical analysis and was sent for forensic examination. The FSL recorded following finding in its report (Exhibit-5):-

“ALUMINIUM PHOSPHIDE was detected in the contents of glass jars ‘A & B’ as described above. Aluminum Phosphide commercially known as ‘CELPHOS’ is a severe-gastro-intestinal irritant.

It is used as a grain preservative and is highly poisonous.”

4. The police upon completion of investigation had submitted chargesheet whereupon cognizance was taken of the offence punishable under Section 304B read with Section 34 of the IPC. Charge was later framed against these appellants for commission of offence punishable under Section 304B read with Section 34 of the IPC. It is worthwhile mentioning that the wife of the appellant Surendra Paswan, i.e., mother-in-law of the deceased had absconded and, therefore, her case was separated from these appellants.

5. At the trial, the prosecution examined altogether 8 witnesses including the father of the deceased (PW-1); brother of the deceased (PW-4); the sister-in-law, (Bhabhi) of the deceased, (PW-6). Shravan Kumar Das, a neighbor of the informant, being



scribe of the First Information Report, deposited at the trial as PW-5. The doctor, who had conducted the postmortem examination, was examined as PW-3, whereas the IO as PW-2. In addition, two other witnesses, i.e., PW-7 and PW-9 tendered at the trial.

6. In addition to the oral evidence of the prosecution’s witnesses, as noted above, the prosecution brought on record following documentary evidence to establish the charge of commission of offence punishable under Section 304B read with Section 34 of the IPC.

Sl. No.	Description	Exhibit Number
1.	Written Report	Exhibit-1
2.	Formal FIR	Exhibit- 2
3.	Postmortem Report	Exhibit- 3
4.	Signature of Pramod Kumar (Informant) on Written Report	Exhibit- 4
5.	Viscera Report	Exhibit-5

7. After closure of the evidence of the prosecution's witnesses, the appellants were questioned under Section 313 of the CrPC, so as to give them an opportunity to explain the incriminating circumstance emerging against them. Following was the common question put to both of them under Section 313 of the CrPC.

"प्रश्न:- आपके खिलाफ साक्ष्य है कि आप दिनांक 24.03.2016 को अन्य मुदलैहम के साथ मिलकर अपने घर



ग्राम छतरवार पकरिवरवा, जिला नवादा में सूचक की बहन नीलम कुमारी को दहेज़ में मोटरसाइकिल और नगद रुपया नहीं मिलने के कारण ज़हर देकर हत्या कर दिया?

उत्तर:- जी नहीं।"

8. Thereafter, the defence examined two witnesses, namely, Sitaram Paswan (DW-1) and Ramvilash Ravidas (DW-2) to make out a case that the deceased had died of snake bite.

9. Mrs. Soni Srivastava, learned counsel appearing on behalf of the appellants has firstly submitted that the finding of conviction for the offence punishable under Section 304B of the IPC as recorded by the trial court verges on perversity in the absence of any definite evidence of demand of dowry, which is an essential ingredient to constitute an offence punishable under Section 304B of the IPC. She contends that except for vague oral evidence in the depositions of PW-1, PW-4 and PW-5 of demand of dowry, there is no other evidence to show that there was any such demand of dowry, within the meaning of the provisions of the Dowry Prohibition Act, 1961. She further contends that there is not even vague evidence with reference to the approximate time when any demand of dowry was made. She contends accordingly that the prosecution miserably failed to prove at the trial that there was any demand of dowry at all before the death of the deceased, let



alone, “ soon before her death”. She has placed reliance on the Supreme Court’s decision in case of *Phulel Singh v. State of Haryana*, reported in (2023) 10 SCC 268 and *Sher Singh v. State of Haryana*, reported in (2015) 3 SCC 724. She contends that the trial court, while recording the finding of conviction, has taken into account the report of the FSL, though the appellant was not questioned at all with reference to the said report, under Section 313 of the CrPC.

10. Learned Additional Public Prosecutor representing the State has defended the finding of conviction recorded by the trial court. She submits that the prosecution ably proved at the trial that the deceased died within one and a half years of her marriage to the appellant Rajesh Ravidas. The FSL report suggests that she died of poison, i.e., under unnatural circumstance. The prosecution witnesses have proved at the trial that there was demand of dowry and that the deceased was subjected to cruelty. She accordingly contends that the prosecution, thus, successfully established a case of 'dowry death' within the meaning of Section 304B of the IPC, at the trial. She has accordingly submitted that having noticed the requirements of Section 304B of the IPC and Section 113 of the Act, the trial court has rightly convicted the appellants and sentenced them imprisonment and fine.



11. We have perused the impugned judgment and order of the trial court and the trial court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties as noted above. Before addressing the evidence adduced at the trial in the background of the above noted submissions which have been advanced on behalf of the parties, we deem it proper to address on the essential requirements for proving a case of dowry death punishable under Section 304B of the IPC, which reads as under:-

“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.”

12. On plain reading of Section 304 (B) of the IPC, it can be easily discerned that following are the essential ingredients to establish an offence punishable under Section 304 (B) of the Indian Penal Code:-



(i) the death of a woman is caused by any burns or bodily injuries or occurs otherwise than under normal circumstances.

(ii) such death must have occurred within seven years of her marriage

(iii) it is 'shown' that soon before the death of such women, she was subjected to cruelty or harassment by her husband or any relative of her husband for, **or in connection with any demand of dowry**

(iv) only if all the above noted conditions are fully established at the trial, a dowry death can be said to have been caused and husband or relative of such women shall be deemed to have caused her death.

