

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.147 of 2013**

Arising Out of PS. Case No.-58 Year-2011 Thana- MAJHAULIA District- West Champaran

Gaya Devi, Wife of Late Shri Narayan Bhagat, Resident of Village Mahanwa,
P.S. Majhauria, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Priya, Advocate (Amicus Curiae)
For the Respondent/s : Mr. Mukeshwar Dayal, APP

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

Date: 04.04.2025

Heard Ms. Priya, Amicus Curiae for the
appellant and Mr. Mukeshwar Dayal, learned APP for the State.

2. The present appeal is being filed for setting aside the Judgment of conviction dated 23.01.2013 and order of sentence dated 30.01.2013 passed by the learned Ad-hoc 3rd Additional District and Sessions Judge, West Champaran at Bettiah in Sessions Trial No. 377 of 2011 arising out of Majhauria P.S. Case No. 58 of 2011 corresponding to G.R. No. 687 of 2011, where the appellant was convicted for the offence punishable under Section 304(B) of the Indian Penal Code (hereafter read as 'IPC') to undergo 10 years of rigorous imprisonment.

3. The brief facts of the case are that the



informant got her daughter Anita Devi married to Bhulan Bhagat s/o Shri Narayan Bhagat on 28.05.2006 according to Hindu Rituals. After the marriage, the informant sent off his daughter with whatever respect he could according to his means. The informant's daughter stayed in Mahanwa for about a year. During this period, the girl told him many times about her mother-in-law, Gaya Devi and husband Bhulan Bhagat that they were constantly pressurizing and harassing her to give fifty thousand rupees more in dowry. Then the informant somehow took his daughter to his home in Mangalpur Gudaria. Due to the dowry incident and harassment caused to his daughter, he filed a case under the Dowry Act in the Court. After the case, with the support of the society of Mahanwa village, on 11.05.2008, the girl was taken to her husband's house in Mangalpur Gudaria and Bhulan Bhagat and his mother were reconciled with the informant's daughter in the Panchayat by the Panchs on the condition that they will not harass the girl in any way and will not demand dowry. If the girl complains again, then whatever punishment the society and law give will be accepted. Keeping in mind the prestige of the society, she went to Mahanwa from the court on 11.05.2008. After a few days, Anita Devi informed him that her husband and mother-in-law were again harassing



her and demanding dowry. The informant and his brother Prasad Bhagat came to Mahanwa and asked his daughter's in-laws to send his daughter with him. On this, Bhulan Bhagat said that he will not send her away. The informant informed this to many people of his village including Rajinder Singh, Laxman Thakur, Vag Yadav Chandrashekhar Chaurasia. On 10.03.2011, at about 9 o'clock in the morning, the informant's son-in-law, Bhulan Bhagat called the informant on mobile and told him that his daughter was unwell on which the informant's wife asked him to come to Mangalpur Gudaria so that their daughter would be treated. Again at 3 o'clock, information was received by some unknown person that Anita Devi's mother-in-law Gaya Devi and husband Bhulan Bhagat had burnt her by sprinkling kerosene on her body and setting her on fire. On receiving the information, the informant, along with his brother Prasad Bhagat, Chandrashekhar Chaurasia and Rajindra Singh, besides Thug Yadav, Laxman Thakur, Munni Chaurasia, Jawahar Yadav, Darshan Chaurasia, came to his daughter Anita's house in a Bolero car where the informant's daughter was lying dead in a burnt state. The informant's statement was recorded by Majhauilya police and on the basis of the said statement, a First Information Report was filed against the accused Gaya Devi and



Bhulan Bhagat under Section 304(B) of the IPC and the police started the investigation.

