

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1048 of 2006

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Md. Taslim Son Of Late Md. Aklu Village- Pawara, Ps- Cheriya Bariyapur,
Dist- Begusarai

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 25-09-2025

Heard Mr. Ajay Kumar Thakur with Mr. Ritwik Thakur, Ms. Vaishnavi Singh with Ms. Kiran Kumari, learned counsel for the appellant and Mrs. Anita Kumari Singh, learned APP for the State.

2. Learned counsel for the appellant submits that vide order dated 05.12.2024, the present appeal has been abated against appellant Nos.2 and 3 due to their death and presently this appeal is continuing against appellant No.1 only.

3. Counsel further submits that the present appellant has already been convicted for 8 years and he has completely served the said sentence and then come out from jail, but the present appeal has been challenged against the order



of conviction only.

4. Counsel further submits that section 374 of the Cr.P.C., 1973 describes about the appeal about conviction. He further submits that section 374(2) of the Cr.P.C. categorically described that the circumstances under which any person convicted on trial may appeal to the High Court. He further submits that the present appeal is maintainable and it is due to this reason that appellant has preferred appeal against the conviction only and not against sentence, as he has already served the sentence. In support of his contention, counsel relied on judgment of Hon'ble Supreme Court of India in case of **Gurjant Singh Vs. the State of Punjab** decided on 13.11.2021 in Criminal Appeal Nos.1385-1386 of 2021.

5. Counsel further submits that in this appeal, the order passed by the Hon'ble High Court of Punjab and Haryana, Chandigarh has been challenged before the Hon'ble Supreme Court of India, in which criminal appeal was rendered infructuous, due to the reason that the appellant has served out the sentence, on which Hon'ble Supreme Court of India has pleased to held that the criminal appeal could not have been dismissed as infructuous and remanded back the matter before the High Court to decide on merit.



6. Counsel further relied on another reported judgment of Hon'ble Supreme Court of India in case of **Dhananjay Rai Vs. State of Bihar** reported in **MANU/SC/0888/2022** and submits that it has been held in the present case that a criminal appeal may not be dismissed on any ground even if the accused was absconding.

7. Learned APP for the State on the point of maintainability submits that *prima facie*, there is subsistence in the argument of counsel for the appellant, and hence, the present appeal is maintainable even if there is no whereabouts of the appellant in the present case as reported by the police in its report.

8. After hearing the argument on the point of maintainability, it is necessary to quote section 374(2) of the Cr.P.C., 1973 under which the appeal from conviction lies to the High Court.

374. Appeals from convictions. -(2)

Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years ¹[has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.



Upon bare reading of section 374 of the Cr.P.C., it transpires to this Court that the language of section 374(2) indicates the different situations under which appeal lies to the High Court.

(A) Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.

(B) Any person convicted on a trial held by an Additional Sessions Judge, may appeal to the High Court.

(C) Any person convicted on a trial held by any other court in which a sentence of imprisonment for more than 7 years (has been passed against him or against any other person convicted at the same trial), may appeal to the High Court.

9. Upon bare reading and after breaking the same, it transpires to this Court that there are 3 situations in which appeal against conviction may prefer before the High Court. In situation A and B, there is no mentioning of sentence. It is due to this reason this Court is of the firm view that the intention of the law maker is very clear that the person convicted on trial under the above mentioned situations may appeal to the High Court.

10. Upon perusal of the judgment of Hon'ble Supreme Court of India in case of Gurjant Singh (*supra*), the



finding is clear and explicit that the appeal against conviction could not be treated as infructuous merely for the reason that the convicted appellant had served out the sentence awarded by the trial court and it is due to this reason, the Hon'ble Supreme Court of India has remanded back the case of Gurjant Singh (*supra*) to the High Court after setting aside the order of appeal passed by the High Court.

11. Similarly, in case of Dhananjay Rai (*supra*), the order passed by the Division Bench of this Hon'ble Court for dismissal of appeal on the ground of absconding of the appellant, has been set aside and Hon'ble Apex Court has held that the appeal against conviction which has already admitted for final hearing shall not be dismissed for non-prosecution without adverting to merit.

12. In the light of the specific provision of section 374(2) of the Cr.P.C. which deals different situations as well as laws referred by learned counsel for the appellant, this Court is of the firm view that the present appeal is maintainable against the conviction only, in-spite of the fact that the appellant has served the sentence imposed upon him by the trial court.

