

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1204 of 2019

Arising Out of PS. Case No.-47 Year-2016 Thana- NARHATT District- Nawada

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BIPIN MISTRY Son of Arjun Mistry Resident of Village - Gandhi Nagar,
P.S.- Sitamarhi, Distt - Nawada.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manish Kumar No.2, Advocate Mr. Ram Kumar, Advocate
For the State	:	Mr. A.M.P. Mehta, Addl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 05-08-2025

Heard Mr. Manish Kumar No.2, learned counsel for the appellant, and Mr. A.M.P. Mehta, learned APP for the State.

2. The present criminal appeal has been filed by the appellant, Bipin Mistry, against the judgment dated 17.01.2019 and the order of sentence dated 21.01.2019 passed by the learned Additional District and Sessions Judge, Nawada, in Sessions Trial Case No. 227 of 2017 arising out of Narhat P.S. Case No. 47 of 2016, whereby and whereunder the trial court has convicted the appellant for the offences under Sections 304(B) and 201, both read with Section 34 of the Indian Penal Code, and also under Section 120(B) of the Indian Penal Code (in short, 'IPC'). The



appellant has been sentenced to undergo rigorous imprisonment for 8 years for the offence punishable under Section 304(B)/34 of IPC. He has been further sentenced to undergo rigorous imprisonment for 2 years for the offence punishable under Section 201/34 of IPC and has been further sentenced to undergo rigorous imprisonment for 8 years for the offence punishable under Section 120(B) of IPC. All the sentences of imprisonment have been directed to run concurrently.

Prosecution Story:-

3. The substance of the prosecution story is as follows:

As per the informant (brother of the deceased), his sister Jyoti Devi, who happened to be the wife of this appellant (hereinafter referred to as the 'deceased/victim'), was killed at her in-laws' house by stabbing and setting her on fire. After killing his sister, the appellant, his father, brother, and mother fled from their house, and he also suspected some other unknown persons to be involved in the commission of the alleged occurrence.

4. The informant filed a written application (Ext.-1) describing the aforesaid prosecution story, upon which the formal FIR bearing Narhat Sitamarhi P.S. Case No. 120 of 2015 was registered under Sections 304(B)/201/120(B) of the IPC against the appellant and others.



5. After the completion of the investigation, the police chargesheeted the appellant for the offences under Sections 304(B)/201/120(B) of the IPC, and the investigation was kept pending in respect of the other named accused, as appears from the impugned judgment.

6. The appellant stood charged for the offences under Section 304(B) read with Section 34 of the IPC and, alternatively, under Section 302 read with Section 34 of the IPC, and also stood charged under Section 120(B) and Section 201 read with Section 34 of the IPC.

7. The charges were read over to the appellant and explained to him in Hindi, to which he pleaded not guilty and claimed to be tried.

8. During the trial the prosecution examined the following witnesses:-

Sl. No.	Name
PW-1	Shankar Mistry, Father of the deceased
PW-2	Sonia Devi, Mother of the deceased
PW-3	Dwarika Mistry, A Resident of the village of the accused
PW-4	Sita Devi, A resident of the village of the accused
PW-5	Ranjit Kumar, Investigating officer
PW-6	Naulesh Kumar, Informant
PW-7	Rameshwar Mistry, Grandfather of the deceased
PW-8	Bishundeo Yadav, A resident of the village of accused/appellant
PW-9	Binda Devi @ Bimla Devi, A resident of the village of accused/appellant
PW-10	Praduman Kumar, An uncle of the deceased



PW-11	Chamari Devi, A resident of the village of accused/appellant
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9. In documentary evidence the prosecution exhibited the following documents:-

Sl. No.	Details of Exhibits and Documents
Ext.-1	An endorsement on the FIR with regard to the lodging of FIR
Ext.-1/1	An endorsement on FIR
Ext.-1/2	The signature of PW-6 on FIR
Ext.-2	Formal FIR
Ext.-3	Seizure List
Ext.-4	Chargesheet
Ext.-5	FSL Report

10. After the completion of the prosecution evidence, the statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure (in short, ‘Cr.PC’), giving him an opportunity to explain the incriminating circumstances appearing against him from the prosecution’s evidence. The appellant, in his statement, denied all the material circumstances and claimed himself to be innocent, though he did not take any specific defence while recording his statement.