4. After investigation, police filed a charge-sheet against accused Gaya Devi under Sections 304(B)/34 IPC and submitted the charge-sheet to the court showing accused Bhulan Magat as absconding. The learned Chief Judicial Magistrate took cognizance of the offence under Sections 304(B)/34 IPC against the accused and separated the case of absconding accused Bhulan Bhagat and handed over the case of accused Gaya Devi to the Sessions Court for further trial and the learned Sessions Judge transferred the presented case to the court of Additional District Sessions Judge FTC-II for trial which was ultimately registered for trial in this court after transfer.

5. On behalf of prosecution, total 18 prosecution witnesses were examined to substantiate the charge leveled against the accused/appellant, PW-1 Gamha Bhagat, PW-2 Dashrath Ram, PW-3 Birendra Bhagat, PW-4 Uday Singh, PW-5 Manoj Bhagat, PW-6 Narendra Thakur, PW-7 Sitaram Prasad Bhagat, PW-8 Prasad Bhagat PW-9 Chandrashekhar Chaurasia, PW-10 Munni Lal Chaurasia, PW-11 Thug Yadav, PW-12 Raj Paswan, PW-13 Darshan Chaurasia, PW-14 Jawahar Yadav, PW-15 Lakshman @ Lakhiram Thakur, PW-16 Rajindra Singh, PW-



17 Dashrath Prasad and PW-18 Dr. Nikhil Kumar. The prosecution also submitted documentary evidence the signature of the informant on the statement, the signature of witness Chandrashekhar Chaurasia Exhibit I, the signature of witness Thug Yadav Exhibit 2, the signature of witness Rajendra Singh Exhibit 3; FIR was marked as exhibit 4, recorded statement Exhibit-5, Inquest report Exhibit 6 and postmortem report Exhibit 7, certified copy of the order passed in complaint No. 1023C/08 Exhibit 8 were marked.

6. The accused was examined under Section 313 of the Cr.P.C. where he denied the charges leveled against him. The accused denied the prosecution evidence and presented four oral witnesses in his defence namely DW-1 Guddu Kumar, DW-2 Julum Sahni, DW-3 Ramlal Ram and DW-4 Awadhesh Prasad.

7. PW-1 Gamha Bhagat, who is the informant in the present case and father of the deceased Anita Devi, stated in his examination-in-chief that the incident took place about a year ago. His daughter Anita Devi was married to the accused Bhulan Bhagat four years ago. Six months after the marriage, Bhulan Bhagat started demanding Rs. 50,000 as dowry. He stated that the accused used to tell his daughter to ask for money from PW-1 as dowry. His daughter ran away from her in-laws'



house and came to his house and told him that Rs. 50,000 were being demanded by her in-laws. PW-1 stated that he filed a case against Bhulan Bhagat and his mother for dowry. The matter was submitted to the Panchayat where the case was settled. After that, his son-in-law Bhulan Bhagat took his daughter to his house. The witness further stated in his examination-in-chief that both the accused again started demanding money in dowry. After the case, they kept the daughter in good health for six months in her in-laws' house but again started demanding dowry. He further stated that about 4 years ago, both the accused killed his daughter by pouring kerosene on her body and setting her on fire. He was informed by some person who called him and informed him about the incident that his daughter has been burnt. Thereafter, he along with Rajendra Shah, Thug Yadav, Jabahir Madhav together went to the deceased daughter's in-laws' house. Chandrashekhar Chaurasia, Munni Lal Chaurasia, Darshan Chaurasia were also present. He stated that he saw that his daughter was killed in the courtyard and her body was burnt.

7.i. In his cross-examination PW-1 stated that there was no dispute between the informant and the accused at the time of marriage. At the time of marriage, the accused did not demand dowry. Our daughter did not have a child. Our



daughter first went to her in-laws' house and came home only once. After that, the case was settled and the daughter went to her in-laws' house again. PW-1 stated in his cross-examination that both the accused used to demand dowry from them. He stated that Bhulan Bhagat came to his house and asked for fifty thousand rupees. After that he filed a case in the court, It is clear from Exhibit 8 which is available on record that the deceased Anita Devi had filed a complaint case 1023C of 2008 against her husband Bhulan Bhagat, which was later dismissed.