13. By this appeal, appellant/convicted accused, Md. Taslim, is challenging the judgment of conviction dated



21.11.2006 passed by Sri Roop Narayan Tripathi, learned Additional Sessions Judge, FTC No.IV, Begusarai, in Sessions Trial No.297 of 1998 (arising out of Cheriabariyarpur P.S. Case No.86 of 1998) by which the appellant has been convicted and sentenced to undergo rigorous imprisonment for 8 years under Sections 304(B)/34 of the Indian Penal Code, which the appellant has already served in the jail during trial and he has been released from jail considering the period of custody undergone which has been set off by the trial court to the period of sentence awarded to him.

14. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

“The informant, namely, Tuntun Mian (PW-5) gave his fardbeyan on 12.05.1998 at 8:10 AM at Pubra Village before the police stating therein interalia that his daughter Shakila Bibi was married to Md. Sattar Mian about two and half years ago. At the time of marriage, the said Sattar Mian and his father made demand of Rs.18,000/- in cash, 60 bhar silver and a golden nose pin in dowry, but at the time of marriage, the informant could manage only Rs.8000/- in cash, one nose pin and 60 Bhar silver Jewellery, whereafter, marriage was solemnized and the daughter of the informant went to her



sasural where she stayed about six months. Her husband and father-in-law and other family members started torturing the daughter of the informant for the balance amount of Rs.10,000/- which was agreed upon by the informant to pay the father-in-law. The informant took her daughter to his own place and while living at the house of her father, gave birth to a male child. Subsequently the informant took back his daughter to her *sasural* and promised them the balance amount will be paid. Upon non-fulfillment of the said amount, in-laws family started torturing the informant's daughter. On the date of occurrence, all accused brutally assaulted the deceased and strangulated her by tying a rope around her neck. The informant got information about the death of his daughter for the first time on 12.05.1998 through the son of one Sahid Mian resident of Village Pubra. Upon information, the informant along with his son Md. Mozim went to her *sasural* where they found the dead body of his daughter lying in a room. The informant came to know that her husband and in-laws family killed her by strangulating her neck by rope and had fled away from there with a minor son of the deceased.

15. On the basis of the fardbeyan of Tuntun Mian (PW-5), Cheriabariyarpur P.S. Case No.86 of 1998 dated



12.05.1998 was registered under Sections 498A and 304(B) of the Indian Penal Code against the accused persons.

16. After investigation, charge-sheet has been submitted under sections 498A, 304B/34 of the IPC against four accused persons and thereafter cognizance has also been taken under the same sections and then committed to the court of sessions for trial.

17. In support of his case, the prosecution has examined altogether 6 witnesses, namely, Md. Mokhtar Mian (PW-1), Tajuamuol Hussain (PW-2), both are neighbours and witness of inquest report, Md. Mozib (PW-3), brother of the deceased and son of the informant, PW-4 is a doctor who conducted post-mortem of the deceased, PW-5 is informant himself and PW-6 is the Investigating Officer (I.O.) of this case. There were 2 defence witnesses examined and in total 4 exhibits i.e., Exhibit-1 (Post-mortem report), Exhibit-2 (fardbeyan), Exhibit-3 (inquest report) and Exhibit-4 (formal FIR) are there.

18. On the basis of the evidences and exhibits, the trial court has framed charges, under sections 498A/34 and 304B/34 of the IPC against all the accused persons including the present appellant on 22.01.2000, on which they pleaded not guilty.



19. After examination in chief and cross-examination of the prosecution witnesses, examination of accused persons have taken place under section 313(1)(b) of the Cr.P.C. and then 2 defence witnesses have been examined and cross-examined and upon hearing the argument, trial court has found the accused persons as guilty under section 304B/34 of the IPC. In the same, accused No.2, Md. Tohid was acquitted. The conviction has been made against 3 accused persons. All 3 persons have preferred appeal, but during pendency of the present appeal, 2 appellants died, therefore, the appeal was abated for appellant Nos.2 and 3 and presently, this appeal is going on only against the appellant No.1 (Md. Taslim).

