

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.724 of 2004

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Sunita Devi @ Sumitra Devi @ Urmila Devi wife of Shambhu Shah @
Garbhu Sah, resident of village-Sadhwara, P.S. Simri, District-Darbhanga.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (SJ) No. 764 of 2004

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Shambhu Sah @ Garbhu Sah son of late Nathuni Sah, resident of village-
Sadhwara, P.S. Simri, District-Darbhanga.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

=====

Appearance :

(In Cr. App. (SJ) No. 724 of 2004 and Cr. App. (SJ) No. 764 of 2004)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh, Adv. Mr. Ritwik Thakur, Adv. Ms. Kiran Kumari, Adv. Mr. Priyanshu, Adv.
For the State	:	Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 10-10-2025

Heard Ms. Vaishanavi Singh, learned counsel for the

appellants and learned Mrs. Anita Kumari Singh, APP for the

State.

2. The aforesaid two appeals are being taken up for

hearing together since they arise out of the same judgment and

order of conviction and sentence.

3. The aforesaid appeals under Section 374 (2) of the



Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.') have been preferred against the common judgment of conviction and order of sentence dated 12.10.2004 passed in Sessions Trial No. 40 of 2002 (arising out of Simri P.S. Case No. 36 of 2001) by the Court of the learned 1st Additional Sessions Judge, Darbhanga (hereinafter referred to as the learned 'Trial Judge'). By the said judgment the learned Trial Judge has convicted the appellants of both the aforesaid appeals for commission of offence under Sections 304B/34 and 201/34 of the Indian Penal Code (hereinafter referred to as the 'IPC') and sentenced them to undergo rigorous imprisonment for seven years for the offence under Section 304B/34 of the IPC and rigorous imprisonment for two years for the offence under Section 201/34 of the IPC. Both the sentences have however, been directed to run concurrently.

4. The short facts of the case as disclosed in the first information report based on the written report of the informant Jaimangal Sah is that his daughter Chandra Kala Devi was married with one Shambhu Sah (appellant) on 18.04.1995 according to Hindu rites and rituals, whereafter, she was subjected to physical and mental torture by the accused persons including the present appellants and a demand of Rs. 50,000/-



was made for the purposes of running a shop properly. It is alleged that the informant paid some amount of money and tried to pacify the matter, however, they remained adamant on their dowry demand. Two children were born out of the wedlock of the appellant Shambhu Sah and the deceased, who were aged about 4 years and 2 years at the time of occurrence. The informant has also alleged that his son-in-law i.e. appellant Shambhu Sah was running a sweet shop at Patna where he developed illicit relations with Sumitra Devi (appellant) who is a resident of Patna and they began to inflict both physical and mental cruelty upon the daughter of the informant on account of demand of Rs. 50,000/-. On getting an information on 11.06.2001 with regard to the fact that his daughter has been killed and the dead body has been made to disappear, the informant reached the house of his son-in-law and he was informed by the local people that his daughter was taken to Muzaffarpur whereupon he had a very strong suspicion that his daughter has been killed for want of demand of dowry and the children have either been hidden somewhere or killed. On the basis of the said written report, a formal FIR bearing Simri P.S. Case No. 36 of 2001 was registered under Sections 304B, 201 read with 34 of the IPC on 14.06.2001 at around 2:15PM,



against five accused persons including the present appellants.

5. After investigation, the police submitted charge-sheet on 14.11.2001 against the present two appellants, for offences under Sections 304B, 201 and 34 of the IPC while keeping the investigation pending against the other accused persons. On the basis of the said charge-sheet, cognizance has also been taken and the case was committed to the Court of Sessions and the case was numbered as Sessions Trial No. 40 of 2002, whereafter the trial judge framed charges on 07.03.2002 under Sections 304B/34 and 201/34 of the IPC against the appellants to which they pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution has examined seven witnesses to substantiate its case, out of whom, P.W. 1 Raj Kumar Sahni, P.W. 2 Yogi Sahni (both hostile), P.W. 3 Mahendra Choudhary and P.W. 4 Shatrughan Choudhary are the co-villagers of the informant, examined on the point of occurrence. P.W.5 Jaimangal Sah is the informant himself, as also the father of the deceased, P.W. 6 Radhe Shyam Sah is the cousin brother of the informant who has also been declared hostile and P.W. 7 Md. Kaisar Alam is the Investigating officer of the case.



