

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.331 of 2004

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1. Srimati Urmila Devi, W/O Sheopujan Mishra, resident of village- Lala Chapra, P.S. Kesariya, Distt.-East Champaran.
 2. Sheopujan Mishra, S/O Late Satyadeo Mishra, resident of village- Lala Chapra, P.S. Kesariya, Distt.-East Champaran.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 333 of 2004

Sri Narayan Mishra, S/O Sheopujan Mishra, Resident of Village-Lala Chapra, P.S. Kesaria, Distt- East Champaran.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 331 of 2004)

For the Appellant/s : Mr. Vijay Shankar Shrivastava, Adv

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

(In CRIMINAL APPEAL (SJ) No. 333 of 2004)

For the Appellant/s : Mr. Vijay Shankar Shrivastava, Adv

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-11-2025

CRIMINAL APPEAL (SJ) No.331 of 2004

At the outset, it is submitted that appellant no. 1 and appellant no. 2 in the present appeal have died during the pendency of this appeal, therefore present appeal stands abated against them and therefore same stands disposed off.

CRIMINAL APPEAL (SJ) No. 333 of 2004

The present appeal has been preferred by the



appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction and order of sentence dated 29.03.2004 passed by learned Additional Sessions Judge, Fast Track Court No. 5, East Champaran, Motihari in Sessions Trial No. 339 of 1996/2 of 2002, whereby the concerned Trial Court has convicted the appellant under Section 304(B)/34 and 201/34 of the Indian Penal Code (for short 'IPC') and has convicted him to undergo R.I. for ten years under Section 304(B)/34 of the IPC and further undergo R.I. for three years under Section 201/34 of the IPC. All aforesaid sentences ordered to run concurrently.

2. The prosecution case, based on the written report of Dhruv Narayan Pandey (P.W. 8), stating that his daughter Geeta Devi was married on 06.03.1992 with one Sri Narayan Mishra. After marriage, her husband and in-laws started demanding a motorcycle and television and when their demand was not fulfilled, they started torturing her. In August 1992, the informant brought his daughter home, her in-laws initially refused to take her back. After requests, they took her on 10.04.1995, but the dowry demands and threats continued. On visiting her on 10.10.1995, Geeta (deceased) informed her father (P.W. 8) that she was being tortured for dowry. Despite efforts by relatives to



resolve issue with in-laws, nothing changed. On 14.10.1995, the informant learned that his daughter had been killed on the night of 11.10.1995 and her body was cremated by in-laws family without informing him. Upon reaching the village, he found the in-laws unable to give any satisfactory explanation. He alleged that his daughter was killed due to non-fulfilment of aforesaid dowry demands.

3. On the basis of aforesaid information as stated above Kesariya P.S. Case No. 86 of 1995 dated 14.10.1995 was registered for the offences punishable under Sections 304(B) and 211/34 of the Indian Penal Code.

4. Learned Magistrate on the basis of materials collected during investigation took cognizance and committed this case to learned Trial Court for its trial and disposal. Learned trial court accordingly framed charges against appellant-accused, which upon explanation to him pleaded as “not guilty” and claimed trial.

5. To substantiate its case, before learned Trial Court prosecution has examined altogether 8 witnesses. Three defence witness were examined in defence. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Paras Nath Mishra
P.W. 2	Jashoda Devi (hostile witness)
P.W. 3	Ukit Sah (hostile witness)



P.W. 4	Deonath Mishra (hostile witness)
P.W. 5	Krishna Nand Missir
P.W. 6	Rajeshwar Mishra
P.W. 7	Awadhesh Mishra
P.W. 8	Dhrup Narayan Pandey (informant)
Defence Witness	
D.W. 1	Birendra Das
D.W. 2	Shashi Kant Mishra
D.W. 3	Om Prakash Prasad

6. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges:-

Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	Sign of informant on Fardbeyan.
2.	Exhibit-2	Letter
3.	Exhibit-3	Letter of Gita Devi for Kiran.

