

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.617 of 2005**

Binod Sah S/o Madan Sah, R/v- Maldi, P.S.- Shikarpur, District- West
Champaran.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Adv.

Mr. Sachida Nand Rai, Adv.

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

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 20-12-2025

1. Heard learned counsel appearing on behalf of the parties.

2. The present appeal has been preferred by the appellant-convict under Section-374(2) of Code of Criminal Procedure challenging the impugned judgment of conviction dated 21.11.2005 and order of sentence dated 23.11.2005 passed in Sessions Trial No. 283 of 1995 by learned Additional Sessions Judge, Fast Track Court Ist, West Champaran at Bettiah, convicting and sentencing appellant for ten years rigorous imprisonment under section 304 (B) of IPC and three years rigorous imprisonment under section 201 of IPC observing that both the sentences will run concurrently.



3. The brief facts of the prosecution case as per FIR, that the daughter of informant (PW-10) namely, Girija Devi was married to appellant namely, Binod Sah, in the year 1991. After the *Gauna* ceremony, when the informant went to the accused persons house for the *bidai* of his daughter, he was not allowed to meet her and a demand of Rs. 2,000 was made. Later, the informant came to know that his daughter was being tortured by her in-laws for the said dowry demand. On another occasion, informant again went to meet her but was abused and prevented from seeing her. Subsequently, the informant received information that his daughter had been killed by administering poison and that her dead body was cremated during the night. On verification, he found the information to be true and accordingly lodged a written FIR against the accused persons for dowry-related murder.

4. On the basis of aforesaid information, Shikarpur P.S. Case No. 142 of 1994 was lodged for the offence punishable under Section 304(B), 201 of IPC.

5. After completion of investigation the charge-sheet was submitted before learned ACJM, West Champaran, who upon the perusal of material collected during investigation



took cognizance of the offence and committed the case before the court of sessions for its trial and disposal.

6. Learned trial court accordingly framed charges on 20.02.1999 against appellant-accused, who upon explanation pleaded as “not guilty” and claimed trial.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 11 witnesses and 2 witness examined in defense. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Israfil Ansari
P.W. 2	Balister Ansari
P.W. 3	Thagai Sah
P.W. 4	Shrawan Ram
P.W. 5	Kodai Sah
P.W. 6	Mishri Sahni
P.W. 7	Harendra Sah
P.W. 8	Ramayan Sah
P.W. 9	Rabindra Sah
P.W.10	Hardwar Sah (Informant)
P.W. 11	Rais Mian
Defense Witnesses	
D.W.-1	Dr. Arun Kr. Sharma
D.W.-2	Dr. Abdul Ansari

8. Apart from the oral evidence, no documents was exhibited as to prove the charges.



9. The statement of the appellant-accused was recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences punishable under Section 304(B) and 201 of IPC and sentenced him in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

12. Hence, the present appeal.

13. It is submitted by learned counsel appearing on behalf of the appellant that the FIR, in issue, was lodged after 26 days of the occurrence. It is pointed out that even out of testimony of prosecution witnesses who are the relatives and family members of the deceased wife of the appellant, it appears that the marriage of appellant took place prior to 7 years, and therefore, the conviction, under Section 304 of IPC not appears convincing in present case. It is further pointed



out that FIR is totally based upon hearsay input as provided by PW-11 namely, Rais Mian that the daughter of informant consumed poison. It is also submitted that the prosecution witnesses said that the relation was cordial for 5 years after the marriage, and therefore, a sudden demand of Rs. 2000/- raised as dowry which appears not convincing and suggesting only the false implication. It is submitted that in fact the death of wife of appellant was due to diarrhea and she was under treatment and case of D.W.-1 namely, Dr. Arun Kr. Sharma but his testimony was completely overlooked by the learned trial court. It is pointed out that all witnesses are interested witnesses and therefore, their testimony cannot be relied upon. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470.***

14. It is also pointed out by learned counsel for the appellant that even the prosecution witnesses P.W.- 3, 4, 5 and 6 testified during trial that the daughter of informant (P.W.-10) died out of diarrhea but learned trial court could not consider the same and therefore, the judgment of learned trial court recording conviction is completely perverse. It is



submitted that allegation *qua* consuming poison and mental torture for non paying of Rs. 2000/- as dowry was supported only by P.W.s - 7, 9 and 10 who are immediate family members of deceased. On the basis of statement of P.W.-11 namely, Rais Mian case was lodged making allegation doubtful. In this connection, it is also submitted that there is no any specific date *qua* raising demand of dowry of Rs. 2000/- as alleged.

15. Learned APP appearing on behalf of State while opposing the appeal submitted that the informant supported the case of prosecution alongwith other prosecution witnesses, however, she fairly conceded that there is nothing on record in support of unnatural death in want of *post-mortem*. It is also conceded that the appellant appears to explain the cause of death of his wife which also appears supported by numbers of prosecution witnesses as submitted aforesaid.

16. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

17. Upon perusal of record and considering the



arguments, it appears that PW-1 namely, Israfil Ansari, P.W.-2 namely, Balister Ansari and P.W.-8 namely, Ramayan Sah respectively are hostile witness, where nothing surfaced out of their testimony which may used for the purpose of contradiction or corroboration *qua* testimony of other prosecution witnesses who supported the occurrence. It also appears from the perusal of record that P.W.- 3 namely, Thagai Sah, P.W.- 4 namely, Shrawan Ram, P.W.- 5 namely, Kodai Sah and P.W.- 6 namely, Mishri Sahni deposed during the trial that the wife of appellant died due to diarrhea. It also appears from the testimony of P.W.-7 namely, Harendra Sah, P.W.-9 namely, Rabindra Sah and P.W.-10 namely, Hardwar Sah that deceased consumed poison and said information he received from P.W.-11 namely, Rais Mian. The FIR, in issue was lodged with a delay of 26 days.

18. It also appears that appellant examined D.W.-1 namely, Dr. Arun Kr. Sharma with whom his wife was under treatment for diarrhea and subsequently, died out of illness, this fact was completely ignored by the learned trial court beside aforesaid even testimony of prosecution witnesses as discussed aforesaid who deposed categorically that wife of



appellant died due to diarrhea was also ignored.

19. In view of same, it appears that the appellant being husband explained the cause of death of his wife in view of Section 106 of Indian Evidence Act.

20. The impugned judgment, nowhere speaks that how it rejected the testimony of P.W.-3, P.W.-4, P.W.-5 and P.W.-6 who testified that the wife of appellant died due to diarrhea, who were not even declared hostile by prosecution and also the testimony of D.W.-1 namely Dr. Arun Kr. Sharma, with whom she was under treatment.

21. In view of aforesaid, it can be said safely that prosecution miserably failed to establish foundational aspect of case *qua* appellant during the trial as to import presumption available u/s 114B of Indian Evidence Act.

22. Accordingly, the appeal stands allowed.

23. The impugned judgment of conviction dated 21.11.2005 and order of sentence dated 23.11.2005 passed in Sessions Trial No. 283 of 1995, by the learned Additional Sessions Judge, Fast Track Court Ist, West Champaran at Bettiah is accordingly set aside.

24. The appellant, above-named, is acquitted of the



charges levelled against him. Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged. Fine if any paid, be returned to appellant hence forth.

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

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.12.2025
Transmission Date	24.12.2025