7.ii. PW-1 stated in the cross-examination that when he went inside the house after getting the news of the incident, none of the accused were present there. The body of the deceased was burnt and lying on the mat. Thus, this witness has established in his complete testimony the fact that the accused had demanded dowry from the deceased and her family members before her death and has also established that the deceased was being harassed for dowry even immediately before her death. In such a situation, this witness, who is the father of the deceased, has fully supported the prosecution in his evidence and there is no such contradiction in the entire evidence of the witness due to which the evidence of this witness can be doubted or disbelieved.



8. PW-2 to PW-7 have been declared hostile by the prosecution.

9. PW-2 Dashrath Ram stated in his examination-in-chief that he did not know how the deceased died but has stated the fact that Bhulan Bhagat's wife died at her in-laws' house. In his cross-examination he stated that he did not see with his own eyes how the deceased was burnt.

10. PW-3 Birendra Bhagat denied the statements made by him before the police in the cross-examination conducted by the prosecution.

11. PW-4 Uday Singh, PW-5 Manoj Bhagat, PW-6 Narendra Thakur and PW-7 Sitaram Bhagat also stated that they did not know how the deceased died.

12. PW-8 Prasad Bhagat stated in his examination-in-chief that his niece Anita Kumari was married to the co-accused Bhulan Bhagat following Hindu rituals about 6 years ago. After marriage she went to her in-laws house where accused Gaya Devi and Bhulan Bhagat kept harassing and beating his niece for fifty thousand rupees dowry. Our niece got fed up and came to her father's house from her in-laws house. A case of harassment was filed by the informant (PW-1) Gamha Bhagat in court through his daughter Anita, in which there was a



settlement by the Panchayat. He further stated that after this, year ago someone called Gamha Bhagat and said that Gaya Devi and Bhulan Bhagat had burnt Anita by pouring kerosene on her. On hearing the news Thug Yadav, Jawahar Yadav, Laxman Thakur, Rajinder Singh, Gamha Bhagat, all went to Anita's in-laws house in a jeep and saw that Anita's dead body was lying in the courtyard. There was a crowd of police and village people. The police had recorded the statement of his brother Gamha Bhagat (PW-1).

12.i. In his cross examination PW-8 stated that he did not see the alleged occurrence with his eyes i.e. he did not see the appellant/accused burn the deceased. He only saw her burnt body. He also stated in his cross-examination that co-accused Bhulan Bhagat had gone out to earn money. He further stated that he did not go to the deceased's house and only received the news of niece's death by burning. He was restless after seeing the dead body. He further stated in his cross-examination that the appellant/accused did not cook food on *Patloi*.

13. PW-9 Chandra Shekhar Chaurasia, stated in his examination-in-chief that the alleged occurrence occurred about a year ago, on 10.03.2011. Accused Gaya Devi and



Bhulan Bhagat, both together, burnt and killed Anita, daughter of Gamha Bhagat (PW-1). On receiving the news, he along with PW-1 and others went to Anita Devi's in-laws' place in a Bolero car. There were many people from the village there. He stated that he saw that Anita's body was lying burnt in the *aangan*. Her body above the waist was burnt. There people were saying that Gaya Devi, her mother-in-law and husband Bhulan Bhagat burnt and killed her. Anita was married to Bhulan Bhagat about 6 years ago.

13.i. In his cross-examination, PW-9 has stated that he did not see the alleged occurrence happening and that he heard the people present in the deceased's in-law's house that the appellant and co-accused Bhulan Bhagat had burnt the deceased.

