

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.206 of 2016

Arising Out of PS. Case No.-76 Year-2013 Thana- BEGUSARAI GRP CASE District-
Begusarai

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Amritpal Singh Son of Amrik Singh Resident of Village - Amardas Colony,
Chhehara, District-Amritsar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Saket Kumar Singh, Advocate
For the State	:	Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

7 23-03-2026 Heard learned senior counsel for the appellant and
learned A.P.P. for the State.

2. This appeal has been filed challenging the judgment of conviction dated 17.12.2015 and order of sentence dated 18.12.2015 passed in Sessions Trial No. 204 of 2014 arising out of Barauni Rail Case No. 76 of 2013 whereby the sole appellant has been convicted under Sections 304B, 498A and 201 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 10 years under Section 304B of the Indian Penal Code, rigorous imprisonment for three years and fine of Rs. 10,000/- under Section 498A of the Indian Penal Code and in default of fine, to further undergo simple imprisonment for one month and rigorous imprisonment for



three years and a fine of Rs. 10,000/- under Section 201 of the Indian Penal Code and in default of payment of fine, to further undergo simple imprisonment for one month. All sentences have been directed to run concurrently.

3. In this case, initially, a U.D. case was registered by the Gajipur Rail Police on 25.09.2013 under Section 302 and 201 of the Indian Penal Code and later on, converted into a regular case on the statement of the informant, namely Saweeran Singh, who identified the dead body of the deceased as his daughter and thereafter, the case was transferred before the Barauni Rail Police and Barauni Rail Case No. 76 of 2013 was registered for the offences punishable under Sections 304B, 498A, 120B and 201 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. In this case, charge-sheet was submitted by the investigating officer only against this appellant, who happens to be husband of the deceased and accordingly, cognizance was taken on 14.02.2014 and case was committed before the learned Sessions Court on 01.03.2014.

4. The prosecution case, in brief, is that marriage of daughter of informant was solemnized with this appellant on 24.02.2013 and thereafter, she went to her in-laws house and after a few days, informed the informant over phone that this



appellant and his family members are demanding a vehicle and one lakh rupees cash as dowry and are assaulting and torturing her. The informant persuaded this appellant to meet out his demands later on. After a few days, the victim again informed over phone that this appellant has been torturing her due to non-fulfillment of demand of dowry. Later on, this appellant took the daughter of informant to Assam and from there also, the victim informed the informant and her brother that this appellant has continuously been torturing and assaulting her. Thereafter, on 23.09.2013, the victim informed that informant that she is coming back home along with this appellant and on 25.09.2013 at about 6:10 PM, this appellant informed the son of informant on phone that he had got down from the train for getting some items but missed the train and the victim is going alone and asked him to receive her at Amritsar. The informant firmly believes that this appellant has killed his daughter by cutting her neck with knife in the toilet of the running train due to non-fulfillment of demand of dowry before calling on phone.

5. In this case, in order to bring home guilt of the accused person, the prosecution has examined two witnesses. P.W. 1 is business partner of brother of the deceased and P.W. 2 is brother of the deceased.



6. On the other hand, the defence has not produced any oral or documentary evidence. However, defence of the appellant is gathered from the line of cross-examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. and is that of total denial of the charges.

7. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of this order.

8. Learned senior counsel appearing for the appellant assails the order of conviction and sentence on multiple grounds. He contends that P.W. 1, in chief of examination, claimed himself to be cousin of the deceased but during cross-examination, he accepted that he is business partner of brother of the deceased. Thus, he has no concern with the affairs of the deceased and her family members and is a hearsay witness and not a reliable witness. P.W. 2 is also not a reliable witness because he has neither lodged the F.I.R. nor produced any corroborative evidence in support of the allegations. Learned senior counsel further contends that the prosecution has not exhibited the F.I.R., *post mortem* report or inquest report and hence, the very basis of the case is not on



record and the learned Trial Court has convicted the appellant only on the basis of presumption under Section 113B of the Evidence Act, which would not be attracted because initial burden of proving the circumstances, as envisaged under Section 304B of the Indian Penal Code, rests on the prosecution. He further contends that in this case, neither the informant nor the investigating officer, doctor or seizure list witnesses have been examined. Neither any corroborative document relating to the prosecution case has been brought on record. Non-examination of informant, Investigating Officer, doctor and seizure list witnesses as well as not exhibiting any document like the F.I.R., *post mortem* report, seizure list or inquest report has highly prejudiced the case of prosecution and in fact, there is no case against the appellant. Lastly, he contends that in order to convict a person under Section 304B of the Indian Penal Code, three essential ingredients are necessary to be present, which are:-