7. I have heard the arguments of the learned counsel for the appellants and the learned APP for the State.

8. Ms. Vaishnavi Singh, learned counsel for the appellants has contended, at the outset, that there is a delay in lodging of the first information report inasmuch as while the occurrence is alleged to have been taken place on 11.06.2001 and the informant also got knowledge about death of the deceased on the same date, yet the written report was filed before the police only after a lapse of 3 days on 14.03.2001 whereupon the formal FIR was drawn. It has also been stated that the said FIR was only received in court on the next date i.e. on 15.06.2001 and the prosecution has not been able to tender any explanation for the delay caused, much less a plausible one. Such an unexplained and inordinate delay has been contended to be fatal to the case of the prosecution. In support of her contention, learned counsel has relied upon the case of **Nand Lal & Ors. Vs. State of Chhattisgarh** reported in **(2023) 10 SCC 470** by referring to paragraphs 23 and 24 thereof. She has further submitted that out of the six private witnesses examined on behalf of the prosecution, P.Ws. 1, 2 and 6, who are the co-villagers of the informant, have not supported the case of the prosecution, hence have been declared hostile. It has, however,



been pointed out that these witnesses have been cross-examined at length and they have maintained their stand that the deceased was the second wife of the appellant Shambhu Sah and she died on account of illness. Besides pointing out that the age of the eldest child is nine years, the attention of this court has also been invited to the evidence of P.W. 2 who despite being a hostile witness has stated in his cross examination that there were cordial relations between the deceased and the appellant Sumitra Devi and that the deceased was the second wife of the appellant while maintaining that the appellant Sumitra Devi was originally the wife of the appellant Shambhu Sah. Besides PW1 and PW2, the two hostile witnesses, P.W. 3 (Mahendra Chaudhary) and P.W.4 (Shatrughan Chaudhary) are the other two witnesses who have also been examined on the point of occurrence and who also happen to be co-villagers of the informant but have not supported the case of the prosecution and have yet not been declared hostile. P.W. 3 in his examination-in-chief has stated that the deceased died due to illness and also that there was a love marriage between the deceased and the appellant. In para-2 of his evidence, this witness has also stated as a matter of fact, the children of the deceased have been residing with appellant Sumitra Devi in



Patna. P.W. 4 has also supported the factum of the deceased dying on account of illness in his examination-in-chief and in paragraph-2 of his deposition, he has also admitted that the appellant Shambhu was earlier married to appellant Sumitra and subsequently had entered into a love marriage with the deceased. He has also stated that the eldest son of the appellant and the deceased was aged 10 years and considering that his statement was made in the year 2002, the learned counsel has raised serious objection to the fact that the death of the deceased has taken place within 7 years of marriage.

9. Upon taking this Court through the evidence of P.W. 3 and 4, learned counsel for the appellants has contended that both the aforesaid witnesses are full-fledged prosecution witnesses and yet, they have neither supported the prosecution case nor have been declared hostile. As such, the evidence of these witnesses becomes binding on the prosecution and to buttress this submission, the learned counsel has placed reliance on the case of **Raja Ram Vs. State of Rajasthan reported in (2005) 5 SCC 272** and paragraph-9 thereof is being quoted hereunder:

“9. But the testimony of PW 8 Dr. Sukhdev Singh, who is another neighbour, cannot easily be surmounted by the prosecution. He has testified in very clear terms that he



saw PW 5 making the deceased believe that unless she puts the blame on the appellant and his parents she would have to face the consequences like prosecution proceedings. It did not occur to the Public Prosecutor in the trial court to seek permission of the court to heard (sic declare) PW 8 as a hostile witness for reasons only known to him. Now, as it is, the evidence of PW 8 is binding on the prosecution. Absolutely no reason, much less any good reason, has been stated by the Division Bench of the High Court as to how PW 8's testimony can be sidelined."

