

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.821 of 2010

1. KAMDEO PRASAD VERMA @ KAMDEO VERMA, Son of late Lalmani Prasad Verma @ Lalmani Mahton

2. Suresh Mahto, son of late Lalmani Prasad Verma @ Lalmani Mahton

All are residents of village Gadi Silfari, Police Station, Chandramandi, District, Munger at present Jamui

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Nagendra Dubey, Advocate
For the Respondent/s : Mr.S.N.Pd., App

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

CAV JUDGMENT

Date : 09-07-2026

Heard Mr. Nagendra Dubey, learned counsel appearing on behalf of the appellants and Mr. S .N. Prasad, learned APP for the State.

2. The present appeal is directed against the judgment of conviction dated 01.07.2010 and order of sentence dated 07.07.2010 passed by the learned Additional District and Sessions Judge, F.T.C. V, Jamui in Sessions Trial No. 534 of 1996/ Tr No.92/2009 arising out of Chandramandih P.S. Case No. 21/89, whereby the appellants have been convicted for the



offences under Section 304 - B and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years under Sections 304B of the Indian Penal Code and rigorous imprisonment for three years under Section 201 of the Indian Penal Code with a fine of Rs. 1,000/-, each and in default of payment of fine, to undergo further rigorous imprisonment for three months. Both the sentences were directed to run concurrently.

BRIEF FACTS OF THE CASE

3. The prosecution case, in brief, is that the marriage of deceased Sushila Devi was solemnized with accused Kamdeo Pd. Verma (appellant no.1) about six to seven years prior to the occurrence. After her marriage, she started residing at her matrimonial home situated at village Gadi - Silfari under Chandramandih Police Station. It is alleged that whenever she visited her parental home, she complained to her brother, the informant Sudhir Kumar Verma, and other family members that her husband Kamdeo Pd. Verma, her devar Suresh Mahton, her father-in-law Lalmani Mahton and her mother-in-law Pagli Devi were persistently demanding Rs.10,000/- in cash along with utensils, an umbrella and a pair of shoes as dowry. It is further alleged that on account of non-fulfilment of the said



demand, she was subjected to physical assault, cruelty and harassment by the aforesaid accused persons.

4. According to the prosecution, on 17.04.1989, the informant visited the matrimonial home of his sister and requested the accused persons not to subject her to further torture. He also assured them that their demands would be fulfilled as early as possible and thereafter returned to his village. However, on 21.04.1989 at about 5:00 P.M., the informant received information from his brother-in-law (*Sala*), Shail Kumar Verma, that his sister had been brutally assaulted by her husband, *devar*, in-laws and one Kailash Mahton, and had succumbed to the injuries sustained in the assault. On receiving the said information, the informant, accompanied by several villagers, immediately proceeded to the matrimonial village of the deceased and reached there during the night. It is alleged that despite repeated requests, the accused persons did not open the door of their house. Thereafter, the informant met Laljit Mahton, a resident of the same village, who informed him that the accused persons, with the assistance of certain villagers, had hurriedly cremated the dead body of Sushila Devi on the bank of the *Dharhwa* River with the intention of causing disappearance of evidence and screening themselves from legal



punishment.

5. On the basis of the fardbeyan of the informant recorded on 22.04.1989 at about 5:30 A.M., Chandramandih P.S. Case No. 21 of 1989 was instituted initially under Sections 302, 201 and 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against Kamdeo Pd. Verma (appellant no.1), Pagli Devi, Lalmani Mahton, Suresh Mahton (appellant no.2), Rameshwar Mahton, Bahadur Mahton, Horil @ Maru Mahton, Numani Mahton, Budhdeo Mahton, Shankar Mahton and Kailash @ Kaleshwar Mahton. During the course of investigation, the Investigating Officer visited the place of occurrence, as well as, the alleged cremation site, recovered ashes, burnt remains and broken bangles, prepared the seizure list, recorded the statements of witnesses and, finding the allegations to be true, submitted charge-sheet against the accused persons under Sections 304B and 201 of the Indian Penal Code, leading to the conviction of the appellants upon conclusion of trial.