20. Learned counsel for the appellant submits that there were in total six witnesses examined. PW-1 and PW-2 were witnesses of the inquest report. PW-1 has categorically deposed that his signature was taken on a blank piece of paper, therefore, he has not supported the inquest report. Counsel further submits that PW-2 became hostile, therefore, his deposition is not trustworthy. Counsel submits that PW-3 who is the brother of the deceased and son of the informant also become hostile. Counsel further submits that PW-4 is the Doctor who conducted the post-mortem. Paragraph no.1 is the



Examination in Chief of the Doctor, but the examination of the Doctor has narrated in paragraph no.2 and paragraph no.6 where it has been categorically deposed by him that there is no external injury found on the body of the deceased save and except, injury at neck. Counsel also submits that in the opinion, it has been expressed by him that such type of injury caused only in case of suicidal and doctor has not found any internal injury also. Counsel submits that it is also not the case of poisoning as it has been deposed by him. Counsel submits that the statement of the Doctor and his case clearly indicates that this case is not fit to be sustained as the entire punishment has been imposed on sole testimony of the informant (PW-5). Counsel submits that PW-5 categorically deposed in his evidence that her daughter was always subject to torture and they used to assault his daughter. But according to the Doctor, there was no external injury found on the body of the deceased. As such, the ocular evidence, the injury found and medical evidence are absolutely in contradiction. Counsel submits that upon bare reading of PW-5, there is absolutely no specific allegation against the present accused person that he has demanded dowry or either tortured the deceased.

21. Counsel submits that there is absolutely lacking



of essentials of section 304B of the IPC against the present appellant. In support of his argument, learned counsel for the appellant relied on some latest judgments of the Hon'ble Supreme Court of India in case of ***Karan Singh Vs. The State of Haryana*** reported in ***2025 INSC 133*** and submits that by virtue of the materials on record, essential ingredients of section 304B of the IPC has not been found in the present case. Counsel relied on another judgment of Hon'ble Supreme Court of India in case of ***Charan Singh Vs. The State of Uttarakhand*** reported in ***MANU/SC/0421/2023*** equivalent to ***AIR 2023 SC 2095*** and submits that in this case, the Hon'ble Supreme Court of India has pleased to acquit the accused under sections 201, 304B and 498A of the IPC on the ground that in the evidence laid down by the prosecution, none of the witnesses stated about the cruelty or harassment to the deceased by the appellant or any of his family member on account of demand of dowry seen before the day or otherwise. Counsel submits that in this case, it has also been held by the Hon'ble Supreme Court of India that mere death of the deceased being unnatural in the matrimonial home within seven years of marriage would not be sufficient to convict the accused under sections 304B and 498A of the IPC.

22. Another judgment on which the learned counsel



for the appellant is relied on i.e. in case of ***Shoor Singh & Ors.*** ***Vs. State of Uttarakhand*** reported in ***MANU/SC/1036/2024*** equivalent to ***2024 INSC 713***. Counsel submits that in this case, it has been held that the punishment under sections 304B and 498A of the IPC shall be imposed only and only after presence of the initial ingredients and those evidences must be direct. Counsel submits that in the present case, there is no direct evidence against the present appellant, rather, an evasive allegation has been made that the family members were demanding dowry. Counsel relied on another judgment of the Hon'ble Supreme Court of India in case of ***Chabi Karmakar & Ors. Vs. The State of West Bengal*** reported in ***MANU/SC/1020/2024*** equivalent to ***2024 INSC 665***. In this case also, Hon'ble Supreme Court of India has acquitted the accused who were charged under sections 498A, 304B and 306 read with section 34 of the IPC. Counsel submits that in the present case, though from the medical report, it transpires that it may be a suicide according to the report of the Doctor. But, there is no material on record by virtue of which, it can be ascertained that any act expressed or impleaded has been made by the appellant due to which the victim decided to suicide. Counsel submits that in the present case, the punishment has



been made on the basis of evidence of sole witness PW-5 without any material. Hence, learned counsel for the appellant prays before this Court that the appellant may be acquitted.

23. Learned APP for the State on the other hand submits that a well discussed judgment has been passed by the concerned trial court. Counsel submits that the death is admitted at the matrimonial home and post-mortem taken place and death has been caused by hanging. In the FIR also, the allegation of hanging by rope is there. Counsel submits that the demand of dowry has been alleged in the evidence of PW-5. Counsel also submits that the deceased herself was subject to torture and demand of dowry, but counsel fairly accepts that the immediate demand has nowhere alleged. In support of his argument, learned APP for the State further submits that in case of such an event, the minor contradiction may be ignored and the order of conviction may be upheld.