10. The above-mentioned case of **Raja Ram (supra)** finds a mention in subsequent judgments of **Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi)**, reported in **(2005) 5 SCC 258** and the learned counsel has relied on paragraph-30 and 31 of the said judgment and has also made a reference to a case reported in **AIR 2022 SC 3373, Virendra Vs. State of Madhya Pradesh**, relying on paragraph-7 of the said judgment.

11. Learned counsel has further submitted that there are several infirmities and inconsistencies in the evidence of the prosecution witnesses including that of the informant who has been examined as P.W. 5, hence it has been argued that the testimony of all the prosecution witnesses are bereft of credibility. It has next been submitted that there have been some



major lapses in the investigation as the Investigating Officer P.W. 7 has failed even to record the statements of the children whose evidence would have had important bearing on the present case. The defence had also tried to adduce the evidence of the son of the deceased by examining him as D.W.-1, but as a matter of fact the trial court did not permit his examination considering him a child witness and finding him incompetent to depose in the court

12. The primary contention raised on behalf of the appellants is that the prosecution has miserably failed to prove its case of demand of dowry and that of torture being meted out to the deceased soon before her death. Learned counsel thus submits that in absence of essential ingredients of Section 304B of the IPC, the said offence is not at all made out against the appellants, hence the conviction of the appellants under the aforesaid section cannot be sustained. It has also been pointed that there is no sufficient evidence on record even to prove the fact that the death of the deceased has taken place within a period of seven years of marriage and that the same was an unnatural death, inasmuch as the prosecution witnesses themselves including P.W. 3 and 4 have clearly stated that the deceased had died on account of illness and Investigating



Officer (P.W. 7) has also stated in his evidence that the witnesses have stated before him that the deceased died on account of an attack of diarrhoea. The counsel for the appellants has relied upon a few case laws on the point that in absence of the essential ingredients of demand of dowry and cruelty meted out soon before death, no offence under Section 304B IPC would be made out and no conviction in absence of these ingredients which are *sine qua non* of Section 304B could be legally maintained.

13. The case of **Charan Singh Vs. The State of Uttarakhand reported in AIR 2023 SC 2095** has been relied upon by the learned Counsel for the appellants and paragraphs 11, 21 and 23 of the said judgment passed by the Hon'ble Apex Court have been pointed out to contend that when the evidence led by the prosecution does not fulfill the prerequisites to invoke presumption u/s 304B IPC or section 113B of the Indian Evidence Act, the conviction of the appellants cannot be justified. The said judgment was followed in the case of **Karan Singh Vs. State of Haryana**, reported in **2025 SCC Online SC 214** wherein the essential ingredients of Section 304B IPC have been enumerated and it has been laid down that the presumption u/s 113B of the Indian Evidence Act will apply only when it is



established that soon before her death, the woman has been subjected by the accused to cruelty in connection with demand for dowry. Paragraph-8 of the said judgment is being quoted hereunder: -

“8.

The presumption under Section 113 -B will apply when it is established that soon before her death, the woman has been subjected by the accused to cruelty or harassment for, or in connection with, any demand for dowry. Therefore, even for attracting Section 113-B, the prosecution must establish that the deceased was subjected by the appellant to cruelty or harassment for or in connection with any demand of dowry soon before her death. Unless these facts are proved, the presumption under Section 113-B of the Evidence Act cannot be invoked.”

14. Further in this regard, the learned counsel has also relied upon paragraphs 6 & 7 of the case of **Chabi Karmakar and Ors v/s The State of West Bengal** reported in (2025) 1 SCC 398 and paragraphs 12, 18 and 23 of the case of **Shoor Singh and Ors v/s State of Uttarakhand** reported in (2025) 2 SCC 815 to emphatically submit that even the informant P.W. 5 has not given any specific instances of dowry demand or torture, much less being soon before death, hence the essential ingredients in order to constitute an offence u/s Section 304B



IPC is lacking.

