

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.566 of 2025

Arising Out of PS. Case No.-273 Year-2023 Thana- HILSA District- Nalanda

Awadhesh Prasad S/o Jagdish Prasad Resident of Village- Barki Bhawanpura,
P.S.- Ghoshi, District- Jehanabad

... .. Appellant/s

Versus

1. The State of Bihar
2. Kundan Kumar S/o Ramesh Ram R/o Vill.- Khorampur, P.S.- Hilsa, Distt.-
Nalanda

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Dr Rajendra Prasad, Advocate
For the Respondent/s : Mr. Ajay Mishra, Spl PP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 18-09-2025

The present criminal appeal has been preferred under Section 413 of the *BharatiyaNagrikSurakasha Sanhita*, 2023 against judgment of acquittal dated 06.02.2025 passed by the learned Additional District and Sessions Judge-III, Hilsa, Nalanda in Sessions Trial No. 668 of 2023, arising out of Hilsa P.S. Case No. 273 of 2023 (Reg. No. 214 of 2023), whereby Respondent No. 2 has been acquitted by the learned trial Court from the charge of Sections 304(B), 34 of Indian Penal Code.

2. The prosecution case, in brief, is that three years ago informant's daughter Aarti Devi @ Gauri got married with



Kundan Kumar, son of Ramesh Ram of Village- Khorampur, P.S.-Hilsa, District-Nalanda and after marriage Aarti Devi @ Gauri's husband Kundan Kumar, father-in-law Ramesh Ram, mother-in-law Anita Devi, brother-in-law (Bhainsur) Manish Ram, brother-in-law (Devar) Chandan Kumar used to demand golden chain of two tolas, golden ring of one tola and a motorcycle as dowry from the informant and as the informant was unable to fulfil the said demand, Aarti Devi was subjected to regular assault. A few months ago, Aarti Devi was told by her husband Kundan Kumar, father-in-law Ramesh Ram, mother-in-law Anita Devi, brother-in-law Manish Ram, brother-in-law Chandan Kumar that she should ask her father to give golden chain of two tolas, golden ring of one tola and a motorcycle and if she would fail to do so, she will be killed and on 09.05.2023 at Kundan's residence all of them together strangled Aarti Devi @ Gauri to death. On receiving that information, the informant along with others rushed to the matrimonial house of Aarti Devi @ Gauri and found that Aarti Devi @ Gauri was murdered and her dead body was lying on the *chauki* (wooden cot) in the house.

3. On the basis of written statement of the informant, Hilsa P.S. Case No. 273 of 2023 was instituted under Sections



304(B), 34 of Indian Penal Code and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether eight prosecution witnesses i.e. PW1- Rudal Prasad PW2- Sita Devi, PW3- Avadhesh Prasad, PW4- Kajal Bharti, PW5- Jai Prakash Narain, PW6- Dr. Vishwjeet Kumar, PW7-Dr. Rajsheikhar and PW8- Sudheer Chaudhary. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Exhibit 1- Hand writing and signature of PW1 on written complaint, Exhibit P2- Endorsement on written complaint by the then S.H.O. Hilsa, Exhibit P3- Hand writing and signature on formal FIR by S.H.O Hilsa, Exhibit P4- Hand writing and signature of PW 5 on charge-sheet, Exhibit P5- Post-mortem report and signature on post-mortem report, Exhibit P6- Post-mortem report signature on post-mortem report, Exhibit C1- Signature on Inquest report. The defence has examined only one witness i.e., DW 1- Parvati Kumari. Court witness, CW 1- Birbal Kumar, an attesting witness of



inquest report, has also been examined. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

5. The learned trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that the prosecution has failed to prove even foundational facts, so presumption of law does not get attracted and the onus remained on the shoulders of the prosecution only. The learned trial Court was of the opinion that the contradictions in the testimony of material prosecution witnesses are sufficient to discharge the onus of the accused persons, and therefore, the accused can be said to have successfully rebutted the presumption of law.

6. Learned counsel for the appellant has submitted that the learned Trial Court has failed to consider that there was unnatural death on account of demand of dowry within seven years of marriage and that the death has been established by clear and cogent evidences, therefore, the accused respondent is liable to be held guilty.

7. The learned counsel for the respondent-State has submitted that there is no perversity in the judgment of the



learned trial court, and the prosecution has failed to prove the guilt of the accused before the learned trial court. Therefore, the order of the learned trial court requires no interference in the present case.

8. We have heard learned counsel for the appellant and the respondent-State and have also gone through the records of the case.

9. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

10. Upon meticulous examination of the record, this Court notices a material discrepancy in the trial court's order concerning the dates of occurrence and registration of the F.I.R. The prosecution case, as per the F.I.R., records the date of occurrence as 09.05.2023 and the date of lodging the F.I.R. as 10.05.2023. However, in the impugned judgment of the trial court, the date of occurrence has been erroneously mentioned as 05.09.2023 and the date of F.I.R. as 05.10.2023. It is manifest that this is a typographical error in the recording of the order and not a discrepancy in the prosecution case itself. Such clerical error, though required to be noticed, does not materially affect the adjudication of the substantive issues arising in this



appeal.

11. Proceeding to the substantive aspects, it is observed that the prosecution has failed to establish with certainty the date of marriage of the deceased. The said fact assumes significance as, in order to attract Section 304B of the Indian Penal Code, it is imperative that the death of a woman occurs within seven years of her marriage and under circumstances otherwise than normal. The Hon'ble Supreme Court in ***Kans Raj v. State of Punjab*** reported in (2000) 5 SCC 207, has categorically held that proof of marriage within the prescribed period of seven years is a sine qua non for the applicability of Section 304B of the IPC, as mentioned in judgment which reads as under:

“9. The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304B. In order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns



or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have been subjected to soon before her death.”

12. In the present case, such foundational fact remains unproved.

13. The further requirement that the deceased must have been subjected to cruelty or harassment by the husband or his relatives in connection with any demand for dowry soon before her death also remains unsubstantiated. The testimonies of the prosecution witnesses are inconsistent and do not establish any specific demand of dowry at any point proximate to the death of the deceased. On the contrary, the statements of material witnesses rather indicate cordiality and affection between the parties. In ***Sher Singh @ Partapa v. State of Haryana*** reported in (2015) 3 SCC 724, the Hon'ble Apex Court reiterated that unless cruelty is shown to be inextricably linked with a demand for dowry, conviction under Section 304B



of the IPC cannot be sustained, as observed in paragraph 25 of the judgment which reads as under:

“25. The fundamental and vital question that the Court has to ask itself and find a solid answer to, is whether this evidence even preponderantly proves that the appellant had treated the deceased with cruelty connected with dowry demands. It is only if the answer is in the affirmative will the Court have to weigh the evidence produced by the appellant to discharge beyond reasonable doubt, the assumption of his deemed guilt”

14. It is equally well settled that the presumption under Section 113B of the Evidence Act does not arise automatically. Before such presumption can be invoked, the prosecution must first prove the foundational facts namely, (i) that the death occurred otherwise than under normal circumstances, (ii) that it occurred within seven years of marriage, (iii) that the woman was subjected to cruelty or harassment, and (iv) that such cruelty was in connection with a demand for dowry. Only then does the burden shift to the accused. The Hon'ble Supreme Court in ***Bajinath & Ors. v. State of Madhya Pradesh*** reported in (2017) 1 SCC 101 emphasized that unless these elements are established, the presumption cannot be drawn. In the present case, the



indispensable link between cruelty and dowry demand has not been proved, and the necessary foundational facts are absent, as observed in para 29 of judgment which reads as under:

“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.”

15. Moreover, the overall evidence of the prosecution appears inconsistent and unreliable. Allegations of strained relations are not sufficient by themselves; they must be corroborated with proof of demand or harassment connected with dowry. No such evidence has been produced.

16. In view of the above discussion, this Court is constrained to hold that the prosecution has failed to prove the essential ingredients of Section 304B of the I.P.C. The demand of dowry, as alleged, has not been established; the date of



marriage has not been proved with certainty; and there is no evidence to suggest that any cruelty or harassment was inflicted upon the deceased in connection with a demand for dowry soon before her death.

17. This Court is mindful of the principle reiterated in ***Kans Raj (supra)*** that suspicion, however strong, cannot take the place of proof. On cumulative consideration of the entire evidence, it is apparent that the prosecution has not succeeded in establishing the charge beyond reasonable doubt.

18. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

19. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further



strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das vs. State of Tripura (2011) 9 SCC 479***, Paragraph Nos. 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the



entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

20. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in (2008) 10 SCC 450 in Paragraph No. 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

"75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

21. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be



upset in absence of strong and compelling grounds.

22. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

23. Accordingly, the present appeal is dismissed.

24. Pending application(s), if any, shall stand disposed of.

(Sudhir Singh, J.)

(Rajesh Kumar Verma, J.)

Anushka/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2025
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