ARGUMENT ON BEHALF OF THE
APPELLANTS

6. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment of conviction



and order of sentence are contrary to the evidence available on record and the settled principles of criminal law. It was contended that the prosecution has failed to establish the foundational ingredients of Section 304-B of the Indian Penal Code beyond reasonable doubt. The entire prosecution case substantially rests upon the testimony of P.W.3 Sudhir Kumar Verma (informant), who admittedly is not an eyewitness and whose evidence regarding the alleged occurrence is hearsay, being based upon the information allegedly received from Shail Kumar Verma, a material witness who was not examined during trial. Though P.W.4 Laljit Mahton claimed to be an eyewitness, his testimony is not corroborated by any independent witness. It was further submitted that P.W.1, P.W.2 and P.W.6 did not support the prosecution case and were declared hostile, while P.W.5 merely proved formal facts regarding the marriage and death of the deceased. Thus, the conviction is based only upon the interested testimonies of P.W.3 and P.W.4, which do not inspire confidence and are insufficient to sustain the conviction.

7. Learned counsel further submitted that the Investigating Officer was not examined, thereby depriving the defence of the opportunity to confront him with the contradictions and omissions in the prosecution evidence and to



challenge the alleged investigation. Moreover, no postmortem examination was conducted, nor was any doctor or medical witness examined to establish that the deceased died otherwise than under normal circumstances. It was argued that the prosecution has also failed to prove that the deceased was subjected to cruelty or harassment in connection with any demand for dowry soon before her death, which is an essential ingredient for attracting Section 304-B IPC. Consequently, the statutory presumption under Section 113-B of the Indian Evidence Act could not have been invoked by the learned Trial Court. It was, therefore, contended that the prosecution having failed to prove its case beyond reasonable doubt, the conviction of the appellants under Sections 304-B and 201 of the Indian Penal Code is unsustainable in law and deserves to be set aside by extending the benefit of doubt to the appellants.

ARGUMENT ON BEHALF OF THE STATE

8. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial has erred no mistake in convicting the appellants for the offences under Sections 304B and 201 of the Indian Penal Code.



ANALYSIS AND CONCLUSION

9. Heard the parties.

10. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

11. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment of conviction dated 01.07.2010 and order of sentence dated 07.07.2010 for the offence punishable under Sections 304 B and 201 of the Indian Penal Code.

12. During the trial, the prosecution has examined altogether six witnesses, namely:

- 1) **P.W.1 – Sitaram Mahton**
- 2) **P.W.2 – Sumitra @ Sumiya Devi**
- 3) **P.W.3 – Sudhir Kumar Verma (informant)**
- 4) **P.W.4 – Laljit Mahton**
- 5) **P.W.5 – Rajkumar Mahton**
- 6) **P.W.6 – Barhamdeo Pd. Verma**

13. The prosecution has also relied upon following documents exhibited during the course of trial:

Ext. 1 – Signature of P.W.1 Sitaram Mahton on the



seizure list.

Ext. 2 – Signature of Bedi Prakash Sinha on the fardbeyan dated 22.04.1989.

Ext. 2/1 – Signature of Manohar Pd. Verma on the fardbeyan.

Ext. 2/2 – Signature of Kushal Chand Mahton on the *fardbeyan*.

Ext. 2/3 – Signature of Shail Kumar Verma on the *fardbeyan*.

Ext. 2/4 – Signature of informant Sudhir Kumar Verma on the *fardbeyan* dated 22.04.1989.

14. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be summarised as follows:

P.W.1 – Sitaram Mahton P.W.1 was a resident of village Gadi-Silfari. He did not support the prosecution case during trial and was declared hostile. Even after his attention was drawn to his previous police statement, he denied having made such statement.

P.W.2 – Sumitra @ Sumiya Devi P.W.2 also belonged to village Gadi-Silfari. She failed to support the



prosecution case and was declared hostile. She denied her previous statement recorded during investigation.

P.W.3 – Sudhir Kumar Verma (Informant and brother of the deceased) P.W.3 deposed that his sister Sushila Devi had been married to accused Kamdeo Pd. Verma about six years prior to the occurrence. According to him, after marriage his sister repeatedly informed him that her husband, devar Suresh Mahton, father-in-law Lalmani Mahton and mother-in-law Pagli Devi were demanding ₹10,000/- in cash along with utensils, umbrella and shoes as dowry and were assaulting and torturing her for non-fulfilment of the demand.

He further stated that on 17.04.1989 he visited her matrimonial home and requested the accused persons not to torture his sister and assured them that their demands would be fulfilled. On 21.04.1989, Shail Kumar Verma informed him that Kamdeo Mahton, Suresh Mahton, Lalmani Mahton, Pagli Devi and Kailash Mahton had brutally assaulted Sushila Devi resulting in her death. He thereafter reached the matrimonial village where P.W.4 Laljit Mahton informed him that the accused persons had already cremated the dead body to destroy evidence.