11. The appellant did not adduce any evidence in his defence.



**Submissions by the learned counsel for the
appellant:-**

12. Mr. Manish Kumar No. 2, learned counsel appearing for the appellant, has mainly argued that the main alleged offence for which the appellant has been convicted is punishable under Section 304(B) of the IPC, in respect of which the most important witnesses can be considered to be that of the deceased's close parental family members. Among them, PW-1, the father of the deceased, did not support the prosecution's allegation, as according to his evidence, the appellant and his family members never demanded dowry from him. Further, he deposed that the victim's dead body was cremated in his presence. The prosecution is not entitled to the benefit of the presumption under Section 113(B) of the Evidence Act, as from the evidence of the prosecution witnesses, it has been established that the appellant was not present at his house where the incident took place; rather, he was in Madras (Chennai). Moreover, all the material witnesses of the prosecution did not say anything about any cruel behavior by the appellant towards the deceased soon before her death. Therefore, merely by the factum of the death of the deceased by burning at the appellant's house, the prosecution is not entitled to shift the burden upon the appellant to prove his



innocence in light of the provisions of Section 113(B) of the Evidence Act. It is further submitted that, as per the allegation, the deceased was burnt inside the parental home of the appellant, but the investigating officer did not find any signs of burning when he inspected the place of occurrence. Hence, if we believe the evidence of the investigating officer, then the alleged place of occurrence with regard to the first part of the incident relating to setting the victim on fire is not established. Learned counsel further submits that the victim's grandfather, examined as PW-7, who is stated to have been present at the deceased's house on the fateful night, deposed before the trial court that the entire incident of the burning of the victim took place before him, but even then he did not take any step to register the FIR or inform the police, and the FIR was registered on the next day, which creates a serious doubt regarding the prosecution's allegation.

Submissions by the learned APP for the State:-

13. On the other hand, Mr. A.M.P. Mehta, learned APP appearing for the State, submits that the deceased, wife of the appellant, died an unnatural death by sustaining burn injuries within the four walls of the appellant's house. Regarding the factum of her death due to said reason, there is no dispute. Regarding the allegation of demand of dowry by the appellant



from the victim, the material prosecution witnesses PW-1, PW-3, and PW-6 fully supported the prosecution's allegations. It is further submitted that the most important witness is PW-7, the grandfather of the deceased, who was present at the house of the appellant when the alleged incident took place, and he fully supported the case of the prosecution. As such, the learned trial court rightly convicted the appellant for the charged offences. There is no merit in this appeal, and it is liable to be dismissed.

Findings of the trial court:-

14. While convicting the appellant, the learned trial court mainly placed reliance on the provisions of Section 113(B) of the Evidence Act and drew the presumption against the appellant, shifting the burden of proving innocence upon the appellant himself. The trial court observed that the death of the deceased took place within seven years of her marriage by sustaining burn injuries, and prosecution witnesses PW-1, PW-2, PW-6, and PW-7 supported the factum of dowry demand by the appellant from the deceased. The dead body of the deceased was cremated by the accused without giving information to the police, and it is an admitted position that the victim died inside her matrimonial house. It was further observed by the trial court that, as the deceased died in the house of the appellant, it was the



burden on the appellant under Section 106 of the Evidence Act to give an explanation as to how and why the deceased died. In this regard, no evidence was given, and no specific defence was taken by the appellant while recording his statement under Section 313 of the Cr.P.C.

15. I have heard both sides, perused the evidences available on the record of the trial court, and also given thoughtful consideration to the aforesaid submissions advanced by both sides.

16. The deceased happened to be the wife of this appellant. The appellant stood charged for the offences under Sections 304(B)/34, 201/34, and 120(B) of the IPC, and alternatively under Section 302/34 of the IPC.

17. The appellant has been convicted under Sections 304(B) read with 34, 120(B), and 201 of the IPC. The learned trial court convicted the appellant mainly with the help of the provisions of Section 113(B) of the Evidence Act. It is settled law that the initial burden of proof lies on the prosecution, which would not shift to the accused merely on the basis of the prosecution's allegation that the death had occurred within seven years of marriage. To attract the presumption under Section 113(B) of the Evidence Act, firstly, it must be proved that an unnatural death of the married woman has taken place within seven years of



her marriage by burning or otherwise. Secondly, it must be shown that the victim was subjected to cruelty or harassment by the accused—husband or any of his relatives for the demand of dowry soon before her death. Though ‘soon before’ is a relative term and it would depend upon the circumstances of each case, no straitjacket formula can be laid down as to what would constitute a period of ‘soon before’ the occurrence. In this regard, I would like to refer to the observation made by the Hon’ble Apex Court in the case of *State of Rajasthan vs. Teg Bahadur and Others*, reported in *(2004) 13 SCC 300*, and the relevant paragraph no. 18 is reproduced as under:—:-