- a. Death of a woman is caused by any burn or bodily injury otherwise than under normal circumstances,
- b. Such death of the woman should occur within seven years of her marriage and
- c. Soon before her death, she should be subjected to



cruelty or harassment by the accused in connection with any demand of dowry.

9. Learned senior counsel for the appellant contends that in the present case, there is no proof on record which can establish that there was any demand of dowry or torture soon before the death. Thus, it is a case of no evidence and prosecution has failed to prove the case beyond reasonable doubt and hence, the appellant is fit to be acquitted. In support of his contentions, he places reliance upon judgments of this Hon'ble Court passed in the case of *Shivjee Sah and another versus State of Bihar* reported in *2021 (2) PLJR 374*, *Md. Jamaluddin Khan @ Mohammad Jamaluddin Khan versus The State of Bihar* passed in *Cr. Appeal (DB) No. 1190 of 2017* and *Kaushaliya Devi and another versus The State of Bihar* passed in *Cr. Appeal (SJ) No. 1012 of 2006*.

10. On the other hand, learned A.P.P. for the State has submitted that there is no need of any interference in this appeal since the prosecution witnesses have supported the corroborated the prosecution story and there is no reason to differ with the findings of the learned trial court and the judgement of conviction and order of sentence are justified and legal.



11. From going through the evidence and perusal of the records, it appears that none of the two prosecution witnesses have seen the occurrence and are related to the informant and are highly interested witnesses. The prosecution has not brought on record any proof with regard to the torture or demand of dowry prior to death of the deceased. Informant, Investigating Officer, doctor or seizure list witnesses have not been examined. F.I.R., *post mortem* report or inquest report have not been brought on record. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has definitely prejudiced the appellant since the appellant lost opportunity to cross-examine the Investigating Officer on the point of seized materials, visit to the place of occurrence and contradiction in statements of the prosecution witnesses. Non-examination of the doctor has also made the case of the prosecution doubtful.

12. It is also pertinent to mention here that in order to establish the offence under Section 304B of the Indian Penal Code, the prosecution is obliged to prove the three essential ingredients, as discussed above. If the prosecution, proves all the three essential ingredients, then the presumption under Section 113B of the Evidence Act will operate. Such



presumption is rebuttable and the onus to rebut shifts on the accused person. If the prosecution fails to establish the aforesaid ingredients, then the presumption under Section 113B of the Evidence Act does not apply and in such cases, the burden does not shift to the accused persons to rebut the presumption under the law.

13. In this case, it is evident that there is nothing on record to show that soon before the death of the deceased, there was any demand or torture by the appellant, which is a necessary ingredient to bring guilt of the accused under Section 304B of the Indian Penal Code. Since one of the essential ingredient of Section 304B of the Indian Penal Code is absent on record, in my view, the appellant cannot be convicted under Section 304B of the Indian Penal Code. Moreover, in this case, F.I.R., *post mortem* report and inquest report are not on record. The Investigating Officer, informant, doctor and seizure list witnesses have also not been examined.

14. Thus, in view of the facts and circumstances of the case, as discussed above, it is not sufficient to come to a conclusion that this appellant committed dowry death due to non-fulfillment of demand of dowry.

15. It is well established rule of law that in case of



circumstantial evidence, the chain must be completed to establish the guilt of the accused person. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellant is entitled to get the benefit of doubt.

16. In that view of the matter, the judgment of conviction dated 17.12.2015 and order of sentence dated 18.12.2015 passed by the learned Additional Sessions Judge-II, Begusarai in connection with Sessions Trial No. 204 of 2014 arising out of Barauni Rail P.S. Case No. 76 of 2013 are hereby set aside.

17. Appellant is acquitted of all the charges and is discharged from the liability of the bail bond in connection with this case.

18. Accordingly, this appeal stands allowed.

(Prabhat Kumar Singh, J)

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