24. After hearing the parties, it is necessary for this Court to analyze the PW- 5 with a view to search the ingredients of section 304B of the IPC in this case. This Court is of the firm view that PW-1 has not accepted his signature on any written paper, rather, on blank paper. PW-2 became hostile. Similarly, PW-3 who is the brother and son of the informant has also



become hostile. PW-4 is the Doctor and has found injuries on her body :-

1. Forth oozing out from both nostril.

2. Face was pale and contused.

3. Eye ball both contused.

4. Ligature mark present above the thyroid cartilage obliquely up ward covering front of the neck and posteriorly behind left ear and right ear. Ligature is 3 /4” wide and blackish in colour.

and in his cross examination in paragraph nos.2 and 6, the Doctor has categorically opined that there is no external mark of assault on the body of the deceased and reached on the conclusion that it may be a suicidal. Doctor also found that it is no case of poisoning.

25. Evidence of PW-5 and PW-6 are stated as follows:-

“PW5 has stated that earlier he has not lodged any case or complaint of the deceased nor he conveyed any Panchyati. He further stated that after one year of the marriage when Shakila Khatoon came to his house she stayed about six months and during that period, in-law people used to come to meet her and thereafter she went to her sasural where she stayed there ten months in a year and during that period he had not gone to meet his daughter nor any one had come from



sasural to meet him and Sakila was not lying ill and after getting information about death of Sakila by elder son of Sahid, he alongwith large number of persons went to sasural of Sakila and the police had also arrived there from before and after one hour of the arrival his statement was recorded.”

“PW-6 who is I.O. of this case stated that on 12.05.1998 at about 8:00 AM, he received information that one lady of village Pubra has been killed. He at once proceeded to village Pubra and at 8:10 AM, he reached there. He recorded the fardbeyan of the informant and marked as Ext-2. He also found there a plastic rope of about 4 feet length. He seized the rope and prepared seizure list. He also proved the enquest report (ext-3) and taken signature of the enquest report witness and he has supported the death as he himself sent body for post-mortem. In column 8 of the enquest report, the cause of death has been shown as the deceased was killed by stragulation and assaulting her with hard blunt substance.

26. The essential ingredients of section 304B of the IPC is that the death of a woman must have been caused by any burn or bodily injury, the death must have been caused within seven years of marriage, soon after her death, she must have subjected to cruelty or harassment by husband or any relative of her husband and the cruelty or harassment must be for, or any in connection with, any demand for dowry. Here in the present



case, the two ingredients are there. i.e. the death of the woman has been caused and second that it has been caused within seven years of her marriage. But the rest two ingredients which was the death, she was subject to cruelty or harassment by husband or any relative of her husband, could not be attracted from the evidence of PW-5 particularly when the Doctor has found that there is no external injury on the body of the deceased. Similarly, all four ingredients are also not available against the present appellant save and except the evasive allegation has been made which is in contradiction of the judgment of the Hon'ble Supreme Court of India that the evasive allegation shall not be the conclusive proof and cannot be treated it beyond all reasonable doubts.

27. In support of my own observations, it is necessary to discuss the following judgments of Hon'ble Supreme Court of India which are stated below. In case of ***Karan Singh (supra)*** whose relevant paragraphs Nos.6, 7 and 8 are as follows:-

6. The following are the essential ingredients of Section 304-B:

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.

7. If the aforesaid four ingredients are established, the death can be called a dowry death, and the husband and/or husband's relative, as the case may be, shall be deemed to have caused the dowry death. Section 2 of the Dowry Prohibition Act, 1961 provides that dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person, to the other party to the marriage or to any other person. The dowry must be given or agreed to be given at or before or any time after the marriage in connection with the marriage of the said parties. The term valuable security used in Section 2 of the Dowry Prohibition Act, 1961 has the same meaning as in Section 30 of IPC.

8. In this case, there is no dispute that the death of the appellant's wife occurred within seven years of the marriage. Section 113-B of the Evidence Act reads thus:

"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 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.

Explanation.-For the purposes of this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860)."

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 presumptions under Section 113-B of the Evidence Act cannot be invoked.

