

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.518 of 2004

1. Vijay Tanti @ Bijay Tanti @ Bijay Tanti
2. Shambhu Tanti
3. Kanhai Tanti

All are sons of Late Suragi Tanti, residents of village-Yogibir, P.S.- Jagdishpur, District-Bhagalpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (SJ) No. 574 of 2004

1. Munna Tanti , son of Bhushan Tanti
2. Bhushan Tanti, son of Late Suraj Tanti
3. Bisulia Devi, wife of Bhushan Tanti.

All residents of village-Jogibir, P.S.-Jagdishpur, District-Bhagalpur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (SJ) No. 518 of 2004)

For the Appellant/s : Mr. Abhas Chandra, *Amicus Curiae*

For the Respondent/s : Mrs. Anita Kumari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 574 of 2004)

For the Appellant/s : Mr. Abhas Chandra, *Amicus Curiae*

For the Respondent/s : Mrs. Anita Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-11-2025

In compliance of order dated 30.1.2025, the Senior Superintendent of Police, Bhagalpur has sent a report to this Court through Letter No. 195, which speaks that the appellant no.3 namely, Bisulia Devi, wife of Bhushan Tanti had died, whereas other appellants are alive and, therefore, the present appeal stands abated against appellant no.3 Bisulia Devi (in



Cr. Appeal (SJ) No.574 of 2004).

2. Now, the present appeals survive against appellants Vijay Tanti @ Bijay Tanti, Shambhu Tanti, Kanhai Tanti (in Cr. Appeal (SJ) No.518 of 2004), Munna Tanti and Bhushan Tanti (in Cr. Appeal (SJ) No.574 of 2004).

3. As learned counsel appearing for respective appellants/convicts has failed to appear repeatedly when this matter was taken on Board for final hearing, therefore, this Court appointed Mr. Abhas Chandra, learned Advocate as an *Amicus Curiae* to assist in disposal of appeals.

4. Both appeals have been preferred by the respective appellants-convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'CrPC') challenging the impugned judgment of conviction and order of sentence dated 08.07.2004 passed by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No.770 of 2003 arising out of Jagdishpur P.S. Case No.4 of 2002, whereby the trial court has convicted all above-named appellants under Sections 304-B and 201 read with 34 of the Indian Penal Code (for short 'IPC') and sentenced them to undergo



rigorous imprisonment for ten years under Section 304-B of IPC and rigorous imprisonment for three years under Section 201 read with 34 of the IPC. Both sentences have been ordered to run concurrently.

5. The brief case of prosecution, as per *fardbeyan* of informant namely, Suresh Tanti (PW-3), recorded by police on 06.01.2001 at about 3.30 P.M. at the bank of Golphara Katiara river that his daughter Rinki Devi was married with accused/appellant Munna Tanti two years ago according to Hindu Rites and Rituals in which he has paid Rs. 15,000/- against dowry demand of Rs.20,000/- at the time of marriage and balance amount of Rs.5,000/- was due to be paid. After the marriage, the deceased Riki Devi gone to her matrimonial home and when she returned her parental home after some days, she complained to her father that appellant Munna Tanti (husband), father-in-law, namely, Bhushan Tanti, cousin father-in-law Shambhu Tanti, Kanhai Tanti, Vijay Tanti and her mother-in-law always used to abuse and assault her due to non-payment of balance amount of Rs.5,000/- and they always used to told her that she would



allow to return her *sasural* only after paying the said amount otherwise she would be done to death and her husband would perform second marriage. It was further stated that daughter of informant Rinki Devi fled away to her “*nanihal*” at Saino in the house of one Prasadi Tanti, where at the time of Dashhara, the appellants came there and requested for *bidai* and gave assurance that henceforth no torture would be meted to her. Believing on them, the informant allowed Rinki Devi to go with them to her “*sasural*”. On 16.01.2002, when the informant came to *sasural* of her daughter at Chhote Yogibir, then he found his daughter and all members of her matrimonial house absent from the house. Thereafter, he searched for them and then came to know from the villagers that her daughter had fled away in the preceding night and thereafter, the informant went to his own *sasural* to search for her, where his father-in-law informed that her daughter had not come there and thereafter, the informant along with his father-in-law started searching for her and in that course, he found the dead body of her daughter engraved in bank of Golphara river. Her head was visible, so the informant and his



father-in-law started digging but, in the meantime, police came there and recorded the statement of the informant.

6. On the basis of aforesaid *fardbeyan*, the police lodged a case as Jagdishpur P.S. Case No. 4 of 2002. After completion of investigation, the charge-sheet was submitted under Sections 304-B and 201 read with 34 of the IPC.