He proved his signature on the fardbeyan and also



identified the signatures of the attesting witnesses thereon. During cross-examination he denied the defence suggestion that Sushila Devi had died due to snake bite or that the accused persons had been falsely implicated owing to previous enmity.

P.W.4 – Laljit Mahton P.W.4 was a resident of village Gadi-Silfari and father of Shail Kumar Verma. He claimed to be an eyewitness to the occurrence. He deposed that on hearing hulla he reached the house of Sushila Devi and found accused Pagli Devi, Lalmani Mahton, Kamdeo Mahton, Suresh Mahton and Kailash Mahton assaulting Sushila Devi for bringing insufficient dowry. According to him, Sushila Devi succumbed to the injuries at about 4:00 P.M.

He further stated that his son Shail Kumar Verma had gone to inform the informant regarding the occurrence. In cross-examination, he admitted that the informant was his son-in-law but denied the suggestion that he had falsely implicated the accused due to any land dispute or that Sushila Devi had died due to snake bite. Nothing substantial could be elicited to discredit his testimony regarding the assault.

P.W.5 – Rajkumar Mahton- P.W.5 was a co-villager of the accused. He admitted that Sushila Devi had been married to Kamdeo Mahton and that she died at her matrimonial



home. He did not depose regarding the alleged assault or demand of dowry.

P.W.6 – Barhamdeo Pd. Verma- P.W.6 was a resident of village Gadi-Silfari and brother-in-law (Sala) of the informant. He admitted the marriage of Sushila Devi with Kamdeo Mahton and also admitted that she died in her matrimonial home. However, he did not support the prosecution case on material particulars and was declared hostile.

15. On the basis of materials surfaced during the trial, the appellants/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

LAW GOVERNING DOWRY DEATH

16. It would be appropriate to reproduce the provisions of Sections 304B and 498A of the Indian Penal Code for the sake of convenience and better understanding:

“Sections 304B- *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).”

498A. 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 purpose 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.

17. The essential ingredients for attracting the offence under Section 304-B IPC, as consistently laid down by the Hon’ble Supreme Court, require the following conditions to be cumulatively satisfied:

(i) that the death of a woman has been caused by burns or bodily injury or has occurred otherwise than under normal circumstances;

(ii) that such death has occurred within a period of seven years of her marriage;

(iii) that the deceased was subjected to cruelty or harassment by her husband or his relatives soon before her death; and



(iv) that such cruelty or harassment was in connection with, or in furtherance of, a demand for dowry and it is only upon the strict establishment of all the aforesaid ingredients that the offence under Section 304-B IPC can be said to be made out and the presumption under Section 113-B of the Evidence Act can be invoked.

18. Law in this regard is well settled by the Apex Court in case of *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 reported in para nos. has held *inter alia* as under:

8. A perusal of Section 2 shows that this definition can be broken into six distinct parts:

(1) Dowry must first consist of any property or valuable security— the word “any” is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

(6) Such giving or receiving must be in



connection with the marriage of the parties. Obviously, the expression “in connection with” would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean “in relation with” or “relating to”.

9. The ingredients of the offence under Section 304-B IPC 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.

21. Coming now to the other important ingredient of Section 304-B—what exactly is meant by “soon before her death”?

22. This Court in Surinder Singh v. State of Haryana [(2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] had this to say : (SCC pp. 137-39, paras 17-18) 22. This Court in Surinder Singh v. State of Haryana [(2014) 4 SCC 129 : (2014) 4 SCC (Cri) 769] had this to say : (SCC pp. 137-39, paras 17-18)

17. “Thus, the words ‘soon before’ appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to

spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words ‘soon before’ is, therefore, important. The question is how ‘soon before’? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be



depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

18. In this connection we may refer to the judgment of this Court in Kans Raj v. State of Punjab [(2000) 5 SCC 207 : 2000 SCC (Cri) 935] where this Court considered the term 'soon before'. The relevant observations are as under : (SCC pp. 222-23, para 15)

'15. ... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential



death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.'

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law."

17. *"Thus, the words 'soon before' appear in Section 113-B of the Evidence Act, 1872 and also in Section 304-B IPC. For the presumptions contemplated under these sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'? This would obviously depend on the facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.*

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Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on the facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law.”

