

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.41 of 2014**

Arising Out of PS. Case No.-13 Year-2007 Thana- MOTIHARI MUFASIL District- East
Champaran

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1. Rakesh Sah, Son of Binda Sah.
2. Binda Sah, Son of Late Aklu Sah.
Both resident of Village- Lakhaura Bichala Tola, Police Station- Lakhaura
Mufassil, District- East Champaran.
- Appellant/s
- Versus
- The State of Bihar
- Respondent/s
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Appearance :

For the Appellant/s : Mr. Amit Anand, Advocate
For the State : Mr. A. M. P. Mehta, APP

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

Date: 06-08-2025

Heard learned counsel for the appellants and
learned APP for the State.

2. Learned counsel for the appellants submits
that appellant no. 2, namely, Binda Sah has already died during
the pendency of this appeal vide Letter No. 224 / vidhi of
Superintendent of Police, East Champaran, Motihari, so the
appeal against the above named appellant no. 2, namely, Binda
Sah stands abated and the sole appellant no. 1, namely, Rakesh
Sah shall continue.

3. The present appeal has been filed under
Section 374(2) of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Cr.P.C') against the Judgment of



conviction dated 19.12.2013 and order of sentence dated 23.12.2013 in Sessions Trial No. 700 of 2009, G.R. Case No. 131A of 2007 arising out of Mufassil P.S. Case No. 13 of 2007 passed by the learned 6th Additional District and Sessions Judge, Motihari, East Champaran, whereby and where-under the appellant has been convicted for the offences punishable under Sections 304 (B) read with 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') to undergo rigorous imprisonment for ten years and further he has convicted under Sections 201 read with 34 of the IPC to undergo rigorous imprisonment for a period of three years and a fine of Rs. 3,000/-. Both the sentences shall run concurrently.

4. On the basis of the fardbeyan of the informant Mufassil P.S. Case No. 13 of 2007 the case was registered against the accused persons. The Police took up investigation and after completion of investigation, charge sheet was submitted before the Trial Court. After cognizance and commitment, the Sessions trial was transferred to the Court of 2nd Additional Sessions Judge, Siwan for disposal.

5. On behalf of prosecution total 9 witnesses were examined. Out of them, PW-1 Yogendra Sah, PW-2 Rohit Sahani, PW-3 Bishwanath Sah, PW-4 Moti Lal Sah, PW-5



Lagandeo Sah, PW-6 Usha Devi (mother of the deceased), PW-7 Bhikhari Sah (informant and father of the deceased), PW-8 Ram Ayodhya Das (IO) and PW-9 Dr. A.A. Lari. PWs-1 to 5 has been declared hostile by the prosecution. Documentary evidences exhibited on behalf of the prosecution, Ext-1 Signature of the informant on the written petition, Ext-2 Endorsement on the written petition, Ext-3 Inquest report and Ext-4 Postmortem Report.

6. PW-6 in his examination-in-chief stated that the deceased Anita Devi was her daughter. She was married to the accused Rakesh Shah, six years prior to her death. Anita died four years ago in her matrimonial home. Her in-laws had been demanding a gold chain and a buffalo as dowry. When the demands were not fulfilled, they started assaulting her. Thereafter, when her husband went to bring her back, but the accused refused to send her daughter. Later, Rakesh's brother informed them that Anita eloped. While searching for her, her body was found in a pond located behind the accused's house. She further stated that she went to the police station and her statement was recorded.

6.i. In her cross-examination, she stated that her statement was recorded by the police during supervision,



approximately a month after her daughter's death, and it was taken at her doorstep. She further stated that her daughter had told her that the accused used to beat her for dowry. She further stated that she does not know how Anita died, and she has not seen the pond from where the body was recovered.

7. PW-7 in his examination-in-chief, stated that the deceased, Anita Devi, was his daughter. She was married to the accused Rakesh Shah in the year 2005 and died in the year 2007 in her matrimonial house. On the day of Khichdi, he went to his daughter's matrimonial home, where Anita informed him that her in-laws were assaulting her for not bringing a buffalo and a gold chain. He asked her father-in-law Binda Shah for her *bidai* upon which her in-laws stated that her husband knows about it and who refused to send her back without receiving the buffalo and chain. Four to five days later, Jagmohan informed him that Anita had gone out in the morning and had not come back yet. A search was initiated and about 4-5 days later, her body was found by fisherman in a pond near the accused's house. People gathered at the scene and the police arrived and took the body into custody. He then went to the police station and filed a case. The Sub-Inspector wrote down the complaint and took his signature, which is marked as Exhibit A.