14. PW-10 Munni Lal Chaurasiya has stated in his examination-in-chief that the marriage took place on 28.06.2006. After marriage Anita went to her in-laws' house. After living there for 5-6 months, Bhulan Bhagat and the appellant used to beat Anita for dowry and used to demand Rs. 50,000 as dowry. The girl Anita had filed a case which was resolved by the Panchayat in which the appellant and co-accused Bhulan Bhagat undertook that they would not demand



dowry and thereafter the deceased went back to her in-laws' house. However, even after that, Anita was harassed and murdered for dowry. The informant PW-1 was informed by some stranger over phone that his daughter Anita was burnt to death by her husband and mother-in-law. After that PW-10 along with Anita's father (PW-1) and 7-8 other men went to Anita's in-laws' house in a Bolero car. PW-10 stated that the deceased's in-laws were not there when they reached the place of occurrence. The upper part of her body was burnt. Anita was burnt to death for dowry.

14.i. In his cross-examination PW-10 stated that no dowry demand was made by the appellant/accused in front of us. He further stated that the upper body of the deceased was burnt and her hands were tied with a rope.

15. PW-11, Thug Badan who lives in Mangalpur Gudaria, which is the maternal home of the deceased, has stated in his examination-in-chief that Anita Devi was married to Bhulan Bhagat, the co-accused, about 6 years ago. After the marriage, Anita went to Mahanwa village. After some time, the appellant and co-accused Bhulan Bhagat began demanding money for dowry. For dowry, Anita was told to get money for dowry from her father. When dowry was not given, Anita was



beaten up by her husband and mother-in-law. Thereafter Anita ran away from her in-laws' house to her father's house. Anita filed a case of harassment in the court, after which a Panchayat was held. Bhulan Bhagat and his mother came to the court in Mangalpur Gudaria, and promised that they would take care of the girl properly and would not harass her. About a year ago, Anita was burnt to death by her in-laws, husband and mother-in-law. The news of her death was received by Gamha Bhagat, the girl's father. Gamha Bhagat called us to his daughter's in-laws' house. PW-11 further stated that when he went to the in-laws' house, he saw that Anita's body was lying burnt.

15.i. In his cross-examination, PW-11 stated that he had gone to Anita's in-laws' house on the same day of Anita's death and many other people were also present with him. There were 8-9 men. Anita's body was lying on the ground. Her *saree* and her blouse were burnt. PW-11 further stated that no one saw Anita burning, but he saw that there were burn marks on Anita's body. Her face, hair and hands were all burnt.

16. PW-12, Raju Paswan was declared hostile by the prosecution.

17. PW-13 Darshan Chaurasia @ Darshan Bhagat stated in his examination-in-chief that he did not know



the name of the deceased's husband. After marriage Anita went to her in-laws house, lived well for six months but after that her mother-in-law started harassing her for dowry after which Anita ran away to her parental house. She filed a complaint which was settled and Anita was taken to her in-law's house after making a bond. However, following this again Anita was harassed. PW-1 Gamha Bhagat received a phone call where he was told that his daughter had been burnt to death. PW-13 went to Mahanwa village with Gamha Bhagat in a car along with 8-9 men. Before reaching the deceased's in-laws' house, police and other people had already reached the place of occurrence. Anita's body was lying in the *aangan* and her body was burnt above the waist. PW-13 stated that the villagers said that Anita's mother-in-law (appellant) had burnt Anita to death.

17.i. In his cross-examination, PW-13 stated that when he reached the place of occurrence the appellant and the co-accused were not present there.

18. PW-14 Jawahar Yadav stated in his examination-in-chief that the occurrence took place before Holi in 2011. He was at his home when PW-1 Gamha Bhagat told him that his daughter was burnt to death and took him to the deceased girl's in-laws' place. He stated that he saw that Anita



had been burnt. She was lying on the floor and he heard the villagers were saying that the mother-in-law and husband had burnt her to death. Anita was married 6 years ago and was not taken care of properly by her in-laws. They used to harass Anita. A case was filed by the informant Gamha against the appellant/accused for dowry, but after reaching a settlement both the accused took Anita home after making a bond that they would keep her properly in her in-laws' place.

18.i. In his cross-examination, PW-14 stated that Gamha Bhagat had told him about the alleged occurrence of burning but who told Gamha Bhagat, he did not know.