19. Similar view was taken by the Apex Court in case of ***State of Madhya Pradesh vs. Jogendra and Anr.*** reported in ***(2022) 5 SCC 401.***



20. The record reveals that P.W.1 Sitaram Mahton and P.W.2 Sumitra @ Sumiya Devi did not support the prosecution case during trial and were declared hostile by the prosecution. Likewise, P.W.6 Barhamdeo Pd. Verma also did not support the prosecution version on material particulars and was declared hostile. P.W.5 Rajkumar Mahton merely deposed regarding the marriage of the deceased with accused Kamdeo Pd. Verma and the fact that she died at her matrimonial home, but he did not state anything with respect to the alleged demand of dowry, cruelty, harassment or assault. Nothing substantive emerged from the testimonies of these witnesses which could corroborate or lend assurance to the prosecution version regarding the alleged demand of dowry, cruelty or the circumstances leading to the death of Sushila Devi. None of these witnesses supported the prosecution case on any material aspect. Consequently, their evidence does not advance the prosecution case in any manner and is of no assistance in establishing the guilt of the appellants. Therefore, the testimonies of P.W.1, P.W.2, P.W.5 and P.W.6 are of no material relevance in proving the charges under Sections 304-B and 201 of the Indian Penal Code against the appellants.

21. The conviction of the appellants has been founded upon the testimonies of P.W.3 Sudhir Kumar Verma, the



informant and brother of the deceased, and P.W.4 Laljit Mahton, who claimed to be an eyewitness to the occurrence. These witnesses have deposed that after the marriage of the deceased Sushila Devi with appellant Kamdeo Pd. Verma, she was subjected to cruelty and harassment by her husband, *devar* and in-laws on account of persistent demands of Rs.10,000/- in cash along with utensils, an umbrella and shoes as dowry. According to P.W.3, despite his intervention on 17.04.1989 and assurance to fulfil the demand, the deceased continued to be subjected to cruelty and, on 21.04.1989, he received information from Shail Kumar Verma that the accused persons had assaulted the deceased, resulting in her death. P.W.4 claimed that he had witnessed the accused persons assaulting Sushila Devi on account of insufficient dowry and further stated that the accused persons hurriedly cremated the dead body to screen themselves from legal punishment. Thus, the testimonies of P.W.3 and P.W.4 constitute the principal basis on which the learned Trial Court sustained the conviction of the appellants under Sections 304-B and 201 of the Indian Penal Code. However, it is noteworthy that P.W.3 is not an eyewitness to the occurrence, the material witness Shail Kumar Verma and the Investigating Officer were not examined, and no medical or post-mortem



evidence was adduced to establish the cause of death of the deceased.

22. In the present case, the Investigating Officer has not been examined by the prosecution. Undoubtedly, the Investigating Officer is a material witness, being essential to explain the manner in which the investigation was conducted and the steps taken during the investigation. His examination also affords the defence an opportunity to test the fairness of the investigation through cross-examination. However, it is well settled that the mere non-examination of the Investigating Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard reference can be drawn from the judgment passed by the Apex Court in the case of ***Ram Gulam Chaudhary v. State of Bihar***, reported in ***(2001) 8 SCC 311*** in para no. 18, which is reproduced hereinafter:

“26. In the case of Ram Dev v. State of U.P. [1995 Supp (1) SCC 547 : 1995 SCC



(Cri) 402 (2)] this Court has held that it is always desirable for the prosecution to examine the investigating officer. However, non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthy testimony of the eyewitnesses.

27. In the case of Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] this Court has held that for non-examination of the investigating officer the prosecution case need not fail. This Court has held that it would not be correct to contend that if the investigating officer is not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of each case and no universal straitjacket formula should be laid down that non-examination of investigating officer per se vitiates the criminal trial.

28. In the case of Ambika Prasad v. State (Delhi Admn.) [(2000) 2 SCC 646 : 2000 SCC (Cri) 522] it was held that the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the investigating officer and other hostile witnesses could not be a ground for discarding evidence of PWs 5 and 7 whose presence on the spot was established beyond any reasonable doubt. It was held that non-examination of the investigating officer could not be a ground for disbelieving eyewitnesses.

29. In the case of Bahadur Naik v. State of



Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] it was held that non-examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination..”