7.i. In his cross-examination, he stated that his statement was recorded before the police for the first time. At the time of lodging of the FIR it was not recorded again. After Anita's marriage, he visited her matrimonial home three times. Each time, he stayed for only about ten minutes. On one occasion, Binda Shah refused to call his son in front of him and said his son (Rakesh) knew everything and he (Binda) did not know anything. He first received news of Anita's disappearance on Saturday and first saw her dead body in a pond on the following Monday, where it was entangled in water hyacinth. He informed his wife and children about the dowry demands. The body was handed over to him after postmortem, and he performed the cremation on Tuesday. None of Anita's in-laws attended the cremation despite being informed.

7.ii. He further stated that Anita had come to his house twice after marriage once 10-12 days after marriage, and once 10-15 days after the ceremony of *donga*. When she came after *donga* for the first time she told him about dowry demands and assault. However, she did not mention that her husband had threatened to kill her. He did not see any cut marks on her body but said Anita told him she was hurt. He never took her to a doctor nor made any complaint against her in-laws at that time.



Anita had no children. He denied the suggestion that his daughter was mentally unsound. He stated he was unaware of any incident in which she slipped into the pond while defecating. He denied that he falsely implicated the accused to extort money.

8. PW-8 in his examination-in-chief stated that on 22.01.2007, he was posted as a Sub-Inspector (SI) at Lakhaura Police Station. On that day, Bhikhari Sah submitted a written application, which he forwarded to Mufassil Police Station for registration of the FIR. The forwarding note from Lakhaura P.S. SHO was marked as Exhibit 2. Based on this, Mufassil (Lakhaura) P.S. Case No. 13 of 2007 was registered and he was assigned the investigation. During the investigation, he first visited the place of occurrence along with the police force and the informant. They searched the pond, and the dead body of Anita Devi was recovered near the roots of a bamboo grove on the south side of the pond. The body was identified by the informant's and thereafter he prepared the inquest report, which bears the signatures of the informant, Vishwanath Shah, and himself which was marked as Exhibit 3. Thereafter, the body was sent for postmortem and the place was inspected.

8.i. He further stated that the first place of



occurrence was the house of accused Binda Shah, facing west and constructed with tiles. As the house was locked from outside, the rooms could not be inspected. There are six ponds along the boundary of the house, one of which is where the body was found. He recorded the statements of Bhikhari Sah, Usha Devi, Vishwanath Shah, Lagandev Shah, Yogendra, Rohit Sahni, Motilal Shah, Rajeshwar, among others. In their statements, Yogendra Shah and others said the accused murdered Anita Devi a day or two earlier and concealed her body in the pond. They also stated that she was being harassed for dowry. He further stated that the second place of occurrence was beneath a bamboo grove on the eastern bank of the pond from where the body was recovered. The postmortem report was later obtained. After supervision by the Deputy SP and SP, the investigation was handed over to Madan Mohan Prasad (SHO) on 30.12.2007 due to the witness's suspension for other reasons.

8.ii. In his cross-examination, he stated that about 10-12 local fishermen were sent into the pond to recover the body and thereafter he recorded the statements of all persons who went along for the search of the deceased. Although some of them were involved in retrieving the body, it was not mentioned in their statements that they assisted in the recovery.



He was present at the place from 1:30 PM to 6:00 PM and first went to the house of the accused. He could not recall the duration spent at each location (house and pond). He did not enter the pond himself. He confirmed that no witness statement mentioned the body being buried under soil at the bamboo grove. The depth of the location was not mentioned in the case diary. The bamboo grove was located east of the pond, and contained about 50-60 bamboo stakes, owned by Ganesh Sah. The *Khata-Khasra* details of the bamboo grove were not verified. Witnesses Vishwanath, Lagan Dev, Rohit Sahni, Motilal Shah, Rajeshwar Sahni, Manoj Sahni were from the informant's village and considered independent witnesses. No witness from the accused's village was examined.

