

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.18 of 2006**

1. Ram Naresh Mahto, aged about 28 years, Son of Bino Mahto.
2. Chandra Kala Devi @ Chanrika Devi @ Chanda Devi aged about 35 years,
Wife of Bino Mahto.
Both residents of village- Jagdar, P.S. Birpur (Barauni) District-Begusarai.
... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Kumar Rajesh, Advocate
	:	Mr. Jeet Kishor Mahto, Advocate
For the Respondent/s	:	Mr. A. M. P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

Date: 28-04-2025

Heard learned counsel appearing on behalf of the appellants Mr. Raj Kumar Rajesh assisted by Mr. Jeet Kishor Mahto and Mr. A.M.P. Mehta learned APP for the State.

2. The present appeal is directed against the Judgment of conviction dated 05.12.2005 and order of sentence dated 12.12.2005 in Sessions Trial No. 178 of 1995 arising out of Barauni P.S. Case No. 257 of 1994 passed by the learned Additional Sessions Judge, Fast Track Court No.-I, Begusarai have convicted the appellants under Sections 498A and 304 B of the Indian Penal Code (hereinafter referred as 'IPC') and under Section 3 of the Dowry Prohibition Act and sentenced them to undergo 3 years rigorous imprisonment and fine of Rs. 5,000/- (five thousand) for the offence punishable under



Section 498A of the IPC and on non payment of fine, the appellants have to undergo simple imprisonment for six months. Further appellants have to undergo rigorous imprisonment for 10 years for the offence punishable under Section 304B of the IPC and all the sentences shall run concurrently.

3. The brief facts leading to the filing of the present appeal on the basis of the *fardbeyan* of the informant, is that the informant (Chowkidar No. 2/10) namely Shivji Paswan gave his statement before the police on 21.06.1994 at about 6:30 AM alleging therein that at about 3:30 AM, he heard hulla and rushed towards the house of the accused and saw that Sonia Devi aged about 24 years wife of Ram Naresh Mahto was lying dead in the house and her entire body was burnt. The reason behind the occurrence is that on previous day there was altercation between the wife Sonia Devi and her husband Ram Naresh Mahto and the husband Ram Naresh Mahto has also assaulted her wife. It is further alleged in the *fardbeyan* that there was no good relation between the wife and the husband since the time of marriage. Further it is alleged that in the mean-time the husband had demanded dowry. Further, it is alleged in the *fardbeyan* that on the previous night all the family members after taking dinner were sleeping in the house.



Ram Naresh Mahto had sprinkled kerosene oil on the body of her wife Sonia Devi and put fire by match and further locked the door of the room as a result of which Sonia Devi died. After seeing smoke from the house the villagers Munna Thakur Laxman Mahto, Triveni Tanti, Prasadi Mahto reached there and they after breaking the door tried to save the victim but she died.

4. On the basis of the aforesaid *fardbeyan* of the informant Barauni P.S. Case No. 257 of 1994 dated 21.06.1994 was registered. After completion of investigation the Investigating Officer has submitted charge-sheet against the accused Ram Naresh Mahto and Chandrikala Devi. After cognizance the case was committed to the Court of Sessions. Thereafter for the trial the case was transferred to the Addl. Session Judge FTC I Begusarai.

5. The prosecution has altogether examined seven witnesses in this case. Out of them, PW-1 Ram Prasad Mahto declared hostile, PW-2 Laxman Mahto declared hostile, PW-3 Dr. Ashok Kumar Rai, PW-4 Dilip Kumar PW-5 Ram Udgar Mahto, PW-6 Shivji Paswan (Chowkidar no.-2/10) of the village Jagdar (Informant) and PW-7 Munna Thakur.

6. PW-3 Dr. Ashok Kumar Rai stated in his examination-in-chief that on 21.06.1994 he was posted at



Sadar Hospital, Begusarai as Civil Assistant Surgeon. On that day at about 11.30 AM. the dead body of Sonia Devi aged about 24 years wife of Ram Naresh Mahto of village Jagdal P.S.-Birpur District Begusarai was brought and identified by constable Raghubar Singh and 2/18 Hare Ram Paswan and chowkidar no.2/10 Ram Ratan Paswan. He further stated that he held postmortem on the same day under the observership of Dr. A. K. Jha.