15. Per Contra, the learned APP for the State Ms. Anita Kumari Singh has submitted in response, that the death of the deceased has taken place in unnatural circumstances within 7 years of marriage and the appellants in conspiracy with each other have caused the said death, which fact has been supported by the prosecution witnesses, in as much as the informant PW 5 has supported the version of the First Information Report that the deceased was subjected to torture on account of demand of Rs 50,000/- for running the shop of the husband Shambhu Sah and subsequently caused her death on account of non-fulfillment of the said demand and even caused disappearance of evidence by surreptitiously cremating the dead body of the deceased.

16. I have minutely perused both the oral and the documentary evidence besides hearing the learned Counsel for the parties. It would be necessary to cursorily discuss the evidence before proceeding further.

17. The prosecution in order to substantiate its case, has examined seven witnesses out of whom PW 1 Raj Kishore Sahni, P.W.2 Yogi Sahni and P.W. 6 Radhey Shyam Sah are the witnesses who are residents of the village of the informant, have not supported the prosecution case and have been declared



hostile, hence their evidence do not warrant any discussion.

18. The evidence of P.W. 3 Mahendra Chaudhary and P.W-4 Shatrughan Chaudhary who also happen to be the co-villagers of the informant have been examined on the point of occurrence. P.W.3, Mahendra Chaudhary has stated in his examination-in-chief that the wife of appellant Shambhu Sah, the deceased herein, was unwell and she was taken for treatment to Muzaffarpur. He had further stated that he later got to know that the deceased Chandrakala Devi had died and that the appellant Shambhu Sah had another wife namely Sumitra Devi who used to reside in Patna. In his cross-examination he has stated that the children of the deceased were staying with appellant Sumitra Devi at Patna where the later is looking after their education.

19. P.W. 4 Shatrughan Chaudhary has also stated in his examination-in-chief that the death of the wife of the appellant Shambhu Sah took place on account of illness and the appellant Shambhu Sah had taken her for treatment to Muzaffarpur, however the deceased died and her cremation was done at Muzaffarpur. In the cross-examination this witness has deposed that the marriage of the appellant Shambhu Shah with his deceased wife Chandrakala was a love marriage and there were



two children out of the wedlock, the elder son being about 10 years of age while the daughter being 5 years old. He has also made a mention of his another wife Sumitra Devi (appellant) to be the first wife of the appellant Shambhu Sah.

20. The informant, Jaimangal Sah who is the father of the deceased, has been examined as P.W. 5. This witness has stated in his examination-in-chief that the marriage of his daughter Chandrakala was performed on 18.04.1995 with the appellant Shambhu Sah and after her marriage the appellant Shambhu Sah and all other accused persons, the other members of the family used to assault her and also used to coerce her for bringing Rs. 50,000/- from her parents in order to enable her husband to run a shop at Patna and such demand could not be fulfilled. Despite the efforts taken by this witness to pacify the matter, they remained adamant on their demand, even after the birth of two children out of the wedlock, and Shambhu Sah and his brother Shankar Sah had even threatened to kill his daughter in case of non-fulfillment of the aforesaid demand. The informant further states that he got information from his elder son-in-law about his daughter being killed and thrown away on 11.06.2001, whereupon he along with some other persons went to the matrimonial household of the deceased but not having found



anyone present, enquired from the villagers who informed him that the accused persons had taken his daughter to Muzaffarpur. He thus filed a written report (Exhibit-1) and supported the facts mentioned therein in his examination before the police. In his cross-examination this witness while expressing his ignorance about the whereabouts of the children of his deceased daughter, has stated specifically in paragraph 12 of his evidence that he neither remembers the date, month or year of the birth of the children of his daughter nor does he remember the date, month and year of the marriage of his other three daughters. He has further stated that he had not made any complaint, oral or written before any police station or court in Muzaffarpur or Patna with regard to the demand of dowry, torture and threatening to kill his daughter. The informant has expressed his ignorance to the defence suggestion that while the son of the deceased was born on 28th June, 1992, the daughter was born on 25th May 1997. The attention of this witness has been drawn to the contents of the written report and his statement before police wherein he has denied that he ever stated about threatening to kill given by the appellant Shambhu Sah and his brother and also some other vital facts. He has also denied the defence suggestion that his daughter had died on account of illness.