8.iii. He further stated that no witness claimed to have seen the accused killing the deceased or throwing her body into the pond. He confirmed that no bleeding wounds or injury marks were initially observed on the body. Later, he noticed a grazed wound on the left side of the neck and a wound-like mark near the right side of the mouth. He could not measure the wounds or determine if they were fresh or old. There was no record of whether the clothes were muddy or torn. His opinion on the cause of death was based on witness statements. He



recorded all the witness statements at the pond between 2:00 PM and 6:00 PM. He tried to examine other villagers of the deceased's village, but this was not noted in the case diary. He could not recall who told him that the body was buried in mud. He later stated that the body was sent for postmortem by tractor, as recorded in the diary. He was not present at the postmortem. He reached the scene on foot, accompanied by the informant. He denied the suggestion that he recorded the informant's statement while sitting at the police station or that the accused was falsely implicated for unlawful gain.

9. PW-9 in his examination-in-chief stated that on 23.01.2007 he was posted at Sadar Hospital Motihari as D.S Sadar Hospital Motihari. On that day at 7:11 am he conducted the postmortem examination of the dead body of Anita Devi, w/o Rakesh Sah at village Bichala tola Lakhaura P.S Lakhaura District East Champaran and found the following antemortem injuries on her dead body:

- i. both eye congested*
- ii. Serosangeos coming out from the Nostril*
- iii. Abrasion $\frac{1}{2}$ cm x $\frac{1}{2}$ cm present at right angle of mouth.*
- iv. A ligature mark width about $\frac{1}{2}$ cm found high up in neck up to 1m angle at mandible but absent in back.*

9.i. On dissection skull NAD, Brain congested,



Neck trachea congested and petechial hemorrhage, found beneath the skin at neck. Thorax NAD but both limbs congested. Heart right chamber contains dark fluid blood, left chamber was empty. Abdomen- Abdominal viscera congested. Stomach contains semi-digested juice about 4 ounce. Urinary bladder empty. Cause of death- In his opinion it is asphyxia caused by smothering as well as strangulation. Time elapse since death- 36 to 42 hrs. The said postmortem report is in his pen and signature, which is marked as Ext. 4.

9.ii. In his cross-examination, he stated that the dead body was produced by police. At the time postmortem, there was no relative of deceased present. He has not written the time in which postmortem was conducted. He did not find blood clot. in the mouth or in nostril. On the basis of rigor mortis he has written the time of death. He has not written the colour of the injury. Colour of the injury is the basis of fixing the time of injury. Arisen of this case had not been caused by *lathi*. There was no sign of finger on neck. It is not a fact that this postmortem is false.

10. After closure of the prosecution evidence, the appellant was 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.

11. The learned counsel appearing on behalf of the appellants submitted that the impugned judgement 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 judgement of conviction and order of sentence. He further submits that from perusal of the evidences adduced on behalf of the prosecution it is crystal clear that on 20.01.2007 brother-in-law of the deceased went to the informant's house and informed that deceased was not at her matrimonial home. He submits that how it is possible that the family who killed informants daughter went to inform them about missing of the deceased. It is alleged by the informant that *sasural* party was demanding golden chain and a buffalo since year 2006 but prior to the alleged occurrence neither FIR nor any complaint was lodged by the informant against the appellants in regard to torture, harassment and demand of dowry.

11.i. He further submits that body of the deceased was found in the pond behind the appellant's premises. If appellants would have killed the deceased then why would they throw the body of the deceased behind their house as



everyone knows that the dead body smells foul. 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.

11.ii. 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. The Learned trial Court has failed to appreciate the evidence it's right perspective and impugned judgement of conviction is bad in law as well as on fact and such to set aside. Learned counsel further submitted that appellant no.1 has spend almost seven years in judicial custody,



where, the appellants have suffered and undergone persistent agony on the account of the same and are struggling for the defence since last 16-17 years. So, the appellants should have been acquitted from the conviction as sentenced against them or period undergone.

11.iii. Learned counsel further relied upon the judgment passed by 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.

12. 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 of the IPC. 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.

13. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

14. 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 father of the deceased (PW-7) in his deposition stated that on the day of Khichdi, he went to his daughter's matrimonial home, where she informed him that her in-laws were assaulting her for not bringing a buffalo and a gold chain. Which has been also corroborated by PW-1. So, this established the fact that soon before her death she was subjected to the cruelty and assault on demand of dowry. There is no earlier complaint regarding the demand of dowry from the family members of the deceased due to the just and natural fact that on the occasion of first or second demand the family members try to compromise and settling the demand within the family and want to save the matrimonial life of his daughter. The brother in law went to inform the family members of the deceased but did



not inform the police at first instant which reasonably required from a prudent men to act in particular circumstances and also no justification has been provided for the said act by the appellant.