External appearance: Rigor mortis present at all over the body. Deep burn and superficial at places is present all over the body except lower part of back and buttock. Due to deep burn both thigh have develop cracks about 90% burnt tongue produced out. He has further stated that on dissection carbon particals are present in trachea in good amount. Lungs are congested stomach contains rice uterus gravid 2 to 4 months.

Opinion- most probable, Cause of death was due to shock and asphyxia produced by burn caused by fire, but due to deep burn other external findings can not be made out. Viscera are kept reserved for further investigation. The time elapsed since death within 6 to 24 hours. This post-mortem report is in my pen and bears my signature marked as Exhibit-1.

6.i. In his cross-examination, he stated that the presence of rigor mortis depends on climatic variation as well as on account of cause of death. But in normal condition its



presence over the body is visible within 6 to 4 hours within the time of death. Literally it is possible to point out the death having within 6 hours and within 24 hours as rigor mortis is not present in all over the body within 6 hours but it has not present after 6 hours. I can distinguish antemortem burn injury as well as postmortem burn injury. Part of lung and heart were kept for further investigation. Viscera were not tested by me. As there is no detail description in postmortem report regarding the state of rice, so I cannot say anything over it. It is not a fact that I could not performed the postmortem.

7. PW-4 Dilip Kumar is the brother of the deceased victim in his examination-in-chief stated that occurrence took place 6 years ago in the night and he came from his village Kumbhi to village Jagdal and he grasped that his sister the victim died due to fire caught in her Sari during preparation of food. He also stated that deceased victim got married with Ram Naresh Mahto and her death took place in her *sasural*. He has further stated that deceased victim had no dispute with the family members of her *sasural*. He stated that his statement was not recorded by the police.

7.i. In his cross-examination, he admitted in para-2 that deceased victim always resided in her matrimonial home and her husband and mother in law kept her in a good



condition and provide her all the comfort as required. He said his sister the deceased victim had never made any complaint against the family members of her in laws.

8. PW-5 Ram Udgar Mahto is the father of the deceased in his examination-in-chief stated that occurrence took place 6 years ago and after passing of 3 to 4 days of the occurrence he came to learnt that his daughter deceased victim was burnt in her matrimonial home. He stated that the marriage of his daughter took place with Naresh Mahto 4 years ago from the date of the occurrence.

8.i. In his cross-examination and he has admitted vide para 2 that the marriage of his daughter took place 5 to 6 years ago from the date of her death. He also said that she used to come to her parental home from the *sasural* and she was sharing good relation with the family members of her *sasural* and she never made any complaint against her in-laws in *sasural*. He also said that his son in law has given information about the incident to his house. He said that he came and inquired the matter and comprehend that his daughter died due to burnt while she was preparing food. He further said that he can not recall that the marriage of his deceased daughter took place 10 years ago from the date of her death and again voluntarily he stated that the death took place 8 years ago.



9. PW-6 Shivji Paswan Chowkidar no. 2/10 of village Jagdal in his examination-in-chief stated that occurrence took place to 10 years ago at about 3.30 AM and he heard *hulla* and went to the house of Bino Mahto and saw that the eastern gate of the daughter in law of Bino Mahto was closed. He further stated that the hand of the deceased victim was tied and her body and cloths were burning and she was shouting "*Bachao Bachao*". He also stated that when he reached at the house of the deceased victim she was alive. He further stated that he went to Police Station to give information about the alleged incident and when he returned from the police station he found that the victim died due to burn injury. He stated in para-2 of his deposition that altercation and assault took place between the deceased victim and her husband due to demand of Dowry and the murder of the victim was committed by her husband Ram Naresh Mahto. He further stated in para-3 of his deposition that the marriage of Sonia Devi with accused Ram Naresh Mahto took place 4 to 5 years ago from the date of occurrence. He stated in para 4 that after receiving information the S.I. of police came at the place of occurrence and he has given his *fardbeyan* before the S.I. of police. He further stated that S.I. of police has recorded his statement. and he has further proved the *fardbeyan* which is Ext.-2 The signature of this



witness on the *fardbeyan* is Ext.-3 he also stated in para 5 of his examinations-in-chief that the mother of Ram Naresh Mahto was also residing in the house and the occurrence was witnessed by Munna Thakur, Triveni Tanti, Prasad Mahto and Laxman Mahto and others.