23. From the perusal of the records and facts and circumstances of the present case and in light of consistent observation of the Hon’ble Supreme Court in respect of the expression “dowry” under Section 304-B IPC is required to receive a broad and purposive construction, so as, to effectuate the legislative intent of eradicating the social evil of dowry deaths, and any demand for money or valuable security having a nexus with the marital relationship, even if made subsequent to the marriage, would fall within its sweep; however, for the presumption under Section 113-B of the Evidence Act to arise, the prosecution is obligated to establish, by cogent and reliable evidence, that the deceased was subjected to cruelty or harassment in connection with such demand “*soon before her death*” and that there existed a proximate and live link between the alleged cruelty and the death and in the absence of such foundational facts, mere general or omnibus allegations would not suffice to sustain a conviction under Section 304-B IPC, and the Court must, therefore, exercise due circumspection in evaluating the evidence so as to ensure that the statutory presumption is not invoked in a mechanical manner but only



upon strict satisfaction of the requirements contemplated by law.

WHETHER PROSECUTION PROVED THEIR
CASE BEYOND REASONABLE DOUBT?

24. It is observed that merely because P.W.1 Sitaram Mahton, P.W.2 Sumitra @ Sumiya Devi and P.W.6 Barhamdeo Pd. Verma did not support the prosecution case and were declared hostile, the evidence of the remaining material witnesses could not have been discarded by the learned Trial Court on that score alone. The learned Trial Court relied mainly upon the testimonies of P.W.3 Sudhir Kumar Verma, the informant and brother of the deceased, and P.W.4 Laljit Mahton, who claimed to be an eyewitness to the occurrence. These witnesses consistently deposed regarding the demand of ₹10,000/- in cash along with utensils, an umbrella and shoes as dowry, the continued cruelty and harassment meted out to the deceased, and the alleged assault upon her shortly before her death. The learned Trial Court also relied upon the circumstance that the deceased died within seven years of her marriage and that the accused persons had hurriedly cremated the dead body to cause disappearance of evidence. On the cumulative effect of the aforesaid oral evidence, the learned Trial Court held that the deceased had died otherwise than under normal circumstances



after being subjected to cruelty and harassment in connection with dowry demands soon before her death and, consequently, invoked the presumption under Section 113-B of the Indian Evidence Act. Holding that the defence had failed to rebut the statutory presumption, the learned Trial Court recorded the conviction of the appellants under Sections 304-B and 201 of the Indian Penal Code.

25. In view of the aforesaid facts and circumstances, and in the light of the settled legal principles and law laid down by the Hon'ble Supreme Court in ***Rajinder Singh (supra)*** and ***Jogendra (supra)***, this Court is of the considered opinion that the learned Trial Court has erred in convicting the appellants. The prosecution has failed to establish beyond reasonable doubt that the deceased was subjected to cruelty or harassment in connection with any demand for dowry soon before her death, which is a *sine qua non* for attracting the provisions of Section 304-B of the Indian Penal Code. The conviction is primarily founded upon the testimonies of P.W.3 and P.W.4, whereas P.W.3 is admittedly not an eyewitness and P.W.4 is the solitary witness claiming to have witnessed the occurrence. The material witness, Shail Kumar Verma, who allegedly informed the informant about the occurrence, was withheld by the



prosecution. Furthermore, the Investigating Officer was not examined, thereby, depriving the defence of an effective opportunity to challenge the prosecution case that the deceased died otherwise than under normal circumstances. In such circumstances, the prosecution failed to prove the foundational facts necessary for invoking the statutory presumption under Section 113-B of the Indian Evidence Act. Consequently, the conviction of the appellants under Sections 304-B and 201 of the Indian Penal Code cannot be sustained and is liable to be set aside by extending the benefit of doubt to the appellants.

26. Accordingly, judgment of conviction dated 01.07.2010 and order of sentence dated 07.07.2010 passed by the learned Additional District and Sessions Judge, F.T.C. V, Jamui in Sessions Trial No. 534 of 1996/ Tr No.92/2009 arising out of Chandramandih P.S. Case No. 21/89 is hereby set aside and quashed.

27. Since the appellants stand acquitted and all the appellants are on bail, they are discharged from the liabilities of their respective bail bonds. The fine amount, if already deposited by the acquitted appellants, shall be refunded forthwith, subject to verification by the court concerned.

28. Accordingly, the present appeal stands allowed.



29. Office is directed to send back the lower court records along with a copy of this judgment to the learned court below forthwith.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	
CAV DATE	30.06.2026
Uploading Date	09.07.2026
Transmission Date	09.07.2026