21. The Investigating Officer, examined as P.W. 7, has stated that he received the typed written report of the informant Jaimangal Sah on 14.06.2001 whereupon he had drawn the FIR (Ext. 2) and took up investigation. He inspected the place of occurrence and recorded statements of witnesses and the villagers had disclosed that the deceased had been taken to Muzaffarpur for treatment as she was suffering with diahorrea. The witnesses of the parental household of the deceased however stated that the accused persons, including the appellants used to torture her on account of non-fulfillment of demand of Rs.50,000/- and later killed her and did not inform them about her death. In his cross-examination, this witness stated in paras 14,15 and 16 of his deposition, that the informant Jaimangal Sah did not state before him that his daughter had asked for money from him nor had stated that Shambhu Sah and his brother Shankar Sah had threatened to kill his daughter or oust her from house. The informant had even not disclosed about him learning facts relating to murder of deceased from his elder son-in-law Shankar Sah.

22. After closing the prosecution evidence, the Trial Court recorded the statements of appellants under Section 313 of the Cr.P.C. on 06.07.2004, enabling them to personally explain the



circumstances appearing in the evidence against them, however, they denied the said charges and circumstances.

23. The son of the deceased Chandan Kumar, aged about 11 years, was examined as DW-1, but since he could not answer to the questions posed to him, he was held to be an incompetent witness.

24. The learned Trial Judge, upon appreciation, analysis and scrutiny of the evidence adduced during trial, has found the appellants guilty of the offences and has sentenced them to imprisonment, by its impugned judgment and order.

Analysis and consideration

25. I have perused the impugned judgment of the learned Trial court, the entire materials on record and have given thoughtful consideration to the rival submissions made by learned counsel for the appellants as well as the learned APP for the State.

26. The contents of the FIR has already been discussed in detail earlier which disclose an allegation of the deceased being subjected to cruelty on account of non-fulfillment of dowry demand and was subsequently killed for the said reason by the accused persons.

27. Out of 7 witnesses examined by the prosecution, PW-



1, PW-2 and PW-6 have been declared hostile and have not supported the prosecution case, while PW-3 and PW-4, who have not supported that case of the prosecution and have yet not been declared hostile and PW-7 is the I.O. Therefore, the only witness, upon whose evidence the prosecution case rests, is PW-5, Jaimangal Sah, the informant of the case.

28. Before going on to analyse and examine the fact as to whether the evidence of this solitary witness is sufficient to base conviction of the appellants, it would be desirable to first elucidate the essential ingredients of Section 304B I.P.C., which are as under:

a. The death of a woman must have been caused by any burns or bodily injury, or must have occurred otherwise than under normal circumstances;

b. The death must have been caused within seven years of her marriage;

c. Soon before her death, she must have been subjected to cruelty or harassment by the husband or any relative of her husband; and

d. Cruelty or harassment must be for, or in connection with, any demand for dowry.”

29. The moot question which now falls for consideration



is whether the prosecution has succeeded in establishing the said ingredients/circumstances beyond reasonable doubts so as to sustain conviction under the aforementioned provision.

30. On going through the discussions made hereinabove in the preceding paragraphs with regard to the evidence of the witnesses, P.W.5, the informant, is apparently the only witness to be considered alongwith the Investigating Officer, P.W. 7.