7. The statement of the appellant-accused is recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which he denied and shows his complete innocence.

8. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant/convict for the offences under



Sections 304(B)/34 and 201/34 of the IPC and sentenced him in the manner as stated above.

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

10. Hence, the present appeal.

11. It is submitted by learned counsel appearing on behalf of the appellant/accused that in want of post-mortem report it cannot be said that the death of the daughter of the informant/P.W. 8 was unnatural. In this context, it is submitted that learned Trial Court completely overlooked the testimony of prosecution witnesses, who categorically deposed before the Court that death was caused by heart-attack and it was natural. It is submitted that as last rites was performed without informing the the informant the present false case was lodged. It is submitted that independent prosecution witnesses starting from P.W. 1 to P.W. 4 turned hostile during the trial and the rest are interested witnesses being immediate family members and, therefore, their testimony cannot be wholly relied upon. It is submitted that a letter was written by deceased suggesting demand of dowry for television and motorcycle, but not proved before the learned Trial Court for the reasons that the letter in issue was written



addressing to one Kiran Kumari, who was not examined during the course of trial. It is further submitted by learned counsel that I.O. in this case also not examined ascertaining the place of occurrence and other material aspects. It is submitted that non-examination of I.O. also deprived appellant-accused from his valuable legal right as of contradictions and corroborations *qua* testimony of such prosecution witnesses who supported the crime in question. In support of his submission learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through **Rajesh Patil Vs. State of Jharkhand, [(2013) 3 SCC 791] & Sher Singh @ Partapa Vs. State of Haryana, [(2015) 3 SCC 724]**. As per testimony of interested witnesses are concerned learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Nand Lal Vs. State of Chhatisgarh [(2023) 10 SCC 470]**.

12. Arguing further, it is submitted that statement of appellant/convict under Section 313 of Cr.P.C. was recorded in very cryptic and mechanical manner, without putting the relevant evidence as surfaced during the trial against them. It is submitted that such type of recording statement of accused is not permissible under law, in terms of legal report of Hon'ble Supreme Court as available through **Sukhjith Singh Vs. State of Punjab [(2014)**



10 SCC 270] and therefore judgment of conviction and order of sentence are liable to be set aside.

13. Learned APP appearing on behalf of respondent-State, while opposing the appeal submitted that daughter of informant/P.W. 8 died within the four corners of her matrimonial home, where the appellant being husband is under obligation to explain the circumstances which caused death of his wife as it is obligatory in terms of Section 106 of the Indian Evidence Act. It is submitted that no such explanation appears available on record on behalf of appellant and, therefore, judgment of conviction as recorded by learned Trial Court cannot be viewed with doubt.

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

15. It would be apposite to reproduce Section 304 B of the IPC, for better understanding of this case which is as under :-

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.

16. It appears out of perusal of record that P.W. 1, P.W. 2, P.W. 3 and P.W. 4 turned hostile during the trial and nothing surfaced out of their depositions, which may said relevant as to contradict or to corroborate the testimony of other prosecution witnesses who supported the occurrence during the trial. It also appears that P.W. 5, P.W. 6 and P.W. 7 are brother-in-law of the informant and therefore being relative their interest *qua* outcome of prosecution in form of conviction cannot be ruled out, particularly in view of legal ratio as available through **Nand Lal Case (supra)**.

17. It also appears from the record that informant (P.W.8) deposed that he was told by his deceased daughter regarding television and motorcycle as dowry demand by appellant-accused. In this context a letter was addressed to one Kiran Kumari by deceased herself, which is available on record, but said Kiran Kumari could not examined during the course of trial and therefore, the letter which exhibited during the trial as **Exhibit-2 & 3** not appears relevant to suggest any evidentiary



value *qua* incrimination of appellant-accused with present crime in question as far demand of dowry is concerned.