13. We have no hesitation in ruling that if either of the above noted four ingredients are absent, the death of woman shall not fall within the definition of dowry death under Section 304(B) of the Indian Penal Code.

14. There is no gain saying thus that it is the duty of the prosecution at the trial to establish the above noted essential ingredients for successfully prosecuting an accused for "dowry death".

15. Further, the explanation to Sub-Section (1) of Section 304 (B) states that the word "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

16. Section 2 of the Dowry Prohibition Act reads as under:-



“2. Definition of “dowry”.—In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly— (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before 2 [or any time after the marriage] 3 [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II.—The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

17. It is evident on reading of Section 2 of the Dowry Prohibition Act that demand of any property or valuable security by a party to a marriage to the other party or by the parents of either party to a marriage or to any other person shall fall within the definition of dowry if such demand, 'at' or 'before' or 'any time after the marriage' only if, it is in connection with the marriage of the said parties.

18. In the present case, we find from the evidence of the father of the deceased (PW-1), brother of the deceased (PW-4) and sister-in-law (*Bhabhi* of the deceased PW-6) that there is no specific reference to even the approximate time of demand of dowry, if any, made by these appellants. They have vaguely deposed at the trial that there was demand of dowry. It cannot be deduced from the evidence of these witnesses that if any such demand was made by the appellants, it was done soon before the death of the deceased.



19. Learned counsel for the appellants have rightly placed reliance on the decision of Supreme Court in case of ***Sher Singh*** (supra), wherein it has been held that the cruelty and harassment meted out to the deceased should have a live link with the demand of dowry, to constitute an offence punishable under Section 304 (B) of the IPC. It would be apt to reproduce paragraph no. 16 of the said judgment which reads as under:-

“...16. As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word “deemed” in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word “shown” is used as synonymous to “prove” and the word “presume” as freely interchangeable with the word “deemed”. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word “deem” to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [AIR 1953 SC 333] and State of T.N. v. Arooran Sugars Ltd. [(1997) 1 SCC 326] , requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word “deemed” so as to



give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304-B IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely,

- (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,*
- (ii) within seven years of her marriage,*
- (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,*
- (iv) in connection with any demand for dowry, and*
- (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.*

We are aware that the word "soon" finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial



presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word "deemed" was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC..."

20. In case of **Major Singh** (supra), the Supreme Court has outlined essential ingredients of Section 304 (B) of the Indian Penal Code and the circumstances attracting the presumption of dowry death under Section 113 (B) of the Evidence Act in paragraph nos. 10 and 11 of the said judgment, which read thus:-

"10. To sustain the conviction under Section 304-B IPC, the following essential ingredients are to be established:



(i) the death of a woman should be caused by burns or bodily injury or otherwise than under a 'normal circumstance';

(ii) such a death should have occurred within seven years of her marriage;

(iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;

(iv) such cruelty or harassment should be for or in connection with demand of dowry; and

(v) such cruelty or harassment is shown to have been meted out to the woman soon before her death”.

“11. If any death is caused in connection with dowry demand, Section 113-B of the Evidence Act also comes into play. Both these sections, Section 304-B IPC and Section 113-B of the Evidence Act were inserted by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

113-B.Presumption as to dowry death.—

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has 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 the dowry death.

Explanation.—For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-B of the Penal Code, 1860.”

It is imperative to note that both these sections set out a common point of reference for establishing guilt of the accused person under Section 304-B IPC, which is “the woman must have been ‘soon before her death’ subjected to cruelty or harassment ‘for or in connection with the demand of dowry’”.



21. After having carefully gone through the evidence of the prosecution's witnesses, we are of the firm view that the prosecution miserably failed to show at the trial, even on the standards of preponderance or probabilities, that there was a demand of dowry, let alone, "soon before the death" of the deceased. On this ground alone, in our opinion, the impugned finding of conviction recorded by the trial court requires interference.

22. Further, we have quoted hereinabove the question which was put by the trial court while examining the appellants under Section 313 of the CrPC. It has been rightly pointed out that the trial court has relied on the report of Forensic Science Laboratory (Exhibit-5). It was incumbent upon the court to have questioned the appellants on the point of the finding of the Forensic Science Laboratory. The same having not been done, the trial court ought not to have relied upon the report of the FSL. It has been repeatedly held by the Supreme Court and this Court that a circumstance not explained to an accused, while being examined under Section 313 of CrPC, cannot be used by it for recording the findings of his conviction.

23. For the aforesaid reasons, the impugned judgment of conviction cannot be sustained. These appeals are allowed.



24. Accordingly, the impugned judgment of conviction and the order of sentence dated 07.07.2018, passed by learned 5th Additional District and Sessions Judge, Nawada in Sessions Trial No. 673 of 2017, 125 of 2017 arising out of Pakribarawan P.S. Case No. 51 of 2016 are hereby set aside.

25. The appellant Surendra Ravidas of Criminal Appeal (DB) No. 1071 of 2018 is on bail. He stands discharged from the liabilities of bail bonds and sureties, if any.

26. The appellant Rajesh Ravidas of Criminal Appeal (DB) No. 1075 of 2018 is in jail. Let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Suraj/Prabhat-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.02.2024.
Transmission Date	05.02.2024.