31. While analyzing the evidence of the informant PW-5, it is noticed that he has tried to support the story of the prosecution, however he has failed to refer to any specific instances of demand of dowry or torture meted out to the deceased. A vague allegation of demand of Rs. 50,000/- for running a shop was made by the appellants alongwith other family members. So far as inflicting torture is concerned, the FIR indicates that though the accused persons remained adamant on their demand of Rs. 50,000/-, even after attempts of pacification, there is no allegation of subjecting the accused to cruelty thereafter. The evidence of this witness needs to be viewed in close scrutiny as his initial statement is a delayed one, inasmuch, despite having knowledge about his daughter being killed and thrown away on 11-06-2001 itself, he filed his written report after a lapse of 3 days for which he has not been able to



tender any plausible explanation, hence, an adverse inference can be drawn that the FIR has been lodged after due thought and deliberation, leaving it open for introduction and concoction of facts and other embellishments. It is also noticed from his evidence that he did not make any complaint earlier with regard to any demand of dowry, torture or any threatening given to kill his daughter and upon a conjoint reading of the deposition of the Informant alongwith the I.O. (PW-5) it is gathered that some very vital facts have been introduced by the informant for the first time during trial and were never stated before the I.O., including the fact about threatening to kill. Thus, the evidence of the informant suffers from several infirmities and appears to be an afterthought, hence the same does not appear to be cogent and worthy of reliance. The initial statement of the informant PW-5 forming the basis of the FIR, takes us to the very first contention raised on behalf of the appellants with regard to the inordinate delay in lodging the FIR. There is no reason indicated as to why despite having knowledge about death of the deceased on 11-06-2001, the written report came to be filed three days thereafter, i.e. on 14-06-2001. It is true that delay in lodging FIR cannot be the only ground for shutting out the case of the prosecution but it indeed, is a valid ground available to the



defence to assail the veracity and authenticity of such delayed First Information Report. The law in this regard is clear that on account of non-recording of a prompt information, the FIR gets denuded of its assurance of truth and if not satisfactorily explained, leads at times to collapse of prosecution.

32. At this juncture, it would be apt to refer to the case of **Thulia Kali Vs. The State of Tamil Nadu reported in (1972) 3 SCC 393** wherein the Hon'ble Apex Court, discussed the importance of a prompt FIR and an extract of paragraph-12 of the said judgment is being reproduced hereunder:

12.First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the



advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.....”

33.The aforesaid issue has also been taken up in the case of **Meharaj Singh Vs. State of U.P. reported in (1994) 5 SCC 188** wherein the Hon’ble Supreme Court in paragraphs 12 and 13 has deliberated upon delay in lodging the FIR as also the FIR being ante-timed and has found the same to be an vital factor in doubting the case of the prosecution.

34.The case of **Nand Lal & Ors. Vs. State of Chhattisgarh** (Supra) may also be referred in this context, paragraphs 30 and 31 whereof are being quoted hereunder: -

“30. We may gainfully refer to the following observations of this Court in *Ramesh Baburao Devaskar v. State of Maharashtra* : (SCC p. 509, para 19)

“19. In a case of this nature, enmity between two groups is accepted. In a situation of this nature, whether the first information report was ante-timed or not also requires serious consideration. First information report, in a case of this nature, provides for a valuable piece of evidence although it may not be a substantial evidence. The reason for insisting on lodging of first information report without undue delay is to obtain the earlier information in regard to the circumstances in which the crime had been committed, the name of the accused, the parts played by them, the weapons which had been used as also the names of eyewitnesses. Where the parties are at loggerheads and there had been instances



which resulted in death of one or the other, lodging of a first information report is always considered to be vital.”

31. As held by this Court in *Ramesh Baburao*, the FIR is a valuable piece of evidence, although it may not be substantial evidence. The immediate lodging of an FIR removes suspicion with regard to over implication of number of persons, particularly when the case involved a fight between two groups. When the parties are at loggerheads, the immediate lodging of the FIR provides credence to the prosecution case.”

35. In the facts of the present case, delay becomes an extremely vital circumstance, in the absence of any corroborative evidence which could lend any support to the case of the prosecution.