28. In case of **Shoor Singh & Ors. (supra)** whose relevant paragraph Nos.11 to 14 & 18 are as follows:-

11. Before we proceed to test the merit of the rival submissions, it would be useful to cull out certain facts as regards which there is no serious dispute. These are:



(a) the deceased was married to the son of the Appellants within seven years of her death;

(b) the deceased died an unnatural death on account of ante-mortem burn injuries;

(c) place of death of the deceased was her matrimonial home;

(d) just 18 days before her death, the deceased had given birth to a male child;

(e) prior to her death there was no police complaint or FIR in respect of harassment of the deceased for any reason whatsoever;

(f) there is no evidence that any of the Accused demanded dowry, or a motorcycle, or cash from the family members of the deceased either before the marriage or at the time of marriage; and

(g) there is no evidence that the deceased was physically assaulted by any of the Accused in connection with demand for dowry or motorcycle or cash.

12. To constitute a 'dowry death', punishable Under Section 304-B Indian Penal Code, following ingredients must be satisfied:

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

ii. such death must have occurred within seven years of her marriage;



iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

13. When all the above ingredients of 'dowry death' are proved, the presumption Under Section 113-B of the Evidence Act is to be raised against the Accused that he has committed the offence of 'dowry death'. What is important is that the presumption Under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the Accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary Rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

14. In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the



parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

18. Indisputably, the Accused have not been convicted for murder, and rightly so, because there was no worthwhile evidence to show that except for the burn injuries, which could be self-inflicted, the Accused suffered any other ante mortem injury. Moreover, the presence of the Accused in the house at the time of occurrence is not proved. In such circumstances, the death was most probably suicidal though this would not make a difference for commission of an offence punishable Under Section 304-B Indian Penal Code if all the other ingredients of dowry death stand proved. But, as noted above, here harassment/ cruelty at the instance of the Appellants in connection with any demand for dowry has not been proved beyond reasonable doubt. As regards the reason to commit suicide, though it is not necessary for us to dwell upon, suffice it to say that husband of the deceased was in service and stayed away from the deceased. Suggestion was given to the prosecution witnesses, and statement was also made Under Section 313 Code of Criminal Procedure, that the deceased used to remain depressed for being unable to join her husband at the place of his posting due to lack of residential quarter. That apart, a photograph of



the deceased (Ex. Kha 1), regarding which no dispute was raised by the prosecution witnesses, showing her alone with a male stranger had surfaced. In the statement Under Section 313 Code of Criminal Procedure a stand was taken that this photograph had shamed her. Be that as it may, once all the necessary ingredients of dowry death have not been proved beyond reasonable doubt, the presumption Under Section 113-B of the Evidence Act would not be available to the prosecution. Hence, in our considered view, the Appellants are entitled to be acquitted of the charge of offences punishable Under Section 304-B and 498-A Indian Penal Code.

29. In case of **Charan Singh (supra)** whose relevant paragraph Nos.9-16 are as follows:-

9. The marriage of the Appellant with the deceased was solemnised in the year 1993. She died on 22.6.1995. FIR was registered on the complaint of the father of the deceased on 24.6.1995 against Charan Singh, the Appellant herein, brother-in-law, Gurmeet Singh and mother-in-law Santo Kaur. However, in appeal filed by the convicts before the High Court, brother-in-law, Gurmeet Singh and mother-in-law, Santo Kaur were acquitted whereas the conviction of the Appellant was upheld. The sentence awarded to the Appellant Under Section 304B Indian Penal Code was reduced from ten years rigorous imprisonment



to seven years rigorous imprisonment. The sentence of two years rigorous imprisonment each awarded Under Section 498A and Section 201 Indian Penal Code was affirmed.

10. The conviction of the Appellant is Under Sections 304B and 498A Indian Penal Code raising presumption regarding dowry death within seven years of marriage. To appreciate the arguments raised by the learned Counsel for the parties, a perusal of Section 304B and 498A Indian Penal Code and Section 113B of the Indian Evidence Act would be required. The same are extracted hereinbelow:

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 Sub-section, "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.

498-A. Husband or relative of husband of a woman subjecting her to cruelty-- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, "cruelty" means--

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

113B. 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.

Explanation.--For the purposes of



this section, "dowry death" shall have the same meaning as in Section 304-B of Indian Penal Code (45 of 1860).

