

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.11 of 2016

Arising Out of PS. Case No.-79 Year-2008 Thana- TAJPUR District- Samastipur

Shiv Charan Das @ Shibu Das son of Late Vishnu Das Resident of Village-
Patepur, Gopinath, P.S.- Pusa, District- Samastipur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Chandra Mohan Singh, Advocate
For the Respondent/s : Mr. Z.Hoda, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 07-07-2026

1. Heard learned counsel for the appellant and learned A.P.P. for the State.

2. This appeal has been filed challenging the judgment of conviction dated 06.10.2015 and order of sentence dated 09.10.2015 passed in Sessions Trial No. 68 of 2014 arising out of Tajpur P. S. Case No. 79 of 2008 by learned Additional Sessions Judge V, Samastipur whereby appellant has been convicted under Sections 304B/34 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 10 years.

3. The prosecution case arises out of the *fardbeyan* of Satyanarayan Dass recorded by SI Ashok Kumar, Pusa P.S. on 21.03.08 at 8.30 AM at Sadar hospital Samastipur. As per the



fardbeyan, the prosecution case, in short, is that the daughter of informant, namely, Anita Devi (deceased) got married with this appellant of village Patepur about 5 years ago. After the marriage, he peacefully kept Anita Devi for some months, thereafter, appellant and his mother Ram Dulari Devi started torturing Anita Devi for the dowry. It is alleged that the informant persuaded appellant several times but the accused and his mother did not listen the prayer of informant and they kept torturing Anita Devi for non fulfillment of demand of motorcyle and Rs. 50,000/-. Informant's daughter was been blessed with two children. It is further alleged that about six months back the informant gave *Palang*, quilt, *Gadda* to this appellant but in presence of the informant, appellant and his mother misbehaved with Anita Devi. At that time also, the informant tried his best to calm down the situation. It is further alleged that once again, son-in-law and *samdhin* gave a threatening note that if it is not fulfilled, they will not allow Anita in the house and they will kill her. But informant took it lightly. He further alleged that on 21.03.08 the police of Pusa P.S informed the informant that his daughter Anita Devi was murdered and her dead body was kept in Sadar Hospital, Samastipur for postmortem. On this information, informant along with the villagers came to the



Sasural of the Anita Devi at Patepur where he came to know that his daughter Anita Devi was brutally assaulted by this appellant and his mother and they killed her and fled away. The police arrived there on the information of the villagers and sent the dead body for postmortem. Informant claims Shiv Charan Das @ Shibu Das and Ram Dulari Devi killed his daughter due to non-fulfillment of demand of dowry.

4. In this case, in order to bring home guilt of the accused person, the prosecution has examined five witnesses.

(i) P.W. 1, Ram Pukar Das is the brother of deceased who stated that she was married to this appellant about 5 years prior to occurrence. After 2-3 years of cordial relationship, the accused started demanding a motorcycle and Rs. 50,000/- as dowry and used to torture her for non-fulfillment of the demand. He deposed that Anita informed her parental family about such torture whenever she visited *Naihar*. He received information about Anita's murder from the *Chowkidar* and saw several injuries on her body at the hospital. He proved his signature on the *fardbeyan* as Ext.1/1.

(ii) P.W. 2, namely, Satyanarayan Das is the informant and father of deceased Anita Devi. He stated that Anita was married to accused this appellant about six years before the



occurrence and had two children. Initially, the accused treated Anita properly, but later on demanded Rs. 50,000/- and a motorcycle and subjected her to cruelty for non-fulfilment of demand. He stated that Anita repeatedly complained about torture by her husband. On receiving information from the *Chowkidar*, he went to Samastipur Hospital and found Anita dead with injuries on her head, buttock and hands, with blood oozing from her nose. He proved the *fardbeyan* as Ext. 1.

(iii) PW-3, namely, Suresh Das is another brother of deceased Anita Devi and he also supported the prosecution case. He denied the defence suggestion that Anita died due to illness.

(iv) PW-4, Dr. B.P. Rai is the Doctor who conducted the postmortem examination. He found several ante-mortem injuries including lacerated wounds on the forehead and hands, fracture of frontal bone, and blood in the cranial cavity. He opined that death was caused due to shock and haemorrhage resulting from hard and blunt force injuries. He further stated that such injuries could not occur by a simple fall from the roof. He proved the postmortem report as Ext. 2.

(v) P.W. 5, Md. Amanullah is charge-sheet witness. He stated that he went to the hospital and saw the dead body of Anita Devi bearing several injuries.



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

6. Learned counsel appearing for the appellant assails the order of conviction and sentence on the ground that there is no eye witness to the occurrence. He denied the prosecution case and stated that the deceased died by falling from the roof while plucking pumpkin and thereby, causing several injuries. Taking advantage of the situation, this false and concocted case was lodged against appellant. He argued that all the prosecution witnesses are close family members of the deceased, hence, their testimonies could not be relied upon. As also, prosecution failed to examine the Investigating Officer, which, according to the defence caused serious prejudice. It is further submitted that there is lack of iota of evidence that due to non-fulfillment of demand of dowry, the deceased was tortured and harassed by the appellant, resulting in her death. He submits that learned Trial Judge has ignored the aforesaid serious infirmities in the prosecution case while recording the judgment of conviction. 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. In support of his contentions, he places reliance upon judgment of this Hon'ble Court passed in the case of **Gudhiya Devi versus State of Bihar** reported in **2021 (1) PLJR 731** and **Bakshish Ram & Another versus The State of Punjab** reported in **(2013) 4 SCC 131**.

7. On the other hand, learned A.P.P. for the State has submitted that prosecution has successfully established the case of dowry death as the victim died in unnatural circumstances in her matrimonial house within seven years of her marriage with multiple injuries on her body and there is allegation of demand of dowry. Hence, pedantic approach in appreciation of evidence cannot be adopted and he urged that for technical flaws, the Trial Court judgment need not be interfered with.

8. From going through the evidence and perusal of



the records, it appears that none of the 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.

9. In this case, prosecution failed to establish the date of marriage of the appellant with the deceased as there is no oral or documentary evidence on record regarding the same. Hence, there is no proof that the deceased was married to the appellant within seven years of the alleged occurrence. I.O., who conducted the investigation, has not been examined. 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. Material contradictions and inconsistencies in the deposition of witnesses remain untested. 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. A conjoint reading the three provisions 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 113B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the persons 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.

10. 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. Thus, cumulative consideration of the prosecution evidence does not inspire confidence that the prosecution has established beyond reasonable doubt the charges levelled against the appellant as there is complete lack of evidence of harassment or torture for non-fulfillment of demand dowry. Learned Trial Judge has miserably overlooked the aforesaid lapses. Hence, judgment of conviction passed against the appellant is not sustained in law.

11. 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.

12. In that view of the matter, the judgment of conviction dated 06.10.2015 and order of sentence dated 09.10.2015 passed in Sessions Trial No. 68 of 2014 arising out of Tajpur P. S. Case No. 79 of 2008 by learned Additional Sessions Judge V, Samastipur are hereby set aside.

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



this case.

14. Accordingly, this appeal stands allowed.

(Prabhat Kumar Singh, J)

Navya/-

AFR/NAFR	NAFR
CAV DATE	N/A
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