“ 18. Our attention was drawn to Section 113-B of the Evidence Act and Section 304-B of the Penal Code, 1860 by the learned counsel appearing for the accused. A conjoint reading of Section 113-B of the Indian Evidence Act and Section 304-B of the Penal Code, 1860 shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. For the above proposition, learned counsel appearing for the accused, cited the judgment of this Court in the case of *Hira Lal v. State (Govt. of NCT), Delhi* [(2003) 8 SCC 80 : 2003 SCC (Cri) 2016] . In that case this Court observed thus: (SCC pp. 86-87, para 9)



“ The expression ‘soon before’ is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. ‘Soon before’ is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ‘soon before her death’ used in the substantive Section 304-B 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. A reference to the expression ‘soon before’ used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods ‘soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession’. The determination of the period which can come within the term ‘soon before’ is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ‘soon before’ would



normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.””

18. The main defence taken by the appellant is that he was not present at his parental house when his wife died and that he was in Madras (Chennai) at that time for the purpose of his livelihood. Secondly, the material witnesses of the prosecution did not support the allegation of dowry demand by this appellant from his wife, and the prosecution failed to prove the cruelty or any kind of harassment by this appellant towards his wife (the deceased) soon before her death. In support of these defences, the learned counsel appearing for the appellant has drawn the attention of this Court to the statements made by the prosecution witnesses, particularly the evidence of PW-1, who is the father of the deceased.

19. PW-1, Shankar Mistry, though alleged in the examination-in-chief that the appellant tortured the deceased for the demand of ornaments and cash amount but in the cross-



examination stated that 3 to 4 months before the occurrence, his daughter had gone to her in-laws' house (*sasural*), and thereafter, during the said period of 3 to 4 months, she was kept in a well manner at her in-laws' house. He further stated in paragraphs 15, 19, 20, and 21 that at the time of the occurrence, the appellant was in Madras (Chennai) and the dead body of his daughter was cremated before him near the crematorium, and that neither the appellant nor his family members ever demanded dowry from him. Whenever his daughter came from her *sasural* to her parental house (*naihar*), he did not see any marks of injury on her body. In this way, the evidence of this witness—who can be deemed an important witness of the prosecution, particularly with regard to the allegation of dowry demand as well as the appellant's presence at the place of occurrence during the relevant period—goes against the prosecution and supports the defences of the appellant.

20. PW-2, Sonia Devi, the mother of the deceased, deposed in the cross-examination that her son-in-law, the appellant, was working in Madras at the time of the occurrence and was not present in the village at that time. She further stated that her daughter was issueless. According to this witness, her father-in-law (PW-7) stayed for eight days at the deceased's in-laws' house and was present at the appellant's village house when



the incident of the victim's burning took place. In this regard, she stated in paragraph no. 5 of her cross-examination that her father-in-law did not make any phone call to her during those eight days while the victim remained alive. From this statement, it is evident that during the said eight-day period, the victim's own grandfather (PW-7) did not notice anything wrong with the deceased by her in-laws. She further stated in paragraph no. 7 that her father-in-law gave the information on the phone that the dead body was burnt before him. It is important to mention that the FIR was registered one day after the occurrence by filing a written application by the brother of the deceased, and no immediate step for lodging the FIR was taken by the deceased's father, mother, or other parental relatives, despite being informed of the death by PW-7. This creates a doubt regarding the bona fide intention of the prosecution party.

21. PW-3 and PW-4, though both belonged to the village of the appellant, also did not support the prosecution's allegations. According to them, the deceased was kept in a well manner by her in-laws.