11. The interpretation of Sections 304B and 498A Indian Penal Code came up for consideration in Baijnath's case (supra). The opinion was summed up in paras 25 to 27 thereof, which are extracted below:

25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(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.

The offence Under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section expositis "cruelty" as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical), or

(ii) harassment of the woman,



where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. *Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.*

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.*

12. *As the aforesaid case was also pertaining to dowry death, presumption Under Section 113B of the Indian Evidence Act was also discussed in detail in paras 29 to 31 of the aforesaid judgment. The same are extracted below:*

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 above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

31. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life



within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be overreached to gloss over and condone its failure to prove credibly, the basic facts enumerated in the Sections involved, lest justice is the casualty.

13. A conjoint reading of Section 304B Indian Penal Code and Section 113B of the Indian Evidence Act with reference to the presumption raised was discussed in para 32 of the aforesaid judgment, which is extracted below:

*32. This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in *Shindo v. State of Punjab* [*Shindo State of Punjab*, MANU/SC/0499/2011: (2011) 11 SCC 517: (2011) 3 SCC (Cri) 394] and echoed in *Rajeev Kumar v. State of Haryana* [*Rajeev Kumar v. State of Haryana*, MANU/SC/1144/2013: (2013) 16 SCC 640: (2014) 6 SCC (Cri) 346]. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death Under Section 304-B of the Code is that 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 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao v. Yadla Srinivasa Rao [K. Prema S. Rao v. Yadla Srinivasa Rao, MANU/SC/0890/2002 : (2003) 1 SCC 217: 2003 SCC (Cri) 271] to the effect that 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".

14. With reference to the legal position as referred to above, the matter is now required to be examined as to whether the case in hand falls in the category where the presumption can be raised against the Appellant relieving the prosecution from proving its case and putting the onus on the Accused/Appellant.

15. The date of death of the deceased is 22.6.1995. She was cremated on the same day. The stand taken by the Appellant was that the parents of the deceased were informed who were living about 290 kms. away. However, they could not reach on time. It was further submitted that the maternal grandmother and two maternal uncles who were living at a distance of about one furlong from the matrimonial residence of the



deceased when she died were present at the time of cremation. They neither raised any issue nor did they inform the police. Rather on the intervention of the panchayat, they had taken all the dowry articles.

16. The cruelty or harassment has to be soon before the death. In his evidence, Pratap Singh (PW-1), father of the deceased stated that two months after the marriage his daughter came to the parental home stating that the Appellant was demanding motorcycle, however, she was sent back. Thereafter, she again came and apprised him that the demand of motorcycle was being pressed by the Appellant. Besides motorcycle, land was also demanded. There is nothing in the statement that any such demand was raised immediately before the death as the incidents sought to be referred to are quite old. He admitted in his cross examination that at the time of funeral, his mother-in-law and two brothers-in-law were present. However, they were threatened not to lodge the complaint. Balbir Singh (PW-2), maternal uncle of the deceased, merely stated that at the time of marriage sufficient dowry was given by the father of the deceased. However, later he heard that the Appellant had demanded the motorcycle. In his cross-examination, he admitted that he was living at the distance of about one furlong from the house of the Appellant. No dowry was demanded at the time of marriage of the deceased. He did not state



that the deceased ever shared with him about the demand of dowry or any harassment on account of non-fulfilment thereof though he was living close to the matrimonial house of the deceased.

30. **Chabi Karmakar (supra)** whose relevant paragraph Nos.7, 8 & 9 are as follows:-

7. Trial Court raised a presumption Under Section 113B of Evidence Act to convict the Appellants Under Section 304B of Indian Penal Code. The High Court did not go into the question of whether the trial court was right in relying upon Section 113B of the Evidence Act.

In Charan Singh alias Charanjit Singh v. State of Uttarakhand MANU/SC/0421/2023 : 2023:INSC:404, where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and Section 304B of Indian Penal Code, had noted that:

21.... .It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption Under Section 304B Indian Penal Code or Section 113B of the Indian Evidence Act.....

22. xxxxxxxx



23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption Under Section 304B and Section 113B of the Indian Evidence Act having not being fulfilled, the conviction of the Appellant cannot be justified. 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 304B and 498A of Indian Penal Code.