9.i. PW-6 in his cross-examination, he admitted in para-11 that he used to go in the *mohalla* of accused for taking out milk in the house of Bhole choudhary and have noticed altercation between victim and her husband Ram Naresh Mahto and due to this reason he has stated the cause behind the occurrence in his *fardbeyan*. He also stated in para-12 that he heard the information regarding the demand of dowry from Triveni Tanti, Prasadi Mahto and late Lakshman Mahto. He further stated that he did not submitted any *sanha* in this regard. S.I. after hearing statements of other witnesses mentioned about demand of dowry in his report. After exhibiting *fardbeyan*, S.I. did not further asked anything from him.

10. PW-7 Munna Thakur in his examination-in-chief stated that occurrence took place 10 years ago at about 3.30 AM when he heard *hulla* he went to the house of accused and found that the wife of accused Ram Naresh Mahto was shouting that the accused/appellants killed her by fire. He



further stated that in the morning the S.I. of police came and he prepared inquest report in his presence and he has put his signature on the inquest report. The signature of the witnesses on inquest report is marked as Ext.-4. He stated in para-2 of his deposition that the marriage of deceased with accused Ram Naresh Mahto took place 4 to 5 years ago and the mother of Ram Naresh Mahto was also residing in the house. He further stated that altercation took place between the deceased and her husband due to demand of dowry of motor cycle and the police has interrogated him on the same day and further did not inquired from him.

10.i. PW-7 in his cross-examination he stated that in front of police his statement was recorded and it is not true that he in-front of police stated that accused/appellants Naresh Mahto went his *sasural* to bring back her wife. PW-7 in his cross examination stated that the relationship between deceased wife and appellants/accused was good and there was no dispute between them and they shared the harmonious relation with each other and lived happily.

11. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the



present case.

12. The learned counsel appearing on behalf of the appellants submitted that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear from the statement of PW-4 and PW-5 the brother and father of the victim respectively have not supported the prosecution case and were also not declared hostile. As per PW-4 and PW-5 the relation between wife and husband was at harmony and good. Both PW's further stated in their deposition that victim died due to catching of fire to the *saree* while she was preparing food. He further submitted that PW-6 the informant was not been examined under Section 161 of Cr.P.C. and PW-7 was not reliable witness as his statement was contradictory in his disposition and his statement before police in case diary. PW-7 in his cross examination stated that the relationship between deceased wife and appellants/accused was good and there was no dispute between them and they shared the harmonious relation with each other and lived happily.

13. Learned counsel further submitted that there



is no any evidence of dowry demand from appellants and the demand of dowry was not established and clearly denied by PW-4 and PW-5. Son-in-law has given the information that victim died due to fire caught in her *saree* while she was preparing food and this fact is admitted by the brother and father of the victim lady who has been examined in this case as PW-4 and PW-5. He stated that without the prove of cruelty or harassment being perpetrated by husband or any relative soon before the death of wife and the only circumstances of death due to burn injuries within the seven year of marriage is not enough to attract the ingredients of Section 304B of the IPC. In the present case the demand of dowry and cruelty both were the self imagination and assumption of the informant and without any corroboration.

14. Learned counsel further submitted that the instance case was based on circumstantial evidence there was no direct evidence or ocular witnesses were available. In circumstantial evidence the chain of guilt should clearly established the guilt of accused and no other probability, which is not established in the instant case. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have



been done by the accused. He also submitted that Investigating Officer has not been examined in this case causing great injury and prejudice to the defence and the case diary has also not marked as exhibit in the instant case. He further submitted that for appellant no. 2, there is no single evidence against her except that she lives in the same house, same has been stated by PW-6 and PW-7 in their deposition and she was wrongly, illegally and arbitrarily convicted in this case.