18. It also transpires that investigating officer of this case could not be examined during the trial and, therefore, the several material aspects *qua* collection of incriminating materials and also establishing place of occurrence not appears proved during the trial. It also appears that non-examination of I.O. deprived appellant-accused from his valuable right of defence as he could not contradict or corroborate on material incriminating aspects as deposed by P.W. 5, P.W. 6, P.W. 7 and P.W. 8 during the trial. In view of same non-examination of I.O. of this case also appears fatal to the prosecution, particularly in view of legal ratio as available through **Sher Singh @ Partapa Case (supra)**.

19. It would be apposite to reproduce para no. 18 of the judgment of Hon'ble Supreme Court in the case of **Rajesh Patil Case (supra)**, which reads as under :

18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her



private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law.

20. P.W. 5, P.W. 6 and P.W. 7 are brothers-in-law of the informant who supported the occurrence, but admittedly they are not the eye-witness of the actual occurrence. Their testimony is based upon hearsay evidence as he came to know that there was demand of dowry of television and motorcycle like P.W. 8/informant when no particular date regarding demand of dowry or committing any cruelty as alleged due to non-fulfillment of demand of dowry was deposed during the trial by these prosecution witnesses. It also transpires that appellant-accused



examined altogether three witnesses in defence, who categorically stated that wife of appellant-accused, who is also daughter of P.W. 8/informant died due to heart-attack. This aspect was completely disbelieved by the Trial Court without assigning any reasons. In support of his submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Baban Shankar Daphal and Others Vs. State of Maharashtra, [(2025) OnLine SC 137]**.

21. It would be apposite to reproduce para **10, 11, 12 & 13** of the legal report of Hon'ble Apex Court in the matter of **Sukhjit Singh** (supra), which reads as under:

“**10.** On a studied scrutiny of the questions put under Section 313 CrPC in entirety, we find that no incriminating material has been brought to the notice of the accused while putting questions. Mr Talwar has submitted that the requirement as engrafted under Section 313 CrPC is not an empty formality. To buttress the aforesaid submission, he has drawn inspiration from the authority in **Ranvir Yadav v. State of Bihar [(2009) 6 SCC 595 : (2009) 3 SCC (Cri) 92]**. Relying upon the same, he would contend that when the incriminating materials have not been put to the accused under Section 313 CrPC it tantamounts to serious lapse on the part of the trial court making the conviction vitiated in law.

11. In this context, we may profitably refer to a four-Judge Bench decision in **Tara Singh v. State [1951 SCC 903 : AIR 1951 SC 441 : (1951) 52 Cri LJ**



1491] wherein, Bose, J. explaining the significance of the faithful and fair compliance with Section 342 of the Code as it stood then, opined thus: (AIR pp. 445-46, para 30).

“30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each



case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice.”

12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468 : 1953 Cri LJ 1933], Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371] in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case



generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

22. It would be apposite to reproduce para no(s). 32 and 33 of the legal report of Hon'ble Supreme Court in the matter of **Nand Lal Case (supra)**, which reads as under:

32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in *Vadivelu Thevar v. State of Madras* [*Vadivelu Thevar v. State of Madras*, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614] , has observed thus : (AIR p. 619, paras 11-12).

"11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the



quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.



23. It would be apposite to reproduce para no(s). 9 and 16 of the legal report of Hon'ble Supreme Court in the matter of **Sher Singh @ Partapa Case (supra)**, which reads as under:

9. The legal regime pertaining to the death of a woman within seven years of her marriage thus has numerous features, inter alia:

(i) The meaning of “dowry” is as placed in Section 2 of the Dowry Prohibition Act.

(ii) Dowry death stands defined for all purposes in Section 304-B IPC. It does exclude death in normal circumstances.

(iii) If death is a result of burns or bodily injury, or otherwise than under normal circumstances, and it occurs within seven years of the marriage and, it is “shown” in contradistinction to “proved” that soon before her death she was subjected to cruelty or harassment by her husband or his relatives, and the cruelty or harassment is connected with a demand of dowry, it shall be a dowry death, and the husband or relative shall be *deemed* to have caused her death.