22. Now, I come to the evidence of the Investigating Officer (PW-5). As per the prosecution story and allegations, the victim was first stabbed and then burnt by pouring kerosene oil on



her inside her in-laws' house, and thereafter, the dead body was cremated by the accused hurriedly near the appellant's village crematorium. If the first part of the prosecution story—relating to killing the victim by stabbing her and then setting her on fire by pouring kerosene oil on her—is to be believed, there must be some incriminating evidence at the alleged place of burning. In this regard, the evidence of the Investigating Officer is very relevant and important. He inspected both the alleged places of occurrence. He testified in the cross-examination in paragraph no. 7 that at the first place of occurrence, he did not find any blood stains or spots, gallon of kerosene oil, or any burnt articles. This evidence of the I.O. does not corroborate the prosecution's allegations made in the FIR. Whereas, according to the evidence of PW-7, the grandfather of the deceased, who is said to have been present at the alleged place, the deceased was burnt inside her in-laws' house, and according to him, several villagers rushed to the spot after seeing the flames. However, the evidence of the I.O., who inspected the said place just the next day, i.e., on 18.09.2015, after the alleged occurrence, creates a doubt about the prosecution's allegation and raises a question regarding the reliability of PW-7's evidence as an eyewitness. From the second alleged place of occurrence, where the dead body of the deceased was cremated, the I.O. collected



bone pieces (in the form of powder), some blood-stained clothes, etc., which were sent to the Forensic Science Laboratory, Patna, for chemical examination. The FSL report was exhibited as Ext.-5. As per this report, blood was not detected on any of the exhibits. This FSL report also goes against the prosecution's allegation that the deceased had been stabbed to death, which might have resulted in profuse bleeding and thereby caused blood stains on the clothes of the deceased and others who took her body near the crematorium—if we believe the prosecution's allegation.

23. From the evidence of the prosecution's witnesses, it is clearly evident that at the time of the alleged occurrence, the appellant was in Madras (Chennai), and it is not the case of the prosecution that he had been torturing his wife mentally through telephonic conversations. Though, as per the Investigating Officer, the informant stated before him that the appellant had abused and threatened the deceased on the day of the occurrence via a mobile call. In this regard, the I.O. (PW-5) further stated in the cross-examination that he obtained the call detail records (CDR) regarding the alleged telephonic conversation between the appellant and the deceased. However, the said CDR was not proved by the prosecution.



24. Now, we come to the evidence of PW-7, who is said to be the most important witness of the prosecution, as he claimed to have seen the commission of the alleged occurrence. He deposed in the examination-in-chief that the deceased was killed on her bed and thereafter, she was brought into the courtyard, kerosene oil was poured upon her, and then she was set on fire. He further alleged that upon seeing the flames, he and the villagers rushed to the spot and found the victim in a dead condition. Though some co-villagers were examined by the prosecution, none of them supported the said story. They might be interested in the appellant and his family members on account of being their co-villagers, but as per the evidence of the I.O., who inspected the first place of occurrence where the victim was allegedly burnt, he did not find any sign of burning or blood stains, which goes against the prosecution story narrated by this witness. This witness stated in the cross-examination in paragraph nos. 7 and 8 that he could not inform the police on the day of the occurrence and that he stayed at the appellant's house on that night when the occurrence took place. This conduct of the witness, as revealed by him, does not appear to be probable or believable if his own granddaughter, the victim, had been killed before him by fire.



Conclusion:-

25. From the above discussions, I find that though the victim died an unnatural death within seven years of her marriage, the prosecution failed to establish the fact that the appellant tortured his wife, even mentally, soon before her death for dowry demand. Further, as per the evidence of material witnesses of the prosecution, he was in another city, Madras (Chennai) when the alleged occurrence took place. Moreover, the main place of occurrence, which is said to be inside the house of the appellant, could not be established by the prosecution, which creates a serious dent in the prosecution story narrated in the FIR. Due to the absence of one of the main ingredients—namely, subjecting the victim to cruelty for demand of dowry by the appellant soon before her death—the prosecution is not entitled to the benefit of the presumption under Section 113(B) of the Evidence Act. Therefore, the burden of proving the charged offences completely remained on the prosecution, which was not discharged by cogent evidence. As such, I am not inspired with confidence to affirm the impugned judgment convicting the appellant for the charged offences. Accordingly, the judgment of conviction dated 17.01.2019 and the order of sentence dated 21.01.2019 passed by the learned Additional District & Sessions Judge-I, Nawada in



Sessions Trial No. 227 of 2017 arising out of Narhat P.S. Case No. 47 of 2016 are hereby set aside, and the instant appeal stands allowed.

26. The appellant is on bail; therefore, he and his bailors are discharged from their respective liabilities.

27. Let the LCR, along with a copy of this judgment, be sent to the trial court concerned for necessary information.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.08.2025
Transmission Date	14.08.2025