36. It is not expected that there would be eye-witnesses to the incident of killing, but there is absolutely no evidence even with regard to any suspicion of foul play by the appellants in order to lend any support to the version of the informant, as disclosed in the FIR and his deposition during trial. During analysis of evidence, it has already been noticed earlier that not only the informant's co-villagers, PW-1, PW-2 and PW-6 have been declared hostile, but PW-3 and PW-4, who are full-fledged prosecution witnesses and yet not declared hostile, have also not supported the prosecution case and have rather made clear averments with regard to the fact that the deceased had died on account of illness. The case of **Raja Ram Vs. State of Rajasthan** (Supra) lays down in clear terms that



the evidence of a prosecution witness, who has not been held to be hostile, becomes binding on the prosecution and there is no apparent reason found to sideline the testimony of these two witnesses PW-3 and PW-4. Thus, the delay in the FIR, coupled with lack of corroboration from any other evidence, gives a fatal blow to the case of the prosecution.

37.Now, it would be imperative to advert to examining the position as to whether the essential ingredients of Section 304 B of the IPC as elucidated in the preceding paragraphs have been made out against the appellants or not in order to prove and establish the case beyond all reasonable doubt. Let us now examine the above-mentioned components individually to arrive at a conclusion as to whether they stand established, in order to sustain a conviction u/s 304-B IPC.

Whether the death has occurred otherwise than under normal circumstances:

38.The first question relates to the fact as to whether the death has occurred otherwise than under normal circumstances, i.e. whether it is an unnatural death or not. The evidence available on record is indicative of the fact that the deceased was suffering from diahorrea for which she was taken to Muzaffarpur for treatment and she died on account of her



illness. Although, there is no medical prescription in support of her illness or treatment, but almost all the prosecution witnesses including those who have been declared hostile i.e., P.Ws. 1, 2 and 6 and the other witnesses, being P.W. 3 and P.W. 4, have all consistently deposed that the deceased had died on account of her illness. I may hasten to point out here, at the cost of repetition, that P.W. 3 and P.W. 4 who are the co-villagers of the informant have not been declared hostile by the prosecution and their evidence is thus binding upon the prosecution. The investigating officer P.W. 7 has also deposed that the villagers had disclosed before him during course of investigation that the deceased had been taken to Muzaffarpur for treatment as she was suffering from diahorrea. Besides, it would also appear from the first information report itself that the informant (P.W.5), upon inquiry from the villagers, was also informed that his daughter had been taken to Muzaffarpur by the accused persons, which lends credence to the defence version.

39. The above-mentioned analysis of evidence leads us to the inference and irresistible conclusion that the factum of death of the deceased occurring otherwise than under normal circumstances, is not established, thus the same cannot be categorized as 'unnatural death'.



Whether death has been caused within 7 years of marriage:

40. So far as the issue of death being caused within seven years of marriage is concerned, there are inconsistencies in the evidence of the witnesses in this respect too, in as much as while the informant has stated the date of marriage to be 18.04.1995, the evidence of P.W. 1 in paragraph-4 and P.W. 4 in paragraph-2 discloses the fact that out of the two children born out of the wedlock of the deceased and the appellant, the age of the eldest child was 9/10 years. Considering the fact that the deposition of the witnesses was being recorded in the year 2002, a serious doubt is created with respect to the fact that the death of the deceased which took place in the year 2001 was possibly within seven years of marriage. The informant has also not been able to furnish any cogent evidence to prove the date of marriage of the deceased. The second ingredient, thus, is also not proved beyond all reasonable doubts.

Whether the deceased had been subjected to cruelty or harassment by the husband or any relative of her husband, soon before her death:

41. This is the next necessary concomitant to constitute an offence under Section 304B IPC. There is virtually no evidence on the above-mentioned proposition but for totally



bald and vague allegations made by the informant in the FIR and in the deposition, which do not stand supported by any other oral or documentary evidence adduced by the prosecution. The evidence of the witnesses are rather to the effect that there was a love marriage between the deceased and the appellant Shambhu Sah and the relationship between the appellants and the deceased inter se was rather cordial and the witnesses have also deposed that the two children of the deceased are even residing with appellant Sunita Devi @ Sumitra Devi at Patna.