7. The learned Jurisdictional Magistrate on the basis of materials collected during investigation, took cognizance of the offence and after compliance of Section 207 of the CrPC, committed the case to the court of sessions in view of Section 209 of the CrPC for trial and disposal.

8. The learned Trial Court on the basis of materials as collected during the course of investigation explained charges to above-named appellants/accused for the offence punishable under Sections 304-B and 201 read with 34 of the IPC, to which, they denied and pleaded '**not guilty**' and claimed for trial.

9. As to substantiate its case, the prosecution has examined altogether five witnesses, they are:- PW-1 Kuleshwar Tanti, PW-2 Surain Tanti, PW-3 Suresh Tanti, PW-



4 Dr. Atul Kumar Mallick and PW-5 Ramkrishan Paswan,
Investigating Officer of this case.

10. The prosecution has also relied upon following
documents exhibited during the course of trial:-

Sl. No.	No. of Exhibits	Documents
1.	Exhibit-1	Postmortem report of the deceased.
2.	Exhibit-2	Entire <i>Fardbeyan</i> .
3.	Exhibit-3	Inquest report of deceased Riki Devi.

11. On the basis of materials surfaced during the trial, all above-named appellants/accused were examined under Section 313 of the CrPC by putting incriminating circumstances/evidences surfaced against them separately, to which they denied and shows their complete innocence.

12. The appellants/accused in their defence examined three witnesses, who are DW-1 Ram Ratan Mahto, DW-2 Ramji Mahto and DW-3 Ramcharitra Mahto.

13. After hearing both sides, the learned trial court has convicted above-named appellants/accused and sentenced them for the offences punishable under Sections 304-B and 201 read with 34 of the IPC.



14. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellants/accused/convict have preferred the present appeals.

15. Hence, these appeals.

Argument on behalf of the appellants:

16. Mr. Abhas Chandra, learned *Amicus Curiae* submitted that without establishing foundational aspect of the case *qua* ingredients of Section 304-B of the IPC, the learned trial court recorded the judgment of conviction purely on the basis of importing presumption as available under Section 114-B of the Indian Evidence Act. In support of his submission, learned *amicus curiae* has relied upon legal report of Hon'ble Supreme Court as available through **Baijnath and Ors. vs. State of Madhya Pradesh** as reported in **[(2017) 1 SCC 101]**. It is submitted that mostly the witnesses, who are relatives of the deceased stated that due to certain differences, the deceased daughter of the informant (PW-3) with her husband appellant/accused Munna Tanti visited either to her maternal uncle's home or her parental



home but, as a matter of an afterthought, the demand of balance payment of Rs.5,000/- as dowry was raised just to aggravate the allegation. It is submitted that no specified date appears available out of testimony of prosecution witnesses that on which particular date the cruelty upon deceased was committed with regard to demand of dowry. It is also pointed out that PW-1 during cross-examination supported the fact that the dispute and differences was not due to dowry demand, which was completely overlooked by learned trial court. It is also submitted that the testimony also suggest that the appellants are in-laws and having least concerned with daily and domestic affairs of deceased and her husband.

17. Mr. Chandra further submitted that the defence witnesses examined in support of accused/appellants also not taken into consideration by learned trial court and it was outrightly rejected. It is also pointed out that the statement of appellants/were recorded by the learned trial court in very cryptic and mechanical manner and same appears in violation of the established principle of law as settled through legal report of Hon'ble Supreme Court as available through through



**Sukhjit Singh v. State of Punjab reported in (2014) 10
SCC 270.**

Argument on behalf of State:

18. Mrs. Anita Kumari Singh, learned APP appearing for the State submitted that the occurrence took place between four-corners of the matrimonial home of the deceased but, she fairly conceded that dead body was recovered from bank of Golpahara river. It is submitted that though certain minor contradictions appear available out of testimony of prosecution witnesses but, that cannot be the basis to set aside the impugned judgment of conviction as recorded by learned trial court. Learned APP has conceded this fact that the appellants/accused are in-laws of the deceased.

19. I have considered the rival submissions canvassed by the learned counsel appearing for the parties and also perused the deposition of the witnesses examined during trial before learned trial court.

20. Upon perusal of record, it appears that PW-1, namely, Kuleshwar Tanti, PW-2 namely, Surain Tanti, both



are maternal grand-father and PW-3, who is father of deceased and also the informant supported the case of prosecution. The doctor and I.O. also appears examined in this case as PW-4 and PW-5 respectively.