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death Under Section 304B of the Indian Penal Code. PW-1 and PW-3 had only stated that deceased used to tell them about her torture. PW-4 (mother of the deceased) did not speak about any demand of dowry after marriage. Moreover, this witness had said that Appellant No. 2 used to assault her deceased daughter as the deceased had objections to the illicit relation of Appellant No. 2 with another woman. PW-16, who is the cousin of the deceased, had deposed in court almost a year after the testimony of PW-1, 3 & 4 and his deposition regarding the physical assault of the deceased in connection with the demand of dowry is also not believable. Considering the aforesaid, in



our view, the trial court erred in raising a presumption Under Section 113B of the Indian Evidence Act, even though the demand for dowry was not established.

8. On the other hand, the learned Counsel for the State of West Bengal would rely on two judgments of this Court, seeking Appellants' conviction Under Section 304B of Indian Penal Code, both of which were decided by Three Judges' Bench of this Court: Rajinder Singh v. State of Punjab MANU/SC/0210/2015: 2015:INSC:161 : (2015) 6 SCC 477 and State of Madhya Pradesh v. Jogendra and Anr. MANU/SC/0027/2022 2022:INSC:30 : (2022) 5 SCC 401. :

The facts in Rajinder Singh (Supra) were entirely different. In that case, the deceased had died due to consumption of poison and there were specific allegations against in-laws in the form of evidence from the deceased's father, who had given credible evidence that the in-laws were demanding money for the construction of the house. There was also evidence of giving a she-buffalo to pacify the in-laws. Father of the deceased therein further deposed how the Sarpanch and Ex-Sarpanch of their village went to the matrimonial home of the deceased for reconciliation where the father of deceased had promised to give money after harvest of crops.

Jogendra (Supra) was decided by taking into account the peculiar facts of that case



where the evidence of PW-1 therein contained specific allegations of constant demand for dowry. It was stated that deceased was asked to raise Rs. 50,000 for the construction of house. He further stated that there was even an attempt by the 'people of society' to settle the matrimonial discord between the parties.

In paragraph 9 of Rajinder Singh (Supra), this Court had discussed the ingredients of Section 304B of Indian Penal Code as follows:

9. The ingredients of the offence Under Section 304-B Indian Penal Code have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry.

The evidence placed before us, in the case at hand, is not sufficient to prove the fourth ingredient i.e. cruelty or harassment in connection with the demand for dowry, as laid down by the abovementioned case.



9. *All the same, having considered all the relevant aspects of the matter, and the evidence of the prosecution, we are also of the opinion that a case of abetment of suicide Under Section 306 of Indian Penal Code and cruelty Under Section 498A of Indian Penal Code is made out against the Appellant No. 2, although the offence Under Section 304B is not made out and consequently, we set aside the conviction of Appellant No. 2 Under Section 304B of Indian Penal Code. With respect to the offences Under Section 306 and 498A, we convict the Appellant No. 2 and sentence him to undergo three years of rigorous imprisonment and a fine of Rs. 25000/- on each count. Both the sentences shall run concurrently and in default of fine, he shall undergo further imprisonment of 3 months. Further, we direct that the fine payable shall be paid to the nearest relative of the deceased within a period of 3 months from today. The Appellant No. 2 shall surrender before the concerned Court within four weeks from today and undergo the remaining sentence.*

Also, we allow the appeal with respect to Appellant No. 1 by acquitting her for all offences in present case. As she is presently on bail, so she need not surrender.

The Appeal is disposed of accordingly.

Pending application(s), if any, shall



stand(s) disposed of.

31. In the light of the discussions made above, this Court reached on the conclusion that ingredients of section 304B of the IPC is not available in the prosecution case and in result, the judgment of conviction and order of sentence dated 21.11.2006 passed by Sri Roop Narayan Tripathi, learned Additional Sessions Judge, FTC No.IV, Begusarai, in Sessions Trial No.297 of 1998 (arising out of Cheriabariyarpur P.S. Case No.86 of 1998 is hereby set aside. The present criminal appeal is hereby allowed. The appellant is acquitted of the charge under Section 304B/34 of the IPC.

32. The appellant, namely, Md. Taslim, of Cr. Appeal (SJ) No.1048 of 2006, is already on bail, and having been acquitted under Section 304B/34 of the IPC, let him be discharged from the liabilities of bail bonds and sureties, if any.

33. Let a copy of this judgment be sent to the concerned Court below along with the LCR.

(Dr. Anshuman, J.)

Prakashmani/-

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