(iv) To borrow from Preventive Detention jurisprudence—there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words “soon before her death”, to bring Section 304-B into operation; the live link will



obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time; the query of this Court in the context of condonation of delay in filing an appeal—why not minutes and second—remains apposite.

(v) The deceased woman's body has to be forwarded for examination by the nearest civil surgeon. (vi) Once the elements itemised in (iii) above are shown to exist the husband or relative shall be deemed to have caused her death.

(vii) The consequences and ramifications of this "deeming" will be that the prosecution does not have to prove anything more, and it is on the husband or his relative concerned that the burden of proof shifts as adumbrated in Section 113-B, which finds place in Chapter VII of the Evidence Act. This Chapter first covers "burden of proof" and then "presumption", both being constant bed-fellows. In the present context the deeming or presumption of responsibility of death are synonymous.

16. As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning



to these provisions, unless the word “shown” is used as synonymous to “prove” and the word “presume” as freely interchangeable with the word “deemed”. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word “deem” to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333] and *State of T.N. v. Arooran Sugars Ltd.* [(1997) 1 SCC 326] , requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word “deemed” so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word “shown” in Section 304-B IPC as to, in fact, connote “prove”. In other words, it is for the prosecution to prove that a “dowry death” has occurred, namely,

(i) that the death of a woman has been caused



in abnormal circumstances by her having been
burned or having been bodily injured,

(ii) within seven years of her marriage,

(iii) and that she was subjected to cruelty or
harassment by her husband or any relative of
her husband,

(iv) in connection with any demand for dowry,
and

(v) that the cruelty or harassment meted out to
her continued to have a causal connection or a
live link with the demand of dowry.

We are aware that the word “soon” finds place
in Section 304-B; but we would prefer to
interpret its use not in terms of days or months
or years, but as necessarily indicating that the
demand for dowry should not be stale or an
aberration of the past, but should be the
continuing cause for the death under Section
304-B or the suicide under Section 306 IPC.
Once the presence of these concomitants is
established or shown or proved by the
prosecution, even by preponderance of
possibility, the initial presumption of innocence
is replaced by an assumption of guilt of the
accused, thereupon transferring the heavy
burden of proof upon him and requiring him to
produce evidence dislodging his guilt, beyond
reasonable doubt. It seems to us that what
Parliament intended by using the word
“deemed” was that only preponderance of
evidence would be insufficient to discharge the
husband or his family members of their guilt.
This interpretation provides the accused a
chance of proving their innocence. This is also



the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.

24. From aforesaid discussion, it can be gathered safely that foundational aspect as to establish a case under Section 304-B of the IPC is not available as to attract the presumption available under Section 114-B of the Indian Evidence Act.

25. In view of aforesaid, it also appears to this Court that statement of appellant-accused also appears recorded in very cryptic and mechanical manner without putting all incriminating circumstances to him and therefore same also appears questionable, in view of **Sukhjit Singh Case (supra)**.

26. In view of the aforesaid discussions it transpires that prosecution has failed to established its case beyond all



reasonable doubts, benefit of which must be extended to accused/appellant.

27. Accordingly, the appeal stands allowed.

28. The impugned judgment of conviction and order of sentence dated 29.03.2004 passed by learned Additional Sessions Judge, Fast Track Court No. 5, East Champaran, Motihari in Sessions Trial No. 339 of 1996/2 of 2002 arising out of Kesariya P.S. Case No. 86 of 1995 is accordingly set aside.

29. The appellant, above-named, is acquitted of the charges levelled against him. Since the appellant was on bail, he is discharged from the liabilities of his bail bonds. Sureties stands discharged. Fine if any paid, be returned to appellant hence forth.

30. I.A. if any, shall be disposed off.

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

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28.11.2025
Transmission Date	28.11.2025

