

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.210 of 2004

-
1. Harendra Sah S/o Shiv Charan Sah R/o vill - Parauna, P.S.- Taraiya, Distt.- Saran
 2. Birendra Sah S/o Shiv Charan Sah R/o vill - Parauna, P.S.- Taraiya, Distt.- Saran
 3. Shiv Charan Sah S/o Late Punit Sah R/o vill - Parauna, P.S.- Taraiya, Distt.- Saran. (Case against the appellant was abated vide Honourable Court Order dated 18-01-2025.)
 4. Kanti Devi W/o Birendra Sah R/o vill - Parauna, P.S.- Taraiya, Distt.- Saran

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Binod Kumar, Advocate
For the Respondent/s : Ms. Anita Kumari Singh, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 18-01-2025

1. This appeal arises from the judgment against the conviction and sentence of the appellants, in Sessions Trial No. 136 of 2004, passed by the Fast Track Court No. 1, Saran at Chapra, dated 13.03.2004 and sentence dated 15.03.2004. Appellants No. 1 to 4 were convicted and sentenced for offences punishable under Sections 304-B and 201 of the Indian Penal Code. They were sentenced to undergo rigorous



imprisonment for seven years and two years, respectively, for those offences.

2. This Court vide order dated 29.08.2024 called for a report from the Superintendent of Police, Saran with regard to whether the 3rd appellant is alive or dead. In compliance of the Order dated 29.08.2024, the report was received from the Superintendent of Police, Saran which disclose that the 3rd appellant, Shiv Charan Sah, passed away. Therefore, the case against appellant No. 3 shall stand abated.

3. The criminal proceedings were initiated based on the fardbeyan of the informant (P.W. 1), who is the father of the deceased, Munni Devi. The contents of the fardbeyan reveal that Munni Devi was married to the first appellant, Harendra Sah, in the year 1995 as per Hindu traditions. Before her death, Munni Devi had filed a criminal complaint against the appellants for offences punishable under Section 498(A) of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. This



case, however, was resolved by way of compromise. Following the terms of compromise, Munni Devi returned to the appellants' house. For a period of one year, there were no disputes between her and the appellants. Later, the appellants resumed torturing Munni Devi. It is further alleged that when their demands were not met, they murdered Munni Devi by setting her to fire. On 29.06.1999, when P.W. 1 visited the appellants' house, to inquire about Munni Devi, he learnt that she was murdered on 27.06.1999. Consequently, P.W. 1 lodged a fardbeyan against the accused persons.

4. Based on the Fardbeyan, a case was registered against the appellants vide Criminal Case No. 86 of 1999, dated 19.08.1999, at Taraiya Police Station for offences punishable under Sections 304-B and 201 r/w Section 34 of the Indian Penal Code. The Investigating Officer took up the investigation and, upon its completion, filed



a charge sheet against the appellants for the aforementioned offences.

5. During the course of the trial, charges were framed against the appellants for the offences punishable u/s 304-B and Section 201 of the Indian Penal Code. The appellants pleaded not guilty and claimed to be tried.

6. On behalf of the prosecution, P.Ws. 1 to 5 were examined. After considering the materials on record, the trial court convicted all the appellants and sentenced them to rigorous imprisonment of seven years for the offence punishable under Section 304-B of the Indian Penal Code and two years for the offence punishable under Section 201 of the Indian Penal Code.

7. Heard the Learned counsel, Mr.Binod Kumar, for the appellants and the Learned Additional Public Prosecutor, Ms. Anita Kumari Singh, for the State.

8. Points for determination in the appeal are as that:-



I. Whether the prosecution was able to prove the guilt of the appellants beyond reasonable doubt for the offences charged against them?

II. Whether the trial Court has rightly convicted and sentenced the appellants?

9. Upon a thorough perusal of the entire evidence, it is evident that all the witnesses have turned hostile and did not support the prosecution's case in any manner. There is no material on record to establish that Munni Devi was subjected to cruelty soon before her death, which is a necessary requirement to attract the offence under Section 304-B of the Indian Penal Code. Furthermore, there is no evidence on record to show that she was tortured for additional demand of dowry. All the witnesses consistently stated that Munni Devi died due to diarrhea.

10. As per Section 304-B of the Indian Penal Code, which pertains to dowry death, the



prosecution must prove the following beyond a reasonable doubt:

(i) There should be sufficient evidence on record to establish that Munni Devi was subjected to dowry demands and ill-treated during her lifetime.

(ii) Her death must have occurred due to burns, bodily injuries, or under circumstances other than normal, within seven years of her marriage.

(iii) Such cruelty or harassment must have taken place soon before her death.

In the present case, there is no evidence on record to prove that the appellants demanded dowry or subjected Munni Devi to ill-treatment, due to the failure to meet such demands. According to the testimonies of P.Ws. 1 to 5, Munni Devi's death resulted due to diarrhea and not from burnt injuries or bodily injuries, or otherwise than normal circumstances.



11. Section 201 of the Indian Penal Code states that anyone who knowingly causes evidence to disappear with the intention of shielding an offender from punishment shall be liable for punishment. However, none of the witnesses deposed that any evidence was tampered with or destroyed to screen away the accused.

12. In the absence of such evidence, the trial court ought not to have convicted the appellants for offences punishable under Sections 304-B and 201 of the Indian Penal Code.

13. It is important to mention that the Investigating Officer was not examined in this case to establish the manner in which the investigation was conducted.

14. The Learned counsel for the appellants relied on the judgment of this Court in **Rajesh Ravidas Vs. The State of Bihar [Criminal Appeal (DB) No. 1075 of 2018]** dated 02.02.2024 wherein the Lordships have held as follows:-



“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 SCC326] , 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 Cr.P.C..."

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."

The above judgment squarely applies in the present facts and circumstances of the case.

15. The Learned Additional Public Prosecutor contended that although the witnesses have turned hostile, their testimonies can still be relied upon to a certain extent, and the trial court was justified in convicting the appellants. It is an admitted fact that the witnesses have turned hostile, there are no exhibits on record to substantiate the evidence.



16. Furthermore, the statements recorded under Section 161 or Section 164 of the Code of Criminal Procedure, which were documented by the police and Judicial Magistrate respectively, were also not brought on record. In the absence of incriminating evidence, it is not proper to convict the appellants.

17. Upon careful consideration of the entire material on record, I am of the firm view that the prosecution has miserably failed to prove the guilt of the appellants for the offences punishable under Sections 304-B and 201 of the Indian Penal Code and the trial Court erred in convicting the appellants. Therefore, the conviction recorded by the trial court needs interference.

18. With the aforesaid reasons, the conviction and sentence dated 13.03.2004 and 15.03.2004 respectively, in Sessions Trial No. 136 of 2004, passed by the Fast Track Court No.-I, Saran at Chapra, against Appellants No. 1, 2, and 4 are hereby set aside.



19. The record reveals that the appellants were released on bail on 20.05.2004. Accordingly, the bail bonds of the appellants shall stand cancelled, including that of the 3rd appellant.

20. In result the appeal is allowed

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.02.2025
Transmission Date	19.02.2025