42. Thus, apparently, the above-mentioned theory put forth by the prosecution that cruelty was meted out to the deceased 'soon before her death', by way of the solitary evidence of the informant P.W. 5, which is not of sterling quality, does not seem to be a credible theory at all in the background of complete dearth of cogent and impeachable evidence in this regard.

43. It would be relevant to make a reference to the case of **Bajnath Singh Vs. The State of MP**, reported in **AIR 2016 SC 5313** wherein the ingredient of Section 304B of the IPC were deliberated upon with special reference to the meaning of cruelty or harassment along with the consideration of the presumption of guilt under Section 304B of the IPC as



engrafted in Section 113B of the Indian Evidence Act. Paragraphs 27 to 30 of the case of **Baijnath Singh** (supra) are being quoted hereunder:

27. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“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.”

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.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably



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

44.The above noted judgment has also been considered and relied upon by the Hon'ble Supreme Court in the recent cases of **Charan Singh** (supra). The fact that the presumption under Section 113B of the Indian Evidence Act would be attracted, only when the prosecution has established that the deceased was subjected to cruelty or harassment in connection with any demand of dowry soon before her death, also finds mention and discussion in the case of **Karan Singh** (supra).

Whether the cruelty or harassment inflicted is for, or in connection with any demand for dowry:

45.This final ingredient to constitute an offence under Section 304B of the IPC has also not been proved or established by the prosecution as the witnesses have either not supported the prosecution case at all or they have stated that there was a love marriage between the deceased and the



appellant and have not made any reference to any dowry demand, other than such allegation being made by the informant, P.W. 5, who also mentions about Rs. 50,000/- being demanded for running a shop, which, not be covered within the definition of 'Dowry' as the same does not appear to be in connection with marriage. Moreover, his solitary evidence in this regard is also not supported by other witnesses, rather specific contradiction has been drawn by way of confronting the investigating officer, P.W.7, to the statement of the informant recorded under Section 161 Cr.P.C., who has negated the fact that the informant had ever made any statement with regard to the said demand made by the appellants before him during course of investigation. Thus, cruelty or harassment on account of dowry demand also does not seem to be established by the evidence on record.

46. From an overall conspectus of the evidence, it transpires that the defence has been able to create a grave doubt on the entire case of the prosecution, impeaching the credibility and sanctity thereof on the vital aspect of the essential ingredients of Section 304B IPC not being proved, thereby shaking the very foundation of the prosecution case and as already discussed above, the presumption under Section 113B of



the Indian Evidence Act can be invoked only when the essential ingredients get satisfied.

47.As a result of the above analysis, I am of the firm view that the prosecution has miserably failed to prove its case beyond reasonable doubts and there are patent and glaring infirmities and several loopholes in the case of the prosecution on account of which the entire edifice of the prosecution crumbles. Therefore, on the basis of such scanty and deficient evidence, the vital circumstances, extremely crucial for constituting an offence under Section 304B of the IPC not having been established, the present case indisputably has not been proved beyond all manner of doubt, hence, it would be unsafe to uphold the conviction of the appellants recorded by the learned trial court.

48.Thus, taking an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and for the foregoing reasons, we find that the prosecution has miserably failed to prove the charges against the appellants beyond all reasonable doubts, leaving the court with no choice but to acquit the appellants of the charges.

49.Accordingly, the finding of conviction recorded by the learned trial court, in my opinion is not sustainable and



requires interference, therefore, the judgment of conviction and order of sentence dated 12.10.2004, passed by of the appellants and the sentence awarded thereunder by the court of the learned 1st Additional Sessions Judge, Darbhanga in Sessions Trial No. 40 of 2002 (arising out of Simri P.S. Case No. 36 of 2001) are hereby set aside.

50.The appellants of both the aforesaid appeals are stated to be on bail, hence they are discharged from the liability of their bail bonds.

51.The aforesaid appeals thus stand allowed.

(Soni Shrivastava, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.10.2025
Transmission Date	19.10.2025