21. It would be appropriate to reproduce the provisions of Section 304-B of the IPC and Section 113-B of Indian Evidence Act for the sake of convenience and better understanding of the fact, which are as under:-

“304-B. 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.*

Explanation- *For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

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 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 the dowry death.*

Explanation- *For the purposes of this section, “dowry death” shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).”*

22. It is clear from the above legal provisions as mentioned under Section 304-B of the IPC that before the application of this sections, following essential ingredients must be fulfilled which are as under:-

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

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

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;

(iv) such cruelty or harassment must be for



*or in connection with demand for dowry;
(v) such cruelty or harassment is shown to
have been meted out to the woman soon
before her death”.*

23. Upon perusal of testimony of PW-1 Kuleshwar Tanti, it transpires that he supported the occurrence and demand of dowry *qua* balance payment of Rs.5,000/- out of settled amount of Rs.20,000/-. He also appears supported to the fact that the deceased was assaulted and ousted on several occasions by the appellants/accused from matrimonial home though, date of occurrence appears not specified in examination-in-chief. However, upon perusal of his cross-examination, it appears that she came to her maternal uncle's home after her marriage only on single occasion. He categorically stated that police never recorded his statement. It was also stated by him that the paper on which the thumb impression was given by him was also not read over to him. It also transpires from his deposition that he met with deceased after 5 or 6 months of her marriage but, she has not disclosed anything like demand of dowry or stated that she was physically assaulted by appellants/accused rather she stated



to this witness that she is living happily in her matrimonial home.

24. It further transpires from the testimony of PW-2 and PW-3, who are the maternal grand-father and father of the deceased that prior to the occurrence, the deceased had left her matrimonial home and then PW-3 started search and while searching her daughter, he came to the house of his in-laws i.e. PW-2 namely, Surain Tanti whereafter, both PW-2 and PW-3 started to search the deceased and while searching so, they found the deceased at the bank of Golpahara river, where the body of the deceased partly covered by sand and soil, whereafter the information was given to the police, who finally excavated the dead body.

25. It appears from the testimony of these two witnesses that this is not a case where dead body of the deceased was recovered from her matrimonial home. The search admittedly was made by PW-2 and PW-3 upon receiving information that the deceased had left her matrimonial home and, therefore, the factual aspects of this case is not suggesting that the husband Munna Tanti or any



in-laws living together are under obligation to explain the circumstances under Section 106 of the Indian Evidence Act.

26. From the testimony of PW-4, who is doctor and conducted autopsy upon deceased daughter of informant, it appears that the death of deceased was caused due to *asphyxia* and shock due to suffocation, suggesting that same was unnatural.

27. Admittedly, the marriage was within the seven years of marriage. The most important factors as to whether the said occurrence was due to demand of dowry as alleged is not appears convincing out of testimony of PW-1, who was not declared hostile by the prosecution. Even, the depositions of PW-2 and PW-3 merely suggest that out of domestic quarrel, the deceased usually left her matrimonial home and as village of her maternal uncle near to her in-laws' village, she usually visited there and, therefore, after receiving the missing information, PW-3 visited to the house of PW-2.

28. In such background, it is unsafe to say that the foundational aspect under Section 304-B IPC is established as to import presumption available u/s 114-B of the Indian



Evidence Act. In this context, it would be appropriate to reproduce legal report of Hon'ble Supreme Court rendered in the matter of **Baijnath and Ors.** (supra), which are as under:-

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis “cruelty” as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or



any person related to her to meet such demand.

29. 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. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate 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 his relative or the person charged is thus the sine qua non to inspire 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 abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.”

29. It also appears that the statement under



Section 313 of the CrPC of accused/appellants has been recorded by learned trial court in very cryptic and mechanical manner and same is not acceptable under law in view of legal ratio as settled through **Sukhjit Singh (supra)**, which are as under:-

“**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in *Ranvir Yadav v. State of Bihar* [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92] . Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. State* [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ 1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30)

“**30.** I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of



the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should



be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933] , Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the



protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to



explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

30. In view of aforesaid factual and legal discussions, it appears that the prosecution has failed to answer number of doubts as surfaced during the trial, the benefit of which must be given to the appellants/accused.

31. Accordingly, both appeals are allowed.

32. The impugned judgment of conviction and order of sentence dated 08.07.2004 passed by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No.770 of 2003 arising out of Jagdishpur P.S. Case No.4 of 2002 is, hereby, set aside. Consequently, the above-named appellants/accused are acquitted from the charges levelled against them. Since all above-named appellants/accused are on bail, they are discharged from their liabilities of bail bonds. Sureties stand discharged.

33. Fine, if any, paid be returned to the



appellants/accused henceforth.

34. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.5,000/- (Rupees Five Thousand) to Mr. Abhas Chandra, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

35. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04-12-2025
Transmission Date	04-12-2025