19. PW-15 Ramkrit Thakur who was resident of Mangalpur Gudaria stated in his examination-in-chief that the incident took place about a year ago He was at his home when he got a call from Gamha Bhagat where he told him that his daughter had been burnt to death. PW-15 along with Gamha Bhagat and other people went to his daughter's house. The police had already arrived there. They were saying that the girl had been burnt to death for dowry. The dead body of Anita was lying on the ground in the *aangan*; the upper part of her legs were burnt.

19.i. In his cross-examination, PW-15 stated that



he is not an eyewitness of the incident and Gamha Bhagat had told him that his daughter Anita was being harassed in connection with dowry demand by the appellant and co-accused Bhulan Bhagat. He further stated that there was no demand for dowry or harassment of the girl in front of him.

20. PW-16 Rajendra Singh has stated in his examination-in-chief that Anita was married to Bhulan Bhagat in 2006. After marriage, Anita went to her in-laws house. She lived there for a few days quite well, after that Anita was harassed by her mother-in-law and husband for dowry. Bhagat used to demand fifty thousand rupees as dowry from the girl's father. The dowry money was not given and she ran away from her in-laws house and came to her parents house and filed a case in the court. A Panchayat was held in the village. Her mother-in-law and husband also attended the Panchayat. On the basis of the panchayat, a bond was made and from the court itself Anita went to her in-laws house. PW-16 stated that after that on 10.03.2011, he came to know that Anita was killed by her family members. He had gone to Anita's in-laws house in a Bolero car. The police had already reached there and many people from the village were there. Anita's dead body was lying burnt in the *aangan*.



20.i. In his cross-examination, PW-16 stated that he did not see the alleged occurrence. He further stated that the deceased's mother-in-law and husband were not at home when he reached the place of occurrence. The witness also stated in his cross-examination that on 10.03.2011, Anita's father had told him that Anita was killed by burning. He stated that the burning was not done in front of him.

21. PW-17, Dasrath Prasad is the Investigating Officer in the instant case. In his examination-in-chief he stated that the body of the girl Anita Devi was found lying inside *chaukhath* of the house and her entire body above the waist was completely burnt. He also stated that no burnt substance was found in the place of occurrence. He stated that the food was cooked in the *aangan* of the house where the body was found at the scene of the incident.

21.i. In his cross-examination he stated that the informant did not tell who gave him the information on phone about his daughter's death. He further stated that during investigation he could not find even one witness who saw the alleged occurrence. He further that in Para-11 of the case diary PW-11 Narendra Thakur said that the deceased was subjected to torture right before her death but there were no eye-witnesses to



the alleged torture. He further stated that he took the statement of the people who were present at the place of occurrence.

22. PW-18 is Dr. Nikhil Kumar who conducted the postmortem examination of the dead body of Anita Devi and issued the postmortem report after the postmortem. In his examination-in-chief he has stated that the cause of death was injuries caused by fire. However, in his cross-examination he stated that he did not mention the degrees/percentage of burns suffered by the deceased.

23. On behalf of the defence/appellant, total 4 witnesses were examined. DW-1 Guddu Kumar stated in his examination-in-chief that Anita Devi was cooking food in the *aangan* and her surroundings caught fire and at that time her husband and mother-in-law(appellant) had gone to their field.

24. DW-2 Julum Sahni has also said in his examination-in-chief that on the day of the incident Anita Devi was making food on the earthen stove in her house on *Patloi* and fire broke out and he heard her scream and when he went there he saw Anita Devi's burnt body.

25. DW-3 Radhelal Ram and DW-4 Awadhesh Prasad have also said in their examination-in-chief that Anita Devi was cooking food in her house on *Patloi* and in the process



her body caught fire and she burnt to death.