15. On the other hand, learned Additional Public Prosecutor has vehemently opposed these appeals and submits that there is direct allegation against the present appellants, for committing an offence under Sections 304B and 498A of IPC and under Section 3 of Dowry Prohibition Act. He submitted that death has been occurred in matrimonial house within the seven years of her marriage. The alleged incident took place within one week after she returned from her parental home and the death of victim was clearly and evidently unnatural. Further it is submitted that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeals should not be entertained.

16. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and



defence before the Trial Court.

17. The Hon'ble Apex Court in the case of ***Charan Singh v. State of Uttarakhand 2023 SCC online SC 452*** has laid down that:

wherein a woman died an unnatural death in her matrimonial home, held that mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304-B and 498-A IPC if the cruelty or harassment has not been proved to be soon before the death.

18. On deeply studied and scrutinized all evidences, it is evident to note that the prosecution alleged that the deceased was murdered by the accused persons for demand of dowry. the defence denied the allegation leveled against them and said that the deceased died due to fire caught in her sari while she was preparing food and this fact is admitted by the brother and father of the victim lady who has been examined in this case as PW-4 and PW-5. The demand of dowry was not established in the instant case. On a collective appreciation of the evidence I am of the considered view that the per-requisites to raise presumption under Section 304B of the IPC and Section 113B of the Indian Evidence Act having not been fulfilled, the conviction of the appellants cannot be



justified.

19. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under section 498A and 304B of the IPC. The family member of the deceased victim her own brother and father has examined as PW4 and PW5 not stated anything about the cruelty or harassment to the deceased by the appellants or any of his family members on account of demand of dowry soon before the death or otherwise. Rather harassment and demand of dowry has not been narrated by anyone. It is only certain oral averments regarding demand of motorcycle as dowry. The aforesaid evidence led by the prosecution does not fulfill the per-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act. Even the ingredients of Section 498A of the IPC not made out for the same reason as there is no evidence of cruelty and harassment to the deceased soon before her death.

20. To attract the provision of Section 304-B of the Code, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”. To appreciate the arguments raised by



the learned counsel for the parties, a perusal of section 304B and 498A of the IPC and Section 113B of the Indian Evidence Act, 1872 would be required. The same are extracted herein below:- Section 304B of the IPC read as follow:

“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.

Explanation-For the purpose of this subsection, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

20.i. The essential ingredients of dowry death under Section 304-B of the IPC are as follow:

- (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.

20.ii. The accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113B of the Indian Evidence Act. Section 498A of the IPC read as:

“Section 498A: Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. — For the purposes of this section, “cruelty” means—

(a) 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) of the woman; or

(b) 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 ”

20.iii. Section 113B of the Indian Evidence Act

read as:

“Section113B: 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.”

21. 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.

22. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailable



substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption en-grafted in Section 113B 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 above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

23. The family members either related to blood, marriage or adoption of the deceased can lodge the complain under Section 498A of the IPC. As in the present case, the informant is the chowkidar of the *mohalla* and not related to the deceased either by blood, marriage or adoption. On the contrary, the PW-4 and PW-5 brother and father of the deceased have denied the allegation with regard to demand of dowry or assault upon the deceased. But in the instant case the family members not supported the prosecution case.

24. Further, Investigating Officer has also not been examined who has investigated the case during the course



of trial as it was fatal since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Further, there is no eyewitnesses to the said occurrence and all the PW's were hearsay witnesses and have not seen the occurrence. In the instant case that the prosecution failed to established beyond the shadow of all reasonable doubt that the accused must have subjected the deceased victim to cruelty in connection with demand for dowry soon before her death.

25. Hence, the Judgment of conviction dated 05.12.2005 and order of sentence dated 12.12.2005 in Sessions Trial No. 178 of 1995 arising out of Barauni P.S. Case No. 257 of 1994, passed by learned Additional Sessions Judge, Fast Track Court No-I, Begusarai is set aside and the accused/appellants are acquitted from the charges leveled against them. As the appellants are on bail, they are discharged from liability of their bail bond.



26. Accordingly, this appeal stands allowed.

27. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02.05.2025
Transmission Date	02.05.2025