15. Further the injury report of the deceased shows that she died not because of drowning but because of asphyxia caused by smothering as well as strangulation. Moreover deceased died within seven years of her marriage and also due to unnatural death. Dead body is recovered near the house of the accused and soon before her death, she was subjected to cruelty in connection with demand for dowry is established. Accordingly it has been concluded that the prosecution has established its case beyond shadow of all reasonable doubts and now the burden shifted on the appellant to discharge this burden. Considering all the above facts and circumstances the presumption against the accused which has been provided under Section 113 B of the Indian Evidence Act (herein after referred as 'IEA') has been raised and now the burden has been shifted on the appellant to rebut the presumption elevated against him. At this point of time it is imperative to observe Section 106 of IEA as it is within the special knowledge of the appellant to explain the alleged



occurrence and the cause of death of the deceased. Section 106 of the IEA read as follow:

“106. Burden of proving fact especially within knowledge. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

16. The Hon’ble Apex Court, in the case of ***Trimukh Maroti Kirkan v. State of Maharashtra (2007) (57) ACC 938 SC*** held that:

*“12. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. In *State of Punjab vs. Karnail Singh*(2003) 11 SCC 271). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the*



facts and circumstances of the case. Here it is necessary to keep in mind section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

(b) A is charged with traveling on a railway without ticket. The burden of proving that he had a ticket is on him."

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

17. In the present case the prosecution has discharged the onus by proving all the elements necessary to establish the offence. To the satisfaction of this court the



prosecution have succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused. The Hon'ble Apex Court, in the case of **Nagendra Shah v. State of Bihar (2021)** *the it has been reinforced that, in cases resting on circumstantial evidence, an accused's failure to provide a reasonable explanation as required by Section 106 of IEA could serve as an additional link in the chain of circumstances.* In the instant case there is no direct or ocular witness is present in the case so the case is completely based on circumstantial evidence. In the present case as no justification has been provided by the accused regarding the circumstances which led the death of deceased add an additional link to the circumstantial evidence which established the guilt of accused.

18. The Hon'ble Apex Court, in the case of ***Dinesh vs State Of Haryana on 25 April, 2014***

*“17. Prima facie we are of the view that neither definite period has been indicted in the aforementioned section nor the expression “soon before” has been defined. In the case of **Dhian Singh & Anr. vs. State of Punjab, (2004) 7 SCC 759**, this Court held that:- “The contention of the appellant’s counsel is that even if it is proved that there was cruelty on account of demand of dowry, such cruelty shall be soon before the death and there must be proximate connection between the alleged*



cruelty and the death of the deceased. It is true that the prosecution has to establish that there must be nexus between the cruelty and the suicide and the cruelty meted out must have induced the victim to commit suicide. The appellant has no case that there was any other reason for her to commit suicide. The evidence shows that the first appellant had demanded dowry and he had sent her away from his house and only after mediation she was taken back to the appellant's house and death happened within a period of two months thereafter. These facts clearly show that the suicide was the result of the harassment or cruelty meted out to the deceased. The presumption under Section 113-B of the Indian Evidence Act could be invoked against the appellant and the Sessions Court rightly found the appellant guilty of the offence punishable under Section 304B IPC and Section 201 IPC."

19. In the present case also the death of deceased is because of asphyxia caused by smothering as well as strangulation and the same is confirmed by the injury report of the deceased which also shows that she died not because of drowning. The prosecution has proved its case to the satisfaction of the court so as per law the presumption of section 113B of the IEA will be raised against the accused.

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 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.

21. 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.

22. 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 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.”

23. 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.

24. The Hon'ble Apex Court, in the case of *State of U.P vs Tribhuwan, (2018) 1 SCC 90* has laid down that, time spent in custody by a convicted persons, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set off under Section 428 of Cr.P.C.

25. Hence, keeping in view all the material on record and the observation of the Hon'ble Apex Court, it is observed that the appellants have been in judicial custody for approx six years five months and the Judgment of conviction dated 19.12.2013 and order of sentence dated 23.12.2013 in Sessions Trial No. 700 of 2009, G.R. Case No. 131 A of 2007 arising out of Mufassil P.S. Case No. 13 of 2007 passed by the learned 6th Additional District and Sessions Judge, Motihari, East Champaran, is hereby upheld and sustained. As there is no



adverse report against the appellant about his conduct otherwise the same would have been brought to our notice by learned counsel for the State and the sentence of the appellant is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

26. Accordingly, this appeal is partly 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	NAFR
CAV DATE	15.07.2025
Uploading Date	06.08.2025
Transmission Date	06.08.2025