26. The learned *Amicus Curiae* for the appellant has submitted that in the instant case there are no eye-witnesses to the alleged occurrence. Out of 18 prosecution witnesses, PW-2 to PW-7 and PW-12 were declared hostile by the prosecution and PW-8 to PW-11 along with PW-13 and PW-16 were hearsay witnesses. She further submitted that the prosecution has not been able to prove the alleged offence of Section 304-B. She submitted that the postmortem report indicated no mark of injury apart from burn injuries on the body of the deceased. She further submitted that there were inconsistencies in the statements of the prosecution witnesses as to where the body of the deceased was found. PW-9, PW-13 stated that the body of the deceased was found in the *aangan* of the house whereas PW-17 stated that the body was found at the *chaukhath* of the house. She further submitted that co-accused Bhulan Bhagat, who was the husband of the deceased was acquitted in the S.T. Case no. 593 of 2013 wherein he was charged with the same offences as the appellant. She submitted that the prosecution did not bring the co-accused Bhulan Bhagat's case on record and neither was any document exhibited related to this.

27. On the other hand, learned Additional Public



Prosecutor has vehemently opposed this appeal and submits that there is direct allegation against the present appellant, for dowry death. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

28. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

29. Having deeply studied and scrutinized the facts and the material on record of the present case, it is evident to note that there was no eye witness to the alleged occurrence in the instant case. The entire prosecution case is based on hearsay evidence. The postmortem report submitted by the Medical Officer, PW-18 does not mention of any antemortem injuries which would show any kind of cruelty on the deceased. At the outset it would be imperative to state Section 304-B of IPC which reads as follows:

“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.”

30. In order to constitute a ‘dowry death’ punishable under Section 304-B IPC, 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.

31. In the instant case, death of the deceased took place within 7 years of marriage. The deceased was married to the co-accused Bhulan Bhagat, son of the appellant on 28.05.2006 and the deceased died on 10.03.2011 under unnatural circumstances wherein she died by burn injuries. The third ingredient necessary to establish conviction under Section 304-B is that *'soon before death she must have been subjected to cruelty or harassment by her husband or any relative of her husband'*. In the instant case, PW-1 stated that there was no dispute between the informant and the accused at the time of marriage regarding dowry. He stated that his daughter had filed a complaint regarding dowry which was settled by the Panchayat but this fact has not been supported by any independent witness. It is further observed that the appellant was not present at the place of occurrence at the time of occurrence. Even prosecution witnesses do not state that at the time of incident the accused were present in the house. Indisputably, the accused have not been convicted for any other offence, and rightly so, because there was no worthwhile evidence to show that, except for the burn injuries, which could be inflicted by accident as well. Moreover, the presence of the



accused in the house at the time of occurrence is not proved. The prosecution has not been able to prove that the deceased was subject to cruelty soon before her death as Exhibit 7 clearly mentions that there was no antemortem injuries found on the body of the deceased. There is no mention of any mental cruelty on the deceased as well. In such circumstances, the ingredients of Section 304-B IPC have not been proved.

32. Hence, the Judgment of conviction dated 23.01.2013 and order of sentence dated 30.01.2013 passed by the learned Ad-hoc 3rd Additional District and Sessions Judge, West Champaran at Bettiah in Sessions Trial No. 377 of 2011 arising out of Majhauria P.S. Case No. 58 of 2011 corresponding to G.R. No. 687 of 2011 is set aside and the appellant is acquitted from the charges leveled against her. As the appellant is on bail, she is discharged from liability of his her bail bond.

33. Before parting with this appeal, Secretary Patna High Court Legal Services Committee is directed to pay Rs. 5,000/- (five thousand) to the learned Amicus Curiae Ms. Priya towards honorarium for assisting the Court in the present Appeal.

34. Let a copy of the first and last page of this judgment be handed over to Ms. Priya, learned Amicus Curiae



and the office is directed to proceed further in granting
honorarium to her which is to be paid by the Patna High Court
Legal Services Committee.

35. Accordingly, this appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.04.2025
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